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INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR 2012

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

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NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mr. Dicks, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

DAVID LESSTRANG, DARREN BENJAMIN, JASON GRAY, ERICA RHOAD, and COLIN VICKERY,
Staff Assistants

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PART 6

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DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR 2012

TUESDAY, MARCH 1, 2011.

MAJOR MANAGEMENT CHALLENGES AT THE DEPARTMENT OF THE INTERIOR

WITNESSES

ANU MITTAL, DIRECTOR, THE NATURAL RESOURCES AND ENVIRONMENT DIVISION, GAO

FRANK RUSCO, DIRECTOR, THE NATURAL RESOURCES AND ENVIRONMENT DIVISION, GAO

MARY KENDALL, ACTING INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR

Mr. SIMPSON. The committee will come to order.

OPENING REMARKS OF CHAIRMAN SIMPSON

I want to welcome the members of the subcommittee that are here as well as our panel of witnesses this morning from the Government Accountability Office and the Department of Interior's Office of Inspector General. We have about three new members of the committee that we will introduce when they come, Mrs. Lummis, Mr. Flake and Mr. Serrano, who are new to the Interior Subcommittee, and we will introduce them when they come and welcome them to the committee.

Our first witness today is Ms. Anu Mittal, Director of the Natural Resources and Environment Division at the GAO. She will be joined by Dr. Frank Rusco, also Director of the Natural Resources and Environmental Division at the GAO. They will be followed by Mrs. Mary Kendall, the Acting Inspector General at the Department of Interior. We appreciate each of you appearing before the subcommittee this morning.

This morning's session marks the first of two dozen hearings that the Interior Subcommittee will hold between now and mid-April. Our primary focus throughout these hearings will be on oversight of the programs and budgets under the subcommittee's jurisdiction. Oversight is especially important this year as we ask agencies to prioritize their funding needs to separate the "must haves" from the "nice to haves" at this time of rising deficits and shrinking subcommittee allocations.

Assisting us in this effort will be the highly respected, nonpartisan GAO and several independent agency IGs. In hearings today, tomorrow and next week, we will examine in detail pro-

grammatic concerns and management issues within the Department of Interior, the Forest Service and the EPA. We have asked our witnesses to identify and summarize specific concerns about programs and policies within each agency. Together, the GAO and the agencies' IGs will testify about the major management challenges facing these agencies so our subcommittee will be better informed to address these challenges and better prepared to write the subcommittee's fiscal year 2012 budget.

The issues highlighted by this morning's testimony point to some of the fundamental weaknesses within the Department of Interior deserving of attention by the Appropriations Committee and this Congress. The same is true for the testimony we will receive tomorrow relating to the EPA and next week relating to the Forest Service. Taken together, this testimony will help members formulate questions when we hear from EPA Administrator Lisa Jackson at this Thursday's budget hearing and from Interior Secretary Ken Salazar and the Forest Service Chief Tom Tidwell at next week's budget hearings.

Because of the importance of today's testimony, the subcommittee is allocating 15 minutes each for the GAO and the IG for opening statements so that they can adequately present their concerns for members. We will first hear from the GAO and then from the Inspector General followed by members' questions.

I will turn the time over to Ms. McCollum if you have an opening statement.

OPENING REMARKS OF MS. MCCOLLUM

Ms. MCCOLLUM. Thank you, Mr. Chair, and good morning.

It is extremely important for Congress and especially the members of this subcommittee to base decisions on facts, and we need to gain the insights of the GAO and understand the work of you folks here to ensure that the departments are well run, efficient, and we are being wise with the public's money and we earn the public's trust.

We all know that Interior is directly responsible for carrying over 500 million acres. That is about 20 percent of America's lands. We know that this Department generates more revenue, largely from oil, gas and coal, than it spends. And it also holds a sacred responsibility to fulfill the government's trust and obligations to America's first people.

You cannot balance the federal budget on the back of this Department, and I agree, we do need to see that each and every federal dollar is wisely spent but we also need to invest properly in the management of our priceless resources. The fragile nature of our current economic recovery and, quite frankly, of our environment, means that the decisions we make in this room have a real impact on America, especially in the West and the South where climate change is altering landscapes, forests and fresh sources of water.

It would appear, based on today's testimony, that existing law and policy does not pay America's taxpayers a fair market price for the extensive fossil fuel, hard-rock minerals, grazing rights that industry extracts from public lands. It indicates to me that we need

to invest in this part of America and we need to invest wisely to manage the resources, not just cut budgets.

I want to thank the GAO for their views on this and the inspectors because we need to have better management of oil and gas, both onshore and offshore. If we did not learn anything, we should have learned from close scrutiny of the BP Transocean oil disaster, that we need to be more mindful, more diligent and we need to have more oversight on these issues.

Mr. Chair, I am glad you are having this hearing today and I hope we can learn how to invest in America wisely and safeguard the resources we have for future generations.

Mr. SIMPSON. Thank you.

Ms. Mittal, it is your turn.

TESTIMONY OF ANU K. MITTAL AND FRANK RUSCO

Ms. MITTAL. Mr. Chairman and members of the subcommittee, we are pleased to be here today to participate in your hearing on the major management challenges of the Department of the Interior. Our testimony today is an update of our March 2009 testimony before this subcommittee. Specifically, we will discuss management challenges in seven key areas. I will cover six of the areas that relate to the overall management of Interior's programs and then my colleague, Frank Rusco, will cover the seventh area related to Interior's oil and gas program, which, as you know, GAO just added to its high-risk list.

The first area of management challenges that I would like to cover relates to Interior's resource protection functions. In fulfilling these functions, Interior has faced a number of challenges in the past and we believe will continue to face additional ones in the future. Based on our recent work, I would like to highlight three specific resource protection challenges.

First is the continuing challenge of protecting lives, property and resources from wildland fires. While Interior partnering with the Forest Service has taken some actions to better respond to the wildland fire problem, a significant amount of work remains to be done and many of the recommendations that we have made in the past have not yet been fully implemented.

The second resource protection challenge is that of protecting federal land and water resources from the effects of climate change. While Interior has begun to consider measures that would strengthen the resilience of natural resources in the face of climate change, we believe that in a fiscally constrained environment, the Department will be challenged in setting priorities and making resource allocation decisions to address these impacts.

The third resource protection challenge relates to protecting and securing federal lands from illegal activities. Our recent work has found that although Interior agencies consider information on the occurrence and effects of illegal activities on federal lands, the agencies do not systematically assess the risk posed by such activities when determining their needs for resources and making resource allocation decisions.

The second area of major management challenges relates to weaknesses in Interior's management of Indian and insular area programs. For several years we have identified a variety of issues

that Interior faces with these programs. For example, Interior's Bureau of Indian Affairs continues to face challenges in processing land and trust applications, and Interior's Office of Insular Affairs continues to face challenges in providing assistance to insular areas. Our recent work has again highlighted the longstanding nature of the financial program management and economic challenges that the insular areas face as well as concerns with Interior's oversight of the programs for these areas and the potential that this creates for mismanagement.

The third major management challenge for Interior has been in the area of land sales, acquisitions and exchanges. Our recent work has identified additional weaknesses in this area. Specifically, we have concluded that Interior faces a number of challenges in completing future land sales and acquisitions under the Federal Land Transaction Facilitation Act, known as FLTFA, and we have identified a number of weaknesses in how Interior's Bureau of Land Management manages land exchanges. We have made recommendations to both Congress and Interior to address these concerns. While some steps have been taken to better manage the land exchange program, several of our other recommendations have not yet been implemented.

The fourth major management challenge relates to Interior's ability to adequately maintain its facilities and infrastructure. For fiscal year 2010, the Department estimated that its deferred maintenance backlog was between $13.5 billion and $19.9 billion. Again, in a fiscally constrained environment, we believe that managing such a significant deferred maintenance backlog will continue to be a challenge for the Department.

The fifth major management challenge area for Interior is the need to enhance its financial assurance and bonding programs for mining and oil and gas operations. For example, our recent work has shown that while Interior requires oil and gas operators to reclaim the land they disturb and post a bond to help ensure they do so, not all operators performed the required reclamation and the minimum bond amounts have not been increased in almost 50 years. We issued a report last Friday that recommends that Interior take a number of steps to improve its bonding program for oil and gas operators including increasing the minimum bond amounts. Similarly, hard-rock mining operators are required to provide financial assurances before they begin exploration or mining on federal lands. However, we have found that the amount of financial assurances posted by these operators has been inadequate and does not cover the full cost of reclamation.

Finally, I would like to cover a new major management challenge that we have recently identified relating to Interior's information security. With an information technology budget of nearly $1 billion, Interior relies on its computerized systems to carry out both its financial and mission-related operators. However, our work has found that Interior has been challenged to effectively protect its computer systems and networks and has not consistently implemented effective controls to prevent, limit and detect unauthorized access to its systems. In addition, Interior has not managed the configuration of network devices to prevent unauthorized access and ensure system integrity. We have made a number of rec-

ommendations that the Department has agreed and plans to implement.

Mr. Chairman, this concludes my prepared statement. I would like to now turn it over to Frank, who will complete our testimony by presenting the management challenges with the oil and gas program.

Mr. SIMPSON. Mr. Rusco.

Mr. RUSCO. Thank you. Mr. Chairman and members of the subcommittee, I am pleased to be here today to speak about the Department of the Interior's management of oil and gas produced on public lands and waters. The Department of the Interior manages the leasing of federal lands and waters for oil and gas exploration, development and production. These activities provide an important domestic source of energy for the United States, create jobs in the oil and gas industry and raise revenues that are shared between federal, state and tribal entities.

Revenue generated from oil and gas produced from leased federal lands and waters is one of the largest non-tax sources of federal government revenue, accounting for about $9 billion in royalties alone in 2009. The deadly explosion onboard the Deepwater Horizon and oil spill in the Gulf of Mexico in April 2010 emphasized the importance of federal management of permitting and inspection processes to ensure operational and environmental safety. The National Commission on the BP Deepwater Horizon oil spill and offshore drilling reported in January 2011 that this disaster was the product of several individual missteps and oversights by BP, Halliburton and Transocean which government regulators lacked the authority, the necessary resources and the technical expertise to prevent.

In recent years, GAO has undertaken numerous evaluations of many aspects of Interior's management of federal oil and gas and have found many material weaknesses that have hampered the agency's ability to strike the right balance between encouraging domestic oil and gas production on one hand and on the other maintaining operational and environmental safety and providing reasonable assurance that the public is getting the revenues to which it is entitled. In particular, three areas of concern caused the GAO to place Interior's management of federal oil and gas on the high-risk list in 2011.

First, Interior has been unable to complete production inspections, maintain reliable royalty and production data and provide reasonable assurance that the public is receiving its fair share of oil and gas revenues. For example, in 2010, we reported that Interior had not consistently met its statutory or agency goals for verifying that oil and gas producers accurately report the volumes of oil and gas produced on federal leases, either onshore or offshore. Also, in 2009 we reported that Interior lacked consistent and reliable data on the production and sale of oil and gas from federal lands and therefore cannot provide reasonable assurance that it was appropriately assessing and collecting royalties. In 2008, we reported that Interior collected lower levels of revenues for oil and gas production than all but 11 of 104 oil and gas resource owners including many countries and some states whose revenue collection systems were evaluated in a comprehensive industry study.

Secondly, Interior has had longstanding challenges in hiring, training and retaining staff in key skilled positions. For example, in 2010 we reported that BLM and MMS experienced high turnover rates in key oil and gas inspection and engineering positions. In addition to hampering production verification efforts, these human capital challenges have resulted in delays in issuing leases and caused Interior to be unable to meet its statutory and agency goals for performing safety and environmental inspections of oil and gas on federal leases.

Finally, in May 2010, the Secretary of the Interior announced plans to reorganize the offshore oil and gas management and revenue collections function of the Department into three bureaus. Under this reorganization, offshore leasing, planning and permitting will be done in the newly created Bureau of Ocean Energy Management, offshore inspections and enforcement by the Bureau of Safety and Environmental Enforcement, and revenue collection both onshore and offshore by the newly created Office of Natural Resources Revenue. While Interior's reorganization may eventually lead to more effective and efficient operations, our past work has shown that organizational transformations are not simple endeavors and they require the concerted and sustained efforts of management and staff alike. Interior's reorganization will be made more challenging because it being undertaken at a time when the agency is working to implement dozens of recommendations made by GAO, Interior's Inspector General and other entities.

In addition, this reorganization will require increased levels of resources, and this will be very difficult to achieve in this time of tight budgets. Further, Interior's reorganization of offshore oil and gas management and revenue collection do not address significant challenges we have identified with its management of onshore oil and gas resources.

It is essential that Interior gets this organization right as well as respond to all the material weaknesses GAO and others have identified. The agency must be able to provide Congress and the public with reasonable assurance that billions of dollars of revenue owed the public are being properly assessed and collected and that oversight of oil and gas exploration and production on federal lands and waters maintains an appropriate balance between efficiency and timeliness on one hand and protection of the environment and operational safety on the other.

This ends my oral statement. I will be happy to respond to any questions you may have. Thank you.

[The statement of Anu K. Mittal and Frank Rusco follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, House of Representatives

For Release on Delivery
Expected at 9:30 a.m. EST
Tuesday, March 1, 2011

DEPARTMENT OF THE INTERIOR

Major Management Challenges

Statement of Anu K. Mittal, Director
Natural Resources and Environment

Frank Rusco, Director
Natural Resources and Environment

GAO-11-424T

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Highlights

Highlights of GAO-11-424T, a testimony statement before the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, House of Representatives

Why GAO Did This Study

The Department of the Interior (Interior) is responsible for managing much of the nation's vast natural resources. Its agencies implement an array of programs intended to protect these resources for future generations while also allowing certain uses of them, such as recreation and oil and gas development. In some cases, Interior is authorized to collect royalties and fees for these uses. Over the years, GAO has reported on management challenges at Interior, which are largely characterized by the struggle to balance the demand for greater use of its resources with the need to conserve and protect them. Furthermore, given the government's long-term fiscal challenges, Interior faces difficult choices in balancing its responsibilities.

This testimony highlights some of the major management challenges facing Interior today. It is based on prior GAO reports.

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 and strengthening internal controls. Interior has agreed with most of the recommendations and taken some steps to implement them. However, Interior has been slow to implement other recommendations, such as developing a cohesive wildland fire strategy and improving oversight of oil and gas activities.

View GAO-11-424T or key components. For more information, contact Anu K.Mittal or Frank Rusco at (202) 512-3841 or mittala@gao.gov and ruscof@gao.gov, respectively.

March 1, 2011

DEPARTMENT OF THE INTERIOR

Major Management Challenges

What GAO Found

As GAO's previous work has shown, Interior faces major management challenges in the following seven areas:

Strengthening resource protection. Interior has not yet developed a cohesive strategy to address wildland fire issues as GAO has recommended in the past. In addition, Interior faces challenges in adapting to climate change and protecting and securing federal lands from illegal activities.

Strengthening the accountability of Indian and insular area programs. Having a land base is important to Indian tribal governments. Concerns remain about the effect of a February 2009 Supreme Court decision on the process for taking land in trust for tribes and their members. In addition, seven insular areas—four U.S. territories and three sovereign island nations—continue to face financial, program management, and economic challenges.

Improving federal land acquisition and exchanges. As the steward of more than 500 million acres of federal land, land sales, acquisitions, and exchanges are important land management functions for the department. The Federal Land Transaction Facilitation Act of 2000 has had limited success and Interior needs to better manage land exchanges and protect federal funds.

Reducing Interior's deferred maintenance backlog. While Interior has made progress improving information on maintenance needs, the dollar estimate of the deferred maintenance backlog for fiscal year 2010 was between $13.5 billion and $19.9 billion.

Management of federal oil and gas resources. GAO designated Interior's management of federal oil and gas resources as a governmentwide high-risk area in February 2011. Interior faces ongoing challenges in four broad areas: (1) oil and gas revenue collection, (2) management of human capital, (3) reorganization of the bureaus dealing with oil and gas issues, and (4) balancing timely and efficient oil and gas development with environmental stewardship responsibilities.

Generating revenue and enhancing financial assurances and bonds. Additional revenues could be generated by amending the General Mining Act of 1872 so that the federal government could collect federal royalties on minerals extracted from U.S. mineral rights. In addition, financial assurances and bonds from hardrock mining and oil and gas operations could be enhanced to help ensure the reclamation of federal land disturbed by these operations.

Improving information security. Interior has been challenged to effectively protect its computer systems and networks. The department has not consistently implemented effective controls to prevent, limit, and detect unauthorized access to its systems or manage the configuration of network devices to prevent unauthorized access and ensure system integrity.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to participate in your hearing on the major management challenges at the Department of the Interior (Interior). As the stewards for more than 500 million acres of federal land—about one-fifth of the total U.S. landmass—and more than 1.7 billion acres of the Outer Continental Shelf, Interior 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. Interior's mission 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 Alaska 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, Congress has appropriated more than $11 billion annually to meet these responsibilities. With these resources, Interior employs about 70,000 people in eight major agencies and bureaus at more than 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. Furthermore, given the federal deficit and the government's long-term fiscal challenges, Interior faces difficult choices in balancing its many responsibilities and protecting and improving the condition of the nation's natural resources and the department's infrastructure.

Our testimony today is an update of our March 2009 testimony before this subcommittee on Interior's major management challenges.[1] Specifically, we will discuss management challenges in seven key areas: (1) resource protection; (2) Indian and insular area programs, which includes programs for four U.S. territories and three sovereign island nations, among others; (3) land acquisition and exchanges; (4) deferred maintenance; (5) federal oil and gas resources; (6) generating other revenue collections and enhancing financial assurances and bonds; and (7) improving information security. Our testimony is based on findings from a number of reports we have issued over the past few years on some of Interior's natural resource management programs. See the list of related GAO products at the end of

[1]GAO, *Department of the Interior: Major Management Challenges*, GAO-09-425T (Washington, D.C.: Mar. 3, 2009).

this statement. We conducted our work in accordance with all sections of GAO's Quality Assurance Framework that were relevant to the objectives of each engagement. The framework requires that we plan and perform each engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analyses conducted, provided a reasonable basis for the findings and conclusions in each report.

Strengthening Resource Protection

In fulfilling its resource protection functions, Interior has faced a number of management challenges in the past and will continue to face challenges in the future. In particular, based on our recent work, we would like to highlight three challenges in this area (1) protecting lives, property and resources from wildland fires; (2) adapting to climate change; and (3) protecting and securing federal lands from illegal activities.

Wildland Fire Management Challenges Persist

As we reported in our March 2009 testimony, Interior, working with the Department of Agriculture's Forest Service, has taken steps to help manage perhaps the agency's most daunting challenge—protecting lives, private property, and federal resources from the threats of wildland fire. However, our nation's wildland fire problem worsened dramatically over the past decade. The average annual acreage burned by wildland fires in the 2000s is more than double that burned in the 1990s, and appropriations for the federal government's wildland management activities have tripled, averaging approximately $3 billion annually in recent years, up from about $1 billion in fiscal year 1999. While Agriculture's Forest Service receives about 70 percent of the appropriations, four Interior agencies—the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS)—are key partners in the federal response to wildland fire. Therefore, most of our work and recommendations on wildland fire management address agencies in both departments.

In our March 2009 testimony we noted four primary areas we believed the agencies needed to address to better respond to the nation's wildland fire problems. While the agencies have continued to make improvements in these areas, as discussed below, work remains to be done in each. As a result, we continue to believe that wildland fire management is a major management challenge for Interior.

- *The agencies have not yet developed a cohesive strategy that identifies options and associated funding to reduce potentially hazardous vegetation and address wildland fire problems.* For more than a decade, we have recommended that the agencies develop a cohesive wildland fire strategy that identifies potential long-term options for reducing fuels and responding to fires that occur, and the funding requirements associated with the various options.[2] In 2009 Congress echoed our call for a cohesive strategy in the Federal Land Assistance, Management, and Enhancement Act of 2009,[3] which requires the agencies to produce a cohesive strategy consistent with our recommendations. In response, Interior and the Forest Service have prepared Phase I of the cohesive strategy, which, according to a senior agency official, provides a general description of the agencies' approach to the wildland fire problem and establishes a framework for collecting and analyzing the information needed to assess the wildland fire problem and make decisions about how to address it. The document has not yet been made final or formally submitted to Congress as required by the act, though the strategy was required to be submitted within 1 year of the act's 2009 passage. Once the document has been made final, the agencies expect to begin drafting Phase II of the strategy, which, according to this official, will involve the actual collection and analysis of data and assessment of different options.

- *The agencies have not yet established clear goals and a strategy to help contain wildland fire costs.* Although the agencies have continued to take steps intended to help contain wildland fire costs, they have not yet clearly defined their cost-containment goals or developed a strategy for achieving those goals.[4] Without such fundamental steps, we believe the agencies will have difficulty determining whether they are taking the most important steps first, as well as the extent to which the steps they are taking will help contain costs. While several agency documents discuss the agencies' cost containment goals and objectives at a high level, we believe these documents lack the clarity and specificity needed by officials in the field to help manage and contain wildland fire costs. We therefore continue to

[2]For more information on the agencies' efforts to address these recommendations, see GAO, *Wildland Fire Management: Federal Agencies Have Taken Important Steps Forward, but Additional, Strategic Action Is Needed to Capitalize on Those Steps*, GAO-09-877 (Washington, D.C.: Sept. 9, 2009).

[3]Pub. L. No. 111-88, § 503, 123 Stat. 2971 (2009).

[4]GAO, *Wildland Fire Management: Lack of Clear Goals or a Strategy Hinders Federal Agencies' Efforts to Contain the Costs of Fighting Fires*, GAO-07-655 (Washington, D.C.: June 1, 2007).

believe that the agencies will be challenged in managing their cost-containment efforts and improving their ability to contain wildland fire costs.

- *The agencies have continued to improve their processes for allocating fuel reduction funds and selecting fuel reduction projects, but further action is needed.* Fuel reduction projects—using prescribed fire, mechanical thinning, herbicides, grazing, or combinations of these methods—are intended to remove or modify wildland fuel to reduce the potential for severe wildland fires, lessen the damage caused by fires, limit the spread of flammable invasive species, and restore and maintain healthy ecosystems. In 2007 we identified several shortcomings in the agencies' processes for allocating fuel reduction funds and selecting fuel reduction projects.[5] While the agencies have continued to take steps to improve these processes, we believe they will continue to face challenges in more effectively using their limited fuel reduction dollars without the improved processes we have previously recommended.

- *The agencies have not yet taken needed steps to improve the use of an interagency budgeting and planning tool.* Since 2008 we have been concerned about Interior's and the Forest Service's development of a planning tool known as fire program analysis (FPA).[6] FPA is designed to allow the agencies to analyze potential combinations of firefighting assets, and potential strategies for reducing fuels and fighting fires, to identify the most cost-effective among them. By identifying cost-effective combinations of assets and strategies within the agencies, FPA was also designed to help the agencies develop their wildland fire budget requests and allocate resources across the country. However, FPA's development continues to be characterized by delays and revisions, and the agencies are several years behind their initially projected timeline for using it to help develop their budget requests. Although the agencies continue to take steps to improve FPA as we recommended, it is not clear how effective these steps will be in correcting the problems we have identified and therefore we believe that the agencies will continue to face challenges in this area.

[5]GAO, *Wildland Fire Management: Better Information and a Systematic Process Could Improve Agencies' Approach to Allocating Fuel Reduction Funds and Selecting Projects*, GAO-07-1168 (Washington, D.C: Sept. 28, 2007).

[6]GAO, *Wildland Fire Management: Interagency Budget Tool Needs Further Development to Fully Meet Key Objectives*, GAO-09-68 (Washington, D.C: Nov. 24, 2008).

Adapting to the Effects of Climate Change on Public Lands

As we stated in our March 2009 testimony, federal land and water resources are vulnerable to a wide range of effects from climate change, some of which are already occurring. According to experts, these effects include (1) physical effects, such as droughts, floods, glacial melting, and sea level rise; (2) biological effects, such as increases in insect and disease infestations, shifts in species distribution, and changes in the timing of natural events; and (3) economic and social effects, such as adverse impacts on tourism, infrastructure, fishing, and other resource uses. Furthermore, in August 2007, we reported that climate change impacts compete for the attention of decisionmakers with more immediate priorities.[7] We found at that time that BLM, FWS, and NPS did not make climate change a priority, and that their strategic plans did not specifically address climate change. Our recent work related to flooding and erosion in Alaska provides an example of how the effects of a warmer climate have been clearly evident in Alaska. In June 2009, we reported that while the flooding and erosion threats to Alaska Native villages have not been completely assessed, since 2003, federal, state, and village officials have identified 31 villages that face imminent threats.[8] We suggested that Congress consider the need for a federal lead to ensure that federal resources are being prioritized and allocated efficiently and effectively.

In October 2009, we found that several federal agencies, including Interior, had begun to consider measures that would strengthen the resilience of natural resources in the face of climate change.[9] In September 2009, Interior issued an order designed to address the impacts of climate change on the nation's water, land, and other natural and cultural resources.[10]

[7]GAO, *Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources*, GAO-07-863 (Washington, D.C.: Aug. 7, 2007).

[8]GAO, *Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion*, GAO-09-551 (Washington, D.C.: June 3, 2009).

[9]GAO, *Climate Change Adaptation: Strategic Federal Planning Could Help Government Officials Make More Informed Decisions*, GAO-10-113 (Washington, D.C.: Oct. 7, 2009).

[10]Secretarial Order No. 3289 (Sept. 14, 2009), as amended. The order, among other things, designated eight regional Climate Change Response Centers, now known as Climate Science Centers. Secretarial Order No. 3289, Amendment No. 1 (Feb. 22, 2010). According to Interior, these centers will synthesize existing climate change impact data and management strategies, help resource managers put them into action on the ground, and engage the public through education initiatives. Interior has also identified specific adaptation strategies and tools for natural resource managers. For example, Interior provided a number of adaptation-related policy options for land managers in reports produced for its Climate Change Task Force, a past effort that has since been expanded upon to reflect new priorities.

Among other things, the order requires each bureau and office to consider and analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources. While we believe that this is a step in the right direction, in a fiscally constrained environment the department will continue to face challenges in setting priorities and making resource allocation decisions to address the impacts of climate change.

Protecting and Securing Federal Lands

Our recent work has also identified a challenge for Interior in the area of protecting and securing federal lands from the effects of illegal activities. BLM, FWS, and NPS are responsible for managing federal lands, enforcing federal laws governing the lands and their resources, and ensuring visitor safety. Illegal activities occurring on these lands have raised concerns that the agencies are becoming less able to protect our natural and cultural resources and ensure public safety. In December 2010, we reported that although land management agencies consider varied information on the occurrence and effects of illegal activities on federal lands, the agencies do not systematically assess the risks posed by such activities when determining their needs for resources and where to distribute them.[11] Without systematic approaches to assess the risks they face, the agencies may have limited assurance that they are allocating scarce resources in a manner that effectively addresses the risk of illegal activities on our nation's federal lands. In order to help the agencies better manage law enforcement resources, we recommended that the agencies adopt a risk management approach to systematically assess and address threats and vulnerabilities presented by illegal activities on federal lands. Interior concurred with our recommendation, and we continue to track its implementation.

In addition, federal lands on the U.S. borders with Canada and Mexico are vulnerable to illegal cross-border activity. In November 2010, we reported that illegal cross-border activity remains a significant threat to federal

[11]GAO, *Federal Lands: Adopting a Formal, Risk-Based Approach Could Help Land Management Agencies Better Manage Their Law Enforcement Resources*, GAO-11-144 (Washington, D.C.: Dec. 17, 2010).

lands.[12] Furthermore, there has been little interagency coordination to share intelligence assessments of border security threats to federal lands and develop budget requests, strategies, and joint operations to address these threats. In October 2010, we also found that coordination challenges between land management agencies and Border Patrol caused land management and environmental laws to be implemented in such a way that, at times, delayed or restricted Border Patrol's access to and monitoring of federal lands along the Southwest border.[13] To more easily balance public safety and access to federal borderlands and to help ensure that Interior, the Department of Homeland Security, and the Department of Agriculture coordinate efforts to provide an effective interagency law enforcement response on these lands, we made recommendations aimed at improving interagency coordination. Interior agreed with our recommendations, and we continue to track their implementation.

Strengthening the Accountability of Indian and Insular Area Programs

We have reported on management weaknesses in Indian and insular area programs for a number of years. BIA continues to face challenges in processing land in trust applications, and Interior's Office of Insular Affairs (OIA) continues to face challenges in providing assistance to seven of the insular areas—four U.S. territories and three sovereign island nations—with long-standing financial, program management, and economic challenges.

Challenges Continue for 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 about 2 million American Indians and Alaska Natives. BIA provides basic services to 565 federally recognized Indian tribes throughout the United States, including 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. In 1980 Interior established a regulatory process intended to

[12]GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177 (Washington, D.C.: Nov. 18, 2010).

[13]GAO, *Southwest Border: More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands*, GAO-11-38 (Washington, D.C.: Oct. 19, 2010).

provide a uniform approach for taking land in trust.[14] 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 2006 that while BIA generally followed its regulations for processing land in trust applications from tribes and individual Indians, it had no deadlines for making decisions on them.[15] While BIA has generally responded to our recommendations to improve the processing of land in trust applications, this issue continues to be a challenge, in part, because of a February 24, 2009, Supreme Court decision.[16] The court held that the Indian Reorganization Act only authorizes the Secretary of the Interior to take land into trust for a tribe or its members if that tribe was under federal jurisdiction when the law was enacted in 1934.[17] The court did not define what constituted being under federal jurisdiction but did find that a tribe, which was not federally recognized until 1983, was not under federal jurisdiction in 1934. It is not clear how many tribes or pending land in trust applications will be affected by this decision, but the decision raises a question about the Secretary's authority to take land in trust for the 50 tribes that have been newly recognized since 1960 and their members.[18] The Secretary's decisions to take land in trust for two of these tribes—the

[14]25 C.F.R. pt. 151.

[15]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).

[16]Carcieri v. Salazar, 555 U.S. ___, 129 S.Ct. 1058 (2009).

[17]Act of June 18, 1934 (Indian Reorganization Act), ch. 576, 48 Stat. 984-988 (1934), *codified as amended at* 25 U.S.C. §§ 461-479.

[18]For additional information on BIA's administrative process for granting federal recognition and a list of newly recognized tribes see GAO, *Indian Issues: Improvements Needed in Tribal Recognition Process*, GAO-02-49 (Washington, D.C.: Nov. 2, 2001). Also see enclosure II of GAO, *Indian Issues: BLM's Program for Issuing Individual Allotments on Public Lands Is No Longer Viable*, GAO-07-23R (Washington, D.C.: Oct. 20, 2006) and appendix II of GAO, *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, GAO-10-768 (Washington, D.C.: July 28, 2010) for updated lists of new and restored tribes. The Shinnecock Indian Nation of New York, the newest federally recognized tribe, was recognized as of October 1, 2010. 75 Fed. Reg. 66124 (Oct. 27, 2010).

Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan and the Cowlitz Indian tribe of Washington—have been challenged in court.[19]

Improve Effectiveness and Accountability for Insular Area Programs

The Secretary of the Interior has varying responsibilities to the insular areas of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), 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. OIA, which carries out the department's responsibilities for insular affairs, provides financial and technical assistance to the insular areas in developing more efficient and effective governments and it helps manage relations between the federal government and the insular area governments by promoting appropriate federal policies. For example, OIA is responsible for helping to implement federal policies related to CNMI immigration and minimum wage increases in American Samoa and the CNMI. The insular area governments have had long-standing financial and program management deficiencies, in addition to facing economic challenges. Our recent work related to the insular areas has focused on concerns relative to OIA's oversight of grants to insular areas, application of U.S. immigration law to the CNMI, and minimum wage increases in American Samoa and the CNMI.

In March 2010, we reported that opportunities exist for OIA to improve its grant oversight and reduce the potential for mismanagement.[20] OIA provided approximately $400 million annually to financial assistance to insular area governments—roughly $70 million of which is awarded annually as grants to insular areas for capital improvement projects, operations and maintenance improvement projects, technical assistance, and other purposes, to increase the self-sufficiency of the insular areas. We estimated that 39 percent of the 1,771 grant projects in OIA's grant management database at the time of our review demonstrated at least one internal control weakness that may increase the projects' susceptibility to

[19]Patchak v. Salazar, 646 F. Supp. 2d 72 (D.D.C. 2009), *vacated by* Patchak v. Salazar, No. 09-5324 (D.C. Cir. Jan. 21, 2011); Clark County v. Salazar, No. 11-00278 (D.C. Cir. filed Jan. 31, 2011).

[20]GAO, *U.S. Insular Areas: Opportunities Exist to Improve Interior's Grant Oversight and Reduce the Potential for Mismanagement*, GAO-10-347 (Washington, D.C.: Mar. 16, 2010).

mismanagement. While we noted that OIA had taken a number of steps to improve project implementation and management since 2005, we recommended that Interior improve OIA's ability to effectively manage grants by taking several actions, including clarifying its authorities to ensure insular areas use funds more efficiently, creating a workforce plan to reflect the staffing levels necessary to adopt a proactive monitoring and oversight approach, and developing criteria for project redirection request approvals. Interior agreed with our recommendations and has since developed the workforce plan.

Over the last few years we have also issued a number of reports on the application of U.S. immigration law to the CNMI.[21] U.S. law established federal control of CNMI immigration beginning in 2009, with provisions affecting employers' access to foreign workers, investors, and visitors during a transition period ending in 2014.[22] Interior is specifically assigned several responsibilities in implementing the law. During the transition period, the U.S. Secretary of Homeland Security, in consultation with the U.S. Secretaries of the Interior, Labor, and State and the U.S. Attorney General, has the responsibility to establish, administer, and enforce a transition program to regulate immigration in the CNMI, and decisions regarding delays or extensions of the transition period also are in consultation with Interior and other agencies. Furthermore, the legislation requires Interior to provide technical assistance to the CNMI to promote

[21]GAO, *Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period*, GAO-08-466 (Washington, D.C.: Mar. 28, 2008); GAO, *Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data*, GAO-08-791 (Washington, D.C.: Aug. 4, 2008); GAO, *Commonwealth of the Northern Mariana Islands: Coordinated Federal Decisions and Additional Data Are Needed to Manage Potential Economic Impact of Applying U.S. Immigration Law*, GAO-09-426T (Washington, D.C.: May 19, 2009); GAO, *CNMI Immigration and Border Control Databases*, GAO-10-345R (Washington, D.C.: Feb. 16, 2010); and GAO, *Commonwealth of the Northern Mariana Islands: DHS Should Conclude Negotiations and Finalize Regulations to Implement Federal Immigration Law*, GAO-10-553 (Washington, D.C.: May 7, 2010).

[22]Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, Title VII, 122 Stat. 754, 853 (2008). The Secretary of Homeland Security elected to delay the transition period start date from June 1, 2009, to November 28, 2009, as permitted by the law. U.S. immigration law was applied to the CNMI November 28, 2009, as scheduled; however, implementation of the CNMI transitional worker program was delayed following a federal court injunction just before the transition period start date that required the Department of Homeland Security to allow more time for public comment on the proposed program regulations. As of January 2011, the department had not yet issued final regulations for the transitional worker program.

economic growth; to assist employers in recruiting, training, and hiring U.S. citizens and lawful permanent residents in the CNMI; and to develop CNMI job skills as needed.[23] To date, the U.S. Department of Homeland Security has not issued final regulations for foreign workers, nor has it made a permanent decision regarding access for visitors from Russia and China. It issued regulations for foreign investors in December 2010.[24] In August 2008, we recommended that because of the importance of key implementation decisions by different federal agencies, the Secretary of Homeland Security should lead other relevant federal agencies, including the Departments of the Interior, Labor, and State, in identifying the interagency process that will be used to collaborate with one another—and consult with the CNMI government, as required—to jointly implement the legislation.[25] Interior agreed with our findings, and we continue to track the law's implementation.

In 2007 the United States enacted legislation that incrementally applies the federal minimum wage to American Samoa and the CNMI.[26] The legislation changed decades of federal law that had allowed both areas to apply minimum wage rates significantly lower than the minimum wage for the U.S. 50 states. Under current law, the minimum wage for American Samoa's lowest paid workers will reach the federal minimum wage of $7.25 in 2018; and in the CNMI this is set to occur in 2016. Public and

[23]In providing the technical assistance, the federal government should consult with the CNMI government, local businesses, regional banks, and other CNMI economy experts.

[24]75 Fed. Reg. 79264 (Dec. 20, 2010).

[25]GAO-08-791. Report on the factors that would affect the impact of the law's implementation on the CNMI economy, in particular the CNMI's (1) labor market, including foreign workers; (2) tourism sector; and (3) foreign investment.

[26]U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110–28, § 8103, 121 Stat. 188 (2007), as amended by Pub. L. No. 111-244, 124 Stat. 2618 (2010), *codified at* 29 U.S.C. § 206 note. Under the law, any future changes to the minimum wage enacted under U.S. law for the 50 states, District of Columbia, U.S. Virgin Islands, Guam, and Puerto Rico also will apply to American Samoa and the CNMI. For changes enacted before American Samoa and the CNMI would have reached the current U.S. minimum wage, the minimum wages in the two areas would continue to increase in $0.50 increments until they reach the federal minimum wage, extending beyond the current time frames. After each area reaches the U.S. minimum wage, any additional increase in the U.S. minimum wage would apply to American Samoa and the CNMI on the same schedule as for the 50 U.S. states. In September 2010, the United States enacted a law delaying the scheduled minimum wage increases in both areas, providing for no increase in the CNMI in 2010, and no increase in American Samoa in 2010 or 2011. See Pub. L. No. 111-244, 124 Stat. 2618 (2010).

private sector officials and workers in both areas have expressed concern about the impact of the minimum wage increases on the local economies. Although the law does not assign Interior specific responsibilities, OIA is generally responsible for promoting and managing government relations in support of appropriate federal policies. In April 2010, we found that the first minimum wage increase had raised the wages of about three-quarters of private sector workers in American Samoa and about a third of private sector workers in the CNMI.[27] Employment in American Samoa and the CNMI has declined for multiple reasons. Studies funded by Interior have projected major additional contraction of both economies.[28] These economic realities pose a challenge to OIA as it tries to improve the standard of living for island residents and promote the economic development and self-sufficiency of the insular areas.

Improving Federal Land Acquisition and Exchanges

As the steward of more than 500 million acres, federal land sales, acquisitions, and exchanges are important land management tools for Interior. Interior has faced a number of management challenges in this area in the past and our recent work has identified management weaknesses in Interior's oversight of land exchanges. As a result, we believe that managing land acquisition and exchanges continues to be a major management challenge for Interior.

In our March 2009 testimony, we stated that the Federal Land Transaction Facilitation Act of 2000 (FLTFA) which, in part, was intended to facilitate land consolidation, has had limited success. We reported that the agencies face several challenges to completing future land acquisitions under the act. Most notably, the act requires that the agencies use most of the funds to purchase land in the state in which the funds were raised; this restriction has had the effect of making little revenue available outside of Nevada. In November 2009, we reported that since FLTFA was enacted in

[27]GAO, *American Samoa and Commonwealth of the Northern Mariana Islands: Wages, Employment, Employer Actions, Earnings, and Worker Views Since Minimum Wage Increases Began*, GAO-10-333 (Washington, D.C.: Apr. 8, 2010). Results regarding workers affected by the minimum wage increases are based on responses to our questionnaire of employers in each area with 50 or more employees.

[28]Malcolm D. McPhee & Associates with Dick Conway and Lewis Wolman, *American Samoa's Economic Future and the Cannery Industry*, prepared for the American Samoa Department of Commerce under an OIA grant (February 2008); and Malcolm D. McPhee & Associates and Dick Conway, *Economic Impact of Federal Laws on the Commonwealth of the Northern Mariana Islands*, prepared for the CNMI Office of the Governor under an OIA grant (October 2008).

2000 through August 2009, BLM had raised $113.4 million in revenue under the act and that about 78 percent of this revenue came from land transactions in Nevada.[29] We also found that the four land management agencies (BLM, FWS, NPS, and the Department of Agriculture's Forest Service) had purchased few parcels with FLTFA revenue. As of November 2009, BLM reported spending a total of $43.8 million to acquire 28 parcels, including $24.6 million for 12 parcels using funds allocated through the interagency process.[30] While we suggested in our November 2009 report that if Congress reauthorized the act that it should consider including additional lands for sale and greater flexibility for acquisitions; the July 2010 reauthorization that extended the act for 1 year did not amend the FLTFA provisions governing lands available for sale and acquisition.[31] The reauthorization occurred a few days after FLTFA expired. According to BLM officials, at the time FLTFA expired, the unobligated program funds were transferred to the Land and Water Conservation Fund and as of November 2010 had not been restored to the program.[32] Officials said that BLM has little incentive to conduct further land sales under FLTFA because of the cost and amount of work involved in preparing the sales and, given the limited 1-year extension, the uncertainty that BLM and other agencies will be able to use any revenues generated to acquire lands.

Our recent work has also identified challenges for Interior in managing land exchanges. In June 2009, we reported on management weaknesses in BLM's oversight of land exchanges under the Federal Land Policy and

[29]GAO, *Federal Land Management: Challenges to Implementing the Federal Land Transaction Facilitation Act*, GAO-10-259T (Washington, D.C.: Nov. 17, 2009).

[30]In 2008 we reported that from August 2007—7 years after FLTFA was enacted—through January 2008, the four land management agencies had spent $13.3 million of the $95.7 million in revenue raised under FLTFA: $10.1 million using the Secretaries' discretion to acquire nine parcels of land and $3.2 million for administrative expenses to prepare land for FLTFA sales. See GAO, *Federal Land Management: Federal Land Transaction Facilitation Act Restrictions and Management Weaknesses Limit Future Sales and Acquisitions*, GAO-08-196 (Washington, D.C.: Feb. 5, 2008).

[31]The Supplemental Appropriations Act for Fiscal Year 2010 extended FLTFA's authorization until July 25, 2011. Pub. L. No. 111-212, § 3007(a) (2010).

[32]The act provides that upon termination of the Federal Land Disposal Account—the account containing the program's funds—any remaining balance in the account shall become available for appropriation under Section 3 of the Land and Water Conservation Fund Act.

Management Act of 1976 (FLPMA).[33] Among other things, we reported that BLM had issued new guidance on managing ledgers and continued to use ledgers to track land value imbalances over time in multiphase exchanges.[34] However, we found that BLM was not adhering to its own guidance for maintaining the ledgers and therefore could not be confident in how much is owed to the federal government. Specifically, BLM could not be assured that the $2.6 million land value imbalance due to the United States, recorded in its ledgers as of June 30, 2008, was accurate. We recommended that Interior take several steps to better manage the land exchange program and protect federal funds. Although BLM has issued additional and clarifying guidance,[35] it has not yet developed a national land tenure strategy, tracked land exchange costs, or required or tracked specific training for staff working on land exchanges.

In addition, in December 2010, we issued a legal opinion concluding that BLM carried out certain land transactions in the state of Washington that were not authorized by FLPMA's land exchange provisions and were inconsistent with FLPMA's land sale provisions.[36] Specifically, we concluded that the multiphase assembled land exchange consisted of a series of transactions where an agent of BLM sold public lands and used the proceeds to purchase nonfederal lands for BLM. The proceeds of these sales were required to be deposited into appropriate funds in the U.S. Treasury without deduction for any charge or claim. Instead, after selling

[33]GAO, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*, GAO-09-611 (Washington, D.C.: June 12, 2009).

[34]BLM regulations define "assembled land exchange" to mean the consolidation of multiple parcels of federal and/or nonfederal land for purposes of one or more exchange transactions over a period of time. 43 C.F.R. § 2200.0-5(f). We refer to assembled exchanges that involve more than one closing transaction as "multiphase exchanges."

[35]Department of the Interior, Bureau of Land Management, Instruction Memorandum No. 2010-122, *Processing of Land Exchanges and Management of Value Imbalances in Land Exchanges* (May 14, 2010).

[36]GAO, *Bureau of Land Management and General Services Administration—Selected Land Transactions*, B-318274 (Washington, D.C.: Dec. 23, 2010). We also examined selected land transactions that BLM, working under an agreement with the General Services Administration, carried out in the state of California. We concluded that although two of the transactions were indeed exchanges consistent with the provisions of the California Desert Protection Act, numerous other transactions were not exchanges but instead were purchases and sales of public land or surplus federal real property. As in the transactions in the state of Washington, these actions violated the Miscellaneous Receipts Statute and improperly augmented BLM's land acquisition appropriations.

public lands, BLM used some of the proceeds to purchase lands. This violated the Miscellaneous Receipts Statute. Furthermore, by using these proceeds, BLM improperly augmented its land acquisition appropriations.

Reducing Interior's Deferred Maintenance Backlog

As we testified in March 2009, Interior continues to face 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 these facilities can impair 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 November 2010, the department estimated that the deferred maintenance backlog for fiscal year 2010 was between $13.5 billion and $19.9 billion (see table 1).[37]

Table 1: Department of the Interior's Estimate of Deferred Maintenance for Fiscal Year 2010

Dollars in billions

	Estimated range of deferred maintenance	
Type of structures	**Low estimate**	**High estimate**
Roads, bridges, and trails	$6.53	$9.55
Irrigation, dams, and other water structures	1.95	2.93
Buildings (e.g., administration, education, housing, and historic buildings)	2.96	4.34
Other structures (e.g., recreation sites and fish hatcheries)	2.09	3.06
Total	**$13.52**	**$19.87**

Source: Department of the Interior data.

Note: Total may not add due to rounding.

[37]Interior is not alone in facing daunting maintenance challenges. In fact, we identified the management of federal real property, including deferred maintenance issues, as a governmentwide high-risk area in 2003, 2005, 2007, and 2009. For our 2011 update of the high-risk areas, we amended the federal real property area and it no longer includes managing the condition of facilities. While federal agencies still face a challenge of reducing their deferred maintenance in light of the federal deficit and long-term fiscal challenges facing the nation, we no longer consider it a governmentwide high-risk area. See GAO, *High-Risk Series: An Update*, GAO-11-278 (Washington, D.C.: February 2011).

Interior has made progress addressing our prior recommendations to improve information on the maintenance needs of NPS facilities and BIA schools and irrigation projects. The high end of the deferred maintenance has been relatively constant since 2007, when the estimate was $19.8 billion. Furthermore, the deferred maintenance estimates for the irrigation, dams, and other water structures category have decreased for the past 2 consecutive years, 2009 and 2010. Interior was able to address some needed repairs and improve the condition of some facilities through funds it received under the American Recovery and Reinvestment Act of 2009.[38]

Management of Federal Oil and Gas Resources

Interior's management of oil and gas resources has been a focus of a large body of our work and an area where we have found numerous weaknesses and challenges that need to be addressed. In response to our recommendations, Interior has taken steps to address material weaknesses and modify its practices for managing oil and gas resources, but as of December 2010, many recommendations remain unimplemented. We designated Interior's management of federal oil and gas resources as a governmentwide high risk issue in February 2011.[39] Interior faces ongoing challenges executing its responsibilities to manage oil and gas production from federal lands and waters in four broad areas: (1) oil and gas revenue collection, (2) management of human capital, (3) the recently undertaken reorganization of the bureaus dealing with oil and gas issues, and (4) balancing timely and efficient oil and gas development with environmental stewardship responsibilities.

Interior's oversight of oil and gas operations is critically important. The explosion onboard the Deepwater Horizon and oil spill in the Gulf of Mexico in April 2010 emphasized the importance of Interior's management of permitting and inspection processes to ensure operational and environmental safety. The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling reported in January 2011 that this disaster was the product of several individual missteps and oversights by BP, Halliburton, and Transocean, which government regulators lacked the authority, the necessary resources, or the technical expertise to prevent.

[38]Pub. L. No. 111-5, 123 Stat. 115 (2009). Interior received nearly $3 billion under the act. The funds are being spent on, among other things, facilities and roads improvements and construction, according to Interior's *Agency Financial Report Fiscal Year 2010*.

[39]GAO-11-278.

Concerns Over Revenue Collection

Federal oil and gas resources provide an important source of energy for the United States, create jobs in the oil and gas industry, and generate billions of dollars annually in revenues that are shared between federal, state, and tribal governments. Revenue generated from federal oil and gas production is one of the largest nontax sources of federal government funds, accounting for about $9 billion in fiscal year 2009. In September 2008, we reported that in the deep water of the U.S. Gulf of Mexico, Interior collected lower levels of revenues for oil and gas production than all but 11 of 104 oil and gas resource owners whose revenue collection systems were evaluated in a comprehensive industry study—these resource owners included many other countries as well as some states.[40] We recommended that Interior undertake a comprehensive reassessment of its revenue collection policies and processes. Interior has commissioned such a study in response to our report, which it expects to complete in 2011. The results of the study may reveal the potential for greater revenues to the federal government. We also reported in March 2010 that Interior was not taking the steps needed to ensure that oil and gas produced from federal lands was accurately measured.[41] For example, we found that neither BLM nor Interior's Minerals Management Service (MMS) had consistently met their statutory requirements or agency goals for oil and gas production verification inspections. Without such verification, Interior cannot provide reasonable assurance that the public is collecting its share of revenue from oil and gas development on federal lands and waters. As a result of this work, we identified 19 recommendations for specific improvements to oversight of production verification activities, with which Interior generally agreed.

Additionally, we reported in October 2010 that Interior's data likely underestimated the amount of natural gas produced on federal leases that is released directly to the atmosphere (vented) or is burned (flared).[42] This vented and flared gas contributes to greenhouse gases and represents lost royalties. We recommended that Interior improve its data and address

[40]GAO, *Oil and Gas Royalties: The Federal System for Collecting Oil and Gas Revenues Needs Comprehensive Reassessment*, GAO-08-691 (Washington, D.C.: Sept. 3, 2008).

[41]GAO, *Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes*, GAO-10-313 (Washington, D.C.: Mar. 15, 2010).

[42]GAO, *Federal Oil and Gas Leases: Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases*, GAO-11-34 (Washington, D.C.: Oct. 29, 2010).

limitations in its regulations and guidance to reduce this lost gas. Interior generally agreed and is taking initial steps to implement these recommendations. Furthermore, we reported in July 2009 on numerous problems with Interior's efforts to collect data on oil and gas produced on federal lands, including missing data, errors in company-reported data on oil and gas production, and sales data that did not reflect prevailing market prices for oil and gas.[43] As a result of Interior's lack of consistent and reliable data on the production and sale of oil and gas from federal lands, Interior could not provide reasonable assurance that it was assessing and collecting the appropriate amount of royalties on this production. We made a number of recommendations to Interior to improve controls on the accuracy and reliability of royalty data. Interior generally agreed with our recommendations and is working to implement many of them, but these efforts are not complete, and it is uncertain at this time if the efforts will fully address our concerns.

Human Capital Challenges Remain Pressing

We have reported that BLM and MMS have encountered persistent problems in hiring, training, and retaining sufficient staff to meet its oversight and management responsibilities for oil and gas operations on federal lands and waters. For example, in March 2010, we found that BLM and MMS experienced high turnover rates in key oil and gas inspection and engineering positions responsible for production verification activities.[44] As a result, Interior faces challenges meeting its responsibilities to oversee oil and gas development on federal leases, potentially placing both the environment and royalties at risk. We made a number of recommendations to address these issues. While Interior's reorganization of MMS includes plans to hire additional staff with expertise in oil and gas inspections and engineering, these plans have not been fully implemented and it remains unclear whether Interior will be fully successful in hiring, training, and retaining these staff. Moreover, the human capital issues we identified with BLM's management of onshore oil and gas continue, and these issues have not yet been addressed in Interior's reorganization plans.

[43]GAO, *Mineral Revenues: MMS Could Do More to Improve the Accuracy of Key Data Used to Collect and Verify Oil and Gas Royalties*, GAO-09-549 (Washington, D.C.: July 15, 2009).

[44]GAO-10-313.

Reorganization of Oil and Gas Functions Poses New Challenges

Historically, BLM managed onshore federal oil and gas activities while MMS managed offshore activities and collected royalties for all leases. In May 2010, the Secretary of the Interior announced plans to reorganize MMS—its bureau responsible for overseeing offshore oil and gas activities and collecting royalties—into three separate bureaus. The Secretary stated that dividing MMS's responsibilities among three separate bureaus will help ensure that each of the three newly established bureaus have a distinct and independent mission. Interior recently began implementing this restructuring effort; transferring offshore oversight responsibilities to the newly created Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and revenue collection to a new Office of Natural Resources Revenue. Interior plans to continue restructuring BOEMRE to establish two separate bureaus—the Bureau of Ocean and Energy Management, which will focus on leasing and permitting, and the Bureau of Safety and Environmental Enforcement, which will focus on inspection and enforcement functions. While this reorganization may eventually lead to more effective operations, we have reported that organizational transformations are not simple endeavors and require the concentrated efforts of both leaders and employees to realize intended synergies and accomplish new organizational goals.[45] One key practice that we have identified for effective organizational transformation is to balance continued delivery of services with transformational activities. We are concerned about Interior's capacity to find the proper balance—particularly in today's fiscally constrained environment—given its history of management problems and challenges in the human capital area. Specifically, we are concerned about Interior's ability to undertake this reorganization while providing reasonable assurance that billions of dollars of revenues owed to the public are being properly assessed and collected and tbat oversight of oil and gas exploration and production on federal lands and waters maintains an appropriate balance between efficiency and timeliness on one hand, and protection of the environment and operational safety on tbe other.

[45]GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

Challenges of Balancing Oil and Gas Development with Environmental Stewardship

We have reported that Interior has experienced several challenges with meeting its obligations to make federal oil and gas resources available for leasing and development while simultaneously meeting its responsibilities for managing public lands for other uses, including wildlife habitat, recreation, and wilderness, among other uses. In July 2010, in our examination of federal oil and gas lease sale decisions in the Mountain West,[46] we found that the extent to which BLM tracked and made available to the public information related to protests filed during the leasing process varied by state and was generally limited in scope. We also found that stakeholders—including environmental and hunting interests, and state and local governments protesting BLM lease offerings—wanted additional time to participate in the leasing process and more information from BLM about its leasing decisions. Moreover, we found that BLM had been unable to manage an increased workload associated with public protests and had missed deadlines for issuing leases. In May 2010, the Secretary of the Interior announced several agencywide leasing reforms that are to take place at BLM, some of which may address these concerns, such as providing additional public review and comment opportunity during the leasing process. In March 2010, we found that Interior faced challenges in ensuring consistent implementation of environmental requirements, both within and across BOEMRE's regional offices, leaving it vulnerable with regard to litigation and allegations of scientific misconduct.[47] We recommended that Interior develop comprehensive environmental guidance materials for BOEMRE staff. Interior concurred with this recommendation and is currently developing such guidance. Finally, in September 2009, we reported that BLM's use of categorical exclusions under Section 390 of the Energy Policy Act of 2005 was frequently out of compliance with the law and BLM's internal guidance.[48] As a result, we recommended that BLM take steps to improve the implementation of Section 390 categorical exclusions through clarification of its guidance, standardizing decision documents, and increasing oversight.

[46]GAO, *Onshore Oil and Gas: BLM's Management of Public Protests to Its Lease Sales Needs Improvement*, GAO-10-670 (Washington, D.C.: July 30, 2010).

[47]GAO, *Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin*, GAO-10-276 (Washington, D.C.: Mar. 8, 2010).

[48]GAO, *Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act*, GAO-09-872 (Washington, D.C.: Sept.16, 2009).

Generating Other Revenue Collections and Enhancing Financial Assurances and Bonds

For many years we have identified better management of revenue collection efforts as a major management challenge. As we stated in our March 2009 testimony, additional revenues could be generated by amending the General Mining Act of 1872 so that the federal government could collect federal royalties on minerals extracted from U.S. mineral rights. In addition, financial assurances and bonds from hardrock mining and oil and gas operations could be enhanced to help ensure the reclamation of federal land disturbed by these operations. Our recent work has found that while BLM requires, among other things, that oil and gas operators reclaim the land they disturb and post a bond to help ensure they do so, not all operators perform the required reclamation, and the minimum bond amounts required have not been increased in almost 50 years.

The General Mining Act of 1872 helped open the West by allowing individuals to obtain exclusive rights to mine billions of dollars worth of hardrock minerals from federal lands without having to pay a federal royalty. In July 2008, we reported that the 12 western states, including Alaska, assess multiple types of royalties on mining operations.[49] States may use similar names for the royalties they assess, but these can vary widely in their forms and rates. Unlike the federal government, these states charge royalties that allow them to share in the proceeds from hardrock minerals extracted from state-owned lands, as well as levy taxes that function like royalties, on private, state, and federal lands.

Under BLM regulations, hardrock mining operators who extract gold, silver, copper, and other 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. 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. In March 2008, we found that the financial assurances required by BLM were not adequate to fully cover estimated reclamation costs.[50] According to BLM, mine operators had provided financial

[49]GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008).

[50]GAO, *Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land*, GAO-08-574T (Washington, D.C.: Mar. 12, 2008).

assurances valued at approximately $982 million to guarantee reclamation costs for 1,463 hardrock operations on BLM land. BLM also estimated that 52 mining operations had financial assurances that amounted to about $28 million less than needed to fully cover estimated reclamation costs. We found, however, that because of a BLM miscalculation, the financial assurances for these 52 operations were in fact about $61 million less than needed to fully cover estimated reclamation costs. In addition, we have also reported on the importance of financial assurances in the reclamation of mountaintop mining operations.[51]

Similarly for oil and gas development, we reported in January 2010 that while BLM requires oil and gas operators to reclaim the land they disturb and post a bond to help ensure they do so, not all operators perform reclamation.[52] If the bond is not sufficient to cover well plugging and surface reclamation and there are no responsible or liable parties, the well is considered "orphaned," and BLM uses federal dollars to fund reclamation. For fiscal years 1988 through 2009, BLM spent about $3.8 million to reclaim 295 orphaned wells, and BLM has identified another 144 wells yet to be reclaimed. According to our analysis of BLM data, as of December 2008, oil and gas operators had provided 3,879 bonds, valued at $162 million, to ensure compliance with lease terms and conditions for 88,357 wells. The minimum bond amount for individual leases was set in 1960, and minimum amounts for statewide or nationwide bonds was established in 1951; none of these bond amounts has been updated or adjusted for inflation. We also found that 12 western states generally required higher bond amounts than the minimum amounts established by BLM regulations for individual and statewide oil and gas leases.

Improving Information Security

With an information technology budget of nearly $1 billion in fiscal year 2010, Interior relies on computerized information systems to carry out its financial and mission-related operations. Effective information security controls are required to ensure that financial and sensitive information is adequately protected from inadvertent or deliberate misuse, fraudulent use, and improper disclosure, modification, or destruction. Ineffective

[51]GAO, *Surface Coal Mining: Financial Assurances for, and Long-Term Oversight of, Mines with Valley Fills in Four Appalachian States*, GAO-10-206 (Washington, D.C.: Jan. 14, 2010).

[52]GAO, *Oil and Gas Bonds: Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells*, GAO-10-245 (Washington, D.C.: Jan. 27, 2010).

controls can also impair the accuracy, completeness, and timeliness of information used by management. The need for effective information security is further underscored by the evolving and growing cyber threats to federal systems and the dramatic increase in the number of security incidents reported by federal agencies.

Interior has been challenged to effectively protect its computer systems and networks. Our recent work,[53] as well as our analysis of agency and Office of Inspector General reports, show that the department has not consistently implemented effective controls to prevent, limit, and detect unauthorized access to its systems or manage the configuration of network devices to prevent unauthorized access and ensure system integrity. For example, we have reported on the need for federal agencies, including Interior, to improve implementation of information security controls such as those for configuring desktop computers and wireless communication devices.[54] We recommended that Interior, among other things, complete implementation of the agency's baseline security configuration for desktop computers using Window XP or Vista operating systems, and ensure its components document deviations to the baseline configuration and deploy a National Institute of Standards and Tecbnology (NIST)-validated tool to monitor compliance with the configuration. The department agreed with our recommendations and indicated that it has initiated actions to implement them.

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

[53]GAO-11-278.

[54]GAO, *Information Security: Agencies Need to Implement Federal Desktop Core Configuration Requirements*, GAO-10-202 (Washington, D.C.: Mar. 12, 2010). The federal desktop core configuration initiative (now known as the United States Government Configuration Baseline) established a set of common security configurations for Windows XP and Vista operating systems used by federal agencies that is intended to provide a baseline level of security, reduce risk from security threats and vulnerabilities, improve system performance, and ensure public confidence in the confidentiality, integrity, and availability of government information. GAO, *Information Security: Federal Agencies Have Taken Steps to Secure Wireless Networks, but Further Actions Can Mitigate Risk*, GAO-11-43 (Washington, D.C.: Nov. 30, 2010).

GAO Contacts and Staff Acknowledgments

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Ms. Mittal has been with GAO since 1989, during which time she has led a variety of reviews of federal programs relating to land management, water resources, oceans and fisheries, environmental restoration, energy, defense cleanup, housing, food safety, science and technology, and agriculture issues. She has also served in other organizational capacities and worked on special projects for the Comptroller General.

Ms. Mittal received a Masters in Business Administration from the University of Massachusetts, and completed the senior exeeutive fellow program at the John F. Kennedy School of Government at Harvard University. She has received numerous GAO honors for sustained leadership and exceptional contributions to the agency's mission.

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Frank Rusco is a Director in GAO's Natural Resources and Environment team, working on a broad spectrum of energy and science issues, including federal oil and gas management; DOE's energy, science, and loan programs; intellectual property rights issues; and government-wide science programs and activities. Mr. Rusco holds both a master's degree and doctorate in economics from the University of Washington in Seattle.

Mr. SIMPSON. Ms. Kendall.

TESTIMONY OF MARY KENDALL

Ms. KENDALL. Mr. Chairman and members of the committee, thank you for the opportunity to appear this morning. Let me summarize the most serious challenges we believe are facing the Department of the Interior today.

OUTER CONTINENTAL SHELF OVERSIGHT

Outer Continental Shelf energy oversight. As the offshore oil and gas industry has reached farther offshore and deeper undersea, the Department's oversight of the industry has become more complex and challenging. The Department is making significant efforts to address this challenge but it is now challenged to comply with the recent judicial mandate to resume issuing deepwater drilling permits.

REVENUE COLLECTIONS

Revenue collections. The Department collects billions of dollars in royalties annually. Our work, like that of GAO, has revealed many weaknesses in the oversight, collection and management of royalties. The OIG has listed revenue collections as a top management challenge for over 10 years.

FINANCIAL MANAGEMENT

Financial management. The Department manages tens of billions of dollars in appropriations, revenues and funds held in trust. The Financial and Business Management System was to be the answer to DOI managing its funds effectively. Unfortunately, implementation of FBMS continues to be a significant challenge for the Department. Successful implementation of FBMS is extremely important to the Department because the system impacts virtually all aspects of DOI operations. FBMS is replacing obsolete legacy financial systems and will also interface or replace a number of other systems. The Department has already spent over $300 million deploying FBMS. Although FBMS has been deployed at four bureaus, the most difficult deployments are still ahead.

INFORMATION TECHNOLOGY

Information technology. The Department's budget for IT is nearly $1 billion annually. Historically, the Department had a decentralized IT program which led to serious governance problems. The Department is now addressing this challenge by bringing all its IT functions under a single Department CIO, and we hope to see some significant changes.

HEALTH, SAFETY AND MAINTENANCE

Health, safety and maintenance. Like GAO, we identified this as a significant challenge to the Department. The department is responsible for serving millions of visitors and maintaining and protecting thousands of facilities and millions of acres of property. Our work has documented decades of deferred maintenance, health and

safety issues that place the Department's employees and the public at risk.

INDIANS AND INSULAR AREAS

Responsibility to Indians and insular areas. Responsibility to American Indians has consistently been a top management challenge for the Department. The myriad problems we have uncovered for years portrayed programs that are sorely understaffed and poorly managed. The Department manages its responsibilities to the insular areas through the Office of Insular Affairs. Our reviews have consistently pointed to problems that might have been mitigated had the Office of Insular Affairs provided better oversight or taken a more active role in assisting insular area governments.

FINANCIAL ASSISTANCE

Financial assistance awards. The Department awards billions of dollars in financial assistance annually yet it does not have a consistent method for recording and reporting these transactions. The Department simply does not provide the level of oversight of financial assistance awards that it should.

RESOURCE PROTECTION

Resource protection and restoration. The Department's resource managers face the perennial challenge of balancing competing interests for the use and protection of the Nation's natural resources.

ACQUISITION MANAGEMENT

Acquisition management. The Department faced and for the most part overcame a significant challenge to properly award and oversee the expenditure of nearly $3 billion in Recovery Act funds as well as other appropriated funds. The acquisition workforce is still challenged to effectively monitor all awarded funds and to take aggressive action against those who fail to manage awarded funds responsibly such as termination of contracts or suspension and debarment. The Department has made significant progress in building a strong suspension and debarment program to protect against recipients with a demonstrated lack of responsibility.

Thank you, Mr. Chairman, for the opportunity to share this information with you today. I respectfully request that my written statement be entered into the record, and I will be happy to answer any questions.

[The statement of Mary L. Kendall follows:]

TESTIMONY OF MARY L. KENDALL
ACTING INSPECTOR GENERAL
FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES
MARCH 1, 2011

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify this morning about the challenges facing the Department of the Interior (DOI).

The Office of Inspector General (OIG) is a small, but highly motivated organization that provides independent oversight to prevent and detect waste, fraud, and mismanagement and promotes excellence, integrity, and accountability within the programs, operations and management of DOI.

The OIG accomplishes its mission by performing audits, investigations, evaluations, inspections, and other reviews of the Department's programs and operations. We independently and objectively identify risks and vulnerabilities that directly affect, or could impact, DOI's mission and the vast responsibilities of its bureaus and offices. We target our resources by identifying and developing solutions for the Department's most serious management and program challenges.

Our organizational strategies are aimed at ensuring the OIG is relevant and respected for its independent expertise and objective products. We continuously evaluate our efforts to improve the accountability of DOI and our responsiveness to Congress, the Department, and the public. We seek continuous improvement within, and we believe in the limitless potential of our employees to maintain OIG as a leading organization in the Federal government.

Let me summarize the most serious challenges facing the Department:

1. Outer Continental Shelf Energy Oversight

The *Deepwater Horizon* tragedy took 11 lives, caused the destruction of an offshore drilling rig, led to the release of millions of barrels of oil, and significantly disrupted the Gulf of Mexico (GOM) region's economy and environment. Recognizing that oil and gas remain an important part of the Nation's energy economy, the Department is making significant changes in an effort to prevent such catastrophic occurrences in the future. The accident and ensuing spill challenged 40 years of the generally accepted belief that offshore operations could occur safely under existing regulation and oversight.

Offshore oil and gas development constitutes approximately 30 percent of domestically produced oil and 11 percent of the domestic natural gas supply. The vast majority of this production occurs in the central and western GOM. To achieve such levels of production, the GOM offshore oil and gas industry has, in recent decades, reached farther offshore and deeper undersea. Many of the facilities are larger, more complex, more technologically sophisticated,

and more distant than ever. Simultaneously, Government oversight of the prolific energy resources of the GOM has become more complex and challenging.

In the wake of the *Deepwater Horizon* accident, the OIG led a review into the oil and gas operations in the Outer Continental Shelf (OCS). The results of our review were published in the September 1, 2010 OCS Safety Oversight Board report which detailed 59 recommendations to improve operations. The OIG issued its own report on December 7, 2010, which made additional recommendations.

The Department is making significant efforts to improve the management and oversight of oil and gas operations in the OCS. It is now challenged to comply with the recent judicial mandate to resume issuing deepwater drilling permits.

2. Revenue Collections

The Department has jurisdiction over 1.76 billion acres of the Outer Continental Shelf, manages about one-fifth of the land area of the United States, and administers 700 million acres of subsurface minerals throughout the Nation. Almost one-third of the Nation's domestic energy production is generated from Department lands and waters. The Department collects billions of dollars in royalties annually. In October 2010, the responsibilities for royalty collection and oversight were transferred from the Mineral Revenue Management directorate to the new Office of Natural Resources Revenue (ONRR).

Our work, like that of the Government Accountability Office (GAO), has revealed weaknesses in the oversight and collection and management of royalties. The OIG has listed revenue collections as a top management challenge for over 10 years. The Department raises revenue from many sources including extractable minerals such as oil, natural gas, coal, decorative rock and gravel; renewable resources such as timber, grazing, wind and geothermal; and from other land uses such as rights of way, recreation, concessions, and many activities classified as special uses.

3. Financial Management

The Department manages an annual appropriation of about $20 billion, revenues between $9 and $25 billion annually from onshore and offshore mineral leases, and $3.7 billion in funds held in trust.

The Financial and Business Management System (FBMS) was to be the answer to managing DOI funds effectively. Unfortunately, implementation of FBMS continues to be a management challenge for the Department. For several years we have included the implementation of FBMS as one of the top management challenges for DOI. FBMS has been under consideration and implementation for at least 10 years. FBMS was supposed to be fully implemented by 2010, but to date only four bureaus/offices have transitioned. Complete implementation is currently estimated for 2013. The number and variety of programs across the Department make budget and performance integration particularly difficult.

We have recently initiated an audit of the FBMS implementation at the Bureau of Land Management (BLM). Our initial focus is on internal controls. Within FBMS, internal controls are critical and necessary to ensure that transactions are authorized, completely and accurately recorded and that reported balances are correct. Ineffective controls can lead to an increased risk of financial fraud, waste, and mismanagement.

One of the promised benefits of FBMS is improved internal controls. Recent audits by KPMG of the Department's financial statements cast doubt on whether this benefit is being realized. KPMG found deficiencies in internal controls related to FBMS in its audits of the Department's FY 2009 and 2010 financial statements. KPMG reported inadequate financial controls including monitoring and reconciliation.

Successful implementation of FBMS is extremely important to the Department because the system impacts virtually all aspects of DOI operations. FBMS is replacing obsolete legacy financial systems and will also interface or replace a number of other systems. The Department has already spent over $300 million developing FBMS. Although FBMS has been deployed at four bureaus, the most difficult deployments are still ahead.

4. Information Technology (IT)

The Department's budget for IT is nearly $1 billion annually. That budget funds the network infrastructure, IT security, and various IT investments, which are intended to align with Departmental mission objectives. IT security strives to assure the confidentiality, integrity and availability of information assets.

Historically, the Department has employed a decentralized and fragmented IT governance framework, which did not optimally operate or fully comply with legislation and Federal policy. The Department is poised to address its decentralized asset management capability and other factors that have left it struggling to meet information security and privacy mandates. The OIG recommended in 2008 that the Department consolidate its IT functions and governance to comply with the Federal Information Security Management Act.

A December 14, 2010 Secretarial Order outlines the steps the Department will take to align IT resources under a Chief Information Officer (CIO). The DOI IT transformation measures are intended to minimize redundancies, streamline IT, enhance customer service and lower IT costs to the Department. The plan envisions bringing all DOI IT functions under a single Department CIO.

The Department has received recognition from Federal CIO Vivek Kundra and "hailed the move as a model for other agencies." The changes are expected to be fully implemented within two to four years.

5. Health, Safety, and Maintenance

Each year, more than 500 million people visit the Department's National parks and monuments, wildlife refuges, and recreational sites. The Department is responsible for serving

these visitors and maintaining and protecting thousands of facilities and millions of acres of property. In some cases, the isolation of Department lands and facilities presents vulnerabilities and makes safety and maintenance challenging. Our work has documented decades of maintenance, health, and safety issues that place the Department's employees and the public at risk.

The Department is responsible for roads, bridges, schools, office buildings, irrigation systems, and reservoirs for which repair and maintenance have been postponed because of budgetary constraints. The Department's FY 2010 estimate to correct deferred maintenance, the Department's term for unfunded repair and maintenance needs, ranges from $13.0 billion to $19.2 billion. Deterioration of assets, because of uncorrected deferred maintenance, poses health and safety hazards.

6. Responsibility to Indians and Insular Areas

Management problems persist in programs for Indians and island communities. The Department manages relationships with 564 Federally recognized Indian tribes, has trust responsibilities for 112 million surface and subsurface acres of land belonging to Indian tribes and individuals, and provides education services to approximately 42,000 Indian children in 184 schools and dormitories. The Department also has various responsibilities to seven island communities to include four territories and three sovereign island nations. The Department provides general administrative supervision of the relations between the U.S. government and the territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands. For the three sovereign nations, the Department is responsible for administering and overseeing U.S. Federal assistance provided under Compacts of Free Association. In carrying out these responsibilities, the Department is required to coordinate with the State Department and other Federal agencies to promote economic development and budgetary self-reliance in these countries.

Indian Affairs

Responsibility to American Indians has consistently been a top management challenge for the Department. Indian Country programs managed by the Department include Indian Trust for Lands and Funds, Indian Education, Self-Determination, Energy and Economic Development, Indian Gaming, and Justice Services. Approximately 25 percent of OIG investigations involve Indian Country issues.

The Federal Government has long acknowledged the resulting complexity from land fractionation on Indian Trust operations. Fractionation is the result of dividing Tribal land into parcels and allotting the parcels to individual Indians. The allotments are subsequently divided among heirs through probate. With each generation, the amount of fractionation increases. We are working with the Department as it develops a comprehensive plan that will guide its efforts to significantly reduce fractionation.

The myriad problems we have uncovered portray programs that are sorely understaffed, underfunded, and poorly managed. The OIG has identified gross program inefficiencies at many levels of Indian Affairs and in tribal management of Federal funds.

Insular Areas

The Department seeks to increase Federal responsiveness to the needs of the Insular Areas through the Office of Insular Affairs (OIA). OIA works to improve the financial management practices of Insular Area governments and to increase economic development opportunities through financial and technical assistance. The FY 2010 budget for Insular Areas was roughly $300 million. Overall, OIA annually funds Insular Area government programs focusing on education, health care, infrastructure improvement, public sector capacity building, private sector development, and the environment.

Unfortunately, the people of the Insular Areas are ill-served by their local governments and the OIA. The problems we observed are not new, having been identified and reported on for years. Our reviews have consistently pointed to problems that might have been mitigated had OIA provided better oversight or taken a more active approach in assisting Insular Area governments. Numerous reviews have pointed to ongoing management and financial problems in the Insular Areas and OIA. We identified problems in the areas of grants management, water and wastewater systems, noncompetitive procurements, tax collection, and property accountability and management.

We evaluated the OIA program management to determine if OIA is able to effectively assist the Insular Area governments in gaining economic self-sufficiency and improve the quality of life for their people. We concluded that OIA's ability to accomplish major policy objectives in the Insular Areas is hindered by a lack of technical expertise and authority to directly assist the Insular Areas. OIA can improve fulfilling its responsibilities in three areas: grants management, advocacy, and performance management. The OIG is concerned that OIA, as it is currently structured, may not be able to successfully assist the Insular Areas to improve services in critical areas such as education, health care, and utilities. OIA has developed a corrective action plan that, if implemented, should address our report's three recommendations. OIA received a $200,000 program increase in 2010 to hire additional personnel to address audit concerns and expand technical assistance, training, and oversight activities.

7. Financial Assistance Awards

Financial Assistance (grants, cooperative agreements, and loans) awards at the Department are estimated to be about $3 to $4 billion each year. In spite of representing such a substantial financial value, the Department does not have a consistent method for recording and reporting these transactions. The Department points to a variety of reasons why it does not have reliable visibility over financial assistance spending, but generally, there is simply not the same level of emphasis in policy, or practice, for overseeing financial assistance awards in the Department as there is for procurement awards. Recent Department efforts to improve in grant management have yielded some positive results.

The Department has not reported problems in executing financial assistance awards. The absence of a formal protest procedure for financial assistance recipients may contribute to the reason complaints regarding unfair selection and award criteria are not common. Post-award monitoring procedures are where the problems are known to prevail. All financial assistance awards require some degree of Government monitoring. At a minimum, the Government must receive reports on the use of funding from the recipient. In the most stringent circumstance, Government site visits may be made to ensure the funding was applied to the intended purpose. OIG reviews have repeatedly found that financial assistance monitoring activity within the Department is weak. Recently, the Department provided new guidance to bureau offices on the expectation for monitoring activity. We are hopeful that bureaus will adhere to this guidance to improve monitoring and reduce the potential for financial assistance funding to be used for other than intended purposes.

8. Resource Protection and Restoration

The Department's resource managers face the challenging task of balancing competing interests for the use and protection of the Nation's natural resources. This is a perennial challenge for the Department. The Department manages one-fifth of U.S. land, including 391 National park units and 548 wildlife refuges. BLM is the Nation's largest land manager with responsibility for 258 million acres of land across the West, as well as a 700 million acre onshore, subsurface mineral estate.

Our recent report detailing the history of the Wild Horse and Burro program in BLM highlights the difficulty of this balancing effort.

9. Acquisition Management

Procurement, contracts, and grants historically have been areas subject to fraud and waste Government-wide; managing them continues to pose a challenge. The Department procurement and financial assistance awards in FY 2010 exceeded $5 billion, which represented over one-third of the Department's total budget. These awards included $4.7 billion in contracts with over 70,000 transactions, and more than $1.7 billion in Federal assistance to over 2,300 recipients.

The American Reinvestment and Recovery Act (ARRA) provided nearly $3 billion to the Department. The Department faced a significant challenge to properly award and oversee the expenditure of these funds.

The Department's acquisition workforce obligated the vast majority of ARRA funds in accordance with the schedule established in the Recovery Act. This significant effort, in addition to executing actions to obligate appropriated funds, placed a severe burden on the acquisition workforce.

The Department now faces new ARRA challenges and must focus on the administration of the contracts, grants and cooperative agreement to ensure that the awarded funds are used for their intended purposes with minimal waste, fraud, or mismanagement. The acquisition workforce must continue to monitor whether applicable recipients of funds are properly

reporting, and take aggressive action against those who fail to report. Such actions may include termination of contracts or withholding of payments, as well as suspension and debarment proceedings.

The Department continues to make significant progress in building a strong suspension and debarment program to protect against contractors or recipients with a demonstrated lack of responsibility. In response to our recommendations, the Department committed necessary resources to fund, establish, and staff an effective suspension and debarment program.

OMB directed that each Department and agency cut contracting costs by 3.5 percent in FY 2010 and another 3.5 percent in 2011. In the Department, a 7 percent reduction in contracting costs for 2011 and beyond equals an average of $186 million dollars a year. One initiative proposed for achieving this cost reduction is strategic sourcing – an institutional procurement process that continuously improves and re-evaluates the purchasing activities of the Department. Simply stated, the Department can achieve better pricing by leveraging the total buying power of the Department rather than individual offices and bureaus doing separate purchases of like commodities. In FY 2011, the Department estimates it will realize savings of $30 million through strategic sourcing.

Thank you, Mr. Chairman, for the opportunity to share this information with you. I will be happy to answer any questions you or other members of the Committee may have.

MARY L. KENDALL
ACTING INSPECTOR GENERAL
DEPARTMENT OF THE INTERIOR

Mary Kendall is the Acting Inspector General for the United States Department of the Interior. An attorney by training, Ms. Kendall has dedicated much of her professional career to law enforcement, as an attorney for federal law enforcement programs and as a state and federal prosecutor. She joined the federal workforce in 1986 as an attorney for the Environmental Protection Agency's Office of General Counsel. In 1990, she transferred to the Environmental Protection Agency's Office of Criminal Enforcement, where she served for nine years in various capacities. In the fall of 1999, Ms. Kendall was named Deputy Inspector General at the Department of the Interior where she has been instrumental in transforming the Office of Inspector General into an innovative organization dedicated not only to detecting fraud, waste, abuse and mismanagement within the Department, but also to assist the Department in identifying and implementing new and better ways of conducting business. In February 2009, when Inspector General Earl E. Devaney was named by the President to be Chair of the Recovery Accountability and Transparency Board (RATB), Ms. Kendall was named Acting Inspector General. In May 2009, she was appointed to serve on the RATB together with Chairman Devaney and eleven other appointed Inspectors General who comprise the Board.

PAST GAO RECOMMENDATIONS

Mr. SIMPSON. Thank you, and all of your full written statements will be entered into the record.

Let me ask first, since everything I am sure that is said in this room will pretty much stay in this room—yes, just between us—many of the recommendations that you make or the problem areas that you point out have been found in reports before. As you said, this was an update of your 2009 testimony, whether it is wildland fires, which has been an issue for quite some time, or the backlog deferred maintenance, those types of things, they continue to repeat in report after report after report. How do you feel the Department takes your recommendations and implements those recommendations when they agree or works with you to try to find solutions when they might disagree with what your recommendations are? Do you need cooperation within the Department?

Mr. RUSCO. Well, I guess I can start by saying some positive things about the Department. In recent years, we have seen kind of a sea change in how our reports on oil and gas have been received and in the ability and willingness of the agency to undertake our recommendations, and we have issued dozens of them in the last three years alone but we went from a period about five years ago where the agency sort of automatically disagreed with everything we said and whether or not they were going to do anything about it. The communication lines were not very good between us. Now I feel like I can call people there and ask what is going on with this recommendation and I get a good answer, and we are rapidly closing a number of recommendations that we have made over the last few years. We feel they are making great progress. That said, we have concerns that are ongoing, and a lot of those concerns are just that they have such a large job to do and they have to manage their day-to-day activities and they are undergoing this reorganization which is going to take a lot more of their resources.

Ms. MITTAL. I would just like to add, we actually have a very active recommendation follow-up process and for three or four years after we make a recommendation, we continue to follow up with the agency because our experience has been that an agency will implement recommendations usually within the three- or four-year period. After you get beyond three or four years, there is less likelihood that they are going to actually implement the recommendations. Our overall success rate with agencies across government is between 75 and 80 percent of recommendations implemented. We do not think Interior is very different from our experience with other agencies. However, we are sitting here today because there are a lot of recommendations that either they have not implemented or they have not fully implemented as we recommended.

Mr. SIMPSON. Do you find that there is more active willingness on the part of the agency to look at some of these recommendations and implement them if the committee is looking at them also and asking you to come and testify?

Ms. MITTAL. I would say absolutely. The wildland fire issue is a perfect example. For 10 years, over a decade, we kept insisting that the Interior and the Forest Service needed to come up with a cohe-

sive strategy and they would not make a move in that direction, and until Congress passed the FLAME Act of 2009 and required them to actually implement our recommendations, they did not start moving in that direction, so yes, absolutely.

OIL AND GAS REVENUES

Mr. SIMPSON. Let me ask one other thing. You all mentioned the oil and gas program and the problems that have existed in the past, and I find it almost stunning that we cannot determine whether we are getting accurate amounts of revenue due to the federal government from the amount of oil and gas produced on public lands. Just out of curiosity, the bonding requirement, you talked about the hard-rock mining and oil and gas, are those statutory requirements? In other words, do they have to change legislatively or is that something that can be adjusted by the Department?

Ms. MITTAL. The bonding requirements can be adjusted by the Department. That is why we recommended that they change the minimum bond amounts.

Mr. SIMPSON. Yes, you said they had not been updated in like 50 years or something like that.

Ms. MITTAL. Yes.

Mr. SIMPSON. But that can be done without legislative approval? Okay. Do you feel that the reorganization of the MMS—I keep calling it that because I know what it is—do you feel that is going to adequately address these issues that have come up with the oil and gas program?

Mr. RUSCO. Well, we hope so but here are some specific concerns. The first is that the reorganization does not address the onshore management of oil and gas, and we have found many, many issues there. Secondly, among the largest issues that this program faces are human capital challenges. They have trouble keeping people in these positions.

Mr. SIMPSON. Do you know why that is?

Mr. RUSCO. One of the key reasons is that they are competing with industry for skilled positions, so when the industry is in a slump, which has not happened for quite a while now but they were able to hire a lot of people in the 1990s that had the kind of skills they need, petroleum engineers and technicians. And then when the oil industry picks up and those skills are highly valued, they lose a lot of them to industry. So they have trouble. They will hire someone who has got a low level of training in the industry. They will train them and then they will get hired away by industry. That is kind of a systemic problem and it is a hard one to deal with, and you could throw a lot of money at it but I do not know that we can compete with industry there. And so I think that is a problem that may persist.

There is another issue, though, that they can deal with, and that is better coordinating and better using the resources that they do have, and we have found that there is almost no communication, no systematic communication between, say, the BLM and the former MMS in terms of utilizing the expertise they have in petroleum engineering and keeping up with industry in terms of technology, updating their orders for what kinds of technology can and

should be used in oil and gas wells, and they can make more efficient use of the resources they do have.

Mr. SIMPSON. One last question before I turn it over to Ms. McCollum. You mentioned climate change as one of the challenges facing the Department, and it has been kind of pet peeve of mine, not really a pet peeve but an issue of concern, I should say, in that we seem to be spending an awful lot of money on climate change and I am not sure any of it is coordinated. It is like in every agency in the federal government, the new key words if you want to get funding for something is climate change, and in fact, a lot of the science that was previously done by different agencies has been now labeled climate change money because it is obviously a concern to more people and easier to get funding for it. Have you done any looking at the coordination of all the money that is spent government-wide and just within the Department on climate change and what the goal is, whether it is just a means of—you know, I always used the example after 9/11 that everybody came in my office added the words "homeland security" to everything they requested. Now "climate change" is the key word that is attached to everything. And my concern is not that we are spending money on climate change, it is just that I do not know that there is any coordination in there or what we are trying to find out with the money we are spending.

Ms. MITTAL. We actually have an engagement ongoing right now. The report is expected at the end of April, early May, and the report is focusing on four or five key objectives. The first thing is to identify all of the federal funding that is currently being used to fund climate change activities. It is also going to identify what types of activities that climate change funding is being used for. The report will focus on what strategic priorities, are being set for climate change at the federal level. It will look at whether the funding that is being spent is aligned with those strategic priorities and then if there are any other options to set strategic priorities for climate change across the federal government. So that report will hopefully answer a number of the questions that you just raised.

Mr. SIMPSON. And I have talked with a variety of people within the Department of Interior about whether it would be smart to take a line item for the bill—because, I mean, we put climate change money into the Forest Service, BLM, the Smithsonian, the Park Service, USGS, you name it, they all have climate change money in there—if it would be smart to have a climate change line item that was overseen by someone or a group that could then weigh the value of different proposals from different agencies as to what they were trying to do and essentially award grants, I guess for lack of a better term, to different agencies. If the Smithsonian has something that is important and the committee felt it was worthwhile to pursue that, they could award them a grant, or the USGS or Forest Service or anybody else. It just seems to me we have got to do a better job of how we coordinate the funding. Otherwise we are going to waste an awful lot of money. Thank you.

Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair. We are really tracking here on the same things so I am just going to do a little bit of a follow-up on the two areas that the Chair was referring to.

In the 10 years I have been here, I have listened to a lot of frustration about how the agency was not doing what it needed to do, but then when I started digging deeper and got on the Appropriations, it was like well, you can only take so much out of a hide so a lot of it was not having all the tools in the toolbox, whether it be reorganization, whether it be looking at ways in which they could share information or work together within the agency or sometimes it was just lack of funds. I am going to do two questions.

One of them is to follow up a little more. Some of it is going to be the will, and I think you mentioned that, and some of it is going to be the means, either organizing the means to be used more effectively or actually having the dollars needed to do it. Could you talk a little more about what needs to happen with information systems, computer systems or just recovery systems to find out what is going on? I am not an engineer. My brother is the engineer at home in Minnesota, not me. But what do we need to either track fiduciarily or to track information, retention and recruitment of personnel? I think maybe you have touched on that but if there anything more you want to add.

I want to ask about climate change but I want to discuss it a little more specifically. I agree with the Chair that we need to—acknowledge, dollars are tight, dollars are precious and we need to get the biggest bang for our buck so maybe we should look at a reconstitution of how we account for climate change. But I am concerned about some of the debate that we had on the Floor and that is why I want to know about the wills and the means. There was $58 million in cuts to programs that the Interior had going to climate change research, and I am excited about seeing this report in April. But I just want to use forestry, for example. We are seeing an increase in pests. Part of it is just the mobility that the pests have, as we have become a denser and denser population with trades and goods. Part of it is climate change, and then the concern with not having the right amount of funds available to do prescriptive burns when appropriate, the contribution it makes to pests, and other wildfires getting out of control and the rest.

Could you maybe talk about forestry, which is important for recreation, important for industry, livelihoods and jobs, and climate change and any gleans of information you might have from the April report on that. And then the will and the means.

Mr. RUSCO. Well, with regard to information systems, some of that we will have to answer for the record. Our IT group does most of the work that——

Ms. MCCOLLUM. If you could get that to the chairman, that would be fine.

Mr. RUSCO. But with respect to oil and gas information management, what we found is that across the Bureau of Land Management, the former MMS, both in terms of revenue collection and in managing permitting and planning of leasing, we found a wide assortment of legacy information systems that do not communicate well. We found——

Ms. MCCOLLUM. Excuse me. Is legacy a nice way of saying old, antiquated and they do not do the job?

Mr. RUSCO. I am not going to disagree with that. We found that sometimes when we were going to ask questions about how do you provide reasonable assurance you are collecting the right amount of royalties and where can we find the data to check this, we found that people are using spreadsheets, individual spreadsheets to do individual tasks that these things are not recorded in a systematic way. Now, they have been working to fix this but it still remains that there are information systems that do not talk across groups and there are still people working on paper and Excel spreadsheets when they should be working on integrated systems.

One more thing is that industry long ago switched to essentially real-time monitoring of oil and gas production so they have second-by-second data that is recorded on computer databases remotely from wells, and they monitor this in order to efficiently manage the well so if anything is going wrong, they see it and a red flag goes up and they send the technician out there and they fix it, and that is great. It is efficient. It cuts down on waste and issues like that.

Mr. MORAN. If the gentlelady would yield, do they share that information with us?

Mr. RUSCO. There is a pilot program in the natural gas area to do so.

Mr. MORAN. The answer is no?

Mr. RUSCO. It is not uniformly done, no, but these data systems are essentially available off the shelf. There is even a free version that has much more functionality. It talks to all of the different systems that are in the industry, could collect these data, could set up immediate flags if there are problems at the well so that inspectors could more efficiently decide where to spend their resources. Instead, they are not using the information that industry has. That would be a great innovation and it would not cost a lot of money.

Ms. MITTAL. I can add to the data issue for the rest of Interior. It is a perpetual problem and it is a systemic problem. No matter what program we are looking at, no matter what agency we are looking at, lack of data, inaccurate, not comprehensive data, not reliable data is a standard problem in just about every GAO audit, whether we are looking at the Office of Insular Affairs, whether we are looking at BLM, whether we are looking at any agency within the Department. Poor data is a systemic problem throughout the Department.

In terms of your question with regard to climate change, in 2007 we specifically had noted that climate change was not a high priority for the bureaus within the Department. However, in 2009 the Secretary issued an order that basically said that all of the bureaus and offices are to consider the impacts of climate change as they develop their strategic plans, as they determine how they are going to spend money on R&D programs, when they develop their multi-year resource management plans and when they determine how they are going to allocate resources. We have not actually gone back into the Department to see how they implemented that secretarial order so I cannot tell you how they are actually going about making that a priority but that was something that they were supposed to do starting in 2009.

INFORMATION TECHNOLOGY

Ms. KENDALL. If I could just add on the IT systems, the sharing of information and then on the retention and hiring, the Department has undertaken a new initiative to bring all IT systems under a single chief information officer. Historically, one of the issues that we always found was that allowing the bureaus to operate their own systems has been a real problem for anyone to really manage the IT systems at the Department. This is a huge step. It is being met with a fair amount of resistance but the IG office has actually offered itself up to be one of the early adopters, which might set an example for some of the bureaus who are putting up a great deal of resistance.

INFORMATION SHARING

To Congressman Moran's question about information sharing, the work that we did following the Deepwater Horizon disaster last summer suggested that there are enormous opportunities for sharing information that industry already has that would allow the new ONRR, the royalty group, to much better monitor what is really happening in terms of production. Historically, the Department has—I do not know how far back this goes but in recent years, I would say, maybe the past 10 years or so, the Department has treated the oil and gas industry sort of with kid gloves, not wanting to put too much burden, which I find a word like "burden" to industry that brings in the kind of revenue as the oil and gas industry does to be a little ironic, but we have found several areas where the Department did not want to burden the industry, and I think that there are many opportunities to shift the burden back to industry, and it would be essentially a no cost to the federal government solution. Our work last summer suggested that there really is this opportunity to make that shift.

RECRUITMENT AND RETENTION

In terms of recruitment and retention, one of the other things that we looked at last summer was this very issue that Mr. Rusco identified. We recommended some fairly simple solutions that might help. It will not solve it completely but one thing that we found was that then-MMS had determined that engineers and petroleum specialists were not eligible for student loan repayment benefits through the federal government. We have asked them to relook at that. I know that the BOEM is now doing some active recruiting at some of the universities and colleges that focus on petroleum engineering. I think that is a great first step.

The other opportunity, now, both are not budget neutral but petroleum engineers often operate in an environment that would otherwise warrant hazard pay. It is another thing that the former MMS had determined they were not eligible for and we suggested that they reconsider that. There would be some financial incentives that the government could provide that it has not been doing that might balance some of the disparity between industry and the government.

Mr. SIMPSON. Thank you.

Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. A very intriguing discussion, and as has been suggested, all of us seem to be kind of in a different way asking the same questions.

COMMUNICATIONS COORDINATION

At one time I had a chance to spend a lot of time with the Department of Defense when I chaired their Subcommittee of Appropriations, and one of the challenges was the fact that we found that the Navy and the Marine Corps had great difficulty communicating with one another. It seems they could not get their software to interplay and the stovepipes were more than stovepipes. We spent lots of money, lots of time and eventually began to break that process down. Clearly, the climate change challenges in the Joshua Tree National Park and in our national forests in California in my district, those overlap a lot and there is a great deal of similarity. I have been worried maybe we are wasting a lot of money by not having effective coordination, etc. Taking us back to Ms. McCollum's point is that we do have a need to implement processes whereby these communications by individual agencies are shared by other agencies. Ms. Kendall, you mentioned a new thought or idea that would suggest that we can coordinate this in a single spot. I gather the agency might be considering a clearinghouse whereby they will have a gathering of information, provide access, provide some of the security you mentioned, Ms. Mittal, but is that actually going forward? Is it likely to be something that the Department will do?

Ms. KENDALL. The Department is challenged to work across its bureau lines, but it is something that because we have tried to become financially neutral in our recommendations that we recommend often that bureaus combine resources and communicate better with one another and identify where they are overlapping their efforts. I think there is a huge opportunity in many realms including climate change but others as well where the bureau could streamline, coordinate and focus its resources much better.

Mr. LEWIS. Well, much of that which we have discussed so far is talking about the fact that there was not enough money for X or Y, to implement X or Y program or effort, and my colleague next to me said gee, you know when you get an apartment house, collecting rent is not a big problem. Only in government would we have difficulty figuring out and measuring what kind of money flows there actually are. And if you do have such a coordinated effort, information gathering, et cetera, let's do not kid ourselves. That does not mean that automatically the individual agencies are going to be willing to share, work with one another and indeed save the taxpayers and some of our funding challenges.

In connection with that, I remember a session with the people from the Park Service, the Bureau of Land Management and from Forest Service in a discussion of the designation of the East Mojave, literally hundreds of thousands of acres, if not millions of acres, being put in a preserve. The three heads of the agencies in that region in a serious extended discussion with me essentially said look, we have got five or six pristine areas out in this territory that deserve and need Park Service protection. Their conclusion was that with such a vast area there is no way we would have the

resources or the people to provide the management. So what was the answer? Throw all of that open desert territory into one big package and then maybe we can manage it better, and it does not seem to me that it is much better managed.

CROSS-DEPARTMENT COORDINATION

Now, my question is, when we do not have these resources and we have a shortage of personnel, should we be looking at taking a new territory to be a part of the agency's responsibility for management or should we be selling off some of these assets in order to provide funding flows that will allow the individual agencies to be ahead of time, ahead of our curve, to be able to implement processes whereby effective public policy goes forward? We do not want to sell off any property, that is for sure. I know that.

Ms. KENDALL. I do not know that I have an answer to your question, Congressman Lewis. I think it certainly bears consideration. But you identify cross departments in this case, and I am not familiar with the particular instance you are discussing. But in this case, it would be a cross-department challenge to get the agencies to coordinate, something that we already suffer internally in just the Department of the Interior, so the challenge is even bigger.

Mr. LEWIS. Much of the rare earths deposits in the country are in the territory I am talking about, in the Mojave Desert, and there is a worldwide challenge here in connection with preserving these. But over the years my miners have talked often about the fact that OSHA and MSHA almost stumble all over each in order to get down in the mine first to see what somebody is doing wrong. I mean, that is sort of lack of effective coordination between agencies that cuts off our ability to do a better job. It is pretty fundamental. And Ms. Mittal, that is kind of why we wanted you to be here.

Ms. MITTAL. Thank you, sir. I think what we keep finding, and you know, whether you sell off lands or not, that is a policy decision. That is a decision that only Congress can make.

Mr. LEWIS. Really? You mentioned that we gave you the authority to raise the bond level over a 50-year period, it has not been raised.

Ms. MITTAL. Well, that is true. But I think there are three fundamental issues that we see repeatedly when we look at Interior's and management programs. One is the lack of strategic planning, and you need to know what your strategies are, you need to know what your goals are before you can achieve what it is that your mission is supposed to be doing. The second is, you have got to have the data. As I mentioned earlier, they do not have good data. They are not making decisions based on good data, whether it is resource allocation decisions or it is program activity and management decisions. And finally, you have got to have good performance measures. One of the things that we see repeatedly when we look at Interior's programs is a lack of good performance measures. So if you are not accountable for your results, if you are not looking at your performance and measuring it against your goals, measuring it against the milestones that you have established, you can never know exactly what point you should take corrective action, when you should change your mode of operation and change it to something different. So those are the three fundamental problems

that we see, and I think it feeds right into your comment about coordination and cooperation. You need to have some of these three elements in place before you can effectively coordinate and cooperate with other people because you first have to know what you are doing as an agency.

Mr. SIMPSON. Mr. Moran.

OIL AND GAS REVENUES

Mr. MORAN. Thank you, Mr. Chairman. Good to see you.

It is obvious to everyone that lives on this planet, the United States is desperate to find any way of doing a better job of balancing its budget. So let me ask you some questions with regard to potential revenue raising.

In your testimony, you indicate that the Interior Department collected lower levels of revenue for oil and gas production than all but 11 of 104 oil and gas resource owners including many of our states—Texas, Oklahoma, Louisiana, etc.—and any number of other countries. Can you give us a sense for what kind of revenue loss we are talking about here, if the royalty level was consistent with, say, the Gulf states, and what other countries charge in terms of royalties for taking the natural resources that belong to the taxpayers?

Mr. RUSCO. Giving a precise answer to that is beyond any of the work we have done. I can say a few things that give a flavor of that. One of the problems with our revenue collection system is that it does not respond to changes in industry conditions, changes in economic conditions, changes to oil and gas prices. So back in the 1990s when oil and gas prices were very low, companies were in dire straits and they came to Congress and asked for royalty relief, and that was granted. And due to the way that that was implemented and some subsequent court cases that essentially ruled that royalty relief was effectively permanent for the wells that were offered that in the deep water, that is going to cost the federal government somewhere between $20 billion and $50 billion, depending on future oil and gas prices and how much is produced.

The system of collecting revenues can reflect changes in the environment and sort of make those kinds of adjustments unnecessary, and so when profits go way up, you could take a greater share of profits or you could take a smaller share. That is one of the things we asked Interior to look at. They are looking at that at this point and they expect to finish sometime in 2011 with that study, doing a comprehensive evaluation of what others are charging. And we expect that they will have an estimate of what, if anything, they feel that they can do to increase revenue.

Mr. MORAN. So the answer is no, you do not have any specifics, but the Interior Department is working on it and if we look just at the Gulf Coast lost royalty revenue, it would be $20 to $50 billion but we do not know. And is the Interior Department determining what we could be bringing in if what we charged was more consistent with what other countries charge and the rate that other states charge?

Mr. RUSCO. That is—my understanding of the study they are doing is to look at just that.

Mr. MORAN. They are looking at that? Now, you also say in your report that the Bureau of Land Management has not met its statutory, its legal obligations for oil and gas verification inspections. I gather that it is quite likely as a result of both the federal government and the states, because they get half the royalties, maybe substantially shortchanging their revenue as a result of BLM not meeting its statutory verification responsibilities. Is that accurate?

Mr. RUSCO. It is certainly possible. Again, we do not know what we do not know, and if they are not making their inspections, we do not know what they would find if they were.

Mr. MORAN. The fact that Interior largely relies upon the oil and gas industry to give its own estimates of how much is being withdrawn and depleted, and you found that those estimates are invariably short of what they actually are drilling, that if there was better monitoring, it would be apparent that there is more being taken and thus more revenue would be coming into the federal government. One way to address that, I gather, is in your response to Ms. McCollum, that if we had more people and the right people, but most importantly the kind of information technology and data that the oil and gas companies already have on a real-time basis, that would tell us what they are generating. So I gather the numbers they are giving us are not even consistent with their own data in terms of what they are taking out of both offshore and onshore reserves. Is that accurate?

Mr. RUSCO. I will say we have not found any systematic underreporting. We have found instances of errors and instances of missing data and instances of reports that should be there that are not, but you are absolutely correct that the industry, they collect these data. They can account for up to very small amounts of oil and gas that they are producing and they collect these data. Then they put this oil and gas into pipelines or sell it to a seller who is also measuring it and they have disagreements and they are both talking about sets of data and they can get together and very quickly resolve those disagreements about how much came from each producer and went into a pipeline, but when they are both talking about data that comes from a meter and is beamed to a computer, they have something to talk about. Those things sometimes malfunction and you get different answers but the meters——

Mr. MORAN. I understand that, but are you telling us that that data is not then given to the owner of the property, the resource, the federal government? They are not sharing that data in terms of how much they are withdrawing, that we sit back and wait for when they want to give us the numbers that they choose to give us?

Mr. RUSCO. That is correct. We do not have third-party verification or direct verification of production.

Mr. MORAN. And a reasonable assumption would be then that it is being somewhat underreported, that there may be more revenue collection available to us if we simply were getting more accurate and fuller data? Is that a reasonable conclusion?

Mr. RUSCO. I cannot go that far. Again, we have not seen systematic underreporting where we have looked but, again, we do not know what we do not know.

Mr. MORAN. You also noted that Interior is—that concludes this line of questioning—but you underestimated the amount of natural gas produced on federal leases that is released directly to the atmosphere. So we have got a lost resource here, we have got no collection of royalties and we have got this intensive greenhouse gas that is polluting the atmosphere. Can you give us any sense of how much in the way of loss we are talking about in that regard?

Mr. RUSCO. In this case, it could be as much as 2 percent of total production on federal lands for the wells that have not put in modern low-bleed pneumatic valves and better equipment for monitoring vented natural gas, but it could be a very significant amount. What we do not know and what Interior cannot tell us is what kind of equipment is being used in each case, but when we did look at specific instances, we found that there is a lot of old equipment out there that bleeds a lot of natural gas in the air and those valves can be economically replaced with newer, low-bleed valves that would cut sometimes very significantly the amount of natural gas, and it could be as much as 2 percent.

Mr. MORAN. Could BLM require that kind of newer equipment so as to reduce the greenhouse gas which we then have to pay to clean up?

Mr. RUSCO. We have recommended that they evaluate the equipment that is being used in every instance and identify cases where it can be economically exchanged for more modern equipment that leaks less.

REVENUE SOURCES: ADDITIONAL

Mr. MORAN. Well, these are good, measured responses. I appreciate your caution in answering them. I trust the Inspector General is ensuring that the Interior management is aware of this additional source of revenue and pursuing it?

Ms. KENDALL. We have talked with the Department about a number of other sources. Going away from oil and gas for just a moment, one of the areas that we have an active evaluation in is rights-of-way. There is a huge amount of land out there that the Department we are finding basically almost gives away rights-of-way. They are utilizing a process by which the rights-of-way are—in one instance, and I cannot say this across the board but we found one instance where an Indian tribe negotiated a right-of-way fee 100 times what BLM is charging for the same type of right-of-way. So we are looking at some other options in terms of determining what the appropriate right-of-way fees ought to be but there is a considerable opportunity to raise much greater revenues there.

Mr. MORAN. Well, good for the Indian tribe but not so good for the federal government.

Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. And just to follow up on that, I have heard the same thing, that what the BLM charges to put wind turbines on BLM ground is significantly lower than what it would cost on private land, and consequently the federal government is losing a ton of revenue that they could be collecting for renewable energy sorts of things.

Mr. Calvert.

Mr. CALVERT. Maybe we should contract out with Native Americans to collect revenue.

Mr. SIMPSON. There you go.

Mr. CALVERT. You know, this is going to be kind of a bipartisan moment here, I think.

I come out of the business community. When you mentioned $20 to $50 billion worth of revenue left on the table, that gets my attention. And if I was going to enter into a private lease agreement with a resource company to extract minerals from property, I would have a lease that would state that I would have access to all records and have a transparent process so I would be able to collect revenue that is due. Is it in your lease agreement that production records are shared with the lessor and any records must be provided to the lessor? Is that not required in a lease agreement?

Mr. RUSCO. It is required. These data are collected from the operators, which are not always the lease owners, but there is an operator that operates a number of wells.

Mr. CALVERT. But in the final analysis, that information is required to be provided to the lessor in order for them to come up with a proper lease amount. Is that correct?

Mr. RUSCO. That is correct, and the issues we have are not that those data are not required to be provided but that when we have looked at those data, we have found missing data, erroneous data and other problems because it is self-reported and it is not checked with a third party.

Mr. CALVERT. This is not rocket science. I mean, if we need some rocket scientists, there are a lot being laid off in Houston right now, I am sure we could pick up a couple. The percentages on these various leases, I guess they change or fluctuate from one lease to the next or do they pretty much stay the same?

Mr. RUSCO. Onshore, most of it is 12½.

Mr. CALVERT. At what point in the process is that collected? Is it collected at the point of sale? Is that 12½ percent based upon market price that day and so fluctuating through the lease process so you have to mark the royalty that is due per that day? Is that not correct?

Mr. RUSCO. Typically it is done on a month-by-month basis.

Mr. CALVERT. So they have an average, a 30-day average of the mineral value or the oil or gas or whatever you are extracting, a 30-day running average, and then that royalty then is charged. At what point is it due to the federal government? What point does the lessor receive its rent?

Mr. RUSCO. It is due, I believe, within 30 days.

Mr. CALVERT. So the government then in effect bills the lessee and the lessee comes up with the money within 30 days from the point of billing. Is that correct?

Mr. RUSCO. I believe that is correct.

Mr. CALVERT. And they cannot do that?

Mr. RUSCO. Not accurately.

Mr. CALVERT. Have the agencies looked into contracting that out for a small fee to a contractor that would have the competence to collect rents or collect royalties? It would seem to me if you are leaving $20 to $50 billion on the table there ought to be a better way. I know there was royalty relief in the 1990s when the oil

prices went down but that should have been credited on the books and then collected later on once that resource recovered. The intent was not to forgive that amount of royalty. Is that not the case?

Mr. RUSCO. Now I have to be very measured. I am sorry. In the end, this went through litigation and the courts determined that the legislation required that royalty relief.

Mr. CALVERT. Was that legislation or was that administrative relief? That was done in the 1990s. Was that not done by administrative relief at that point?

Mr. RUSCO. There was the Deep Water Royalty Relief Act of 1995 that implemented the royalty relief but then Interior implemented the legislation.

Mr. CALVERT. They implemented it incorrectly. At the time the Deep Water Royalty Relief Act went into effect in 1995, was it not true that the cost, the capital cost of installing the drilling equipment in the Gulf was substantial? Congress was trying to find a way to create an incentive for people to go into the Gulf and to drill in deep water because at that time they were not getting the bid prices up for the tracts within the Gulf? Is that not correct? And so they created this incentive where the capital cost would be booked for whatever royalty amount that was until that capital cost was received and then the royalty would be received thereafter. The lease agreement, as I understand it, was written where they just gave them permanent relief. Is that not correct?

Mr. RUSCO. For two of the five years that there was royalty relief, for reasons that we do not understand fully, there was no price trigger put on that so that when prices went up, they would collect.

LEASE PRICE THRESHOLDS

Mr. CALVERT. Why did somebody not go back and find out who the idiot was that wrote those leases? Again, this is not rocket science. I mean, if any one of us at this table had a resource that we were going to lease out and we understood the basis of that lease agreement, we understood that the capital cost was going to be credited and at that point forward a royalty was going to be paid, why in God's name was the lease written that gave them permanent relief? I mean, I just do not understand it.

Ms. KENDALL. We did conduct an investigation into the failure to put a trigger into the 1998 and 1999 leases, and we could not find, as you put it, the idiot, but we found a real bureaucratic bungling is what I think Mr. Deveney defined it where one group of MMS thought another group was responsible.

Mr. CALVERT. You know, we are talking about real money here.

Ms. KENDALL. Oh, I know.

Mr. CALVERT. When we get into $20, $50 billion here, you know, we have been fighting and we are going to continue to fight all year to save a similar amount, $50 billion, and we left $50 billion out there in the ether. I find this amazing. What is even more amazing is it continues to go on, based upon your testimony, because of the inability of certain folks to collect revenue from royalties that we should be collecting.

So it is distressing to me, Mr. Chairman. There are a lot of out-of-work engineers out there at NASA. Maybe we ought to send them on over and maybe they can straighten this out, or we could

get some good accountants. I will even volunteer. Thank you, Mr. Chairman.

Mr. SIMPSON. Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman. I should point out that we have had an amendment that would make the corrections that we just talked about as being necessary, and I hope that it can be dealt with positively. In any case, Mr. Chairman, thanks very much, and thank you very much. Thanks for what you have said and everything that you are doing.

I want to follow up with something that Mr. Moran was talking about. As we know, for years now the GAO has been examining the Department of Interior's royalty collection program. We are dealing with a situation here where two weeks ago this House passed a Continuing Resolution with draconian cuts to some of our country's most vital investments and services, cuts that would according to the most economic analysis by Mark Zandy of Moody's lead to the loss of nearly 700,000 jobs. So we paid almost no attention to the opportunities that are present in undercollected royalties of our existing oil and gas operations on public lands. You pointed out in your testimony that the Interior Department collected lower levels of revenues for oil and gas production and that lower level was connected from 93 out of 104 oil and gas resource owners that you examined. You examined 104. Ninety-three were producing less. Only 11 were not. You also made specific recommendations on what the Department should be doing to improve royalty collections ranging from comprehensive review to better measurements to accounting for the amount of natural gas that is being vented or burned.

So let me just ask you two little questions. How much revenue does GAO estimate we are losing by not implementing the suggestions that you have identified to improve and increase the royalty collection? And secondly, how much effort and resources would be required to make these changes?

Mr. RUSCO. I will try to answer the most satisfying one first. The effort, if Interior decides or determines that in fact we are collecting less than the fair share of revenues for oil and gas production on federal lands——

Mr. HINCHEY. Well, you determined that already.

Mr. RUSCO. Well, we determined that it was lower than a lot and we recommended that the agency do a comprehensive review, taking into account all the things that they believe are important. We are quite confident that they are going to find that they collect lower than many states and other countries. If they decide that they can collect more revenue, then it is not a costly or difficult endeavor to do so, at least going forward. When you issue a different lease, you can raise royalties, you can change lease terms.

Mr. HINCHEY. So do you know how much revenue GAO is estimating that we are losing? I mean, they have communicated that to you so you must have some insight into it.

Mr. RUSCO. No, we do not have an estimate of how much their study will determine, if any, that they are——

Mr. HINCHEY. They have done the study and they have communicated this to you?

Mr. RUSCO. No, we looked at other studies, industry studies of revenue collection.

Mr. HINCHEY. How much revenue are you losing? How much revenue are we losing?

Mr. RUSCO. Well, we do not know but there are some countries that collect a huge proportion more. Now, it is very difficult to make comparisons across countries because, you know, some countries might collect a lot but they also do not have a rule of law or a set of contract law that we have here, and it is very difficult to compare. That is why we asked the agency to conduct its own review using the expertise of industry consultants and determine whether they could do this. There is a trade-off between charging more revenue and encouraging domestic oil and gas production. Where that trade-off is, is something for the agency to determine.

Mr. HINCHEY. Well, GAO has said that to you. They have given you information. And you have come up with improvements to increase the royalty collection, right?

Mr. RUSCO. Interior increased the royalty rates in the deep water twice, and they estimated that that would increase revenue by about $5 million on——

Mr. HINCHEY. Okay, if you do not have the specific answer to these questions, I would very much appreciate if you would look into this and communicate this back to us, give us the specific answers to those two questions.

Mr. RUSCO. I am sorry, but with respect, without looking at Interior's study when it comes out, we would not have that information at GAO. I certainly will——

Mr. HINCHEY. Well, GAO has communicated to you. There are estimates that they have produced. You have got that information. You have looked into this. You have decided that there are things that had to be done to change it, to make it better. So I would like you to communicate to us the factual information that you are looking into that you have got. You cannot answer it now but please give it to us.

Mr. RUSCO. I will give you every bit of information we have on this.

Mr. HINCHEY. So you know what GAO has done because, you know, you are from GAO.

Mr. RUSCO. Yes.

Mr. HINCHEY. You know what GAO has produced. You know the recommendations that they have made, and all of that has been put forward. So we would just like to understand this a little bit more clearly and more specifically, particularly with regard to the numbers, the estimates, things of that nature. If you can provide that, and I am sure you can, we would very much appreciate it.

Mr. RUSCO. Yes, sir, will do.

Mr. HINCHEY. Just one other quick thing that I would like to talk about, and that is the danger of the drilling that we are experiencing. We have seen a lot of danger with regard to the frack drilling for natural gas in a lot of places, places from Texas to Pennsylvania, a number of other states across the country. You have looked into this, I assume, to some extent. You understand it, to some extent, about what is happening and what is going on. There was a very interesting article in the New York Times on Sunday. I do not know if you had an opportunity to see that. But this is another expansion of the understanding of the cost of this kind of

drilling and what damages that drilling can provide, and in this particular case, again with regard to the danger to water supplies, which are critically important for the future of everyone's life. I would appreciate it if you would take an analysis of that, look into it and give us your understanding and recommendations as to what is going on. We are in the process now of following up on that information and providing a couple of pieces of legislation that we are offering to this operation here, and so I would appreciate anything that you could provide to us that would be helpful and useful. Thanks very much.

Mr. SIMPSON. Mr. Flake.

GRANTS, COOPERATIVE AGREEMENTS

Mr. FLAKE. Ms. Kendall, these financial assistance awards, $3 to $4 billion a year that are given out, can you give us some examples of what they might include?

Ms. KENDALL. The easiest example, it would be the financial assistance to Indian tribes and insular areas, but there are financial assistance agreements which are basically grants and cooperative agreements that go to any number of entities. Some are sort of partner entities to the Department. The cooperative agreements usually go to the partner entities. I can think of a couple that come readily to mind that we actually looked at, one being the George Wright Society with National Park Service. They have a very close cooperative relationship and a cooperative agreement that started out as about, if I remember correctly, I think a $35,000 cooperative agreement escalated up to over $800,000 without any significant change in purview and very little oversight. We are going to be putting together what I would call a roll-up report on cooperative agreements. We think it is an area that is a very high risk because there is so very little oversight.

Mr. FLAKE. You are saying there is no consistent method of recording these transactions?

FINANCIAL ASSISTANCE OVERSIGHT

Ms. KENDALL. It is another example where bureau by bureau they will do it differently, sometimes even region by region. There is not a consistent Department-wide guidance or requirement in terms of how financial assistance is overseen. For instance, and I realize I am speaking real generalities in terms of the financial assistance that goes to Indian tribes and insular areas, but using the insular areas for an example, funds are pushed out to the insular area government and the Office of Insular Affairs measures its performance on getting the money out, not necessarily on how that money is spent and whether it is spent wisely and well and it is accounted for. Although we have not made this recommendation, one of my personal thoughts is that there may need to be a complete rethinking of how BIA and Insular Affairs provides money. In the insular areas, for example, initially I had discussion with staff that perhaps we should do it on a reimbursable basis rather than put all the money out and then say tell us what you have done with it, which is not working, or to have an incremental requirement where a certain amount goes out, they report back with some substantiated information in terms of how the money was spent.

Mr. FLAKE. With regard to insular areas, how much of the money that would come under what you term financial assistance is mandated under the compact of free association, for example, with Palau and the Marshall Islands? How much are we required under those compacts to give? Is this money that we can say, "we did not like how you spent it, so we are going to cut it off"?

Ms. KENDALL. That is an issue that would have to be addressed. I do not know the answer to that. I realize that it may require some changes in the compact language. The same would hold true with Indian tribes, that there may need to be some pretty fundamental and sweeping changes in terms of how those agreements are reached.

Mr. FLAKE. Do you sense that the agency is moving ahead to address or remedy this?

Ms. KENDALL. We have really just started to engage in discussions with OIA on this.

Mr. FLAKE. How can we speed that process along?

Ms. KENDALL. I will let you know.

Mr. MORAN. If the gentleman would yield, I am told that the GAO has some additional information on that.

Mr. FLAKE. Please.

Ms. MITTAL. Well, we have looked at the Office of Insular Affairs grant to insular areas. They make about $70 million worth of grants every year, and what we have found is that about 40 percent of the grants that they make have at least one internal control weakness and that those kinds of internal control weaknesses are what lead to fraud, waste, abuse and mismanagement, and so we have identified a number of issues that we think the Office of Insular Affairs needs to address, and one of them is providing much more proactive monitoring and oversight of the grants.

Mr. FLAKE. What I am asking is: if this is part of the compact that we have agreed to then how much leverage do we have over how they spend the money?

Ms. MITTAL. The grants that we are talking about are not part of——

Mr. FLAKE. This is all discretionary? It is not part of the compact?

Ms. MITTAL. Right.

Mr. FLAKE. All right. That is what I was asking. Thank you.

Mr. SIMPSON. Mr. Cole.

Mr. COLE. Thanks very much. Thanks, Mr. Chairman. A quick point and then I want to go to my line of questioning. But just on the oil and gas issue, when we are looking at comparable returns, which I think we all agree we need to do a lot better job than we have been doing around here, just foreign countries usually are not a very good way to look at it, simply because the costs of raising a barrel of oil in Saudi Arabia versus raising one anyplace in the continental United States are dramatically different. So one of them in a sense is more profitable, and there is more money available to flow back to the government. Whatever the private people in adjacent areas are getting is usually a pretty good way to look at it because they are looking out for their own interest, so I would just urge you as you delve deeper into this to look at that.

INDIAN FUNDS: MISMANAGEMENT

I wanted to question you more in another area, not surprisingly, Indian Country. Ms. Kendall, I was reading your report with a great deal of interest and your testimony and there is a sentence that really bears repeating here. "Responsibility to American Indians has consistently been a top management challenge for the Department of Indian Country programs managed by the Department," and then you go on and list all the ones that are there and you go on, "Approximately 25 percent of OIG investigations involve Indian Country issues." That is a shocking number considering Indian Country does not get anywhere near 25 percent of the Interior budget. So clearly it is a problem area within a problem area. Could you and Ms. Mittal sort of comment broadly on the specific areas of mismanagement and concern that you have and whether or not—and I do not mean to make this partisan with this Administration or any, because I think this has been a problem with both parties, multiple Administrations, and I actually think there has been considerable progress made but I would like for you to give us a little bit more on the range of problem areas and the progress, if any, in recent years. And then I have got two or three specific areas to ask about.

Ms. KENDALL. The range of problem areas really runs the gamut. We have focused in recent years on Indian schools, Indian jails. Actually Indian jails have been a perennial issue that we have addressed repeatedly. The actual handling of funds that go to tribes internally, we have had any number of criminal investigations that the tribal members or the tribal council are mismanaging or taking money from their own people. And I know that 25 percent is shocking but we have said internally that we could dedicate all of our resources to Indian Country and still not be wondering what to do with ourselves.

Ms. MITTAL. Our work obviously is much more focused and has not been as wide-ranging as the IG's work. Our recent work has focused on the land and trust issues that BIA is dealing with and that has become a greater issue now with the Supreme Court decision in 2009 and so we——

Mr. COLE. We will get to that.

Ms. MITTAL. Okay. So it has raised a lot of uncertainty in terms of how many of the pending land and trust applications are actually going to be affected by the Supreme Court decision. We recently looked at the Native American Graves Repatriation Act and the extent to which federal agencies have complied with the requirements of the Act, and what we basically found is after 20 years of enactment, the agencies are not in full compliance with the Act, and currently we have other work ongoing looking at Indian arts and crafts issues. We are also looking at sexual assaults and the ability of IHS to provide services to victims of sexual and domestic violence on Indian reservations.

Mr. COLE. This committee on a bipartisan basis has made real progress in the last two or three years in trying to upgrade some of the funding in Indian Country, which has been very low. Have we made comparable progress on the executive side of the equation in addressing this problem? Again, I do not expect anybody to solve

100 years' worth of problems in 18 months but how much progress are we making in terms of administering the dollars we have in a more efficient manner, in a more transparent manner, making sure we are really delivering help through the tribes to people that need it?

Ms. KENDALL. Based on the areas that we have been looking at, and I am drawing a blank right now on the one financial area that we have looked at recently, but I cannot say that we are making any considerable progress, that the problems that we see are repetitive and really fairly entrenched.

Mr. COLE. Let me ask this to get to a couple specific issues. One, let us just start off with Carcieri, which you mentioned, which again this committee tried to address, and I think very successfully. Mr. Moran, Mr. Simpson, working together, we actually tried to correct the problem and we were probably a little unorthodox legislatively in our approach but we did it in a bipartisan manner to try and move through the House an amendment but basically legislation that would have ended this two-tribe distinction, because that is basically what we have now. We have got obviously a situation where the Department of the Interior is not sure what it can do for tribes versus whether they are in the 1934 Indian Reorganization Act or not, and we have got 80 years' worth of decision involving billions of dollars worth of property that we now really do not know what the status is, and the Administration, to its credit, has tried to address this. We tried to address it here. It got hung up in the Senate. How big a problem is this going to be going forward for the Department? And if you want to hazard an estimate on litigation if we do not get this solved and basically have a uniform standard for the Secretary in terms of putting land into trust?

Ms. MITTAL. We believe it could be a significant problem because there are at least a thousand pending applications right now for land in trust, new applications for land in trust. There are already two cases that have been filed, so it will be interesting to——

Mr. COLE. Can I ask you a question on that? On that thousand—and I know the answer—how many of them relate to gaming? Because that is one of the big objections we have, this is all a big game, but how many of these?

Ms. MITTAL. The thousand are non-gaming.

Mr. COLE. Yes. It is less than 2 percent of all the applications, which was the whole argument we heard on the Floor that this was a backdoor gaming thing.

INDIAN LANDS: FRACTIONATION

Can I ask one other question? And you mentioned this in your testimony, I believe, Ms. Kendall, but the fractionation issue is of course a gigantic issue in Indian Country in just dealing with the vision of land over time under allotments. We tried through the Cobell decision and the Cobell legislation to empower tribes to begin to deal with that themselves. We have given them a considerable pot of money that they can go out and purchase fractionated land from individuals, recombine it and use it. I know the Department has been working on this as well. What kind of progress are we making on the fractionation issue and do you have any specific administrative things that we ought to be doing to push it forward?

Ms. KENDALL. We did issue a report not too long ago about land fractionation. What we were trying to do was get in front of the effort that will be undertaken by the Department as a result of Cobell. The Department has been hampered by some requirements, primarily by the Cobell court, where they are prohibited from discussing openly what their efforts are but we have been working with them. Our report identified a number of some fairly practical things in terms of just communicating among the various entities that will be involved in resolving the land fractionation. There are three or four entities within Interior that are going to need to work and coordinate together. We made some recommendations about that coordination, the level of communication, some elimination of duplication of effort.

Mr. COLE. I would really appreciate it going forward if you can keep us regularly informed, particularly on the Cobell aspect. This has potential to make progress but it is also an enormously daunting challenge administratively for the Department. So if there are things we can do or ought to know I would hate to miss a great opportunity here to actually deal with the fractionation issue in the context of a court settlement where everybody has agreed because we administratively fumble the ball, and again, I do not think that critically of anybody. This is a big challenge to deal with but it is a great opportunity as well.

Ms. KENDALL. I absolutely agree, and we have committed to work cooperatively with the Department and collaboratively to try to help them looking forward as opposed to what we oftentimes tend to do, which is sit back and wait until they do fumble. So we are actively involved in that right now. Our next effort is to look at the Office of Hearings and Appeals process for probate land but we have got a lot of maybe half a dozen areas that need to be addressed and we are working with the Department in that area but we will be glad to keep you apprised.

Mr. COLE. Please do. Thank you.

Thank you, Mr. Chairman.

INDIAN TRUST RESPONSIBILITIES

Mr. SIMPSON. Before I call on Mrs. Lummis, let me follow up on what Tom was saying. I think this committee in a bipartisan way has felt like we have an obligation to meet our trust responsibilities to American Indians and that we also have to do it in an efficient way and help improve the operations of the BIA, and here is one of the things I have heard in talking with people at the BIA: if you look at this current Assistant Secretary now, he has been there two years and he is probably one of the longer-serving ones. Is it a problem that—and as I have talked to Mr. Echo Hawk—he is a good friend of mine, we have known each other for years from Idaho—this is a huge agency that has a lot of responsibility that is very, very complicated when you start looking at it. He has told me it is two years now and he is really feeling like he is just kind of getting his arms around what the problem is, and you have got to know what the problem is before you can solve it or propose solutions, and if this is one of the longer-serving directors of the BIA, is that one of the main problems we have, the same thing that you were mentioning with people working on the oil and gas industry

for the government, that it is hard to get people who are going to stay around long enough to solve some of these very complicated problems?

Ms. KENDALL. I think that is fair. If I remember correctly, we looked at the assistant secretaries for Indian Affairs and the average, Mr. Echo Hawk has exceeded the average. The average has been 16 months. And I know that the Department recently put in place an acting director for the Office of Special Trustee but had real difficulty finding someone to take that position. So it is a perennial problem and it is a real challenge for the Department.

Mr. SIMPSON. Thank you.

Ms. MCCOLLUM. Mr. Chair, I am not going to ask a question but I think this might be something that I think several of us would like to understand and get more into some of these issues. I requested and got a breakdown of not only the Bureau of Indian Affairs, but money that affects Indian Country and other budgets, and for the first time ever in history, they actually put together a budget so you can kind of holistically see, so tribes can holistically see resources that are available to them. I know you are putting together your hearing schedule, but I would really encourage you to do this not only for the Bureau, a hearing on that, but also have that budget document so we can kind of look at it wholly because I will tell you, the schools are a mess, and so are the health clinics.

Mr. SIMPSON. Thank you.

Mrs. Lummis.

Mrs. LUMMIS. To that last point, in Wyoming there are two agencies in state government where they are considered so important that the appointees transcend the terms of the governor: the state engineer, which is water, and the Department of Audit, which we want to make sure is nonpartisan. And so those run for six years, and that person knows that for six years they are appointed regardless of whether it is a Democrat or Republican governor, and that may be something that the federal government should consider with the BIA, an appointment by the President that is confirmed by the Senate but then it extends beyond that President's tenure.

ONSHORE REVENUE COLLECTION: CHALLENGES

And I want now to change to the subject of onshore oil and gas drilling because that is another area where my state of Wyoming has a considerable amount of experience. Going back to Mr. Calvert's question that really got lost, I think, in the stream of consciousness, he asked if there has been the notion of contracting out to a private party. I would suggest that it also should be considered to contract out to states because states that have a lot of oil and gas and coal production, my state, for example, is the number two energy-producing state in the United States and unlike Texas, which is number one, has an enormous portion of our oil and gas on public lands, both state and federal. The state board of land commissioners, state lands and investments, really has tremendous oil and gas lease terms in terms of benefiting the state and the ability for the state to monitor and audit. So I would say, as Mr. Cole said, looking to other countries as an example may not be the best apples-to-apples comparison. Look to states. And I would high-

ly recommend my state. I really think my state does a better job with its collections, with its severance and tax collections, its royalty collections, as well as the lease terms in our state oil and gas leases.

There is a tremendous problem with onshore, and Ms. Kendall, I would like to pursue that with you for a minute. Does the federal government have the resources, both manpower and financial resources to manage the program? There is a report that indicates that over 90 percent of the leases in the intermountain west were protested. In my state of Wyoming, it is 100 percent. A hundred percent of the oil and gas leases are protested, and that we know that revenues collected from oil and gas declined between 2008 and 2009 to the tune of a quarter of a billion dollars. So it is affecting revenues that these are protested and that part of the protests come from the fact that under the law, the agencies cannot seem to meet the deadlines, so these are sort of pro forma protests. They are cookie cutter protests that occur over and over because the agency misses deadlines. Is it your opinion that the agency is underresourced or are they just dragging their feet?

Ms. KENDALL. I would say that they are underresourced. We have not done any work in regard to protests in particular but I was looking back at our report from last summer on the Outer Continental Shelf. The levels of expertise in areas that are involved in oil and gas extraction are really immense and there are so many considerations that have to be taken into account. You mentioned the protests. We have never even—I mean, we are aware of it but we have not looked at that particular issue specifically. So I guess I would say yes, the bureaus that oversee oil and gas production and leases are really challenged.

Mrs. LUMMIS. Is there any effort at the Department of the Interior to aggregate human and financial resources in areas where they are a revenue generator for the United States?

Ms. KENDALL. Again, I think we face the chronic challenge of bureau coordination. In fact, although I cannot say this definitively, I have heard it anecdotally, that even BOEM and BLM tend to steal from each other. So the coordination effort, I think there may be some areas where they have that opportunity. We have not addressed those specifically.

Mrs. LUMMIS. Thank you.

Questions for the GAO folks. Many of these leases that are protested are by environmental groups that just file these canned briefs and obviously when 100 percent of leases are protested, they are protested by the same organizations over and over, some of which because a deadline was missed that is a statutory deadline and the deadline was missed by the agency. Some of these organizations receive compensation under EAJA, the Equal Access to Justice Act, out of taxpayer dollars for suing the federal government and then the taxpayers are paying them to sue the federal government. I support the intent of EAJA but I believe EAJA has been hijacked, and we do not know, though, there is no substantiation for how much money is being spent, how lawyers are being compensated. There are allegations and there is a university here in the East that has kind of looked at this as a research project.

Is the GAO the right agency to be the repository for how to monitor each award, whether they are made by the courts or by the agency itself in a settlement? And how much money in taxpayer dollars are agencies paying out? What are the sources of the payouts? Are they coming out of the agency budgets or are they coming out of the Department of Justice? Any thoughts there?

Ms. MITTAL. We have done work at the request of Congress looking at appeals and litigation issues at the Forest Service so I think the type of questions you are asking is something that we could undertake as a review and we could try to get those answers for you. We have not done any work to date on those issues so we could not answer definitively today.

Mr. RUSCO. With respect to protests for oil and gas leases, we have done a recent report on that. We did not address in that report this issue. We did find that most of the oil and gas leases, their protests come from a wide range of sources including, as you mentioned, environmental groups make up a large percentage, but also hunting, recreation groups, ranchers, state and local governments as well, and we also found, as you said, that this has affected the timeliness of issuing leases, so once a protest has been resolved and a lease is going to be issued, we found that protested leases missed their statutory deadline of 30 days' issuance. Ninety percent of those were missed, and so it is an issue there. We have found sustained, longstanding workforce planning problems at BLM and they do not match their workforce planning with where they expect the most work to be very well, and that is a systemic problem.

Mrs. LUMMIS. Thank you. Let me ask you further with regard to MMS reorganization, this question also for our GAO folks, have either of you looked into the Department's handling of the leasing and permitting for coal?

Ms. MITTAL. We have not. The only work we have done relating to coal has been mountaintop mining, and that is the Office of Surface Mining, but we have not looked in any great detail at leases.

Mrs. LUMMIS. If I wanted to make a request that something be studied as a Member of Congress, how do these studies—what is the genesis of these studies? Do Members of Congress get to ask you to study certain things?

Ms. MITTAL. Sure. The genesis of most of our studies are either mandates, committee requests or individual member requests. However, because of our backlog, we generally cannot get to member requests. We give highest priority to mandates and our second priority is to committee requests. So if a committee of jurisdiction was to request us to undertake a study, we would definitely be able to do that.

Mrs. LUMMIS. Thank you.

Now I am going to switch to wildland fires, Mr. Chairman. Is that all right?

Mr. SIMPSON. Yes.

Mrs. LUMMIS. Thank you.

Congress gave the Forest Service tools to manage fuel reduction in the Healthy Forest Restoration Act but your report indicates that they do not have a strategy to even identify options for reducing hazardous vegetation and yet we are spending, well, I think in

1999 a billion dollars on this subject, now $3 billion in recent years. So how is it that the agency does not even have a strategy to identify options about how to reduce hazardous fuels?

Ms. MITTAL. The wildland fire issue is a major concern for us. It has been a major concern for us going back over a decade. There are four specific areas that we feel that the agencies have not moved forward in a timely fashion like we have recommended. One is to develop a cohesive strategy to deal with fuel reduction as well as respond to wild fires. The second area is cost containment issues. They still do not have cost containment goals and strategies on how to achieve those goals. The third area, as you just mentioned, is the fuel reduction options. They have not established good processes to determine which fuel reduction projects should be undertaken and what the costs would be associated with those. And finally, we have been concerned about the planning tool that they are developing, a budgeting planning tool that they have been developing for several years now, which is behind schedule. It is over budget and we have no guarantee that it is going to be able to deliver the objectives that it was designed for. So we have a whole host of issues related to the wildland fire issue, both for Interior as well as the Forest Service, and we will be talking about that next week some more.

Mrs. LUMMIS. Thanks, Mr. Chairman.

Mr. SIMPSON. Mr. Moran, do you have anything else?

Mr. MORAN. I do, but I think given the fact that we have been here for, what?

Mr. SIMPSON. Just an hour and 55 minutes.

Mr. MORAN. Call it two hours. I would be happy to let them go. They have done a great job. I do not think they are the problem. The problem is DOI, and in fact, it may even be us to some extent, you know, we have not provided sufficient oversight in the past, but this has been excellent testimony. It does seem to me there is some revenue here if we seek it out, and all we are doing to generate ways to balance the budget, this may be a very appropriate place to look, just getting folks to be more conscientious about not only the extraction of the people's resources but getting adequate compensation. So hopefully we could pursue that in a bipartisan manner.

Mr. SIMPSON. Mr. Hinchey.

Mr. HINCHEY. Just a brief question.

Mr. SIMPSON. Sure.

Mr. HINCHEY. One of the things about natural gas that is very interesting, the price of natural gas in 2008 went up so high, it brought in a lot of revenue, then in 2009 it collapsed. So it is just one of those things.

But I would like to talk about the Deep Water Royalty Relief Act just briefly, just give a little background on it. This was back in 1995 when Congress passed the Deep Water Royalty Relief Act. It gave the Interior Department the ability to provide royalty forgiveness for the energy industry, royalty forgiveness. The idea was to spur deep-water exploration at a time when oil prices were low, drilling was less profitable. The measure was supposed to allow the Interior Department to institute price thresholds into the leases so that royalty payments would be made when prices were high. How-

ever, due to something, allegedly a clerical error, whatever it might have been, the Interior Department left out price thresholds on contracts that were signed back in 1998 and 1999. That allowed oil and gas companies to extract resources from public property without paying royalties regardless of the price of oil or gas. Making matters worse, thanks to an industry-led lawsuit, an appeals court has ruled that companies would not have to pay royalties for contracts signed, whether they were signed in 1996, 1997, or interestingly enough, in 2000. So we are looking into this and trying to make some corrections about it, trying to prohibit the Interior Department from issuing any new leases to companies that refuse to recognize that the high price of oil no longer justifies royalty.

So I wonder if you can remind the committee how much revenue we have lost, the United States is now losing thanks to this lawsuit?

Mr. RUSCO. The amount is several billions already but it will be somewhere in——

Mr. HINCHEY. Several billions? What is more precise in terms of "several"? Is it three, seven?

Mr. RUSCO. When we looked at it last, it was just over $1 billion that had accumulated but since then the lawsuit entailed paying back royalties that had been paid, so that has gone up and we have not yet looked at this issue since then. But we did estimate at that time that depending on the price of oil and gas, mostly oil in this case, the loss would be somewhere between $20 billion and $50 billion.

Mr. HINCHEY. Twenty and 50 billion?

Mr. RUSCO. Yes.

Mr. MORAN. And we have actually paid money back to the oil and gas companies. Are you finished, Maurice? I was just going to suggest, Mr. Chairman, before you conclude this meeting, I wonder if Mr. Cole might find that Indian tribe that got a thousand times reimbursement what BLM is getting for the right-of-way and maybe we can contact them on a consultant basis or something to get a little better break on our right-of-way.

Mr. SIMPSON. I think that was something that——

Mr. COLE. I told Mr. Calvert at the time, look, we have learned something negotiating with you guys over the last 500 years.

Mr. SIMPSON. Anyway, that will be the end of this meeting then.

Mr. COLE. Can I make one quick point?

Mr. SIMPSON. Sure.

Mr. COLE. First of all, I owe you an apology, Ms. Kendall. I think I called you Shelly and I did not mean to, so I apologize.

Second, it would not be a fair meeting if my friend, Mr. Hinchey, and I did not wrangle a little bit over hydraulic fracturing. So I just want to make one point as you study this going forward. There are states that do this very well that have literally managed hydraulic fracturing for over 50 years. It is not a new technology. I think there are real problems here. I agree with Mr. Hinchey on that. And I think there is a lot of misunderstanding as well, and a lot of our problem I think stems from a difference in the sophistication and the experience at the state level in the regulatory arena, and I would suggest just as Ms. Lummis did, a good thing to do might be to go back to states that have a lot of experience

and do this well as opposed to starting a whole new federal regime where we have no experience, no background. We already have a department that does not manage the things that it is supposed to do as well as any of us would like. I would be very careful about taking on a whole other area because natural gas production is rising in the country. This is a big thing, and again, there are real problems in this growth area but there are states that do this very well and it would be far better to keep this at the state level, in my opinion, help those states that have this challenge develop a regulatory regime than try to all of a sudden create one at the federal level when we have very little background in doing this, but just my observation. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. And I thank both the GAO and the IG for coming in and going through your reports today. My idea of oversight really is that we are all working together toward a common goal, so I appreciate your insights into this and working with the Department and with this committee to try to improve the operations of government. So thank you for being here today.

Response to Post-Hearing Questions for the Record
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
House of Representatives
Hearing Held March 1, 2011

Questions for the Record Submitted by Chairman Michael K. Simpson

Simpson Q1

This morning's testimony expressed concern about coordination challenges between the Department of the Interior and Border Patrol which at times have delayed or restricted the Border Patrol's access to, and monitoring of, federal lands along the Southwest Border. This is an issue that this subcommittee has addressed in the past and will continue to address this year.

QUESTION: What steps can Congress take to strengthen this coordination between federal agencies with overlapping jurisdiction on these federal lands which is so critically important to stemming illegal activity along the border?

GAO Response:

Vigilant congressional oversight to ensure that cooperation occurs between Border Patrol and the land management agencies throughout the borderlands region could be highly beneficial. In our October 2010 report, we found that access to portions of some federal lands along the southwestern border has been limited because of certain land management laws, according to patrol agents-in-charge for 17 of the 26 stations, resulting in delays and restrictions in agents' patrolling and monitoring these lands.[1] For some of the stations, the delays patrol agents-in-charge reported could have been shortened if Border Patrol could have used its own resources to pay for, or perform, required environmental assessments according to patrol agents-in-charge and land managers with whom we spoke. For other stations, using Border Patrol resources to pay for or perform assessments may not always expedite access; instead, land managers and Border Patrol officials told us that a programmatic environmental impact statement—a broad evaluation of the environmental effects of multiple Border Patrol activities in a geographic area—should be prepared under the National Environmental Policy Act (NEPA) to help expedite access. We therefore recommended that to help expedite Border Patrol's access to federal lands, the agencies should, when and where appropriate (1) enter into agreements that provide for Customs and Border Protection to use its own resources to pay for or to conduct the required environmental and historic property assessments and (2) prepare programmatic NEPA documents for Border Patrol activities in areas where additional access may be needed. Where such cooperative

[1]GAO, *Southwest Border: More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands*, GAO-11-38 (Washington, D.C.: Oct. 19, 2010).

arrangements have been developed, Border Patrol and land managers have resolved some access delays and restrictions.

Simpson Q2

GAO's written testimony recommends that the agencies adopt a risk management approach to systematically assess and address threats and vulnerabilities presented by illegal activities on federal lands.

QUESTION: What would a risk management approach look like in a budget request? For example, could we see a shift in requested law enforcement funding from one agency to another in order to be consistent with where the illegal activities are occurring?

GAO Response:

In our December 2010 report, we recommended that the Interior agencies and the Forest Service each adopt a risk management approach to systematically assess and address threats and vulnerabilities presented by illegal activities on federal lands.[2] We recognized that the agencies might adopt different methodologies to assess risks because of differences in the agencies' missions and the difficulty in qualitatively and quantitatively assigning risk levels. Different risk assessment methodologies among the agencies would limit the utility of using the results to shift law enforcement funds from one agency to another. Within each agency, however, establishing structured processes for considering the results of periodic risk assessments could help each agency set priorities for and distribute its law enforcement resources to best protect natural and cultural resources, the public, and employees.

Simpson Q3

Both GAO's and OIG's written testimony state that Interior's FY10 information technology budget was nearly $1 billion. That's a staggering amount in its own right, but even more incredible when one considers that Interior's total appropriation for FY10 was less than $11 billion.

QUESTION: Ms. Mittal, please explain in further detail the IT problems you uncovered in your investigations. Why hasn't the Department been more aggressive about pursuing IT consolidation?

Are you aware of any instances where employees were reprimanded or terminated for problems uncovered by your investigations?

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[2]GAO, *Federal Lands: Adopting a Risk-Based Approach Could Help Land Management Agencies Better Manage Their Law Enforcement Resources*, GAO-11-144 (Washington, D.C.: Dec. 17, 2010).

GAO Response:

Our work and review of Interior's Inspector General (IG) reports has uncovered that the department has not consistently implemented effective controls to prevent, limit, and detect unauthorized access to its computer systems or manage the configuration of network devices to prevent unauthorized access and ensure system integrity. For example, in March 2010, we reported that Interior had not effectively implemented information security controls for configuring desktop computers that used Windows XP or Vista operating systems.[3] In November 2010, we also reported weaknesses in Interior's controls for securing wireless communication devices.[4] In addition, Interior's IG reported that the department's information security program had major inconsistencies resulting from the department's decentralized approach to governing IT security. Similarly, Interior's independent auditor identified significant deficiencies in IT controls over financial management systems in fiscal years 2009 and 2010.[5] These deficiencies included instances where Interior had not consistently removed terminated user's access and had not consistently tested and documented application changes before implementing them.

With regard to Interior's IT consolidation, we have an ongoing governmentwide engagement concerning data center consolidation and Interior is one of the agencies in that review. However, we have no specific comments on why the department has not been more aggressive in pursuing IT consolidation.

We are unaware of any specific employee disciplinary actions related to our findings.

Simpson Q4

Regarding deferred maintenance backlog, I understand that maintaining facilities and infrastructure in the face of inadequate funding continues to be a major management challenge. What is less clear is whether there remain problems with property management, including data quality, standardized property assessment, and the ability of the bureaus to prioritize limited maintenance funds.

QUESTION: Aside from limited funding, are there deferred maintenance management problems—such as those I've just mentioned—that should give this committee pause in its deliberations on FY12 deferred maintenance budgets?

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[3]GAO, *Information Security: Agencies Need to Implement Federal Desktop Core Configuration Requirements*, GAO-10-202 (Washington, D.C.: Mar. 12, 2010).

[4]GAO, *Information Security: Federal Agencies Have Taken Steps to Secure Wireless Networks, but Further Actions Can Mitigate Risk*, GAO-11-43 (Washington, D.C.: Nov. 30, 2010).

[5]A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

GAO Response:

As we reported in February 2011, federal agencies including the Department of the Interior have improved their ability to manage their repair and maintenance backlogs by conducting facility condition assessments, prioritizing repairs, and improving the definition of deferred repair and maintenance.[6] However, while we found that agencies generally prioritize repair and maintenance for assets they consider to be important to their mission when deciding what projects to fund, we have not assessed the effectiveness of such efforts at Interior or performed any recent reviews on the department's management of deferred maintenance. In the past we have done selected work on deferred maintenance issues for National Park Service (NPS) facilities, Bureau of Indian Affairs (BIA) schools, and BIA irrigation projects but we have not conducted a comprehensive audit of the deferred maintenance inventory for the entire department. The most recent reports that we have issued relevant to this question date back to 2003, 2004, and 2006.[7] According to Interior officials, real property management at the department is decentralized even within the bureaus, as many decisions are made at the field level, and there are differences in property management across the bureaus because of their varying missions, organizational cultures, and distribution of properties. In addition, Interior does not have a department-wide property inventory and each bureau relies on its own system to submit data for the Federal Real Property Profile (FRPP).[8] Interior officials told us that the development of additional data elements for the FRPP related to deferred maintenance would assist the department in making improved property management decisions. Given that we have not performed any recent reviews, we are not in a position to comment on deferred maintenance management problems at the bureaus but there are indications that the department lacks the information systems needed to track and manage deferred maintenance across the department.

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[6]GAO, *High-Risk Series: An Update*, GAO-11-278 (Washington, D.C.: Feb. 2011).

[7]GAO, *National Park Service: Major Operations Funding Trends and How Selected Park Units Responded to Those Trends for Fiscal Years 2001 through 2005*, GAO-06-431 (Washington, D.C.: Mar. 31, 2006); 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); GAO, *Recreation Fees: Comments on the Federal Lands Recreation Enhancement Act, H.R. 3283*, GAO-04-745T (Washington, D.C.: May 6, 2004); GAO, *National Park Service: Efforts Underway to Address Its Maintenance Backlog*, GAO-03-1177T (Washington, D.C.: Sept. 27, 2003); GAO, *Bureau of Indian Affairs Schools: Expenditures in Selected Schools Are Comparable to Similar Public Schools, but Data Are Insufficient to Judge Adequacy of Funding and Formulas*, GAO-03-955 (Washington, D.C.: Sept. 4, 2003); GAO, *Bureau of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed*, GAO-03-692 (Washington, D.C.: July 31, 2003); and GAO, *National Park Service: Status of Agency Efforts to Address Its Maintenance Backlog*, GAO-03-992T (Washington, D.C.: July 8, 2003).

[8]In response to the 2004 Executive Order 13327 on Federal Real Property Asset Management, Senior Real Property Officers for the major real property holding agencies formed the Federal Real Property Council (FRPC) that supports governmentwide real property reform efforts. The council, in conjunction with the General Services Administration (GSA), established the FRPP to meet the order's requirement for a single database that includes all real property under the control of executive branch agencies. FRPP contains asset-level information submitted annually by agencies on 25 high-level data elements, including four performance measures that enable agencies to track progress in achieving property management objectives.

Simpson Q5

Ms. Mittal, you mention the reorganization of the Minerals Management Service to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). By the end of this fiscal year, the Bureau (BOEMRE) will be divided into two separate agencies—the Bureau of Ocean Energy Management, which will handle permits and leasing, and the Bureau of Safety and Environmental Enforcement, which will handle inspections and enforcement.

QUESTION: Given the lack of coordination between many agencies within the Department, are you concerned that these two agencies might not work well together—i.e. reduced efficiency and further delays of oil and gas development?

GAO Response:

Because the reorganization is still under way, the final structure of the two new bureaus remains in development. We plan to report on the reorganization's status and challenges we identify, if any, in 2012.

Simpson Q6

Ms. Mittal, also regarding the wild horse and burro program, the BLM just announced it will reduce the amount of wild horses removed from the range in the next two years from 10,000 to 7,600—though they've previously stated they needed to remove at least 10,000. BLM also announced that they will try to increase adoptions.

QUESTION: Is GAO concerned about potential overgrazing? Does GAO see a real potential to expand adoptions—especially in this economy?

GAO Response:

While our recent work has not specifically addressed the current potential for overgrazing in the Wild Horse and Burro Program, a more pressing concern identified in our recent work is the sustainability of the program. In October 2008, we reported that BLM has made significant progress toward setting and meeting appropriate management levels (AML)—the optimum number of animals which results in a thriving natural ecological balance and avoids range deterioration.[9] However, we also identified significant challenges—including off-the-range holding costs—that, if not addressed, would continue to overwhelm the program. Specifically, we found that the number of animals removed from the range is far greater than the number adopted or sold, which has resulted in the need for increased short-term and long-term holding of animals at facilities.

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[9]GAO, *Bureau of Land Management: Effective Long-Term Options Needed to Manage Unadoptable Wild Horses*, GAO-09-77 (Washington, D.C.: Oct. 9, 2008).

With respect to the viability of adoptions, at the time of our review, we found that adoptions were declining which contributed to BLM increasing the number of short-term and long-term holding facilities. In 2007, 36 percent fewer wild horses and burros were adopted compared to average adoption rates in the 1990s. BLM officials attributed the steady adoption decline in recent years to the decreasing demand for horses in general and increasing hay and fuel costs associated with their care. As of June 2008, BLM was holding 30,088 animals in short- and long-term holding facilities, far more than in 2001 when it held 9,807. Although BLM has increased efforts to market adoptions, demand continues to decline for wild horses, even though the price for adopting them has remained at the minimum fee of $125 since 1997. At that time, BLM officials attributed the steady wild horse adoption decline in recent years to increases in hay and fuel costs associated with horse care, the large number of domesticated horses that are currently flooding the adoption market, a general urbanization of rural areas, and a shift toward other forms of recreation. For example, according to one official, individuals who once had corrals with two or three horses may now own one horse and four all-terrain vehicles.

Simpson Q7

Ms. Mittal and Ms. Kendall, as you know, we're in a budget crisis yet the cost of the wild horse and burro program continues to climb and could soon reach $100 million a year. Some interest groups are promoting fertility control rather than removing wild horses from the range.

QUESTION: Have either of you looked at the effectiveness and cost of fertility control on wild horses?

GAO Response:

We have not conducted any work looking at this issue but the National Academy of Sciences is undertaking a review of BLM's current policies and ways to better manage wild horse and burro population dynamics.

Questions for the Record Submitted by Ranking Member James P. Moran

Interior's Oil and Gas Management on the Feb. 2011 Government Wide High Risk List

Moran Q1

I am very concerned about your testimony on the remaining challenges for Interior's onshore and offshore oil and gas management. As the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling reported in January, government regulators lacked the authority, necessary resources and technical expertise to properly oversee industry and prevent this disaster. Do you agree with that assessment? Do you think the Secretary's plans for reforming and enhancing the Bureau of Ocean Energy Management are needed and are they sufficient to help fix this situation?

GAO Response:

We have not specifically reviewed the National Commission's findings and recommendations. However, our prior work has identified challenges at Interior in obtaining sufficient resources and expertise to adequately oversee oil and gas operations on federal lands and waters. In our March 2010 report on Interior's ability to verify oil and gas produced from federal leases, we found that Interior had challenges with hiring, training, and retaining staff in key positions, including its inspection and engineering positions.[10] We concluded that without having sufficient staff with the necessary training, Interior would not be able to provide reasonable assurance that it was collecting all the royalties it was due from the production and sale of oil and gas from federal leases.

Interior's reorganization of its offshore oil and gas oversight responsibilities is still under way, and we have not assessed the effectiveness of the steps that Interior is taking. We plan to report on the reorganization's status and challenges we identify, if any, with the new regulatory oversight structure in 2012. That said, the challenges inherent in taking on such a comprehensive reorganization, particularly in a time of tight budgets, is one of the reasons we put Interior's management of federal oil and gas on GAO's High Risk list in 2011.[11]

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[10]GAO, *Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes*, GAO10-313 (Washington, D.C.: Mar. 15, 2010).

[11]GAO-11-278.

Moran Q2

The GAO testimony indicates that Interior collected lower levels of revenues for oil and gas production than all but 11 of 104 oil and gas resources owners, including States and other countries. Give us a feel for what kind of revenue loss is involved here. Does Interior have the administrative authority to enhance its revenue collection?

GAO Response:

Any revenue implications would be dependent on how the Secretary of the Interior adjusted the terms of the federal oil and gas fiscal system. Currently, Interior has the legal authority to change most aspects of the oil and gas fiscal system. Specifically, Interior is allowed by statute to change lease bid terms for offshore leases, including the royalty, bonus bid structure, rental terms, and even the minimum 12.5 percent royalty rate, so long as there is only one variable or "flexible" term—such as a royalty rate that adjusts upward or downward with oil and gas prices—in the resulting system, and so long as Congress does not pass a resolution of disapproval within 30 days of Interior's changes to the system. With regard to onshore leases, Interior is generally allowed by statute to change bid terms including the royalty rate, the bonus bid structure, rental terms, and the minimum royalty rate so long as the bid structure meets certain hid terms, but with certain additional limits on flexibility than the offshore leases.

Moran Q3

GAO also notes that BLM has not met its statutory requirements for oil and gas production verification inspections. Can you please explain this some more?

GAO Response:

Our March 2010 review of Interior's efforts to verify oil and gas production from federal leases found that BLM had been unable to consistently meet its statutory or agency goal for completing production inspections. Production inspections are BLM's primary mechanism for ensuring that operators are complying with various measurement regulations and policies. BLM staff conduct production inspections to provide reasonable assurance that oil and gas produced from federal leases are being measured and handled appropriately. Our analysis of BLM data for the six field offices we reviewed found that BLM did not meet its inspection goal approximately two-thirds of the time from fiscal years 1998 through 2009.[12]

Moran Q4

Is it likely that the Federal government, and the States since they get half of the royalties, may be short-changed but we really don't know?

[12]GAO-10-313.

GAO Response:

Our review was not designed to identify specific instances of under-measurement; however, given the weak internal controls we found, we believe there is a possibility that some volume of oil and gas is being measured incorrectly. To the extent that oil was incorrectly measured, it would affect company-paid royalties to the federal government and states. Interior does have a process of internal reviews and audits that could detect and correct some errors and royalty payments.

Moran Q5

You also note that Interior is underestimating the amount of natural gas produced on federal leases that is released directly to the atmosphere. This means there is a lost resource, no collection of royalties, and this intensive greenhouse gas is polluting the atmosphere. Give us a feel for the potential losses here and the pollution contribution.

GAO Response:

We found during our October 2010 review of Interior venting and flaring policies that data from the Environmental Protection Agency (EPA), supported by information obtained from technology vendors and our own analysis, suggested that around 40 percent of natural gas estimated to be vented and flared on onshore federal leases could be economically captured with currently available control technologies.[13] According to our analysis, such reductions could increase federal royalty payments by about $23 million annually and reduce greenhouse gas emissions by an amount equivalent to about 16.5 million metric tons of CO_2—the annual emissions equivalent of 3.1 million cars. Venting and flaring reductions are also possible offshore, but data were not available for us to develop a complete estimate.

Moran Q6

Can the IG refresh our memory about the royalty-free deepwater oil and gas leases in the Gulf of Mexico? What is the estimate of the amount of oil and gas that certain lease holders are getting from the American citizens but paying no royalties?

GAO Response:

This is a question for Interior's IG. We will defer to Interior's IG Office to respond to this question.

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[13]GAO, *Federal Oil and Gas Leases: Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases*, GAO-11-34 (Washington, D.C.: Oct. 29, 2010).

Moran Q7

Have there been attempts to regain some of this lost revenue for the American taxpayers?

GAO Response:

This is a question for Interior's IG. We will defer to Interior's IG Office to respond to this question.

Human Capital Deficiencies in Oil and Gas Management

Moran Q8

The GAO also reports that both the former MMS and the BLM have persistent problems in hiring, training and retaining adequate, technically trained staff to manage the oil, gas and coal programs. With the increased attention by the world on the new Bureau of Ocean Energy Management, there appears to be a real attempt at fixing this situation.

GAO Response:

See the response to the following question.

Moran Q9

How big is the human capital problem and what kind of financial resources and time will be required to fix this at Ocean Energy?

GAO Response:

We do not know the specific financial resources necessary to address Interior's challenges with hiring, training, and retaining adequate numbers of staff. In our March 2010 review of Interior's efforts to verify oil and gas produced from federal leases, we analyzed overall turnover rates for Interior's offshore inspection staff—which are the same staff who conduct other types of inspections, such as environmental and safety—for fiscal years 2004 through 2008 in four district offices.[14] These data show that there was an overall turnover rate of between 27 and 44 percent for those 5 years. Offshore inspection staff and supervisors told us that turnover can still have a disruptive impact on their work.

We also found that offshore inspectors at Interior district offices do not have a required, standardized measurement training curriculum. Inspectors are required to take a

[14]GAO-10-313.

minimum of 60 hours of training every 2 years, including courses on safety and other basic issues, but they are not required to take specialized training in measurement issues.

To address gaps in critical oil and gas measurement abilities, we recommended that the Secretary of the Interior ensure that key onshore and offshore production verification staff receive initial standardized training necessary to effectively carry out their job functions as well as ongoing measurement training as needed; and determine what additional policies or incentives are necessary, if any, to attract and retain qualified measurement staff at sufficient levels to ensure an effective production verification program.

Moran Q10

You also indicate that similar problems exist at the BLM regarding its ability to oversee and measure onshore oil and gas. Please explain more about the problems at the BLM.

GAO Response:

We found that turnover rates for BLM's petroleum engineers, petroleum engineer technicians, and production accountability technicians were generally high and, according to BLM officials, were negatively impacting program implementation. Our analysis of Interior data found that the overall turnover rate for petroleum engineers ranged from 33 through 100 percent for fiscal years 2004 through 2008 for the eight field offices we examined. Similarly, the overall turnover rates for the same period for petroleum engineer technicians ranged from 30 through 83 percent for seven of the nine field offices we examined; with the remaining two offices having turnover rates of 22 percent or less. Moreover, overall turnover rates for production accountability technicians were also generally high, with eight of the nine field offices having turnover rates of 50 percent or more for fiscal years 2004 through 2008. According to BLM officials, staff turnover is impeding the production verification program in two areas. First, staff turnover results in the loss of institutional knowledge of the program. Second, BLM must direct its resources toward attracting and hiring staff, then have more senior staff provide on-the-job training for the new staff, which limits the senior staffs' capacity for completing their own work.[15]

We also found that BLM had not consistently provided training necessary for performing official job duties of its petroleum engineers, petroleum engineer technicians, and production accountability technicians. For example, BLM's petroleum engineers are not required to take measurement training or other courses related to production verification. Additionally, BLM has not provided its petroleum engineer technicians and production accountability technicians with the necessary training. For example, BLM offers a core curriculum for its petroleum engineer technicians, requiring that they pass a six module training course, obtain official BLM certification, and then be recertified once

[15]GAO-10-313.

every 5 years to demonstrate continued proficiency; however, BLM has not offered a recertification course since 2002.

Moran Q11

What kind of revenue losses to the American Taxpayers, and the States, may be involved if we are not adequately measuring oil and gas from our public lands?

GAO Response:

We have not specifically attempted to quantify this; however, given the large volumes of oil and gas produced from federal leases, even a small percentage overall of inaccurately measured oil and gas would equate to large amounts or royalties.

Reorganization of Former MMS and Similar Needs at BLM

Moran Q12

From the very beginning of his time as Secretary, Mr. Salazar has stressed the need to reform the ethical lapses that plagued the former MMS. After the Gulf of Mexico disaster, he reorganized the former MMS. Both the GAO and the IG have closely evaluated the disaster and the government need to respond. Can each of you please talk about the organizational transformations that you see underway?

GAO Response:

Interior's reorganization of its offshore oil and gas oversight responsibilities is still under way and we have not yet assessed the effectiveness of its actions. We plan to report on the reorganization's status and challenges we identify, if any, with the new regulatory oversight structure in 2012. However, the challenges inherent in taking on such a comprehensive reorganization, particularly in a time of tight budgets, is one of the reasons we put Interior's management of federal oil and gas on GAO's High Risk list in February 2011.[16] In this High Risk report, we stated that agency reorganizations are complex and pose significant challenges to both agency management and staff and that the failure to adequately address—and often even consider—a wide variety of people and cultural issues is at the heart of unsuccessful transformation.

[16]GAO-11-278.

Moran Q13

What is the likelihood that this major reorganization will be able to find the proper balance between adequate oversight of industry and protection of the environment, and appropriate development of our Nation's fossil energy?

GAO Response:

Interior's reorganization of its offshore oil and gas oversight responsibilities is still under way and we have not yet assessed the effectiveness of its actions. We plan to report on the reorganization's status and challenges we identify, if any, with the new regulatory oversight structure in 2012.

Moran Q14

Both the GAO and the IG have indicated that the BLM oil and gas management suffers from similar structural problems as those now widely known at the former MMS. Can you please explain what the problems may be at the BLM for onshore fossil energy?

GAO Response:

Our work examining BLM's oil and gas program has identified numerous problems that place both the environmental resources of our public lands, and royalties paid to the federal government for onshore oil and gas production, at risk. For example, we found in June 2005 that increased permitting had lessened BLM's ability to meet its environmental protection responsibilities.[17] Specifically, BLM officials in five out of eight field offices that we visited explained that as a result of the increases in drilling permit workloads, staff had to devote increased time to processing drilling permits, leaving less time for mitigation activities, such as environmental inspections and idle-well reviews.

More recently, in March 2010, we found that BLM had challenges with hiring, training, and retaining staff for key positions, including its engineering and inspector positions.[18] Furthermore, while agencies are generally provided the opportunity to determine how best to delegate responsibilities and conduct supervision, we found that BLM's Inspection and Enforcement Program—which includes production inspections—for onshore leases is relatively decentralized. BLM has created a number of mechanisms for coordinating the operations of the production inspection program across field and state office jurisdictional boundaries, but key supervisory functions remain largely under the control of field offices where, according to some BLM officials, supervisors have limited understanding of the jobs they are supervising.

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[17]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).

[18]GAO-10-313.

Environmental Stewardship vs. Oil and Gas Development

Moran Q15

GAO has reported that there are major challenges for Interior to balance its environmental protection mission with its development of fossil and renewable energy mission. GAO also reports that the BLM did not correctly use categorical exclusions under NEPA for certain Energy Policy Act related permits. Please discuss the reforms that Secretary Salazar announced in May 2010 and how these may help address some of the problems you found.

GAO Response:

BLM's May 2010 Instruction Memorandum No 2010-118 announced several key reforms to the way BLM can use categorical exclusions authorized by section 390 of the Energy Policy Act to approve permits for oil and gas activities.[19] These reforms substantially address the gaps and shortcomings in BLM's guidance that we identified during our September 2009 review of BLM's use of section 390 categorical exclusions.[20] First, the memorandum explicitly identified the types of NEPA documents needed to adequately support the approval of section 390 categorical exclusions and that any supporting NEPA analysis must be specific to the proposed drilling site. Second, the memorandum directs BLM field offices to ensure that all oil and gas development approved with a section 390 categorical exclusion conform to the analysis conducted in the supporting land use plan and are within the range of environmental effects analyzed in the plan and associated NEPA documents.

In addition, the May 2010 instruction memorandum requires that BLM field offices screen for the presence of extraordinary circumstances—such as for cumulative impacts on air quality or critical habitat—whenever considering the use of a section 390 categorical exclusion. Our September 2009 report identified a number of issues—including whether the use of section 390 categorical exclusions should be subject to a screening for the presence of extraordinary circumstances—that were a source of confusion for BLM and its field offices as they implement the law. We suggested that Congress should consider amending section 390 to clarify and resolve some of the key issues identified in the report including, but not limited to, (1) clearly specifying whether section 390 categorical exclusions apply even in the presence of extraordinary circumstances and (2) clarifying what the phrase "rebuttable presumption" means and how BLM must implement it in the context of section 390. Subsequently, in *Western Energy Alliance v. Salazar*, Civ. No. 10-237, D. Wyo. (filed Oct. 21, 2010), plaintiffs have alleged that the May 2010 instruction

[19]Department of the Interior, Bureau of Land Management, *Instruction Memorandum No. 2010-118: Energy Policy Act Section 390 Categorical Exclusion Policy Revision* (May 17, 2010); and Pub. L. No. 109-58, § 390, 119 Stat. 747 (2005), *codified at* 42 U.S.C. § 15942.

[20]GAO, *Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act*, GAO-09-872 (Washington, D.C.: Sept. 16, 2009).

memorandum violates section 390, which, the plaintiffs contend, does not authorize BLM to screen the categorical exclusions described in section 390 for extraordinary circumstances. This litigation is still pending, and in accordance with our policy against commenting on matters in litigation, we express no view on this aspect of the instruction memorandum.

Moran Q16

The development of oil and natural gas resources on federal lands and offshore areas contributes to domestic energy production but also results in concerns over potential impacts such as on wildlife habitat. Public protests of lease sales are one way that federal resource management agencies, such as BLM, can be made aware of these potential impacts. Does GAO have recent work that speaks to how well these agencies address the public's concerns about leasing decisions?

GAO Response:

In July 2010, we reported that issues raised in protests can help BLM ensure that the best leasing decisions are made, but protests have also been associated with delays and may increase industry uncertainty over the availability of federal lands for oil and gas leasing.[21] Although BLM had taken steps to collect agencywide protest data, when we tried to evaluate the effects of protests, we were hindered by the incompleteness, inconsistency, and ambiguity of these data. Protester groups have also been dissatisfied with BLM's lack of protest-related information. Without more robust protest information, BLM, Congress, and the public lack a full picture of protest activity and how protests affect leasing decisions. Accordingly, we recommended that BLM (1) revisit the way it tracks protest information and in so doing ensure that complete and consistent information is collected and made publicly available and (2) improve the transparency of leasing decisions and the timeliness of lease issuance. Interior concurred with our recommendations.

Generating Other Revenue Collections and Enhancing Financial Assurances and Bonds

Moran Q17

The GAO testimony indicates that the BLM is unable to require oil, gas, coal, and hardrock mine operations on Federal lands to post adequate bonds to ensure that the lands can be reclaimed after the disturbance of these operations. Please explain why this situation exists and what levels of revenues are potentially being lost to the American taxpayer.

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[21]GAO, *Onshore Oil and Gas: BLM's Management of Public Protests to Its Lease Sales Needs Improvement*, GAO-10-670 (Washington, D.C.: July 30, 2010).

GAO Response:

Our work on these issues has generally identified two principle causes underlying this particular management challenge at BLM—problems associated with its management processes and policies and problems with its information systems.

Regarding hardrock mining, we concluded in June 2005 that BLM had not ensured that some current and previous operators have adequate financial assurances, as required by federal regulations and BLM guidance because it lacked (1) an effective management process for ensuring that hardrock mining operators have financial assurances and updated reclamation plans and cost estimates on which the financial assurances should be based and (2) critical management information in its automated system for managing financial assurances, such as the status of hardrock operations, whether each existing operation that requires a financial assurances has a financial assurance, and whether the financial assurance is adequate to cover the costs of reclamation.[22] Due in part to these problems, we identified $56.4 million in unfunded reclamation costs for 25 hardrock mining operations that had ceased and had not been reclaimed by operators on BLM land. In March 2008, we reported that hardrock mining operators had provided financial assurances that were about $61 million less than the amount needed to fully cover estimated reclamation costs for 1,463 hardrock operations on BLM land.[23]

Regarding oil and gas operations, we reported in February 2011 that BLM had not fully or consistently implemented its bond adequacy and idle and orphan wells policies for managing potential liabilities—oil and gas wells and leased land that require reclamation—and faced challenges with its bonding system and data system for tracking oil and gas information.[24] We concluded that these deficiencies have the potential to increase the federal government's exposure to paying for reclamation costs for idle and orphan wells on federal land. In January 2010, we reported that for fiscal years 1988 through 2009, BLM had paid $3.8 million to reclaim 295 orphan wells and had identified an additional 144 orphan wells that needed to be reclaimed.[25]

Regarding coal mining, our work has been limited to date and has focused on describing the approaches for obtaining financial assurances for surface coal mining on private land in four Appalachian states and the efforts of federal and state agencies to monitor

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[22]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).

[23]GAO, *Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land*, GAO-08-574T (Washington, D.C.: Mar. 12, 2008).

[24]GAO, *Oil and Gas Bonds: BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability*, GAO-11-292 (Washington, D.C.: Feb. 25, 2011).

[25]GAO, *Oil and Gas Bonds: Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells*, GAO-10-245 (Washington, D.C.: Jan. 27, 2010.)

environmental problems after reclamation is complete.[26] We have not conducted audit work to assess whether financial assurances for coal mines are adequate or to ascertain the levels of lost revenue.

Moran Q18

GAO also notes that under the General Mining Act of 1872 that the federal government can not charge royalties or require revenue sharing or adequate reclamation bonds, unlike the 12 western States, including Alaska, that assess multiple types of royalties on mining operations on State owned lands. What is the level of revenue that is lost because hardrock mining is not managed on federal lands like it is on State owned lands?

GAO Response:

We have not conducted the necessary audit work to determine the amount of royalty revenue that might be collected from hardrock mining operations on federal lands, due in part to the wide range of possible royalty types and rates and a lack of available data on the amount of production of hardrock minerals on federal land.

Moran Q19

GAO also reported that the BLM cannot ensure that oil and gas operators post adequate bonds to reclaim disturbed lands, and that the minimum bond amounts have not been increased for 50 years. GAO found that 12 western States generally required higher bond amounts than the minimum amounts established in BLM regulations. Please give us a feel for the amount of damaged lands you are talking about, and the potential loss of revenues from bonds, if the bonds were actually adequate to provide proper environmental cleanups on Federal lands.

GAO Response:

According to BLM, approximately 44.5 million acres of federal land are leased for oil and gas operations, of which about 11.7 million acres have active oil and gas production. In addition, BLM manages about 250 million federal acres, of which 472,000 acres have surface disturbance related to oil and gas production.

One of the difficulties of evaluating the amount of bonds available for plugging wells and reclaiming oil and gas operations is that BLM regulations establish a minimum bond amount to ensure compliance with all legal requirements (such as paying royalties, plugging wells, reclaiming disturbed land, and cleaning up abandoned operations) and also authorize or require BLM to increase the bond amount in certain circumstances. We

[26]GAO, *Surface Coal Mining: Financial Assurances for, and Long-Term Oversight of, Mines with Valley Fills in Four Appalachian States*, GAO-10-206 (Washington, D.C.: Jan. 14, 2010.)

reported in January 2010 that as of December 2008, oil and gas operators had provided 3,879 bonds, valued at approximately $162 million, to ensure compliance with all terms and conditions for 88,357 wells, according to our analysis of BLM data.[27] However, because BLM does not systematically estimate the total reclamation costs for oil and gas operations, and bonds are not intended to cover these reclamation costs, it is difficult to quantify the federal taxpayer's potential exposure to having to pay these costs, and we have not attempted to do so.

Moran Q20

The GAO testimony discusses orphaned oil and gas wells that the BLM is forced to use Federal funds to clean up. What is the extent of this problem? Given the large increase in drilling on BLM managed lands during the past decade, is it likely that this problem of orphan wells will expand? How bad is this problem of orphan wells in the Gulf of Mexico?

GAO Response:

In January 2010, we reported that for fiscal years 1988 through 2009, BLM had paid about $3.8 million to reclaim 295 orphan wells, with an average reclamation cost of $12,788 per well.[28] In addition, BLM had identified an additional 144 orphaned wells on BLM and other federal land that need to be reclaimed. Although BLM reclamation estimates were not available for all of these wells, officials in BLM field offices had completed reclamation cost estimates for 102 of the 144 wells, for a total estimated cost of $1,683,490.

While we have not conducted the audit work necessary to determine the likelihood of an increase in the number of onshore orphan oil and gas wells, we reported in February 2011 that BLM has not fully or consistently implemented its policies that are designed to prevent wells from becoming orphaned and faces challenges in managing potential oil and gas well liability.[29] We have not evaluated the issue of orphan wells in the Gulf of Mexico.

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[27]GAO-10-245.

[28]GAO-10-245.

[29]GAO-11-292.

Reducing Interior's Deferred Maintenance Backlog

Moran Q21

The testimony presents a summary of the facilities and infrastructure backlog for roads, dams, buildings and other structures that is somewhere between $13.5 billion and $19.9 billion. You indicate that this is alarming, but that this backlog amount has stabilized. Please explain some of the dangers in this situation.

GAO Response:

We have not done recent work looking at Interior's backlog, so we are not in a position to comment on specific examples that would illustrate the dangers for Interior's facilities and infrastructure. However, the department owns a variety of assets—such as visitor centers, schools, office buildings, roads, bridges, dams, irrigation systems, and reservoirs—which our previous work has found creates an implicit fiscal exposure for the federal government because the government will incur costs associated with maintaining and operating these assets.[30] In general, facilities have a finite, expected useful life, over which time they should be maintained and after which time they can be reasonably expected to need replacement. The useful lives of facilities can be extended through adequate and timely repairs and maintenance. Conversely, delaying or deferring repairs and maintenance can, in the short term, diminish the quality of services and, in the long term, shorten building lives and reduce asset values. In addition, repair and maintenance backlogs may lead to higher operating and maintenance costs and short-term inconveniences.

Strengthening Resource Protection

Moran Q22

The GAO testimony reminds us that the Administration has yet to submit the Cohesive Wildland Fire Management strategy that was required by section 503 of the FLAME Act of 2009. Please explain to us why the GAO continues to feel that such a strategy is important.

GAO Response:

The cohesive strategy that we have called for since April 1999 can be viewed as an investment strategy intended to help ensure the agencies spend their fire management funds efficiently and effectively.[31] The strategy would lay out broad long-term options for

[30]GAO, *Federal Real Property: Government's Fiscal Exposure from Repair and Maintenance Backlogs Is Unclear*, GAO-09-10 (Washington, D.C.: Oct. 16, 2008).

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

(1) reducing accumulated vegetation that could exacerbate wildland fires, (2) responding to wildland fires when they occur, and (3) describing each option's estimated costs and potential long-term benefits and drawbacks. Information on potential options and costs for addressing the wildland fire problem over the long term would help the agencies and Congress have a better understanding of what can be accomplished with different funding levels and help them make more informed decisions about how best to invest limited resources. Such information could also better inform decision making, for example, about whether investing more funds in managing hazardous fuels in the short run would help reduce expected suppression costs in the future.

Moran Q23

The GAO has reported on the BLM wild horse and burro program in the past and recommended that more effective long-term options were needed. Have you had a chance to look at the Secretary's and the BLM's new strategy in which they claim they will do fewer gathers of wild horse and increase contraception? Do you think that this is the right direction to go in?

GAO Response:

We have not reviewed BLM's new strategy, but the National Academy of Sciences is undertaking a review of BLM's current policies and ways to better manage wild horse and burro population dynamics.

Moran Q24

The GAO indicates that the Interior Department and the Forest Service have made improvements in their processes for allocating hazardous fuel reduction funds and selecting fuel reduction projects. Do you have a sense that high priority projects are getting done, which actually reduce wildfire dangers and help restore fire-adapted forests?

GAO Response:

The improvements that Interior and the Forest Service have made, and continue to make, include establishing processes for considering risk when allocating funds and selecting fuel reduction projects. Considering risk when making decisions should increase the likelihood that high priority projects will be selected for funding. In addition, the agencies' long term efforts to evaluate the effectiveness and longevity of different types of fuel treatments could better position the agencies to identify priority projects. We have not, however, examined the fuel reductions projects the agencies have implemented since initiating these improvements.

Moran Q25

GAO also summarizes the need for Interior to begin adapting to the effects of climate change on the public lands. GAO says that Interior is beginning to take steps in the right direction, but I am curious about what you think should be done to increase the resilience of public lands. What impacts of climate change are you seeing in your work?

GAO Response:

Our August 2007 report on climate change on federal lands found that federal resources are vulnerable to a wide range of observed and potential climate change effects including limited water supplies; increased wildland fires; adverse effects on habitats and wildlife; as well as flooding and erosion.[32] Furthermore, climate change has implications for the fiscal health of the federal government, affecting federal crop and flood insurance programs, and placing new stresses on infrastructure. In terms of what can be done to increase the resilience of public lands, we would reiterate our past findings related to strategic planning and ensuring that managers have sufficient information to plan for and manage the effects of climate change.[33] In particular, our August 2007 report demonstrated that resource managers did not have sufficient site-specific information to plan for and manage the effects of climate change on the federal resources that they oversee. We found that managers lacked computational models for local projections of expected changes and detailed inventories and monitoring systems for an adequate baseline understanding of existing local species. Without such information, it is difficult to plan for future changes. In addition, as we reported in October 2009, federal, state, and local agencies are tasked with a wide array of responsibilities that will be affected by a changing climate. Governmentwide strategic planning—with the commitment of top leaders—can help integrate activities that span a wide array of federal, state, and local entities.

Moran Q26

GAO also mentions the fire program analysis initiative that began during the previous administration. This FPA program is supposed to improve analysis of fire fighting assets and the linkage between hazard reduction projects and subsequent fire dangers and staffing needs. What is the history of this FPA program? How much was spent on it so far and is anything coming out that is useful?

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[32]GAO, *Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources*, GAO-07-863 (Washington, D.C.: Aug. 7, 2007).

[33]GAO, *Climate Change Adaptation: Strategic Federal Planning Could Help Government Officials Make More Informed Decisions*, GAO-10-113 (Washington, D.C.: Oct. 7, 2009); and GAO-07-863.

GAO Response:

As we noted in our testimony, the development of the fire program analysis (FPA) budget and planning tool has been marked by delays and revisions. Interior agencies and the Forest Service began developing FPA in 2002, and at one time, agency officials expected to begin using FPA results to allocate their funds in fiscal year 2007 and to develop their fiscal year 2008 budget requests.[34] In November 2008, we reported that FPA was expected to cost approximately $54 million through fiscal year 2010.[35] At that time, we reported that FPA showed promise in achieving some of the key objectives originally established for it, but that the approach the agencies had taken hampered FPA from meeting other key objectives. In particular, we noted that FPA had limited ability to project the effects of different levels of vegetation reduction treatments and firefighting strategies over time, meaning that agency officials lacked information that could help them analyze the long-term impact of changes in their approach to wildland fire management. More broadly, we also reported that the approach the agencies took in developing FPA involves considerable discretion on the part of agency officials, increasing the importance of making decisions in a transparent manner so that Congress, the public, and officials throughout the agencies understand FPA's role in budget development and allocation.

The agencies have yet to use FPA results to develop their budgets or allocate funds. The agencies collected nationwide data in 2009 and 2010 but determined they had insufficient confidence in the quality of the data to use the results. The agencies continue to take steps to improve FPA and have several actions planned to begin this year, including submitting FPA to an external peer review. These planned improvements may help the agencies better fulfill some of the key objectives envisioned for FPA, although we have not examined the planned improvements in detail. According to an FPA official, the improvements might allow the agencies to begin using FPA results in a limited way beginning in fiscal year 2012, but a more likely estimate would be the fiscal year 2013 or 2014 budget cycles. The history of delays and revisions in the development of FPA, however, leads us to view the planned improvements with caution. If, after a decade of development, FPA is to be viewed as a credible tool to assist the agencies in developing their budgets and allocating funds, the agencies will need to (1) clearly describe the capabilities and limitations of FPA and its role in the budget development process and (2) submit FPA to external peer review—actions we recommended in our November 2008 report.

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[34]GAO, *Wildland Fire Management: Interagency Budget Tool Needs Further Development to Fully Meet Key Objectives*, GAO-09-68 (Washington, D.C.: Nov. 24, 2008). In this report we detailed the history of FPA, including the major changes made to its design during the course of development.

[35]We have not examined FPA costs since our November 2008 report.

Strengthening Accountability of Indian and Insular Area Programs

Moran Q27

The GAO testimony mentions the potential problems that may affect pending Indian land in trust issues due to the Supreme Court case of Carcieri v. Salazar. Can you tell us how many tribes may be affected by this ruling?

GAO Response:

We have not done work looking at this issue, so we are not in a position to respond to this question.

Moran Q28

GAO discusses the need for better Interior Department oversight of funds provided for Insular areas, especially for the freely associated States of Micronesia, Marshall Islands and Palau.

GAO Response:

The Secretary of the Interior has varying responsibilities to the insular areas of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, 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. Interior's Office of Insular Affairs (OIA), which carries out the department's responsibilities for insular affairs, provides financial and technical assistance to the insular areas in developing more efficient and effective governments and also provides economic assistance under the Compacts of Free Association. For example, OIA's 2009 budget included $70 million in grants and technical assistance and an additional $217 million in Compact assistance.

In March 2010, we reported that opportunities exist for OIA to improve its grant oversight and reduce the potential for mismanagement.[36] That report focused primarily on the four U.S. territories of American Samoa, CNMI, Guam, and the U.S. Virgin Islands. In our June 2008 assessment of the Compact of Free Association with the Republic of Palau, we reported on the challenges Palau faced in dealing with persistent financial management weaknesses and with achieving long term economic self-sufficiency.[37] We recommended that the department formally consult with the government of Palau regarding Palau's financial management challenges and target future technical assistance

[36]GAO, *U.S. Insular Areas: Opportunities Exist to Improve Interior's Grant Oversight and Reduce the Potential for Mismanagement*, GAO-10-347 (Washington, D.C.: Mar. 16, 2010).

[37]GAO, *Compact of Free Association: Palau's Use of and Accountability for U.S. Assistance and Prospects for Economic Self-Sufficiency*, GAO-08-732 (Washington, D.C.: June 10, 2008).

toward building Palau's financial management capacity. Finally, in December 2006, we reported that OIA's oversight of the Compact of Free Association assistance provided to Micronesia and the Marshall Islands was hampered by the office's difficulty in filling staff positions.[38]

Moran Q29

Can you please summarize what staffing the Interior Department has to oversee these funds that are nearly $400 million per year?

GAO Response:

OIA has a total of 41 staff, only some of which are directly involved with overseeing financial assistance to the insular areas. In our March 2010 report, we reported that the two divisions within OIA that are largely responsible for grant administration and management were—the Budget and Grants Division and the Technical Assistance Division.[39] The Budget and Grants Division has a total of 12 staff and the Technical Assistance Division has a total of 4 staff. The Budget and Grants Division maintains an office in Hawaii for compact oversight in the Federated States of Micronesia and the Republic of the Marshall Islands and has a field presence in the CNMI, the Federated States of Micronesia, Palau, and the Republic of the Marshall Islands. A third OIA division—the Policy and Liaison Division, which has a total of 17 staff—also provides some staff for grant-related tasks. This division maintains a field presence in American Samoa and the CNMI.

OIA's recently completed workforce plan identified the need for seven additional staff beginning in fiscal year 2011. Most of the new positions identified are to increase oversight and monitoring of funds provided to the insular areas.

Moran Q30

What should be done to better manage these funds and help the Insular governments, while assuring there is no fraud, waste or abuse?

GAO Response:

We reported in March 2010 that opportunities exist for OIA to improve its grant oversight and reduce the potential for mismanagement.[40] We noted that OIA had taken a number of steps to improve project implementation and management since 2005, but we

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[38]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).

[39]GAO-10-347.

[40]GAO-10-347.

recommended that Interior improve OIA's ability to effectively manage grants by creating a workforce plan to reflect the staffing levels necessary to adopt a proactive monitoring and oversight approach and developing criteria for project redirection request approvals. Interior agreed with our recommendations and has since developed the workforce plan. We also recommended that the Secretary direct Interior's Office of the Solicitor to prepare a detailed written evaluation of OIA's existing authorities that could be used to ensure the more efficient use of funds by insular areas and work with OIA officials to use such authorities as appropriate and to identify the need, if any, for additional authority. We recommended that if the evaluation identifies the need for additional authorities, the Secretary should submit the evaluation to the Congress.

Questions for the Record Submitted by Representative Tom Cole

Cole Q1

With respect to mismanagement at BIA would you go into more detail about that? Also, you mention that BIA has responded to recommendations for approving land trust applications can you explain what they have done to improve their management of that process?

GAO Response:

With respect to mismanagement at BIA, we have not completed work that would allow us to comment on this question.

The three recommendations from our July 2006 report on BIA's processing of land in trust applications were aimed at improving timeliness and transparency and ensuring better management of BIA's land in trust process.[41]

First, we recommended that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to reinforce that all decisions be fully documented. BIA took action to implement this recommendation by (1) reinforcing the requirement that all decisions on land in trust applications be fully documented when it released the new land in trust handbook in May 2008 and (2) reminding employees of the need to fully document decisions on land in trust applications at the 2008 National Trust Conference, according to BIA.

Second, we recommended that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to move forward with adopting specific time frames for BIA to make a decision once an application is complete. BIA has taken some action to implement our recommendation, in part. Specifically, in June 2010, BIA issued a new chapter to the Indian Affairs Manual that establishes time frames for processing land in trust applications. For example, if an application is complete and there are no expired or missing documents, the manual requires that BIA staff take the necessary action to assure that a Notice of Decision is issued as soon as possible but no later than 15 days from the date of receipt of final document(s) required to issue the Notice of Decision.

Third, we recommended that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to institute internal controls to help ensure that accuracy and reliability of the data in the land in trust database, as part of the redesign of the existing system. The Office of the Chief Information Officer has indicated that general and application controls were included in the redesign process to improve the accuracy and reliability of the data.

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[41]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).

Cole Q2

In your testimony, you do not mention the mismanagement of trust accounts that led to the *Cobell* case. Have those problems been fixed?

GAO Response:

Due to the litigation in this area—both the recently settled *Cobell* case for individual Indian account holders and various other ongoing cases involving tribal account holders—we have not done any work in this area for a number of years. Therefore, we are not in a position to answer this question.

Cole Q3

Other than addressing lax oversight of measuring oil and gas production from public lands how can revenue collection on extracted resources be improved?

GAO Response:

One of the key issues that our work has addressed regarding revenue collection is royalties for hardrock minerals on federal land. Since the passage of the General Mining Act of 1872, mine operators have extracted billions of dollars worth of silver, gold, copper, and other hardrock minerals from federal land without having to pay a royalty. In contrast, the 12 western states that contain most of the federal hardrock mining operations charge royalties that allow them to share in the proceeds from hardrock minerals extracted from state owned lands. In addition, most of these states charge taxes, such as severance taxes, mine license taxes, or resources excise taxes on hardrock mining operations that occur on private, state, and federal lands. Additional revenue could be generated by amending the General Mining Act of 1872 so that the federal government could collect royalties on minerals extracted from U.S. mineral rights.

Cole Q4

You mention that the biggest hurdle to permitting is that protests to permitting have not be given enough weight. What other permitting problems have you identified and what effect have they had on delaying permitting of exploration and production activities.

GAO Response:

We have not reported on the degree of weight BLM should give to protests in its decisionmaking. In July 2010, we reported that the protest process involves trade-offs.[42] Specifically, issues raised in protests can help BLM ensure that the best leasing decisions

[42]GAO-10-670.

are made, but protests have also been associated with delays and may increase industry uncertainty over the availability of federal lands for oil and gas leasing. We have not recently completed any other work specifically examining oil and gas permitting.

Cole Q5

You mentioned that orphaned wells are a problem. What recourse if any does Interior have to recover from the operators who orphaned those wells? Are there any other consequences for producers who abandon wells such as a prohibition from government contracting?

GAO Response:

BLM does have methods of recourse to recover funds from operators who fail to properly plug and reclaim their wells. First, BLM may use the bond the operator has posted to defray the costs of plugging and reclaiming the well. However, as we have reported in January 2010, BLM regulations establish minimum bond amounts that have not been updated since the 1950s and 1960s.[43] These minimum bond amounts may be insufficient to cover the costs to reclaim one well, which BLM officials told us can in many circumstances exceed $100,000. BLM may also decide to take legal action against the operator or other parties involved such as the leaseholder. However, BLM officials told us that this can be quite costly and time consuming, possibly involving many years of litigation.

Regarding the consequences for these operators, if an operator who had previously failed to plug or reclaim land in a timely manner, resulting in BLM having to make a demand on a bond in the prior 5 years applies for a new permit to drill, BLM regulations require BLM to increase the bond amount equal to its cost estimate for plugging the proposed well the reclaiming the area. However, BLM officials told us that some operators are able to thwart the intent of the regulations by having their companies declare bankruptcy and simply forming a new company to conduct future operations.

Cole Q6

How has the *Cobell* case impaired the development of IT security? Are there lingering problems?

GAO Response:

As previously stated, we have a policy against doing work on matters in litigation, so we have not done any work on IT security issues as they relate to the management of Indian trust funds.

[43]GAO-10-245.

Cole Q7

How have the renovations at Interior headquarters building challenged agency management?

GAO Response:

We do not have any information about renovations at the Interior headquarters building.

Questions for the Record Submitted by Representative Jeff Flake

Flake Q1

The testimony of Ms. Kendall noted that financial assistance awards, grants, and loans - as opposed to funds spent through a procurement process - provided by the Department cost roughly $3-4 billion annually. Despite this being a sizable chunk of the Department's annual funding, she noted a disturbing lack of a "consistent method for recording and reporting these transactions," including the lack of a formal protest procedure and long-term issues with post-award monitoring procedures. With a moratorium on earmarks, there will be greater emphasis on competitive grant programs and other financial assistance awards at the agency level. To what does the Office of Inspector General or the Government Accountability Office attribute these persistent issues related to ensuring that taxpayer dollars are not wasted: a previous emphasis on earmarks that were not the priority of the agency, a lack of technical proficiency, a lack of resources, or some other reason?

GAO Response:

To make the best use of our resources and avoid duplication, we conduct our work in coordination with the Interior IG and, as a result, we have not done work on these issues across the department and therefore we are not in a position to respond to this question. Ms. Kendall, the Acting IG, raised this issue in her testimony and she would be in the best position to respond to this and the following three questions.

Flake Q2

Please provide examples of where the lack of effective financial monitoring has led to taxpayer dollars ending up where they were not intended. Are there programs that are worse than others when it comes to these issues?

GAO Response:

As previously stated, we have not done work on these issues and are not in a position to respond to this question.

Flake Q3

Ms. Kendall's testimony noted that the Department has taken some action with grant management that "has yielded some positive results." Could these actions be described and expanded on?

GAO Response:

As previously stated, we have not done work on these issues and are not in a position to respond to this question.

Flake Q4

The Department has provided guidance on "the expectation for monitoring activity," and Ms. Kendall's testimony noted that she is "hopeful" that the bureaus will adhere to it. How likely is it that they will? Are there hurdles to the implementation of the expected monitoring activity?

GAO Response:

As previously stated, we have not done work on these issues and are not in a position to respond to this question.

Flake Q5

Does the Government Accountability Office view the lack of effective monitoring of billions of taxpayer dollars in financial assistance as a management challenge for the agency? Has the Government Accountability Office investigated these issues relative to Department of Interior's financial assistance awards to date?

GAO Response:

As previously stated, we have not done work on these issues across the department and the work we have done in this area has focused on grants provided through OIA.[44] We reported in March 2010 that opportunities exist for OIA to improve its grant oversight and reduce the potential for mismanagement. While we noted that OIA had taken a number of steps to improve project implementation and management since 2005, we recommended that Interior improve OIA's ability to effectively manage grants by creating a workforce plan to reflect the staffing levels necessary to adopt a proactive monitoring and oversight approach, and developing criteria for project redirection request approvals. Interior agreed with our recommendations and has since developed the workforce plan. We also recommended that the Secretary direct Interior's Office of the Solicitor to prepare a detailed written evaluation of OIA's existing authorities that could be used to ensure the more efficient use of funds by insular areas, and work with OIA officials to use such authorities as appropriate and to identify the need, if any, for additional authority. We recommended that if the evaluation identifies the need for additional authorities, the Secretary should submit the evaluation to the Congress.

[44]GAO-10-347.

The department, through OIA, provides roughly $70 million in grant funds annually to increase insular area self-sufficiency. We found that internal control weaknesses previously reported by us and others continue to exist, and about 40 percent of grant projects funded through OIA have these weaknesses, which may increase their susceptibility to mismanagement. These weaknesses, including insufficient reporting and record-keeping discrepancies, can be categorized into three types of activities that may increase the possibility of mismanagement: grant recipient activities, joint activity between grant recipients and OIA, and OIA's grant management activities. Weaknesses associated with grant recipient activities were the most common issues we found, encompassing 62 percent of the weaknesses exhibited by OIA grant projects.

OIA has taken steps to improve project implementation and management over the past 5 years. Most notably, OIA established incentives for financial management improvements and project completion by tying a portion of each insular area's annual allocation to the insular governments' efforts in these areas—such as their efforts to submit financial and status reports on time. In addition, OIA established expiration dates for grants to encourage expeditious use of the funds. Despite these and other efforts, some insular areas are still not completing their projects in a timely and effective manner, and OIA faces key obstacles in compelling them to do so. Specifically, (1) current OIA grant procedures provide few sanctions for delayed or inefficient projects, and the office is not clear on its authorities to modify its policies; (2) resource constraints impede effective project completion and proactive monitoring and oversight; (3) insufficiently documented project redirection policies and inconsistent decisions do little to discourage insular areas from redirecting grant funds in ways that hinder project completion; and (4) OIA's current data system for tracking grants is limited and lacks specific features that could allow for more efficient grant management. Interior is currently phasing in an agencywide database that is scheduled to be implemented in OIA in 2011, but to be effective, it will require some flexibility to address OIA's needs for grants management.

Flake Q6

Please recommend any means by which Congress can assist in ensuring that the financial assistance awards that the agency provides are used for their intended purpose and adequately monitored for waste, fraud, and abuse.

GAO Response:

In our March 2010 report, to improve OIA's ability to require insular areas to efficiently complete projects and expend funds, we recommended that the Secretary direct Interior's Office of the Solicitor to prepare a detailed written evaluation of OIA's existing authorities that could be used to ensure the more efficient use of funds by insular areas, and work with OIA officials to use such authorities as appropriate and to identify the need, if any, for additional authority.[45] We recommended that if the evaluation identifies

[45]GAO-10-347.

the need for additional authorities, the Secretary should submit the evaluation to Congress.

Hearing Questions for the Record (QFR) Prepared for the DOI Inspector General
Hearing: Major Management Challenges at the Department of the Interior
Tuesday March 1, 9:30 Rayburn B308

Chairman Michael K. Simpson

Simpson Q1
As I look through the GAO's list of major management challenges facing the Department of Interior in recent years, I notice that many of the same issues have been addressed in multiple reports. For instance, deferred maintenance backlog issues are highlighted on several occasions over the years. Challenges relating to wildland fire are included in GAO reports as far back as 1999.

QUESTION: Why do you believe these issues have lagged over the years?
Is the Department any closer today to addressing the deferred maintenance backlog or developing a cohesive strategy to address wildland fire issues?

OIG Response
Like the Government Accountability Office (GAO), the Office of Inspector General (OIG) has identified a large number of the Department of the Interior's (Department or Interior) major management challenges that have remained consistent over a number of years. A number of factors, such as program complexity and funding availability, make it difficult for the Department to achieve timely resolution for many of its long-standing management challenges.

In regard to the Department's deferred maintenance, like GAO, we have found that the Department continues to struggle to address its deferred maintenance backlog, which is currently estimated to be between $13.5 billion and $19.9 billion. With the availability of American Recovery and Reinvestment Act (ARRA) funds, the Department has been in a unique position to address the long-standing issue of deferred maintenance. In fact, our office will be initiating a review this year to assess the Department's progress toward resolving its deferred maintenance backlog with the use of ARRA funding.

As for wildland fire issues, the Department has made progress in developing a cohesive strategy. DOI and USDA released the new National Cohesive Wildland Fire Management Strategy Report on March 28, 2011. The Wildland Fire Leadership Council (Interior is an integral player on the WFLC) is directing the on-going development of the national strategy.

Any comprehensive wildland fire strategy, such as the National Fire Plan, must address the vital roles of both Interior and the U.S. Department of Agriculture Forest Service (USDA). Interior and USDA have different planning, budgeting, and funding allocation processes. Further complicating matters, Interior does not have one bureau dedicated to fire issues, but 4 bureaus -- each with firefighting responsibilities as well as other critical missions. In addition, Interior's Office of Wildland Fire Coordination develops Department-wide policies and allocates appropriated monies to the bureaus; however, it does not have an operational role. Although

federal cross-cutting fire agencies appear to work well on the ground, still it seems that underlying institutional differences in policy and budget allocation work against effective cost containment approaches. There may be a need for congressional intervention to bridge Interior's and Forest Service's organizational differences and gaps to further certain cohesive strategy goals.

Simpson Q2
Today's GAO testimony, coupled with a December 23, 2010, letter to the subcommittee, highlights a systemic problem dating back at least as far as 2000 and having to do with abuses of BLM's authorities under the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Land Transaction Facilitation Act of 2000 (FLTFA), regarding the sale, purchase, and exchange of public lands. While on the surface this would appear to be an oversight issue best reserved for the Natural Resources Committee, the fact that the Administration is requesting the full $900 million for Land and Water Conservation Fund acquisitions makes this issue relevant to this committee's FY 2012 funding deliberations.

QUESTION: I just have one question today regarding this issue: To your knowledge, how many Interior employees over the past 10 years have been reprimanded or terminated as a result of the violations identified by GAO?

OIG Response
The Office of Inspector General does not have access to information pertaining to personnel actions for the entire Department of the Interior. Personnel actions are handled independently by the Bureaus and each of the seven Bureaus maintain their own records relating to reprimands and terminations involving their employees. The only exception to this situation would be for the overall small percentage of cases that are fully investigated by the OIG and then referred back to the Bureaus for administrative action.

Simpson Q3
Ms. Kendall, when you testified two years ago you outlined specific concerns about financial management and financial oversight challenges within the Department. At that time, you expressed some concern about tracking the Department's $4 billion in Recovery Act funding.

QUESTION: Can you speak to any specific issues or concerns related to the oversight of the Recovery Act funding that the Department received?
Were you able to put in place the tracking controls and mechanisms to track the funds as you had hoped and the Recovery Act intended?

OIG Response
Question Part 1 – Can you speak to any specific issues or concerns related to the oversight of the Recovery Act funding that the Department received.

Our principal concern regarding oversight was the decentralized nature of the Department and the number of projects supported by the Recovery Act. Funds were allocated to the Department and six bureaus. These funds were applied to over 4,000 specific projects ranging in size from less than $1,000 to over $100 million. Virtually all of these projects were executed through

contracts, grants or cooperative agreements, requiring over 7,000 acquisition actions involving over 1500 recipients. Thus, our challenge was to identify areas of highest risk for fraud, waste and mismanagement and to focus our oversight resources on those areas.

Another key concern with implementation of the Recovery Act was the ability of the Department's acquisition and financial assistance personnel to obligate funds according to the law's deadline of September 30, 2010. This aggressive timeframe, combined with ongoing, routine program requirements imposed on personnel, presented a substantial challenge to the Department and bureau workforce. Recognizing this stress on the workforce, we implemented initial oversight plans focused on the review of planning and acquisition data sources (Federal Procurement Data System-Next Generation, Grants.gov, Recovery.gov) to identify issues (e.g. lack of competition, failure to use fixed-price awards). As funds were obligated, we began an aggressive effort to visit project and program sites to assess on-the-ground oversight processes and to provide important fraud awareness information to Department personnel and recipients.

Question Part 2 – Were you able to put in place the tracking controls and mechanisms to track the funds as you had hoped and the Recovery Act intended?

The Department established mechanisms by which the bureaus developed lists of specific projects to be funded by the Recovery Act with associated milestones for the obligation of funds and project performance. In addition, the Recovery Accountability and Transparency Board (Board) established critical recipient reporting processes that we used extensively to assess the Department's progress in using funds. The Board also established the Recovery Operations Center, a data compilation and analysis unit that provides information to Offices of Inspectors General on acquisition issues and concerns regarding potential fraud, waste and mismanagement.

Within the OIG, we established the Recovery Oversight Office (ROO). This office was tasked specifically with providing oversight on all activities related to use of Recovery Act funds by the Department and its bureaus. The office was staffed with diverse professionals with audit, project performance and investigative experience to provide a comprehensive ability to identify and report on fraud, waste and mismanagement. In addition, the Department designated a Senior Advisor to the Secretary for Economic Recovery and Stimulus, who serves as the key liaison with the ROO. As a result, we were able to work proactively with the Department to address issues as we found them so that corrective actions could be taken in real time. For example, four recipients that were 3-time non-reporters were quickly debarred, when the OIG brought their failure to report, in accordance with the Recovery Act, to the attention of the Suspending and Debarring Official. Finally, our aggressive outreach to project sites and program offices in the area of fraud prevention resulted in educating over 13,000 individuals with our prevention message. During our efforts, we have visited program offices and project sites in 30 states. [See, Attachment 1.]

ROO also increased the Department's focus on its Suspension and Debarment (S&D) Program by collaborating successfully with the Department's Senior Procurement Executive. As we found firms of questionable qualifications or business integrity during our reviews of project planning and execution, we were able to proceed, as appropriate, with the S&D process in expeditious manner. As of February 28, 2011, the Department has suspended 12 firms or individuals,

debarred 54 firms or individuals, and worked cooperatively with 2 firms and 2 individuals to enter into agreements to protect the Department's procurement and non-procurement programs. These compliance agreements recognize the efforts the companies and individuals had already undertaken, and are willing to take, to ensure that the misconduct that served as causes for debarment are addressed and not repeated and enable American employees to retain their jobs.

Simpson Q4
Ms. Kendall, in your written testimony you mention Interior's Financial and Business Management System (FBMS)—a customized computer program more than 10 years in the making, costing more than $300 million, and, it would appear, still an optimistically estimated two years away from completion.

QUESTION: Please explain to the committee in further detail what this system is designed to do and why it's necessary.

How does the cost and time to completion for Interior's system compare to other agencies across the federal government?

What is the probability that FBMS will be obsolete by the time it is fully completed and implemented?

OIG Response
FBMS is replacing Interior's legacy financial and procurement systems. FBMS will provide the backbone for Interior's financial management activities from recording obligations to paying invoices using a modern web-based interface. FBMS interfaces with internal and external systems, such as Interior's human resources system and Treasury's payment system. Interior's legacy financial system is mainframe based and no longer supported by the vendor. Consequently, continuing with the legacy system is not an option.

The implementation of FBMS has been costly and time consuming, as is common for implementation of major financial systems. We have not performed a comparison of Interior to other agencies regarding cost and time needed to complete FBMS. Such comparisons are not easily made because they are affected by the scope of the system, the size of the agency, and the status of implementation. On the surface, Interior's performance does not appear to be amongst the very best or the very worst.

FBMS is based on SAP Enterprise Resource Planning (ERP) software. Interior has moved to new versions as they have become available. Accordingly, the risk that FBMS will be obsolete by the time it is fully completed and implemented is low. On the other hand, I am worried that FBMS will become obsolete long before the end of the useful life projected by Interior of September 30, 2030.

Simpson Q5
Your testimony states that, "One of the promised benefits of FBMS is internal controls." Yet the accounting firm KPMG has found deficiencies in internal controls of FBMS in its audits of Interior's 2009 and 2010 financial statements.

QUESTION: Is it fair to say that the FBMS system, as it currently stands, is threatening Interior's ability to receive clean audits? If not, then please elaborate on the point you were trying to make about the KPMG audits.

OIG Response
The reference to the KPMG audits was intended to make two points. First, the realization of benefits is not automatic and depends upon the quality of Interior's implementation. Second, the implementation poses continuing risks for Interior as more bureaus are transitioned to the new system and additional functionality is added.

The implementation of a new financial system always poses a risk to receiving an unqualified - "clean" – opinion on the financial statements. The risks arise not only from potential flaws in the new system, but also from lack of familiarity and demands of converting to a new system. The problems encountered by KPMG during their audit of Interior's 2009 financial statements illustrate this risk. KPMG experienced difficulties auditing the Bureau of Land Management (BLM) which just converted for 2009. KPMG and Interior through considerable effort were able to overcome these difficulties and fewer difficulties were encountered during 2010. However, no new bureaus were converted to FBMS for 2010. It is too early to say what difficulties will be encountered in 2011; although it our understanding that the conversion of the U.S. Geological Survey is going more smoothly than the conversion of BLM. A number of major bureaus are set to convert in future years which could impact the audit opinion depending upon how smoothly the conversion goes and the ability of Interior to handle the increased conversion workload.

Simpson Q6
Ms. Kendall, in your testimony you state that OIG has uncovered myriad problems at Indian Affairs caused by poor management, and has identified gross program inefficiencies at many levels of Indian Affairs.

QUESTION: Please provide for the committee a few examples of the most pressing issues that can be addressed in the short-term and/or long-term.

OIG Response
Detention Facilities

In 2004, our office conducted an assessment of the detention facilities throughout Indian Country operated or funded by the Bureau of Indian Affairs (BIA). Our assessment revealed a long history of neglect and apathy by BIA officials that resulted in a variety of serious safety, security and maintenance deficiencies in the vast majority of facilities that were reviewed. Our work in this area received considerable attention and the Congress appropriated significant funding to improve upon what was characterized as a national disgrace.

We have completed an evaluation of BIA's efforts to improve upon staffing levels at their detention facilities, a critical issue directly impacting safety and security and a key recommendation from our 2004 report. We have determined that despite the focus on the seriousness of the problem and a 48% increase in funding in excess of $64 million, BIA has

failed to address staffing shortages and the situation at these facilities remains largely unchanged. Additionally, we were unable to determine what much of the increased funding was spent on.

Togiak Roads, LLC

We investigated a complaint involving a $2.4 million contract between BIA and the Traditional Council of Togiak (TCT) for improvements to the Togiak Airport and a 1.78 mile section of road located in Togiak, AK. We determined that BIA paid out over $2.4 million to the TCT and that according to witnesses and a review of BIA documents, little of the specified work was completed. As a result of our investigative efforts we estimate that $1.6 million had been expended on a non-specified road maintenance project and that as much as $200,000 may have been overbilled by a sub-contractor. We were unable to determine the actual percentage of work completed on the project or the disposition of the remaining funds due to a lack of project oversight and funds accountability by the awarding office. Since 2004 this contract was listed as "suspended" and had been in this limbo status with little or no action until our investigation spurred BIA to take action and cancel the contract for convenience. As a result the BIA forgave the debt for the misappropriated funds less approximately $162,000 by accepting the work performed.

BIA – Alaska Reservation Roads Program

The U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA) in conjunction with BIA conducted a program review of the Indian Reservation Roads Program (IRRP) as managed by the Alaska Regional Office (ARO) in Juneau, AK. The review team concluded that the IRRP in Alaska suffered from general mismanagement and various other problems – in particular, the review team took note of the fact that seemingly excessive amounts of overtime (OT) were being claimed by employees at the Anchorage office, even during the winter when there were apparently no roads projects underway. Further, it appeared as though OT has been paid to employees who were on annual leave (AL).

We were not able to substantiate that OT was improperly and/or illegally being claimed, nor did we find any evidence that OT was being claimed while anyone was in leave status. This was due to the lack of any uniform system of records for tracking the OT worked by those specific employees. We determined that this lack of OT documentation and tracking constitutes violations of both BIA and FHWA policies.

Fort Peck Tribal Credit Program

A Montana Federal Grand Jury has indicted three additional individuals in connection with a decade-long fraud scheme to embezzle tribal funds from the Fort Peck Credit Program, a tribal lending program of the Fort Peck Tribe in northeast Montana. Linda Christiansen, the City Clerk of Poplar, Montana, was indicted in December 2010; and subsequently, pled guilty in March 2011 to aiding and abetting in the theft; Arthur Greybull III was indicted in January 2011 and is scheduled for trial in April 2011 for aiding in the theft of Credit Program funds; and Florence White Eagle, BIA Agency Superintendent, Fort Peck Agency, was indicted in March 2011for conspiracy in the conversion of Credit Program funds. White Eagle was also charged with

bribery and false statements and has since been placed on indefinite suspension without pay pending the outcome of her case. Seven additional individuals, including two DOI employees, all entered guilty pleas in connection with their role in this fraud scheme. All seven were sentenced to prison. Total loss to the Credit Program is approximately $1.2 million.

Summit Lake Paiute Tribe Fisheries (SLPT)

For 14 years, BIA funded a nonexistent fish hatchery. Our investigation confirmed that for 14 years the BIA funded an SLPT hatchery that never hatched a single fish. BIA continued to fund the hatchery even after a superintendent visited the SLPT Reservation and saw that that the hatchery site had been converted into office space and even after the superintendent was subsequently notified that the former SLPT Chairperson had spent BIA provided funds, including those meant for the Tribe's Fisheries Management Program, towards the purchase of real estate. Funding for the hatchery finally stopped in late 2006 when BIA's Regional Office learned of the situation.

Seldovia Ferry

BIA mismanaged a $9 million DOT funded ferry boat in Alaska that turned into a private boat tour. We investigated a complaint regarding the Seldovia, Alaska Native Association (SNA) and Seldovia Village Tribe's (SVT) misuse of funding intended to build a year-round high-speed car and passenger ferry to operate between Homer, Seldovia, Jacolof Bay and Halibut Cove on the Kachemak Bay.

The complaint alleged that the "pass through" funding from DOT-FHWA in the amount of $9 million of a planned $14 million, which was supposed to be overseen by BIA, and was misspent. Instead, the complaint alleged that SNA used the funding to build what has been described as a tour boat, without capability to haul vehicles, traveling only between Homer and Seldovia.

We found a lack of sufficient controls and oversight over Federal funding which would have prevented these funds from being spent contrary to the intended use. We determined that the proposal submitted to the BIA by the SNA described a scheduled year-round, high-speed car/passenger ferry servicing Homer, Seldovia and other unserved points on Kachemak Bay. The language of the Congressional appropriations by which the project was funded indicated monies for a ferry to serve "Homer – Halibut Cove – Jacolof Bay – Seldovia." Further, we concluded that the SNA did change the scope of the project by selecting a style boat that varied significantly from the original stated intent and from the specifications of the RFP; however, we found a clause in the Annual Funding Agreements (AFA) between BIA and the SNA/SVT which allowed a change in scope. We also found instances in which the SNA indicated their intent to the Government to depart from the original specifications prior to the actual departure.

Non-Responsiveness

Due to resource limitations, the OIG can only investigate and/or review a small percentage of the issues that come to our attention. As a result, many of the issues are referred back to the Bureaus so that they can be thoroughly evaluated and resolved appropriately. For the more significant

issues, our process requires the Bureaus to respond back to us, communicating the actions that have been taken to resolve this matter and any preventative measures that can be taken to ensure that similar situations to not re-occur in the future.

For many years, the Bureau of Indian Affairs has demonstrated tremendous inefficiency and has poorly managed the numerous serious issues that are referred to them for necessary action. The OIG refers serious allegations of employee misconduct such as fraud, theft, retaliation, misuse of funds to the BIA on a regular basis with the expectation that the issues will be appropriately resolved or that poor managers and/or ethically challenged employees will be held accountable. BIA, more than any other bureau at Interior, has a history of failing to respond to OIG referrals or even worse, completely disregarding the serious matters referred to them. As a direct result of BIA's inattention to these matters, the OIG recently had to create a new category within our referral program - "Non-Responsive"- to eventually close out the issues, many more than a year overdue. We have since elected to begin reporting "non-responsive" matters in our Semiannual Report to Congress.

Simpson Q7
As you likely know, many of my colleagues are, like me, concerned about oil and gas related jobs in the Gulf and putting people back to work—albeit safely and with proper stewardship of the environment. You mention the difficulty of DOI trying to balance organizational issues with continued delivery of services—which we have certainly seen since last summer.

QUESTION: With two new Bureaus, does the division of permitting and leasing from environmental enforcement really ensure timely and environmentally appropriate oil and gas development in the Outer Continental Shelf? What about the accountability of each bureau—especially when we often see agencies blame other agencies for a lack a results?

OIG Response
As with any separation of functions, the key to success of this new structure will lie with effective communication between the two new bureaus to ensure that gaps in program authority are quickly identified and eliminated. It is difficult to predict how this new structure will perform given the limited time it has been in existence. In our report "*A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement*", issued December 2010, we noted that communication and timeliness of actions were difficulties facing the organizations when they were a single entity.

Director Bromwich has acknowledged that this reorganization is only part of a larger strategy to address the challenges related to oil and gas development in the Outer Continental Shelf, a strategy which must also address new safety requirements, staffing shortfalls, environmental requirements, and inspection and enforcement concerns, among others.

Simpson Q8
Ms. Kendall, we've had a lot of interest in Congress on the Wild Horse and Burro program. The 'gathers' of wild horses seems to be very controversial in Congress; though I personally know they are necessary to protect our western rangelands.

QUESTION: Could you briefly explain your review of the wild horse and burro program?

Did you find inhumane treatment of wild horse and burros by the BLM?

OIG Response
Question Part 1 - Briefly explain of our review of the Wild Horse and Burro Program

In response to allegations of mismanagement and abuse surrounding BLM's Wild Horse and Burro Program, we conducted the inspection to determine if wild horse and burro gathers are necessary and justified, and if wild horses and burros are being mistreated.

With growing populations and waning public interest in horse adoptions, mounting costs are straining BLM's ability to sustain the Wild Horse and Burro Program. Continued unchecked horse population increases will result in a growing need for holding horses with a commensurate increase in program funding.

	FY 2004	FY 2010
Adoption Decreases	6,644	2,960
	FY 2010	FY 2020
Projected Population Increases	38,365	238,000
	FY 2004	FY 2010
Horses and Burros in Holding Facilities Increases	22,000	37,800
	FY 2004	FY 2010
Program Funding Increases	$36.7 Million	$66.1 Million

As a result, the animals and the environment suffer. External intervention is necessary for achieving and maintaining a thriving natural ecological balance of authorized uses of the land.

We found that fiercely competing interests and highly charged differences of opinion currently exist between BLM and private individuals and organizations concerning the need for wild horse gathers, the methods used to gather, and whether horses are treated humanely by BLM and its contractors during and after the gathers. In addition, public interest groups have claimed that the science behind program management is inaccurate. BLM has acknowledged that the science behind its program needs to be reviewed. The issue behind the science of the program has been referred to the National Academy of Sciences/National Research Council.

We determined that wild horse and burro gathers are necessary for population control, as the population cannot be sustained by the land. We also determined that BLM's gathers are justified and that BLM is doing its best to perform a very difficult job. BLM is required by law to manage the range for authorized multiple uses, including wild horses and burros, livestock grazing,

wildlife (e.g. deer, elk, and antelope), and protection of habitat for threatened and endangered species. All of these authorized uses compete for the limited amount of forage and water available on the range. We did not observe any instances where BLM or its contractors treated wild horses and burros inhumanely. Further, we noted several actions planned to help resolve the ongoing population control issues. We recommended that BLM continue moving forward with the Secretary's initiative and BLM's program improvements to the extent that:

1. There is urgent and aggressive focus on research and testing of improved population control methods to balance wild horse and burro population growth with adoption demand, thereby minimizing the need for additional long-term holding facilities and preserves.
2. There is an ambitious effort to minimize and reduce over the long term the need for short- and long-term storage facilities.
3. The best science for wild horse and burro management and needed new research is coordinated with and confirmed by the National Academy of Sciences and the results put into practice.

Question Part 2 - Did we find inhumane treatment of wild horse and burros by BLM?

Part of the current controversy surrounding the Wild Horse and Burro Program involves complaints that BLM has mistreated wild horses and burros. In conducting our inspection, we interviewed officials and observed wild horse gathers conducted by BLM and its contractors in California, Oregon, and Nevada. In addition, we visited eight of BLM's short-term holding facilities in California, Colorado, Nevada, Oregon, Utah and Wyoming, and six long-term facilities operated by contractors in Kansas, Oklahoma, and South Dakota. In addition we interviewed interested third-parties and animal advocates to gain a perspective of their concerns regarding gathers and overall wild horse and burro management. During these site visits we observed the following:

- The use of helicopters during the gather,
- The movement and capture of wild horses,
- Transportation of wild horses from the capture sites to the holding facilities,
- Veterinarian services provided on-site,
- The conditions of the short-and long-term holding facilities, and
- The condition of wild horses and burros housed at holding facilities.

We found that BLM and its contractors did not treat any wild horses and burros inhumanely. BLM is operating within the confines of its Handbook with regard to carrying out the gathers.

Simpson Q9

Ms. Mittal and Ms. Kendall, as you know, we're in a budget crisis yet the cost of the wild horse and burro program continues to climb and could soon reach $100 million a year. Some interest groups are promoting fertility control rather than removing wild horses from the range.

QUESTION: Have either of you looked at the effectiveness and cost of fertility control on wild horses?

OIG Response
BLM currently uses two population control measures during gathers: Porcine Zona Pellucida (PZP), a non-hormonal contraceptive, and gender ratio adjustment. Neither of these measures currently provides an effective means to limiting the population of wild horses and burros at a level that can be sustained on public lands. Both PZP and gender ratio adjustment are administered during the gathering process for horses that are planned to be returned to the Herd Management Area (HMA).

BLM began limited testing of PZP in 2004 and has administered it to only 2,825 mares in its first 7 years of use. BLM is currently using a 22-month formulation of PZP that should be administered between 70 and 90 percent of breeding mares to effectively reduce population growth. In addition, the vaccine becomes progressively less effective after the first year it is administered. Due to the large size of herds and vastness of the HMAs, the effectiveness of fertility control using PZP is currently limited.

According to BLM, it is also conducting research with the U.S. Geological Survey (USGS) to develop longer lasting and more effective fertility controls agents. For example, in FY 2010 the BLM partnered with the USGS to conduct research into the use of SpayVac™ as a potential longer-lasting (more than two years) fertility control tool or possible sterilant in wild horses. A longer-lasting agent would allow the herds to be captured about every 4 to 5 years and would result in reduced capture and handling costs, less impact on individual animals and the herd, fewer excess animals that need to be removed to maintain appropriate management levels, and reduced adoption and holding costs over time.

Gender ratio adjustment requires that nearly all the wild horses and burros be gathered, segregated by gender, and released at appropriate gender ratio levels. Although horse populations might be controlled effectively in smaller HMAs, the sheer number of horses in the larger HMAs precludes this as an effective overall population control technique.

We did not review the cost of the fertility control on wild horses during our evaluation.

Ranking Member James P. Moran

Interior's oil and gas management on the February 2011 government wide high-risk list

Moran Q1
I am very concerned about your testimony on the remaining challenges for Interior's onshore and offshore oil and gas management. As the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling reported in January, government regulators lacked the authority, necessary resources and technical expertise to properly oversee industry and prevent this disaster. Do you agree with that assessment? Do you think the Secretary's plans for reforming and enhancing the Bureau of Ocean Energy Management are needed and are they sufficient to help fix this situation?

OIG Response
Our report "*A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement*" identified numerous deficiencies in the program's authority, resources, and expertise. Specific issues included insufficient permitting and inspection personnel, training standardization and certification needs, increased need for subject matter experts, and the need to reevaluate the enforcement actions. Accordingly, the new bureaus need to implement all 64 recommendations contained in our report. While 11 implementation teams were formed to address the issues identified by both the Safety Oversight Board and the OIG, significant strides are required to correct all weaknesses identified.

Moran Q2
The GAO testimony indicates that Interior collected lower levels of revenues for oil and gas production than all but 11 of 104 oil and gas resources owners, including States and other countries. Give us a feel for what kind of revenue loss is involved here. Does Interior have the administrative authority to enhance its revenue collection?

OIG Response
The amount of lost revenue cannot be estimated with precision. Interior does have administrative authority to enhance revenue collections and has exercised it. For example, the Department recently increased the royalty rate for deepwater leases from 16.67 to 18.75 percent. Measuring the effect is not straightforward, however, because in a competitive marketplace different royalty rates charged by other landowners (such as state governments, Indian tribal governments, and private citizens) can influence which lands companies choose to lease and develop.

Moran Q3
GAO also notes that BLM has not met its statutory requirements for oil and gas production verification inspections. Can you please explain this some more?

OIG Response
Our report "Bureau of Land Management's Oil and Gas Inspection and Enforcement Program", issued December 2010 stated that BLM has not performed the required number of production inspections established in its inspection strategy. In accordance with the Federal Oil and Gas

Royalty Management Act of 1982 (FOGRMA), annual inspections are required on those oil and gas wells that produce significant quantities, have a history of noncompliance, or both. FOGRMA does not define "significant quantities" and, accordingly, BLM develops its own criteria. In doing so, BLM sets its inspection goals based on fixed production volumes that apply nationwide. For example, for many years the threshold for requiring an annual inspection was 12,000 barrels of oil per month or 120,000 cubic feet of natural gas.

As noted in our report, we found no logical methodology for BLM's production inspection strategy thresholds. BLM decreased the monthly production thresholds in fiscal year 2009 to 6,000 barrels of oil and 80,000 cubic feet of gas, which increased the number of production inspections required.

BLM has a history of not completing its required number of production inspections. From fiscal years 2006 through 2009, BLM reported it had inspected only 39 percent of its required annual inspections and 55 percent of its 3-year inspections. For FY 2009 alone, the bureau determined that it needed to conduct 9,394 production inspections but planned to perform only 7,104. The official database ultimately reported completion of only 3,703 inspections, 39 percent of those required.

Moran Q4
Is it likely that the Federal government, and the States since they get half of the royalties, may be short-changed but we really don't know?

OIG Response
It is likely that the Federal Government and the states are getting short-changed, but it is difficult to quantify the amount. Without conducting the necessary production inspections to verify industry is properly measuring and accounting for production removed from federal lands, the extent of unpaid royalties is an unknown or an educated guess at best. Additionally, the processes and methods of producing, measuring, transporting, valuing, and reporting minerals from federal lands are both diverse and complex and require much more than volume inspections to ensure accountability and proper payment of federal royalties. A well-designed and collaborative system of inspections, controls, communication, regulations, oversight, penalties, and industry deterrents are necessary for the Department to properly monitor and account for federal mineral production.

The following example may help illustrate the significance of this issue. In FY 2010, the Office of Natural Resources Revenue (ONRR) collected $6.6 billion in petroleum related royalties. According to a 2006 report from the Association of Certified Fraud Examiners, the average company loses about 5 percent of revenue to fraud annually. By applying that figure to the amount of royalties ONRR collected in FY2010, the amount of lost revenue would be approximately $330 million.

Moran Q5
You also note that Interior is underestimating the amount of natural gas produced on federal leases that is released directly to the atmosphere. This means there is a lost resource, no

collection of royalties, and this intensive greenhouse gas is polluting the atmosphere. Give us a feel for the potential losses here and the pollution contribution.

OIG Response
We have not conducted recent work that would allow us to answer this question. GAO may be able to better address it.

Moran Q6
Can the IG refresh our memory about the royalty-free deepwater oil and gas leases in the Gulf of Mexico? What is the estimate of the amount of oil and gas that certain lease holders are getting from the American citizens but paying no royalties?

OIG Response
In 1995, Congress passed the Outer Continental Shelf Deep Water Royalty Relief Act (the Act) in an effort to spur oil and gas exploration in the Gulf of Mexico. The Act accomplished this by granting the oil and gas industry relief from paying royalties to the U.S. Government for the right to drill for oil and gas on federal property. The Act mandated certain restrictions on this royalty relief in the form of price thresholds and volume suspensions for leases issued prior to passage of the Act (pre-Act leases) – meaning that when oil and gas prices reached a certain level or companies began producing a certain volume, companies would be required to pay royalties.

However, the Act did not apply the same restrictions for leases issued after passage of the Act (new leases). The Act still mandated royalty relief restrictions in the form of volume suspensions, but it did not include price thresholds. The Minerals Management Service (MMS), however, contended that while the Act did not *mandate* the use of price thresholds for new leases, it provided discretionary authority to apply this restriction.

Following MMS' attempt to collect royalties on deepwater leases issued between 1996 and 2000 based on price thresholds, Kerr-McGee Oil and Gas Corporation filed suit against MMS' ability to collect such royalties under the Act. Ultimately, the U.S. Court of Appeals for the Fifth Circuit subsequently affirmed a district court ruling that MMS cannot require the payment of royalties from certain production on deepwater oil and gas leases issued between 1996 and 2000 in the Gulf of Mexico, and on October 5, 2009, the U.S. Supreme Court denied a petition for writ of certiorari. *See Kerr-McGee Oil & Gas Corp. v. U.S. Department of the Interior, 554 F.3d 1082 (5th Cir. 2009).* As a result of this ruling, all deepwater leases issued under the Act in the Gulf of Mexico between 1996 and 2000 are producing royalty free.

Of special note, MMS had failed to include "price threshold" language in deepwater leases they issued in the years 1998 and 1999, whereas such language had existed in the leases they issued in 1996, 1997 and 2000. Prior to the court decision in the Kerr-McGee lawsuit challenging the legality of price threshold language for all five years of the Act (1996-2000), as a sign of good faith, several lessees had entered into negotiated agreements with MMS agreeing to pay royalties on their 1998 and 1999 leases under the price threshold provisions included in the 1996, 1997 and 2000 leases. These agreements, however, included specific terms stating that if Kerr-McGee was successful in its lawsuit against the U.S. Department of the Interior regarding royalty liability for all 5 years under the Act, the agreements would become null and void.

The OIG has not determined an "estimate of the amount of oil and gas that certain lease holders are getting from the American citizens but paying no royalties." BOEMRE would be more likely to have the answer to this question.

Moran Q7
Have there been attempts to regain some of this lost revenue for the American taxpayers?

OIG Response
Beyond MMS' attempts to make the leases pay royalties under the price-threshold theory, which was contested successfully by Kerr-McGee in the abovementioned lawsuit, we are unaware of other "attempts to regain some of this lost revenue for the American taxpayer." There was some discussion in Congress about passing legislation requiring lessees to pay royalties related to the leases, but no such legislation has passed. The "sanctity of contracts" argument appears to have prevailed in preventing any such legislation.

Human capital deficiencies in oil and gas management

Moran Q8
The GAO also reports that both the former MMS and the BLM have persistent problems in hiring, training and retaining adequate, technically trained staff to manage the oil, gas and coal programs. With the increased attention by the world on the new BOEMRE there appears to be a real attempt at fixing this situation.

OIG Response
Similar to GAO, we have found that BOEMRE and BLM have had difficulty hiring, training, and retaining personnel in the oil and gas programs. Our report, "*Bureau of Land Management's Oil and Gas Inspection and Enforcement Program*" *(Report No. CR-EV-BLM-0001-2009)*, issued December 2010, made two recommendations addressing these concerns, including a recommendation to improve training and implement a Petroleum Engineering Technician Retention Plan for BLM. In addition, our report "*A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement*" *(Report No. CR-EV-MMS-0015*-2010), issued December 2010, identified potential personnel succession difficulties in BOEMRE for permitting and inspection staff, and training and accreditation shortcomings for inspectors.

The Secretary has included in the FY 2012 budget request a call for the "implementation of a recruitment strategy for BOEMRE to expand the field of inspectors and engineers" as well as a proposal to hire "over 100 inspectors, engineers and other safety and enforcement staff by the end of 2012".

Moran Q9
How big is the human capital problem and what kind of financial resources and time will be required to fix this at Ocean Energy?

OIG Response
The human capital problems for BOEMRE are significant and a substantial amount of time, effort, and resources are needed to fix problems. To illustrate, in our report *"A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement"*, we noted that there were 55 inspectors in the Gulf of Mexico. In FY 2009, there were 3,100 production facilities and 100 drilling rigs subject to BOEMRE oversight in the Gulf of Mexico. The Secretary has included in the FY 2012 budget request a call for the "implementation of a recruitment strategy for BOEMRE to expand the field of inspectors and engineers" as well as a proposal to hire "over 100 inspectors, engineers and other safety and enforcement staff by the end of 2012". According to the BOEMRE website, their recruitment efforts have been successful. In our report, we stated that BOEMRE did not have a formal certification program for its inspectors. In BLM, the inspectors have to be certified, a process that takes about 18 months to complete. BOEMRE has a team in place charged with developing training programs and curricula for inspections.

The human capital and financial resources required to enhance the operations of BOEMRE are best determined by bureau officials.

Moran Q10
You also indicate that similar problems exist at the BLM regarding its ability to oversee and measure onshore oil and gas. Please explain more about the problems at the BLM.

OIG Response
Our report, *"Bureau of Land Management's Oil and Gas Inspection and Enforcement Program"* stated that BLM does not achieve the production and drilling inspection goals established in its inspection strategy, nor does the strategy sufficiently consider low-producing and nonproducing wells. Additional issues include minimal oversight during inspections, lack of policy that establishes and maintains industry self-inspection, and inspectors spending too much time on administrative duties rather than on performing inspections.

We also found that monetary assessments and civil penalties based on rates set in the 1980s fail to deter operator noncompliance. In addition, enforcement is hampered because immediate assessments are limited to just four types of infractions. Additional situations such as cases involving chronic offenders are not immediately evaluated and pursued.

Although BLM has increased its environmental inspections in the oil and gas fields, it still does not fully meet its environmental responsibilities. In particular, we found that field offices having significant increases in drilling permit applications do not complete all critical environmental inspections, thus jeopardizing compliance with environmental laws, regulations, and policies. In addition, the official electronic database for the Inspection and Enforcement Program needs enhancement due to problems with inaccurate data, the absence of a user-friendly system, insufficient user training on the system, and inadequate data entry controls.

We found the program could be strengthened and employee professionalism could be enhanced by improving on-the-job training and mentoring, sharing promising practices, developing fraud awareness and refresher training for inspectors, and improving the training for environmental inspectors and Production Accountability Technicians. In its response to the report, BLM generally concurred with the recommendations and stated that corrective action would be taken.

Moran Q11
What kind of **revenue losses to the American Taxpayers**, and the States, may be involved if we are not adequately measuring oil and gas from our public lands?

OIG Response
It is likely that the Federal Government and the states are getting short-changed, but it is difficult to quantify the amount. Without conducting the necessary production inspections to verify industry is properly measuring and accounting for production removed from federal lands, the extent of unpaid royalties is an unknown or an educated guess at best.

The following example may help illustrate the significance of this issue. In FY 2010, the Office of Natural Resources Revenue (ONRR) collected $6.6 billion in petroleum related royalties. According to a 2006 report from the Association of Certified Fraud Examiners, the average company loses about 5 percent of revenue to fraud annually. By applying that figure to the amount of royalties ONRR collected in FY2010, the amount of lost revenue would be approximately $330 million.

Reorganization of former MMS and similar needs at BLM

Moran Q12
From the very beginning of his time as Secretary, Mr. Salazar has stressed the need to reform the ethical lapses that plagued the former MMS. After the Gulf of Mexico disaster, he reorganized the former MMS. Both the GAO and the IG have closely evaluated the disaster and the government need to respond. Can each of you please talk about the organizational transformations that you see underway?

OIG Response
The separation of duties that will result from reorganizing the former MMS may help prevent internal misconduct, but it may not necessarily increase the Government's ability to properly monitor and oversee the Department's mineral programs. A well-designed and collaborative system of inspections, controls, communication, regulations, oversight, penalties, and industry deterrents are necessary for the Department to properly monitor and account for federal mineral production. This is a challenge which requires a Departmental strategy and continuous vigilance.

Moran Q13
What is the likelihood that this major reorganization will be able to find the proper balance between adequate oversight of industry and protection of the environment, and appropriate development of our Nation's fossil energy?

OIG Response
As with any separation of functions, the key to success of this new structure will lie with effective communication between the two new bureaus to ensure that gaps in program authority are quickly identified and eliminated. It is difficult to predict how this new structure will perform given the limited time it has been in existence. We have noted that both communication and timeliness of actions were challenges facing the organizations, even when they were a single entity.

With the communication problems that existed under one bureau, the negative impacts of poor communication could be amplified between two. This is a Departmental challenge that requires a comprehensive strategy and a collaborative effort.

According to Secretary Salazar, the creation of the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) is intended to increase independence and to eliminate possible conflicts of interests, some of which we identified in our report "*A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement*".

Director Bromwich has acknowledged that this reorganization is only part of a larger strategy to address the challenges related to oil and gas development in the OCS, a strategy which must also address new safety requirements, staffing shortfalls, environmental requirements, and inspection and enforcement concerns, among others.

Moran Q14
Both the GAO and the IG have indicated that the BLM oil and gas management suffers from similar structural problems as those now widely known at the former MMS. Can you please explain what the **problems may be at the BLM for onshore fossil energy**?

OIG Response
Our report, "*Bureau of Land Management's Oil and Gas Inspection and Enforcement Program*" found numerous deficiencies including:

- Field offices having significant increases in drilling permit applications do not complete all critical environmental inspections, thus jeopardizing compliance with environmental laws, regulations, and policies.
- BLM's annual strategy places too much focus on high-production wells.
- BLM lacks a comprehensive policy for industry self-inspections even though such a policy is recommended in BLM's "The Gold Book," and is required by Onshore Oil and Gas Order No. 3 for site security.
- Inspections are frequently performed in remote areas by individual inspectors who have only infrequent direct supervision.

- Six of the seven Onshore Oil and Gas Orders, which address activities such as drilling operations, the measurement of oil and gas, and site security, are outdated as they were enacted in the late 1980s and early 1990s.

- The fines structure for assessments and civil penalties is outdated.

Inspection and enforcement program information in BLM's official electronic database known as the Automated Fluid Minerals Support System is not fully functional either for managers or for employees.

Note: With the exception of Question 21, the remaining questions from Congressman Moran (15 through 28) appear to be addressed to GAO rather than the OIG. If there are specific questions for the OIG, please let us know.

Environmental stewardship vs. oil and gas development

Moran Q15
GAO has reported that there are major challenges for Interior to balance its environmental protection mission with its development of fossil and renewable energy mission. GAO also reports that the BLM did not correctly use categorical exclusions under NEPA for certain Energy Policy Act related permits. Please discuss the reforms that Secretary Salazar announced in May 2010 and how these may help address some of the problems you found.

OIG Response
This question appears to be addressed to GAO.

Moran Q16
The development of oil and natural gas resources on federal lands and offshore areas contributes to domestic energy production but also results in concerns over potential impacts such as on wildlife habitat. Public protests of lease sales are one way that federal resource management agencies, such as BLM, can be made aware of these potential impacts. Does GAO have recent work that speaks to how well these agencies address the public's concerns about leasing decisions?

OIG Response
This question appears to be addressed to GAO.

Generating other Revenue Collections and enhancing financial assurances and bonds

Moran Q17
The GAO testimony indicates that the BLM is unable to require oil, gas, coal, and hard rock mine operations on Federal lands to post adequate bonds to ensure that the lands can be reclaimed after the disturbance of these operations. Please explain why this situation exists and what levels of revenues are potentially being lost to the American taxpayer.

OIG Response
This question appears to be addressed to GAO.

Moran Q18
GAO also notes that under the General Mining Act of 1872 that the federal government can not charge royalties or require revenue sharing or adequate reclamation bonds, unlike the 12 western States, including Alaska, that assess multiple types of royalties on mining operations on State owned lands.

What is the level of revenue that is lost because hard rock mining is not managed on federal lands like it is on State owned lands?

OIG Response
This question appears to be addressed to GAO.

Moran Q19
GAO also reported that the BLM cannot ensure that oil and gas operators post adequate bonds to reclaim disturbed lands, and that the minimum bond amounts have not been increased for 50 years. GAO found that 12 western States generally required higher bond amounts than the minimum amounts established in BLM regulations. Please give us a feel for the amount of damaged lands you are talking about, and the potential loss of revenues from bonds, if the bonds were actually adequate to provide proper environmental cleanups on Federal lands.

OIG Response
This question appears to be addressed to GAO.

Moran Q20
The GAO testimony discusses orphaned oil and gas wells that the BLM is forced to use Federal funds to clean up. What is the extent of this problem? Given the large increase in drilling on BLM managed lands during the past decade, is it likely that this problem of orphan wells will expand? How bad is this problem of orphan wells in the Gulf of Mexico?

OIG Response
This question appears to be addressed to GAO.

Reducing Interior's Deferred Maintenance Backlog

Moran Q21
The testimony presents a summary of the facilities and infrastructure backlog for roads, dams, buildings and other structures that is somewhere between $13.5 billion and $19.9 billion. You indicate that this is alarming, but that this backlog amount has stabilized. Please explain some of the dangers in this situation.

OIG Response
The majority of DOI facilities exist to serve the general public. National Parks and wildlife refuges are popular tourist destinations and receive thousands of visitors every year. Poorly maintained facilities, including buildings, roads, and bridges that are used by the public present

an unnecessary risk to the health and safety of our visitors. There is the risk of liability borne by the Department if a member of the general public or an employee is injured.

Poorly maintained facilities, particularly roads, dams, and bridges, also severely impacts the Department from a financial standpoint. Routine maintenance is substantially cheaper than rehabilitation and replacement. It extends the life of these structures, thus delaying the necessity of costly major overhauls. Not maintaining these facilities becomes a compounding problem, deflecting the immediate expense and costing the government even more money to having to meet future facility and industry requirements.

A recent OIG report on the roads maintained by the Department's bureaus indicated that out of the 186,713 miles of roads that are designated for either public or administrative use, more than 50 percent have been identified as being in poor condition. This is just one example.

Strengthening Resource Protection

Moran Q22
The GAO testimony reminds us that the Administration has yet to submit the **Cohesive Wildland Fire Management Strategy** that was required by section 503 of the FLAME Act of 2009. Please explain to us why the GAO continues to feel that such a strategy is important.

OIG Response
This question appears to be addressed to GAO. That being said, the two reports that comprise the strategy required by the FLAME ACT were released on March 28, 2011:

- A National Cohesive Wildland Fire Management Strategy
- The Federal Land Assistance, Management and Enhancement Act of 2009 Report to Congress.

Moran Q23
The GAO has reported on the **BLM Wild Horse and Burro Program** in the past and recommended that more effective long-term options were needed. Have you had a chance to look at the Secretary's and the BLM's new strategy in which they claim they will do fewer gathers of wild horse and increase contraception? Do you think that this is the right direction to go in?

OIG Response
This question appears to be addressed to GAO.

Moran Q24
The GAO indicates that the Interior Department and the Forest Service have made improvements in their processes for allocating hazardous fuel reduction funds and selecting fuel reduction projects. Do you have a sense that high priority projects are getting done, which actually reduce wildfire dangers and help restore fire-adapted forests?

OIG Response
This question appears to be addressed to GAO.

Moran Q25
GAO also summarizes the need for Interior to begin adapting to the effects of **climate change on the public lands**. GAO says that Interior is beginning to take steps in the right direction, but I am curious about what you think should be done to increase the resilience of public lands. What impacts of climate change are you seeing in your work?

OIG Response
This question appears to be addressed to GAO.

Moran Q26
GAO also mentions the fire program analysis initiative that began during the previous administration. This FPA program is supposed to improve analysis of fire fighting assets and the linkage between hazard reduction projects and subsequent fire dangers and staffing needs. What is the history of this FPA program? How much was spent on it so far and is anything coming out that is useful?

OIG Response
This question appears to be addressed to GAO.

Strengthening Accountability of Indian and Insular Area Programs

Moran Q27
The GAO testimony mentions the potential problems that may affect pending Indian land in trust issues due to the Supreme Court case of Carcieri **v. Salazar**. Can you tell us how many tribes may be affected by this ruling?

OIG Response
This question appears to be addressed to GAO.

Moran Q28
GAO discusses the need for better Interior Department oversight of funds provided for Insular Areas, especially for the freely associated States of Micronesia, Marshall Islands and Palau.

OIG Response
This appears to be addressed to GAO.

Moran Q29
Can you please summarize what staffing the Interior Department has to oversee these funds that are nearly $400 million per year?

OIG Response
The Office of Insular Affairs (OIA) is led by an Assistant Secretary and is authorized a total of 41 FTE. The majority of staff are located in the Washington, D.C. office where the policy,

administrative and grants management functions occur. Five employees are located in the Insular Areas: two in the Commonwealth of the Northern Mariana Islands (CNMI), one in the Republic of the Marshall Islands (RMI), one in American Samoa, and one in the Virgin Islands. These staff provide support for the grants managers located in Washington, D.C. Four employees are stationed in the Honolulu office, which is dedicated solely to administering Federated States of Micronesia, Republic of Palau and RMI Compacts. OIA has requested an additional two FTE (a fiscal specialist and a grants specialist) beginning in FY2012 to open a field office on Guam as the U.S. military pursues a strategic realignment of forces from Okinawa, Japan, to Guam and nearby Tinian (in the CNMI). In our recent report, we commented on the distribution of the current staff, noting disparities in on-island presence and OIA's ability to effectively oversee grant projects.

Moran Q30
What should be done to better manage these funds and help the insular governments, while assuring there is no fraud, waste or abuse?

OIG Response
Working to prevent fraud, waste, and abuse requires continuous vigilance. OIA staff, local public auditors, and the staffs of the various governmental entities in each Insular Area all require continuing professional development in the areas of fraud awareness, grants management and administration, and public financial management. When fraud is detected, the local officials should be trained and equipped to pursue appropriate prosecutorial action in their respective jurisdictions. OIA and OIG both support capacity-building efforts in the Insular Areas. OIG efforts place particular emphasis in providing training in fraud prevention and fraud investigation in addition to partnering with the Office of Public Auditors (or equivalent official) in each jurisdiction. Regarding OIA, we advocate a proactive approach to grants administration -- including regular monitoring of funded projects and close coordination with the Insular governments as well as other Federal agencies that provide funds in the Insular Areas. In the end, all Federal agencies need to be good stewards of their Insular Area programs and funds. However, as the ongoing fraud investigation in the Republic of the Marshall Islands demonstrates, obtaining a relative level of assurance that fraud, waste, and abuse will not occur in insular government operations is contingent upon the effectiveness of internal controls implemented and enforced.

Questions prepared specifically for the IG

Moran Q31
The IG testimony indicates that for 10 years they have listed Interior's revenue collection as a problem. There are now some initiatives underway to address these long-standing problems. Ms. Kendall, can you tell us about some of the things that are going on now at Interior, and whether or not you see progress at the new Office of Natural Resource Revenue (ONRR)?

OIG Response
We do see progress at the new Office of Natural Resource Revenue (ONRR). In response to prior OIG recommendations, ONRR developed a risk-based audit and compliance program to target underpayments. ONRR is currently shutting down the historically troubled Royalty In-

Kind program and is transitioning those properties to collect royalties in value. We are also currently evaluating the efficiency of processes in ONRR's Office of Enforcement and their effectiveness in obtaining timely compliance when lessees are found to be in violation of lease terms or regulations, including those that relate to revenue collection.

ONRR has requested additional funding in FY 2012 to increase offshore production verification and inspection activities, expand ONRR's state and tribal audit program, increase internal audit and oversight capabilities, conduct data mining for missing or inaccurate royalty data, as well as for other royalty and compliance initiatives. As part of its reorganization, ONRR has initiated a top to bottom strategic review in an effort to improve the management and oversight of royalty collection and disbursement.

ONRR's Office of Enforcement meets with the OIG Energy Investigations Unit on a bi-monthly basis to discuss matters of mutual interest and to refer allegations of suspected frauds, false claims, or other crimes. Further, ONRR has requested that the OIG provide fraud awareness and suspected crime reporting training to its personnel during regularly scheduled training opportunities.

Moran Q31
Has the IG examined areas where the Interior Department is not doing all it can to see that appropriate revenues are gained for the American taxpayer? Are there any specific areas where Interior could see that a fair return was achieved for public resources used for private purposes?

OIG Response
In addition to issues identified in our audit and evaluation reports pertaining to the Department's energy development, energy production and royalty collection programs, the OIG has identified other opportunities for enhanced revenue collection:

- Our report, *"Department of the Interior's Management of Land Boundaries" (Report No. C-IN-MOA-0001-2009),* issued July 2010, identified opportunities to collect additional revenue by identifying unauthorized uses. We recommended BLM explore opportunities to retain a portion of revenues collected as a result of these surveys. A follow up review that is ongoing explores opportunities for BLM to collect additional revenues for Rights of Way.

- Additionally, opportunities exist to collect additional revenue by identifying unreported sub-leases at communication sites. BLM has reported collecting $2 for every $1 spent on these audits.

We are also currently evaluating the efficiency of processes in ONRR's Office of Enforcement and their effectiveness in obtaining timely compliance when lessees are found to be in violation of lease terms or regulations, including those that relate to revenue collection.

Moran Q32
I understand that the IG has pursued a number of civil fraud cases within the Department. Some other departments have authority for the IG to retain a small portion of civil case penalties and

restitution, to be used for future IG investigations. Has this been considered at Interior?

OIG Response
Between 1998 and 2007, the Office of Inspector General jointly conducted royalty management investigations with the U.S. Department of Justice, resulting in the recovery of nearly $700 million from 25 U.S. companies operating oil, natural gas, coal and other activities on federal and Indian lands. Since 2007, millions of additional dollars have been recovered from cases that were in the pipeline. As the annual collections within the Department increase, opportunities for recovering lost revenue are growing, and expertise in investigating complex civil fraud and *qui tam* cases has become critical.

Over time, resource constraints have prevented OIG from pursuing further civil fraud cases. As a partial solution, OIG has proposed a 1% Fund concept. This concept is already in law and used by the Department of Justice. Section 11013 of Public Law 107-273 provides offsetting collections to a DOJ fund for up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities of DOJ. A similar, 1% Fund, could be established for investigating agencies as an incentive to bring such cases in the future.

Proposed language was submitted to the House Natural Resources Committee at the request of the Chairman for the committee's authorization bill for 2009. The language was inserted, then removed, however, on jurisdictional grounds.

Moran Q33
The IG also has suggested that the fee structures for right-of-way rentals are outdated. Can you think of better ways Interior or the Congress should address this issue in order to incentivize bureaus to get permitting work done, such as for renewable energy?

OIG Response
We currently have an ongoing audit related to ROW fees. The following is drawn from the unpublished report. We will not have any recommendations until a thorough analysis of the program is completed.

We have identified several issues with the BLM right-of-way program. BLM's linear ROW fees are the same, regardless of the value or volume of product carried. For instance, BLM charges the same rates for:

- A small wastewater pipeline
- A large petroleum pipeline
- An electric power line for a single home
- A high voltage power line for an entire city
- A fiber optic cable for high-speed data transmission

The current rates were developed in 1992, prior to the wireless communications revolution. This change in the marketplace resulted in higher ROW fee values, and BLM has acknowledged the need to update the rates.

Moran Q34
I understand that as part of the ARRA program of work, the IG and Interior have worked to suspend and disbar corrupt contractors. How can and should Interior expand its efforts to suspend and disbar bad contractors?

OIG Response
Background

Suspension and Debarment (S&D) are administrative remedies to protect taxpayer dollars against fraud, waste, abuse and poor performance by ensuring the Government does not do business with individuals or organizations that are not "presently responsible," i.e., those who have engaged in criminal or other improper conduct or demonstrate serious past poor performance or a lack of business integrity. Interior's suspension and debarment program currently employs one full-time S&D program manager in its Office of Acquisition and Property Management (PAM). The Interior Suspending and Debarring Official is also the Department's Senior Procurement Executive and Director, PAM. The OIG, staffed by one full-time employee and one term employee, makes suspension and debarment recommendations to PAM.

Progress Achieved

From 2009 to date, the Department has made dramatic progress in responding to IG recommendations for creating an effective suspension and debarment program, including:

- Hiring a dedicated, full-time suspension and debarment program manager, who is highly knowledgeable and experienced;
- Revising the DOI Acquisition Regulation that captured "best practices" recognized by the Interagency Suspension and Debarment Committee (ISDC);
- Providing suspension and debarment training to over 500 contracts and assistance award personnel in conjunction with the OIG Debarment Program Manager;
- Issuing a Policy Release, instructing contracting officials to refer all final terminations for default or for cause to the OIG for evaluation and potential referral S&D;
- Issuing a Policy Release, interpreting the Federal Acquisition Regulation so that contracting officers consult the Excluded Party List System "immediately prior to award" to ensure awards are not mistakenly make to excluded companies and individuals;
- Developing and implementing enhanced program practices and procedures for case initiation and resolution and creating an electronic S&D case management tracking system;
- Actively participating in the ISDC monthly suspension and debarment meetings and work group activities; and
- Actively participating in the Federal Awardee Integrity Information System (FAPIIS) requirements development.

Since February 2009, the OIG has submitted referrals to the SDO, resulting in the issuance 88 suspension or debarment notices against individuals and companies. In addition, the SDO executed comprehensive administrative agreements with two companies to protect the Department's procurement and non-procurement programs, while offering an opportunity for companies to rehabilitate, continue to receive Federal government awards, and preserve the jobs of over 700 American workers. Award recipients are required by section 1512 of ARRA to report quarterly as a condition of the receipt of funds. The OIG and the Department have taken appropriate actions to address the lack of integrity involved in repeated failure to comply with ARRA requirements, resulting in four recent debarment actions.

How Interior Can and Should Expand its Suspension and Debarment Efforts

The Department takes the view that oil and gas leases, including those granted for the Outer Continental Shelf (OCS) as well as those for onshore, are considered "covered transactions" and therefore are subject to the non-procurement suspension and debarment rules under 2 C.F.R. § 180, as adopted by the Department at 2 C.F.R. § 1400. The OIG intends to increase the number of conviction-based and complex fact-based recommendations to the SDO. It is also anticipated that OIG will significantly increase the number of recommendations to the SDO for the suspension and debarment of companies that have been granted leases to drill for oil and gas in the OCS and onshore, where there is evidence of serious misconduct. The anticipated, increased workload will require the allocation and expenditure of additional resources dedicated to suspension and debarment efforts.

Continued access to the data analysis resources developed by the Recovery Accountability and Transparency Board's Recovery Operations Center will promote accountability and facilitate agencies' S&D efforts. In addition, Interior should continue to expand its suspension and debarment efforts by continuing to train acquisition and financial assistance personnel in coordination with the OIG Debarment Program Manager. In addition, the OIG should continue to actively participate in the Council of the Inspectors General on Integrity and Efficiency (CIGIE) suspension and debarment working group, as well as participate in the American Bar Association suspension and debarment committee and other organizations to inform the public, state, local and tribal governments and to enhance compliance programs.

Moran Q35
Is the IG office involved with helping Interior to prevent fraud, waste and abuse? What can be done to enhance your joint efforts to stop management problems before they occur?

OIG Response
The OIG adopted fraud prevention as one of our strategic objectives, in recognition of the importance to prevent fraud, waste, and mismanagement in Department programs. We assist and educate the Department in minimizing these risks, as well as on identifying vulnerabilities of fraud, waste, and mismanagement in high-risk programs and assisting improvements to address such causes. To that end, we assist the Department through fraud awareness and technical assistance presentations; Davis-Bacon and Related Acts compliance training; audits; critical point evaluations; investigations; suspension and debarment referrals; collaboration with the

Department and external partners such as the Recovery Accountability and Transparency Board; and ongoing, weekly meetings with senior Department officials.

For example, in furtherance of our oversight of Recovery Act expenditures, the OIG provided 215 training sessions, educating over 13,000 individuals, and conducted 15 outreach sessions to meet the needs of Insular Area governments, tribal organizations, and recipients. Currently, the OIG regularly presents fraud prevention and awareness training to Departmental acquisition officials as part of their initial and continuing education requirements.

Finally, we encourage the public and Department employees to report fraud, waste and mismanagement through the OIG Hotline operations.

We believe the following steps will further enhance existing joint efforts to address management problems before they occur:

- Continue implementation of the Department-wide Financial and Business Management System (FBMS) to allow the Department to realize the benefits of integrated real-time data, including acquisition and financial assistance accounting;
- Continue training and outreach sessions with Department staff, private contractors and recipients regarding fraud prevention;
- Continue our quality assurance reviews of Single Audit reports and identify with the Department requirements for technical assistance and program guidance to recipients on recurring Single Audit issues;
- Enhanced data mining and predictive analysis capacity; and
- Continue Secretary-level attention and commitment, with emphasis on the reduction of waste, fraud, abuse and mismanagement regarding acquisitions and financial assistance awards.

The OIG's Energy Investigations Unit provides fraud awareness briefings to Interior, state and tribal personnel involved in the Department's energy development, energy production and royalty collection programs. The briefings have been provided at BLM State Office Oil & Gas Conferences, a BLM law enforcement conference, a then-MMS offshore inspectors' conference, State and Tribal Royalty Audit Committee meetings and at training for ONRR personnel. The presentations include discussion of fraud, types of fraud, reporting suspected fraud, and ethics requirements pertaining to gifts and gratuities. OIG auditors who are routinely assigned audits or evaluations pertaining to the Department's energy programs have participated in some of the briefings.

Tom Cole

Based on our work to date we are unable to answer this series of questions. We believe these questions are best addressed by the Department.

Cole Q1
In your testimony, you do not mention the mismanagement of trust accounts that led to the *Cobell* case. Have those problems been fixed?

Cole Q2
Other than addressing lax oversight of measuring oil and gas production from public lands how can revenue collection on extracted resources be improved?

Cole Q3
Was delay in new permitting for shallow water production thoroughly considered before the change from MMS to BOEMRE was hastily implemented?

Cole Q4
How has the *Cobell* case impaired the development of IT security? Are there lingering problems?

Cole Q5
How long does it take to clear new hires for full IT access at the Department? Does this pose a challenge to managing programs and resources?

Cole Q6
How have the renovations at Interior headquarters building challenged agency management?

Jeff Flake

Flake Q1
The testimony of Ms. Kendall noted that financial assistance awards, grants, and loans - as opposed to funds spent through a procurement process - provided by the Department cost roughly $3-4 billion annually. Despite this being a sizable chunk of the Department's annual funding, she noted a disturbing lack of a "consistent method for recording and reporting these transactions," including the lack of a formal protest procedure and long-term issues with post-award monitoring procedures. With a moratorium on earmarks, there will be greater emphasis on competitive grant programs and other financial assistance awards at the agency level.

QUESTION: To what does the Office of Inspector General or the Government Accountability Office attribute these persistent issues related to ensuring that taxpayer dollars are not wasted: a previous emphasis on earmarks that were not the priority of the agency, a lack of technical proficiency, a lack of resources, or some other reason?

OIG Response
We note as a factor that the Department does not have a consolidated database to track financial assistance awards and is in the process of transitioning to a Department-wide Financial and Business Management System (FBMS). Currently, the Department must rely upon bureau-specific accounting methods that are often manual procedures to obtain information on financial assistance awards, grants, cooperative agreements, and loans.

We believe several factors adversely affect the Federal Government's ability to monitor financial assistance programs. Among those factors are:

- The "Common Rule," as incorporated in Title 2 of the Code of Federal Regulations and governing financial assistance, is not sufficiently comprehensive and provides limited guidance to Federal agencies on proper monitoring;
- OPM has not established qualification standards and training requirements for the grants management series, 1109s, as they have for the 1102 contract specialist series;
- Financial assistance awardees do not necessarily go through rigorous, sophisticated reviews of financial management controls or procurement system reviews;
- The transparency required for Recovery Act awards is not applicable to other financial assistance programs;
- Resources are not allocated to financial assistance monitoring consistent with those expended for contract monitoring; and
- Less opportunity to verify that funds are used to benefit tribes under Public Law 93-638 contracts, in the same manner as Recovery Act expenditures, due to limitations on the Government's authority and ability to review and question those expenditures and Single Audit Act report findings.

Flake Q2
Please provide examples of where the lack of effective financial monitoring has led to taxpayer dollars ending up where they were not intended. Are there programs that are worse than others when it comes to these issues?

OIG Response
In general, tribes are advanced 100% of their Public Law 93-638 funds, which increases the inherent risks in monitoring compliance with applicable laws, regulations and award provisions. The Tribally Controlled Schools Act requires each grantee to provide an annual financial audit conducted pursuant to the Single Audit Act of 1984, as amended. Pursuant to 25 U.S.C. § 450j-1(f), any finding of disallowance of costs identified in a Single Act audit must be issued within 365 days of the date an audit report was received by the Secretary of the Interior. In February 2011, the U.S. Civilian Board of Contract Appeals upheld the Department's claim that it was entitled to recover grant funds from a tribe which the Department provided for use in Fiscal Year 2006, but which were used to cover deficits that had occurred in prior years. The Department was unable to enforce a claim for the inappropriate use of funds in a separate year because the Department's collection action was initiated too late.

Lack of effective program monitoring can also lead to dollars ending up where they were not intended. In our 2007 report, titled "*Proper Use of Cooperative Agreements Could Improve Interior's Initiatives for Collaborative Partnerships,*" we reported that, under the guise of forming partnerships, bureaus extensively used cooperative agreements as a procurement tool to hire employees, perform maintenance work, and build infrastructure that directly benefited their own missions. In these cooperative agreements, the non-federal parties and Interior bureaus did not work together as partners to accomplish a mutual goal that benefited the public.

Rather, the non-federal parties functioned solely as contractors or brokers to provide or acquire services for the Government. As such, they contributed little or none of their own resources. The use of cooperative agreements in this way did not foster effective partnerships that leveraged federal dollars in accomplishing Interior's goals.

As an example, we noted in our report that the U.S. Geological Survey (USGS) used a university over a four-year period to pay 28 full-time contractors ($2 million annually) for work on USGS research projects. Contrary to the original intent of the agreement to establish a partnership between the university and USGS for joint research, the contractors worked solely for a USGS center, some for as long as 7 years. In another example, BLM used a cooperative agreement with a non-profit for five years to hire hundreds of temporary employees to work for up to 2 years at various BLM offices at a cost of $15 million. In that particular situation, BLM violated the Federal Acquisition Regulation, which specifically prohibits agencies from awarding personal services contracts unless specifically authorized by the statute to do so.

The Department's Office of the Solicitor issued a *Partnership Legal Primer* in September 2004, and the Department created a Web site that addresses frequently asked questions about legal authorities affecting Federal partnerships, partnership tools and guidance at

http://www.doi.gov/partnerships/partnership_legal_framework.html. Nonetheless, vigilant monitoring is essential to the proper management of financial assistance awards.

More recently, we reviewed the initial obligation of Recovery funds under a Public Law 93-638 contract for an expansion project of a road, which was to end directly in front of a casino. Section 1604 of the Recovery Act states, however, that "none of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment...." During our review, the Bureau of Indian Affairs chose to retract the Recovery Act funds for this project, which is now funded by another source.

Flake Q3
Ms. Kendall's testimony noted that the Department has taken some action with grant management that "has yielded some positive results." Could these actions be described and expanded on?

OIG Response
The Department recognized that attention to grants management was critical and initiated actions to increase internal controls over financial assistance awards and management. The Department has hired a Financial Assistance Program Manager and an assistant to oversee the over $3 billion in grants awarded by the Department, its bureaus and offices. Over the past two years, the Department has worked to improve its policies by revising the Departmental Manual, 505 DM 2, entitled *Procurement Contracts, Grants and Cooperative Agreements*. We look forward to the Department finalizing this draft policy as an integral step to increasing the Department's effectiveness in managing and monitoring its financial assistance program. In addition, the Department drafted financial assistance monitoring guidance in collaboration with its bureaus. In May 2010, Department's Office of Insular Affairs issued a Financial Assistance Manual to provide an overview of the financial assistance programs it administers and to familiarize the readers with the applicable regulations, policies and procedures.

Key to appropriate management and oversight of financial assistance matters is to ensure that current federal programs and guidance are implemented appropriately. On November 24, 2009, we published an advisory to the Department identifying concerns about the Department and its bureaus' use of Catalog of Federal Domestic Assistance (CFDA) numbers. In response, the Department has identified and reported 15 separate programs that had not been identified in CFDA, but for which financial assistance awards had been routinely made. Identifying and reporting these categories of transactions is positive first step in gaining greater visibility and control over the Department's financial assistance program and financial assistance opportunities. The Department has limited ability to review financial assistance awards within the bureaus.

As noted previously, the Department is currently converting to a Department-wide Financial and Business Management System (FBMS). While the Department has encountered challenges in transitioning to FBMS, the ultimate implementation of FBMS should allow the Department to realize the benefits of integrated real-time data, including acquisition and financial assistance accounting.

Flake Q4
The Department has provided guidance on "the expectation for monitoring activity," and Ms. Kendall's testimony noted that she is "hopeful" that the bureaus will adhere to it. How likely is it that they will? Are there hurdles to the implementation of the expected monitoring activity?

OIG Response
The Department revised a policy manual provision 505 DM 2, titled *Procurement Contracts, Grants and Cooperative Agreements*, in part to address concerns with the monitoring and management of financial assistance programs. In addition, the Department issued draft guidance on monitoring financial assistance awards. We look forward to the completion of the final policy and monitoring guidance. While we are not able at this time to measure anticipated bureau adherence with the policy and guidance procedures, we note that the bureaus were afforded an opportunity to comment and revisions have been made in response to bureau comments.

The Department does not have a consistent method for recording and reporting financial assistance transactions. The Federal Funding Accountability and Transparency Act of 2006 requires awarding agencies to report financial assistance transactions for disclosure to the public through usaspending.org, an open Web site. The Department points to a variety of reasons why they do not have reliable visibility over financial assistance spending, which results in non-compliant reporting in accordance with the Act. The reasons include the pace of transition to the FBMS and bureau-specific accounting methods that are often manual procedures. Generally, there is not the same level of emphasis in policy or practice for overseeing financial assistance awards in the Department, as there is for procurement awards.

Across the Federal Government, agencies face similar hurdles with regard to the monitoring and management of financial assistance activities. Unlike procurement awards, financial assistance awards are not subject to appeal. Thus, the relative absence of complaints from the recipient community regarding unfair selection and award criteria does not promote greater accountability and transparency in the process.

Post-award monitoring procedures are where the problems are known to prevail. While suspension and debarment has been used as an important administrative tool by the Department to protect it from financial assistance recipients with a demonstrated lack of responsibility, increased monitoring activities addressed in recent revisions to policy and guidance is necessary to ensure funding is applied for the intended purposes.

Flake Q5
Does the Government Accountability Office view the lack of effective monitoring of billions of taxpayer dollars in financial assistance as a management challenge for the agency? Has the Government Accountability Office investigated these issues relative to Department of Interior's financial assistance awards to date?

OIG Response
This question appears to be addressed to GAO.

Flake Q6
Please recommend any means by which Congress can assist in ensuring that the financial assistance awards that the agency provides are used for their intended purpose and adequately monitored for waste, fraud, and abuse.

OIG Response
The American Recovery and Reinvestment Act of 2009 mandated new initiatives to promote accountability and transparency in the obligation and expenditure of Federal funds, including required recipient and sub recipient reporting and Inspector General authority to access records and conduct interviews with employees of all tiers of contractors and grantees receiving Recovery Act funds. Application of these important requirements to all financial assistance awards would help to protect and promote the integrity of financial assistance programs. Specifically, we recommend:

- Continued data mining and predictive analysis services, which are currently provided by the Recovery Operations Center of the Recovery Accountability and Transparency Board;
- Continued requirements for transparent reporting by recipients through a mechanism such as Recovery.gov and the continued extension of this reporting requirement to sub-tiers of contractors and grantees;
- Continued OIG access to records at all levels (e.g. prime contractors, financial assistance recipients, sub-recipients and subcontractors), including tribal entities; and
- Integration of financial assistance actions into the Federal Procurement Data System-Next Generation, rather than reporting through grants.gov, for a single point of information on the Web for all acquisition and financial assistance-related activities.

WEDNESDAY, MARCH 2, 2011.

MAJOR MANAGEMENT CHALLENGES AT THE ENVIRONMENTAL PROTECTION AGENCY

WITNESSES

DAVID TRIMBLE, GAO ACTING DIRECTOR, NATURAL RESOURCES & ENVIRONMENT

ARTHUR A. ELKINS JR., INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY

WADE NAJJUM, ASSISTANT INSPECTOR GENERAL FOR PROGRAM EVALUATION, OFFICE OF INSPECTOR GENERAL

OPENING REMARKS OF CHAIRMAN SIMPSON

Mr. SIMPSON. Good morning, and welcome to our second oversight hearing this week. Today we plan to discuss Major Management Challenges at the Environmental Protection Agency. The Government Accountability Office and the EPA Inspector General have identified a number of barriers to effective implementation of EPA's mission and responsibilities through past audits, investigations, and evaluations. These barriers can be either self-imposed, internal constraints such as work force management that the agency may have the ability to address, or they may prove to be external challenges outside of the control of the agency, including one area that I have long had questions about, the lack of a government-wide coordinated effort and approach to climate change.

We welcome the testimony from the GAO and EPA Inspector General today and look forward to an honest conversation about their findings and the next steps that either the EPA or the Congress should take in order to address these shortcomings.

Mr. SIMPSON. I am pleased to be joined by our Ranking Member, Mr. Moran. Would you like to have your opening statement?

OPENING REMARKS OF MR. MORAN

Mr. MORAN. Fine, Mr. Chairman. I will just say a couple words.

First of all, when several of the members of the subcommittee get up and leave, do not think or do not wonder if was it something I said because it is just I know Mr. Cole is on and I think Mr. Calvert, we have got Secretary Gates at Defense Approps, so we are going to have to leave at quarter to ten or so.

But we very much appreciate this, and speaking for the minority in this subcommittee, we particularly appreciate Chairman Simpson's focus on the management challenges in these agencies. You know, they may draw quite as well, although we have got good attendance today, but they are not as sexy, but they are at least as important issues, and we are so dependent upon the credibility of the Inspector General's Office and the General Accountability Office.

So this is terribly important and what we are going to hear about, and I have had an opportunity to go through the statements, so I am just going to take a couple of minutes because I want to ask some questions, if you do not mind, Mr. Chairman, but these challenges that the Environmental Protection Agency confronts from water and waste water infrastructure, greenhouse gases, climate change, and so on and the regulation of chemicals that are used by Americans every day, they are enormous challenges, but what comes out from your testimony, and this is what the Chairman alluded to, EPA cannot fix it on its own. There has got to be an integrated collaborative strategy.

And I have to say past administrators at times have ignored and delayed action until the lawsuits and court orders to implement legislation, and those court orders still exist today, and they are still going to be in place regardless of what we do in terms of providing federal resources.

But there has been too much stove-piping of policies, and some of that is the Congress's fault in terms of the separate authorizations. Now, we have been focusing through the continuing resolution on de-funding some of the EPA responsibilities, but the legal responsibility nevertheless stays even if the Federal Government does not have the resources.

I am particularly concerned about the Toxic Substance Control Act because right here in the Washington area we are seeing it in the fish and the Potomac River and other things that there seems to be a real need to regulate the disrupting effects of these chemicals, but we are not sure how to do that, and EPA certainly cannot do it on its own.

But we also lack this national approach with regard to infrastructure needs, and I know the IG's report is particularly good on the issue of controlling non-point sources of pollution. The storm runoff, for example. But it is extraordinarily expensive, and now we are not going to have as much in the way of resources through the Clean Water State Revolving Fund and the Safe Drinking Water State Revolving Fund. So this is very relevant to the policy decisions we are making with regard to bringing about the kind of clean water that our citizens except and take for granted really.

So this is a terribly important hearing, and again, I will end where I started, Mr. Chairman. I very much thank you for holding it. So thank you.

Mr. SIMPSON. Thank you, and I also just want to emphasize what Jim said. It is tough because we all have different committees we have to serve on. I have Admiral Donald up in the Energy and Water Subcommittee that I have got to slip out and ask questions to, though we will have somebody here, but believe me, we do read your testimony and the recommendations and problems that you bring up, but we want to hear from you, and the subcommittee is allocating 15 minutes each to the GAO and the IG witnesses so they can adequately outline their concerns to the members, after which we will follow with members' questions.

We will first hear from Mr. David Trimble, Acting Director of the National Resources and Environment Group at the GAO. Mr. Trimble will be followed by Mr. Arthur Elkins Jr., the EPA Inspec-

tor General. I thank both of you for being here today. Please share your thoughts with us.

TESTIMONY OF DAVID TRIMBLE

Mr. TRIMBLE. Thank you, Mr. Chairman and members of the committee. I am pleased to be here to discuss GAO's work on key management challenges facing the Environmental Protection Agency as it implements and enforces laws intending to improve the quality of the Nation's air, water, and lands and protect public health.

Our work examines the full range of EPA's programs, and we have made numerous recommendations to enhance the agency's effectiveness. These recommendations have frequently targeted a lack of information necessary to make regulatory decisions, challenges with the agency's management across headquarters and ten regional offices, and the need for enhanced internal and external coordination. My statement touches on five key challenges beginning with improving agency-wide management.

First, EPA has not comprehensively analyzed its workload and workforce since the late 1980s to determine the optimal numbers and distribution of staff agency wide. We have recommended that EPA identify the factors driving its workload and develop accurate allocation systems for deploying staff with the right skills and capabilities to areas of need.

In 2005, we reported that any efforts made by the agency to develop a more systematic process will be hampered by the lack of comprehensive and accurate workload data. In 2010, we reported that the agency still had not developed a comprehensive workload plan and that the only recent workload analysis conducted was limited to the Superfund Program.

We have also identified challenges with managing its enforcement of environmental statutes and regulations and problems with incomplete and unreliable enforcement data. In sum, EPA could improve its oversight of state enforcement agencies and its regional offices and better inform the public about state enforcement efforts.

Additionally, coordination on efforts such as the Chesapeake Bay Program and Water Infrastructure Projects in the border region with Mexico also needs improvement. In 2009, we reported that EPA and six federal agencies obligated $1.4 billion for drinking water and waste water projects in the U.S., Mexico border region from 2000, to 2008. We found that with only one exception the agencies had not comprehensively assessed the region's needs and lacked coordinated policies and processes for selecting and building projects, potentially resulting in programmatic and budgetary inefficiencies.

In 2008, we reported that while the Chesapeake Bay Program had developed a strategic framework for the restoration effort, it had not developed a coordinated implementation strategy for restoring the bay that identified the activities needed to reach its goals, resources needed to undertake the activities, or the partners who would be responsible for funding and carrying out the activities. We currently have work ongoing to assess the bay restoration effort at this time, and we are evaluating the steps EPA has taken

since our report to improve the coordination with bay program partners.

A second set of challenges involves the need to transform EPA's process for assessing and controlling toxic chemicals. EPA's ability to effectively implement its mission of protecting public health and the environment depends on credible and timely assessments of the risks posed by toxic chemicals. EPA assesses chemicals under its Integrated Risk Information System Program, IRIS, and is authorized under the Toxic Substances Control Act, TSCA, to obtain information on the risks of chemicals and to control those it determines pose an unreasonable risk.

Because EPA had not developed sufficient information under these programs to limit public exposure to chemicals that may pose health concerns, we added this issue to our high-risk list in 2009. Last month GAO updated its high-risk series and reaffirmed this as a continuing area of concern.

Let me illustrate, if I could, the scope of the challenge in the IRIS Program. We reported in 2008 that of the 70 IRIS assessments in progress at that time 48 had been in progress for more than 5 years and 12 of those for more than 9 years, and most of these were still in the draft development stage. In addition, we reported that EPA indicated that about half of the chemical assessments in the database may potentially need to be updated.

Third, EPA faces challenges concerning its management of a variety of clean water issues involving non-point sources of pollution such as urban and agricultural runoff as well as restoring large watersheds such as the Chesapeake Bay.

Additionally, there is a challenge posed by the cost of repairing and upgrading the Nation's deteriorating water infrastructure. EPA finances infrastructure investments through the Clean Water and Drinking Water State Revolving Funds. These funds represent two of the largest items in the EPA's budget, $2.1 billion for Clean Water and $1.4 billion for Drinking Water in 2010. These funds also received $6 billion in Recovery Act funding.

However, as estimates predict that the cost to meet water infrastructure needs over the next 20 years will total from $485 billion to $1.2 trillion, additional federal, state, or local funds or revenue from rate increases will still be required to address future needs.

Fourth, our work on the cost and pace of cleanup at Superfund and other hazardous waste sites has found that despite progress in cleaning up these sites, EPA's future cleanup costs at non-federal priority-listed sites will likely be substantial and are likely to exceed current funding levels. Incomplete and inaccurate data hinder estimation of the amount of work remaining, as well as future cleanup costs at such sites.

Key obstacles such as the absence of interagency agreements have delayed cleanups at some priority sites at Department of Defense installations. We have recommended that EPA assess comprehensiveness and reliability of the data the agency collects on the Superfund Program and make necessary improvements.

Finally, the fifth set of challenges involves the agency's role in addressing climate change. While our past work in this area has addressed various issues concerning others' experiences with cap and trade programs and technical issues such as carbon capture

and storage, the fundamental challenge facing EPA concerns the agency's efforts to decrease greenhouse gas emissions under the Clean Air Act.

These efforts have led to an array of legal challenges and uncertainty about prospects for further regulation. In 2009, EPA found that emissions from motor vehicles were endangering public health and welfare. This endangerment finding is the basis for EPA's efforts to limit greenhouse gases under the Act. Twenty-six lawsuits challenging this finding have been filed and will be heard together by a panel of judges.

In addition, EPA has issued a rule for greenhouse gas emissions from light-duty motor vehicles and additional rules for certain stationary sources have also been challenged in court.

Furthermore, five bills that would preclude EPA from regulating greenhouse gases have been introduced in this Congress. As a result, EPA's efforts to address greenhouse gases face substantial obstacles and uncertainty going forward.

This concludes my prepared statement. I would be pleased to respond to any questions you all may have.

[The statement of David C. Trimble follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, U.S. House of Representatives

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ENVIRONMENTAL PROTECTION AGENCY

Major Management Challenges

Statement of David C. Trimble, Acting Director
Natural Resources and Environment Team

GAO-11-422T

GAO

Highlights

March 2, 2011

ENVIRONMENTAL PROTECTION AGENCY

Major Management Challenges

Why GAO Did This Study

What GAO Recommends

What GAO Found

On the basis of recent GAO work, key management challenges facing EPA include the following:

- *Improving agencywide management.* EPA has struggled for years to deploy its staff efficiently and in a manner that would do the most good. It has also sought to improve the reliability of its environmental enforcement and other program data, as well as its coordination among EPA offices and with other agencies to improve efficiency and leverage limited resources. Generally, the agency's initiatives in these areas have yet to achieve their intended goals. In this connection, GAO is currently examining the extent to which EPA is taking a coordinated approach in managing its laboratories.
- *Transforming EPA's processes for assessing and controlling toxic chemicals.* EPA has yet to develop sufficient chemical assessment information for limiting public exposure to many chemicals that may pose substantial health risks. As a consequence, GAO in February 2011 reaffirmed the need to transform EPA's process for assessing and controlling toxic chemicals by continuing it as one if GAO's "high-risk" areas warranting increased attention by Congress and the executive branch.
- *Reducing pollution in the nation's waters.* Among the nation's most pressing water quality problems with which EPA and other stakeholders struggle are the contributions of diffuse, or "nonpoint," sources of pollution and the challenges posed by deterioration in the nation's premier watersheds, such as the Chesapeake Bay and Great Lakes. Multibillion-dollar liabilities associated with replacing and upgrading the nation's aging water infrastructure are a looming issue that, if not sufficiently addressed, will impact water quality.
- *Addressing the cost and pace of cleanup at Superfund and other hazardous waste sites.* EPA's Superfund program is intended to ensure the cleanup of hazardous waste sites on both private and public lands. Nonetheless, 30 years after the program began, GAO found that cleanup costs for remaining hazardous waste sites will not only be substantial, but that problems with the accuracy and completeness of data on the amount of remaining cleanup work prevent EPA from reliably estimating these costs.
- *Addressing the agency's emerging role in climate change issues.* As a highly interdisciplinary issue, climate change poses management challenges for the federal government at large. For EPA, particular climate change-related challenges pertain to the legal and administrative barriers facing the agency in its ongoing efforts to reduce carbon emissions, its difficulties in coordinating activities involving numerous other agencies and other levels of government, and its efforts to account for and manage data on greenhouse gas emissions.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss management challenges facing the Environmental Protection Agency (EPA). These challenges are made all the more important by increased demand for improved government performance and responsiveness, as well as greater accountability. EPA operates in a highly complex and controversial regulatory arena, and its policies and programs affect virtually all segments of the economy, society, and government.

As you know, EPA's responsibilities are carried out under a complex array of environmental laws, including the Clean Air and Clean Water acts, the Toxic Substances Control Act (TSCA), and others. The legal framework within which the agency operates is also shaped by numerous court orders resulting from lawsuits that have been filed over the years by states, concerned citizens, special interest groups, and others. Structurally, EPA comprises headquarters offices largely aligned with its primary authorizing statutes and 10 regional offices that help to implement these statutes across the country. The regional offices possess considerable autonomy, which has sometimes led to questions and concerns about variation from region to region in enforcement and other aspects of program delivery. The agency's budget, while rising in nominal terms from $7.8 billion for fiscal year 2000 to $10.4 billion for fiscal year 2010, has remained relatively flat in real terms.[1] EPA's fiscal year 2010 budget included about $1.1 billion for clean air and climate change, $4.9 billion for clean water (which includes federal funding for both the Clean Water and Drinking Water state revolving funds), and $1.8 billion for land restoration.[2]

My testimony today updates our 2009 report on EPA's management challenges[3] and is drawn largely from our work over the last several years (see Related GAO Products at the end of tbis statement). Many of these reports included recommendations intended to improve EPA's programs by enhancing the information it uses to manage its programs and

[1]In real terms, using 2011 dollars, EPA's budget equated to $9.9 billion in fiscal year 2000 and $10.4 billion in fiscal year 2010.

[2]EPA's 2011 budget is uncertain, given that the federal government is operating under a continuing resolution set to expire on March 4, 2011.

[3]GAO, *Environmental Protection Agency: Major Management Challenges*, GAO-09-434 (Washington, D.C.: Mar. 4, 2009).

strengthening internal controls.[4] EPA has generally concurred with our recommendations and has taken steps to implement some of them. I will highlight some notable issues arising from our recent work. Some are long-standing issues involving the agency's core programs; others are emerging challenges for which we believe the agency will need to become better prepared. With this in mind, I would like to focus my remarks today on the need to (1) improve key aspects of the agency's overall management, (2) transform EPA's processes for assessing and controlling toxic chemicals, (3) reduce pollution in the nation's waters, (4) address the cost and pace of cleanup at Superfund and other hazardous waste sites, and (5) address the agency's emerging role in climate change issues.

Improving Agencywide Management

EPA's size, geographical dispersion, reliance on its partnership with state and local governments, and broad and complex mission all combine to make management of the agency a formidable challenge. Our recent work has identified several particular management challenges at EPA, including the need to address workload and workforce planning, to ensure consistent environmental enforcement and compliance data, and to better coordinate with other agencies to more effectively leverage limited resources.

Addressing Workload and Workforce Planning Needs

EPA has struggled for years to identify its human resource needs and to deploy its staff throughout the agency in a manner that would do the most good. In 2008, we reported that rather than establishing a process for budgeting and allocating human resources that fully considers the agency's current workload, EPA makes requests for funding and staffing by making incremental adjustments, largely based on historical precedent.[5] We noted that the agency has not comprehensively analyzed its workload and workforce since the late 1980s to determine the optimal numbers and distribution of staff agencywide. Moreover, EPA's human capital

[4]We conducted our work in accordance with all sections of GAO's Quality Assurance Framework that were relevant to the objectives of each engagement. The framework requires that we plan and perform each engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analyses conducted, provided a reasonable basis for the findings and conclusions in each report.

[5]GAO, *EPA's Execution of Its Fiscal Year 2007 New Budget Authority for the Enforcement and Compliance Assurance Program in the Regional Offices*, GAO-08-1109R (Washington, D.C.: Sept. 26, 2008).

management systems have not kept pace with changing legislative requirements and priorities, changes in environmental conditions in different regions of the country, and the much more active role that states now play in carrying out day-to-day-activities of federal environmental programs.

To remedy its piecemeal methods for determining workload and staff allocation, we recommended that EPA improve its workforce planning by identifying the factors driving its workload and developing more accurate allocation systems for deploying staff with the reqnisite skills and capabilities to areas where they are most needed. The agency has taken some recent steps to improve its workforce planning. For example, in 2009 it hired a contractor to provide information about the agency's workload in several key areas, such as staffing levels and workload shifts. In addition, the agency asked one of its advisory councils to help developing its next strategic workforce plan to supersede the last plan established in 2006, which delegated responsibilities to the various offices. We have not evaluated whether EPA has made meaningful progress in these efforts.

Ensuring Consistent Environmental Enforcement and Compliance Data

EPA has authorized states to carry out many of the day-to-day responsibilities for timely and appropriate enforcement of environmental laws and regulations. We have noted instances in the past where EPA has not (1) identified the causes of poorly performing state enforcement programs, (2) informed the public about how well the states are implementing their enforcement responsibilities, or (3) assessed the performance of EPA's regional offices in carrying out their state oversight responsibilities—performance that has generally proven to be inconsistent over the years.[6]

EPA has been slow to improve long-standing problems with often incomplete and unreliable enforcement data. Among other things, enforcement data are needed to accurately identify and characterize regulated entities to improve the transparency and accuracy of the agency's reports to Congress and the public when reporting on the effectiveness of the enforcement programs. Furthermore, we have reported problems in how EPA calculates and reports on measures of program effectiveness, such as penalties, the value of injunctive relief, and

[6]For example, see GAO, *Clean Water Act: Longstanding Issues Impact EPA's and States' Enforcement Efforts*, GAO-10-165T (Washington, D.C.: Oct. 15, 2009).

any resulting reduction in pollution.[7] These problems may undermine the transparency and accuracy of EPA's reported outcomes and cause the agency to either over- or underreport its enforcement achievements.

In recent years, we have recommended ways for EPA to enhance its oversight of regional and state enforcement activities so as to implement environmental programs consistent with the requirements of federal statutes and regulations. In particular, we recommended that EPA develop an action plan for addressing enforcement problems identified in state programs; ensure that states have sufficient resources to implement and enforce programs as authorized by EPA; and help the states improve their capacity for enforcement.[8] We also suggested that EPA (1) routinely assess the performance of regional and state enforcement programs and communicate the results of these assessments to the public and the regulated industry and (2) disclose more information when reporting penalties and estimates of the value of injunctive relief and pollution reduction.[9]

EPA has generally agreed with our recommendations and is in the process of implementing them. In particular, the agency has developed an initiative known as the State Review Framework that it believes will (1) address many of the long-term problems related to providing fair, consistent, and transparent enforcement throughout the country and (2) obtain accurate data that can be used to determine the extent of state compliance with enforcement standards and the need for corrective actions. Still, implementation of the framework is clearly a work in progress. During its fiscal year 2008 evaluation of the framework, for example, EPA identified significant noncompliance with water permitting requirements and an unacceptably low level of enforcement activity. In response, in 2009 the agency issued its Clean Water Act Enforcement Action Plan, which described efforts to (1) raise the bar for EPA and state enforcement performance; (2) inform the public clearly and fully about serious Clean Water Act violations and actions to address them; and (3) use the latest

[7]GAO, *Environmental Enforcement: EPA Needs to Improve the Accuracy and Transparency of Measures Used to Report on Program Effectiveness*, GAO-08-1111R (Washington, D.C.: Sept. 18, 2008).

[8]GAO, *Environmental Protection: EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancements*, GAO-07-883 (Washington, D.C.: July 31, 2007).

[9]GAO-08-1111R.

technology to transform the collection, use, and availability of EPA data. In addition, EPA now publishes its State Review Framework reports and data on enforcement performance on its Web site and has developed new Web-based tools to help the public search and analyze the performance data.

EPA also stated that it would take actions to disclose more information when reporting estimates of injunctive relief and pollution reductions and consider our recommendation to report collected penalties. For example, in 2010, EPA began reporting penalties in a manner that clearly indicates that penalties are reported as assessed, rather than as collected, and began properly presenting time-series data that are adjusted for inflation. Overall, the agency's efforts in this area are still in their early stages, and their success is uncertain. Much will depend on the continued commitment of senior management, along with sufficient priority and resources.

Coordinating with Other Agencies to More Effectively Leverage Limited Resources

EPA relies on other federal and state agencies to help implement its programs. Given the federal deficit and the government's long-term fiscal challenges, it is imperative that EPA improve coordination with its federal and state partners to reduce administrative burdens, redundant activities, and inefficient uses of federal resources. For example, EPA and other federal agencies may work together to fund water infrastructure projects.[10] In 2009, we reported that EPA and six federal agencies obligated $1.4 billion for drinking water and wastewater projects to assist communities in the U.S.-Mexico border region from fiscal years 2000 through 2008.[11] Nevertheless, we found that the agencies' efforts to fund these projects were ineffective because the agencies, with the exception of the Indian Health Service, had not comprehensively assessed the region's needs and lacked coordinated policies and processes for selecting and building projects. As a result, we suggested that Congress may wish to consider establishing an interagency task force to develop a plan for coordinating funding to address the region's most pressing needs.

[10]The agencies are the Department of Agriculture; the Department of Housing and Urban Development; the U.S. Army Corps of Engineers; the Economic Development Administration in the Department of Commerce; the Indian Health Service within the Department of Health and Human Services; and the Bureau of Reclamation, within the Department of the Interior.

[11]GAO, *Rural Water Infrastructure: Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region*, GAO-10-126 (Washington, D.C.: Dec. 18, 2009).

In addition to funding water infrastructure projects, EPA has coordinated with numerous federal and state agencies as the lead agency in a multi-billion dollar effort to restore the Chesapeake Bay. We found, however, that key commitments and plans were inconsistent with one another, and some were viewed to be unachievable by some partners. We found, however, that key commitments and plans were inconsistent with one another, and some were viewed to be unachievable by some partners. In 2008, we reported that the Chesapeake Bay Program (a partnership among EPA, several states, and the Chesapeake Bay Commission) had taken several actions in response to our findings, such as developing a strategic framework to unify planning documents and identify how it will pursue its goals. While these actions are positive steps, we found that additional actions are needed before the program has the comprehensive, coordinated implementation strategy we recommended.[12]

Transforming EPA's Processes for Assessing and Controlling Toxic Chemicals

As we reported in March 2009, EPA's ability to effectively implement its mission of protecting public health and the environment depends on credible and timely assessment of the risks posed by toxic chemicals. Such assessments are the cornerstone of scientifically sound environmental decisions, policies, and regulations under a variety of statutes, including TSCA. EPA assesses chemicals under its Integrated Risk Information System (IRIS) program and is authorized under TSCA to obtain information on the risks of chemicals and to control those it determines pose an unreasonable risk. Because EPA had not developed sufficient chemical assessment information under these programs to limit public exposure to many chemicals that may pose substantial health risks, in 2009 we added this issue to our list of areas at high risk for waste, fraud, abuse, and mismanagement or in need of broad-based transformation.[13] In a number of reports, we have also made recommendations to (1) improve

[12]GAO, *Chesapeake Bay Program: Recent Actions Are Positive Steps Toward More Effectively Guiding Restoration Efforts*, GAO-08-1033T (Washington, D.C.: July 30, 2008). In May 2009, the President issued an executive order establishing a Federal Leadership Committee for the Chesapeake Bay to oversee the development and coordination of programs and activities of agencies participating in the protection and restoration of the bay. The committee is chaired by EPA and includes six other federal agencies. Part of the Committee's responsibilities included developing a strategy for coordinated implementation of existing programs and projects to guide efforts to protect and restore the Chesapeake Bay. The resulting strategy was issued in May 2010. We have ongoing work assessing this strategy.

[13]GAO, *High Risk Series: An Update*, GAO-09-271 (Washington, D.C.: Jan. 22, 2009); GAO, *High Risk Series: An Update*, GAO-11-278 (Washington, D.C.: Feb. 16, 2011).

the timeliness and credibility of EPA's IRIS program, which provides EPA's scientific position on the potential human health effects of more than 540 chemicals, and (2) enhance EPA's ability under TSCA to, among other things, obtain health and safety information from the chemical industry. We also recently addressed nanotechnology as an emerging area of toxic substance regulation.

Addressing IRIS' Timeliness, Transparency, and Credibility

EPA's IRIS database provides the basic information the agency needs to determine whether it should establish controls to protect the public from exposure to toxic chemicals in the air, in water, and at hazardous waste sites. In March 2008, we reported that IRIS' viability was at risk because EPA had been unable to complete timely and credible chemical assessments—including those for chemicals of greatest concern, such as formaldehyde and dioxin.[14] Assessments of these two chemicals have been in progress for 13 and 19 years, respectively. In addition, EPA had been unable to decrease its long-standing backlog of ongoing assessments or to keep its existing assessments current.

In May 2009, EPA revised its IRIS assessment process. If implemented effectively, these assessment reforms will be largely responsive to our 2008 recommendations. Among other things, they will restore EPA's control of the process and increase its transparency. Specifically, under the prior process, interagency reviews were required and managed by the Office of Management and Budget, and EPA was not allowed to proceed with assessments at various stages until the office agreed that EPA had sufficiently responded to interagency comments. In contrast, under the reforms, EPA is to manage the entire assessment process, and all written comments on draft assessments provided during the interagency process are to be part of the public record. It is too soon to determine whether the reforms will be effective, but EPA reports it has made some progress in addressing its assessment backlog.[15] We are currently reviewing EPA's implementation of the revised process.

[14]GAO, *Chemical Assessments: Low Productivity and New Interagency Review Process Limit the Usefulness and Credibility of EPA's Integrated Risk Information System*, GAO-08-440 (Washington, D.C.: Mar. 7, 2008).

[15]GAO-08-440.

Addressing EPA's Ability to Obtain Chemical Health and Safety Information

We have also reported that EPA's assessments of industrial chemicals under TSCA provide limited information on health and environmental risks.[16] In contrast to the approach taken by the European Union—which generally places the burden on companies to provide data on the chemicals they produce and to address the risks posed by these chemicals to human health and the environment—TSCA generally places the burden on EPA to obtain information about the roughly 80,000 chemicals in the agency's TSCA inventory. For example, the act requires EPA to demonstrate certain health or environmental risks before it can require companies to further test their chemicals. Consequently, EPA does not routinely assess the risks of the industrial chemicals already in use.[17]

For the approximately 700 new chemicals introduced into commerce annually, chemical companies are required to provide EPA with certain information in premanufacture notices, and EPA can ban or limit the chemicals' use if the information is inadequate. Nevertheless, although 85 percent of the notices lack any health or safety test data, EPA does not often use its authority to obtain more information. After our reports, EPA began taking steps to address some of these issues. For example, under its existing authorities, EPA has initiated actions on such chemicals as mercury and lead to, for example, ban or phase out their use in certain products. Most of these actions are in their early stages of development.

As we reported in our February 2011 *High-Risk Update*, EPA needs to continue to demonstrate a strong commitment to and support of the IRIS program and its TSCA initiatives. Specifically, we stated that EPA needs to ensure that its 2009 IRIS reforms are implemented effectively and that the program can routinely provide timely and credible assessments. Regarding TSCA, we have recommended both statutory and regulatory changes to, among other things, provide EPA with additional authorities to obtain health and safety information from the chemical industry and to shift more of the burden to chemical companies for demonstrating the safety of their

[16]GAO, *Chemical Regulation: Options for Enhancing the Effectiveness of the Toxic Substances Control Act*, GAO-09-428T (Washington, D.C.: Feb. 26, 2009).

[17]GAO-11-278.

chemicals.[18] The EPA Administrator has expressed support for TSCA reforms and in 2010 developed principles for addressing them.

Addressing Nanotechnology as an Emerging TSCA Issue

Finally, one emerging area of toxic substance regulation on which we recently reported, and for which EPA faces challenges, is the area of nanotechnology.[19] Nanotechnology involves the ability to control matter at the scale of a nanometer—one billionth of a meter. The world market for products containing nanomaterials is expected to reach $2.6 trillion by 2015. EPA has taken some regulatory action under TSCA to address potential risks to human health and the environment related to nanotechnology, but other planned actions have not yet gone into effect. Overall, EPA has issued four regulations characterizing the manufacture of four different nanomaterials as significant new uses of existing chemicals under TSCA.

In our May 2010 report, we recommended, among other things, that EPA finalize a number of regulatory actions it had planned to pursue. Specifically, according to EPA, the agency plans to propose a new rule that would regulate, in a single rule, a range of nanoscale versions of existing chemicals as significant new uses of those chemicals. EPA also plans to require companies to provide certain information on nanomaterials—including production volume, methods of manufacture and processing, exposure and release, and available health and safety studies—and plans to require companies to generate test data on the health effects of different nanomaterials. At the time our report was released, EPA reported that it planned to propose these rules by December 2010, but has not yet done so. While EPA continues to work on these rules, however, products may be entering the market without EPA review of available information on their potential risk. In addition, although EPA requires chemical companies to periodically provide certain information on many of the chemicals currently in commerce, it has not extended this requirement to nanomaterials.

[18]GAO, *Chemical Regulation: Options Exist to Improve EPA's Ability to Assess Health Risks and Manage Its Chemical Review Program*, GAO-05-458 (Washington, D.C.: June 13, 2005).

[19]GAO, *Nanotechnology: Nanomaterials Are Widely Used in Commerce, but EPA Faces Challenges in Regulating Risk*, GAO-10-549 (Washington, D. C: May 25, 2010).

Reducing Pollution in the Nation's Waters

The Clean Water Act establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating the quality of surface waters. Since its enactment, much progress has been achieved under the act to control pollution from wastewater treatment plants and other specific "point sources" of discharge. Since that time, however, other challenges have emerged and continue to confront EPA and other levels of government in their efforts to ensure safe and abundant water supplies for the American people. These challenges include (1) the need to focus more attention on diffuse, or "nonpoint," sources of pollution to address the most significant of the nation's remaining water quality problems; (2) the unique challenges posed by deterioration in the nation's premier watersheds including, among others, the Chesapeake Bay and Great Lakes; and (3) daunting challenges posed by the multibillion dollar liabilities associated with replacing, maintaining, and building new water infrastructure.

Controlling Nonpoint Sources of Pollution

The Clean Water Act's effectiveness has become increasingly challenged by a recognition that the largest share of the nation's remaining water quality problems are more decentralized and diffuse in nature—and therefore more difficult to monitor and regulate. One such nonpoint pollution source, for example, is urban storm water runoff. Pollutants and sediment carried by storm water, as well as the volume and temperature of runoff, can alter aquatic habitats and make it hard for fish and other organisms to survive.[20] Polluted storm water runoff can also make fish and shellfish unsafe to eat and can adversely affect people using fresh- and saltwater areas for recreation. In 2007, we reported that while many communities were still implementing their first permits for controlling storm water runoff, several factors influence the extent to which EPA's storm water program burdens a community, such as prior storm water management experience.[21] We recommended that EPA evaluate the implementation of its storm water program, issue additional program guidance, and consider regulatory changes to improve the quality and consistency of activity reporting by communities. EPA agreed with our

[20]Discharges from urban storm water runoff share many of the traits of a diffuse, nonpoint source, but they are technically treated and regulated under the Clean Water Act as a point source.

[21]GAO, *Clean Water: Further Implementation and Better Cost Data Needed to Determine Impact of EPA's Storm Water Program on Communities*, GAO-07-479 (Washington, D.C.: May 31, 2007).

recommendations to develop guidance to help the agency obtain better data to evaluate the program and provided additional program guidance to states and regions on such items as storm water pollution prevention plans. In 2009, the agency issued a guide to assist permit writers in strengthening storm water permits in 2010.

The agricultural sector accounts for a large share of water problems stemming from nonpoint sources and therefore much of the effort to control such pollution lies within the jurisdiction of the U.S. Department of Agriculture. Crop production, for example, impairs water quality as pesticides, fertilizer, and sediment run off fields and into nearby water bodies. Of particular note, a 10-year, nationwide study published in 2006 by the U.S. Geological Survey detected pesticides in 97 percent of streams in agricultural and urban watersheds. In 2009, we reported that many experts believe that the increased use of pesticides (insecticides and herbicides) related in particular to increased crop production for biofuels, will likely further degrade surface and ground water quality.[22]

Another major source of agriculture-related pollution stems from discharges associated with large-scale animal feeding operations.[23] More than a dozen government-sponsored or peer-reviewed studies since 2002 on water pollutants emitted by concentrated animal-feeding operations found increased levels of phosphorus, nitrogen, or hormones in surface water and groundwater near animal-feeding operations. Excessive amounts of these nutrients can deplete oxygen in water, which could result in fish deaths, reduced aquatic diversity, and illness in infants. Our 2008 report on the subject found that despite its long-term regulation of concentrated animal-feeding operations, EPA still lacks comprehensive and reliable data on the number, location, and size of the operations that have been issued permits and the amounts of discharge they release.[24] As a result, EPA has neither the information it needs to assess the extent to

[22]GAO, *Biofuels: Potential Effects and Challenges of Required Increases in Production and Use*, GAO-09-446 (Washington, D.C.: Aug. 25, 2009).

[23]Discharges from concentrated animal feeding operations share many of the traits of a diffuse, nonpoint source, but they are technically treated and regulated under the Clean Water Act as a point source.

[24]GAO, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern*, GAO-08-944 (Washington, D.C.: Sept. 4, 2008). Among other things, the report recommended that EPA complete its efforts to develop an inventory of permitted operations.

which these concentrated animal-feeding operations may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.

The question of how well EPA is coordinating its own efforts to control agricultural pollution with Agriculture is an important part of our ongoing review of the agency's Nonpoint Source Management Program, established under section 319 of the Clean Water Act. This program supports state nonpoint source management programs, providing funds to states to implement projects directed toward resolving nonpoint source pollutiou problems. Among the key issues being addressed in this broad program review are the extent to which EPA coordinates the implementation of its section 319 program with similar efforts to control agricultural nonpoint sources of pollution undertaken by Agriculture, as well as with other federally funded efforts to control nonpoint sources of pollution (including efforts funded through EPA's own Clean Water State Revolving Fund).

Emphasizing a Watershed-Based Approach

EPA has increasingly emphasized a "watershed-based approach" that attempts to restore and protect the nation's water resources by taking into account the full range of stresses emanating from all pollution sources. Under this holistic approach, EPA and its partners seek to identify the priority threats to large, often multistate watersheds like the Great Lakes and Chesapeake Bay. EPA partners with federal, state, and local agencies and nongovernmental organizations to develop and implement approaches that reduce pollution in out nation's significant water bodies.

Nonetheless, after decades of effort and expense by EPA and its partners to spearhead restoration efforts for these watersheds, we reported that these efforts have been impeded by a lack of targeted strategies; poor coordination among federal, state, and local stakeholders; and unrealistic goals for ensuring that limited restoration resources are being used for the most effective restoration activities. In 2006, for example, we recommended that EPA ensure that the Chesapeake Bay Program develop a coordinated implementation strategy unifying its various planning documents and establishing a means to better target its limited resources to the most cost-effective restoration activities.[25] Along similar lines, in 2008 we recommended that EPA develop for its Great Lakes Initiative a

[25]GAO, *Chesapeake Bay Program: Improved Strategies Are Needed to Better Assess, Report, and Manage Restoration Progress*, GAO-06-96 (Washington, D.C.: Oct. 28, 2005).

more consistent permitting strategy for controlling mercury and gather more information to help it develop water quality standards and assess the effect of programs intended to minimize pollutants that are exceeding standards.[26]

EPA has taken some actions in response to our recommendations. In addition, in May 2009, the President issued an executive order establishing a Federal Leadership Committee for the Chesapeake Bay to oversee the development and coordination of programs and activities of agencies participating in protection and restoration of the bay. Chaired by EPA, the committee includes six other federal agencies. Part of its responsibilities included developing a strategy for coordinated implementation of existing programs and projects to guide efforts to protect and restore Chesapeake Bay. The resulting strategy was issued in May 2010. We are currently assessing this strategy. Additionally, EPA has indicated that it plans to work with the Great Lakes states in assessing approaches for reducing mercury in lieu of developing a mercury permitting strategy.

Rebuilding the Nation's Aging Water Infrastructure

Some of the most daunting water pollution control problems will be those faced by EPA and the nation's water utilities in addressing the multibillion-dollar costs of upgrading aging and deteriorating water infrastructure and building new infrastructure to serve a growing population. The investment made throughout the 1970s and 1980s to build and upgrade the nation's water infrastructure accounted for much of the progress in past years to deal with what were, at that time, the pressing water issues of high bacterial contamination and toxic water pollution. Many of the wastewater treatment plants and other water infrastructure built in those years, however, have since reached, or will soon reach, the end of their design lives. Frequent and highly publicized incidents of combined sewer overflows into rivers and streams, as well as water main breaks in the nation's largest cities, have been perhaps the most visible manifestations that the problem is growing.

EPA provides funding to the states for water infrastructure upgrades and construction through the Clean Water and the Drinking Water state revolving funds, authorized by Congress in 1987 and 1996, respectively.

[26]GAO, *Great Lakes Initiative: EPA and States Have Made Progress, but Much Remains to Be Done If Water Quality Goals Are to Be Achieved*, GAO-08-312T (Washington, D.C.: Jan. 23, 2008).

Congress provided $2.1 billion and $1.4 billion, respectively, for each program in fiscal year 2010. These funds supplement other revenue—from water rates or other taxes—raised by local utilities to pay for their infrastructure projects. While EPA also received and distributed about $6 billion in additional water infrastructure funding under the American Recovery and Reinvestment Act, the total cost to meet water infrastructure needs across the country through 2029 has been estimated to be from $485 billion to $1.2 trillion.

EPA faces a challenge in working with the states and utilities to address this issue. We have noted in the past that better management techniques can, at least to some extent, help utilities make the best use of available dollars in their struggle to meet their infrastructure needs. We recommended comprehensive asset management—a technique whereby water systems systematically identify their needs, set priorities and better target their investments—as a tool for helping utilities make better use of available funds. However, additional funds—or revenue from rate increases—will still likely be needed to address future needs.

To address options for alternative funding sources for these infrastructure needs, we have issued reports providing information on various proposals to develop alternative funding sources and mechanisms to address current and projected water infrastructure needs. In 2009, we reviewed one proposal to establish a Clean Water Trust Fund, which would provide a dedicated source of federal funding for wastewater infrastructure.[27] Stakeholders we interviewed disagreed over whether EPA should administer such a trust fund as part of the Clean Water State Revolving Fund. These stakeholders also disagreed over whether funding should be provided as loans or grants to recipients, although a majority did agree that funds should pay for capital projects. We also discussed potential revenue sources for funding a Clean Water Trust Fund and obstacles to generating revenue from these sources.

In 2010, we examined two other proposed alternative funding sources for water infrastructure projects: a national infrastructure bank and public-private partnerships.[28] Concerning an infrastructure bank, stakeholders

[27]GAO, *Clean Water Infrastructure: A Variety of Issues Need to Be Considered When Designing a Clean Water Trust Fund*, GAO-09-657 (Washington, D.C.: May 29, 2009).

[28]GAO, *Wastewater Infrastructure Financing: Stakeholder Views on a National Infrastructure Bank and Public-Private Partnerships*, GAO-10-728 (Washington, D.C.: June 30, 2010).

disagreed over whether an infrastructure bank should be administered by a federal agency or structured as a government corporation or other entity and over which types of projects—such as large infrastructure projects or small ones—should be eligible for bank financing. Stakeholders did agree, however, that federal funds should be used to finance a bank initially but that other mechanisms could be used to generate funds for financing projects over the long term. Regarding public-private partnerships, officials for the 7 municipalities that had experience with such arrangements said that advantages of public-private partnerships include access to nontraditional funding sources, creating potential efficiency through economies of scale, and completing projects more quickly. These officials also identified challenges to public-private partnerships, such as local opposition to potential or perceived rate increases, higher interest rates charged by private entities involved in the partnership, and increased project costs because of complex contracts and arrangements.

As a related matter, in 2010, we reviewed 14 states' spending of Recovery Act funding on water infrastructure projects.[29] The Recovery Act provided $6 billion in additional funding for states, $2 billion for the Drinking Water State Revolving Fund and $4 billion for the Clean Water State Revolving Fund. We found that these states allocated the funding to 504 drinking water projects and 890 clean water projects. We also found that the states met Recovery Act requirements for providing Clean Water revolving fund assistance for "green" projects (projects that included environmentally friendly infrastructure, provided water- or energy-efficiency improvements, or other environmentally innovative activities).[30] We found, however, that attention and monitoring by EPA and the states of Recovery Act projects could be strengthened. As a result, we recommended that EPA work with the states to implement specific oversight procedures to monitor and ensure Recovery Act compliance. EPA issued new guidance in June 2010. We are continuing our review of EPA's implementation of Recovery Act funds and how the funds will help address states' water quality problems. As part of this work, we will continue to assess EPA's and the states' monitoring of Recovery Act projects.

[29]GAO, *Recovery Act: States' and Localities' Use of Funds and Actions Needed To Address Implementation Challenges and Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010).

[30]States were also required to use at least 20 percent of funds provided under the Recovery Act for Clean Water revolving funds as a "green reserve" to provide assistance for green infrastructure projects, water or energy efficiency improvements, or other environmentally innovative activities.

Costs and Pace of Cleanup at Superfund and Other Hazardous Waste Sites

To protect human health and the environment from the effects of hazardous substances, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act in 1980, which established the Superfund program. Since 1980, EPA has identified more than 47,000 hazardous waste sites potentially requiring cleanup. As of the beginning of fiscal year 2010, 1,269 of the most seriously contaminated sites were included on EPA's National Priorities List: 1,111 nonfederal sites and 158 federal facilities. Among the key findings of our recent work are that (1) cleanup costs are likely to be substantial, (2) problems with the accuracy and completeness of data prevent the agency from estimating future cleanup costs, and (3) several key obstacles have delayed cleanup progress at Department of Defense (DOD) installations. Our recent work provides an indication of the challenges that lie ahead for this important program.

Addressing Substantial Cleanup Costs

We and other organizations have cited the growing gap between the costs associated with cleaning up sites remaining on the National Priorities List and funds available to do so. Cleanup efforts at listed sites are typically expensive and can take many years. While responsible parties are liable for conducting or paying for site cleanup of hazardous substances—and EPA can seek reimbursement for its cleanup costs from these parties—the parties in some cases cannot be identified or may be unwilling or financially unable to perform the cleanup. To fund EPA-led cleanups at nonfederal National Priorities sites, EPA uses the Hazardous Substance Superfund (trust fund) from which EPA receives annual appropriations. Historically, the trust fund was financed primarily by taxes on crude oil and certain chemicals, as well as an environmental tax on corporations based on their taxable income. The authority for these taxes expired in 1995, however, and shortly thereafter the balance in the trust fund started to diminish. Since 2001, appropriations from general revenues have been the largest source of funding for the trust fund. At the start of fiscal year 2009, the trust fund had a balance of $137 million. Superfund program appropriations have averaged about $1.2 billion annually since 1981, although the annual level of these appropriated funds has generally declined in recent years when adjusted for inflation.

In June 2010 we reported that EPA's cost to remediate existing and future National Priorities sites will likely exceed current funding levels.[31]

[31]GAO, *Superfund: Costs to Remediate Existing and Future Sites Will Likely Exceed Current Funding Levels*, GAO-10-857T (Washington, D.C.: June 22, 2010).

Considerable work remains at most nonfederal sites on the list with unknown or unacceptable human exposures, and some site cleanups have not been funded at a level that is sufficient to ensure meaningful results. Moreover, site costs are likely to increase because, according to EPA, in the program's early years the agency focused resources on sites that needed less construction work and were farther along in the cleanup process. Consequently, the sites that have been on the National Priorities List the longest without completing construction of cleanup remedies are likely to face more complex and costly future cleanup work.

Resolving Data Limitations Hindering Estimates of Program Costs

While remedial actions have been implemented or are under way at most sites on the National Priorities List, the amount of work remaining is unclear because, as we reported in July 2009, data on whether construction is complete at sites do not provide a clear picture of the amount of work that actually remains at sites, and the progress of cleanup is even less clear for sites where construction is not complete.[32] EPA program status reports do not provide information on the number and cleanup status of megasites—sites with actual or expected total cleanup costs, including removal and remedial action costs, that are expected to amount to $50 million or more (especially mining and sediment sites). This information could help indicate the types of conditions driving EPA's remedy decisions at sites that were listed more recently, as well as the impediments to cleanup progress at older sites. Additionally, these reports do not provide information on the number of sites where responsible parties are financially unable to help pay for cleanup activities or on the potential impact on EPA's ability to carry out cleanup activities when it cannot obtain reimbursement from responsible parties for agency cleanup costs. Such information could help indicate the factors that are driving program expenditures and potential future costs.

Accordingly, we recommended that EPA assess the comprehensiveness and reliability of the data the agency collects and, where necessary, improve the data to provide aggregated information on (1) the status and cost of cleanups at individual sites, particularly complex and expensive sites; (2) the extent to which there are viable responsible parties at sites on the National Priorities List; and (3) the potential financial impacts from

[32]GAO, *Superfund: Litigation Has Decreased and EPA Needs Better Information on Site Cleanup and Cost Issues to Estimate Future Program Funding Requirements*, GAO-09-656 (Washington, D.C.: July 15, 2009).

EPA's inability to obtain reimbursement for agency cleanup costs from nonviable responsible parties. EPA agreed to assess data reported on program status and costs but did not agree to assess and report data on the extent to which there are viable responsible parties, nor on the financial impacts if such parties cannot be identified. We believe these data are essential to assess EPA's future funding needs.

As we reported in May 2010, most EPA regional offices expect an increase in the number of sites added to the National Priorities List over the next 5 years but cannot estimate the associated cleanup costs.[33] One factor that could increase the number of sites eligible for the list is whether EPA begins to assess the risks of subsurface hazardous substances leaking upward into homes and businesses (vapor intrusion). As a result, we recommended that EPA determine the extent to which EPA will consider vapor intrusion as part of the listing process for the National Priorities List and how this phenomenon will affect the number of sites listed in the future. EPA agreed with our recommendation.

Confronting Difficulties in the Cleanup of DOD Superfund Sites

Our July 2010 report on DOD-related Superfund sites identified several obstacles—including poor coordination, lack of interagency agreements, contract management, and legal limitations—that have delayed cleanups.[34] First, poor coordination with regulators and incomplete record reviews have resulted in poor decision making, such as placing military personnel in housing at risk of contamination, ultimately leading to their evacuation. Second, because DOD had not signed interagency agreements at some of its National Priorities List sites, EPA lacked the mechanisms to ensure that cleanup proceeds expeditiously, is properly done, and has public input as required by law. Third, DOD's use of performance-based contracts to clean up installations has affected how the cleanup work was scoped and conducted and has created pressure on contractors to operate within price caps and meet deadlines, which may conflict with regulatory review times and encourage the department to take shortcuts. Finally, EPA has virtually no enforcement tools available to compel agency compliance with the law

[33]GAO, *Superfund: EPA's Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites Are Expected to Be Added to the National Priorities List*, GAO-10-380 (Washington, D.C.: May 6, 2010).

[34]GAO, *Superfund: Interagency Agreements and Improved Project Management Needed to Achieve Cleanup Progress at Key Defense Installations*, GAO-10-348 (Washington, D.C.: July 15, 2010); GAO, *Superfund: Greater EPA Enforcement and Reporting Are Needed to Enhance Cleanup at DOD Sites*, GAO-09-278 (Washington, D.C.: Mar. 13, 2009).

at installations without an interagency agreement, unless EPA has concurrence from the Department of Justice, whose policy generally precludes one agency from bringing suit against another.

Addressing EPA's Emerging Role in Climate Change

As one of the most complicated interdisciplinary environmental issues currently facing the federal government, climate change poses particular management challenges for EPA. We have previously reported that, in addition to its environmental implications, climate change has implications for the fiscal health of the federal government, affecting federal crop and flood insurance programs and placing new stresses on infrastructure and natural resources. We have also analyzed and reported on recent legislative and regulatory efforts to reduce greenhouse gas emissions. Recent GAO work has also identified a range of climate change management challenges for the federal government at large, including a broad array of departments with diverse missions. For EPA, particular challenges relate to the agency's ongoing efforts to reduce carbon emissions; to coordinate activities with other agencies; and to account for and manage data on greenhouse gas emissions.

Legislative and Regulatory Greenhouse Gas Emissions Reduction Efforts

Several bills that would have established comprehensive emissions reduction programs were introduced and debated during the 111th Congress, although none became law. To provide the Congress with relevant information during these deliberations, however, we reported on the economic implications of different policy options and on lessons learned from the European Union's own efforts to implement mandatory carbon reductions. We found, for example, that the European Union set its overall emissions limit, or "cap," too high (i.e., at a level that was higher than actual emissions) because of uncertainty surrounding the emissions data used to set the cap.[35] We also reported on carbon offsets—reductions of greenhouse gas emissions from an activity on one place to compensate

[35]GAO, *International Climate Change Programs: Lessons Learned from the European Union's Emissions Trading Scheme and the Kyoto Protocol's Clean Development Mechanism*, GAO-09-151 (Washington, D.C.: Nov. 18, 2008). GAO did not recommend executive action in response to this work, but stated that, in deliberating legislation for emissions trading, Congress may wish to consider the lessons learned from the European Union's efforts.

for emissions elsewhere—noting that the credibility of offsets could compromise the environmental integrity of a system to reduce emissions.[36]

In the absence of a law establishing a cap-and-trade program in the United States, EPA is implementing a regulatory program to reduce greenhouse gas emissions that is facing an array of legal challenges. Specifically, in 2009 EPA issued a finding that greenhouse gas emissions from new motor vehicles are contributing to air pollution that is endangering public health and welfare. This finding, known as the Endangerment Finding, is the foundation for all of EPA's efforts to regulate greenhouse gases under the Clean Air Act. Twenty-six lawsuits have been filed challenging the endangerment finding for greenhouse gases. Nonetheless, the EPA rule establishing emissions standards for light-duty motor vehicles went into effect on January 2, 2011. Additional rules subjecting certain stationary sources to regulation under the Clean Air Act as of January 2, 2011, have also been challenged. All of these lawsuits are to be heard together by the same panel of judges. Moreover, to date, five bills that would preclude EPA from regulating greenhouse gases under the Clean Air Act have been introduced in the 112th Congress.

Coordinating Climate Change Activities with Other Agencies

Climate change has the potential to affect every sector and level of government operations. Consequently, there are areas in which EPA will need to work closely with other agencies and to clarify its own role within broader, governmentwide efforts. One example arose during our 2008 work on the federal government's examination of carbon capture and storage as a means of reducing carbon emissions from the electric utility sector. Carbon capture and storage involves capturing carbon dioxide from a power plant's emissions, transporting it to an underground storage location, and then injecting it into a geologic formation for long-term storage. In addition to its formidable technological challenges, we noted that carbon capture and storage faces significant legal and regulatory uncertainties. We noted that EPA was addressing some of these uncertainties (specifically by issuing a rule to govern underground injection of carbon dioxide for geologic sequestration), but that "many of

[36]GAO, *Carbon Offsets: The U.S. Voluntary Market Is Growing, but Quality Assurance Poses Challenges for Market Participants*, GAO-08-1048 (Washington, D.C.: Aug. 29, 2008). GAO did not recommend executive action based on this work, but stated that, as it considers legislation that allows the use of offsets for compliance, Congress might consider, among other things, directing the establishment of standardized quality assurance mechanisms.

them fall within the domain of the Departments of Energy, the Interior, Transportation, the Federal Energy Regulatory Commission, and other agencies in a manner that would require collaboration between agencies and, in many cases, coordination with state governments and other entities."[37]

We recommended that EPA more comprehensively examine barriers to the development of carbon capture and storage by identifying key issues that fall outside the agency's Safe Drinking Water Act authority. EPA's Office of Water responded to GAO that it is committed to work both with other offices within the agency as well as other "partner federal agencies" to assess the implications of various statutes on the development of carbon capture and storage. As a related matter, the White House established an Interagency Task Force on Carbon Capture and Storage on February 3, 2010, to develop a comprehensive and coordinated federal strategy to speed the commercial development and deployment of clean coal technologies. Among other things, the Task Force's August 2010 report recommended that EPA and other relevant agencies work to quickly and collaboratively propose, finalize, and implement a regulatory framework to ensure safe and effective carbon capture and storage deployment.

Developing and Managing Data on Greenhouse Gas Emissions

High-quality data on greenhouse gas emissions are critical to the development and implementation of domestic and international efforts to address climate change. As we recently reported, for example, a European Union program designed to control carbon emissions has run into difficulties due to a lack of facility-specific data on baseline emissions.[38]

EPA faces particular challenges in accounting for and managing emissions data from facilities. The Consolidated Appropriations Act of 2008 directed EPA to issue a regulation requiring mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy. EPA issued the regulation under its Clean Air Act authority on October 30, 2009. The regulation includes provisions to ensure the accuracy of emissions data through monitoring, record-keeping, and verification

[37]GAO, *Climate Change: Federal Actions Will Greatly Affect the Viability of Carbon Capture and Storage As a Key Mitigation Option*. GAO-08-1080 (Washington, D.C.: Sept. 30, 2008).

[38]GAO-09-151.

requirements. According to EPA, the rule covers approximately 10,000 facilities responsible for an estimated 85 to 90 percent of total U.S. greenhouse gas emissions. Data collection, monitoring, and verification for a universe of facilities this large could be expected to pose a formidable challenge for EPA especially in light of the tight budget environment.[39]

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

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[39]GAO, *Climate Change Science: High Quality Greenhouse Gas Emissions Data are a Cornerstone of Programs to Address Climate Change*, GAO-09-423T (Washington, D.C.: Feb. 24, 2009).

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David Trimble
Acting Director, Natural Resources and Environment
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Biography

David Trimble serves as an Acting Director in the U.S. Government Accountability Office's Natural Resources & Environment group in Washington DC. Mr. Trimble provides leadership and oversight on environmental matters including EPA management, clean water and clean air issues and Superfund.

Mr. Trimble joined the U.S. Government Accountability Office in April 2009. Previously Mr. Trimble worked for nine years at the Department of State's Political Military Affairs Bureau as the Director of the Office of Defense Trade Controls Compliance where he was the senior official responsible for export compliance and enforcement issues. From 1986 to 2000, Mr. Trimble worked for the GAO in field offices as well as GAO Headquarters covering a wide range of issues. He has an MA in Policy Analysis from the University of Chicago and a BA in Philosophy from Lawrence University.

Mr. SIMPSON. Mr. Elkins.

TESTIMONY OF INSPECTOR GENERAL ARTHUR ELKINS, JR.

Mr. ELKINS. Okay. Thank you. Good morning, Chairman Simpson, Ranking Member Moran, and members of the subcommittee. I am Arthur Elkins, Jr., Inspector General of the U.S. Environmental Protection Agency. I also serve as the Inspector General of the U.S. Chemical Safety and Hazard Investigation Board as well. I am pleased to appear before you today for the first time to discuss the significant management challenges facing EPA that the OIG identified for fiscal year 2010.

Serving as Inspector General is an honor and a privilege for me because of the opportunities presented to make a positive difference by protecting taxpayer dollars from fraud, waste, and abuse. Also, by making recommendations that assist EPA to achieve its stated goals of protecting human health and the environment.

Since becoming Inspector General in June, 2010, I have been thoroughly impressed with the expertise, dedication, and professionalism of my OIG staff. Their hard work serves as the basis of my testimony this morning.

OIG conducts independent, non-partisan audits, evaluations, and investigations. This independence is the source of our credibility. While my remarks this morning are on our fiscal year 2010 management challenges list issued last May, I should note that we are currently updating our challenges list for fiscal year 2011, and will have those ready by early this summer.

We identified seven challenges which are detailed in my statement for the record. This morning I would like to focus on one of these challenges, which is cyber security. The challenge of cyber security as we see it is that EPA has a limited capability to effectively respond to advanced persistent threats, otherwise known as APTs, conducted by outside organizations which are designed to establish a beachhead within EPA's computer networks to steal or modify information without detection. APT-type attacks are an infestation much like bedbugs. Once they are in, it is hard to get them out.

EPA lacks sufficiently-trained personnel and resources to adequately address this type of threat. For example, EPA has faced APT-type compromises across its network computer systems. These compromises have resulted in proven thefts of intellectual data. Our investigations have shown illegal accesses to multiple key infrastructure components and high-level personnel to include political appointees.

Now, why is this important? It is important because these compromises places EPA infrastructure and data at risk. For example, a risk to CBI, intellectual properties such as chemical formulas, and water utilities vulnerabilities—data that EPA is entrusted to protect.

It is also important because it could have an impact on our economy and trade, environmental and human safety programs, and potentially allow for compromises due to trusted relationships between EPA's computer domain and other government computer domains such as the USDA, Interior, and Commerce.

Discussing the challenges of addressing and responding to cyber attacks is also a natural segue here to our budget request for fiscal year 2012. The President's budget included $56 million and 365 FTE, which includes a $10 million transfer from the Superfund Trust Fund, about $5 million below our original request.

Now, when Congress amended the Inspector General Act in 2008, it provided the IGs with additional safeguards to our independence. One is the authority to provide comments in the President's budget submission if we believe the budget request for our operations would substantially inhibit us from performing the duties of the Office. I do not take this authority lightly. However, I felt an obligation under the law to state my concerns about our 2012 budget, so I provided comments with the President's budget submission because I believe our budget request would inhibit us from doing our work.

Additional funds would strengthen our Office of Cyber Investigations and homeland security efforts to help the agency address this security issue. We could hire more agents, obtain needed specialized training for agents, and purchase necessary hardware and software for cyber investigations. Specifically, this would allow for the proper future funding of our existing 11 FTEs, increase investigative and analytical staff from 11 to 23, and establish an office in the west, thereby expanding our presence beyond just DC and RTP where we are currently located, closer to any west coast compromises.

Putting the OIG's budget request in perspective, the total OIG budget represents an investment in oversight of less than half of 1 percent of the agency's total budget. I see the OIG as an insurance policy. During times of reduced resources is when there is a greater need for oversight to promote efficiency and address the heightened risk of fraud, waste, and abuse.

Finally, in closing, management challenges are meant to bring the big issues to the attention of senior EPA management, Congress, and the public. I think we and GAO share the same goal here. That is to see that EPA improves its performance. The agency has made some progress in addressing some of the challenges we identified. For example, in the cyber security area, members of the agency have told my staff, "we get" it as it pertains to cyber security, and they are taking steps independently and with us through the development of an MOU to address the ever-changing landscape of cyber security threats.

However, a more sustained and robust effort is needed to fully resolve not just cyber security but the other challenges that we identified as well. We will continue to monitor and track EPA's progress and report on any other emerging issues, but if the OIG is under-funded, it will impact the depth of our reviews in these and other areas.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions the subcommittee may have.

[The statement of Arthur A. Elkins, Jr. follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Congressional Testimony

Major Management Challenges at the Environmental Protection Agency

Statement of Arthur A. Elkins, Jr.
Inspector General

Before the Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
U.S. House of Representatives

March 2, 2011

Good morning Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee. I am Arthur Elkins, Jr., Inspector General at the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I also serve as the Inspector General of the U.S. Chemical Safety and Hazard Investigation Board. I am pleased to appear before you today for the first time to discuss the significant management challenges facing EPA that the OIG identified for fiscal year (FY) 2010. Serving as Inspector General is an honor and privilege for me because of the opportunities presented to make a positive difference by protecting taxpayer dollars from fraud, waste, abuse, and making recommendations that assist EPA to achieve its stated goals of protecting human health and the environment. Since becoming Inspector General in June 2010, I have been thoroughly impressed with the expertise, dedication and professionalism of the OIG staff. Their hard work serves as the basis of my testimony this morning.

Today's hearing is very timely. Given our economic climate, there is renewed emphasis on oversight, accountability, and performance of Federal agencies and how they spend taxpayer dollars. The OIG is uniquely positioned within EPA to identify areas where EPA faces significant management challenges and to bring those challenges to the attention of senior EPA leadership and to Congress. Under the Inspector General Act of 1978, as amended, the OIG is granted the authority to conduct audits and investigations of EPA programs, operations, and personnel. Our role is to promote economy and efficiency, and to prevent and detect fraud, waste, and abuse. Although we are a part of EPA, senior EPA leadership can neither prevent nor prohibit us from conducting our work. This helps to ensure our independence. We do not engage in policymaking nor do we perform operational activities. We are non-partisan which, when coupled with our independence, I believe gives credibility to our work.

EPA Management Challenges for FY 2010

The Reports Consolidation Act of 2000 mandates that Inspectors General identify management and performance challenges facing their respective agencies. The OIG issues an annual list of management challenges based on audit, evaluation, and investigative work conducted throughout the fiscal year. We also take into account trends over time as well as the status of prior OIG recommendations. EPA has the opportunity to respond to our management challenges. The challenges we identify and EPA's response are included in EPA's "Agency Financial Report" issued every November.

We developed a definition for management challenges to clarify and distinguish them from internal control weaknesses. Weaknesses are deficiencies in internal control activities designed to address and meet internal control standards. In contrast, we defined management challenges as a lack of capability derived from internal, self-imposed constraints or, more likely, externally imposed constraints that prevent an organization from reacting effectively to a changing environment. For example, lack of controls over approval of bankcard purchases would be considered a control weakness because it can be corrected internally by adding the necessary controls. Conversely, the EPA's ability to address an issue such as funding shortfalls for water infrastructure repairs would

constitute a management challenge, as EPA does not have the ability to solve these challenges without outside assistance, such as from Congress and States. The GPRA Modernization Act signed into law in January 2011 contains a different definition of the term "major management challenge," which we will apply as we identify challenges for FY 2011.

In May 2010, we issued our list of areas we considered to be key management challenges facing EPA for FY 2010. They were: 1) the need for a national environmental policy; 2) water and wastewater infrastructure; 3) oversight of delegations to States; 4) safe reuse of contaminated sites; 5) limited capability to respond to cyber security attacks; 6) reducing domestic greenhouse gas emissions; and 7) EPA's framework for assessing and managing chemical risks. These last three – cyber security, greenhouse gas emissions, and chemical risks – were new to our management challenges list in FY 2010. We are currently in the process of updating our challenges list for FY 2011 and will issue them to the Administrator later this spring.

The Need for a National Environmental Policy

Congress passed the National Environmental Policy Act and created EPA in 1970 to carryout national policy. However, rigid environmental laws that focus on a single media or threat make it difficult for EPA to confront emerging, cross-media, and cross-boundary challenges in an integrated manner. The result is an agency with media-specific program offices, which inhibit the process of comparing risks, setting priorities, and integrating fragmented data. Additionally, EPA lacks complete authority or control over many activities that impact the condition of our nation's environment. One example is the cleanup of the Chesapeake Bay, where the Department of Agriculture rather than EPA may be better positioned to persuade farmers to adopt progressive agricultural practices and to help communities and private landowners conserve natural resources. EPA's 2006-2011 Strategic Plan identified 25 federal agencies that contribute to EPA's goals, including the Departments of Energy, Transportation, and State. A national environmental policy would help EPA and other federal agencies go beyond existing, fragmented coordination efforts.

Developing and implementing a national policy will require action by EPA, the Administration, and Congress. EPA should work with Congress and the Administration to examine ways to leverage resources expended on various, insular environmental protection efforts. The Administration should propose to Congress that it create expert panels to consider formulating a national environmental policy and subsequent quadrennial review. Congress should consider integrating or passing legislation that may be recommended by these panels to harmonize various efforts and, where appropriate, maintain existing requirements in environmental statutes. Finally, Congress should provide EPA and other federal agencies that share a responsibility for environmental protection the means to identify and manage environmental problems of national significance.

While EPA has efforts underway to address intra-agency coordination across various media through cross-agency councils and committees, it questions whether a

national environmental policy would substantially improve environmental results. However, one need only look at the national strategies and quadrennial reviews already in place for homeland security and defense to see their value. We believe EPA should do more in this area.

Water and Wastewater Infrastructure

Under the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA), drinking water and wastewater facilities are responsible for ensuring that water leaving their facilities meets federal standards. EPA is responsible for administering these laws, enforcing violations of the standards, and assisting facilities to meet their treatment requirements. Drinking water and wastewater treatment systems, many built decades ago, are reaching the end of their life cycles, and huge capital investments are needed to replace, repair, and construct facilities. There is an estimated $300-$500 billion funding gap for wastewater treatment and water infrastructure over the next 20 years. Meeting new and more stringent standards on top of already existing standards also places additional financial burdens on municipalities. For example, the District of Columbia estimated it will need to spend $3.6 billion to meet some CWA requirements. EPA and State and local governments have struggled to update these systems over the years because no level of government has sufficient modernization and replacement funds.

The Federal Government lacks a national approach for bridging this water and wastewater infrastructure gap. While EPA is responsible for administering the CWA and SDWA, it does not have the resources or authority to address the funding gap. The funding EPA receives for its Clean Water and Drinking Water State Revolving Funds, even when coupled with other water grant and loan programs from the Departments of Agriculture and Housing and Urban Development, are small in relation to the gap and are not part of a comprehensive investment strategy to address water infrastructure needs. Rather, they reflect each agency's mission and congressional direction. However, EPA should take the lead in organizing a coherent federal strategy within the limits of its statutory authorities and responsibilities. A comprehensive approach to bridging the gap would systematically assess the investment requirements, alert the public and Congress of unfunded liabilities and risks, and involve work with States and local governments to organize resources to meet needs.

As part of the Administration's long-term strategy, EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with States and communities to enhance technical, managerial, and financial capacity. This includes finding ways to expand and incorporate "green infrastructure" options and their multiple benefits. However, we have seen no evidence of any significant progress in moving toward a comprehensive approach in addressing the funding gap. Moreover, the EPA budget for FY 2012 reduces funding for the State Revolving Funds. We will continue to monitor EPA's actions in this area.

Oversight of Delegations to States

EPA may delegate programs that implement environmental laws to State, local, and tribal agencies. Delegation, however, does not abrogate EPA of its statutory and trust responsibilities. EPA performs oversight of State, local, and tribal programs to provide reasonable assurance that delegated programs are achieving their goals. Effective EPA oversight is hampered by limitations in the availability, quality, and robustness of program implementation and effectiveness data, and limited EPA resources to independently obtain such data. Also, differences between State and federal policies, interpretations, and priorities make effective oversight a challenge. For example, EPA lacks the data necessary to assess the benefits of its air toxics standards, such as data on decreased incidence of cancer. Data on the program's effectiveness, such as changes in emissions, concentrations of air toxics in the (ambient) outdoor air, and data on compliance with air toxics standards are limited and inconclusive. States' discretion adds flexibility to address specific circumstances and local issues. Joint implementation and enforcement leads to special challenges in interpretations, strategies, and priorities.

EPA has begun to improve its oversight by implementing the State Review Framework. The Framework is intended to be a consistent approach for overseeing programs and identifying weaknesses and areas for improvement. However, EPA has not yet implemented it in a consistent manner. Data available to EPA show that, in many parts of the country, the level of significant non-compliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low. For example, one out of every four of the largest Clean Water Act dischargers had significant violations in 2008. Many of these violations were serious effluent violations or failure to comply with enforcement orders. We are continuing to conduct work in this area that will support EPA in carrying out its oversight responsibilities. Ongoing OIG evaluations are exploring how EPA addresses state performance problems, and what types of EPA action are most effective in improving state enforcement performance.

Safe Reuse of Contaminated Sites

EPA has placed increasing emphasis on the reuse of contaminated properties and has a performance measure to define a population of contaminated sites that are ready for reuse. EPA has successfully turned some problem sites into properties that reinvigorated communities and created jobs. However, EPA's primary duty is to ensure that contaminated sites are safe for humans and the environment. EPA faces significant and increasing challenges in this area due to: 1) the common practice of not removing all sources of contamination from hazardous sites; 2) a regulatory structure that places key responsibilities for monitoring and enforcing the long-term safety of contaminated sites on non-EPA parties that may lack necessary resources, information, and skill; 3) changes in site risks as site conditions change over time; and 4) weaknesses in EPA's oversight of the long-term safety of sites.

The lack of effective long-term monitoring and enforcement of reuse controls at contaminated sites can pose significant risks to human health and the environment. For example, a January 2010 OIG report disclosed previously undetected contamination at a

deleted Superfund site in Delaware that had been purchased by a local government entity. We found that the site owner had nearly finalized plans and secured finances to reuse the site for public recreation. This had gone undetected by EPA because they had not kept current with the site reuse plans. In addition, EPA did not implement its procedures for evaluating the site's readiness for reuse because the procedures were viewed as discretionary. In New York, the Department of Environmental Conservation released a report in March 2009 listing hundreds of "old" Superfund, Brownfields, and other clean-up cases that were reopened to investigate potential new threats from vapor intrusion. These threats were not previously considered because the state of the science was not focused on vapor intrusion when the sites were first evaluated.

EPA will continually need to assess the challenges it faces to ensure sites are safely reused. As it does so, EPA should consider new or expanded authorities and regulations, new organizations, new methods of sharing information, and dedicated funding and resources for long-term stewardship activities. We will be updating this management challenge to reflect new OIG findings and observations on actions EPA has taken since we issued our challenge. A February 2011 OIG report on the Brownfields program noted weaknesses in EPA's oversight of environmental due diligence investigations at properties assessed for environmental contamination. We have also observed that EPA has undertaken a review of at least two broad issues that are included in our management challenge regarding the safe reuse of contaminated sites – Superfund Five-Year Reviews, which determine whether clean-up actions at Superfund sites remain safe; and institutional controls at national priority list Superfund sites, which are administrative or legal measures that limit human exposure by restricting activity, land-use, and access to properties with residual contamination.

Limited Capability to Respond to Cyber Security Attacks

Federal Government networks are facing persistent and unauthorized intrusions from various groups and actors here and abroad. Their motives range from intelligence collection, theft, and/or disruption or shutdown of critical agency systems. The targets of these intrusions are no longer limited to intelligence, defense, or economic networks. EPA has also become an increasing target given the intellectual property, confidential business information, and various environmental data it collects. At the time we issued this management challenge, EPA reported that over 5,000 servers and user workstations may have been compromised as a result of recent cyber security attacks (i.e., EPA identified that these systems were communicating to reported known hostile computers or domains outside of EPA). These potentially compromised systems extend to every EPA regional office and Headquarters. Moreover, OIG work disclosed that EPA could not identify the owners of approximately 10 percent of the Internet Protocol (IP) addresses that may have been compromised.

EPA has a limited capacity to effectively respond to Advanced Persistent Threats (APTs) designed to steal or modify information without detection. Our ongoing analysis and prior audits lead us to conclude that EPA does not have sufficiently trained personnel with the technical knowledge, nor the resources, to actively pursue a course of action that will enable EPA to promptly identify and effectively remedy ongoing cyber threats.

Although EPA currently monitors network traffic to identify hostile traffic at its Internet choke points, EPA should conduct more detailed analysis to better understand and combat the insidious nature of these cyber attacks. EPA does not have the resources, in equipment and staff, to adequately assess attacks against its infrastructure. Rather, EPA continues to depend on others to specifically identify whether systems are actually compromised. Adequate funding and a coordinated technical strategy would enable EPA to better defend itself against cyber-attacks that target valuable EPA data.

EPA has acknowledged that detecting and remediating APTs is a challenge. The OIG is taking steps with EPA to establish an internal Memorandum of Understanding (MOU) to enhance the communications and dissemination of timely information, and clarify roles and responsibilities between OIG and EPA personnel so that we might better address cyber security incidents and related criminal activity within EPA. We are hopeful that this MOU will be finalized in the near future.

Reducing Domestic Greenhouse Gas Emissions

In April 2007, the U.S. Supreme Court ruled in *Massachusetts* v. *EPA* that greenhouse gases (GHGs) are air pollutants under the Clean Air Act (CAA). In response to the Supreme Court decision, EPA issued an endangerment finding in December 2009 stating that the current and projected atmospheric concentrations of six GHGs threaten the public health and welfare of current and future generations. EPA also determined that new motor vehicles endanger public health and welfare, as defined under CAA Section 202(a), because they contribute to GHG pollution. The issuance of these findings means that EPA must address the adverse impacts of this new set of air pollutants, which is a significant undertaking.

EPA is addressing domestic GHG emissions through three avenues that are to some extent beyond EPA's direct control. First, EPA is regulating GHG emissions but lacks specific legislation establishing a GHG emissions reduction program beyond new motor vehicles. Without such language, EPA is relying on its interpretation of its authorities under the CAA to regulate GHG emissions from thousands of other sources. Already EPA faces a number of legal challenges to its GHG rules. Second, EPA is relying on voluntary programs to reduce GHG emissions. For example, three key voluntary programs (ENERGY STAR, Climate Leaders, and Clean Energy-Environment State Partnership) are joint partnerships between EPA and others. A major challenge with voluntary programs has been weaknesses in data collection and reporting systems. These systems are neither transparent nor verifiable, and are limited by anonymous reporting and the use of third-party industry data. Finally, EPA is relying on multi-agency research organizations for the information and tools to help address GHGs, and to accelerate the development of new and advanced GHG reduction technologies. Consequently, EPA has limited control over the content, conduct, and timing of this research.

EPA agreed that it faces significant challenges in addressing GHGs. We will continue to monitor how EPA addresses the challenge of reducing domestic GHGs in the face of mounting opposition, unverifiable data, and the obstacles that come with relying on multi-agency research.

EPA's Framework for Assessing and Managing Chemical Risks

EPA's framework for assessing and managing chemical risks has not yet achieved the goal of protecting human health and the environment. In 1976, Congress passed the Toxic Substances Control Act (TSCA) authorizing EPA to collect information on, and to regulate the production and distribution of chemicals. However, EPA's effectiveness in assessing and managing chemical risks is hampered by limitations on its authority to regulate chemicals under TSCA. For example, chemicals that were produced for commercial purposes prior to TSCA were grandfathered. Manufacturers were not required to develop and produce data on toxicity and exposure, which are needed to properly and fully assess potential risks. Further, TSCA never provided adequate authority for EPA to evaluate existing chemicals as new concerns arose or as new scientific information became available. TSCA also lacks the broad information-gathering and enforcement provisions found in other major environmental protection statutes. For example, TSCA does not provide EPA with the administrative authority to seek injunctive relief, issue administrative orders, collect samples, and quarantine and release chemical stocks, among other key authorities.

In 2009, the Administration outlined core principles to strengthen U.S. chemical management laws. Congress has also made attempts to revise and modernize TSCA. However, in the absence of new legislation, we found EPA could better manage existing authorities and demonstrate results within its New Chemicals Program and Endocrine Disruption Screening Program (EDSP). For example, EPA does not have integrated procedures and measures to ensure that new commercial chemicals do not pose an unreasonable risk to human health and the environment. Oversight of regulatory actions designed to reduce known risks is a low priority, and the resources allocated by EPA are not commensurate with the scope of monitoring and oversight work. In addition, EPA's procedures for handling confidential business information (CBI) requests are predisposed to protect industry information rather than to provide public access to health and safety studies. Finally, EPA's framework for assessing and managing chemical risks from endocrine disruptors is failing to show results. Despite establishing the EDSP in 1998, EPA has yet to regulate the endocrine-disrupting effects of any chemicals.

EPA has developed a corrective action plan in response to our work on the New Chemicals Program. It includes efforts to improve internal coordination and efficiencies, enhance accountability through performance measures, and the development of more detailed guidance on CBI. We will continue to monitor EPA's progress in assessing and managing chemical risks through our ongoing work on the endocrine disruptor program, nanomaterials, and children's chemical program.

OIG FY 2012 Budget Request

The President's Budget released last month calls for $56 million and 365 FTE for the OIG for FY 2012, which includes a $10 million transfer from the Superfund Trust Fund. This would represent an increase of $1.2 million when compared to our FY 2010 Enacted Budget. I am grateful that EPA leadership and the Administration believe that the OIG is a wise investment, despite the challenging economic times facing our Nation.

When Congress amended the Inspector General Act in 2008, it provided Inspectors General additional safeguards to our independence. One is the authority to provide comments in the President's Budget submission if we believe the budget request for our operations would substantially inhibit us from performing the duties of the office. I do not take this authority lightly. However, I felt an obligation under the law to state my concerns about our FY 2012 budget. For FY 2012, the OIG requested a net increase of $6 million above the President's FY 2010 Enacted Budget. After further discussions with the Office of Management and Budget, our proposed budget was increased but is still nearly $5 million below our initial request. These additional funds are needed to strengthen the OIG's ability to investigate cyber attacks against EPA systems, a management challenge that I highlighted earlier in my statement. Addressing cyber security requires highly specialized detection, prevention, and enforcement skills and tools. We currently fund our limited cyber activities through a reallocation of existing resources but to do this long-term would create gaps in our oversight of other EPA programs and operations.

I believe that during times of reduced resources, there is an even greater urgency for investment in oversight to promote efficiency, effectiveness and address the heightened risks of fraud, waste, and abuse. The total OIG budget represents an investment in oversight of less than half of one percent of EPA's total budget. As Inspector General, I am concerned that the reduction in our budget request would impact the OIG's ability to adequately perform our duties. We will do our part by being good stewards of our own resources. Toward that end, I have initiated efforts to identify areas where the OIG can improve and streamline its operations to maximize its efficiency and effectiveness.

Conclusion

Our annual list of management challenges provides us the opportunity to inform EPA senior leadership, Congress, and the public about what we see as the most pressing issues facing EPA. We also offer recommendations on how EPA can address these challenges so it can better fulfill its mission of protecting human health and the environment. EPA does take our management challenges seriously and has made some progress in addressing them but we believe a more sustained and robust effort is needed to fully resolve them. We will continue to monitor and track EPA's actions to address these challenges while looking to identify any emerging issues warranting attention.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions the Subcommittee may have.

Biography of Inspector General Arthur A. Elkins, Jr.

Arthur A. Elkins, Jr. became Inspector General of the U.S. Environmental Protection Agency (EPA) on June 25, 2010. Before his appointment, Mr. Elkins served as Associate General Counsel within EPA's Office of General Counsel. While in that position, he supervised the delivery of legal counsel, opinions, litigation support, and other legal services for the Office of General Counsel's Information Law Practice, Employment Law Practice, and Intellectual Property Law Practice.

Previously, Mr. Elkins served as the Chief Legal Officer and General Counsel for the Court Services and Offender Supervision Agency, an independent federal executive branch agency responsible for pretrial services and adult parole and probation community offender supervision; Counsel to the Inspector General of the National Science Foundation; and Counsel within the Department of Defense, Defense Office of Hearings and Appeals.

Prior to joining the Federal Government, Mr. Elkins served as an Assistant Prosecuting Attorney in the Ohio Cuyahoga County Prosecutor's Office and as an Assistant Public Defender in the Ohio Cuyahoga County Public Defender's Office.

Mr. Elkins earned a Bachelor degree in social sciences from Thomas A. Edison State College; a Master of Business Administration degree from Baldwin-Wallace College; a Juris Doctor degree from Cleveland-Marshall College of Law, Cleveland State University; and a Master of Laws in Law and Government from Washington College of Law, The American University.

Mr. Elkins is a member of the bar in Ohio, District of Columbia, United States District Court for Northern Ohio, the United States Court of Appeals for the Sixth Circuit, and the Supreme Court of the United States of America.

Mr. Elkins is the recipient of the Council of Counsels to the Inspector Generals Leadership Award, Federal Executive Council on Integrity and Efficiency Award for Excellence in Investigations, and the National Science Foundation Office of Inspector General Commendable Service Award.

Mr. Elkins is the proud father of three children and resides in Bowie, Maryland, with his wife, Gail.

Mr. SIMPSON. I know that you have got to go here shortly. Is there anything you would like to ask before you go?

Mr. MORAN. I would, Mr. Chairman. Let me just ask about the Chesapeake Bay because that is particularly important to me and otherwise it might not come up.

We have a new agreement that requires everyone to be involved in terms of achieving the total maximum daily load, but that requirement was then wiped out in the continuing resolution. Do you see, either of you, as that being sufficient to achieve our objectives? Because we are about 30 years behind in terms of achieving the objectives that we had set with the six states. Is there any comment on that?

Mr. TRIMBLE. Well, I think as I noted, we have an ongoing review. Under a mandate we have a recurring obligation to review progress under the Chesapeake Bay Program. We have an ongoing review looking at progress since we last looked at the issue in 2008.

Part of that effort is to look at the latest plan taken by the EPA and the Administration and then, again, looking at the basic issues we have identified before in terms of identifying strategic goals and coordination issues. I think our report will probably get at a lot of the issues that you are asking.

Mr. MORAN. When will we get that report?

Mr. TRIMBLE. That will be early summer, I believe.

Mr. MORAN. Early summer of this year?

Mr. TRIMBLE. Yes.

Mr. MORAN. Okay.

Mr. TRIMBLE. Yes, sir.

Mr. MORAN. All right. Let me just ask you, we have had some serious problems with regard to TSCA, the regulation of the chemicals that consumers use every day. Is TSCA sufficient? We have been considering reauthorization of TSCA, but again, you bring out the fact that there needs to be more collaboration than exists right now. Do you see the TSCA legislation as sufficient? Can we just renew it, or should there be a substantial reconfiguration of it?

Mr. TRIMBLE. I know that in our prior work we have identified substantial problems with TSCA both in terms of its implementation and also we have made very specific recommendations regarding legislative changes as well. So I think both need to be addressed.

TOXIC SUBSTANCES CONTROL ACT

Mr. ELKINS. And I would concur with that assessment as well. We found similar challenges as well.

Mr. MORAN. So the existing legislation is insufficient to achieve the tasks both with combinations of chemicals and the existing authority.

Just one last thing, and then I am going to let it go. The water pollution from non-point sources, this is a major finding. Do we need more resources? I know we have cut the Clean Water State Revolving Fund and the State Drinking Water Revolving Fund, but you are telling us that these non-point sources, the storm water runoff particularly, we are really not making a whole lot of

progress in terms of achieving the quality of the water that we need.

Mr. TRIMBLE. We right now have an ongoing review looking at the 319 Program for non-point sources. It is clearly an area of need. A lot of progress has been made in the past regarding point-source pollution, and right now a lot of our focus in the current review is looking at coordination efforts and level of effort in the 319 Program. So certainly more is needed in that area.

Mr. ELKINS. And I do not know exactly whether or not we have looked at that exact issue. You know, I would like to state for the record here, too, I have been on board now for about 8 months, so I am not going to claim to know all the small details. That is why I brought some of my qualified staff with me.

So at this point let me turn around.

CHESAPEAKE BAY

Mr. NAJJUM. Wade Najjum, Assistant Inspector General for Program Evaluation. We have done work in the Chesapeake Bay but not within the past 2 years. We thought the program office and Executive Order did make some big steps, and also the coordination with the Department of Agriculture, in particular for non-point sources. And that has carried over, I think, into other areas of the country where agriculture is looking at it. That was part of a joint project we did with the USDA IG.

WATER NUTRIENTS

We also issued a report on nutrients standards for the water. EPA accepted and began taking action on it to look at a lot of the nutrients that come from the non-point sources. They do have authority to deal with that. They just have to exercise it, which was one of the things that we recommended they do.

Mr. MORAN. More challenging in terms of trying to get out. There are other issues, the important of the greenhouse gas registry and so on, but I suspect Ms. McCollum, Mr. Chairman, is going to pursue areas like that, so rather than be repetitive, I thank you for the opportunity, and thank you very much for having this hearing.

Mr. SIMPSON. You mentioned that workforce management is a challenge. I find that, I guess, kind of surprising because that would seem to be one of the primary goals of management is to make sure your workforce is aligned with priorities that you have established.

Why is that a problem, and how do we get at it, and could workforce management or the lack of workforce management lead to differences between the regions and how different rules and regulations are applied? I continue to hear this from businesses, industries that have plants in different parts of the country that say rules applied one way in this region and another way in another region and that type of thing.

Could the lack of workforce management lead to that type of implementation?

Mr. TRIMBLE. You know, I do not know if our work is specifically tied to that, but that is certainly one potential consequence. I mean, the fundamental issue is identifying your workload, lining up your workforce with that workload, and then linking it to your

strategic objectives, and that is really where we have found the agency has fallen down. I believe the last workforce plan was in 2006, and I believe that was the first one by the agency.

And so without the ability to line up your resources with the workload, a natural consequence is that you have such disconnects as you mentioned. I think the other area that leads to that kind of disconnect is in the area of enforcement, where we have repeatedly made observations or recommendations concerning improving the data EPA has to manage enforcement undertaken by the states and the regions in their oversight capacity. And it is the absence of that data or the absence of using that data to analyze why there are differences, I think is also a potential cause of the situation you described.

Mr. SIMPSON. Speaking of data and data the states have, do you know many of the environmental responsibilities are delegated to the states, if those states demonstrate that they can operate programs and they are at least as stringent as the federal standards? The EPA IG is finding that more data collection is required to ensure proper oversight of state-delegated programs is in direct conflict with what we hear from the states quite frankly.

The GAO has also identified the need for more consistent enforcement and compliance data, yet some states already believe that the EPA's data requirements are too burdensome. We even saw a few states rejecting Recovery Act funds because of the reporting burden that was too high for those states.

Have you heard similar complaints as you conducted your reviews or since the release of your findings, or have you found that states generally agree with the recommendations to increase data collection?

Mr. TRIMBLE. I would have to go back to check on specific state responses. I believe a lot of the focus of our recommendations concerns consistency of information across the regions and the states as much as it is additional information. So I am not sure it is necessarily an additional burden we are talking about.

DATA: COLLECTION AND REPORTING

Mr. ELKINS. Yes, and also on the work that we have done, I am not quite sure that I have information on what the states' reaction has been to our report because we do the review and then release the report to the agency, although we have found that data quality issues have been an ongoing challenge.

Again, I would like to turn to my subject matter experts and see if anybody can give me——

Mr. SIMPSON. And your name is for the record?

Mr. NAJJUM. Wade Najjum, Assistant Inspector General for Program Evaluation.

Mr. SIMPSON. Okay.

Mr. NAJJUM. What we have found is, yes, the states have told us when we have talked with them about not liking some of the requirements or the inconsistent requirements that EPA has. What we found from our point of view is the real issue is there is a difference in definition. It's not so much that we have not looked to see that the requirements are burdensome necessarily. But when we are looking at an enforcement function it is to see do they have

the information to make the right decisions? And what you will have generally is through the regions, EPA relies on the state systems to provide them the information.

That information varies from state to state, and the definition of what goes into the database varies from state to state. So by the time it gets through the regions and their interpretation and ten different regions' interpretation of it, it is inconsistent.

I do not think it is one that you would blame any of the states for having their own system, but what you do have is that lack of a consistent definition so that when the data gets brought in and consolidated, you don't have a real understanding of what it means.

Mr. SIMPSON. How hard can it be to ask for consistent data from the states or from the regions?

Mr. NAJJUM. Well, it is not hard to ask for it unless you are asking the states to change their system to provide information to a definition that they did not design their systems to do. I think that is the issue. The states have their systems which are to serve their own purposes. To the extent it can, EPA draws their information from these systems.

There may not be a standard definition. We recently issued a report on emergency drinking water wells. It is not something that EPA looks at but based on the situation in Crestwood where a town was blending water using contaminated water from an emergency well to supplement their water supply. We looked to see does EPA know where emergency wells are. Because it is a data element that is reported but depending on which state you are dealing with depends on how they categorize and report it.

So when you pull all the information together, it is useless. I believe Colorado, for example, maintains emergency wells strictly for firefighting. Does not have anything to do with whether it is contaminated or not. Some other places in Illinois, for example, maintained an emergency well of contaminated water for firefighting, just for emergencies, but there are two different types of wells there that we are really talking about.

So I think that is the issue, sir.

Mr. SIMPSON. Okay.

Ms. MCCOLLUM. Mr. Chair.

Mr. SIMPSON. Yes.

Ms. MCCOLLUM. This is baffling to me. I mean, I would think that if we define what an emergency well was and there could be many different types, potable water, emergencies for firefighting, that would be pretty clear. You say states are doing their own thing. If we ask somebody to report on emergency wells and we say, okay, potable and for forest fires, how hard is that?

Mr. NAJJUM. It would be hard if you wanted to use your authority to tell the states, including the ones that do not keep those records necessarily, they have to do it. I think that is the issue there on lots of things.

If we use somebody else's system, unless you are willing to tell them how to define all the data elements in it, if you are willing to accept their system, then you accept the information that is in it.

Ms. MCCOLLUM. Okay.

Mr. NAJJUM. And it may be of different definitions and quality.

Ms. MCCOLLUM. I am a mom. So if I say drink your milk, it means drink your milk. It does not mean drink the water or drink something else, or go to the refrigerator and get juice to drink. It means drink the milk. So if I ask people to report on emergency wells and I have described what emergency wells are to them——

Mr. NAJJUM. Yes.

Ms. MCCOLLUM [continuing]. They might have systems that account for things differently, but is it that they cannot or will not? Because you could have a system that lists that differently, but you still have it in front of you to pull it out.

Will they not or they cannot?

Mr. NAJJUM. I do not think it is a will not or cannot. I think there is so much information available.

Ms. MCCOLLUM. I think you are being very polite, sir.

Mr. NAJJUM. I try to be.

Mr. SIMPSON. Well, it is kind of surprising to me. You would think that when the states accept the responsibility to enforce the Clean Water Act or are delegated the authority to do that, part of that delegation would be this is what we expect, not only that you meet standards, but that you have reportable data that fits within the system so that we know what is going on.

DELEGATIONS TO STATES

Mr. NAJJUM. As a matter of fact, sir, we issued a report on inconsistencies between the EPA State Clean Water Act memorandums of agreement that have been put into place. They are the basic underlying internal controls to that delegation of authority, and depending on when that delegation was made and when it has been updated or how it has been updated, some of those memorandum of agreements were not complete as far as changes, statutory changes to the act or things had changed over time.

And what they covered, since they were individually negotiated between the regions and the states, they were not consistent, which may go back to your earlier point about inconsistencies in enforcement. It is that delegation to the states and then how the states actually do the work that is how the inconsistencies come about. I think the memorandum of agreement has been described as part of a layer cake. It is not a sole defining document, but it is part of a layer cake of how we do business with the states, and many of them were of our date.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you. I have a couple of things I would like to ask about, but I really want to take the time while I have you here to learn, so I am going to just see how I go from here. I would like to talk about Toxic Chemical Reform.

I come from a state that actually has invested and put money into public health and toxic chemicals and is working on even listing emerging chemicals of concern.

The EPA, as we were kind of talking before, something that was even easier to describe, what is emergency water, states have been working with the EPA in chemical reform. In the GAO report, there suggests that there is a barrier to the EPA's ability to assess chemical risks because of the lack of authority under TSCA to require comprehensive health and safety information.

Then I go to page 8 of your report, and you have in here in the first paragraph, I read from it, "In contrast to the approach taken by the European Union which generally places the burden on companies to prove the data on the chemicals that they produce to address the risks posed by these chemicals to human health and the environment." So we have just the opposite here.

I would like you to, as you comment, have that in the back of your mind as you respond.

Then you go on to say, "Nevertheless, although 85 percent of the notices lack any health or safety tests, EPA does not often use its authority to obtain more information." So there is someone out there kind of collecting and saying, jeez, 85 percent of this information we have on whether or not this is toxic is really, really inconclusive.

And then one of the challenges that you kind of addressed in your report is to shift more of the burden to chemical companies for demonstrating the safety of their product, so I am kind of concerned that we are not watching what is going on there with these chemicals of emerging concern, let alone we still have a lot of chemicals that are currently out there.

And then you go on to talk about nanotechnology, which is even, I do not want to say frightening, because I think nanotechnology possesses a lot of good, but we have no idea on how to handle it as waste and what is safe.

Could you maybe talk to me about how you really think your ability to guard and protect public health is not being addressed because we are not sharing the burden with the companies who are for profit, who sell these products and then we end up cleaning or we end up as taxpayers cleaning it up or dealing with the public health risk. Could you talk about that and maybe what is preventing you from being more efficient in that?

Mr. TRIMBLE. Yes. Well, I think our work on EPA's Toxic Chemical Programs, I mean, there are two pieces that form the base for why it became a high-risk area. One was IRIS, which is EPA's program for assessing toxicity, and the program you alluded to is under TSCA, which regulates chemicals.

What our work has found and which is what has led to the numerous recommendations in the area for both agency and legislation is that there is sort of an overwhelming amount of work to be done. When TSCA first kicked in, there were about some 60,000 chemicals in use at the time, registered for use. Currently there are about some 80,000 registered for use. Not all are currently in use, but that is the number in the registry.

The challenge has been to get information on the potential health effects of those chemicals. The level of burden or what kind of information varies depending on whether it was in use or if it is a new chemical. For chemicals that are coming into use, companies have to provide a pre-manufacture or pre-use notification to EPA, and the 85 percent figure you allude to is in reference to new chemicals coming into commerce. Eighty-five percent of the notices coming to EPA did not have the health effects information associated with that.

Now, some of that may be because it is known, it is a no-brainer. But a lot of it is an unknown. It is a question mark, and the chal-

lenges that we have reported on and previously have been that the thresholds, the legislative, the statutory criteria EPA must meet in order to demand more information has been a very high hurdle and has impeded EPA's ability to get the information on the potential health affects of those chemicals.

Ms. MCCOLLUM. Do you know if the EPA requires if you were able to have the information, what would be the level effect on pediatrics versus adult?

Mr. TRIMBLE. That kind of question goes more into the Integrated Risks Information System, which is on the potential health effects of a chemical, and that would be the kind of thing that would go into that study, and that is the area where we have noted problems just because they have been, again, long in tooth in terms of getting these things out. They have not been keeping up with the pace and then a lot of the assessments already into their Integrated Risk Information System are already in need of updating.

So I believe in my opening statement I made the reference to the 70 that were in the process and about 40 of those or 48 of those were already over, I believe, 5 years old and 12 were over 9 years old. And the IRIS process is what is the foundation for EPA's other regulatory actions, because that provides the human health effects information which then becomes the basis for regulating it in air and water and for Superfund cleanups.

So that is why that is such a critical program.

Ms. MCCOLLUM. So you have a list of the backlog and how far behind we are?

Mr. TRIMBLE. I believe we touched on that in our report from 2008. I do not know if we have current information. In 2008, I believe we had said there were about 70 ongoing IRIS assessments, and at that time I think we had been told that about half of the assessments were already in the database, and I believe the database had around 500 or so chemicals already in potential need of updating.

Ms. MCCOLLUM. There was some legislation that passed through our university system, so we are not necessarily growing the Federal Government larger to do all this, but have emerging centers of excellence with our university systems. Are you aware of that, and how do you interface with other people who are working on it so we are not, you know, trying to create another wheel when there is somebody out there who can do it, and we can work with them more effectively and efficiently with the taxpayers' dollars?

Mr. TRIMBLE. Yes. GAO has not looked at EPA's interaction with the universities and centers of excellence and whether that is part of their current strategy for reforming the process. I know they have a lot of initiatives ongoing regarding both IRIS and TSCA, but I am not familiar. That is not an area we have done work in recently.

Mr. SIMPSON. Okay. Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. Mr. Trimble, to you first. The Environmental Protection Agency has obviously, and you mentioned it, caused controversy with some of the actions that have been taken, including overreach lawsuits, legislation introduced on greenhouse gas regulation, push back on Clean Water Act regulations that have been interpreted to include virtually every body of

water including those created when a truck tire makes an indent in the surface of the earth. It just seems that there is over-zealousness everywhere.

What roles does the federal oversight community, including the GAO and the Inspector General, play when such overreach is occurring? Is it your role or is it the Inspector General's role to say, "hey, is it time to back off a bit here"? Like I said, whether it is greenhouse gas regulation or any of the other areas, there seems to be a chorus outside of the agency saying there is overreach here.

What role do you play?

INSPECTOR GENERAL ACT

Mr. ELKINS. I will address that. Under the IG Act, the IG's role is clearly laid out by statute. One of the prohibitions for IGs is not to get involved in operational issues of an agency, which would include making policy decisions or policy judgments. The type of issue that you raised is a policy issue.

What the IG's role is is that once the agency has implemented a policy, then the IG can take a look at what the impact of that use of discretion is. That will be our proper role. So I would be out of my lane to comment on issues related to the agency's exercise of policy beyond the impact issue.

Mr. FLAKE. Mr. Trimble, has the GAO been commissioned to study this issue by any members?

Mr. TRIMBLE. No, we have not. The one observation I would make is that GAO has a policy of not getting involved in areas where there is ongoing litigation, so for example, I think one of the areas——

Mr. FLAKE. Then how do you get involved in anything?

Mr. TRIMBLE. Yes. Exactly. One of the areas, for example, is I believe there is a lawsuit challenging the TMDL for the Chesapeake Bay by I believe the Farm Federation or Farm Bureau. That is an area which, while it is related to ongoing work we are doing, we are going to shy away from because it puts us at risk of getting right in the middle of the litigation, and we do not want to sort of have our records subpoenaed and be called out. So as a policy matter we will shy away.

So I think the fact of what happens is because this is such a litigious area, we sort of get bumped out of it for other reasons.

Mr. FLAKE. Then it is up to us, I guess. Right?

Mr. Elkins, you noted in your testimony that the agency is implementing a sustainable water infrastructure policy that includes finding ways to expand and incorporate green infrastructure options.

Now, given the limited funding that is available right now for new initiatives, have you done any assessment or has anybody on what new costs that might incur, what relative effectiveness and efficiency of using these new green infrastructure options?

WATER INFRASTRUCTURE: GREEN

Mr. ELKINS. You know, I hate to do this, but it seems that this is turning into the Wade Najjum show here, but he seems to be my subject matter expert. He has all the details on this, so Wade.

Mr. NAJJUM. Wade Najjum. The short answer, sir, would be no.

Mr. FLAKE. You work just like my staff. So, we will turn to the GAO then. Has that been the subject of a study commissioned by any member?

Mr. TRIMBLE. Yes. We have not looked at that directly. It came up incidentally in our work looking at the Recovery Act money that went to the Revolving Funds, and there was a 20 percent set-aside for green projects. So we looked at more sort of technical implementation issues regarding that.

We have an ongoing review due out I think at the very end of May, beginning of June. That report is sort of an update on our monitoring of the Clean Water, Drinking Water Funds, and I think we will get a little bit more in detail, but nothing specific as to the cost implications, I believe.

Mr. FLAKE. So you have not issued any reports that you can report on or give a summary of now?

Mr. TRIMBLE. No, I do not believe, not on the efficiency of the costs of those initiatives.

Mr. FLAKE. Thank you.

Mr. SIMPSON. I think Mrs. Lummis has a problem with her voice today and so she came to listen more than anything else because the voice is gone. I understand that.

Let me ask. In the report the GAO released yesterday entitled, "Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars and Enhance Revenue," the GAO identified coordination with other agencies as an issue in the U.S.-Mexico border region leading to an ineffective and fragmented use of resources. I think you mentioned this in your testimony.

The GAO suggested that Congress establish a taskforce to review and coordinate those activities. Any idea how that taskforce would work and why Congress should do it rather than the Administrative Branch of government? As I understand seven agencies are the EPA, the USDA, the Army Corps of Engineers, IHS, EDA, the Bureau of Reclamation.

Mr. TRIMBLE. Yes. I am not that familiar with the details as to why that became a matter for Congress other than, of course, when you have that many agencies it is not something one agency can do unilaterally. So obviously having sort of another force to tell them to do it, I think, is the obvious answer.

That was an area, I think as I mentioned in my opening statement, you have seven agencies involved in the border region of Mexico, providing similar services for clean water, drinking water projects. Only one of those agencies has actually done a comprehensive sort of needs assessment of the region. That was the Indian Health Service at the reservations or the Indian lands.

And so what you had then is both Ag and EPA as the big players, sort of working potentially across purposes because the actions were not coordinated.

Moreover, you increase the burden on the local communities because a lot of the application requirements for those projects, which can involve a lot of engineering drawings, which could cost you $30,000 to put a package together, they are not identical. So if you are going to apply to both funding streams, you have to do it twice, and then sometimes people would do it, and then they would

choose one funding stream but not the other, and then you have had a waste of resources in that regard.

So there is clearly a potential for improvements at the local level just to make the program more effective. And moreover, the way the program is constructed is that the areas perhaps of greatest need may not be communities that have the technical or financial wherewithal to go through the application process for these federal programs. So you need to have a strategic outlook to target those communities because the ones who will be silent may be the ones who are most in need as well.

Mr. SIMPSON. Okay. Mr. Elkins, you mentioned and talked some about adequate funding within the EPA for cyber security. Tell me about that need more if you would. When I think of cyber security, the EPA is not something that I really think of. Yesterday when we heard about the Department of the Interior and other agencies uniting cyber securities, I always think of that with Homeland Security and Defense and some of the other agencies.

Why is it important within EPA, and what would be the results if we did not pursue that, make sure they had a secure system?

CYBER SECURITY

Mr. ELKINS. Sure. That is a fair question. Most people do not realize that EPA has information that is of a sensitive nature. For instance, treaty information, information on climate change that someone might have an interest in to be able to use that information against the interest of the United States.

There has been evidence and we have investigated intrusions into EPA systems. I cannot get into the specifics of that because it is of a classified nature, but it suggests that this is a real issue.

Also, I think, just looking at the recent press releases would indicate, generally speaking, this is not just an EPA issue. This is a global issue, and it is a Federal Government issue. Other agencies than EPA are also being attacked as well.

The challenges and the threat changes. The players change. You know, these are organized operations that are specifically set up to infiltrate, to get into the system, to bury themselves in there, and then to use the systems against EPA. That compromised information then goes out to some of our partners. So it is a very insidious type of an operation.

So it is a major management challenge for the agency. It is ongoing. It is complicated to the extent that the current authorities, for instance, the IG Act provides that the IG is responsible for overseeing the operations and programs of the agency. However, on the other hand the agency also has certain responsibilities in terms of security and how it protects its assets.

So sometimes there is a disconnect between the agency's desire to run its show and the IG's responsibilities to oversee. So we run into conflict and where we have that gap is where those who have an interest in taking advantage of that can play and can get in and cause a lot of harm.

So to have some sort of consistent approach to dealing with cyber security would be helpful, and it may require legislation to do that. I am not quite sure. But every day we see more and more attacks.

It becomes more and more serious, and I am not quite sure we totally have a coherent strategy to be able to address it.

Mr. SIMPSON. Is it more of a focus issue within the Department or a resource issue?

Mr. ELKINS. It is a little bit of both. From our perspective it is a resource issue because it does take money. This is not an issue where I can just take criminal investigators from one shop and just detail them over to do cyber work. Cyber folks come with a certain skill set and also requires investment in certain types of software to be able to detect when there has been an intrusion. So from our standpoint it is a resource issue.

I believe the agency, as I said, gets it. They understand that this is a challenge, and it is a threat, and we are working hopefully as a team, the agency and the IG's office, as we move forward to be able to address this.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you. One of the things that sometimes we do not think about when we talk about growth and potential and expansion and everything else is what is changing in the world. Now, we touched on the chemicals a little bit. One of the things, nanotechnology, when these legislation and these agencies were set up, nanotechnology was not on anybody's radar screen, and there you are dealing with it. Cyber security was not anything that people were worried about. There we are dealing with it.

Another thing that has kind of come up of concern is coordinating climate change activities, and the chair touched on this yesterday. One of the things that, when the EPA was looking at and people were not talking about fracking and people were not talking about, capturing carbon and storing it and all that.

And these are things you have to look at because they impact clean water for populations to drink. It is a public health issue. It is a conservation issue for future generations.

Has GAO or the Inspector General, have you looked at, and I mean, this is not about growing government bigger. These are responses to technology. Have you looked at just doing the basic mission of the EPA plus these new, whether it is new chemicals, new technologies, new production methods, how they impact your budget, and when you are talking about building in for inflation, are we building in for how we have to respond to technology so that you can really do your job efficiently?

I think we still need to look for ways, and I think climate change is one way where we can start molding the interagency cooperation better.

Mr. TRIMBLE. Well, I mean, I think you make some excellent points regarding sort of the evolving, fast-changing world and the evolving challenges, and I think, you know, to go back to the importance of workload and workforce planning, that is sort of why you need to do that. That is why that is so important, and I think in our prior reports what we had noted was EPA, even though they had identified changes in their workload and their responsibilities under the Clean Water Act and these other duties, that there is not a systematic process by which they look at those evolving responsibilities and make sure both that their staff are aligned to address

that, as well as to make sure that their staff's skill sets are aligned to address that to meet their changing strategic goals.

So I think that is sort of the heart and soul of the importance of that issue. In general, in sort of an incidental way, we come across this repeatedly, so in terms of the coordination issue, we have done a report on carbon capture and storage, and in that report we noted that to do this is not something the EPA can do alone. You are talking about massive technology, you are talking about massive transportation systems to ship this stuff across the country, plus storage. So you are talking, you know, the Department of Transportation, Department of Agriculture and Interior. All these guys are going to be involved in some effort like that, and we had made recommendations along those lines, and I believe the President last year or the end of the prior year had started a coalition or an executive level group to look at this issue.

But absolutely most of these big changes, these challenges are going to require large amounts of coordination across the agencies.

NANOTECHNOLOGY

ENDOCRINE DISRUPTORS

Mr. ELKINS. And we agree with you. We think these are important issues in areas that we should be looking at from an IG perspective. As a matter of fact, currently we do have ongoing projects right now looking at the nano-material areas as well as endocrine disrupters as well.

So I guess what I can say to you is stay tuned because there will be reports coming out within the near future.

Ms. MCCOLLUM. Mr. Chair, I think that makes it a real challenge for you and for this committee putting the budget together, and we have to do a lot of belt tightening right now. I am not saying that we do not, but we have a responsibility for not only today's public health issues but being smart for the next generation, because if we are not, it is going to be even more expensive for them to deal with that.

If I could, it is quick, and it is short. It is the Great Lakes, which I know everybody is just so excited to hear about it. The EPA has been given an initiative, and it came together primarily working with the governors and the elected officials from Canada and then working out things between the two federal governments and so there has been a lot put in at the local level, not driven necessarily at a national level.

And you have some initiatives that have come out as a result of that, the Great Lakes Initiative. Now, I understand that there was money to fund this, and the Canadian government is doing its part, too. I was just with an official from Canada in my office yesterday, and we were talking about the Great Lakes Initiative. They are concerned that the United States and so are the states, Minnesota in particular, that we are not going to live up to our commitment, and it goes to infrastructure needs, testing, innovation and other things.

So can you tell me how much of that might have been from lack of resources because I am hearing different things from different

people so I am not judging. I am just asking for your factual/opinion on this.

Did we have funds there before you were able to scale up with a staff to do that? Was there a hard time attracting the right staff with the right tool set? And then the other interesting thing that I have heard, believe it or not, is that weather has been a problem because there are only certain times, as you know, that you can do certain things with bodies of water because they get hard at certain points during the year.

So part of it is that funds are obligated but they were not being able to be used because we have a little thing called a cold climate.

Mr. TRIMBLE. The GAO's work on Great Lakes, we have not done anything in the last couple of years on that. That is an area we definitely believe needs attention and some focus. The work we have done in the past in that area noted some coordination issues as well as some issues concerning questions about how they would monitor progress on the plans that they had talked about.

I think the issues and concerns you speak of will probably be echoed in the work ongoing in the Chesapeake Bay. So I think the issues and the lessons learned from that effort will clearly have applicability to the ongoing effort. You have the same, you know, budgetary pressures among the states versus the Federal Government and then the questions about who is going to pick up what piece of the load and whether or not people can still meet those commitments given the pressures at the state and the federal levels.

Ms. MCCOLLUM. And I am not trying to be funny about it, but I know from even serving on a city council, you do road bids, you put things out, and then weather just does not cooperate. When the GAO looks at timeliness of being able to fulfill obligations in reports, I mean, seriously, do you look at the impact that there are certain times of the year where we just cannot do certain things? And does that factor in? If it factors in, then is it a help, or is it never accounted for at all, and then we could look like we are not doing our fair share when we are just prohibited to do it because of climate?

Mr. TRIMBLE. I mean, we have not done a recent review of, you know, specific milestones and progress, so we are not in a position to talk about any potential delays. I can speak from experience. I was involved in tracking the Recovery Act money for water projects specifically across the country and then also mostly I did a lot of detailed work in Ohio. And clearly the weather impacts the progress of those projects, and that is all accounted for both in the state's planning and the layout and distribution of those funds.

So it is clearly something that is foreseen and accounted for both in the planning and then in the evaluation of those efforts.

Ms. MCCOLLUM. Thank you, Mr. Chairman. Thank you for your indulgence.

Mr. SIMPSON. Mr. Flake.

Mr. FLAKE. No more questions. Just a comment. How can people with so much water still complain so much?

Ms. MCCOLLUM. We are protecting it for you or from you. I am not sure which.

Mr. FLAKE. No more questions.

Mr. SIMPSON. I appreciate that, and I appreciate you both being here today. As I said, or as Mr. Moran said, there are a number of hearings, unfortunately, that are going on. We appreciate the staff for being here also and answering questions. I can tell you that we do take your reports very seriously. I still would repeat that I am kind of stunned that a concern of yours is the workforce development within the EPA when you look at the fact that 25 percent of their budget is spent on employees and salaries. You would think that that would be a high priority of making sure the workforce fits the task that you ask them to do and the priorities that you have asked them to do.

And that is certainly questions that will come up during the hearing with the EPA, but you have given us a basis of questions that will be asked, and we appreciate your work on this, and thanks very much for being here.

GAO's RESPONSES TO QUESTIONS FOR THE RECORD

Pertaining to its testimony:

Environmental Protection Agency: Major Management Challenges

Before the
Subcommittee on Interior, Environment, and Related Agencies, House Committee on Appropriations
March 2, 2011

Q1: The EPA needs assessment for water infrastructure had been used as a justification for over $11 billion increases to the SRFs in the past two years. These massive increases have proven to only be a drop in the bucket relative to the hundreds of billions of dollars in identified needs so it is clear the federal government alone cannot foot the bill, nor do we expect it to given the massive federal debt. Therefore, this discussion is more academic than it is practical given that current federal spending is not sustainable.

QUESTIONS: Is there a paradigm shift worth considering? Is there a different way of doing business that would bolster our water infrastructure and create jobs, while reducing federal spending?

Estimates regarding the costs of needed water infrastructure investments vary greatly—by hundreds of billions of dollars— depending on the assumptions behind the estimates. We have not fully analyzed these estimates but have conducted work examining alternative funding sources and asset management.

In 2009 and 2010, we issued reports examining alternative funding approaches. Specifically, we analyzed three alternative approaches: (1) a trust fund to provide a dedicated source of federal funding similar to some of the trust funds that Congress has established for other infrastructure and environmental programs, such as for highway and transit infrastructure; (2) a national infrastructure bank (NIB), which could finance infrastructure upgrades through a variety of mechanisms, such as directly loaning money to eligible projects, guaranteeing municipal bonds to lower costs, and pooling loans from numerous smaller municipalities to lower costs; and (3) public-private partnerships (PPPs) involving private financing. A PPP is a contractual arrangement in which a public entity (such as a municipal government agency) contracts with a private sector partner to contribute to the provision of a public service by planning, financing, designing, constructing, or operating and maintaining a facility or system. A final approach that we have not studied would involve exempting wastewater projects from state caps for private activity bonds.

As mentioned in our testimony, in 2002 we reported on utilities' asset management practices and found that about a third of the utilities in our survey did not have in place a capital asset management plan. Such plans are critical to allowing the utilities to manage their infrastructure and understand their costs so that they can make strategic decisions regarding maintenance and replacement, as well as to know whether rates charged to consumers cover their costs of service. We have not updated our survey work on the use of asset management plans since this report was issued.

Simpson Q2: Many environmental responsibilities are delegated to States if those States demonstrate that they operate programs that are at least as stringent as the federal standards. The EPA IG's finding that more data collection is required to ensure proper oversight of state delegated programs is in direct conflict with the message from States. The GAO has also identified the need for more consistent enforcement and compliance data. Yet some States already believe that EPA's data requirements are too burdensome. A few States even rejected Recovery Act funds because the reporting burden was too high.

QUESTION 2a: What has the state reaction been to the findings of inconsistent data and the need for additional reporting?

The Environmental Council of the States (ECOS), representing state and territorial environmental commissioners, launched a state reporting burden reduction initiative with EPA in 2006 focused on state concerns over escalating agency reporting requirements. Since that time, EPA reports that they have taken action to reduce state reporting frequency and variation in regional reporting requirements and worked to improve gaps in enforcement data between state and EPA databases. We have not reviewed these efforts. However, we reported in 2007 (*Environmental Protection: EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement* (GAO-07-883)) that EPA's State Review Framework reviews in 33 states identified several weaknesses in state program data and reporting. EPA officials said that states (1) are not adequately documenting the results of facility inspections in order to determine the significance of violations; (2) are not adequately entering significant violations noted in their inspection reports in EPA databases; (3) lack adequate or appropriate penalty authority or policies; and (4) are not documenting how they implement EPA's policies for calculating and assessing penalties. EPA and State officials suggested that some of the causes of inadequate state documentation and reporting of facility inspections can be traced to a lack of staff expertise, inadequate training, increasing workload, and reductions in staff and budgetary resources in recent years. In addition, EPA and state officials said that agency reviews of state enforcement programs are helping them recognize the reasons for discrepancies between state and EPA databases and improve the quality of data in these databases.

QUESTION 2b: EPA is proposing a $27.5 million increase to increase compliance monitoring data with an emphasis on e-reporting, and enhanced data collection. Is this proposal a step in the right direction to address data issues as it relates to this management challenge?

We have not analyzed this proposal to understand how the additional funding will be used to enhance data collected from the states.

Simpson Q3: Last year the GAO identified workforce management as a challenge. Within a constrained budget, agencies must prioritize programs where staffing shortages could affect the success of the mission, while identifying overstaffing in less effective or lower priority programs. Without the proper alignment of workforce planning and budget formulation, the agencies may not have an appropriate mix of employees or employ a workforce in the appropriate programs. This is particularly troubling given that 25% of EPA's budget is payroll.

QUESTION: The GAO testimony indicates that EPA has taken some recent steps to improve workforce planning. For the record, please summarize the responsive actions taken by the agency to date. Please also identify next steps as appropriate.

As stated in our testimony, EPA is developing a new strategic workforce plan. In addition, EPA hired a contractor in 2009 to conduct a workload benchmarking study of six major functions it shares with other federal agencies—financial management, scientific research, regulatory development, enforcement, environmental monitoring, and permitting. According to EPA's FY 2012 Justification of Appropriation Estimates for the Committee on Appropriations, the study will not provide information sufficient to determine changes in workforce levels at this time. In February, the agency began the second part of the study to compare EPA's data to other federal agencies with analogous functions and to identify possible best practices that can be adopted. According to the Justification, the agency expects to complete the study in September 2011. In addition, the agency asked its National Advisory Council on Environmental Policy and Technology to help in developing the new workforce plan. On January 31, 2011, the Council responded with an advice letter to the EPA Administrator with several recommendations on how to address the scientific and technical competencies the agency needs to be prepared for tomorrow's challenges,.

Simpson Q4: Both the EPA IG and the GAO have identified the cleanup and long-term monitoring of contaminated Superfund sites as a perennial challenge. The EPA 2012 budget proposes $1.236 billion for the Superfund program, a $70 million reduction from 2010 levels. One concern with regard to the Superfund budget is that only two out of every three dollars proposes to fund cleanup activities. Every third dollar in the Superfund budget pays for administrative, overhead, or other activities. And when large reductions are proposed, as is the case for 2012, proportional reductions are applied to the cleanup programs rather than derived from bloated overhead or administrative activities as one might expect.

QUESTION: With NPL sites expected to cost hundreds of millions of dollars to cleanup over the course of decades, how can EPA make better use of limited resources in the Superfund Trust Fund?

To improve utilization of the limited resources in the Superfund Trust Fund, EPA must better understand costs and status of cleanup activities. In GAO's July 2009 report on Superfund litigation, cost, and other issues,[1] we stated that EPA needs comprehensive and reliable data that can be aggregated to provide information on key issues, such as the (1) status and cost of cleanups at sites that are not construction complete, particularly sites where cleanup is likely to be complex and expensive; (2) extent to which sites lack responsible parties capable of paying for some or all of a site's cleanup activities; and (3) financial impacts of having EPA shoulder these sites' cleanup costs. Information on these key issues is important for EPA to effectively plan the future course of the Superfund program, and the Congress needs such data to help it make more informed decisions about program funding and policy issues. Therefore, we recommended that the EPA Administrator assess the comprehensiveness and reliability of the data the agency collects on these three issues and, where necessary, improve the data. We also recommended that EPA aggregate these data, as appropriate, to provide clear and complete information on these issues, and provide this information to the Congress in the agency's annual accomplishment reports. While EPA agreed to assess data reported on program status and costs, the agency did not agree to assess and report data on the extent of viable responsible parties and the financial impacts if such parties cannot be identified. Nevertheless, GAO continues to believe that these data are essential to assess EPA's future Superfund funding needs.

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[1]U.S. GAO, *Superfund: Litigation Has Decreased and EPA Needs Better Information on Site Cleanup and Cost Issues to Estimate Future Program Funding Requirements*, GAO-09-656, July 15, 2009.

Simpson Q5: The Subcommittee has long had a concern about EPA's use of special accounts to cleanup Superfund sites. As of the end of the fiscal year 2010, EPA had collected $3.3 billion from responsible parties and had $1.8 billion in settlement funds sitting in special accounts dedicated toward the cleanup of those sites. Therefore, to date EPA has spent less than half of what it has collected from responsible parties.

QUESTIONS: Do you know of any examples where the use of special accounts has accelerated the cleanup of Superfund sites? What new policies or controls has EPA put in place to spend these special account funds more expeditiously? And what additional steps should EPA take to accelerate expenditures of special account settlement funds?

GAO has not previously looked at EPA's use of Superfund Special Accounts in any detail. However, we have an ongoing review addressing this issue. Specifically, our review examines (1) the status of EPA's special accounts and (2) the extent to which EPA is following its policies and procedures in managing and monitoring these accounts. This work is being conducted at the request of the Ranking Member of the Senate Committee on Environment and Public Works, and is expected to be completed by late 2011.

Simpson Q6: In the report GAO released on March 1, 2011, entitled "Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue" the GAO identified coordination with other agencies as an issue in the U.S.-Mexico Border region leading to an ineffective and fragmented use of resources. The GAO suggested that Congress establish a task force to review and coordinate activities.

QUESTIONS: Please provide more detail about the composition of this task force. Of the seven federal agencies active in the border region (EPA, USDA, HUD, the Corps of Engineers, IHS, EDA, and the Bureau of Reclamation) who would be the lead? What authorities would Congress need to provide?

Any task force that is created needs to involve all seven agencies to most effectively coordinate programs concerning the drinking water and wastewater needs of the region. While the structure of the task force can vary, the task force would need to work in partnership with state and local agencies to maximize effectiveness of the federal programs. GAO did not make a specific recommendation as to which agency should lead the task force. EPA has provided the largest amount of funding in this area, and as the key regulatory agency for wastewater and drinking water, possesses significant expertise. USDA and HUD have also expended significant amounts in this area, and have on the ground resources in urban and rural areas. The remaining agencies have spent less in this area.

Most important would be the coordinating functions that a task force would perform. We found that despite spending $1.4 billion on projects in the area in recent years, the agencies had not conducted an overall assessment of needs in the area or developed comprehensive coordinated policies and procedures. We did find examples of states along the border region that have made efforts to better coordinate funding processes for water and wastewater projects. For example, New Mexico has established an initiative to coordinate funding using a single application process for entities seeking assistance. The state has also developed a single set of engineering requirements that state and some federal agencies accept.

To this end, we suggested that Congress might want to consider authorizing a task force to:

- Leverage collective resources to identify needs within the border region—including the identification of the water infrastructure status within colonias, and the extent to which the lack of institutional capacity has impeded communities within the border region from seeking assistance;
- In light of these needs, establish a framework for compatible and coordinated policies and procedures across relevant agencies, such as a coordinated process for the selection of projects, and standardized applications and environmental review and engineering requirements, to the extent possible;
- Evaluate the degree to which there are gaps in the programs and what resources or authority would be needed to address them; and

- Provide periodic status reports regarding the progress made in developing this strategic and coordinated approach.

Simpson Q7: I also believe there is a lack of coordination in the approach to climate change. I have expressed concern over the last couple of years about the rapid growth in budgets for activities related to climate change in this Bill as well as government-wide.

QUESTION: Given present budget constraints, would it make sense to have one entity be the lead agency overseeing federal climate change efforts in order to ensure limited dollars are being prioritized and allocated efficiently and effectively?

We have not conducted work on the feasibility or advisability of having one entity lead federal climate change efforts. However, we have an ongoing review addressing climate change funding and related coordination issues. Specifically, our review examines (1) federal funding for climate change activities and how these activities are organized; (2) the extent to which methods for defining and reporting climate change funding are interpreted consistently across the federal government; (3) federal strategic climate change priorities, and the extent to which funding is aligned with these priorities; and (4) what options, if any, are available to better align federal climate change funding with strategic priorities. Two of our recent reports—a 2010 report on environmental satellites used for measuring variations in climate over time and a 2009 report on climate change adaptation—showed that certain federal climate-related activities were not well coordinated across the government.[2] This work is similar to issues identified in a 2008 Congressional Research Service (CRS) report which noted that the packaging of mostly existing programs into a federal climate change strategy has resulted in a lack of a unifying mission across the federal government.[3] We have found in the past that when agencies do not collaborate well when addressing a complicated, interdisciplinary issue like climate change, they may carry out programs in a fragmented, uncoordinated way, resulting in a patchwork of programs that can limit the overall effectiveness of the federal effort.[4]

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[2]GAO, *Environmental Satellites: Strategy Needed to Sustain Critical Climate and Space Weather Measurements*, GAO-10-456. (Washington, D.C.: Apr. 27, 2010). GAO, *Climate Change Adaptation: Strategic Federal Planning Could Help Government Officials Make More Informed Decisions*. GAO-10-113. (Washington, D.C.: Oct. 7, 2009). Climate change adaptation means adjustments to natural or human systems in response to actual or expected climate change.

[3]Congressional Research Service. *Climate Change: Federal Program Funding and Tax Incentives*. December 22, 2008 (RL33817).

[4]GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005), and *Managing for Results: Barriers to Interagency Coordination*, GAO/GGD-00-106 (Washington, D.C.: Mar. 29, 2000).

Simpson Q8: Both the IG and GAO have raised concerns about EPA's approach to managing risks from chemicals as the agency cannot keep up with the pace at which chemicals are being introduced into commerce. I understand the Administration supports reform of the Toxic Substances Control Act (TSCA).

QUESTION: In the absence of Congressional action on TSCA, what steps can the agency take in order to improve their management of chemical risks?

In prior reports on TSCA, GAO has recommended both statutory and regulatory changes to, among other things, strengthen EPA's authority to obtain additional information from the chemical industry and shift more of the burden to chemical companies for demonstrating the safety of their chemicals. While section 6 of TSCA authorizes EPA to issue regulations that may, among other things, ban existing toxic chemicals or place limits on their production or use, the statutory requirements EPA must meet to do so present a legal threshold that has proven difficult for EPA and discouraged agency action. In the absence of Congressional action, EPA has nevertheless taken some recent steps to begin addressing chemical risks under section 6. For example, using its existing authorities, EPA has initiated actions on such chemicals as mercury and lead to, for example, ban or phase out their use in certain products. However, most such actions are in the early stages of development, and as we have noted, the agency has not completed any actions to ban or limit toxic chemicals under section 6 since its rule prohibiting the future manufacture, importation, processing, and distribution of asbestos in almost all products was rejected by the courts in 1991.

Simpson Q9: GAO previously listed "Improving implementation of the Clean Air Act" as a management challenge in 2009, but this item is not included as a management challenge in 2010.

QUESTION: Has EPA adequately addressed Clean Air Act implementation issues highlighted by GAO, namely coordination with other federal agencies, analyses of health impacts from air pollution, and delays in regulating mercury and other air toxics?

EPA still faces challenges implementing the Clean Air Act. We did not highlight this area in our testimony as we chose to focus our observations on our most recently completed work. In 2006 we reported on EPA's management of its Air Toxics program and included recommendations that agency develop a plan for improving the management of the program, including a prioritization scheme, timelines, and estimates of resources needed to meet its statutory obligations.[5] EPA agreed, in part, with our recommendations, but has not implemented them.

[5]GAO, *Clean Air Act: EPA Should Improve the Management of Its Air Toxics Program*, GAO-06-669, (Washington, D.C.: Jun 23, 2006).

Moran Q1: GAO has continually found limitations in EPA's ability to show health effects on many chemicals used by consumers every day.

QUESTION 1a: Does EPA need statutory changes to effectively regulate chemicals?

GAO has recommended that the Congress consider statutory changes to TSCA to provide EPA with more authority to effectively regulate chemicals. TSCA generally places the burden on EPA to obtain data on the more than 80,000 industrial chemicals in EPA's TSCA database, rather than requiring the companies that produce the chemicals to develop and submit such data. This burden is costly and time-consuming since TSCA requires that EPA demonstrate that certain health or environmental risks are likely before it can require companies to further test their chemicals. TSCA provides slightly more robust authority for new chemicals—about 700 of which are introduced into commerce each year. Chemical companies are required to provide EPA with certain information on new chemicals in "premanufacture notices," and EPA may ban or limit their use if this information is inadequate. However, while 85 percent of premanufacture notices lack any health or safety test data, EPA does not often use its authority to obtain this information. In contrast, The European Union's Registration, Evaluation and Authorization of Chemicals (REACH) legislation generally places the burden on companies to provide data on the chemicals they produce and to address the risks those chemicals pose to human health and the environment.

QUESTION 1b: Short of reforming the Toxic Substances Control Act (TSCA) are there additional resources that could lead to better and more effective regulation of known hazardous chemicals?

As discussed above, EPA is in the process of using its authority to label, restrict, or ban chemicals under Section 6 of the Act, to ban or phase out the use mercury and lead in certain products. However, as we reported in 2005, even when EPA does have toxicity and exposure information on existing chemicals, it may still have difficulty demonstrating that harmful chemicals pose an unreasonable risk that warrants limits on their production or use. In 2005, we reported that since the Congress enacted TSCA in 1976, EPA had issued regulations under the act to ban or limit the production or restrict the use of five existing chemicals or chemical classes.

Moran Q2: GAO's 2010 report on DOD-related Superfund sites identified several obstacles to cleaning up those sites. One obstacle is that the contractors that DOD nses are forced to operate within price caps and meet deadlines which may conflict with regulatory review times and encourage shortcuts.

QUESTIONS: Did GAO seek comment from DOD? If so, what has been their response?

Yes, GAO did seek and receive comment from DOD regarding performance-based contracts (PBC) in our draft report, and in response to one of our recommendations. Regarding price caps and deadlines, DOD provided a range of comments, many of which challenged the information presented. At the same time, DOD concurred with our recommendation to improve project management by using OMB criteria and service guidance before the services use PBCs for Superfund cleanup.

The GAO report discussed how contract management issues affected the cleanup work at the selected installations which were the subject of the report. While DOD was concerned that this discussion was based on worst-case scenarios, the information presented was primarily from regulators such as EPA officials who worked on these issues day to day, and who identified problems including the following:

- When PBCs are used, the contractor typically may not explore the full range of alternatives during the remedial investigation and feasibility study, due to the pressure of PBC price caps to reduce the costs involved in developing these alternatives.
- The remedies of proposals put forward by the PBC tend to be those that do not require construction, such as monitored natural attenuation for groundwater contamination, in order to save money on the contract.
- Poor quality of documents submitted to EPA, including lack of legal review and routine failure of the installation to perform quality reviews of contractors' work, were due to pressure to meet the fixed price aspects of PBC contracts, and which resulted in significant redrafting by EPA's legal staff.

In addition, DOD indicated that deadlines are based on assumed review times as laid out in an interagency agreement (IAG), suggesting that any time pressure is no different than would otherwise exist. However, where there is no IAG in place, as was the case for the installations studied in the report, there is generally no Site Management Plan that includes detailed schedules, providing an enforceable cleanup schedule. As for price caps, DOD officials commented that since every contractor takes a risk on bidding on price, contracting for the federal government should be no different in that respect. However, without an IAG the regulator lacks the mechanisms to ensure that cleanup by an installation proceeds expeditiously, and can result in unrealistic time frames for cleanup work that have not been agreed to by EPA or other stakeholders and create an incentive for rushed work, resulting in possible rework later on.

Finally, DOD stated in its comments, that once basic investigation stages are complete, PBCs can be a more efficient use of taxpayer money, not less. DOD also noted that the

department believes it has successfully used PBCs for some environmental remediation and munitions response activities. According to DOD, the PBCs include identifiable and measurable costs, schedules and outcomes, such as acceptance by DOD and the regulatory agencies. DOD stated that PBCs can benefit DOD by:

- Providing flexibility of scope, rather than prescriptive methods;
- Allowing DOD to benefit from the expertise and emerging technologies of the private sector in solving problems during various phases of the cleanup process;
- Ensuring cost control with known outcomes at the completion of the contract; and
- Encouraging contractors to look for ways to reduce time and cost.

Nonetheless, Tyndall AFB officials told us that after shifting toward PBCs for cleanup in 2004, they are now migrating away from them because there is too much uncertainty in the cleanup work needed at the base. Conversely, the Army told us that in its view, PBCs are better suited for complex work because they foster innovation from the private sector.

According to a February 2011 Air Force policy memo, PBCs are currently being encouraged as a mechanism to quickly complete cleanups and close out sites.

Moran Q3: GAO's testimony stated that "high-quality data on greenhouse gas emissions are critical to the development and implementation of domestic and international efforts to address climate change".

QUESTION: Is the Greenhouse Reporting Registry funding, requested at nearly $17 million in FY 2012, necessary to ensure EPA has accurate data?

GAO has not studied the funding request for EPA's greenhouse gas reporting registry. The Consolidated Appropriations Act of 2008 directed EPA to issue a regulation requiring mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy. As we reported in 2009, monitoring, reporting, and verification needs for reliable data on greenhouse gas emissions depend on the purpose and intended use of the data.[6] As we reported, data requirements become more complex and challenging as the number and types of covered activities increases.

[6]GAO. *Climate Change Science: High Quality Greenhouse Gas Emissions Data are a Cornerstone of Programs to Address Climate Change.* GAO-09-423T. (Washington, D.C.: Feb 24, 2009).

Moran Q4: GAO has reported in the past that EPA's regions operate with considerable autonomy, causing varied levels of enforcement depending across the regions.

QUESTION: Are their examples that have worked for other agencies to standardize some of the core functions of the agencies in the region?

We have not examined how EPA might apply the experiences of other agencies in working with regional offices, but have made recommendations on how the agency could nonetheless improve its oversight. In 2007, we issued a report entitled, *Environmental Protection: EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement* (GAO-07-883) which said that EPA's Office of Enforcement and Compliance Assurance implemented a new oversight program in 2004, known as the State Review Framework (SRF), to more uniformly and objectively measure the performance of states' enforcement programs. EPA expects its 10 regional offices to take a systematic, consistent approach in overseeing the state enforcement programs and, in doing so, to follow EPA's regulations, policies, and guidance. Through policy and guidance, EPA outlines its oversight expectations for regional offices to ensure that state approaches include the elements of an acceptable state enforcement program (such as the type and timing of the actions that should be taken for various violations, and how to track state compliance). We also reported that that the regions vary substantially in the actions they take to enforce environmental requirements, such as the number of inspections performed at regulated facilities and the amount of penalties assessed for noncompliance with environmental regulations. In addition, past EPA Inspector General and agency evaluations found variations among regions regarding issues such as sufficiently encouraging states to consider economic benefit in calculating penalties, taking more direct federal actions where states were slow to act, and requiring states to report all significant violators. Accordingly, we reported that the SRF provides a model that EPA could use to evaluate progress being made by EPA's regions in addressing inconsistencies in enforcement actions and oversight and recommended that the agency conduct a performance assessment similar to the SRF for regional enforcement programs.

Moran Q5: GAO has noted that many States operate the day-to-day enforcement of Federal laws.

QUESTION 5a: Who at EPA is responsible for ensuring States do their jobs? Is it the region or headquarters?

EPA administers its environmental enforcement responsibilities through its headquarters Office of Enforcement and Compliance Assurance (OECA). While OECA provides overall direction on enforcement policies, and occasionally takes direct enforcement action, much of its enforcement responsibilities are carried out by its 10 regional offices. These offices are responsible for taking direct enforcement action and for overseeing the enforcement programs of state agencies with relevant enforcement authority.

QUESTION 5b: Is there some sort of metrics EPA uses to rate the performance of States?

We reported in 2007 (GAO-07-883) that under EPA's State Review Framework, regions evaluate the extent to which state performance in managing three major programs complies with specific legal requirements, policy, and guidance, while OECA headquarters manages the overall review process. In conducting this evaluation, the regions use 12 review elements, such as the degree to which states complete planned inspections, accurately identify significant violations, and take timely and appropriate enforcement action.

QUESTION 5c: How would you recommend we ensure that States are properly enforcing Federal laws?

For one thing, EPA should continue to be held accountable to its own policies for overseeing state enforcement programs. We reported in 2007 (GAO-07-883) that EPA expects its 10 regional offices to take a systematic, consistent approach in overseeing the state enforcement programs and, in doing so, to follow EPA's regulations, policies, and guidance. EPA outlines, by policy and guidance, its oversight expectations for regional offices with regard to ensuring the state approaches include the elements of an acceptable state enforcement program, such as the type and timing of the actions that should be taken for various violations, and track how well the states comply. To better ensure more consistent state performance and more consistent oversight of state enforcement programs, we recommended that EPA (1) develop and implement corrective actions for the major deficiencies identified through the State Review Framework and (2) assess the capacity of poorly performing state programs to determine whether they possess the staff, financial, and other resources to effectively implement enforcement programs consistent with federal requirements.

Moran Q6: GAO reported that EPA has been slow to improve long-standing problems with often incomplete and unreliable enforcement data.

QUESTION: Do other agencies like the Department of Justice do a better job in reporting their enforcement data in which the public can easily obtain information?

We have not directly examined the issue of which DOJ enforcement data are publicly available, and if so, the extent to which such data are complete and reliable.

As we have reported, the problems with EPA enforcement data are related to its management of the data, as well as what data are made available to the public. We have conducted work on case management by DOJ's Civil Rights Division that indicates that the department needs to improve its enforcement case management data in this area, although the data are not routinely made available to the public. In 2009, we issued *Civil Rights Division Case Management System: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs* (GAO-09-938R), which said that the Division lacked information on how its Interactive Case Management (ICM) system performed and whether it met users' needs. We also found that the Division did not collect information on protected class and subject—information that is key to ensuring the Division executes its charge to enforce statutes prohibiting discrimination on the basis of protected class. Furthermore, we also found that each of DOJ's litigating components has its own case management system containing information on its respective enforcement efforts, a situation that makes it expensive and difficult to generate department-level reports on enforcement efforts. While DOJ had planned to implement a new integrated case management system in 2010, the department terminated the system.

Hearing Questions for the Record (QFR) Prepared for the EPA Inspector General Hearing: Major Management Challenges at the Environmental Protection Agency Wednesday March 2, 9:30 Rayburn B308

Chairman Michael K. Simpson

National Environmental Policy

Simpson Q1

Several of the management challenges identified by the EPA Inspector General are broad, and outside the scope of what the EPA can address on its own. These challenges will take years to resolve and in many instances requires Congressional action. We are holding oversight hearings in part to determine what actions the EPA and Subcommittee could take in the near term to address the inefficiencies and challenges at the Agency.

QUESTION: With that in mind, and assuming the foreseeable absence of a comprehensive National Environmental Policy, what are some near-term corrective actions that the EPA can institute with these broader goals in mind?

In the absence of a comprehensive national environmental policy, there are a number of near-term corrective actions that EPA can take to coalesce various environmental stakeholder efforts. Smaller steps EPA could take inelude benchmarking the process used by the Department of Homeland Security (DHS) to develop the Quadrennial Homeland Security Review (QHSR). To start, the EPA Administrator could send a letter to stakeholder groups asking for their insight on areas a national environmental policy should address. Next, EPA could form study groups, each led by a senior EPA official, to address key concepts, topics, and/or missions relevant to a national environmental policy. As the DHS' Secretary did, the EPA Administrator could send a letter to stakeholder organizations encouraging participation in the interagency groups. DHS described this early engagement of homeland security stakeholders at the beginning of the review process as a critical element of the QHSR. Finally, EPA's study groups could then meet regularly and develop position papers on their respective topics. Position papers could identify shared goals, overlapping/duplicative programs, strategies to attain goals, and measures to assess progress. Currently, EPA has ad hoc interagency workgroups – such as that between EPA and the Departments of Transportation and Housing and Urban Development to create a framework to foster sustainable communities – but EPA lacks an overall coordinated strategy and goals that integrate these efforts with other stakeholder activities.

DHS saw success with its study group approach. DHS' study groups conducted their analysis over a 5-month period and consistently shared work products with the other stakeholder groups via different collaboration processes. One process utilized by DHS that EPA could easily benchmark would be to convene on-line, collaborative national dialogues on environmental policy to ensure broad stakeholder involvement. Sustained engagement of the environmental

stakeholder community through these efforts could help kick-start interest and development of a national environmental policy.

QUESTION: And what are some near-term corrective actions that the Subcommittee should consider?

In the near-term, the Subcommittee could direct EPA to undertake the corrective actions outlined in the response to Question #1. Since DHS established its QHSR through a multi-step process that took a little over a year, and DHS' study groups conducted their analysis over a 5-month period, the Subcommittee could require EPA to report progress at 6- and 12-month benchmarks. Since Congress would play a key role in the development of a national environmental policy, the Subcommittee should require frequent, consistent engagement by EPA on study group progress and results in order to identify additional near-term actions.

Water Infrastructure

Simpson Q2

The EPA needs assessment for water infrastructure had been used as a justification for over $11 billion increases to the SRFs in the past two years. These massive increases have proven to only be a drop in the bucket relative to the hundreds of billions of dollars in identified needs so it is clear the Federal government alone cannot foot the bill, nor do we expect it to given the massive federal debt. Therefore this discussion is more academic than it is practical given that current Federal spending is unsustainable.

QUESTION: Is there a paradigm shift worth considering? Is there a different way of doing business that would bolster our water infrastructure, create jobs, while reducing federal spending?

The SRF loan programs established in the 1987 Amendments to the Clean Water Act (CWA) and the 1996 Amendments to the Safe Drinking Water Act (SDWA) are financing tools that help utilities repair and upgrade infrastructure. SDWA also expanded EPA and State assistance programs to prevent contamination of water supplies. While these efforts have improved utility performance, the infrastructure funding gap persists.

A December 2010 Congressional Research Service report, "Water Infrastructure Needs and Investment: Review and Analysis of Key Issues," noted the far-ranging challenges facing our nation's utilities. Drinking water and wastewater utilities must address challenges to meeting regulatory requirements, financing infrastructure repair or replacement, and security needs. Doing so in a sustainable way that does not increase federal financing responsibilities can help to close these infrastructure gaps while creating jobs.

EPA and its partners could move away from isolated, media- and interest-specific initiatives toward a more cohesive, unified, and future-thinking approach to environmental protection.

Environmental protection – like homeland security – is a public good and as such requires a nationally coordinated approach toward policy. EPA must have the force of national environmental goals to set regulatory standards, particularly for problems that cross State or national borders or pose risks to future generations. Congress should provide EPA, States, and the other 25 federal agencies that share a responsibility for environmental protection the means to identify and manage environmental problems of national significance, like water infrastructure. EPA should work with Congress and the Administration to examine ways to leverage resources expended on various, insular environmental protection efforts.

Data: Collection and Reporting

Simpson Q3

Many environmental responsibilities are delegated to States if those States demonstrate that they operate programs that are at least as stringent as the federal standards. The EPA IG's finding that more data collection is required to ensure proper oversight of state delegated programs is in direct conflict with the message from States. The GAO has also identified the need for more consistent enforcement and compliance data. Yet some States already believe that EPA's data requirements are too burdensome. A few States even rejected Recovery Act funds because the reporting burden was too high.

QUESTION: What has the state reaction been to the findings of inconsistent data and the need for additional reporting?

Our March 3, 2011, testimony (and our FY-2010 Management Challenges) noted that delegation of programs to State, local, and Tribal agencies does not abrogate EPA of its statutory and trust responsibilities for protecting human health and the environment. In general, the OIG has found that limitations in the availability, quality, and robustness of program implementation and effectiveness data for delegated programs have negatively impacted EPA's oversight of delegated programs.

The OIG has not conducted an assessment of State reactions to such findings. Anecdotal information suggests that at least two issues are of concern to States: 1) the resources required for reporting data to EPA; and 2) the difficulty associated with collecting, managing, formatting, and reporting data to meet EPA's data requirements that may be different from the software that States have been using. For example, in our 2007 report on EPA's air toxics program, "Improvements in Air Toxics Emissions Data Needed to Conduct Residual Risk Assessments," (Rpt. No. 08-P-0020, October 31, 2007, p. 15), we noted that:

> ". . . staff from Region 5 told us that Illinois had not submitted a large amount of the required minimum data to AFS[[1]] due to resource constraints and the lack of an interface between the State's database and EPA's AFS database. Texas has also had a long-running

[1] AFS is the Air Facility Subsystem, EPA's database for recording compliance monitoring activities.

problem submitting data to AFS because the State's system was not compatible with AFS. The State recently uploaded new data into AFS, but this update had not yet been completed at the time we conducted our analysis. EPA regional air program managers told us of at least two other States with similar problems, but said these States have since taken action to improve their data submission to AFS."

A July 2009 interview with representatives of the National Association of Clean Air Agencies (NACAA) indicated uncertainty regarding States' attitudes toward mandatory air toxics emissions reporting. They pointed out that there is strong pushback from States and locals to repackage their data for EPA. They also pointed out that grants to State and local agencies have diminished in the last decade, while responsibilities have increased exponentially.

EPA is proposing a $27.5 million increase to increase compliance monitoring data with an emphasis on e-reporting, and enhanced data collection. Is this proposal a step in the right direction to address data issues as it relates to this management challenge?

The OIG has not evaluated the specific EPA-proposed $27.5 million increase to enhance its compliance monitoring data collection and reporting. However, we believe an increased focus on e-reporting is a step in the right direction to enhance EPA's collection of compliance monitoring data. Our recent audit work disclosed areas where enhanced e-reporting would help EPA accelerate its efforts to have all states consistently report permit compliance information as well as manifest information for hazardous chemicals. In particular:

- Increased efforts for e-reporting would help EPA modernize its Discharge Monitoring Report (DMR) data entry process. The process is a manual-oriented process for many State environmental offices, which significantly elevates the risk of data exceptions. EPA has been continually enhancing DMR data entry and quality review processes, including efforts to: 1) convert states from the legacy Permit Compliance System to the new Integrated Compliance Information System – National Pollutant Discharge Elimination System; 2) increase use of the Interim Data Exchange Format (IDEF) quality review process; and 3) implement eDMR and NetDMR automation capabilities. However, according to EPA officials, competing resources have limited full implementation of these enhancements.

- The EPA-sponsored e-Manifest software initiative could improve data quality by automating collection of manifest data. Hazardous waste data in EPA systems was not supported by the original source documents. The manifest records hazardous waste a designated facility generates, transports, and receives. EPA has not established a requirement for states to retain manifest documents. Hazardous waste generators are required by U.S. Code of Federal Regulations Title 40, "Protection of the Environment," to retain manifest documents for three years. EPA is engaged in ongoing efforts to enable electronic submission of manifest data.

Furthermore, increased funding for e-reporting efforts would also encourage states to increase their participation in the use of the Environmental Information Exchange Network (Exchange Network). EPA created the Exchange Network as a secure internet- and standards-based approach for exchanging environmental data and improving environmental decisions. EPA, State environmental departments, U.S. tribes, and territories have partnered in building the Network and many of EPA's new e-reporting initiatives make use of the Exchange Network as the method for sharing data. States cited EPA grant funding as the primary reason for enabling their use of the Exchange Network. States viewed the data standards and State-to-State exchanges as expected benefits from the Exchange Network. During our audit, there were 48 States and 2 tribes actively using the Exchange Network. EPA has invested more than $162 million on the Exchange Network.

Today, EPA reports that all 50 states, 12 tribes, 2 territories, and 7 business partners are actively using the Exchange Network to exchange data with EPA. Also, EPA has 26 additional Exchange Network projects either in development or planned in order to increase utilization of the network and improve data quality. While EPA has seen rising utilization of the Exchange Network, more work is needed to increase states use of the Exchange Network to provide data using all the regulatory data exchanges. If EPA is to have its partners adopt the Exchange Network as the preferred method to share data with the Agency, then increased management efforts and funding is vital. Without this, EPA's investments in the Exchange Network would not yield the desired outcomes.

Superfund

Simpson Q4

Both the EPA IG and the GAO have identified the cleanup and long-term monitoring of contaminated Superfund sites as a perennial challenge. The EPA 2012 budget proposes $1.236 billion for the Superfund program, a $70 million reduction from 2010 levels. One concern with regard to the Superfund budget is that only two out of every three dollars proposes to fund cleanup activities. Every third dollar in the Superfund budget pays for administrative, overhead, or other activities. And when large reductions are proposed, as is the case for 2012, proportional reductions are applied to the cleanup programs rather than derived from bloated overhead or administrative activities as one might expect.

QUESTION: With NPL sites expected to cost hundreds of millions of dollars to cleanup over the course of decades, how can EPA make better use of limited resources in the Superfund Trust Fund?

The OIG has conducted numerous reviews of how EPA can improve efficiency and effectiveness of the Superfund program. In response to a House Appropriations Committee request, in 2004, the OIG reported that between 1996 and 2003 independent auditing organizations (such as OIG and GAO), and other notable organizations, had identified over 50 recommendations to remedy Superfund program weaknesses in contracting, deobligations management, special accounts

management, workload modeling, and cost accounting.[2] In 2004 EPA also completed its own internal review of Superfund and made over 100 recommendations for improvement.[3]

Since 2005, OIG has conducted 12 audits or evaluations that have identified approximately $130 million in efficiencies, or monetary benefits, that EPA could achieve through improved 1) cost recovery processes, 2) deobligations of unused funds, 3) Superfund special accounts management, and 4) better management of contracting and interagency agreement processes.[4] In addition, the OIG has conducted dozens of performance reviews and evaluations of Superfund program components. These have identified ways EPA can expedite and improve Superfund cleanups so that sites achieve cleanup goals, are successfully deleted from the National Priorities List, put into reuse as appropriate, and potentially generate beneficial economic outcomes for communities.[5]

EPA has agreed to make, or made, many of the changes the OIG has recommended to improve Superfund efficiency and effectiveness. Results of past OIG work have provided EPA with an array of opportunities and tools for continuous Superfund improvement. The OIG's work will continue to focus on how the Superfund program can improve its program and financial management, particularly in view of budget constraints. Congress also has a critical role to play in ensuring the Superfund program is both effective and efficient. Engaging in dialogue with EPA about the challenges the Superfund program faces, what is realistically needed to ensure the program has the tools and resources to achieve its goals, and how EPA is working to implement recommended changes are critical congressional actions to make possible an effective and efficient Superfund program.

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[2] EPA/OIG: "OIG Response to Congressional Request on Superfund Administrative Costs" Report No. 2004-S-00004 September 15, 2004. See: http://www.epa.gov/oig/reports/2004/20040915-2004-S-00004.pdf.

[3] EPA: "Superfund: Building on the Past, Looking to the Future – 120-day study, 2004. See: http://www.epa.gov/oig/reports/2004/20040915-2004-S-00004.pdf.

[4] EPA Can Better Manage Superfund Resources, Report No. 2006-P-00013, February 28, 2006; EPA Should Continue Efforts to Reduce Federal Advances and Federal Special Accounts, Report No. 10-P-0093, March 31, 2010; EPA Has Improved Efforts to Reduce Unliquidated Obligations in Superfund Cooperative Agreements, But a Uniform Policy Is Needed, Report No. 09-P-0241, September 22,2009; Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups, Report No. 09-P-0119, March 18, 2009; Making Better Use of Stringfellow Superfund Special Accounts, Report No. 08-P-0196, July 9, 2009; Making Better Use of Superfund Special Account Funds for Thermo Chem, Report No. 2007-S-00002; August 20, 2007; EPA Needs to Improve Internal Controls to Increase Cost Recovery, Report No. 09-P-0144; April 27, 2009; Follow-up on Audit of Undistributed Site Costs Finds Corrective Actions Not Complete, Report No. 08-P-0236; August 25, 2008; EPA Can Recover More Federal Superfund Money, Report No. 08-P-0116; March 26, 2008; EPA Could Improve Its Redistribution of Superfund Payments to Specific Sites, Report No. 2006-P-00027, July 31, 2006; EPA Can Improve Its Preparation and Use of Independent Government Cost Estimates for Superfund Contracts, Report No. 10-P-0065, February 16,2010; EPA Can Improve Its Managing of Superfund Interagency Agreements with U.S. Army Corps of Engineers, Report No. 2007-P-00021, April 30, 2007.

Significant sample OIG reports: Improved Controls Would Reduce Superfund Backlogs, Report No. 08-P-0169, June 2, 2008; Superfund's Board of Directors Needs to Evaluate Actions to Improve the Superfund Program, Report No. 2007-P-00029, August 1, 2007; Improving Nationwide Effectiveness of Pump-and-Treat Remedies Requires Sustained and Focused Action to Realize Benefits, March 27, 2003; EPA Decisions to Delete Superfund Sites Should Undergo Quality Assurance Review, Report No. 08-P-0235, August 20, 2008; EPA Needs to Take More Action in Implementing Alternative Approaches to Superfund Cleanups, Report No. 2007-P-00026, June 6, 2007; EPA Should Improve Its Oversight of Federal Agency Superfund Reviews, Report No. 10-P-0133, June 2, 2010; Lack of Final Guidance on Vapor Intrusion Impedes Efforts to Address Indoor Air Risks, Report No. 10-P-0042, December 14, 2009; Tribal Superfund Program Needs Clear Direction and Actions to Improve Effectiveness, Report No. 2004-P-00035, September 30, 2004

Superfund: Special Accounts

Simpson Q5

The Subcommittee has long had a concern about EPA's use of special accounts to cleanup Superfund sites. As of the end of the fiscal year 2010, EPA had collected $3.3 billion from responsible parties and had $1.8 billion in settlement funds sitting in special accounts dedicated toward the cleanup of those sites. Therefore, to date EPA has spent less than half of what it has collected from responsible parties.

QUESTION: Do you know of any examples where the use of special accounts has accelerated the cleanup of Superfund sites?
What new policies or controls has EPA put in place to spend these special account funds more expeditiously? And what additional steps should EPA take to accelerate expenditures of special account settlement funds?

The OIG issued its first report on Superfund special accounts over 10 years ago[6], and since then has issued five more reports.[7] These reports have produced approximately $58 million in monetary benefits for the Superfund program as well as improvements in EPA's management controls for Superfund special accounts. The large available balances in Superfund special accounts, and EPA's past management difficulties in this area, bring attention to it as high risk with potential high return for the government if improvements are made and appropriate management practices are implemented.

In situations where—1) EPA uses appropriated Superfund dollars towards a site cleanup, yet 2) fails to use an available special account to fund the cleanup, and 3) also is unable to fund other cleanups because of a shortage in appropriated Superfund dollars for other sites—the failure to use special account funds can delay cleanups at sites that did not have sufficient funding. When special account funds are used consistent with Agency guidance, EPA can redirect (i.e., reclassify) appropriated Superfund money that may have been spent at a site with a special account to other sites, including those that do not have sufficient funding. In the OIG's 2007 report on the Thermo Chem Superfund site in Michigan, we found at the time that had EPA timely reclassified the (approximately) $2.8 million in the site's special account, it could have started construction of a cleanup remedy at another site that was delayed because the site did not receive appropriated Superfund construction funding.[8]

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[6] EPA/OIG, Administration of Superfund Special Accounts Needs Improvement, Report No., 99P-214, September 28, 1999., http://www.epa.gov/oig/reports/1999/99P0214.pdf.
[7] EPA/OIG, EPA Can Better Manage Superfund Resources, Report No. 2006-P-00013, February 28, 2006; EPA Should Continue Efforts to Reduce Federal Advances and Federal Special Accounts, Report No. 10-P-0093, March 31, 2010; Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups, Report No. 09-P-0119, March 18, 2009; Making Better Use of Stringfellow Superfund Special Accounts, Report No. 08-P-0196, July 9, 2009; Making Better Use of Superfund Special Account Funds for Thermo Chem, Report No. 2007-S-00002; August 20, 2007.
[8] EPA/OIG, Making Better Use of Superfund Special Account Funds for Thermo Chem, Report No. 2007-S-00002; August 20, 2007.

In response to OIG recommendations, EPA has taken a number of important steps in recent years to improve its management controls for Superfund special accounts. This includes implementing:

- Requirements for clear and separate financial reporting of special account funds in a publicly available report.
- An annual planning process that includes a determination that special account funds will be used consistent with the hierarchy (Agency guidance), to aid in the monitoring of special account funds.
- EPA Regional and Headquarters controls that include follow-up to make sure planned and/or requested uses (e.g., reclassifications, transfers) of special accounts funds occur, and document these controls in appropriate guidance.
- A plan that includes reports with accurate special accounts data, and that identifies how EPA will use the special accounts data it collects to manage the program and improve performance.
- Guidance that addresses the proper application and amount of the holdback or reserve of special account funds for future use.

EPA has also implemented OIG recommendations to reclassify or properly use special account funds and achieve Superfund efficiencies.

Since the OIG issued its 2009 report, which identified comprehensive improvements in EPA management controls for Superfund special accounts, we believed it was prudent to provide EPA with the time to implement our recommendations, observe the impact of the recommendations, and make adjustments as needed. Therefore, the OIG has not initiated new reviews of non-federal Superfund special accounts since our 2009 report.[9] The OIG is aware that GAO currently has a broad review of Superfund special accounts underway. This work may provide useful insights into EPA's improvements and if there are additional opportunities for improvement.

Toxic Substances Control Act

Simpson Q6

Both the IG and GAO have raised concerns about EPA's approach to managing risks from chemicals as the agency cannot keep up with the pace at which chemicals are being introduced into commerce. I understand the Administration supports reform of the Toxic Substances Control Act (TSCA).

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[9] OIG's March 2010 report, "EPA Should Continue Efforts to Reduce Federal Advances and Federal Special Accounts, Report No. 10-P-0093" focuses on federal special accounts, which is a different universe of special accounts that those that have been the focus of OIG's previous recommendations, including the 2009 report recommendations.

QUESTION: In the absence of Congressional action on TSCA, what steps can the Agency take in order to improve their management of chemical risks?

In February 2010, the OIG published the report "EPA Needs a Coordinated Plan to Oversee Its Toxic Substances Control Act Responsibilities." In this report, the OIG identified several weaknesses in the Agency's management of new chemicals. Specifically, EPA did not have integrated procedures and measures in place to ensure new chemicals do not pose an unreasonable risk to human health and the environment. We recommended that EPA better coordinate risk assessment and oversight activities by establishing a management plan that contains new goals and measures that demonstrate the results of EPA actions. Additionally, we recommended that EPA establish criteria for selecting chemicals or classes of chemicals for low-level exposure and cumulative risk assessments, and develop confidential business information classification criteria to improve EPA's transparency and information sharing. Finally, we recommended that EPA develop a management plan for Core TSCA enforcement that includes training, consistent enforcement strategies across regions for monitoring and inspection protocols, and a list of manufacturers and importers of chemicals for strategic targeting. The Agency agreed with our recommendations, and in November 2010 we approved the Agency's Corrective Action Plan outlining the steps the Agency will implement by 2012 to meet the intent of our recommendations.

As the EPA designs and implements new steps to improve its management of chemical risks, previous OIG experiences point to the need for EPA to institute sufficient internal controls to ensure success of its efforts. In particular, the Agency needs to create performance measures that demonstrate the impact and overall success in reaching the desired outcomes. The Agency should have a clear strategy that formalizes intra-agency coordination and prioritizes activities to maximize the impact of available resources in pursuit of its goals, ensuring that the most significant risk areas are addressed first.

Cyber Security

Simpson Q7

The EPA IG findings indicate that EPA does not have enough resources to respond to cyber security attacks. The IG report states that "adequate funding and a coordinated technical strategy would enable EPA to better defend itself against cyber-attacks that target valuable EPA data."

QUESTION: What level is an adequate level in order to ensure that EPA is protected against cyber attacks? Please provide an estimate of the need and the resource gap for the record.

These questions are best addressed by the Agency since they are in a better position to articulate their resource needs in terms of funding and personnel. However, limited followup activities and an overreliance on US-CERT lead us to conclude that EPA's Computer Security Incident Response Center (CSIRC) does not have the technical skills or resources needed to promptly

identify and remedy ongoing cyber threats. The CSIRC center is EPA's Agency-wide approach to protecting information assets and responding to actual and potential incidents. EPA did not take steps to modify a contract to provide forensic tools and technical expertise to the CSIRC until Advanced Persistent Threats (APTs) rapidly infiltrated the Agency's network. However, EPA has not yet put in place the new contract. EPA wrote a new Statement of Work identifying four new positions: 1) Security Incident and Event Manager/Network engineer; 2) Senior Programmer; 3) Forensic Analyst; and 4) Malware Analyst. This task order is dated August 13, 2010. As of March 2, 2011, EPA had not awarded the contract and we were told they expect to award the contract on April 1, 2011.

While a lack of resources may be a contributing factor, we believe that management could also do a better job of prioritizing their efforts to address ongoing issues and implement the associated recommendations from prior OIG reports. The OIG made recommendations within these reports that could help the Agency strengthen cyber security practices for combating APTs. However, some of those recommendations remain unimplemented and we continue to find and report on similar weaknesses at other EPA locations. EPA should aggressively address previously reported security weaknesses to strengthen its ability to detect and respond to network attacks. In particular, EPA should:

- Implement a process that tracks Internet Protocol (IP) address assignments and documents the origin of all active IP addresses so responders can take quicker steps to minimize harm caused by APTs.
- Implement a vulnerability management program to proactively identify and correct commonly known vulnerabilities before they can be exploited.
- Communicate high-risk vulnerability alerts more effectively throughout the Agency and follow up with responsible parties to ensure satisfactory remediation.
- Verify that EPA's numerous Information Security Officers are adequately skilled to conduct regular vulnerability tests of their respective local area networks and systems, as well as successfully recognize and remediate high and medium risks in a uniform and acceptable manner.
- Take steps to improve the reliability of data used to assess the status of its information security program and posture with regard to known network threats.
- Train EPA's information security community on testing and documenting information systems security controls and enhance the quality assurance process to verify that self-assessments evaluate all required security controls.

How will the Memorandum of Understanding that is in the works between the IG's office and the EPA serve to better address cyber security issues?

Over the last two years there has been confusion over the OIG's role and responsibility in investigating cyber security crimes versus the Agency's responsibility to protect their infrastructure. The Memorandum of Understanding (MOU) cited in our testimony will more clearly define what those roles and responsibilities are for the OIG and the Agency. It will also

quantify the timeframes by which Agency IT staff must notify the OIG when a possible criminal cyber event has occurred, as well as the timeframes, if warranted, by which the OIG must initiate a case and collect evidence so that crime scenes can be released back to the Agency for remediation actions. Finally, the MOU will provide a structured process that will allow for Agency decision makers to have the necessary information regarding compromises to allow them to make the best tactical and strategic decisions for the Agency and the government due to these threat potentials. We believe that this MOU, once finalized, will tighten response times and enhance coordination between the OIG and the Agency that will help address these very dynamic attacks.

Ranking Member James P. Moran

Clean Water and Drinking Water Infrastructure

Moran Q1

The Inspector General testimony highlights an issue that concerns most of us – how to pay for the aging water infrastructure in this country. The IG reported that he has seen no evidence of any significant progress in moving toward a comprehensive approach in addressing the funding gap. Moreover, the EPA budget for FY 2012 reduces funding for the State Revolving Funds by $947 million.

QUESTION: What is the answer, other that funding through the SRFs?

EPA recently established the "Four Pillars of Sustainable Infrastructure" initiative to identify and promote improved utility operations. These four pillars are better management, full-cost pricing, efficient water use, and watershed approaches to protection. These efforts can be a critical supplement to the SRF but they cannot close the funding gap. Making infrastructure improvements in a sustainable way that does not increase federal financing responsibilities can help to close these infrastructure gaps while creating jobs. Nevertheless, according to the Congressional Research Service, current and projected wastewater infrastructure needs total about $192 billion and $334.8 billion in drinking water infrastructure needs.

EPA and its partners could move away from isolated, media- and interest-specific initiatives toward a more cohesive, unified, and future-thinking approach to environmental protection. Environmental protection – like homeland security – is a public good and as such requires a nationally coordinated approach toward policy. EPA must have the force of national environmental goals to set regulatory standards, particularly for problems that cross State or national borders or pose risks to future generations. Congress should provide EPA, States, and the other 25 federal agencies that share a responsibility for environmental protection the means to identify and manage environmental problems of national significance, like water infrastructure. EPA should work with Congress and the Administration to examine ways to leverage resources expended on various, insular environmental protection efforts.

THURSDAY, MARCH 3, 2011.

ENVIRONMENTAL PROTECTION AGENCY

WITNESSES

LISA P. JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

BARBARA BENNETT, CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY

OPENING REMARKS OF CHAIRMAN SIMPSON

Mr. SIMPSON. The hearing will be come to order. Good morning, and welcome to the third meeting and the first budget hearing of the 2012 season for this Subcommittee on Interior, Environment and Related Agencies. I am pleased to kick off the 2012 debate with the Environmental Protection Agency, whose programs and funding are of great interest to this subcommittee. Administrator Jackson, thank you for being here this morning and testifying on your 2012 budget proposal. We find ourselves at a critical juncture as we begin to focus on our work for the fiscal year 2012 while we continue to finish the 2011 budget. The overspending has gone on too long, and now it is time to tighten our belts. Difficult decisions await this subcommittee and the Appropriations Committee in general. The House took the necessary first steps to move in a fiscally responsible direction on February 19th by passing $100 billion in discretionary spending reductions. The package included $4.4 billion in cuts from agencies funded through this subcommittee, of which $3 billion came out of the EPA budget.

We did so, in large part, by reducing the Clean Water and Drinking Water State Revolving Fund by almost $2 billion in order to return those programs to the 2008 funding levels. In 2009, the SRFs received $6 billion in stimulus funding, equivalent to five years of appropriations at the 2008 level. I think we can all agree that a 5-year infusion of funding in one year is a huge influx for any program to absorb. I raise this not because I am opposed to the purpose of the SRFs, but as the clearest example in this bill of too much, too fast which could be the mantra for the EPA whether we are talking about spending or regulations.

The House full-year CR also cut $303 million from the geographic programs, including $225 million from the Great Lakes Restoration Initiative. This is another program that has struggled to place funding on projects within a year, following a staggering seven-fold increase in 2010. The CR also cut $68 million in climate change funding and targeted reductions to the EPA's air, water and policy offices, which continue to develop what I believe to be job killing regulations.

We also put a halt to the EPA's clear attempt to legislate through regulation on a number of policy issues, including green-

house gases and navigable waterways. It should be up to Congress, not the administration, to determine whether and how to regulate greenhouse gases, but the litany of overreaching regulations does not stop there. Jobs in the cement industry are under attack by the Portland Cement Rule. The oil and gas industry has been unable to obtain air permits to work in the Outer Continental Shelf in Alaska and agriculture is under attack as EPA considers whether or not to regulate farm dust.

The coal industry, which is of great importance to Chairman Rogers, is under attack on multiple fronts, whether it is where industry can place a mining fill materials, whether coal ash may now be labeled as hazardous waste, or whether a company may be able to use existing permits to work in Appalachia and keep mines open. We put a hold on all of these regulations and the House passed the CR in order to relieve the burden on industry and to give our authorizers the opportunity to address these issues in a more comprehensive fashion this year.

EPA's 2012 budget request provides $8.973 billion, a 12.9 percent decrease from the 2010 enacted level. Generally speaking, the EPA 2012 budget is balanced on the back of States as State grants have been reduced by 22 percent while EPA operations and research budgets have received only a 2 to 4 percent reduction in order to reduce spending by $1.3 billion from current levels.

The 2012 budget cuts $947 million from the Clean Water and Drinking Water State Revolving Funds, $125 million from the Great Lakes Restoration Initiative, $70 million from the Superfund Program, which cleans up the most toxic hazardous waste sites and eliminates $179 million for earmarks as every administration does. This is not the blueprint for reduced Federal spending and debt reduction that the American people and Congressional Republicans are demanding. In stark contrast, we cut more spending out of the SRFs in the House passed full-year CR than has been proposed in your entire 2012 budget.

The demand for 2012 is simple, spend less and regulate less. Furthermore, I question the rationale for some of the 2012 proposals, most notably eliminating the diesel emissions reductions grants to retrofit old diesel engines while proposing new start programs to regulate greenhouse gases.

I am not sure it makes sense to eliminate a grant program with clear, proven, quantifiable benefits in favor of new programs with no demonstrated benefits. I am also not sure that it makes sense to eliminate a grant program with broad bipartisan support and the support of the States and industry in favor of climate change initiatives that you know are most likely dead on arrival in the House. As my good friend and colleague Mr. Calvert said on the floor during the CR debate, the DERA Program is a win-win. So either the President is playing politics with his budget or this further illustrates that the EPA is simply out of touch. We have a number of issues that I know all members are interested in discussing with you today.

So I will save additional remarks for questions following your testimony. I am pleased to now yield to our distinguished ranking member, Mr. Moran.

OPENING REMARKS OF MR. MORAN

Mr. MORAN. Well, thank you very much, Mr. Chairman. I really appreciate your commitment to the important programs that are contained in this bill. And I certainly want to welcome Administrator Jackson and Ms. Bennett, the chief financial officer for EPA. You represent the best of our civil service. And I don't take that lightly. I mean it, and it is a high compliment. The Environmental Protection Agency has worked so hard on behalf of all of the American citizens to protect the nation's environment and public health. And for that, you certainly deserve the praise of all and the appreciation of all Americans. EPA's budget request, though, is $9 billion, $1.3 billion or 13 percent below fiscal year 2010.

And below the current continuing resolution level. That is too low. While I understand that the budget request aims to reflect the fiscal constraint, all agencies must operate on, I am troubled that most of EPA's reduction comes at the expense of the Clean Water and Safe Drinking Water State Revolving Funds, as the Chairman has referenced. These funds were collectively reduced by $947 million, or 27 percent. But they are prudent investments that help maintain the infrastructure that makes clean and healthy water available to all Americans, which we have all taken for granted.

I guess when most governors have claimed that the Federal stimulus money was wasteful spending, then they won't object to a reduction in these important grant programs. What do you think? Although I am not sure that is going to be the case, I suspect most of the governors are hoping that we will take all the heat and yet provide all that money for them. But if we don't, I don't see how they come up with it. When I had the privilege of chairing this subcommittee last year, I suspect at the behest of local and State governments, members from both sides of the aisle—and I know the Chairman is aware of this, they requested more than 1,200 projects, just in fiscal year 2010, for water and wastewater infrastructure. That source of funding has now dried up. It is gone.

So you make the cuts to the State revolving funds a much larger issue for State and local governments. With a reduction in the Federal commitment, I don't know who tackles these problems. Certainly individuals can't do it unless they want to start digging wells in their backyard, and we go back to outhouses or something. Because the State and local governments don't have the money themselves. But this is our national plumbing system. And like our home plumbing, it doesn't get noticed until it backs up and makes a mess.

Cutting billions from Clean Water and Safe Water Drinking programs is ignoring a problem that will require much more expensive investments and upgrades to our water sources down the line. While the Appropriations Committee has the authority and the duty to exercise Congress' constitutional role in providing funds to the executive branch, the appropriation bills have become ground zero for contentious policy debates.

I ask the distinguished gentleman from Kentucky if he remembered that quaint phrase, "this is out of order because it is legislating an appropriations bill." I didn't get a full response, but I know he is fully aware of this issue. The full year continuing reso-

lution we call H.R. 1 included 22 amendments that were hostile to EPA's and other government agencies' current work on climate change, wetlands, air toxics, renewable fuel standards and mountain-top mining. And most of them were adopted on the House floor. Beyond this, several riders were included in the base bill, one would stop EPA from updating rules or guidance pertaining to the definition of U.S. waters that will perpetuate delays in permits and land use decisions.

We are hearing from a number of people in the private sector saying, look, this is not helpful, we need to have clarity, we need to know what is appropriate or not. A lot of the builders are saying we can't move forward until we have clarification and permits that allow us to do our work. The EPA needs to be allowed to carry out the laws and the Congress and the courts have authorized them to carry out. The Bush administration's EPA administrator, as well as you, Ms. Jackson, determined that greenhouse gas emissions do, in fact, endanger the health of our citizens.

Ms. Jackson, you have done your job, and you actually issued an endangerment finding, and thus you are now required as we know to regulate these harmful emissions. The law requires you to. If Congress no longer wants certain pollutants cleaned up to improve America's health, then Congress should change the underlying law, not simply stop funding EPA. Otherwise, EPA is violating the law by not enforcing it.

And actually, if you want to cut costs in this country, then you should allow the Clean Air Act to do its job. A report released Tuesday by EPA estimates that the benefits of reducing fine particles and ground level ozone pollution under the 1990 Clean Air Act amendment will reach $2 trillion in 2020, while saving 230,000 people from early death in that year alone.

230,000 people in one year will live longer because of the Clean Air Act. It is still my hope that this committee will refrain from controversial policy riders and leave these issues to the authorizing committees where they belong so that we can return to the bipartisanship that has defined the Appropriations Committee in previous years.

I am glad we have been joined by Mr. Dicks. I know he feels strongly about this as I do. On this side of the aisle, we are going to continue to try to pursue that tradition because it is time we started enacting our appropriation bills. We understand that the more we work together, the better chance these bills have in moving forward in the Senate and getting them signed into law by the President. So Administrator Jackson, we all look forward to receiving your testimony and again thank you for your leadership. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. We are also joined today by our chairman of our full Appropriations Committee, Chairman Rogers, and I thank him for taking the time to contribute to this important conversation. Mr. Rogers, do you have an opening statement?

OPENING REMARKS OF MR. ROGERS

Mr. ROGERS. Thank you, Mr. Chairman. And congratulations, by the way, on your elevation to this great post. We know you will do a great job. This is truly a historic time. I don't need to remind us

that the Nation has found itself at a crossroads. The 112th Congress has been solely focused on reining in out of control spending, getting our economy back on track and putting Americans back to work. It is all about jobs. I reiterate, getting our economy back on track to create jobs and provide opportunity. With unemployment still hovering around 10 percent under this administration, this is unquestionably our top priority as a country and our chief responsibility as legislators, policymakers and yes, administrators.

Chairman Simpson alluded to some of our concerns about your $9 billion budget submission. The EPA's third largest in history. While we are borrowing 42 cents on every dollar we spend, we are borrowing 42 cents on every dollar of the 9 billion that you are asking for. That staggering figure is, in and of itself, disconcerting. But I have to tell you for the record that I am not confident that the budget you are defending today, or frankly your Agency's actions in the last 2 years align with our important goals of creating jobs and opportunity.

In fact, I believe you have been a great hindrance. The EPA is headed in the wrong direction with an aggressive and overzealous regulatory agenda that far exceeds the authority of this Congress that you have been given. And I think we have a responsibility to rein you in. The Committee on Oversight and Government Reform recently released a report identifying over 60 regulatory actions recently taken by EPA that could have negative impacts on job creation, 60 different ones. I have to wonder whether you are taking heed of the President's January 21st executive order to account for the cumulative costs of regulations because EPA is running absolutely roughshod over our country's small businesses. The very engines that propel our economy forward and provide most of the jobs.

And you have hit every sector of the economy, agriculture, manufacturing, construction, transportation and the lifeblood of my region of the country, Appalachian coal miners, wrongheaded greenhouse gas regulations, so-called guidance on surface mining, the retroactive veto of a coal permit that has undergone more than a decade of environmental review, reopening a longstanding definition of "fill material" that could have devastating impacts on the mining sector nationwide.

All represent constitutionally dubious legislation by regulation. I think you have exceeded your authority by far. A number of these matters are being adjudicated by the courts even as we speak. We have corresponded, you and I, on a number of these topics. So you are aware that my people feel like EPA has taken dead aim at an industry that sustains 20,000 high paying jobs in my State of Kentucky and supplies the fuel to power 50 percent of our Nation at a low cost. Our Speaker, in recent weeks, has reiterated the need for adult conversations about the fiscal challenges that confront the country and I hope that is what we can accomplish here today, an adult conversation. Thank you, chairman.

Mr. SIMPSON. Thank you, Chairman. The Ranking Member of the full committee, the former Chairman of this subcommittee, Congressman Dicks, is also here today. I know these issues remain of great interest to him. Mr. Dicks, do you have an opening statement?

Mr. DICKS. Yes, I do. Thank you, Mr. Chairman. And congratulations on you becoming chairman. And being from the Northwest, I know we will work hard together to get some positive things done. I want to welcome Administrator Jackson and Barbara Bennett, EPA's chief financial officer. In fiscal year 2010, this committee provided you with the largest budget in EPA history. Your current budget request of 8.9 billion is a reduction of 13 percent and reflects the fiscal restraints we find ourselves in today. I am glad to see that Administrator Jackson submitted a reasonable budget request that will allow essential environmental cleanup and monitoring.

That is in stark contrast to the long-term continuing resolution approved by the House 2 weeks ago, H.R. 1. That bill cut EPA by nearly 30 percent and includes 22 environmental riders to defund EPA and other government agencies' activities ranging from limiting greenhouse gases to reducing water pollution and those were done without any hearings. They were just put into this bill and they are all legislative language that have a negative impact.

I am also pleased that the request includes language started by this committee that allows the use of the Drinking Water and Clean Water State Revolving Funds for loan forgiveness and other affordability tools, green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. I do, however, have concerns about this budget request but not as much as I do with H.R. 1. My biggest concern is that we are shifting the problems of today for bigger problems tomorrow. We talk about saddling our children with debt. That concerns me greatly. But by cutting these important environmental infrastructure programs like the drinking water and wastewater revolving funds, we are saddling future generations with deferred maintenance costs and a crumbling infrastructure that will cost more to fix than if we did it now.

Christine Todd Whitman, the former Republican governor of New Jersey, when she was administrator of EPA said we have a $688 billion backlog on wastewater and drinking water treatment facilities. And a group of scientists looked at all of the things that happened in civilization and what had made the greatest difference in health to the world and it was wastewater treatment facilities and clean water. I was on the staff up here when Richard Nixon was President of the United States and we passed a Clean Water Act, the Clean Air Act, the National Environmental Policy Act. And all of those things were passed in a bipartisan manner and signed by a Republican President. And the country is better today because of environmental protection than it was 40 years ago.

Remember when we had these rivers on fire? Think of how terrible those things were. And now we have turned this thing around. And I think what you are doing on climate change is absolutely essential. Some people are just turning their head away from scientific reality and just saying it isn't going to happen. They are saying they care about their grandchildren's future. If we don't deal with climate change, if we don't deal with ocean acidification, the world is going to be a disastrous place in 50 to 100 years. And to say this doesn't exist is just preposterous. The best scientists in the world have said this phenomenon is going on. Our committee held

hearings. We asked the Park Service and the Fish and Wildlife Service and the USGS, can you tell us on the ground, can you see manifestations of global warming already and they said, "yes". The fire seasons are longer, the oceans are rising.

We are having more drought, more bug infestation because of this. We are watching what is happening in the Arctic. I don't know how people don't understand the importance of these issues and addressing these issues. And I am not—I am going to fight every step of the way against efforts to weaken and take back the environmental improvements we have made starting with Richard Nixon and the Congress back in the 1960s and the 1970s when people worked on a bipartisan basis and cared about the environment.

These riders have got to go. And we are going to fight them to the end. Don't be intimidated. You are doing your job and you have to do it under the law. And the Supreme Court said you had to do certain things. And don't be intimidated. Do your job. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. I appreciate that. And again, thank you for being here this morning, Administrator Jackson. And we look forward to your proposed 2012 budget. And after those warm welcoming remarks from all of us, the floor is yours.

TESTIMONY OF ADMINISTRATOR JACKSON

Ms. JACKSON. Thank you, Mr. Chairman. And good morning to you, Ranking Member Moran and members of the subcommittee. Thank you for inviting me to testify about President Obama's fiscal year 2012 budget request for the Environmental Protection Agency. Congress enacted the Clean Air Act, the Clean Water Act and America's other bedrock environmental protection laws on a broadly bipartisan basis. It did so to protect American children and adults from pollution that otherwise would make their lives shorter, less healthy and less prosperous. It did so to make the air and drinking water in America's communities clean enough to attract new employers. It did so to enable America's local governments to revitalize abandoned and polluted industrial sites. It did so to safeguard the pastime of America's 40 million anglers. It did so to protect the farms whose irrigation makes up a third of America's surface fresh water withdrawals. And it did so to preserve the livelihoods of fishermen and America's great waters, such as the Chesapeake Bay and the Gulf of Mexico.

Mr. DICKS. Don't forget Puget Sound.

Ms. JACKSON. And Puget Sound. And the Great Lakes. Congress gave EPA the responsibility of implementing and enforcing those laws, and each year Congress appropriates the money that makes EPA's implementation and enforcement work possible. As head of the EPA, I am accountable for ensuring that we squeeze every drop of public health protection out of every dollar we are given. So I support the tough cuts in the President's proposed budget, but I am equally accountable for pointing out when cuts become detrimental to public health. Without adequate funding, EPA would be unable to implement or enforce the laws that protect America's health, livelihoods and pastimes.

Big polluters would flout legal restrictions on dumping contaminants into the air, into rivers and onto the ground. Toxic plumes already underground would reach drinking water supplies because ongoing work to contain them would stop. There would be no EPA grant money to fix or replace broken water treatment systems and the standards that EPA has set to establish for harmful air pollutants from smokestacks and from tailpipes would remain missing from a population of sources that is not static, but growing.

So if Congress slashed EPA's funding, concentrations of harmful pollution would increase from current levels in the places Americans live, work, go to school, fish, hike and hunt. The result would be more asthma attacks, more missed school and workdays, more heart attacks, more cancer cases, more premature deaths and more polluted waters.

Needless to say, then, I fervently request and deeply appreciate continued bipartisan support in Congress for funding the essential work that keeps American children and adults safe from uncontrolled amounts of harmful pollution being dumped into the water they drink and the air they breathe. President Obama believes that our Federal Government must spend less money. Decreasing Federal spending is no longer just a prudent choice, it is now an unavoidable necessity. Accordingly, the President has proposed to cut EPA's annual budget nearly 13 percent from its current level. That cut goes beyond eliminating redundancies. We have made difficult, even painful choices. We have done so, however, in a careful way that preserves EPA's ability to carry out its core responsibilities to protect the health and well-being of America's children, adults and communities.

You have been reviewing the budget request for more than 2 weeks now, so I will not march through all of its details. Rather, than I would like to provide just a few examples of the difficult choices we have made while preserving fundamental safeguards. This request provides $2.5 billion, a decrease of 947 million for the Clean Water and Drinking Water State Revolving Funds. Future year budgets for the SRF will adjust, taking into account repayments to the funds. EPA, the States and community water systems will build on past successes while working towards the fiscal year 2012 goal of ensuring that over 90 percent of the population served by community water systems receives drinking water that meets all applicable health standards.

This budget requests an additional $6.4 million to conduct integrated pilot projects in several communities, including disadvantaged ones to evaluate and reduce risks from toxic air pollution through regulatory enforcement and voluntary efforts. An additional $3.7 million will improve our monitoring of toxic air pollution and our dissemination of that data to State, local and tribal governments and to the public. The budget contains $350 million for programs and projects strategically chosen to target the most significant environmental problems in the Great Lakes ecosystem. That represents a cut of $125 million from fiscal year 2010, which was the first year of the initiative. We will implement the most important projects for the Great Lakes restoration and achieve visible results. With this budget, $16 million investment in enhancing chemical safety initiatives, we will take action to reduce chemical

risks, increase the pace of chemical hazard assessments and provide the public with greater access to information on toxic chemicals. We will use the funds to implement chemical risk reduction steps that address impacts on children's health and on disadvantaged, low-income and indigenous populations. Thank you, Mr. Chairman. I look forward to the subcommittee's questions.

[The information follows:]

TESTIMONY OF
LISA P. JACKSON

ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
COMMITTEE ON APPROPRIATIONS, SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 3, 2011

Chairman Simpson, Ranking Member Moran, and Members of the Committee, thank you for the opportunity to appear before you to discuss the Environmental Protection Agency's proposed budget. In the State of the Union – as President Obama laid out a plan to win the future – he made clear that we "will not hesitate to create or enforce common-sense safeguards to protect the American people," and explained that these safeguards are "why our food is safe to eat, our water is safe to drink, and our air is safe to breathe."

These are the services EPA provides. EPA's activities prevent thousands of illnesses such as asthma, cancer and other diseases. They help keep students and workers healthy so they can be more productive. And, they save lives. Preliminary estimates show that last year, the Clean Air Act alone is estimated to have saved 160,000 lives and prevented more than 100,000 hospital visits.

President Obama also understands, however, that as millions of families are cutting back and making sacrifices, they expect the same level of good fiscal sense out of their government.

This budget reflects that good fiscal sense, and makes many tough choices.

FY 2010's budget of $10.3 billion was EPA's highest funding level since its creation. This FY 2012 budget request, while a deep cut resulting in a total budget of $8.973 billion, will allow EPA to carry out its core mission and fund the most critical efforts to protect the health of American families.

The choices in this budget reflect EPA's commitment to core regulatory work and preserving the hard-won progress made over the last 40 years in protecting and restoring the quality of our air, water, and land; ensuring the safety of our chemicals; and providing strong enforcement of environmental laws and regulations.

At the same time, we have heeded the President's call for deficit reduction and made some painful choices to reduce funding for important programs. As it does every year, EPA has worked to find efficiencies within our programs and in some cases made reductions trusting that further efficiencies can be found. The $8.973 billion proposed for EPA in the FY 2012

President's Budget will allow the Agency to maintain its core programs while investing in areas of urgent need and will support key priorities during this time of fiscal challenges.

This budget represents a nearly 13 percent reduction over the FY 2010 budget and reflects our priorities: supporting action on climate change and improving air quality; protecting America's waters; building strong state and tribal partnerships; strengthening enforcement and compliance; enhancing chemical safety; supporting healthy communities; and maintaining a strong science foundation. Because of the constrained fiscal environment, the Budget decreases the State Revolving Funds (SRFs) by nearly $950 million while supporting a long-term goal of providing about 5 percent of total water infrastructure spending and spurring more efficient system-wide planning. The Budget also reduces the Great Lakes Restoration Initiative by $125 million, eliminates about $160 million in targeted water infrastructure earmarks, and eliminates $60 million for clean diesel grants.

Our priorities are aligned with the government-wide effort to identify near-term high priority performance goals. For EPA, our goals include reducing greenhouse gas emissions, improving water quality, and delivering improved environmental health and protection to our communities. EPA will work toward meeting these goals over the next 18 to 24 months.

Chairman and Members of the Committee, let me touch on some of the highlights of this budget, both the painful choices and the targeted investments that will protect our health and the environment.

Supporting Action on Climate Change and Improving Air Quality

We are committed to meeting EPA's obligations under the Clean Air Act, the landmark law that all American children and adults rely on to protect them from harmful air pollution. We will continue to take meaningful, common sense steps to address climate change and improve air quality. Making the right choices now will allow the Agency to improve health, drive technology innovation, and protect the environment; all without placing an undue burden on the nation's economy. Indeed, EPA's implementation of the Clean Air Act has saved millions of lives and avoided hospital visits; enhanced American productivity by preventing millions of lost workdays and growing the clean energy sector; and kept American children healthy and in school.

Our budget requests $46 million for additional regulatory efforts aimed to reduce greenhouse gas emissions and address the Climate and Clean Energy Challenge. This includes $30 million in state grants and support for permitting, which will ensure that our state partners develop the technical capacity to address greenhouse gas emissions under the Clean Air Act. Also included is $6.0 million in additional funding for the development and implementation of new emission standards that will reduce greenhouse gas emissions from mobile sources such as passenger cars, light-duty trucks, and medium-duty passenger vehicles. These funds also will support EPA's assessment and potential development, in response to legal obligations, of standards for other mobile sources. Also included is $7.5 million for the assessment and potential development of New Source Performance Standards for several categories of major stationary sources through means that are flexible and manageable for business. Finally, this amount includes an additional

$2.5 million for priority measurement, reporting and verification activities related to implementing the GHG Reporting Rule, to ensure the collection of high quality data.

Our air toxics strategy prioritizes standards that provide the greatest opportunity for cost-effective emissions reductions. This budget requests an additional $6.4 million to conduct integrated pilots in several communities, including disadvantaged communities, to systemically evaluate and reduce risks from toxic air pollutants through regulatory, enforcement, and voluntary efforts. An additional $3.7 million will improve air toxic monitoring capabilities and dissemination of information between and among the EPA offices, the state, local and tribal governments, and the public.

We anticipate a more than four-fold increase in the number of vehicle and engine certificates EPA issues. In addition, as a result of diverse and sophisticated technologies, we anticipate more challenging oversight requirements for both the vehicle/engine compliance program and fuels. We will upgrade vehicle, engine, and fuel testing capabilities through a $6.2 million investment in the National Vehicle and Fuel Emissions Laboratory.

Protecting America's Waters

By leveraging partnerships and traditional and innovative strategies, we will continue to sustain and improve water infrastructure and clean-up America's great waterbodies. EPA, the states, and community water systems will build on past successes while working toward the FY 2012 goal of assuring that 91 percent of the population served by community water systems receives drinking water that meets all applicable health based standards.

The Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) provide grants to states, which use the funds to make affordable loans to local communities for public drinking water and wastewater infrastructure projects. The President's Budget requests $1.55 billion for the Clean Water SRF and $990 million for the Drinking Water SRF. This request level reduces funding for State Revolving Funds by $947 million from FY 2010 levels. As part of the Administration's long-term strategy, EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with states and communities to enhance technical, managerial, and financial capacity. Important to the technical capacity will be enhancing alternatives analysis to expand "green infrastructure" options and their multiple benefits. Future year budgets for the SRFs gradually adjust, taking into account repayments, through 2016 with the goal of providing, on average, about 5 percent of water infrastructure spending annually. Federal dollars provided through the SRFs will serve as a catalyst for efficient system-wide planning and ongoing management of sustainable water infrastructure.

We will also leverage our partnership with states and tribes through an additional $21 million in Water Pollution Control (Sec. 106) grants to enhance water quality and to provide additional resources to address Total Maximum Daily Load (TMDL), nutrient, and wet weather issues. An additional $4 million is requested for Public Water Systems Supervision grants to support management of state and drinking water system data, improve data quality, and allow the public access to compliance monitoring data not previously available. This will improve transparency and efficiency and reduce the need for state resources to maintain individual compliance databases.

This budget supports EPA's continued efforts to clean up America's great waterbodies. It includes $67.4 million for the Chesapeake Bay program, a $17.4 million increase, which will allow EPA to continue to implement the President's Executive Order on Chesapeake Bay Protection and Restoration. The increased funding will support Bay watershed States as they implement their plans to reduce nutrient and sediment pollution in an unprecedented effort to restore this economically important ecosystem.

This budget has $350 million included for programs and projects strategically chosen to target the most significant environmental problems in the Great Lakes ecosystem, a $125 million decrease from FY 2010, the first year of the initiative. Led by EPA, and engaging the capabilities of a number of federal agencies, the initiative will implement the most important projects for Great Lakes Restoration and achieve visible results.

The Administration is committed to restoring and protecting the Gulf Coast ecosystem following decades of environmental harm, including the BP Deepwater Horizon oil spill. As Chair of the Gulf Coast Ecosystem Restoration Task Force, established by Executive Order 13554, I will work with the Federal and State Task Force members to lead environmental recovery efforts in the region. EPA is also working to support the Federal and State Trustees on the Deepwater Horizon Natural Resource Damage Assessment and Restoration Trustee Council as they develop a restoration plan to restore the region's natural resources to pre-spill conditions. As a complement to these efforts, EPA's request of $6.6 million for the Mississippi River Basin program will address excessive nutrient loadings that contribute to water quality impairments in the basin and, ultimately, to hypoxic conditions in the Gulf of Mexico.

Building Strong State and Tribal Partnerships

Strong partnerships and accountability are vital to the implementation of environmental programs, and we are committed to strengthening state and tribal capacity. This budget includes $1.2 billion for state and tribal grants which is an overall increase of $84.9 million over FY 2010 within this amount is a reduction to Nonpoint Source (Sec. 319) Grants and Local Government Climate Change Grants. This request will provide critical support to State and local governments who are working diligently to implement new and expanded requirements under the Clean Air Act and Clean Water Act.

These include implementation of updated National Ambient Air Quality Standards and addressing complex water quality issues such as nutrient pollution, which I discussed earlier.

To help tribes strengthen environmental protection capacity and move forward with implementation of environmental programs, an $8.5 million increase is included for Tribal General Assistance Program grants and $20 million is budgeted for the competitive Tribal Multi-media Implementation grant program.

Strengthening Enforcement and Compliance

Regulated entities, Federal agencies, and the public benefit from easy access to tools that help them understand environmental laws and find efficient, cost-effective means for putting them into practice. This budget includes a request of $27.5 million for the Regaining Ground in Compliance Initiative. Through this initiative, EPA will begin to harness the tools of modern

technology to address some of these areas and make EPA's Enforcement and Compliance Assurance program more efficient and effective. We also will increase the number of inspections at high risk facilities regulated under the Spill Prevention, Control and Countermeasures (SPCC) and the Facility Response Plan (FRP) regulations.

By increasing the use of electronic reporting, monitoring tools, and market-based approaches, we will improve the effectiveness and efficiency of our limited resources, and ensure a level playing field for American businesses. By maximizing the use of advanced data and monitoring tools, we can focus our limited inspection and enforcement resources and focus our attention on identifying where the most significant vulnerabilities exist.

Enhancing Chemical Safety
America's citizens deserve to know the products they use are safe. One of my highest priorities is making significant and long overdue progress in assuring the safety of chemicals. We are taking immediate and lasting actions to eliminate or reduce identified chemical risks and develop proven alternatives.

FY 2012 represents a crucial stage in our approach for ensuring chemical safety. The program has attained its "zero tolerance" goal in preventing the introduction of unsafe new chemicals into commerce. However, many "pre-TSCA" chemicals already in commerce remain un-assessed.

With the $16 million investment for the Enhancing Chemical Safety initiative included in this budget, we will increase the pace of chemical hazard and risk assessments, strengthen chemical information management and transparency, and take action to address identified chemical risks including careful consideration of the impact of chemicals on children's health and on disadvantaged, low-income, and indigenous populations. The additional funding will help to close knowledge and risk management gaps for thousands of chemicals already in commerce through actions that will decrease potential impacts to human health and the environment. We also will continue promoting use of proven safer chemicals, chemical management practices, and technologies to enable the transition away from existing chemicals that present significant risks.

Supporting Healthy Communities
We are committed to protecting, sustaining or restoring the health of communities and ecosystems by bringing together a variety of programs, tools, approaches and resources directed to the local level. Partnerships with international, Federal, state, tribal, local governments, and non-governmental organizations have long been a common thread across EPA's programs. This diversity of perspectives and experiences brings a wider range of ideas and approaches, and creates opportunities for innovations.

The budget includes a $20.4 million multidisciplinary initiative for Healthy Communities. It supports states and communities in promoting healthier school environments by increasing technical assistance on school siting, environmental health guidelines, and Integrated Pest Management in schools. It also provides resources to address air toxics within at-risk communities, and to enhance the important joint DOT/HUD/EPA outreach and related efforts with communities on sustainable development.

We proudly support the America's Great Outdoors initiative to develop a community-based 21st century conservation agenda that can also spur job creation in the tourism and recreation industries. Leveraging support across the Federal Government, EPA will join the Department of the Interior, the Department of Agriculture, and the Council on Environmental Quality to lead the coordinated effort to protect and restore our outdoor legacy. The area-wide planning and community support focus of existing EPA programs and initiatives like Urban Waters and Brownfields programs align well with the goals and objectives of this new initiative.

Maintaining a Strong Science Foundation

To develop a deeper understanding of our environmental challenges and inform sustainable solutions, we are requesting a science and technology budget of $826 million, $22 million lower than our FY 2010 enacted funding level, reflecting both efficiencies and difficult choices in order to ensure support for the highest priority science needs. We will strengthen planning and delivery of science through an integrated research approach, which will help us more deeply examine our environmental and public health challenges. By looking at problems from a systems perspective, this new approach will create synergy and produce more timely and comprehensive results beyond those possible from approaches that are more narrowly targeted to single chemicals or problem areas. Within the request, we are including increases for research on endocrine disrupting chemicals, green infrastructure, air quality monitoring, e-waste and e-design, green chemistry, and the potential effects of hydraulic fracturing on drinking water.

To make progress on these research priorities and leverage the expertise of the academic research community, funding redirections will support additional Science to Achieve Results (STAR) grants and fellowships. This budget also supports the study of computational toxicology, and other priority research efforts with a focus on advancing the design of sustainable solutions for reducing risks associated with environmentally hazardous substances. Two million dollars is also included to conduct a long-term review of EPA's laboratory network. These increases are offset by redirections from other areas, such as human health and ecosystems, biofuels, homeland security, mercury, and ground water remediation.

We look forward to working with the Congress to cut spending and cut the deficit. But to win the future, we cannot cut in a way that will undermine our ability to win the future and out-educate, out-innovate, and out-build our economic competitors. The budget that the President announced is a responsible plan that shows how we can live within our means and invest in the future. It makes tough choices to cut spending and cut the deficit. It includes a five-year non-security discretionary freeze, saving more than $400 billion over the decade and reducing non-security discretionary spending to its lowest level as a share of the economy since President Eisenhower, and the Budget reduces the deficit by more than $1 trillion, putting us on a path to fiscal sustainability.

Thank you again for inviting me to testify today, and I look forward to answering your questions.

Administrator Lisa P. Jackson leads EPA's efforts to protect the health and environment for all Americans. She and a staff of more than 17,000 professionals are working across the nation to usher in a green economy, address health threats from toxins and pollution, and renew public trust in EPA's work.

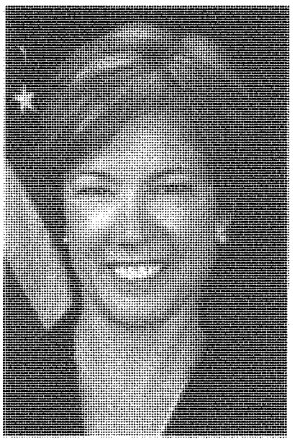
As Administrator, Jackson has pledged to focus on core issues of protecting air and water quality, preventing exposure to toxic contamination in our communities, and reducing greenhouse gases. She has promised that all of EPA's efforts will follow the best science, adhere to the rule of law, and be implemented with unparalleled transparency.

Jackson is the first African-American to serve as EPA Administrator. She has made it a priority to focus on vulnerable groups including children, the elderly, and low-income communities that are particularly susceptible to environmental and health threats. In addressing these and other issues, she has promised all stakeholders a place at the decision-making table.

Before becoming EPA's Administrator, Jackson served as Chief of Staff to New Jersey Governor Jon S. Corzine and Commissioner of the state's Department of Environmental Protection (DEP). Prior to joining DEP, she worked for 16 years as an employee of the U.S. EPA.

Jackson is a summa cum laude graduate of Tulane University and earned a master's degree in chemical engineering from Princeton University. She was born in Pennsylvania and grew up a proud resident of New Orleans, Louisiana. Jackson now resides in Washington D.C..

She is married to Kenny Jackson and is the proud mother of two sons, Marcus and Brian.



Barbara J. Bennett
Chief Financial Officer
Environmental Protection Agency

Barbara J. Bennett was nominated by President Barack Obama on September 3, 2009 to serve as Chief Financial Officer for the Environmental Protection Agency (EPA). She was confirmed by the Senate on November 6, 2009. Ms. Bennett's responsibilities include oversight of EPA's annual planning and budget formulation, budget execution and financial management, performance and financial reporting, as well as strategic planning for the Agency. Ms. Bennett is a global business executive with over 25 years of experience. Prior to joining EPA, Ms. Bennett served as Senior Executive Vice President and Chief Financial Officer of Discovery Communications, Inc. From 1990 to 2007, Bennett was a key member of the team that built the parent company of the Discovery Channel into one of the world's most extensive media enterprises, with more than 100 channels telecast in 170 countries, in over 30 languages to over one billion subscribers. As CFO, she was responsible for the worldwide financial functions and strategies of the company including accounting, treasury, budgeting, reporting, audit, tax activities, and evaluation of new growth opportunities, and leading a multi-cultural, multi-lingual team located in the five leading international hub offices in addition to corporate headquarters. From 2007 to 2009, Bennett was an independent consultant working with companies and non-profit organizations with interests in media, hospitality, tourism, and professional sports. She earned her bachelor's degree from Vanderbilt University and completed executive programs at Harvard Business School and Yale University.

Mr. SIMPSON. Thank you. I appreciate again your being here today. Because of the interest in this, we are going to try and enforce, to the extent possible, the 5-minute rule. We have a timer up here and we will keep time with that so that we can have several rounds of questions if that is possible. First let me just make a general comment and question. During the debate on H.R. 1 that has been mentioned up here by just about everybody, we talked about authorizing on an appropriation bill. Most of these amendments were limiting the funding to be used for certain things, which is appropriate within an appropriation bill. I also noticed after all of the criticisms about some of the underlying riders, if you will, that were greenhouse gas provisions and that dealing with navigable water, I don't remember any amendments being offered by anyone to remove those from the bill.

If they were such a concern to the Ranking Member of both the full committee and this subcommittee that maybe there would have been an amendment to remove those. But I didn't see any of those and I wonder why that was. And I think you and I have discussed many times the concern I have about what I hear when I go home, not just from businesses that are trying to operate and trying to do the right thing, they don't want to pollute the air and water, but from cities, counties, State government and others about the concerns about the direction that the EPA has gone.

And I have always wondered if it was just in my region, or it was across the country. And I have got to tell you, in all honesty, I was surprised by the number of amendments that were offered that addressed the EPA concerns from people all over—representatives from all over this country, and I am wondering after that debate and the 22 amendments, if any other agency had that many amendments directed at them or their actions, if you will. I am wondering what message you took from that.

Ms. JACKSON. Sir, there have been a number of discussions, some of them on the Hill, some of them outside in the countryside. I spend a lot of my time meeting with people and dealing with people around the country. And I think overwhelmingly there are also some other truisms that haven't come out yet and that is that the American people believe that EPA plays a very valuable role in safeguarding the health of their families and their communities.

Mr. SIMPSON. I don't think anybody disagrees with that.

Ms. JACKSON. And that the American people believe that the Clean Air Act, the Clean Water Act, other things like the Safe Drinking Water Act, our environmental laws are there to protect them from polluters who otherwise would not have any controls on them. And last but not least, that the American people believe that there are lots of laws on the books that aren't enforced. And when they look at something like the Deep Water Horizon spill or other environmental catastrophes, they say we are not sure we need new laws, we need people to enforce the laws that are on the books and protect our air and water quality.

So while I have great respect for the deliberations of this body, of course, and I am happy to sit down and meet with any of the members individually or together. I think we must also bring back

to bear as we look at what is the appropriate role of an independent agency.

NAVIGABLE WATERS

Mr. SIMPSON. When you look at, as an example, navigable waters, the attempt there was to prevent the EPA from expanding the definition of what waters are regulated by EPA under the Clean Water Act to all waters of the United States. It is not as if those waters are not regulated at all. They are, in fact, regulated by the States. And now the EPA, by removing navigable, or attempting to remove navigable, expands what EPA controls instead of the States. And that is the problem and that is what concerns me and many other people.

Ms. JACKSON. Mr. Chairman, that is not the intent. Almost all of the States, about 46, I believe, implement the Clean Water Act under delegations from EPA. So EPA has a couple of roles there. The first is to ensure some uniformity so that the playing field is level for businesses and for citizens across the country. And the second is to look at issues that are regional. So when we look at the confusion and we see genuine confusion right now about what is covered jurisdictionally under the Clean Water Act and what is not. That confusion stems in part from two Supreme Court cases that are a bit murky in terms of when you put them together what they mean.

One of the things the EPA can and should do is offer clarity within the law. We are not looking to change the law, and we are not looking to change the Supreme Court's ruling; we respect them both. But we can certainly, I think, use our expertise to offer clarity to protect headwaters. If you don't protect headwaters, then the waters downstream will most certainly be polluted.

EPA WORKFORCE

Mr. SIMPSON. I would suggest that the States do a good job of that in most areas. And I don't want you out controlling and regulating drainage and irrigation ditches in Idaho, frankly. The State of Idaho can do that. Let me ask another question. We heard from the Inspector General yesterday, that one of the problems with the EPA's workforce alignment—and this has been kind of an ongoing problem that the workforce hasn't been aligned with the roles and missions and goals of the EPA. This is a management issue. Where are you on that and what is your take on that recommendation or that concern by the GAO?

Ms. JACKSON. Well, I certainly appreciate the management challenge of constantly working to improve our workforce allocation and planning. I disagree with some aspects. Frankly, I believe that the most effective workforce planning has to be local. We have moved around in the last budgets, the ones that I have been involved in, our agency talent to address concerns. When we look at cuts to programs, what we are reflecting is a need to move talent around. I think that we have to manage our people efficiently. And I disagree with the IG that we aren't doing that right now. And I also think we have to work closely and realize that some of our tools, the 1982 position management system, I don't believe we should be going back to try to make a new one.

I think we should look at the programs we have right now and do as we have done, which is constantly strengthening our capabilities and working within a strategic planning process, that we have given real time and attention to make sure our resources match up with our priorities.

Mr. SIMPSON. But the GAO disagrees with you.

Ms. JACKSON. I think they do in part and I don't want to—I don't want to say that I don't agree with them, that it is important to manage people effectively. I certainly believe we have done that consistent with OPM guidelines, but we probably have some differences in terms of management of the Agency. And I believe that the local management of resources, whether here or in the programs or adjustments that we make as part of our strategic planning has done a lot of that work.

STATE REVOLVING LOAN FUND REDUCTION

Mr. SIMPSON. Another question. During the debate on the CR, we were criticized as undermining and destroying the State revolving loan fund because we took it back to the 2008 level, about a $2 billion reduction in the Clean Drinking Water Fund and the State Revolving Loan Fund. Your proposal decreases it by about $1 billion. Are you destroying the revolving loan fund?

Ms. JACKSON. Half as much as you.

Mr. SIMPSON. So you are destroying it? Is that right? You are destroying it?

Ms. JACKSON. Destroying, I don't know what that word means. We will be doing half as many cuts as is proposed in CR 1. And that was a tough decision. It is made based on the fact that when we are being asked to cut back, we do know that there is still some money that will hit the streets from the Recovery Act. It has almost all been obligated, but it hasn't all been spent.

Mr. SIMPSON. How much has been obligated but unspent? It was supposed to be spent two years ago, at least shovel ready projects.

Ms. JACKSON. It is within the States. These are contracting issues. I think it is all under contract. But the obligation, I think, is close to 100 percent. The actual spending, I think, might be around 60 percent.

Mr. DICKS. Mr. Chairman.

Ms. JACKSON. 75 percent.

Mr. SIMPSON. Why did you decide $947 million in reductions of the State Revolving Loan Fund? Where did that number come from?

Ms. JACKSON. The number was designed to reflect a significant cut, but to try to keep us above the last Bush budget which we felt was so low that we increased it in both the Recovery Act as well as in our fiscal year 2010 proposal. So we are at $2.5 billion for the two combined funds. That is still higher than we saw before the President's administration.

UNOBLIGATED FUNDS

Mr. SIMPSON. In the Recovery Act, you got essentially six years worth of 2008 funding levels for the State revolving loan fund. As most of it is obligated, some of it, I think about a billion and a half or something like that, is unspent yet but it is obligated. There is

still about $1.47 billion in unobligated funds from last year that are unobligated for the State Revolving Loan Fund in last year's appropriation. And is the reduction due to the fact that we have all of the unobligated funds sitting out there? That is what we looked at frankly when we were looking at H.R. 1 and trying to reduce the overall budget. We were trying to find savings. Because believe it or not, I know there is a lot of people in government that don't believe this, a lot of people here in Congress that don't believe this, but the fact that we have a $1.6 trillion deficit is an issue and we have to reduce spending. And is that how you decided to come up with the $1 billion, is that you had all of these unobligated funds from last year?

Ms. JACKSON. I certainly think that is something worth considering, Mr. Chairman. I don't disagree with you that we can look at the money that is on the street. It is very much a pipeline, though. So having run a State agency, having seen how funds work—these are revolving funds. The money goes out in loans to local governments, to municipalities, to small systems. And if it is not forgiven, and in some cases it is, then it comes back in.

So our goal over time will be to fund about 5 percent of the need annually through a combination of direct appropriations and paybacks. But this is a tough year and we recognize that in a tough year, we may not be able to fund the 5 percent we would like to. So it is a cut. It was simply intended not to be as drastic a cut as has been discussed in the House.

Mr. DICKS. Mr. Chairman, just briefly.

Mr. SIMPSON. Sure.

Mr. DICKS. On this revolving fund, some of the newer members may not realize, this money goes back to the States and these funds are loaned out and then they are paid back to the revolving fund. So from time to time, if you increase the revolving fund funding, they can make more loans and they get money coming back.

So you can make a reasonable cut here. There is no question about that because we added a lot of money in the stimulus bill for these revolving funds.

The other thing that the committee agreed to and you as ranking member helped on this, was that some of the money can be forgiven for the low-income communities. What I worry about is now that we have taken away earmarks for STAG grants, a lot of these poor communities are going to have a hard time doing the projects without some grant money. So I hope we can figure out a way and maybe the Department has already done this, of putting a pot of money together that will be competed for across the country by low-income communities to do projects that will help them deal with their problems. If not, they simply will not do the projects.

That is the reality of it and the environment will suffer from it. But I just wanted to give that little history.

Mr. SIMPSON. I will have some more questions in the second round. Mr. Moran.

RULE: COST-BENEFIT ANALYSIS

Mr. MORAN. Thanks very much, Mr. Chairman. Administrator Jackson, you have testified that from 1990 through 2020, the benefits of implementing the Clean Air Act are projected to exceed the

costs by a factor of 30 to 1. We also have EPA's current report that the Clean Air Act will save $2 trillion by 2020. The growing talking point that we heard on the House floor and so on from the other side is that the EPA's regulations are destroying the economy when we, in fact, have seen quite the contrary. Back during the Clinton administration, Carol Browner made very serious strides in cleaning the environment by issuing rules on the ozone, air toxics from the chemical industry, refineries industries, et cetera. And yet with all of that environmental protection, regulation, the economy grew at an unprecedented rate during the Clinton administration. Twenty-three million new jobs, 3 successive years of surpluses.

So the point is we achieved substantial surpluses while very actively enforcing the Clean Air and Clean Water Acts. Now, Administrator Jackson, could you walk us through your Agency's cost-benefit analysis? Because it does seem to me that it is at the heart of whether this is a prudent investment or not.

Ms. JACKSON. Certainly, sir. Of course we have to do these analyses every time we do a rule. The Clean Air Act, a report that you cited, talks about $2 trillion in benefits by 2020. In 2010 alone, 160,000 cases of premature mortality avoided, 130,000 heart attacks avoided, 13 million lost workdays avoided. Certainly an economic impact. 2.4 million asthma attacks.

So essentially, there are two ways the environmental regulations help the economy, not hurt it. The first is it is preventive medicine. It is as though we took all of those health care costs, however they are borne through our economy, and zeroed them out and said now spend all that money that you would have spent dealing with your asthmatic child or your own heart disease issues and put it into the economy, spend that money somewhere.

And the other way is, I think it is now generally accepted that the air pollution control sector of our market is a world leader. It is net positive in our U.S. trade balance. It generates $11 billion surplus in our trade balance. We export air pollution control commitment to countries like China who need it because we have invested and have the resources, innovation and expertise in this country and have stepped up to deal with air pollution as a challenge.

Mr. MORAN. Thank you. I have got this information. Boy, we have wonderful staff. I don't know what we would do without them, Mr. Chairman. They are so good. But it turns out that the Bush administration did an analysis; they thought the results were going to be that the regulations were more costly than the benefit, but in fact, the health benefits alone were substantially greater than the cost of a ratio from 16 to 1. From 1997 to 2007, the Bush White House estimated that EPA regulations promulgated during those years cost between $32 and $35 billion, but the health benefits alone were between $83 billion and $592 billion. So interesting.

CHESAPEAKE BAY

Let me ask one other particular question here on the Chesapeake Bay, if I could. You mentioned the Chesapeake and the Puget Sound, of course, and the Great Lakes. I will mention the Puget Sound again when Mr. Dicks is paying attention. But you got a request for $67 million. It is an increase of $17 million. We have got

six States and the District of Columbia working on this because we lost so many jobs in crabbing, fishing, tourism and so on. So you are aware, I am sure, my colleague from Virginia, Mr. Goodlatte sponsored an amendment that passed the House to stop Federal funding for the cleanup of the Bay. His reasoning was that the total maximum daily loads take control away from the States. He claimed the States were making progress, even though it has taken more than 2 decades to get to this point, and, of course, the Bay isn't clean. What prompted EPA's issuance of the total maximum daily load standard? And if the Goodlatte amendment was included in the final appropriations bill, how much of that $67 million in EPA funds would localities lose out on in terms of their efforts to clean the Bay?

Ms. JACKSON. TMDL, the total maximum daily load, the pollution diets in the Bay, was a result of lawsuits which were basically joined by the Chesapeake Bay Foundation and others who said that our progress was woefully inadequate on meeting the goals that had been set by EPA for improvements in the Bay. We have seen some slight improvements, but I don't think—I would not characterize it that we have turned the corner on the issues we have. And the TMDL is meant to assign to each State a load. It is your diet, here is how much pollution you can put into the Bay and still see the Bay improve. That is our job. It is a regional approach.

Then it relies back on the States through what are called watershed implementation plans, WIPS, to meet those numbers. So we are not, every day, working inside the States. The States are. I want to salute the States that have really taken a leadership role and stepped up to come up with these watershed implementation plans. The $67 million is a $17 million plus-up, about 60 percent, almost two-thirds of it, goes back to the States in support of those watershed implementation plans.

We are also working very closely with USDA, because as you might expect, agriculture is a significant player, not the only player here. So States have really done an amazing amount of technical work, and I would hate to see us lose time on the Chesapeake Bay.

Mr. MORAN. Thank you. Mr. Chairman, I have got a number of questions on greenhouse gases, but I suspect we want to try to get everybody in the first round. We are going to have other rounds so I will yield back. Thank you.

Mr. SIMPSON. Thank you, Mr. Chairman.

APPALACHIAN SURFACE COAL MINING PERMITS

Mr. ROGERS. Thank you, Mr. Chairman. In June 2009, EPA signed a memorandum of understanding with the Corps of Engineers and the Interior Department to "reduce the harmful environmental effects of Appalachian surface coal mining." And in conjunction, EPA then later released what was called guidance, which puts in place unachievable thresholds for water quality measurements, which everyone but you believes are arbitrary and based on unsound science. Preempted, well-established State water quality programs target only coal mining, specifically Appalachian coal mining when the Clean Water Act applies to industries such as road construction, development, farming, construction and the like.

A Senate committee told us that these so-called guidances are "having a deleterious effect on rural jobs, energy production and small businesses in Appalachia."

One hundred and ninety permits were expected to produce 2 billion tons of coal, support over 80,000 jobs and 81 businesses, and yet the 190 applications have been practically all denied. Only six permits issued since 2009. One company in my district still doesn't have a permit after wading through 3 Army Corps colonels, at least 6 EPA reviewers. They have invested an additional $1.5 million to deal with the EPA regulatory hurdles, and the longer the permitting process takes, the higher these costs become. On average, coal companies can expect to pay 2 to $3 more per ton to mine coal with a 5-year permit process. And guess who pays the cost of that? It is the people that use electricity.

According to your Web site, there are 79 permits that are being flagged. The Senate committee says there are 190. Whatever. You have only issued six in over 2 years. In your budget request, you are asking for more reviewers, I think four or five people. Thanks a lot. How much faster will these people be able to process these permits through their regular order?

Ms. JACKSON. I cannot commit to a time frame, sir. We are working very diligently on those permit requests.

Mr. ROGERS. Who is working on them?

Ms. JACKSON. Primarily staff in our regional offices, but also staff in our Washington office.

Mr. ROGERS. Can you explain why there have only been six permits issued out of 190 applications in over 2 years?

Ms. JACKSON. The enhanced coordination process covered approximately 79 permits. We are down to, I think, two to three dozen permits, many have been withdrawn, a few have been issued, and many have gone back and are working diligently through the State and through EPA, as mentioned in your State, Mr. Chairman, to try to find ways to reduce the environmental impacts.

This is about clean water and impacts on water. And, sir, I have to say that this is not unscientific at all. It is the result of peer reviewed studies that have gone through both EPA's scientific advisory board and independent scientists who agree that without intervention, there would be irreversible harm to waterways in the region.

PERMITTING GUIDANCE

Mr. ROGERS. But since the issuance of the so-called guidance in June of 2009, you have only issued six permits. That is a drastic change, is it not?

Ms. JACKSON. We are not waving permits through. We are reviewing them with the States and the Corps of Engineers and with the applicants to try to decrease their impact on water pollution.

Mr. ROGERS. The question is, it is quite a change.

Ms. JACKSON. Sir, I absolutely agree with you that the enhanced coordination has changed the landscape in that part——

Mr. ROGERS. And it was a substantive change from prior regulations, right?

Ms. JACKSON. It is guidance that has been out for comment, and will be finalized quite shortly, I think.

Mr. ROGERS. But the guidance does represent a big change from prior regulations, correct?

Ms. JACKSON. Yes, it reflects the latest science that shows that the way that permits were being issued was not protective of water quality.

CLEAN WATER ACT: PERMIT VETO

Mr. ROGERS. And that is why a lot of people are saying that when you issued those guidances, you violated the law on how you come up with regulations because there were no hearings, there was no advance notice, no one had a chance to weigh in on this substantive change in your prior regulations and that is why you are being sued by the State of Kentucky, the National Mining Association, several other States and coal operators on the grounds that the guidance constitutes a violation of the Administrative Procedures Act, APA, which requires that any major changes to existing regulations must go through a formal rulemaking process, to include public comment and peer review science.

And in January, the U.S. district court for D.C. ruled in a challenge to you on this APA. Violation would ultimately succeed on merit. So what do you say about the charges that you violated the Administrative Procedures Act?

Ms. JACKSON. Mr. Chairman, I don't agree with them. I wouldn't want to violate it. It is guidance. It is subject to public comment. In fact, we have just concluded a lengthy public comment period and our responsibilities have not changed under the Clean Water Act. It is simply a matter of ensuring that as these permits are issued, we are not trading future water quality for issuance of permits hastily today.

Mr. ROGERS. Now, the coal mining industry that provides over half of the power—the electricity around the country, is being shaken to its boots because of a ruling that you issued in Logan County, West Virginia, where you repealed retroactively a mining permit and shut down a mine even though they had been granted a permit previously by the Corps of Engineers in 2007 after a 13-year, 1,600 page environmental review by State and Federal agency, including EPA, you said it is okay, you got the permit. Three, four years later, you come back in and say we are going to revoke your permit. Now, every construction company that is building highways, every coal mining company and everybody that does the business that has to be done is unsure of themselves. They are—and it is having a very destabilizing impact on this industry. Where do you think—where do you claim to have the authority to retroactively go back and undo a permit that has already been issued for several years?

Ms. JACKSON. Mr. Chairman, respectfully, I think it is inaccurate to say there is a retroactive undoing. EPA has the authority under the Clean Water Act to veto a permit issued by the U.S. Army Corps of Engineers if we believe it is not protective of water. That is what the Clean Water Act says on its face. The reason the Spruce permit has been hanging around since 2007, is that it was in litigation. When it was issued by the U.S. Army Corps of Engi-

neers, not with the concurrence of EPA, and in fact, without taking into account significant comments by EPA, it was litigated.

And in the course of that litigation, EPA was asked to determine whether or not—EPA had to determine—we were not asked to, we had to determine whether or not we would stand behind a permit that we did not agree with and instead we chose to use our veto authority under the Clean Water Act.

Mr. ROGERS. But the permit issued by the Corps in 2007 had approval of EPA.

Ms. JACKSON. No, sir. No, sir. The EPA commented on several versions of the permit discussions. And I know the permit applicant has said over and over again that we approved, but we did not. Our comments were taken, many of them were not addressed, and the final permit issued by the Corps, in our opinion, was not protective of public health and not protective of the water quality, not consistent with the language of the Clean Water Act and I do admit that that is being litigated.

Mr. ROGERS. I guess you noticed that during the debate on the CR a couple of weeks ago, 240 Members, bipartisan, voted to strip EPA of your authority to retroactively veto existing permits. I don't guess you noticed that.

Ms. JACKSON. Sir, of course I did. I certainly noticed the vote.

Mr. ROGERS. Well, I am sure there are others who want to ask questions.

Mr. SIMPSON. Thank you, Mr. Chairman. Ranking Member Dicks.

PUGET SOUND

Mr. DICKS. Administrator, again, welcome.

One of the things I just wanted to bring up was, I think we are making some real progress in the State of Washington on the Puget Sound Geographic Program. I appreciate the fact that there is money in the President's budget for this program. I wish it were at the higher level that Congress had approved, and I just want you to know that we have developed in Washington State an action agenda, a scientifically credible plan for restoration. And it really depends now on being able to get State and Federal funding to make this thing work. I know that the administration has a tremendous interest in the Chesapeake Bay, but you know, the difference in funding between the Chesapeake Bay—not the Chesapeake Bay, but the Great Lakes. And I wish—I wish they had a similar positive view of the Chesapeake Bay and Puget Sound.

We feel like we are the orphans here. And these are two extremely important bodies of water. It has been obvious that the administration can't spend all the money that has been given to the Great Lakes. I mean, it is just not going out the door. I just hope, one, that you will insist that both the Great Lakes and the Chesapeake develop an action agenda too. They need a scientifically credible plan. EPA now is in charge of the recovery in the Chesapeake Bay, and I hope that we will take that seriously, and a lot of the run-off issues that have been neglected by the States should be addressed. And I know you are trying to do that.

Mr. LATOURETTE. Will the distinguished ranking member yield for a minute?

Mr. DICKS. Yes, I yield.

Mr. LATOURETTE. You are not suggesting to take money away from the Great Lakes for Puget Sound, are you?

Mr. DICKS. Oh, no. That would be wrong.

Mr. LATOURETTE. That would be horribly wrong. All right, well, thank you. I appreciate that.

Mr. DICKS. I would just like to see the budget give a little more help to Puget Sound. And I would also like to see the Great Lakes have an action agenda, a plan. I don't think they have a plan yet——

Mr. LATOURETTE. We have all kinds of plans.

Mr. DICKS. Wait a minute—that is scientifically credible and verified by independent sources. That is what I think you need to do. And that is what we did in the State of Washington.

Mr. LATOURETTE. I would just say to the distinguished former chairman and now ranking member that when the Puget Sound has 20 percent of the world's fresh water, perhaps you could make the case and take some money away from us but not now.

Mr. DICKS. But when we have the most endangered species in the country in Puget Sound, it also is a priority. All I am saying is, let's try to be fair. And the administration's budget again I don't think was fair to budget Puget Sound. Now Tom Eaton is out there doing a good job. He is working hard. But we have been the forgotten party here. It has always been the Great Lakes, the Chesapeake Bay, and the Everglades. And Puget Sound has been, I think, not as important to the administration as it should be. I mean, this is a very important body of water. So anyway, I have used my time up. But again, we want to work with you on this, but we hope to get that budget request up in the future. I think it is totally justified. And I think we have done what we need to do out there with our action agenda, and the Puget Sound partnership is moving forward. So I yield back.

Mr. SIMPSON. Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman. I can assure you, Mr. Chairman, that with the passion of my colleague, the ranking member, Puget Sound will certainly not be forgotten.

Mr. DICKS. Thank you.

AIR QUALITY

Mr. LEWIS. In the meantime, Madam Administrator, Ken Calvert and I, the gentleman sitting to my left, represent the Inland Empire in southern California. Years ago when I first became involved in public affairs, for something over 250 days a year, you could not see the mountains that surround this valley for almost 360 degrees. It is a beautiful valley. And over many a year, many of us have been involved in air quality questions because of that.

Today you can see those mountains almost every day of the year. But indeed, I will never forget taking a trip. I spent a whole month one weekend in Detroit, to talk to the Big Three about air quality questions and what the American automobile industry was not doing in terms of improving the impact of auto emissions on air quality questions. It was not until foreign manufacturers produced cars with better gasoline mileage that there began to be a change, and that has contributed significantly to the cleaning of our air.

But also I will never forget that during those years, there were voices heard, including my own, that we should be very cautious as we go forward with developing regulations and policies in the arena of air quality because often times we just plain don't know what we are talking about. It is easy to point to the big smokestack and say that if we can solve that problem, we will solve 95 percent of the problems and so forget about the rest of it.

And you, Madam Administrator, and I know that that automobile continues to be the problem. And I would be very interested in what EPA is thinking about and what your experts are thinking about relative to having a direct impact upon how people deal with their own transportation needs. Automobiles, et cetera. Please don't talk to me about high-speed rail. That is hardly a solution to some of these problems. In the meantime, the Air Quality Resource Center, which was then located at the University of California at Riverside, helped us a lot in trying to deal with some of these problems. I once converted a very beautiful and wonderful convertible that I had to propane. The car never ran again, by the way. But that was by way of legislation that was moving that would suggest that we ought to take all automobiles that have a stationary source, major pools of cars, and convert them experimentally to propane to see what effect it might have.

The Research Center came to me as that bill was moving and said, Jerry, we ought to be kind of cautious about this because our research is beginning to show us some things that we didn't anticipate, that it would appear that propane, when it goes through the combustion process, creates a thing called propylene and the emission in that form may be even worse than the standard automobile emission that we are concerned about.

We talk a lot about scientists and research and independent peer review, et cetera. But oft times in these arenas, we don't know what we are talking about. If we are going to promote regulations that dramatically impact people's lives and spend a lot of money in doing it, we should know what we are talking about.

Just by way of asking you to comment on that general area, let me mention also that back in those days, a community known as Chino was in my district. They had the largest cowherds in the country. Cows in numbers of 1,000 per farm, et cetera. And I note that within your air quality arena, you talk about animal gases. I must say, it astonishes me. And I would really like to see the background of those experts who talked about animal gases for indeed the people of Chino who would wonder whether we know what we are talking about. So thank you, Madam Administrator, for being here. I would be very interested in your thoughts and where you would be taking us by way of research and otherwise relative to air quality.

Ms. JACKSON. Thank you, Mr. Lewis.

Just a few things. I will begin by hailing your State as being one of the engines that has driven us towards cleaner vehicles in this country. EPA's history with vehicles includes things like taking the lead out of gasoline, which I think single-handedly made a tremendous difference in children's health. But also enabled the catalytic converter which is an American invention that is now on cars all over the world that has made our cars run cleaner.

Mr. LEWIS. California Legislature, as a matter of fact, led the way.

Ms. JACKSON. California has a history of leading the country with respect to vehicles, sir. And of course, there is a large market. The Clean Air Act actually recognizes California's leadership by giving your State a special role.

I simply would say this, we have probably a million more cars on the road than we had in 1970, just in absolute numbers. And the emissions from all those cars is much lower than the emissions from 1970. That means we are driving more cars, but they are much, much cleaner and more fuel efficient. That was the genesis of the fuel efficiency greenhouse gas deal, the car deal that was worked out last year. And so as cars become cleaner, Americans, of course, as the population grows—I have two young sons, both who want to be drivers sooner than I would like—we need to continue to sort of push that envelope so that we make our cars cleaner.

You asked about research. I am a scientist by training. I just recently visited our Ann Arbor laboratory which, sadly, is not in the State of California, but is an impressive place. I would invite you to see it. But if you ever have a chance to see it, you are struck by what an engine of economic development that it is. Many of the car companies locate the parts of their research lab that deals with emissions near us as they do in parts of California because they know that they are going to have to design cars that continually ramp down on efficiencies.

The last thing I will say is that with respect to animal emissions, I assume you mean greenhouse gas, methane emissions. EPA has no plans to regulate such. The number of agricultural sources that are even being required to report their greenhouse gas emissions is zero. So I know that has been discussed and is a source of worry. And I find myself often giving some amount of reassurance to people, to ranchers about that matter.

AIR QUALITY: MOBILE SOURCES

Mr. LEWIS. Well, Mr. Chairman, I would just kind of add, the bottom line there for the administrator, I really want to hear from you how you think this committee can help you accomplish EPA's mission relative to air quality without overly impacting our already very fragile economy. There is little doubt that we could take a small piece of the money that some people are touting for high-speed rail and at the other end of that line, use that money—small piece of money—and buy more buses than we would know what to do with to replace that high-speed rail, move a lot more people and help clean the air in that fashion, assuming we could get those engines to operate considerably more efficiently. Please tell us how we can help.

Ms. JACKSON. I will be happy to work with you in any way I can, Mr. Lewis. I think obviously my colleague, Secretary Ray LaHood, your former colleague, I think very, very highly of. And I think his work—and EPA is working closely with DOT as he looks at the transportation acts of the future, we are happy to share with you the information we are sharing with him. I think that communities are differently situated when it comes to transportation choices.

And our interest is simply to ensure that we are not going to sacrifice air quality. And my belief is, with technological innovations, including mass transit, we don't have to do that.

Mr. LEWIS. I haven't thought about asking Ray LaHood to talk with you about this. Excuse me, Mr. Chairman, for this. But, indeed, those buses at the other end hopefully have cleaner driven engines as it were. You could perhaps put together a major study to help us change the pattern of what people are willing to do in terms of transporting themselves. We can buy those buses but we can't get folks to ride in them in southern California. It is an incredible challenge, and we are a long, long ways away from turning that corner. Thanks, Mr. Chairman.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chairman. But representing the Great Lake State of Lake Superior, the gentlemen from Lake Erie were here first before me. I respect seniority and I respect their ability to make my life miserable if I went first.

Mr. SIMPSON. Representative Hinchey.

HYDRAULIC FRACTURING

Mr. HINCHEY. Thank you very much. I appreciate it. First of all, it is a great pleasure, Administrator Jackson, to be here with you and to be involved in this situation with you. I want to commend you for the courageous way in which you have led the EPA and the kinds of things that you have been able to do quickly already in the context of the kinds of circumstances that you inherited and had to deal with. Your mission is to protect human health and the environment, and that is exactly what you have been working to do. So I deeply applaud you for it. I think your work on the Clean Air Act particularly is saving lives, keeping people healthier and, as a result, providing enormous benefits across the country, in communities across the country and in our economy.

So, as you know very clearly, we need a strong EPA to safeguard our children, safeguard the community, safeguard our future. There was a recent series of articles in The New York Times which are absolutely fascinating and which are producing a significant amount of new information that is presented in ways that are more understandable than they have been in the past, for many people. And in fact, stories like little or no testing for radioactive levels, and the radioactivity of those levels can be very important.

So I just want to ask you a few questions along these lines. Along the many issues raised in The Times series was that hydraulic fracturing wastewater contains radioactivity at levels much higher than previously known. And it is being sent to wastewater treatment plants that cannot safely remove the radioactive materials. These plants are then dumping this contaminated water into rivers and streams and those rivers and streams supply drinking water. And as a result of that, there is a threat to the health of millions of people. Such material such as barium, strontium, radioactive elements, little or no testing is going on.

So I am wondering if there is anything that can be done to deal with this. Given these reports, will the EPA, for example, order the immediate testing of water from these facilities that accept

fracking wastes as well as testing at drinking water intake systems downstream from these treatment plants?

Ms. JACKSON. Thank you, Mr. Hinchey. I think that EPA is very interested in ensuring we get data on radioactivity and flow-back water. And the only hesitance I have to say—and absolutely yes, we will order the testing—is that I would like to have an opportunity to speak to the States involved—specifically Pennsylvania—who has done some amount of work. I actually intend to go tomorrow to our office in Philadelphia to have those discussions. But I do believe additional information is due the public as a result of that series.

Mr. HINCHEY. Well, I appreciate your saying that. And I think that is absolutely true. A lot of these States are doing things that are not really strong enough. And Pennsylvania I think is one of them. There is an awful lot of drilling going on in Pennsylvania and the rapid increase of that drilling is going on over the course of the next few years. It is going to cause a whole host of problems, particularly if there is no oversight as to what is going on. And if you live close to Pennsylvania—like, for example, in New York—and you find that Pennsylvania is dumping a lot of these radioactive materials and other toxic materials into rivers that are on the border of your State, then you have got to be concerned about it too.

Just leaving these situations open to individual States is not going to do it. So that is part of it, and I am glad that you are very interested in this.

EPA STUDY OF HYDRAULIC FRACTURING

Let me just ask you something else. The narrowing of the national fracking study and the squelching of other researches. Again, in The Times, they also raise serious concerns about the process behind EPA's study on hydraulic fracturing. In general, what I believe is that EPA has put forth to the study advisory panels that are positive. I commend the Agency for not falling into the industry's trap of narrowly defining the drilling process, and we are seeing that all over this country in State after State where these things are going on. And they are doing this—the industry's trap of narrowly defining the drilling process because you were able to overcome that because you were under some real pressure to do so. However, it is what has been left out of the study scope that I would like to discuss, what is outside of that study scope.

According to The Times initial versions of the study scope recommended research on a number of dangers, dangers of toxic fumes. The risks of contaminated run-off from landfills where drilling waste is disposed. Whether rivers can sufficiently dilute hazardous gaswell wastewater that is discharged from treatment plants and more, a whole host of other things.

However, the scoping document sent to the advisory board late last month included none of these topics, interestingly enough. So Agency officials expressed concern about the public's reaction if it was discovered that the study scope was being narrow and staff were discouraged from putting anything in writing about the national study unless vetted by managers. So it could not be in the Freedom of Information Act, for example.

One regional administrator apparently instructed his subordinates to not spell out their grandest visions about what the study should examine, less the public see all of these concerns. These are the kinds of things that we know are very, very dangerous. And we know there are a lot of activities that are going on to try to keep adverse circumstances too quiet.

Now EPA did have recommendation from Congress on what it should study, specifically drinking water. But if the Agency's scientists felt there were additional areas to examine because of concerns over human health, such as with air emissions, then the public and Congress should have been made aware of those. Contrary to assertions from the industry, the report language was a congressional recommendation, not an order. And EPA had the authority to ignore or expand on it. Instead, what we see here are deliberate attempts to shield from the public additional concerns expressed by EPA's scientists. There is a lot of positive things going on by the scientists, particularly in EPA under your leadership and under your direction.

So there are clearly other risks worth examining that have come to light since this report language was first drafted in June of 2009.

Shouldn't the public and Congress be made aware of all of the concerns EPA's scientists had about the risks that fracking poses to public health? Why would EPA managers believe this information should be withheld? Why is that? Why would EPA not allow these additional topics to be submitted to the advisory board? Furthermore, at a January meeting in Washington, regional directors were informed that the national study would be the only forum for research on hydrofracking.

While I understand the Agency might want to ensure there is no redundancy, there is absolutely no justification to stop research outside the scope of this study. So one other issue, should the national study be the only forum for research on fracking, even if regional offices and other scientists and researching risks outside the scope of the study in response of public health concerns just keep rising and getting more serious?

Mr. SIMPSON. Why don't we give the Administrator a chance to answer that.

Mr. HINCHEY. Thank you.

Ms. JACKSON. There are several questions. Thank you, Mr. Chairman. And thank you, Mr. Hinchey.

On the issue of the public and Congress having access to what we know, absolutely, I have committed the Agency to transparency in information. And I would like to point out that the issues seem to stem from some concerns that are really located in Philadelphia. We have 10 regions. We have 10 different offices of EPA across the country. The one that handles New York is in New York City. I think they have submitted strong and principled comments to the State on its draft EIS and we await the State's actions on the EIS. Many of the States are very involved in this issue. It is affecting them now while we do this big study, which is going to take about 2 years.

Texas, we have actually taken enforcement actions there, and we are in something of a dispute with the State because our belief is

that we needed to take those actions to assure protectiveness. So I want to first just start by saying we believe natural gas is important. It is a homegrown source of energy, but it must be sustainably and responsibly produced. And future generations shouldn't somehow bear the burden of a rush to produce it. We think it can happen, both can happen. You asked about withholding information. I just want to clarify one thing. The article—the series is very important. But we are looking at radionuclides as part of the study.

So somehow the reporter reports today that that was left out of the study. That is not true. But I am sure it is just an inaccuracy, something he read. But the study is with our science advisory board. We have used a transparent consensus-based process to scope this study. We expect the science advisory board to have a meeting on the study parameters on Monday. All of that has been open. We have vetted the people who sit on the board to make sure they don't have undue conflicts of interest so that we don't have folks later worry that the study was somehow skewed. With all those safeguards that we have put in place, I am certainly not going to be closed-minded to say we don't need to look to make sure we are doing everything right.

So that is why I am going to go tomorrow to Pennsylvania to Philadelphia to our office to try to understand what the state of play is there. Your last question was about the national study. The budget this year calls for $6 million for that national study. And I thank Congress for last year or the year before—I can't remember—for authorizing it and for your leadership in ensuring that we have the study money.

The only thing I will say is, we have to spend money wisely. So I will not say that the national study should be the only study, sir. But after a process that open, that transparent, that rigorous to try to outline a study, I would want my science adviser, my head of research and development, to understand what additional work is happening so that we are not somehow being redundant. We don't want to stifle science, but we want to make sure if we are doing work that we are not doing the same work over here.

I think that is only fair. It is a wise use of money. But otherwise, I think we should certainly not be tying the hands of our scientists and trying to understand this. While at the same time recognizing maybe the article didn't do the greatest job of portraying that many States who are used to drilling have done significant work in regulating the fracking and drilling and natural gas recovery process. States like your own have sort of taken a time-out so they can make sure to get it right.

Mr. HINCHEY. I deeply appreciate that. If I could respond to that briefly.

Mr. SIMPSON. Very briefly.

Mr. HINCHEY. I deeply appreciate that, and I know that you are doing a lot of things that are very, very important and need to be done. But also there is a lot of damage that is taking place right now and that damage is going to increase dramatically, rapidly over the course of the next couple of years. And if nothing is being done to try to just control and oversee what is happening, then there is going to be a lot of damage to a lot of people.

So all of that is critically important. There are a number of things that can be done by this Congress, and one of the things that could be done and should be done by this Congress is to go back and correct a piece of legislation that took out an important Federal Act which was put into place back in 1974 to regulate this frack drilling, and to ensure that whatever frack drilling is being done, it is being done honestly and not being done in ways that are corrupted and corrupted quietly so that nobody knows about the corruption, nobody knows about the danger, nobody knows about what is going on, including what is being injected into the context of this drilling.

Mr. SIMPSON. I thank the gentleman for his comments.

Mr. Calvert.

NATIONAL ENVIRONMENTAL POLICY ACT

Mr. CALVERT. I thank the chairman. I wanted to follow up on Mr. Lewis's comments regarding nonstationary sources. And I think Jerry certainly has credibility on the issue. He wrote the Clean Air Act in the State of California, which is probably the most stringent set of clean air regulations in the United States. Because we understand that nonstationary sources are the problem—automobiles, trucks, trains—and cause a significant part of pollution, especially particulate pollution. One of the programs that has been very successful at EPA has been the DERA program, the Diesel Emissions Reduction Act.

And Senator Feinstein, Senator Boxer, myself and others have been very supportive of that program because it is removing old diesel engines from the inventory and replacing them with clean diesel, which has a significant positive effect on reducing particulate pollution. We know that is a program that works and there are a lot of things that we do in government that don't work.

So a lot of us were concerned when you zeroed out the DERA program. I just want to bring that to your attention.

In my home State of California, as you have mentioned, we have our own environmental laws. And I would say in almost every case, we meet or exceed Federal standards. We have a process in California called CEQA, the California Environmental Quality Act, which exceeds the NEPA requirements almost in every requirement in the State of California. One agency after the other—because obviously we have a significant job problem in California, our unemployment rate is at 12.5 percent.

In my district, one out of every four people are either out of work or underemployed. And the NEPA requirements are causing significant delays in permitting processes and in getting projects underway. Have you ever given any thought to States such as mine? Where permit applications that are submitted from States such as California, which exceed NEPA requirements, can NEPA be waived in States such as California? I can't think of a State that has more stringent environmental laws than the State of California, but don't you think that is a way that we can work toward getting these projects underway quicker?

Ms. JACKSON. Sir, I haven't focused on the NEPA process, you know, that is run out of the Council on Environmental Quality from the White House. So it is not really entirely within our juris-

diction. We comment as part of the NEPA process, but it is not mine to manage.

Mr. CALVERT. Well, wouldn't EPA certainly have some input into this and supporting a new process in which NEPA can potentially be waived?

Ms. JACKSON. Well, I am happy to take a look at and/or discuss it along with the chair of the council. I will say this for our environmental permits, like our Clean Air Act permits in the State of California almost across the board is delegated the permit authority for those issues. So there is no duplicity. We don't issue the permit, and then in California, they issue one permit.

Mr. CALVERT. Any comments on the DERA program?

Ms. JACKSON. Yes, sir. I do not disagree with you in terms of both the popularity and the effectiveness of the program. I think it is around 13 or 14 to one, health benefits to dollars spent. It is a tough, tough budget, full of tough choices. And the only consideration I would offer for you, sir, is that there was DERA money included in the Recovery Act, and that money is about 60 percent spent I believe. So the thought was in a year of tough budget choices that we could let that money hit the street, if you will, and retrofit more engines.

So that was the basis for the very difficult decision to not add money to the program this year.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chairman. Thank you, Administrator Jackson, for coming to testify here today. I want you to know on behalf of my constituents and the citizens of Minnesota, your hard work in ensuring the EPA's protection of public health and the environment is much appreciated. In fact, I got Valentines to pass on to you. We support your mission to enforce our Nation's laws to make the air we breathe cleaner and the water we drink safer. We know that we do face tough fiscal times and difficult choices must be made. But the one thing that can never be sacrificed is the health of our children, our seniors and our most vulnerable populations, which you addressed in your testimony. There has been a lot of talk about jobs and what can happen and what can't happen. This morning I was looking at Politico and there was a story that talks about what happened when we as a Nation were working on controlling and removing ozone-depleting CFCs. Some of the quotes in the story were from the air conditioning and refrigeration institute, who warned that we will see shutdowns of refrigerator equipment in supermarkets. It went on to say, we will see shutdowns of chiller machines which cool our large office buildings, our hotels and our hospitals. According to the EPA—and this will be the last quote I do from the article—the phaseout happened 5 years faster than predicted and cost 30 percent less than expected.

I was working for a company that is called Sears Roebuck in major appliances, and it was doom and gloom about what was going to happen. People got it when they came in to buy their refrigerators to replace them. People understood that what they were doing was making the air better for their children. I never heard a consumer complaint about what was moving forward. And in fact, it caused a lot of great improved technology. Thank you for the

work that you do. I think lots of times, we focus on what our problems are and trying to understand regulations and why we are moving forward and we don't celebrate our successes.

EPA BUDGET

I do want to talk about something. I am concerned when you are talking about balancing your budget. I think the chairman has been very thoughtful on how we work to coordinate climate change. You were mentioning that too about using the best science and not duplicating it. But yesterday, we heard from the GAO and Inspector General about the increasing new demands on the EPA. They listed in their reports things that you didn't even have to deal with a few years ago. Nanotechnology, cybersecurity, contaminants of emerging concerns in our water.

So one of my two questions is, is the EPA's budget significant to address these issues as well as working on past issues and the mandate that you have in front of us? Because I think you can roll these together, I will do my second question too.

CHEMICAL SAFETY

We also heard from the GAO and the Inspector General the difficulties that the EPA has in regulating toxic chemicals. That is due to the fact that for-profit chemical companies are not required to fully disclose health and safety data information. This puts the burden on the EPA and the taxpayers to prove the safety of the chemicals that are being sold for profit. This is in contrast to the European Union's approach. I am heartened to see you have made toxic chemical safety one of your priorities. But I am concerned about how you are going to do that with a decreasing budget and fulfilling all the other things that we have heard about today and backlogs and the evolving water counts and the concern that the gentleman from Kentucky had with ongoing litigation.

My question is, how are you going to be able to carry out your enhancing chemical safety initiative that has been given to the EPA, not the chemical companies, to determine the safety of these chemicals?

Ms. JACKSON. Well, thank you. The reason I smiled when you said Sears Roebuck is my dad worked there in hardware for many years, so it brought back a very nice memory.

Ms. MCCOLLUM. I was in division 1, 2, and 3, you can tell him.

Ms. JACKSON. So your question was about the new challenges that we face at EPA, and that has been our management challenge in trying to put together this budget. We understood the President's strong call, and actually I very much agree with that we just have to find efficiencies and do what Americans are doing, which is trying to find ways to get our job done on lower budgets. That is fair, and I think we should be, at EPA, embracing that and be a part of it.

I just want to note, for example, on toxics which I do and we have identified as a real area of focus and concern. We have also called for modernizing our Nation's toxic chemicals, laws. I am still hopeful that we will get around to that soon, that Congress will continue its work there. But we have increased our funding for toxics in this proposed budget. It is a plus-up of $16 million to deal

with some of the issues you mentioned including—and we are really proud of using the existing law to challenge confidentiality claims where we can. We are going to add some people simply to do the legal work of challenging these companies to open up the window shades, if you will, and let scientists see what is in some of these products. That takes legal resources though because there are challenges under the law. So we have made cuts but we have tried to preserve and actually, in some areas, increase those places where we believe with the challenges we see before us we really need to increase our resources.

ENDOCRINE DISRUPTER

Ms. MCCOLLUM. Mr. Chairman, I was in a cab today and the cab driver didn't know what I do for a living. But he asked me where I was from and I said I was from Minnesota. And he asked me if I fish. I said do you fish in the Potomac? We were at a red light so he turned around and he gave me the slightest smile and he said, Do you think I am crazy? We have no idea whether they are boy fish, girl fish, what kind of fish they are. And the cab driver used the term endocrine disrupter.

Mr. MORAN. It is getting through. It is getting through.

Mr. SIMPSON. His message is getting through.

Ms. MCCOLLUM. We have our work to do to protect future generations. Thank you.

Mr. SIMPSON. Mr. Cole.

COAL-FIRED POWER PLANT

Mr. COLE. Thank you very much, Mr. Chairman. I have a couple of specific questions, and one in particular that my colleague asked—and I have a more general one—but he asked me to put to you, Mr. Young from Alaska, so I am going to read the question. He asked, ″Were due processes and basic notions of fairness considered when you rescinded a properly issued permit on the Desert Rock power plant? If built, it has been said that this plant would be the cleanest coal plant in the United States. If this doesn't meet clean air standards, would any coal plant be able to do so going forward? So I wanted to tell you ahead of time, I don't know this issue particularly well, but he asked to be given the opportunity for you to address it.

Ms. JACKSON. It is in New Mexico, does that sound right to you?

Mr. COLE. Again, I wish I could tell you more. It just said the Desert Rock power plant.

Ms. JACKSON. I believe he is talking about a title 5 petition for a coal-fired power plant in the four corners region of New Mexico.

Mr. COLE. He was particularly worried because this has a Native American angle to it as well. There was a tribe that was going to benefit tremendously financially had this gone ahead.

Ms. JACKSON. Yes. We had significant petitions and concerns raised by the State of New Mexico in downwind areas that were very concerned that this plant would contribute to regional haze, visibility issues over the Grand Canyon as well as some significant additional pollution issues. I can get more information.

Mr. COLE. Please do. I would appreciate that very much.

ASSISTING SMALL WATER SYSTEMS

I have got one other specific question. And that is on drinking water issues. What is the EPA doing right now to assist small water systems and meeting compliance on the Safe Drinking Water Act?

Ms. JACKSON. Our work there continues. I have had many discussions with the chairman about that very issue. We have two roles. The first is to put out health-based standards but the other, the Safe Drinking Water Act, acknowledges that there are affordability issues. So we are looking at both. We have encountered some amount of resistance understandably from communities who say, because I choose to live in a rural area or small town doesn't mean I choose to have water that doesn't meet Federal standards. That is a tough, tough spot to be in. So we tend to err on the side of trying to bring resources to communities to meet the standards, although we are increasingly looking at providing guidance on affordability as well. I don't think we have finalized that.

REGULATION

Mr. COLE. Let me ask you a more general question. And I don't mean this to be adversarial. I really don't. I want to give you an opportunity to state a broader case. As was mentioned earlier in some of the questions, we had an awful lot of amendments on H.R. 1 aimed obviously at the EPA. And I can just say to you, when I go home, I get more questions about your Agency and concerns than I do any other agency in the Federal Government. And they sort of run the gamut. If it is farmers in the southwestern part of my district, they are worried you want to regulate dust in the area. Well, you can't farm in southwest Oklahoma without having dust in the air. If it is oil and gas people—and again my friend Mr. Hinchey and I sometimes disagree on hydraulic fracturing—as a matter of fact, we always disagree on hydraulic fracturing, to be fair.

But again, I recognize the legitimacy of the issue that he raises, particularly in areas that haven't had oil and gas activity on the scale we are seeing for decades. In Oklahoma we have. Hydraulic fracturing is not a new technology to us. We think we regulate it very well. We have been using it since the late 1940s. We think they probably ought to talk at the State level to other regulators who do this.

But I have got a whole industry that worries they are on the verge of having a Federal regime they have never had to deal with imposed upon them when it is a practice they have been doing safely for a long time. And I have got communities that come to me continually and say they keep raising the standards on water. And we get unfunded mandates.

So while you pointed out in your testimony the environment is bipartisan—it was Nixon that created the EPA, Roosevelt the National Park Service, and air and water is better today than it was 20 years ago and I think everybody appreciates that—but somehow this administration, whether deliberately or not, stumbled into a situation where it is becoming very ideological and very partisan. Is that because you think the science or the technology has changed so much? Again, we clearly have a clash here in an area

that we don't need a clash. So are you more aggressive? Are you going further? I would just ask you to reflect a little bit about why all this political controversy is happening around the Agency.

Ms. JACKSON. I wish I had the benefit of history so I could look back and reflect on these times. But I will say this, it is fair to say that there is a backlog of—especially under the Clean Air Act, but not only under the Clean Air Act—standard setting that has been overdue for a while, either because the previous administration—and, again, not to be adversarial—set the standard and the courts overturned it. That is the case for mercury and other toxics in air. Or transport of pollution from sort of the western half of the country because of course the air blows from west to east.

Mr. COLE. In Oklahoma it is north to south.

Ms. JACKSON. I should have said in general. There are always exceptions. So there is a backlog of updating the standards under the Clean Air Act. None of the standards are without cost. It is my job, as administrator, to do and make sure that the analyses show they are done in a way that is transparent that protect, first and foremost, public health but don't surprise business but give them a clear set of rules to operate by.

We have been in sort of a stasis for quite some time. The other issue, quite frankly, and many of them—and I make this offer with some trepidation. But many of them I think have to do with our ability to communicate what is really going on inside the walls of EPA to people who shouldn't spend most of their time worrying about that.

So especially with the agricultural community, we have endeavored to redouble our efforts with USDA to communicate better. For example, on coarse particulate matter which most people would call dust in parts of rural America, there has been no regulatory change proposed. There has been a study. The study, interestingly enough, says it gives equal weight to retaining the current standards as it does to changing them. And there has been absolutely no regulatory decision made. We have committed to listening sessions. We just had a bunch in Iowa and Missouri about that very matter. So I think we need to find ways to get out and speak to people where they are and explain to them because I absolutely agree with you. Americans don't want dirtier air. Certainly farmers rely on clean water for their livelihood. We just need to be able to ensure that we are doing everything we can to communicate with USDA but also in the States.

Mr. COLE. Well, I am going to have a series of questions later on. I know my time is about up. I would just ask you to recommit or think through that in the Agency. Because I can assure you that the political backlash is real. It has real consequences. So I don't know if we are going too far or too fast. I have opinions on all these things individually where I may well differ with the EPA. But I can just tell you, attitudinally and atmospherically in a political sense, there is a reason why all this is happening. So sometimes you can be too zealous or too quick or not—I don't mean you personally. I am just talking about in general. Agencies or people in government can get ideas, move a lot further and faster than the public wants them to go. And I think we are in one of those situations right now where the EPA is concerned and we are going to

continue to have clashes in Congress unless we can find some more cooperative way to move forward. And we have done that in the past and hopefully can do that going forward. Thank you, Mr. Chairman.

Mr. SIMPSON. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. It is an honor to be a member of this subcommittee.

Mr. SIMPSON. It is an honor to have you here.

Mr. SERRANO. It only took me 21 years.

Before I begin to ask my questions, let me just say that in those 21 years, I always realize that every day you learn more or you hear things a little differently. For instance, listening to the gentleman, since he goes back and he hears from farmers and he hears from people who are drilling for oil or whatever, gas and so on. I don't have in the south Bronx any oil wells, and I don't have any farmers. We enjoy the results of the hard work they do.

But on the other hand, in looking for a balance in how we deal with the EPA and all that, I have the highest asthma rates in the Nation. So I know that people want, yes, whatever balance we need to strike but not to go back into the days when the air in New York was totally, totally, totally polluted. I also have a river. And for most people, they say, you have a river in the middle of the Bronx? Yes, the Bronx River. It is a great name for it. And most of you live in communities where rivers and ponds and waterways are just a way of life that you even take for granted.

Well, that the whole community worked on cleaning up that river and that river became a very special place is so important and EPA played a major role in making sure that fish came back to the river and animal life in the neighboring area that didn't exist before.

So again, some may say, well, that is a little melodramatic. But in the middle of a city with a lot of cement, that is extremely important. So as we look forward to the balance of not hurting industry, we also have to make sure that we don't move back on the advances we have made. And that is just my comment.

Thank you so much for your work and for your service. I know the next couple of years will be rough ones, but we all stand here ready to assist you in any way we can.

POLYCHLORINATED BIPHENYLS

As you know, I have been actively involved in working with the EPA on finding ways to address the public health impacts of PCBs in both window calking and light ballasts in our schools. This past week, New York City announced that it is moving forward with a 10-year plan to remove and replace all PCB-contaminated light ballasts throughout the New York City school system. So I have three questions. Based on the current science and the EPA guidance that was issued in December 2010 on PCB-contaminated light ballasts, do you think that in order to protect our schoolchildren that the city needs to resolve this problem sooner than the announced 10-year time period? Secondly, as you know, separately from the light fixture problem, there is also an immediate and real concern about the PCBs contained in window caulking in our schools.

Could you please take a moment to update me on your efforts to have New York City also address this issue as well? When the safe-

ty of our children is at risk we cannot afford any further delays. And lastly, is this something that is in the inner city in New York more than other places? Or is this an issue affecting the Nation as a whole?

Ms. JACKSON. Well, thank you. I will start, Mr. Serrano, with your last question because I had just written down that this is not a New York City-only issue. It has to do with basically the generation of the buildings. So to very quickly summarize, PCBs, polychlorinated biphenyls are cancer causing. They are found in ballast, in fluorescent lights, old fluorescent lights. They can be found in caulk. They were a component of caulk until they were phased out beginning in the 1970s, I believe.

So I do think that we were gratified to see the city's announcement that they are going to move forward to address the ballast issue. The reason that came to be was that the city had signed up to do an investigation of PCB in caulk because PCB was showing up in the air, and they came to understand, I think, through very quick sampling that the bigger problem might well be these PCBs in the ballast. The ballast get old. They start to leak and PCBs can be a concern.

So I think our next move is to meet with the city and encourage them to—10 years is certainly I think part of their budgetary impetus and they are looking at, to their credit, an energy efficiency and sort of an updating revamp that would be beneficial to the schools in terms of their operating costs. So they may well be able to do this work, replace the lights and the ballast and it may well be able to pay for itself or nearly pay for itself over time. We are going to encourage them to focus on the places where we think there is contamination leaking so that we don't have some child, God forbid, or teacher who ends up being on the 10-year side of that.

We would like to at least give some assurance that they are triaging this situation. But I do think that has been a tremendous step forward. The city in general has been dealing with this issue. Other areas around the country—and we now have guidance up on our Internet site. It is not a regulation. It is not a requirement to help school districts who are dealing with either caulk or PCB.

Mr. SERRANO. Well, you answered the last question which I was going to ask you which is, has the city been cooperative? And you do feel that they have. Well, maybe you don't feel that they have.

So let me ask you a question, has the city been cooperative in moving ahead on this? And again, 10 years may be a budget piece, but can we wait 10 years? Should this be dealt with at a much quicker pace?

Ms. JACKSON. I think when you are talking about a health issue, especially one that is a children's health issue, young bodies still developing, we don't have a lot of data on how pollution or toxics affect them more or less than adults. Urgency is always called for. I have not been dealing with the city in day-to-day negotiations. I will suffice as to say that where they are now is a good thing. They have stepped up after some period of time to say, we now know and understand that we need to be aggressive here. And I don't think we should discount that. Our goal now is to ensure that they improve even their 10-year plan, which is a wonderful improvement and a step forward to try to make it as effective as we can always

with children in mind, always with children and doing it within their budget. I mean, the city schools have their own set of challenges, and the mayor and officials are quick to point that out. So we are trying to help them deal with this issue in a way that is protective but also mindful.

Mr. SERRANO. Thank you so much. Thank you, Mr. Chairman.

Mr. SIMPSON. Mr. Flake.

SPILL PREVENTION CONTROL AND COUNTERMEASURE PROGRAM

Mr. FLAKE. Thank you, Mr. Chairman. Thank you Ms. Jackson. The theme seems to be, at least from this side of the aisle, that there seems to be overreach by the EPA. I don't know how it can be classified otherwise, and we saw this in response on the CR. And, just to give you an example, a couple of weeks ago the Wall Street Journal talked about a new rule promulgated just 6 weeks ago by the EPA finalizing a rule that subjects dairy producers to the spill prevention control and countermeasure program. This was created in 1970 to deal with oil spills near shorelines and navigable waterways. This is done, as the EPA put it, because of the percentage of animal fat that is a nonpetroleum oil in milk. Now my understanding is, this rule requires mitigation measures be put in that include dairies training first responders in cleanup protocol and building containment facilities, berms, and dikes, if possible. I can tell you, I grew up milking a cow and I would have loved to have told my dad, "sorry, there is no berm here around the barn. I am not going to do it."

How with a straight face can anyone in the EPA say that, given all of the problems and the need to maintain the progress that we have made in a budget environment like this, we need promulgate new rules like this? We understand it is not going to cost the EPA much, but it costs the dairy industry and farmers a lot. Those who produce cheese and other milk products are required to be in this as well. I mean, what is next? Sippy cups in the House cafeteria? What are we going to do? But, please, explain how that is not overreach. Many seem to deflect any criticism of anything the EPA is doing, saying there is no overreach and they are not going too far. Is this not overreach?

Ms. JACKSON. Sir, it is not accurate. I can just read to you from the letter to the editor that we wrote that I think the Wall Street Journal has yet to find time or space to publish. EPA has already proposed to exclude—exclude—milk storage tanks from this spill prevention program. This commonsense decision was announced months before the Wall Street Journal chose to write their inaccurate article. Moreover, EPA stayed enforcement. Compliance requirements were changed pending the final agency action.

It is widely known that EPA will take action on this this spring, and I can give you a personal update. EPA has already sent the draft final exclusions to the White House. So we are on schedule to do that, which we had announced months ago. I have no idea why the Wall Street Journal chose to inaccurately report. We have tried to fix the record, but I don't believe they published it.

Mr. FLAKE. Well, it sounds like this rule has been promulgated and now you are just looking to make exemptions to it. Would that not be accurate?

Ms. JACKSON. No, that is not entirely accurate, sir. Because when we promulgated the rule, at the same time we made clear that we were announcing and proposing an exemption. So it does take a bit of time for the regulatory process to ensure the exemption is through. And so to ensure no producer was subject to a rule that we did not intend for them to be subject to, we have also announced that we won't enforce it. So there has been no period of time where anyone has been subject to worry about whether milk and spilled milk was going to be regulated. We have announced that we don't believe that is an area where regulation is necessary.

Mr. FLAKE. It would be accurate to say that the EPA has spent a considerable amount of time promulgating this rule in the first place.

Ms. JACKSON. The rule is for oil. The rule is for inland oil facilities that need containment to ensure our waterways are protected, but we wanted to ensure there was an exemption for milk and the fats in milk.

Mr. FLAKE. There has been no effort to include or to subject dairy producers to the spill prevention control and countermeasure program then? No effort then?

Ms. JACKSON. No, sir. There has been an effort to exempt them, but there are rules under SPCC, if we can just use the shorthand, to deal with preventing spills of large amounts of oil into inland waterways. That is part of our requirements. But because this unintended consequence came up, EPA announced an exemption so there would be no confusion.

Mr. FLAKE. But it is still inaccurate to say that this was not being considered by the EPA and time was not spent on it because there was a rule finalized to subject dairy producers to this that is now being considered or exempted or held back, correct?

Ms. JACKSON. At the same time as the rule was finalized for oil containment and storage facilities, large ones, I think over a million gallons, sir, but I can double-check that, EPA proposed to ensure that milk was exempted. So there has been time and effort, in my mind, my opinion, spent on just the opposite of overreach, which is underreach. We made it clear through our rules that we were not going to or intending to have milk, milk as a substance, regulated, regardless of whether it is over a million gallons.

So you ask why I cannot entirely buy into this idea of overreach. Many of the things that EPA is accused of are, in my mind, attempts to misinform people of what is actually happening. What is happening on the ground is that we are not intending nor do I believe will ever regulate milk. As soon as the rule becomes final, that will be quite clear.

AMBIENT AIR QUALITY

Mr. FLAKE. Let me move to Arizona here. Arizona counties and municipalities are very worried about a review of ambient air quality that could result in the lowering of the coarse particulate standard. You talked about this being considered before. I understand the Clean Air Scientific Advisory Committee has recommended that the standard be lowered or raised or bettered, I guess you would say. Is that correct? Is that why the EPA is moving ahead with consideration of changing the standard?

Ms. JACKSON. The actual language in the Scientific Advisory Board document says that it is equally—I don't have the exact quote. I will try to find it for you. It is equally like possible to retain the current standard. There is a standard now or to lower it. So, as far as I know, they have not made a determination or a recommendation to lower the standard to EPA.

Mr. FLAKE. We know that they have made a recommendation. And is it safe to say that EPA tries to or often follows recommendations of the Scientific Advisory Committee?

Ms. Jackson. We are required by law to consult with the Case Act. There has only been one case when EPA did not follow the recommendations of Case Act. That was the ozone standard promulgated at the end of the Bush administration which we are now reconsidering.

Mr. FLAKE. This clean air advisory——

SCIENCE ADVISORY COUNCIL

Ms. JACKSON. Scientific Advisory Council——

Mr. FLAKE. They recommended that EPA establish a new coarse particulate standard for rural dust, but my understanding is that EPA has rejected their recommendation in the past; is that correct?

Ms. JACKSON. My understanding, sir—and I will get the backup—is that their recommendation says that they support either retaining or revising. So they did not take a position. But I will make sure and get you the exact language.

[The information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 18 2011

THE ADMINISTRATOR

The Honorable Jeff Flake
240 Cannon House Office Building
Washington, DC 20515

Dear Congressman Flake:

During my appearance before the Interior, Environment, and Related Agencies Subcommittee on March 3, you asked about the review that the Clean Air Act directs the Environmental Protection Agency to conduct of the national ambient air quality standard for coarse particulate matter (PM10). What came to my mind when you asked your question was the draft assessment that EPA staff had prepared on that issue and released for public comment last June. In that draft assessment, EPA staff wrote, "Consideration should be given to retaining or revising the current ... standard ...."[1]

In reviewing the hearing transcript, my staff noticed that you had asked about the Clean Air Science Advisory Committee's (CASAC's) recommendation, rather than about the draft EPA staff assessment. I referred to CASAC in my response, even though I was thinking about and describing the draft staff assessment. I apologize for the error. CASAC's September 2010 report on the coarse particulate matter standard states, "The general consensus of CASAC is that consideration should be given to revising the current 24-hour PM10 standard."[2]

The decision whether to retain or revise the standard lies with me. I have not made any decision yet. EPA recently conducted a series of listening sessions in rural American, in order to hear directly from agricultural communities on this subject. Before I make any final decision, EPA will issue a proposal and solicit public comment on it.

Finally, thank you very much for your thoughtful March 9 letter regarding our exchange at the hearing about the exemption of milk containers from oil spill prevention requirements.

Sincerely,

Lisa P. Jackson

[1] http://www.epa.gov/ttn/naaqs/standards/pm/data/20100630seconddraftpmpa.pdf, at Page 3-44.
[2] http://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/CCF9F4C0500C500F8525779D0073C593/$File/EPA-CASAC-10-015-unsigned.pdf, at Page 6.

Mr. FLAKE. The concern would be that the EPA is following one recommendation and not following the other recommendation. The one recommendation would impose considerable costs. And when the other recommendation made might spare the cities and municipalities that cost, the new standard or separate standard for rural dust was to be adopted. So my concern would be that the EPA would be picking and choosing which recommendations to follow and only following those that impose significant costs.

And then the problem is, and we have been through this again and again, every time the EPA comes in to say they are going to change the standard there has already been lawsuits. There has already been action forcing cities and counties to take action to reach a new standard. And while they are in the middle of trying to comply with this, here comes EPA again saying you might have a new standard.

And it would behoove all of us to sit back and say, all right, can we have a 10-year standard and here are the benchmarks. Here is what we have got to reach. This would be instead of putting the cities and counties through the wringer every couple of years that they find very difficult to comply with.

That is my concern. I will wait for the next round of questions. Thank you, Mr. Chairman.

Mr. SIMPSON. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. I don't have much of a voice today, so thanks for your tolerance.

I would like to start, Ms. Jackson, by associating myself with the remarks of Mr. Cole. I have never heard the vitriol during town hall meetings that I hear towards the EPA from everyone from coal miners to ranchers to people who do believe climates are changing but believe that the EPA's heavy hand towards regulating greenhouse gases will put us out of business and just send those jobs into countries that do not have environmental regulations that match ours, thereby causing greater pollution elsewhere in the world that will eventually get to us as well.

Most of us have more confidence in our own country's ability to manage environmental issues with the latest technologies than is capable around the world. So I think that we should concentrate on trying to keep jobs and technology in the United States. We can actually be the leader in those areas and export those technologies elsewhere in the world.

So please do take careful heed of Mr. Cole's remarks. I believe they were right on target.

I do have some questions for you, some of which I will submit in writing.

REGULATORY ACTIONS

Mrs. LUMMIS. How many regulatory actions is your agency currently undertaking under the Clean Air Act or the Clean Water Act?

Ms. JACKSON. I don't have the exact number in front of me. We classify regulations according to their economic significance I believe over the course of a year. Are you asking about maybe this year?

Mrs. LUMMIS. Yes, ma'am.

Ms. JACKSON. I think we have two or three economically significant requirements, maybe four under the Clean Air Act that are in our regulatory calendar.

PRESIDENT OBAMA'S JANUARY 18, 2011, EXECUTIVE ORDER

Mrs. LUMMIS. Are you complying with President Obama's January 18th executive order that requires agencies to take into account—and this is among other things—the costs of cumulative regulation?

Ms. JACKSON. Yes, ma'am.

Mrs. LUMMIS. And do you have some data you can share on that?

Ms. JACKSON. We have been asked to do a retroactive look-back of regulations to determine impacts, and we have begun that scoping process, but I don't have anything to share at this time.

Mrs. LUMMIS. And when will you?

Ms. JACKSON. I cannot give you a date today, but we will get you a date.

Mrs. LUMMIS. When you get us the date, can you also give us information?

Ms. JACKSON. When we have it. We will get you a date when we will have information that we are able to share, absolutely.

Mrs. LUMMIS. Thank you.

CRITERIA FOR REGULATORY CHANGES

What criteria do you use to determine when a regulatory change must follow the open rulemaking process or where guidance will suffice? I can tell you we hear a lot of concerns that guidance has broadened the scope of the Clean Water Act in ways that skirt the rulemaking process.

Ms. JACKSON. We follow the Administrative Procedure Act in determining what should be a regulation; and, of course, once we have a regulation, we have made a determination about a regulation, it goes through full public comment, usually a very long and detailed process. And we are pretty proud of the fact that we think we have a very transparent rulemaking process. The guidance issues are for those issues which generally EPA needs to offer guidance and clarification, doesn't rise to the level of a rule.

And, increasingly, EPA's guidance is subject to public comment as well. For example, you heard perhaps earlier the discussion about the mountaintop removal mining guidance and surface mining guidance.

Mrs. LUMMIS. Thank you.

HYDRAULIC FRACKING

I want to follow up on the conversation on hydraulic fracking, something that occurs commonly in my State, and there has never been a connection proven in spite of frequent revisiting of the hydraulic fracking issue between the diminution in water quality and modern hydraulic fracking techniques.

I would also point out to those that are concerned about it, especially those that are concerned about the New York Times article, that the former director of the Pennsylvania Department of Environmental Quality and the former governor, Governor Rendell, sub-

mitted a rebuttal to the New York Times that the New York Times wouldn't print because it was too long. But it addressed many of the concerns that were raised in the article.

And, of course, the article also was not a peer-reviewed, scientific expression of hydraulic fracking. So I would refer those who are concerned about it to former Governor Rendell and the former director in the State.

And following up on that, using that as a segue, can you tell me what does the EPA do that States are incapable of doing through their own departments of environmental quality?

EPA AND STATES ROLES

Ms. JACKSON. Well, ma'am, as you know, water moves between States, and air moves between States and countries. And so I think EPA's most important role over its history, EPA often helped States to set up their program. Now we have moved more into a role where we oversee programs to ensure that the Clean Water Act is implemented the same way, for example, across the country.

Where I think EPA has made some tremendous progress and where we have work to do is on regional issues, on places—for example, the transport of pollution from the Midwest to the East or water quality issues that are regional in nature that require the cooperation of several States. I think a national environmental body—as well as research. EPA has a very fulsome environmental research budget. Most States can't afford that. I used to run a State program, and we just didn't have the money to put in research we would like.

We still set international standards for risk assessment. And our work still—I am always amazed wherever I go internationally, almost every slide, if it is an environmental issue, is attributed to many of the scientists and researchers at EPA, car standards. I could go on and on and on.

But the States are extremely important in the day-to-day implementation of our environmental laws. They write permits. They enforce the law. But the EPA's role is one of oversight as well as scientific knowledge and working on regional issues.

EPA RESEARCH

Mrs. LUMMIS. Do you believe that research is your highest priority expenditure at EPA?

Ms. JACKSON. Our mission is protection of public health and the environment. So I wouldn't call it our highest priority, but I would say increasingly environmental issues are so complex that you need very, very good science. So we spend a lot of money and a significant portion of our budget on science issues, whether in applied research or in grants to do research.

EPA PRIORITIES

Mrs. LUMMIS. In making decisions about prioritizing your funding, do you look at what States can do versus what they cannot do or what you believe they are incapable of doing and prioritize for the EPA to do those things that you believe the States are incapable of doing as well as EPA is capable of doing it?

Ms. JACKSON. We have seven priorities that I established at EPA. One of them is working in partnership with our States and tribes. Because many of our managers, including myself, came from State government and know very well that there is a synergistic relationship.

There are also times, quite frankly, when we don't agree and the laws carve out a role for EPA and implementation of the environmental laws that we must also uphold. We are ultimately accountable for implementation of those laws.

AIR QUALITY AROUND GRAND CANYON

Mrs. LUMMIS. There are State and tribal groups that form commissions such as the Grand Canyon Air Visibility, the Transport Commission. That is not the exact name of it. But it was the western governors, the tribes near the Grand Canyon and others who worked diligently together to address air quality issues in the airshed around the Grand Canyon. I know there are similar intrastate and intratribal interagency efforts around the country. Do you look to those as a primary driver or do you look more to the Federal Government as the primary driver?

Ms. JACKSON. No, of course. And, in fact, those groups, if they are the ones I am thinking about, are authorized under the Clean Air Act. The Clean Air Act realized that haze is a regional problem, visibility is a regional problem, and so there are several regional haze groups that protect Class 1 visibility areas around the country, and they are authorized under law, and we work very closely with them.

EPA BUDGET

Mrs. LUMMIS. Since President Obama became President, it looks to me as if, in terms of percentage increase, the EPA has received the highest percentage increase in its budget. Do you agree?

Ms. JACKSON. Certainly we received the highest increase of any EPA budget under President Obama in fiscal year 2010, yes.

Mrs. LUMMIS. So as I understand, it was about 39 percent total for the previous administration's budget and so your current proposed 13 percent cut really amounts to a 24 percent increase over previous EPA budgets. Do you agree with my math?

Ms. JACKSON. Top line, yes. It is essentially so, yes.

Mrs. LUMMIS. So you are still dealing with about a quarter increase over previous administration's budget?

Ms. JACKSON. With the very vast majority of that money going out to States, either for the Great Lakes or for water and wastewater infrastructure grants. What the President thought was very important was investing in water and wastewater infrastructure but in a tough year we have had to basically give some of that back, reluctantly, but we are part of the team and we think we have to make those tough choices.

Mrs. LUMMIS. And among those were the State revolving funds, the safe drinking water?

Ms. JACKSON. That is what I referred to.

Mrs. LUMMIS. Excuse me. You are being very generous, Mr. Chairman, with my 5 minutes. So I will yield back. I do want to pursue that if there is another round. Thank you.

Mr. SIMPSON. The gentleman from Ohio.

Mr. LATOURETTE. Thank you, Mr. Chairman.

It is nice to see you, Madam Administrator, again; and I want to thank you for the courtesy that you have extended to me personally and to my constituents.

And, also, on the issue of the Great Lakes, I want to commend the President and you for the emphasis placed on the Great Lakes.

I am sorry that the distinguished ranking member of the full committee isn't here anymore, but I think he was engaging in a little bit of revisionist history. It is actually this administration that is the very first administration that has put real money behind the Great Lakes cleanup initiatives. We sort of limped along at $50 million here and $50 million there, and the President's original vision of $475 million would have actually let us move forward in a lot of important areas. And if the gentleman from Washington is short on species, we would be happy to send him the Round Goby, the sea lamprey, the zebra mussel, or the Asian carp. Perhaps he could repopulate some of his areas.

Mr. MORAN. Is the Asian carp edible? That is a heck of a big fish. What can you do with it?

Mr. LATOURETTE. I would say to the distinguished ranking member of the subcommittee that I will bring him one and maybe we will check it out.

Mr. MORAN. I bet it is a tough one to fillet. It is about 6 feet long.

Mr. LATOURETTE. Some of them go 100 pounds. So I hope it is good eating.

MISLEADING PESTICIDE PRODUCT BRAND NAMES

With those things, there are a couple of things that are of concern to me; and I would like to get through in the 5 minutes, if I could. And one is something that Ms. Kaptur and I sent you a letter on. It was a draft PR Notice 2010 Act and you were kind—actually, you didn't send the letter back to me. It was Mr. Owen, the Assistant Administrator.

The U.S. EPA draft PR Notice 2010 Act has to do with false or misleading pesticide product brand names. And here is my concern. There are two companies in Ohio. One is Scotts, which is pretty well-known, and the other one I didn't know about until this sort of dustup started, and that is Anderson's Golf Pro. And the proposed PR Notice, which isn't going to go through rulemaking, it is going to be guidance, as you were discussing with others, wants to take a look at trademark names.

Now, I have a lot of problem with that from a legal standpoint. A trademark name is a trademark name. But on the draft guidance that comments are being solicited on, names that apparently the agency is going to have problems with are eradicator, germ shield, professional grade, pro, safe, safer, safest, and green.

Now, when I was growing up, green was a color. And if somebody has gone through the process of having its fertilizer trademarked, I have no problem with the EPA looking at what is in the bag to make sure it is safe for human health and everything else. But, obviously, a lot of time and money——

Some of these trademark names have been around since the 1960s, and there is just a—Scotts Lawn Pro, I have trouble on a

couple of levels. One, I don't find anything deceptive in having a trademark name called Lawn Pro; and, two, I do have trouble with the EPA proposing without the rulemaking process to move forward with a guidance that would say that the word "pro" was inappropriate.

In the case of the Anderson's company, the reason Ms. Kaptur signed the letter—it is in her district—they make a product called Anderson's Golf Pro; and apparently in correspondence with the agency they have been advised—because it can be used on your front lawn and not just a golf course—that they have trouble. They find the word "golf" as deceptive. So they are going to be able to call it Anderson's, I guess, because they can't call it Anderson's Golf and they can't call it Anderson's Pro.

The problem moving forward is that—I said to the people at Scotts who are down in Marysville, Ohio, I think Mr. Tiberi's district, I said you are really only scratching the surface when you talk about things like pro and green and everything else. Because the one Scotts product that I use is Miracle-Gro. And how the heck are they going to be able to establish that a miracle has occurred when they put their stuff—they are going to have all of these little old ladies take their tomato plants over to Rome to present them to the College of Cardinals to determine whether a miracle has occurred.

So that is the trouble I have got with this thing; and I would hope that at the very least, because we are dealing with trademarks and the fact that they have been in place for a long time—I could argue it is an unconstitutional taking of property without due process of law. But I would hope that perhaps because I find you to be a reasonable person, that maybe you could pull back the people that want to take the word green and pro and everything else out of the trademark. And if you want to proceed in this direction, that you put it through the rulemaking process and not through this guidance process.

And your letter—again, the letter from the Assistant Administrator at the end of January—indicates that that is not the position of the agency. But that is my request, if you would take a look at this. And if you want to really get into what lawn care products are called, that it go through the rulemaking process and not just solicits comments from people but also lets the Congress also weigh in and make some observations. So that would be request number one.

FLY ASH OR COAL AS REGULATION

Request number two has to do with fly ash. And you know that there was an amendment during the CR. One of our new members, Mr. McKinley, offered the amendment to deny funding to the EPA relative to declaring coal ash to be a hazardous material. I think that amendment passed.

Regardless of that amendment—and I am not a big fan of amendments limiting funding. But the history of fly ash or coal ash, to my understanding, is that there was a series of studies, the Bevill studies, that the agency actually presented a recommendation to Congress that coal ash should not be regulated as a haz-

ardous material. And now, without consultation with the Congress, it appears that the EPA is about to do a 180 degree turn.

And so, one, I have the same problem. Why would Congress direct the EPA to make a study and a recommendation only to have the EPA go in the other direction? And then, two, just the folks that are engaged in waste tell me when you increase the amount of fly ash that needs to be treated as a hazardous material, it is going to be about 40 to 50 million tons a year, which is going to exhaust our landfill space in just about a couple of years.

So your comment on Miracle-Gro and your comment on fly ash would be greatly appreciated.

Ms. JACKSON. I believe in miracles.

Mr. LATOURETTE. I do, too.

Ms. JACKSON. So I will take a look at the issue you raise seriously, sir. I am sorry for the joke.

And on the second issue of coal ash, let me just say a couple of things in terms of where we are. EPA continues to support the beneficial use of that material. We proposed a rule. The rule did not take a—it proposed two different approaches and took comment on it. The approaches were to regulate it under Subtitle C, which are the hazardous provisions of the law, of RCRA, or Subtitle D, which is the solid waste provisions. Either way, increased regulation, which I believe is warranted because there is certainly real and potential public health and environmental issues.

All this was in the aftermath of the failure of the big impoundment in Kingston, Tennessee. We received over 450,000 comments on the proposal, and that is going to take quite a bit of time to work through. So we remain committed to rulemaking on this matter; and we are going to analyze that information and make a final decision based on comments, science, and the law. But we will almost certainly not do that this calendar year. I think it is going to take quite a bit of time.

Mr. LATOURETTE. I had understood that you had come up with actually three different proposals to have comment on—C, D, and D prime—and that there were actually three different ones.

The only concern that I have, if you look at the Tennessee incident, which was obviously serious, it seems to me that it is a matter of engineering and studying and dams and things of that nature. But to just reclassify fly ash as a hazardous material I think is a big step. And just like in the case of the fertilizer, I hope that if you, as the leader of the agency, reach a conclusion that that is the direction you are going to go in, that you would at least consult with the United States Congress before moving in that direction.

Thank you.

Mr. SIMPSON. Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman.

Mr. LaTourette, I hope that that is not your Alexandria lawn where you are using all of that fertilizer stuff.

Mr. LATOURETTE. Nothing but natural green products go onto my property in Virginia. But thank you for asking.

Mr. MORAN. I hope that is the case. We have got some people using all that stuff, and it is getting into our water supply and then we have to spend all this taxpayer's money trying to clean it.

Mr. LATOURETTE. I think that is probably how you got the doghead fish in your——

Mr. MORAN. I suspect so. But we have been trying to find our neighbors who are accountable for that, and maybe we found the problem.

Anyway, that is not really what I want to focus on here, but thanks for raising it. We will send the lawn police out after you, Steve.

GREENHOUSE GASES

First of all, greenhouse gases. We have heard so much from so many people on how aggressive you have been on greenhouse gases. We have got this old coal-fired power plant in Alexandria that is redundant, and we still can't get it closed down. So some of us would like a little more aggressive action. But I know how differential you want to be to the industry, and you want to make sure that everything is done right.

But there is another point of view from the one that has been expressed, particularly on the floor of the House when we were considering the CR. During consideration of the CR, Mr. Poe from Texas, who was the author of the amendment to stop EPA's regulation of greenhouse gases, said, and I quote, this amendment will rein in EPA and prohibit them from implementing the so-called cap and trade philosophy on States such as Texas. Other Members said that the EPA was trying to implement cap and trade. So I want to ask you, do the greenhouse gas regulations that EPA finalized in December actually institute cap and trade, and do you intend to implement cap and trade at EPA in the future without congressional action?

Ms. JACKSON. That is no and no. EPA has taken no steps to establish a cap and trade program, and we do not need to do so. I joined the President in calling for legislation in the absence of that. We do not——

Mr. MORAN. So, without congressional action, you are not going to be acting on that. So thank you, Ms. Jackson.

We heard also from Mr. Barton, who had been the ranking member on the Commerce Committee, that carbon dioxide is not a pollutant under the definition of the Clean Air Act, so EPA has no authority to regulate that. Is that true?

Ms. JACKSON. No, sir, that is untrue.

Mr. MORAN. So all the members are clear, what have you asked of industry in the greenhouse gas regulations and have you seen evidence of refineries and power plants actually going out of business as a result of your actions?

Ms. JACKSON. No, sir. Actually, we have seen some permit activity that would be encouraging, I think. We have had about 100 PSD applications that are now in process. PSD are Clean Air Act permit applications that are needed before either undertaking a new facility or a significant modification that would raise the amount of greenhouse gases quite significantly. Twenty-six of those 100 have already done their analysis for greenhouse gas emissions, and that is before the permit riders. Two have already received their greenhouse gas permits. I believe one is in Louisiana; one is in California.

CLEAN WATER ACT

Mr. MORAN. Now, on clean waters. This dump truck of a bill, known as H.R. 1——

Mr. SIMPSON. Dump truck?

Mr. MORAN. A dump truck, because we dumped everything—or you guys dumped everything you could imagine into it and weighing it down so we are having trouble getting it passed, of course.

But it contains language that prohibits EPA from updating its rules and guidance pertaining to the definition of waters under the Clean Water Act. So, without question, there are two Supreme Court decisions, one in 2001 and another in 2006, that have created some confusion and uncertainty over the scope of the Clean Water Act. But the prohibition in H.R. 1 is anti-real estate and anti-business, given the past position of industry groups that they do support a rulemaking process that would provide all sides with clarification, with an ample opportunity to participate in that regulatory process.

So I ask you, Madam Administrator, how would the prohibition that was dumped onto H.R. 1 impact the permit process in EPA's future actions on limiting water pollution?

Ms. JACKSON. I believe it would prevent EPA and the Corps from offering clarification to permit writers who work for either EPA, the Corps, and authorize States under the Clean Water Act. That level of confusion is having a real-world impact in implementation of permitting and enforcement and in my belief will have an impact on water quality if not addressed. So if we are prohibited from making any clarification possible, it will have an impact on our ability to move as we try to develop and invest money as we try to create jobs.

Mr. MORAN. Well, that is what I was concerned about. We are trying to grow this economy, and real estate developers who have plans that have been worked out with the locality, a number of smart-growth ideas in metropolitan areas, we are being told that they can't move until they can get clarification on the Clean Water Act. And they are asking you to do it, and now you are stopped because of H.R. 1.

LIMITING GREENHOUSE GAS EMISSIONS

One last question with regard to H.R. 1. This is Section 1746. It would fund the government through the remainder of the fiscal year, but it would stop EPA from limiting greenhouse gas emissions. But what is less clear is the impact of section 1746 on renewable fuel standards. So I want to ask you, is the language included—and I shall use that expression once more—in that dump truck of a bill known as H.R. 1, I mentioned on the floor that it had more poison pills than Rasputin's medicine cabinet. That is the kind of thing we would have expected out of Representative LaTourette.

But here we are burdened with all of this stuff, and we have got this language in H.R. 1 that stops EPA's renewable fuel standards for the remainder of the fiscal year. How do you deal with that, with the impact of the consequences of Section 1746 in H.R. 1, Madam Administrator?

Ms. JACKSON. Yes, I think we agree that the greenhouse gas prohibitions and the riders thereto have an impact on our ability to implement the renewable fuel standards because they are, after all, greenhouse gas based or based on a lifecycle analysis with respect to greenhouse gas compared to conventional gasoline. So I think that is one of the consequences as well.

FUNDING RESTRICTIONS

Mr. MORAN. Well, just one final comment to address—we have talked a lot about the Great Lakes restoration. And I happen to agree. We ought to be investing money because it has an immediate economic benefit and a deleterious one if we don't make that investment.

But I think Mr. Dicks is right with regard to Puget Sound, and that affects the quality of water all the way downriver and Chesapeake Bay. And on Chesapeake Bay we have had support on both sides of the aisle, but now we have this language that says you can't use any Federal funds, even though we have had the Agriculture Department, we have had EPA, we have had any number of agencies working in a collaborative manner, particularly with the States and localities, to clean up the Chesapeake Bay.

We have got miles of dead zones from all the fertilizer, as Mr. LaTourette referenced, that is killing the vegetation at the bottom of the water; and now we have got this legislation that says you can't use any Federal funds to implement the total maximum daily load, which is precisely the tool that we are using to try to clean up the Bay.

If you have any further comment, that is fine. Otherwise, I will let you go. I appreciate the opportunity, though, to make these points, Mr. Chairman. And I trust that you would agree, we ought to get back to a regular interior appropriations bill so we can deal with these very difficult regulatory and legislative issues in an appropriate document and not in that dump truck of a bill known as H.R. 1.

Mr. SIMPSON. I appreciate the gentleman's comments, but funding limitation amendments are appropriate in an appropriation bill because we are the Appropriations Committee and hence the definition, funding limitation amendment, which is what was offered.

And I would also say that I think you are incorrect. Section 1746, that was stationary sources of greenhouse gas. It had nothing to do with fuel standards. So it would have left those completely untouched.

Whenever we put something in, everybody throws out this, oh, the world is going to fall; we won't be able to do anything. Originally, when it was proposed, the Energy Star standard wouldn't be able to do Energy Star anymore. That is a program that existed before there was ever any mention of greenhouse gases. There was nothing that would have affected Energy Star. But yet all of those comments are made.

And, of course, people that don't like it throw out the worst-case scenario. I am surprised that the world just didn't fall apart the day after that passed. But, unfortunately, or fortunately, I guess, it didn't.

Maybe some of those things that were said aren't true. And it seems like the agency—I am smart enough to understand the agency on almost anything it does overstates a benefit and understates the cost. And I am also smart enough to understand that businesses that maybe don't like it overstate the cost and understate the benefit. And the truth is somewhere in the middle. And the problem is having an honest discussion about this stuff because of all the bull that is thrown out, and that is the reality.

Mr. Hinchey.

Mr. MORAN. Mr. Chairman, I would agree with you that you are a very smart guy.

Mr. SIMPSON. I didn't say that.

Mr. MORAN. You suggested that. And I agree that you are a smart guy, but I think you would also agree that we shouldn't be deciding these issues with 10 minutes of debate. For example, the Chesapeake Bay, it didn't mention EPA. It just said all Federal funds. And that is the problem with legislating in that manner at 2:00 in the morning.

Mr. SIMPSON. Just to clarify that. You will notice that on the greenhouse gas regulation or limitation that was put in there, we only did it through the CR, through the 7-month CR, because we didn't want the EPA and business to spend a ton of money implementing a rule that was being taken up by the authorizing committee.

The one thing I don't want to do is I don't want to have this committee substitute its judgement for the authorizing committee. But working with them, they said, through the term of this CR, that is fine; let us work. They are currently holding hearings.

I don't know what Congress will ultimately decide. I may agree or disagree with whatever Congress decides. But let us let the authorizing committees do their work, because sometimes there are things that have to be done on an appropriations bill.

I will also tell you that there are an awful lot of statutes out there that are unauthorized. They have expired. And what do we do? We extend the authorizations through the appropriations bill. If you want to just stop doing that, we will close down the Indian health clinics across the world. We will do a lot of other things that are unnecessary.

Mr. MORAN. So who is exaggerating now? I don't want to be argumentative with you, Mr. Chairman, because you are a good guy, and you want to do the right thing. But I do think we have got a real problem with all of those riders that were put on to that continuing resolution. But thank you.

Mr. SIMPSON. And, as I said, they were so devastating that no efforts were made by your side to remove them.

Mr. Hinchey.

Mr. HINCHEY. Chairman, thanks very much.

NEW YORK TIMES ARTICLE

I just have one brief question, and it is about the most recent article in the Times. I think it is coming out today or tomorrow. According to the report, what they say is that some EPA lawyers believe that Federal pollution laws are being violated in Pennsylvania. And I know that you are going up there tomorrow, and you

will get some deep insight into this whole situation, and I deeply appreciate your spending the time up there.

So they believe that the pollution laws are being violated in Pennsylvania; and, specifically, drilling waste is being discharged into rivers and streams with minimal treatment. According to one EPA lawyer that was cited in this most recent story in the Times, and this is a quote: "Treatment plants are not allowed under Federal law to process mystery liquids, regardless of what the State tells them. Mystery liquids is exactly what this drilling waste is, since its ingredient toxins aren't known."

That was an interesting statement by him. Nevertheless, the agency has not intervened in Pennsylvania mostly because of resistance, as we understand it, resistance from upper-level staff within the EPA Region 3 office. And, of course, they oversee the operations of the State.

This may be something that you might be interested in checking out in going up there. So I think that it would be interesting—maybe you know something about this already. A disagreement in Region 3, something about what is going on there, what about this disagreement, how this disagreement is taking place, what the contexts of it are. Maybe you will just find out about this and look into this tomorrow.

And enforcement officers there believe the law is being violated. You have some enforcement officers there who believe that this law is being violated. So I wonder if you can give us some insight into why no action has been taken, despite calls to do so from enforcement personnel.

Ms. JACKSON. Well, I will be in a better position after speaking directly to my staff tomorrow.

What I want to also assure them from the highest level of the agency are those things I have said publicly, which is we are going to do a study. We are going to base our work on study. If at any time we find a situation that we believe violates the law, we need to be clear, and we need to either work with the State as the primary enforcer to take an action or to address it.

I will say one other thing. When it comes to the water that comes back up and potentially goes into a treatment plant or surface water, that is regulated. That is absolutely regulated under the Clean Water Act. That is wastewater when it comes back up.

Now, there are some places that reuse it. They call that recycling, and that may be an opportunity. But there are still wastewaters that are produced even in a recycling operation.

So one of the things that I think is important is that as an agency we ensure that—for example, the New York office has made clear to New York State that EPA can at any time set additional standards for what we call pretreatment, for waste that may go to a treatment plant. So I need to speak to the professionals out in the Philly office and ensure that they hear from the top of this organization that there is no look-the-other-way standdown. We need to do our jobs, and we need to do that with respect for the fact that, when a State is doing the work, we are not there to simply poke them but to ensure that we are providing information.

So I am happy to report back, but I cannot give you much more than that, Mr. Hinchey.

Mr. HINCHEY. Well, Administrator Jackson, I just want to thank you very much. Thank you for everything that you are doing and thanks for everything that you have done here today. And I appreciate you going up to Pennsylvania tomorrow. Thanks.

Mr. SIMPSON. Thank you.

Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. I apologize for the voice.

First, I want to tell you that I had a good experience with the EPA out of the Denver office a number of years ago with regard to our requests that they work with my State's DEQ on a compliance issue that was right next to my land, which is right next to an oil refinery; and I am not sure that we ever would have got it solved without the EPA. So I want you to know I am not a person who is anti-EPA. I saw it work in our instance, and a cleanup occurred that I really don't believe ever would have happened but for the EPA.

So please don't view me as a detractor, but I do have some questions about the efforts to prioritize funding that I believe may be detracting from efforts that really work on the ground. I am concerned with the boots-on-the-ground dollars that EPA uses that really do help businesses comply and communities comply with EPA regulations.

EPA RURAL WATER SYSTEMS BUDGET

This first question is about rural water systems. Does your fiscal year 2012 budget set aside money to assist small rural water systems to remain in compliance?

Ms. JACKSON. Within the funding for the revolving funds is money for rural systems; and, of course, that is added to the money from USDA, who spends an awful lot of rural development money as well.

Mrs. LUMMIS. In 2007, over 200 representatives and senators asked the EPA to fund technical assistance and training grants to small water systems; and I believe that the EPA chose, under your leadership, to go a different route. So I am going to write to you and work with you to encourage you to revisit what seems to be working well in my State of Wyoming with regard to training grants for small water systems, because these small communities just don't have the expertise.

You were in Pennsylvania, correct?

Ms. JACKSON. I was in New Jersey.

Mrs. LUMMIS. There may be some communities in New Jersey that even are small enough—you know what I am talking about. They really do struggle to comply, and they want very much to provide clean water to their water users, but that technical assistance just really does seem to go a long way. So we will visit further about that.

MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

Another question I have is about MACT. Has EPA conducted or asked for an impact analysis of the proposed utility MACT rule on electric reliability jobs, consumer and business electrical prices?

Ms. JACKSON. Thank you.

Yes. The MACT—the toxic rules for utilities is what you are asking for on that. And the air toxics rule is not out, but it will include a benefits analysis. It will include in its proposal a jobs analysis as well. But that is not yet out for public comment.

Mrs. LUMMIS. And do you know when that is coming?

Ms. JACKSON. It is required by a court order for, I believe, March 16th.

Mrs. LUMMIS. And you anticipate being able to meet that deadline?

Ms. JACKSON. Yes, yes.

Mrs. LUMMIS. Did your agency consult with the SBA on the proposed rule?

Ms. JACKSON. Yes, we did a brief consultation, as required by law.

Mrs. LUMMIS. And did they comment and could you provide those comments or should I follow up with you?

Ms. JACKSON. We will provide them. Absolutely.

Mrs. LUMMIS. That would be great. I would be most interested.

I have some other questions, Mr. Chairman, but my voice just isn't cooperating. So I will submit them in writing.

And I do want to thank you very much, Ms. Jackson and Ms. Bennett, for being here today.

Ms. JACKSON. Gladly.

And if you wouldn't mind, I do want to compliment—I visited your State 2 years ago, or last year; and your drinking water program is wonderful. Water is obviously quite a commodity there. So thank you. And feel better.

Mrs. LUMMIS. Thank you very much.

I served on the Board of Land Commissioners and the State Loan and Investment Board which administered the SRF, the State Revolving Fund for safe drinking water and the Clean Water Act. Mr. Chairman, I can tell you those programs in my State are hugely helpful at making safe drinking water available around the State of Wyoming. So it is a great program.

Thank you very much.

Mr. SIMPSON. Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman.

And, Madam Administrator, I am all that stands between you and freedom, so I will attempt to be—oh, and——

Ms. JACKSON. Do we need another miracle?

Mr. LATOURETTE. You are in deep trouble.

Mr. SIMPSON. Who knows? Mr. Moran is staying——

Mr. LATOURETTE. I am glad that the distinguished ranking member is still here, because I don't think I can let him call H.R. 1 a dump truck several times without making an observation.

H.R. 1 I don't think was a dump truck. The dump truck was a majority party that didn't produce a budget, didn't produce any appropriation bills of significance except on the defense side, and abandoned regular order. So I think what you saw in H.R. 1 was pent-up frustration.

Someone mentioned to me that we had more recorded votes during the consideration of H.R. 1 than we had in the entire year of 2010, the last year that Mrs. Pelosi was the Speaker of the House.

And the reason for that, quite frankly, was that we didn't have any open rules.

And I don't want to embarrass Mrs. Lummis, but she actually at a meeting I was at said, what is this open rule thing? What is an amendment? How long do I get to talk? And I think it is a sin that somebody who had been here for 2 years didn't know what an open rule was, but nobody did know what an open rule was.

So I agree that a lot of stuff got piled onto H.R. 1, but it was 4 years of frustration on both sides of the aisle in not having decent ideas brought to the forefront. So if there was a dump truck, the dump truck was the decision by the previous majority to not finish its business and basically dump this thing on our lap with an expiration date of March the 4th, which was no accident.

I always say that the former chair of this committee, Mr. Obey, is a very, very bright man. He knew exactly what he was doing. And that was the dump truck.

REGIONAL ENFORCEMENT AND REGULATION

The question that I have for you, however—and I think it comes from Mr. Hinchey's observation when he talks about District 3. I have District 5 out of Chicago. And so the EPA structure has the headquarters and then 10 regional offices and then guidance from the Department of Justice.

And while I think we all appreciate flexibility and regional nuances, one of the things you see—it is a lot like the different appellate districts in the United States District Court system, where you get all of these conflicting interpretations. And while regionalism is great, I think that some uniformity across the country when it comes to enforcement and regulation would be welcomed. You shouldn't have one set of rules for Mr. Hinchey in Pennsylvania and another set of rules for Ohio and Illinois, at least on the implementation.

So I am just interested to see whether you think there is a variance between regions in terms of how different is a wetland in Ohio different from a wetland being interpreted by the regional office than in Wyoming and what are you doing to sort of strive that the agency speaks with one voice.

Ms. JACKSON. Thank you. Certainly our goal is consistency and enforcement and a level playing field across the country. And our challenges in meeting that goal are that oftentimes the vast majority, if not all, of the enforcement action is taken or undertaken by the States. And so EPA plays a sort of dual role, and we try to do them both well. First work in partnership on training or capacity building or technical assistance or interpretation of the law and also in oversight for a State that might, for whatever reason, not be so inclined to implement the Clean Water Act or Clean Air Act.

Those are tough discussions. And the regional office, the district offices are on the front lines of trying to maintain those relationships over many, many elections. So those relationships are long standing. I worked for almost 12, 13 years in our office in New York City, and so I have a very strong belief and respect for the hard work of the on-the-ground work with the States. And usually those relationships are very good ones. So I think we play both those roles. I think we do have challenges.

Our head of enforcement work, Cynthia Giles, who worked in the region, now works in the office. What we try to do is give national enforcement priorities because we could enforce—we have so many laws, and so many are important. We try to go where the public health threats are the greatest. And we hope to succeed, but we certainly are constantly trying to improve.

There is actually money in the budget for an initiative that Cynthia Giles came up with which is based on transparency of information. Because what we find is that communities and States love to know what is being emitted into their air or their water; and if you can get people information on what is in their drinking water, they will do a lot of our work for us, because no one wants contaminated water. And so that regaining ground, she calls it, initiative is really based, first and foremost, on using electronic information, reporting data, and getting that out to the public.

Mr. LATOURETTE. I appreciate that, and I would appreciate your further efforts in that.

Some of the disconnect—when Mr. Cole talks about people getting upset, and Mrs. Lummis talks about the same thing, one of the things that the people in my part of the world and even further west, you have the east coast where they have paved all their wetlands and they have eaten all their endangered species and are now trying to impose a set of standards on—and it gets people upset. So we are just looking for evenhandedness, and I trust you to do that.

Ms. JACKSON. Thank you.

Mr. SIMPSON. Thank you, Administrator Jackson.

I am going to bring this to a close. You have been gracious to spend three hours with us this morning and address many concerns that, as you can tell, Members of Congress have that we hear these from our constituents and actually a couple of budget issues, also.

I have a whole list of questions that go from everything that I will be submitting for the record. Again, some of them actually deal with the budget, and others are other issues that the EPA deals with.

One of the things I do want to sit down with you—not right now, but at sometime either I will come down to your offices or you up to mine. But I would like to sit down and talk about how you come up with a cost-benefit analysis on the regulation, what goes into it, who makes those determinations, those type of things.

And I use this example. We have talked many times about the arsenic rule and what it does to small communities trying to comply with this. Sometimes when they are trying to reduce their arsenic levels from 12 or 14 parts per billion down to 10 parts per billion, there is an incredible cost to getting those last few parts per billion down. Do you take into consideration—and these are the questions we will discuss, but do you take into consideration the fact that a city council sitting here of a town of 500 or 600 or 700 people has to decide that their volunteer fire department is going to use buckets instead of using fire equipment because they can't afford it anymore because they are putting all their resources there. And that affects human life, also. They can no longer have their police officer because they have to comply with these stand-

ards. That affects human life, also. Do those types of things come into the consideration, the decisions that they have to make because of the imposition some of these rules have on them?

The same would be true of businesses. They have to make tradeoffs and decisions as they try to comply with some of the rules and regulations that are coming down.

Again, I do want to thank you for being here. I want to associate myself with the words that Mr. Cole had, that the concerns being expressed are real.

And you are right. If you go out and ask the American people, do you want clean water? Do you want clean air? Everybody does. Every Republican in Congress, every Democrat in Congress wants clean air and clean water.

We sometimes have differences of opinion about the impacts of some of the regulations and how we get there and the costs of some of those regulations. So it is not a matter of whether they are in favor of clean water and we are not or we are in favor of clean air and they are not. It is trying to achieve a common goal.

And one of the things I have heard—and maybe the best description of all of the concern out there that I have heard—and I have mentioned it to you before. Whenever I go to a meeting, I don't care whether it is with local city councilmen, whether it is with the chambers of commerce, whoever it is, once the word EPA comes up, that is the rest of the discussion. That is the concern that is being expressed out there.

And when I talk about funding and reducing funding that we had to do in H.R. 1 and what we will have to do in the 2012 budget to get our budget back in balance, some will raise their hand and say, defund the EPA. And it is the only applause line during this whole thing. That is the kind of concern that the American people have. They don't feel like the EPA is working in concert with them to try to clean up the air and water. They feel like the EPA is imposing on them, and sometimes for limited benefit. And if we don't change that attitude around, I fear that the EPA is going to have more difficulty trying to do its job.

But one person described it to me as if you look at some regulatory agencies like they use the NRC, Nuclear Regulatory Commission, they set a standard, and then business will come in to them and say, okay, this is the standard we can meet. They don't impose how you are going to meet the standard. They set the standard and let businesses develop the plans; and they will sit down and discuss, yes, this will do it; no, this won't do it.

They say the EPA is different. They set a standard, and then they tell you exactly what you have to do to meet that standard, and it prevents innovation and development of new technologies and new ideas of how to meet certain standards out in the real world. And that is a difference in attitude.

So I want to work with you to try to hopefully solve some of the problems and hopefully address some of the concerns that I think a vast majority of American people have about the way that the EPA is moving and addressing some of the concerns that we have.

So I appreciate it. Thank you very much for being here today. I know it has been a long time. Three hours sitting there is not always easy. Thank you.

Representative Simpson

Questions Submitted for the Record by Representative Simpson

GREENHOUSE GAS REGULATION

The 2012 budget proposes to spend $46 million on greenhouse gases of which $37.5 million would be used to impose new standards and regulations on stationary sources. There are numerous proposals in both the House (H.R. 1 and H.R. 910) and in the Senate to limit or prevent EPA from regulating greenhouse gases at stationary sources. If enacted EPA will be unable to use these funds for the requested purpose.

Question 1: Is there another program within the 2012 budget that could best make use of these funds, such as the air program via the restoration of DERA grants, under such a scenario?

Answer: Had H.R. 1 been enacted with that provision intact, the funding would not have been available – it is eliminated in H.R. 1. If funding were available, EPA would target it to the priorities identified in the President's Budget – including permitting and rule development for greenhouse gases. The permitting rule was effective in January and states are beginning to issue permits.

Question 2: Please provide a table of all current non-regulatory programs whose activities would reduce greenhouse gas emissions. Please include in the table the FY 2010, FY 2011, and FY 2012 PB funding levels for those programs, the actual greenhouse gas emissions reductions for the most recent year of data, and 2012 emissions reduction targets.

Answer: *See Table below

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Climate Change Funding -- Non-Regulatory Programs ($000s)

EPA has defined a Non-Regulatory Voluntary Program as: Any program in which the participants or partners are not statutorily required to participate.

Note: This table does not include all the activities funded in the program projects entitled *Climate Protection Programs*. Notably, the GHG Mandatory Reporting Rule implementation and the Clean Automotive Technology programs are not included, and do not have estimated GHG reductions associated with them. In reporting the the Climate Change Technology Program crosscut, EPA typically includes all activities funded through the *Climate Protection Programs*.

Activity/Program Name	FY 2010 Total Funding ($ in 000)	FY 2011 Total Funding ($ in 000)	FY 2012 Total Funding ($ in 000)	Actual Emissions Reductions*	FY 2012 Emission Reduction Target (MMTCO2e)
AgStar Agricultural Programs	$796.1	$792.1	$792.1	1.2	2.0
Coalbed Methane Outreach Program	$1,039.0	$1,177.5	$1,177.5	8.8	10.0
Combined Heat and Power Partnership	$1,114.3	$1,114.3	$1,114.3	12.6	16.1
Energy Star	$53,606.0	$55,475.0	$55,628.0	169.8	190.0
Green Power Partnership	$1,426.6	$1,426.6	$1,426.6	11.4	13.4
Landfill Methane Outreach Program	$2,083.2	$2,219.8	$2,219.8	22.0	24.0
Methane to Markets Partnership (Global Methane Initiative)	$4,569.0	$4,591.0	$5,616.0	9.0	15.0
Natural Gas Star	$1,638.7	$1,634.7	$1,634.7	35.0	31.0
Smart Way Transport	$2,679.0	$2,691.0	$2,670.0	20.0	41.4
State and Local Voluntary Activities	$3,186.9	$3,532.0	$2,853.0	7.3	7.3
Voluntary High GWP Programs	$1,136.7	$1,134.7	$1,134.7	45.0	59.0
Total	$73,275.5	$75,788.7	$76,266.7	342.1	409.2

* Reductions are for 2009 and are in million metric tons of CO2 equivalent (MMTCO2e)

Representative Simpson

HIGH UNOBLIGATED BALANCES

As of the end of February 2011, EPA had $1.47 billion in unobligated balances from funds appropriated in 2010 and prior. EPA received the 2010 appropriation on October 29th, 2010 and has therefore had 1 year and 4 months to identify projects and put those funds on a project. For many grant programs, especially the State Revolving Funds obligating these funds is a purely bureaucratic transaction whereby EPA must transfer the funds to the States based on a formula. Yet of the $1.47 billion, $733 million of the SRF funding was still unobligated as of the end of February 2011.

Question 3: Please explain why this funding has yet to be put on projects or given to the States more than a year after its appropriation.

Answer: Under Section 604(c)(1) of the Clean Water Act (CWA) and Section 1452 (a)(1)(C) of the Safe Drinking Water Act (SDWA), States have the fiscal year in which funds are appropriated and the following fiscal year to receive their capitalization grant awards. The Agency fully expects that all FY 10 capitalization grants will be obligated within the deadlines established by the CWA and the SDWA.

The CWA and SDWA establish substantial requirements that States must satisfy before EPA is able to award an SRF capitalization grant, including: develop a project-specific Intended Use Plan (which typically requires a public comment process at the State level), and securing a 20 percent State match (which often requires a State legislature decision and is effected by current economic conditions.) EPA works collaboratively with our state partners to ensure that SRF awards are made within deadlines and that states are implementing statutory programmatic requirements.

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HIGH UNSPENT BALANCES: RECOVERY ACT

It has been over two years since the Congressional Democrats passed and the President signed the Recovery Act which appropriated $7.22 billion for the EPA. The Recovery Act was billed as a "stimulus" program whereby funds were supposed to be quickly put on projects and spent to create jobs. While EPA has obligated all of the ARRA funding to States, EPA still has not spent $1.8 billion of those funds. When coupled with the $1.47 billion in unobligated balances from prior year appropriations the result is a total of $3.2 billion in appropriated funds that have yet to demonstrate results.

Question 4: If the EPA 2010/2011 CR budget was reduced by the amount not yet spent, the funding levels would be in the same ballpark as EPA's 2008 budget. Does this not show that EPA's capacity to spend its appropriation in a timely and efficient fashion is roughly capped at the 2008 appropriations level?

Answer: As of March 31, 2011, the ARRA outlay status is:

CWSRF: $3.19 billion (79%) spent on nearly 2,000 projects

DWSRF: $1.59 billion (84%) spent on over 1,400 projects

The financial data represent State Revolving Loan programs that are designed by statute to require fiscally prudent measures to preclude obligation of federal funds in advance of state match, public notification of State Intended Use Plans, and other controls. The data also shows that the SRFs are designed by statute to allow expenditures to be drawn by the states only after local recipients have incurred costs, which may take several years for water infrastructure projects.

Under Section 604(c)(1) of the Clean Water Act (CWA) and Section 1452(a)(1)(c) of the Safe Drinking Water Act (SDWA), states have the remainder of the fiscal year in which funds are appropriated and the following fiscal year to receive their capitalization grant awards. Once awarded, grant proceeds are drawn as needed to cover construction costs of the projects that receive funding. Depending on the nature and scope of a project, the construction period may take as long as several years. Additionally, some states will disburse their own funds to cover projects costs and then reimburse themselves through grant proceeds at a later date. It is worth noting that the SRFs have been very successful in leveraging the federal investment. For every $1 deposited into the CWSRF program, $2.55 has been disbursed for wastewater infrastructure

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and other water quality projects. For every dollar deposited into the DWSRF program, $1.77 has been disbursed for drinking water infrastructure projects.

STATE REVOLVING FUNDS: NEED FOR ADDITIONAL REDUCTIONS

The 2012 budget justification points to the Recovery Act and the large 2010 increases as the rationale for cutting $947 million from the SRFs, interestingly the same rationale for taking SRFs back to the 2008 level in the House-passed CR. However, the budget materials do not offer additional insight as to how this funding level was set.

Question 5: For the record, please explain how the 2012 budget arrived at this number and why $947 million is the appropriate reduction as opposed to any other amount, including the 2008 level for the SRFs.

Answer: The Agency made difficult choices in the FY12 budget that preserves EPA's ability to carry out its core responsibilities to protect the health and well being of America's citizens and communities. The President's request maintains the balance between the necessity of reducing federal spending and ensuring that there is sufficient investment in our nation's water and wastewater infrastructure.

As part of the Administration's long-term strategy, EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with States and communities to enhance technical, managerial and financial capacity. Important to the technical capacity will be enhancing alternatives analysis to expand "green infrastructure" options and their multiple benefits. Future year budgets for the SRFs gradually adjust, taking into account repayments, through 2016 with the goal of providing, on average, about 5 percent of water infrastructure spending annually. When coupled with increasing repayments from loans made in past years by states, the annual funding will allow the SRFs to finance a significant percentage in clean water and drinking water infrastructure. Federal dollars provided through the SRFs will act as a catalyst for efficient system-wide planning and ongoing management of sustainable water infrastructure.

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NAVIGABLE WATERS

H.R. 1 provides regulatory certainty that the EPA will not redefine the definition of navigable waters now that efforts in Congress have since stalled. Most farmers and ranchers are scared that the EPA would be able to regulate their irrigation ditches, drainage ponds, and even groundwater. Allowing the federal government to claim jurisdiction over state waters would have a devastating impact on rural communities throughout our state and the food supply throughout our nation. There is a draft guidance document under interagency review that would seek to change EPA's approach for defining what is and is not a navigable waterway.

Question 6: Is EPA still planning to release new guidance or regulations with respect to navigable waters?

Answer: U.S. EPA and the U.S. Army Corps of Engineers have developed draft guidance for determining whether a waterway, water body, or wetland is protected by the Clean Water Act. Notice of the draft Guidance was published in the Federal Register on May 2 and will be available for public comment for 60 days to allow all stakeholders to provide input and feedback before it is finalized. The draft guidance reflects the agencies' interest in clarifying existing requirements of the law and regulations consistent with Supreme Court decisions. We agree that guidance cannot change current law. The scope of jurisdiction described in the draft guidance remains more narrow than protections provided under the CWA prior to the *SWANCC* and *Rapanos* decisions. In addition, all existing exemptions for agriculture in the CWA and its implementing regulations remain unchanged by the draft guidance. These include exemptions for farm and stock ponds and irrigation ditches from CWA Section 404 permitting requirements, and the treatment of prior converted cropland as excluded from the definition of "waters of the United States." We also agree that groundwater is not subject to regulation under the CWA. Finally, the draft guidance proposes to retain jurisdiction over ditches as clarified in the 2008 guidance.

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Question 7: What is the status of those plans?

Answer: The draft guidance was published in the Federal Register on May 2 for a 60 day public comment period. The draft guidance is also available at: http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm. The draft guidance will not be finalized until after an opportunity for public review and comment and EPA and the Army Corps of Engineers consider all comments.

Question 8: Is EPA contemplating a more expansive definition than the one put forth by the U.S. Supreme Court and, if so, why is EPA looking to violate President Obama's pledge to reduce current regulatory burdens?

Answer: No. EPA and the Corps do not seek to implement a more expansive definition than that set forth by the Supreme Court in the *SWANCC* and *Rapanos* decisions. EPA and the Corps have drafted guidance that does not broaden the reach of the CWA, which is set by the statute and the regulations, but instead clarifies those waters over which the agencies will assert jurisdiction consistent with the CWA, implementing regulations, and Supreme Court decision. By providing additional clarity on what is and is not subject to CWA protection, we believe the draft guidance will help reduce regulatory uncertainty and provide better protection for waterways

Question 9: Does EPA plan to conduct rulemaking to allow public review and comment on its proposal?

Answer: EPA and the Corps will follow up the final guidance with rulemaking to provide further opportunity for comment and to clarify Clean Water Act regulations.

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Question 10: If so, please provide copies of these directives or drafts for the record.

Answer: The draft guidance is available at:
http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm.

STATE REVOLVING FUNDS: CONSTRUCTION JOBS VS. NEW PROGRAMS

EPA's Gap Analysis identifies $388 billion in capital needs for wastewater infrastructure and $274 billion in capital needs for drinking water infrastructure. While there is a gap between the needs and our investments, tough choices need to be made in order to reduce spending. However, it is difficult to understand why the 2012 budget proposes new "nice-to-have" voluntary programs and initiatives like 1) the urban waters program, 2) pilot programs to address air toxics, or 3) the healthy schools initiative, and why those programs rank higher on the priority scale than adding an extra dollar to the state revolving funds to finance additional construction. In sum, the 2012 request for those few, new programs totals a little over $16 million.

Alternatively, that amount could finance low interest loans for drinking water or wastewater projects in at least another 5-7 communities. While that may not sound like much, that lost opportunity means fewer construction jobs. And since the funding is handed out to communities as a loan, it would be paid back in to the state revolving funds so that funding would revolve and continue to finance future infrastructure projects. And that means more construction jobs.

Question 11: Why does the budget reduce the SRFs to in order to fund pilot programs and "nice-to-have" initiatives?

Answer: The President's FY12 Budget Request maintains this Administration's historic commitment to funding drinking water and wastewater infrastructure across the country.

As part of the Administration's long-term strategy, EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with States and communities to enhance technical, managerial and financial capacity. Important to the technical capacity will be

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enhancing alternatives analysis to expand "green infrastructure" options and their multiple benefits. Future year budgets for the SRFs gradually adjust, taking into account repayments, through 2016 with the goal of providing, on average, about 5 percent of water infrastructure spending annually. When coupled with increasing repayments from loans made in past years by states, the annual funding will allow the SRFs to finance a significant percentage in clean water and drinking water infrastructure. Federal dollars provided through the SRFs will act as a catalyst for efficient system-wide planning and ongoing management of sustainable water infrastructure. Overall, the Administration requests a combined $2.5 billion for the SRFs. This request brings the four year total for SRFs to approximately $16 billion (FY 2009 – FY 2012).

These historic levels of funding demonstrate an unprecedented level of support for these programs and the communities that depend on them to help finance their water infrastructure needs. However, we also felt strongly that the Budget provide for some other targeted high priority investments, and that we could provide these additional investments without harming the ability of the SRFs to provide assistance to communities.

Question 12: Why reduce programs that fulfill a statutory need in order to create new voluntary programs?

Answer: Between 2009 and 2012, the Administration has provided and/or requested a total of $16 billion for the Clean Water and Drinking Water SRFs, including $6 billion in ARRA funding. These historic levels of funding demonstrate an unprecedented level of support for these programs and the communities that depend on them to help finance their water infrastructure needs.

However, we also felt strongly that the Budget provides for some other targeted high priority investments, and that we could provide these additional investments without harming the ability of the SRFs to provide assistance to communities.

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PESTICIDE NPDES PERMITS

The 6th Circuit Court of Appeals' deadline for adoption of an NPDES permit program for pesticide use is April 9. After that date, it will be illegal to use pesticides in, above or near waters without a permit. The regulated community in my State and throughout the nation still has no idea what the final EPA permit will look like, whether it will be done, or what the 44 delegated states are going to do.

Question 13: What are EPA's plans to avoid complete chaos for irrigation, weed control, mosquito control, forest spraying and other public health and safety concerns?

Answer: On April 1, 2011, EPA posted on its website a pre-publication version of its draft final pesticide general permit for discharges of pesticide applications to U.S waters. As part of the agency's ongoing efforts to be transparent and responsive to stakeholders, this action will assist states in developing their own permits and the regulated community in becoming familiar with the permit's requirements before it becomes effective. The provisions of this permit are designed to improve protection of public health and our nation's water quality. For more information see http://cfpub.epa.gov/npdes/home.cfm?program_id=410

Question 14: Specifically, is EPA going to ask the 6th Circuit Court for additional time to adopt a final general permit and to allow the delegated states to develop their permit programs?

Answer: On March 3, 2011, EPA requested an extension of the April 9, 2011 deadline for when pesticide operators need to obtain permits for pesticide discharges into U.S. waters. On March 28, 2011, the U.S. Court of Appeals for the Sixth Circuit granted EPA's request to extend the deadline to October 31, 2011. The basis for the request was to allow sufficient time to engage in Endangered Species Act Section 7 consultation with the Fish and Wildlife Service and National Marine Fisheries Service, and to complete the development of an electronic database to streamline requests for coverage under EPA's general permit. The extension will also allow time for authorized states to finish developing their state permits and for permitting authorities to provide additional outreach to stakeholders on pesticide permit requirements. EPA will continue working with states to develop their permits and with stakeholders to communicate permit requirements prior to the Court's deadline.

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STORMWATER DISCHARGES

A number of concerns have been raised about EPA's intention to revise federal Clean Water Act permit regulations and establish a new program to regulate stormwater discharges from developed properties. It's my understanding that these discharges are currently regulated by individual states.

Section 402(p) of the Clean Water Act requires the EPA to prepare and submit a report to Congress prior to any efforts to expand the scope of the stormwater discharge program.

Question 15: Has the agency provided any such report to Congress?

Question 16: If not, shouldn't that be the first step taken in this process before the agency formally releases the proposed regulations for public comment?

Answer: Yes, EPA has provided Reports to Congress on stormwater discharges under Section 402(p) of the Clean Water Act (CWA) and plans to supplement the 1999 Report to Congress as part of the rulemaking.

Section 402(p)(5) of the CWA required EPA, in consultation with the states, to conduct studies on stormwater discharges that were not identified under Section 402(p)(2). EPA issued reports summarizing the studies required under Section 402(p)(5) on February 1, 1994, March 29, 1995 and October 1, 1999. Based on the findings of these studies, and in consultation with State and local officials, EPA promulgated regulations under 402(p)(6) on December 8, 1999 (64 FR 68722). EPA has authority under Section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA in order to protect water quality (see Envt Defense Ctr. v. EPA, 344 F.3d 832, 873-76 (9th Cir. 2003)). EPA continues to collect and analyze information about the implementation of the stormwater program. In 2006, EPA asked the National Research Council (NRC) to conduct a review of the NPDES stormwater program. In October 2008, the NRC released the report Urban Stormwater Management in the United States (The National Academies Press, 2009). The NRC report made a number of recommendations to strengthen EPA's stormwater program.

On December 28, 2009, EPA announced its plans to initiate national rulemaking to establish a program to reduce stormwater discharges from new development and redevelopment

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and make other regulatory improvements to strengthen its stormwater program. EPA is developing a supplement to the Reports to Congress used to support the December 8, 1999 stormwater regulations authorized under 402(p)(6). EPA expects that the Report will be sent to Congress this summer before the rulemaking proposal is published.

Question 17: Is EPA contemplating an expansion of stormwater regulations (directly or through NPDES permit requirements) to cover privately owned sites with as little as 5000 square feet of impervious surface? If yes, please indicate the statutory authority for any such nationwide proposal.

Answer: EPA has initiated a rulemaking to protect waterbodies from harmful pollutants that are generated from the creation of impervious surfaces. The current regulations require regulated municipal separate storm sewer systems (MS4s) to develop, implement, and enforce a program to reduce pollutants in post-construction runoff from new development and redevelopment projects that disturb one acre of land or greater. EPA is considering provisions to strengthen this requirement by establishing specific performance standards. EPA is evaluating several options and no decisions have been made on a site size threshold.

Congress has provided EPA the authority to regulate additional stormwater discharges, including discharges from newly developed and redeveloped sites, to protect water quality under section 402(p)(6) of the Clean Water Act (CWA). Section 402(p) established a phased approach to regulating stormwater discharges. Thus far, EPA has regulated medium and large MS4s, MS4s located within urbanized areas, and industrial discharges, including construction discharges, from active construction sites that disturb one acre or more of land. EPA continues to have the authority to use Section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA in order to protect water quality (see Envt Defense Ctr. v. EPA, 344 F.3d 832, 873-76 (9th Cir. 2003)).

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SPRAY DRIFT

The agriculture industry is concerned regarding EPA's proposal to add language to pesticide labels that would change the current standard for regulating possible drift of sprayed pesticides. It appears that EPA's new language would replace the current risk-benefit standard for pesticide spray drift when the product is used according to its label with a new zero-risk standard. Not only does this policy overlook safety risk factors already built into current law, additional protections offered by current technology, and efforts underway within industry to reduce possible adverse impacts, but it appears to be completely unreasonable and unrealistic, given the widespread use of these chemicals.

Question 18: Does EPA have any intention to revise the current proposal and replace it with something more reasonable?

Answer: Off-target pesticide drift is a difficult and controversial problem. There is much support for EPA to address the issue and establish consistent label language; however, there is no consensus on what action to take. EPA developed the proposed new spray drift language following a process that involved several years of consultation with multiple stakeholder groups, input from a broad array of organizations through our Federal Advisory Committee, the Pesticide Program Dialogue Committee (PPDC) including pesticide registrants and growers, as well as extensive advice from state regulators.

The labeling proposal contains the following statement for some pesticide products, "Do not apply this product in a manner that results in spray [or dust] drift that could cause an adverse effect to people or any other non-target organism or site." Rather than prohibiting all drift or setting a zero risk standard EPA specifically intended this statement to recognize that some level of spray drift is unavoidable and is only a concern if it poses a risk.

About 600 distinct comments were received in response to the draft PR Notice along with letters and over 33,000 signatures from several write-in campaigns that expressed both support and strong concern. Some comments expressed concern that the proposed labeling was ambiguous, could be interpreted to result in a "zero drift" standard, and was not consistent with the language used in the FIFRA statutory standard. In addition comments suggested EPA look at

state drift laws and regulations. EPA is fully considering all aspects of this important issue and is in the process of carefully responding to all stakeholder comments on the draft PR Notice and the related supporting documents.

In response to the comments received, EPA has tentatively settled on changes to the proposed drift statement that are similar to those in current state drift regulations. The tentative revised statement for commercial applicators is listed below:

Tentative revised general drift statement

"...do not apply this product in a manner that results in spray [or dust] drift that harms people or any other non-target organism or site."

EPA convened a stakeholder meeting in February 2011, to receive feedback on the tentative revised drift statement. EPA is working to issue a Final Drift PR Notice, along with responding to the comments received, later in 2011.

WATER INFRASTRUCTURE

The GAO and the EPA IG testified before the Interior and Environment Subcommittee about Management Challenges at the EPA. They highlighted a number of issues, one of which was the lack of adequate resources for water infrastructure. The EPA needs assessment for water infrastructure had been used as a justification for over $11 billion increases to the SRFs in the past two years. These massive increases have proven to only be a drop in the bucket so it is clear the Federal government alone cannot foot the bill, nor do we expect it to given our massive federal debt. Therefore, this discussion is more academic than it is practical when you consider that current Federal spending is unsustainable.

Question 19: Is there a paradigm shift for water infrastructure worth considering here?

Answer: More than ever before, we need to make sure that we are making the right infrastructure investments with our federal dollars. Under EPA's Clean Water and Drinking

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Water Infrastructure Sustainability Policy, we've stated that federal investments, policies, and actions should support water infrastructure in more efficient and sustainable locations to best support existing communities, enhance economic competitiveness, and promote affordable neighborhoods. Drinking water and wastewater systems should use robust and comprehensive planning processes to pursue water infrastructure investments that are cost-effective over their life cycle, are resource efficient, and are consistent with community sustainability goals. EPA is encouraging systems to consider a range of alternatives before making infrastructure decisions that will lock in future costs. Conservation approaches, natural or "green" systems, and even integrating a mix of decentralized and centralized approaches may provide collateral benefits to the community that traditional systems may not. Water utilities should also employ effective utility management practices, building their technical, financial, and managerial capacity for managing their infrastructure assets, and seeking partnerships or cooperative agreements when they would help reduce costs or improve technical, financial, or managerial capacity.

EPA continues to work closely with states and systems within the water SRF programs, as well as through the Capacity Development Program, to encourage improvements in community/system sustainability on several levels.

- To ensure that the most cost-effective projects are funded, EPA is encouraging better up-front planning for infrastructure projects that includes various alternatives, including "green" alternatives (e.g., water reuse, decentralized infrastructure)
- Fix-it-first – emphasis on investing in existing infrastructure as a way of supporting existing communities so that they are liveable and sustainable.
- Encouraging cross sector coordination by synching investments in housing, transportation, and water infrastructure to meet community goals.
- Promoting effective utility management practices to ensure that water and wastewater systems are managing their assets, establishing appropriate rates, reducing energy consumption, and increasing water efficiency to reduce their need for federal and state spending.
- Encouraging water system partnerships to achieve greater efficiencies, including shared treatment facilities for systems with similar compliance challenges that are close together.

Question 20: Is there a different way of doing business that would bolster our water infrastructure, create jobs, while reducing federal spending?

Answer: Generally, there are four sources of investment capital in wastewater and drinking water infrastructure available to local governments: Pay as you go with funds coming from current cash savings or flows; taxes and fees to support borrowing in the bond market, from commercial banks, or other sources, such as the SRF programs; subsidies and transfer payments;

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and direct private sector financings through various types of privatization. All sources have been tapped extensively with the exception of privatization. Privatization offers potential as a significant source but faces real and perceived economic and regulatory barriers.

DELAY OF MANDATORY REPORTING TO THE GREENHOUSE GAS REGISTRY

EPA has extended the deadline for reporting 2010 GHG data to September 30, 2011 due to technical concerns with the software. The EPA's statement indicated that the Agency needed to further test the system and give industry the opportunity to test the tool, provide feedback, and have sufficient time to become familiar with the tool prior to reporting.

Question 21: What are the concerns with the software that require more testing?

Answer: There was a great deal of interest from reporters in testing and becoming familiar with the web-based reporting tool before the final version is made available this fall. As a result, we are offering several testing opportunities over a two month period this summer.

Question 22: Is it not a secure application?

Answer: The data system supporting the Greenhouse Gas Reporting Program meets Federal and Agency requirements for information security.

Question 23: Please provide a detailed description of the timeline for how long you expect the testing to last, and the time for industry to familiarize itself with the software.

Answer: Reporters will be able to test EPA's Electronic Greenhouse Gas Reporting Tool (e-GGRT) over a two month period this summer. Three testing opportunities will be available:

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1. Starting in mid-May, EPA will conduct a two-week "targeted testing" period during which a group of about 60 companies, identified by industry associations, will test e-GGRT. Participants in this testing period are expected to give EPA feedback about the design of the tool. As a result, the testing during this period will require a substantial time commitment from testers; up to 2 days depending on the number of subparts being tested.

2. Also starting in mid-May, reporters who plan to upload their emissions data via XML schema will have the opportunity to test this capability. Participants in this testing period have also been suggested by industry associations.

3. In June, EPA will conduct a wider testing effort referred to as the "sandbox" testing period. This testing period will be open to all reporters who express an interest, and users will be able to register for this testing phase on the GHGRP website. The main difference between this phase and the targeted testing period is that testers will not be required to give us feedback on the tool design.

Prior to the start of testing, EPA will offer several webinars to familiarize e-GGRT users with GHG reporting. These webinars will be tailored for the different industries reporting to EPA, and webinar participants will be able to ask questions about e-GGRT via electronic chat. Reporters will be able to register for these webinars on the GHG Reporting Program website.

DIESEL EMISSIONS REDUCTION GRANTS

The diesel emissions grants program (DERA) provides $13 of economic benefit per Federal dollar, the retrofit technology supported by DERA reduces black carbon emissions by 90 percent, and projections estimate that nearly 2,000 lives will be saved by 2017 in direct relation to DERA's impact on air quality.

Question 24: Why initiate new pilot programs as part of the Healthy Communities and Healthy Schools Initiatives, while eliminating a proven program that would retrofit the old diesel engines in school buses that are driving throughout our communities and transporting our children to and from school?

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Answer: The Agency is initiating new programs through the Healthy Communities and Healthy Schools Initiatives to continue advancing the protection of children's health as directed by the 1997 Executive Order 13045, *Protection of Children's Health from Environmental Health and Safety Risks* and mandates such as the Energy Independence and Security Act of 2007, the Safe Drinking Water Amendments of 1996 and the Food Quality Protection Act of 1996. These initiatives are designed to target a number of environmental health risks in communities through partnerships with state and local governments. The Agency agrees that the diesel emissions (Diesel Emissions Reduction Act - DERA) grants have played a significant role in reducing environmental exposures for children and will continue to implement existing grants. However, the need for additional DERA funding diminishes with time, as the inventory of existing engines turns over and new cleaner engines become the norm. Beginning in 2007, new diesel engines are subject to strict emissions controls that reduce particulate matter (PM) pollution by 90 percent and nitrogen oxides (NOx) emissions by 50 percent, compared to the previous standard. The Agency is also committed to doing its part to reduce the federal budget deficit, and in a tough budget climate the Agency has had to make hard choices. The Healthy Communities and Healthy Schools Initiatives and other agency programs will ensure that we are protecting both indoor and outdoor environments.

ARSENIC/PHOSPHORUS

Question 25: EPA's arsenic regulation continues to cause problems for smaller communities. We have talked about this standard at great length. For many communities, meeting the federal arsenic standards forces them to make difficult, even unthinkable decisions about whether to pay their firefighters or reduce the amount of arsenic in their water supply from 12 to 10 parts per billion. EPA has indicated that there is flexibility with compliance deadlines, but the communities and associations repeatedly report that EPA is not allowing all the compliance options available under the Safe Drinking Water Act. What flexibilities are available for smaller communities to meet deadlines for EPA's water quality regulations?

Answer: Under §1416 of the Safe Drinking Water Act (SDWA), states with primary enforcement responsibility that have also received primacy for Variance and Exemptions may grant public water systems (PWSs) within their jurisdiction exemptions. Exemptions are an appropriate mechanism to provide systems with additional time to acquire financial assistance

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and develop mechanisms necessary to ensure compliance with a drinking water standard. Exemptions encourage water systems to start down the path to compliance now, so that public health is better protected. Public water systems that meet the minimum criteria outlined in the SDWA may apply for an exemption of up to three years. For smaller water systems, exemptions may provide up to nine additional years beyond the compliance date of the Maximum Contaminant Level (MCL) to achieve compliance. For example, PWSs were required to meet the revised arsenic MCL of 10 ppb by January 23, 2006. If granted an exemption, a PWS would have up to 3 additional years to comply (January 23, 2009). Eligible systems serving fewer than 3,300 persons could be granted up to 3 exemption extensions of 2 years, thereby allowing up to 9 total years (14 years since the rule was published) to obtain financial assistance and implement a compliance strategy (January 23, 2015). One hundred sixty-six arsenic exemptions have been issued; there are approximately 72 water systems currently operating under an active arsenic exemption.

Question 26: Please list several (5-7) examples where EPA has provided flexibility to a community that has been unable to meet deadlines for the arsenic standard?

Answer: EPA has utilized provisions under the SDWA to help systems keep user rates reasonable including researching cost-effective technologies, providing technical assistance, offering flexibility where allowed by statute and regulation, and providing funding support through the State Revolving Fund program. In the Northwest region of the U.S, over 50 percent of the arsenic violations have occurred in Idaho where there are higher concentrations of naturally occurring arsenic in the ground water. Idaho and other states have worked to provide maximum flexibility permitted under the rule in addition to exemptions. For example, states have allowed very small systems to utilize point of use treatment at individual homes instead of installing expensive treatment at the plant, time weighted averaging of sample results, and compliance agreement schedules with timelines that accommodate each system's unique circumstances. In Idaho, most of the 23 systems currently in violation anticipate treatment installed by the end of 2012.

In addition, EPA Region 9 has granted exemptions to two tribes that were unable to meet deadlines for complying with the arsenic standard – Tohono O'odham and Navajo Nation. EPA Region 6 has issued arsenic exemptions to five tribal water systems – San Ildefonso Pajaritos, Zia Pueblo, Zia Chamisa, Santa Ana Pueblo, and Isleta Eastside. The exemptions afford all five water systems until January 23, 2015, to comply with the Arsenic Rule.

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PORTLAND CEMENT AND BOILER MACT REGULATIONS

EPA has issued several Clean Air Act regulations that will have a significant impact on the U.S. economy. Last September EPA issued the Portland Cement MACT, and more recently the Boiler MACT regulations. In a February 23 letter to Congress, however, EPA indicated that it would grant both reconsideration of the Boiler MACT Rule and an administrative stay of the rule pending completion of the reconsideration process. A few months ago, the Portland cement industry made similar requests for reconsideration and administrative stay related to the Portland Cement MACT.

Question 27: Given the relationship between the Portland Cement and Boiler MACT rules, please confirm that EPA will grant the same relief of reconsideration and administrative stay for the Portland Cement MACT?

Answer: There is no direct relationship between the Portland Cement and Boiler Maximum Achievable Control technology (MACT) rules. They involve separate source categories, different equipment, different emissions, and different administrative records. Thus, EPA's decisions on each rule are, necessarily, separate. EPA is considering various petitions for reconsideration of the Portland Cement MACT final rule and expects to issue a response to those petitions shortly. Some of the cement petitions also request that EPA issue an administrative stay of the Portland Cement MACT rule. We currently intend to address the stay request at the same time we respond to the pending petitions for reconsideration.

With regard to the Boiler MACT rule, on February 21, 2011, EPA issued a Federal Register notice stating that we intended to initiate a reconsideration process with regard to certain aspects of the final rule. In that Federal Register notice, we explained that we were in the process of developing a proposed reconsideration notice that would identify the specific elements of the rule for which we believe further public comment is appropriate. We also indicated that we may receive petitions for reconsideration of the final Boiler MACT rule from the public and that we would consider such petitions as we develop the proposed reconsideration notice. The February 23, 2011 letter to members of Congress is wholly consistent with the February 21, 2011 notice. That letter indicates the Agency's intent to initiate a further public comment process with regard to certain aspects of the final Boiler MACT rule. We wish to clarify that neither that letter nor the Federal Register notice address the potential issuance of an administrative stay for

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the Boiler MACT rule. We have received one request for a stay, which is currently under consideration.

For cement kilns, there is a relationship between the Portland Cement Rule and the Commercial, Industrial and the Institutional Solid Waste Incinerators (CISWI) Rule. The determination of whether a cement kiln is regulated under the Portland Cement MACT rule or the CISWI rule is determined by EPA's Solid Waste Definition Rule. Currently, there are no plans to reconsider the Solid Waste Definition Rule. Therefore, with these three rules in place, cement kilns have the information needed to make decisions regarding their use of secondary materials and their investment in pollution control equipment and operational practices.

Question 28: If not, why not?

Answer: As explained above, there is no direct relationship between the Portland Cement and Boiler MACT rules. EPA's decisions on each rule are necessarily separate and will be made considering the facts and circumstances relevant to each rule. We are evaluating the stay request concerning the Portland Cement MACT and intend to issue a response shortly. To the extent that we receive requests to stay the Boiler MACT rule, we will review and consider those requests.

Question 29: Finally, what flexibility with respect to timing of compliance with these standards is EPA considering given the difficulty that the three-year compliance window poses for the industry?

Answer: We have specified compliance dates for existing sources of three years from the publication of the final rule. This is the maximum compliance period provided under Clean Air Act section 112(i)(3)(A). However, under section 112(i)(3)(B), permitting authorities are allowed to extend the compliance date on a case-by-case basis for one additional year if a source demonstrates a need for additional time to install controls.

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ENFORCEMENT: COMMON SENSE

At $621 million, the EPA proposing the largest enforcement budget ever. This is an increase of $24 million over the 2010 level which would serve to bolster an overly intrusive EPA. The 2012 budget indicates that this funding would be used to increase inspections of oil and chemical facilities, take additional actions against to enforce total maximum daily loads in the Chesapeake Bay, and require more monitoring and data from States on compliance issues. I have heard from more than one company, on more than one occasion, that the EPA has threatened to impose multimillion dollar fines along with the threat of criminal enforcement actions unless these companies comply with a high, but relatively less costly compliance remedy. EPA continues to use the stick when the carrot would suffice. It seems that a little common sense injected into the process would go a long way.

Question 30: Currently, and for 2012, what is the EPA doing to ensure that common sense is incorporated into regulatory and enforcement decisions?

Answer: EPA's goal is fair and consistent enforcement of Federal laws as balanced with the flexibility to respond to region-specific environmental problems. The Agency has in place a framework of national enforcement policies that guide Regional efforts in critical areas such as enforcement response, penalty policy, and the development of compliance monitoring strategies. We believe that these policies are based on common sense, as well as the rule of law, and that our Regional and Headquarters enforcement offices use common sense in applying them. The Agency also develops model administrative orders/consent decrees and other documents to assist the Regions and help promote consistency ensuring that violators in similar circumstances receive similar treatment under Federal environmental laws. The Agency's enforcement program is focused on environmental outcomes, employing a mix of tools including monitoring, assistance, incentives, and traditional enforcement approaches to improve compliance with environmental laws and help businesses, Federal facilities, local governments, and tribes meet their environmental requirements.

Question 31: Please provide several examples (5-7) across the various media – air, water, and land – where EPA has worked with smaller communities to agree to flexible approaches to remedy compliance and regulatory issues.

Answer: EPA provides financial, technical and programmatic assistance to help small communities achieve compliance with environmental laws.

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Where appropriate, EPA provides flexibility in the guidance and regulations addressing compliance for smaller communities. For example, in Alaska, most Native Village systems have less than 10,000 users, and may be granted less costly monitoring requirements than systems servicing larger communities. In contrast to systems servicing 10,000 people or more, which are required to monitor for a contaminant called Cryptosporidium, smaller systems are allowed to first monitor for E. coli – a bacterium that is less expensive to analyze than Cryptosporidium – and are only required to monitor for Cryptosporidium if their E. coli results exceed specified concentration levels.

The Agency also takes steps to address financial constraints faced by small communities and small governments. For example, in the context of municipal wastewater compliance costs, the "Combined Sewer Overflows (CSOs) – Guidance for Financial Capability Assessment and Schedule Development" evaluates the financial resources a permittee has available to implement CSO controls and provides a framework to assist the permitee, EPA and state National Pollution Discharge Elimination System (NPDES) authorities to cooperatively develop CSO control implementation schedules. Schedules can be adjusted in situations where the CSO control measures will result in a high financial burden and the guidance acknowledges situations where longer implementation schedules of up to 15 to 20 years may be necessary for some municipalities.

Under the Safe Drinking Water Act (SDWA) EPA has utilized provisions to help systems keep user rates reasonable including researching cost-effective technologies, providing technical assistance, offering flexibility where allowed by statute and regulation, and providing funding support through the State Revolving Fund program. Under §1416 of SDWA, states with primary enforcement responsibility (that have also received primacy for Variance and Exemptions) may grant public water systems (PWSs) within their jurisdiction exemptions. Exemptions are an appropriate mechanism to provide systems with additional time to acquire financial assistance and develop mechanisms necessary to ensure compliance with a drinking water standard. For smaller water systems, exemptions may provide up to nine additional years beyond the compliance date of the maximum contaminant levels (MCLs) to achieve compliance. For example, PWSs were required to meet the revised arsenic MCL of 10 ppb by January 23, 2006. If granted an exemption, a PWS would have up to 3 additional years to comply (January 23, 2009). Eligible systems serving fewer than 3,300 persons could be granted up to 3 exemption extensions of 2 years, thereby allowing up to 9 total years (14 years since the rule was published) to obtain financial assistance and implement a compliance strategy (January 23, 2015). One

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hundred sixty-six arsenic exemptions have been issued: there are approximately 72 water systems operating under an active arsenic exemption.

As part of the Chesapeake Executive Order, EPA was asked to develop an enforcement strategy to address sectors and regions that contribute to Bay impairment. As part of this strategy, EPA launched a compliance effort in Lancaster County, Pennsylvania directed at small dairies. The Agency first consulted with the Commonwealth, the Plain Sect Community leadership, and Lancaster County Conservation District (LCCD) and jointly developed an approach that used a wide range of tools to ensure compliance. EPA with LCCD evaluated all 24 farms in the watershed and found that 85% of the farmers were in non-compliance with the state requirement to have and implement a conservation plan and a manure management plan, and 85% of drinking water tested had nitrate and pathogen levels that exceed the Maximum Contaminant Level (MCL). Rather than take punitive enforcement actions, EPA worked closely with the farming community, LCCD and the state to educate farmers and help them identify steps to take to bring them into compliance with state and federal requirements. To date, all farms have obtained the required plans and are coming into compliance with their terms. In the end, EPA was able to bring 23 farms into compliance through collaborative efforts and informal actions.

EPA worked with residents of Libby, Mont., in Lincoln County to develop a woodstove changeout campaign. The campaign included EPA, the woodstove industry, and state and local governments. Over three years, the campaign replaced old, polluting woodstoves with cleaner-burning, EPA-certified woodstoves in the Libby area, which did not meet EPA's national air quality standards for fine-particle pollution, also known as PM 2.5. Smoke from woodstoves is the primary source of PM 2.5 emissions in and around Libby. This changeout strategy has since been adopted by other localities. The costs of many local changeout programs are covered by a partnership of government agencies, gas utilities, manufacturers, distributors and retailers.

Lastly, the Fallon Paiute-Shoshone Tribe's Environmental Protection Department (EPD) started a Used Oil and Oil Filter Recycling program with funds from EPA's Hazardous Waste Management Grant Program. This recycling program was developed to accept used oil and oil filters from tribal "do-it-yourself" oil changers and to dispose of the used oil by burning it in a used oil furnace, which now provides heat for the tribal auto shop. In FY 2010, EPD worked to develop partnerships with neighboring tribes in Nevada to recycle their used oil. These partnerships could help reduce the cost of hazardous waste disposal for the other tribes, and further reduce heating costs for the Fallon Paiute-Shoshone Tribe.

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OIL SPILL – BP DEEPWATER HORIZON LITIGATION

The 2012 budget proposes a $3 million increase to assist the Department of Justice with criminal investigations and civil actions related to the BP Gulf Oil Spill. Much of what we heard for EPA's response to the BP Spill was related to the use of chemical dispersants.

Question 32: Please describe for the Subcommittee how this funding would be used.

Answer: EPA (along with the Coast Guard) is jointly responsible with DOJ for prosecuting the Clean Water Act violations for the DWH spill and securing penalties from the responsible parties and any injunctive relief that may be needed. The increase is provided for Deepwater Horizon litigation support, discovery management, and the continuing civil and criminal investigation. We are working closely with DOJ on the criminal and civil investigations into the Deepwater Horizon spill. The increased funds are for the salaries of seven legal staff and for additional expenses associated with the size and complexity of this case (e.g., including document management, interviewing potential witnesses) to ensure that we can effectively pursue and prosecute violations.

OIL SPILL – INCREASED FACILITY INSPECTIONS

The budget proposes $5 million and 16 new FTE to increase inspections on chemical and oil facilities following EPA's completion of the SPCC rule last year. The budget indicates that there are 640,000 entities subject to regulation under SPCC. These are non-transportation-related oil storage facilities (including offshore facilities), of which 4,300 facilities are designated as high-risk. The budget increase is expected to fund approximately 175 inspections at high risk facilities each year.

Question 33: What does a facility have to do in order to comply with the new SPCC rule?

Answer: The Spill Prevention, Control and Countermeasure (SPCC) rule was originally promulgated in 1973 and most recently revised to streamline and tailor requirements for a wide range of industry sectors in 2009. A facility subject to the SPCC rule must implement measures to prevent, and to be prepared to respond to, oil spills in U.S. waters through the development of

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an SPCC Plan. The requirements vary by industry sector, volume of oil stored on site, and containment vessels and piping transporting the oil on site.

Question 34: How many high-risk facility inspections did EPA conduct in 2010?

Answer: High-risk oil facilities are defined as those subject to Facility Response Plan (FRP) requirements in addition to SPCC requirements. These facilities are differentiated into two categories of risk: substantial harm or significant and substantial harm depending on the level of risk an oil spill poses to human health and the environment. A facility must prepare an FRP if it exceeds certain oil storage capacity thresholds (e.g.; 1 million gallons) and, due to their location, could reasonably be expected to cause substantial harm to the environment by discharging into or on navigable waters, adjoining shorelines, or the exclusive economic zone. EPA inspected 268 of the 4,300 FRP high risk facilities in 2010.

Question 35: Please describe what an inspection at one of these high-risk facilities would look like.

Answer: The inspections and audits associated with an FRP facility include: a comprehensive FRP review, facility inspection, and/or Government-Initiated Unannounced Exercise (GIUE). Staff reviews the contents of an FRP in detail relative to the regulatory requirements. In an inspection, inspectors compare the FRP to what is present and implemented at the site; a detailed checklist is used to facilitate the inspection. In a GIUE, a facility is expected to conduct an actual response to a small discharge scenario outlined in their plan (e.g.; a spill of 2,500 gallons of oil) and deploy personnel and response equipment. The response is evaluated against the regulatory requirements and the plan, for example: the time needed to ready the spill containment boom for deployment, or the successful deployment and staging of oil recovery equipment.

Question 36: What actions, and/or penalties are associated with a finding of non-compliance following an inspection?

Answer: The actions, and/or penalties associated with a finding of non-compliance vary depending on the nature of the compliance element. The goal of the inspection is to move the

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facility into a compliance status. Actions include a Notice of Violation for minor compliance issues up to and including an enforcement action which may result in penalties or compliance orders.

MILK REGULATION

At last year's House Subcommittee markup, report language was added directing EPA to exempt large milk storage containers from oil spill regulations. EPA has stated that a compliance exemption is currently in place for dairy farmers until a permanent exemption can be finalized.

Question 37: Why has the permanent exemption not yet been finalized?

Answer: On October 7, 2010, EPA delayed the SPCC compliance date by which a facility must address milk and milk product containers, associated piping and appurtenances one year from the effective date of a final rule specifically addressing these milk and milk product containers.

On April 12, 2011, EPA issued its final rule exempting milk and milk product containers from the Oil Spill Prevention, Control, and Countermeasure (SPCC) rule. The final rule was published in the Federal Register on April 18, 2011 and will become effective on June 17, 2011.

Question 38: Why is it taking as long as it is?

Answer: The rulemaking process is an analytical and deliberative process involving discussions with stakeholders, review of public comment and input, collection of relevant information, assessment of impacts, and Agency review and consensus.

Question 39: What is the status of the permanent exemption, and when will the exemption be finalized?

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Answer: On April 12, 2011, EPA issued its final rule exempting milk and milk product containers from the Oil Spill Prevention, Control, and Countermeasure (SPCC) rule. The final rule was published in the Federal Register on April 18, 2011 and will become effective on June 17, 2011.

GREAT LAKES RESTORATION INITIATIVE

As of the end of January, EPA had $19.5 million in unobligated balances for the Great Lakes Restoration Initiative. This was 15 months since EPA was appropriated the funding. The 2012 request is $50 million higher than the level requested in 2011, but falls well short of the $475 million that was assumed in the Great Lakes Action plan.

Question 40: What additional benefit would the $50 million have that is requested for 2012 that was not requested in 2011?

Answer: Through January of 2011, $455.6 million of Great Lakes Restoration Initiative funds had been obligated and $81 million had been expended. By May 5, 2011 almost the full $475 million has been obligated, less than $500,000 in carryover remains, and more than $115 million has been expended. Much of the FY 2010 funding was put toward restoration projects that will begin during this spring's construction season. Consequently, we expect to see accelerated expenditures and results this year from the FY2010 funding as construction begins. Now moving into its second year, we expect to also provide FY2011 funding during this construction season and to continue accelerated expenditures.

The additional $50 million in 2012 funding will help expedite Area of Concern (AOC) cleanups for sites that have remained on the cleanup list for years, better secure 95 percent of the nation's fresh surface water from Asian carp and other species that could unravel the delicate Great Lakes' food web, accelerate other on-the-ground and in-the-water actions, and provide greater accountability. The largest funding increases are currently planned for EPA (about half of the new funding), followed by the Fish and Wildlife Service and the Army Corps of Engineers. The largest funding increase will be to the Toxics and Areas of Concern focus area; funding is expected to decrease for the focus area pertaining to Accountability, Education, Monitoring, Evaluation, Communication, and Partnerships. With the first year of the Great Lakes Restoration Initiative well underway, we anticipate being able to accelerate work through the 16 federal and bi-national agencies.

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Question 41: And what is assumed in the action plan for 2012 that will not be addressed at the requested level?

Answer: At the reduced funding level, the agencies would focus on maintaining the highest-priority efforts, but may have to defer projects in some areas, including for example:

- reduction in activities associated with the Asian Carp Control Strategy Framework;
- decrease in the number of projects initiated to remove beneficial use impairments at Great Lakes Areas of Concern by 25percent;
- decrease Legacy Act contaminated sediment cleanups by about 130,000 cubic yards (from 530,000 cubic yards to 400,000 cubic yards), also further delaying progress toward de-listing Great Lakes Areas of Concern; and
- decrease restoration of coastal, upland, and island habitats by 25percent, such that only about 5,000 acres of such habitat would be protected, restored, and enhanced rather than 7,000 acres.

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GREAT LAKES AREAS OF CONCERN

Question 42: Please provide an updated table which shows funding for each of the 30 areas of concern for 2011 and 2012 and the change from 2011 to 2012.

Answer: To maximize Great Lakes Restoration Initiative (GLRI) funding for Area of Concern restoration projects that are ready for implementation, GLRI funding is not allocated to individual Areas of Concern in advance, but is provided when the projects are ready. Following funding of the Area of Concern projects in FY11 and FY12, project listings will be available from: https://restore.glnpo.net/glas_pub/qareports.htm. The listings will include projects funded through each of the GLRI funding agencies. Several agencies fund work in the Areas of Concern, including EPA, the National Oceanic and Atmospheric Administration, U.S. Geological Survey, Bureau of Indian Affairs, and Fish and Wildlife Service. EPA's GLRI funding for projects in Areas of Concern is provided through negotiated Legacy Act sediment remediation projects, negotiated funding with Great Lakes states, and through competitive grants.

CHESAPEAKE BAY

EPA has proposed to increase the Chesapeake Bay program by $17 million. We continue to hear that the biggest impediment to the restoration of the Bay is non-point source nutrient loading in the basin from farms. Yet EPA does not have the ability to regulate agricultural runoff.

Question 43: Absent that, what is the purpose for the additional funding?

Answer: EPA's primary approach to nonpoint source pollution control in the Chesapeake Bay watershed is through the support of state-specific Watershed Implementation Plans (WIPs), which address all significant point and nonpoint sources of nutrient and sediment pollution. The WIPs, which are developed by the states and the District, are designed to meet Total Maximum Daily Load (TMDL) wasteload and load allocations and to cap pollutant loading to achieve a healthy Bay and tidal waters. In FY 2012, the Chesapeake Bay jurisdictions will be

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expected to complete and implement second-generation or Phase II WIPs that define the local scale actions that will be taken to continue to improve the rate of progress in reducing nutrient and sediment pollution entering the waters throughout the Chesapeake Bay watershed, and ultimately to achieve the jurisdictions' TMDL allocations. EPA expects that by 2017, controls to achieve approximately 60 percent of the necessary reductions will be in place, and that the controls necessary to achieve the additional 40 percent of reductions will be in place by 2025.

The WIPs, along with the TMDL, constitute the foundation of an accountability system that EPA has designed to ensure that the pollutant reductions called for in the TMDL can and will be achieved no later than 2025. Although EPA does not have authority under the Clean Water Act to regulate nonpoint sources, EPA is maintaining a rigorous system of oversight of WIP implementation progress, regular reporting by the jurisdictions, and oversight of the jurisdictions' two-year milestones, which are state commitments for specific pollutant reductions from point and nonpoint sources.

EPA's 2012 budget proposal would continue to improve the rate of progress in reducing nutrient and sediment pollution entering the waters throughout the Chesapeake Bay watershed. The requested FY 2012 funding represents a $13 million increase over the FY 2011 enacted appropriation. Over 50 percent of this increase is for state implementation and enforcement grants and development of technical and analytical tools to support the states in TMDL implementation. It would bring the total for state implementation and enforcement grants to $25.3 million. This funding will allow the Bay jurisdictions to greatly expand implementation of agricultural best management practices (BMPs) and is required to be targeted toward high priority watersheds and practices. Likewise, Innovative Nutrient and Sediment Reduction grants would continue to provide funding to address agricultural sources of pollutants to the Chesapeake Bay. In FY 2012, EPA also plans to increase its monitoring efforts, particularly in agricultural high priority watersheds, including "showcase watersheds" identified by the U.S. Department of Agriculture. The showcase watersheds are designed to demonstrate water quality improvements in a confined geographic area through expanded producer outreach efforts, use of innovative conservation practices and intensive conservation planning, implementation, and monitoring. These activities are consistent with the May 2010 Executive Order Strategy issued by the Federal Leadership Committee for the Chesapeake Bay.

Question 44: How much impact can we expect these funds to have if we are not addressing the greatest impediment to the Bay's restoration?

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Answer: The Chesapeake Bay watershed is a complex ecosystem—a network that includes people, plants, fish and wildlife, each related to and connected to the other. High levels of nitrogen, phosphorus and sediment enter the watershed from agricultural operations, urban and suburban stormwater runoff, wastewater facilities, air pollution and other sources, including onsite septic systems. Overall since 1985, we have reduced nitrogen loads by 27 percent and phosphorus loads by 32 percent, preventing an additional 93 million pounds of nitrogen and 8 million pounds of phosphorus from polluting the Bay. Despite these reductions in pollution during the past 25 years of restoration due to efforts by federal, state and local governments and others, our progress is not enough. The *Strategy for Protecting and Restoring the Chesapeake Bay*, issued in response to Executive Order 13508, and the Chesapeake Bay Total Maximum Daily Load, both reflect the understanding that a comprehensive approach is needed to fully restore the watershed. Similarly, funding for Bay watershed restoration needs to reflect the comprehensive approach and effectively address pollutant loads from each sector.

Question 45: How much have we spent to date on Chesapeake Bay restoration efforts?

Answer: The total of the enacted appropriations for fiscal years 1984-2010 for EPA's Chesapeake Bay Program Office is $565.2 million. The spreadsheet below presents EPA Chesapeake Bay Program Office financial information for Fiscal Years 1984 through 2010.

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CHESAPEAKE BAY FUNDING

(Includes funding for both Targeted Watersheds and for the Chesapeake Bay Programs)

(Dollars in Millions)

Fiscal Year	PresBud	Enacted w/o Earmarks	Earmarks	Targeted Watersheds	Total Enacted
1984	$0.0	$4.6	$0.0	$0.0	$4.6
1985	$0.0	$10.2	$0.0	$0.0	$10.2
1986	$0.0	$9.7	$0.0	$0.0	$9.7
1987	$10.1	$10.1	$0.0	$0.0	$10.1
1988	$10.4	$11.4	$0.0	$0.0	$11.4
1989	$11.5	$12.2	$0.0	$0.0	$12.2
1990	$12.0	$12.7	$1.0	$0.0	$13.7
1991	$12.2	$16.2	$2.8	$0.0	$19.0
1992	$16.3	$18.1	$0.9	$0.0	$19.0
1993	$19.8	$20.9	$1.0	$0.0	$21.9
1994	$20.0	$21.2	$0.0	$0.0	$21.2
1995	$20.8	$20.7	$0.0	$0.0	$20.7
1996	$20.8	$21.1	$0.0	$0.0	$21.1
1997	$20.2	$19.8	$0.1	$0.0	$19.9
1998	$19.7	$21.7	$0.8	$0.0	$22.5
1999	$18.9	$19.6	$0.8	$0.0	$20.4
2000	$18.9	$20.3	$0.7	$0.0	$21.0

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2001	$19.5	$20.7	$1.3	$0.0	$22.0
2002	$18.8	$20.6	$1.8	$0.0	$22.4
2003	$20.7	$20.6	$2.0	$0.0	$22.6
2004	$20.8	$20.7	$2.0	$0.0	$22.7
2005	$20.8	$20.8	$2.0	$7.9	$30.7
2006	$20.7	$20.0	$2.0	$5.9	$27.9
2007	$26.4	$26.8	$0.0	$0.0	$26.8
2008	$28.8	$30.5	$0.0	$0.0	$30.5
2009	$29.0	$31.0	$0.0	$0.0	$31.0
2010	$35.1	$50.0	$0.0	$0.0	$50.0
TOTAL	**$472.2**	**$532.2**	**$19.2**	**$13.8**	**$565.2**

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Question 46: What benefits have those tax dollars produced?

Answer: The funding provided to the Chesapeake Bay Program (CBP) partners over the last 25 years has been essential to stemming the degradation of the Chesapeake Bay and raising public awareness of the challenges facing the Bay. A recent analysis by the Chesapeake Bay Program found that several key indicators of the health and restoration of the Chesapeake Bay and its watershed are headed in the right direction:

- Between 1985 and 2009, annual nitrogen loads decreased by 101 million pounds, from 368 million pounds to 267 million pounds per year.
- Between 1985 and 2009, annual phosphorus loads decreased by 7.6 million pounds, from 24.1 million pounds to 16.5 million pounds per year.
- Between 1996 and 2009, 6,858 miles of streamside forest buffers were planted, achieving 69 percent of the program's goal.
- Between 1998 and 2009, 13,614 acres of wetlands were established or reestablished, achieving 54 percent of the program's goal.
- Between 1984 and 2009, submerged aquatic vegetation (SAV) abundance increased by 47,671 acres, achieving 46 percent of the program's goal.
- The population of adult blue crabs in the Bay increased to 223 million in 2009, exceeding the interim target of 200 million. State regulatory actions from 2008 through 2009 are thought to be the primary factor in the crab's recent recovery.

In addition, in the last 25 years, the CBP partners have:

- Adopted the nation's first consistent water quality standards and assessment procedures, prompting major state and local investments in nutrient removal technologies at hundreds of wastewater treatment facilities;
- Established nutrient management plans on more than 3 million farmland acres;
- Preserved more than 1 million acres of forests, wetlands, farmland and other natural resources, meeting the program's Land Preservation goal two years early;
- Developed science, data monitoring, models, and measures that are recognized as some of the best and most extensive in the country and often around the world;
- Placed moratoria on striped bass harvests, leading to restoration of the stock that supports 90 percent of the Atlantic Coast population;
- Advanced use of conservation tillage, now practiced on more than 2 million acres of farmland; and
- Removed blockages to more than 2,000 miles of spawning grounds to help restore migratory fish.

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With the issuance and implementation of the Chesapeake Bay TMDL, the Chesapeake Bay Program expects to significantly increase the rate of progress in the Bay and its watershed to restore water quality.

Question 47: For the record, provide a table that breaks out funding for the Chesapeake Bay by major component, including state grants, targeted grants, and intramural funding for 2010, 2011 and 2012.

Answer: The spreadsheet below presents EPA Chesapeake Bay Program Office financial information for Fiscal Years 2010, 2011 and 2012. Specifically it presents: the FY 2010 Enacted Budget, the FY 2011 operating plan, and the FY 2012 President's Budget.

FY 2010 - FY 2012 Chesapeake Bay Program

(Dollars in Thousands)

Action	FY 2010 Enacted	FY 2011 Op Plan	FY 2012 Pres Bud
Totals	**$50,000.0**	**$54,391.0**	**$67,350.0**
Chesapeake Bay Operations – Intramural	$4,402.0	$5,066.0	$6,001.0
Chesapeake Bay Operations – Extramural	$5,225.0	$7,000.0	$6,449.0
TMDL Development and Implementation	$814.0	$3,000.0	$3,000.0
Reporting & Accountability	$451.5	$650.0	$650.0
Permit Reviews & Rule Implementation	$3,742.0	$4,453.0	$4,194.0
Enforcement	$710.0	$2,135.0	$3,057.0
Clean Water Rules & Guidance	$2,878.0	$3,159.0	$3,679.0

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Chesapeake Stat	$448.5	$1,000.0	$1,621.0
Tidal Water Quality Grants	$2,085.0	$2,100.0	$2,184.0
Nontidal Water Quality & Accountability Monitoring Grants	$916.0	$1,000.0	$1,000.0
Small Watershed Grants	$2,000.0	$1,500.0	$2,000.0
Innovative/Competitive Grants	$7,500.0	$2,000.0	$8,000.0
State Implementation Grants	$18,828.0	$21,328.0	$25,328.0
Air Deposition	$0.0	$0.0	$187.0

*The FY 2011 Operating Plan and the FY 2012 Enacted Budget totals for the sub-components of the Chesapeake Bay program listed in the table are subject to change.

Descriptions:

Chesapeake Bay Operations - Intramural

These funds support Chesapeake Bay Program Office personnel compensation and benefits, travel, facilities, supplies, Working Capital Fund, and related expenses.

Chesapeake Bay Operations – Extramural

These funds support important grants, interagency agreements, and contracts. For many years, the Chesapeake Bay Program has relied on such arrangements to secure the expertise necessary to design and implement a science-based program that integrates the federal government, state agencies, local jurisdictions, and other stakeholders. Without these funds, these arrangements would end.

TMDL Development and Implementation

These funds are necessary to support the development and implementation of the Chesapeake Bay Total Maximum Daily Load (TMDL), including modeling and monitoring that support the

model, the development of watershed implementation plans, and the evaluation of progress toward the pollutant reductions required under the TMDL.

Reporting & Accountability

These funds support independent evaluation as recommended by GAO and E.O. 13508, development of accountability and coordination tools, including maintenance and development of Chesapeake*Stat*, and reporting required by E.O. 13508.

Permit Reviews & Rule Implementation

These funds support implementation of the Chesapeake Bay TMDL development and commitments EPA has made under E.O. 13508, including the review of National Pollutant Discharge Elimination System (NPDES) permits to ensure their consistency with the TMDL, implementation of existing regulations in light of the TMDL, and implementation of new regulations for Concentrated Animal Feeding Operations (CAFOs), urban/suburban stormwater, and new or expanded discharges of pollutants to the waters of the Chesapeake Bay watershed.

Enforcement

These funds support new enforcement responsibilities related to commitments EPA has made under E.O. 13508, including development of an enforcement strategy specific to the Chesapeake Bay watershed and the Chesapeake Bay TMDL, as well as the provision of compliance assistance for permittees challenged by the TMDL and new regulations.

Clean Water Rules & Guidance

This funding supports commitments made under E.O. 13508 to undertake rulemaking to control discharges to the Bay from CAFOs, Municipal Separate Storm Sewer Systems (MS4s), and new or expanded sources of nutrients and/or sediment.

Chesapeake Stat

These funds support development of the technical elements of Chesapeake*Stat*, an innovative tool bringing together budget, monitoring, and geospatial data to vastly improve accountability

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of the agencies and jurisdictions responsible for implementing protection and restoration activities in the Bay watershed.

Tidal Water Quality Grants

These funds support essential monitoring and data collection on the effectiveness of agricultural best management practices (BMPs) and other types of BMPs.

Nontidal Water Quality & Accountability Monitoring Grants

These funds support grant work crucial to analyses of trends and habitat health of the Bay and watershed, assessment of management effectiveness through evaluations against Bay water quality criteria and standards, and calibration and verification for ecosystem models used to derive restoration goals and assist the TMDL process.

Small Watershed Grants

These funds provide grants to organizations for projects that improve the condition of their local watershed while building stewardship among citizens. Recipients develop conservation plans, preserve valuable natural lands, and implement on-the-ground restoration practices throughout the Chesapeake Bay watershed.

Innovative/Competitive Grants - Includes Headwater Grants

These funds support efforts in the Bay watershed to accelerate nutrient and sediment reductions with innovative approaches and to implement cooperative tributary basin strategies and programs that address the water quality and living resource needs in the Chesapeake Bay ecosystem.

State Implementation Grants

These funds provide states with grant funds to implement their Chesapeake Bay programs, to improve their regulatory and enforcement programs, and to develop and implement watershed implementation plans related to the TMDL.

Air Deposition

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These funds will be used to support permit review and rule implementation activities in the watershed.

FILL RULE

On February 24, 2011 the Agency announced that it has no intention of moving forward with any changes to the fill definition for mining debris.

Question 48: Please describe the current status of guidance or rulemaking on the definition of fill material, and what options EPA had previously considered.

Answer: The Administration has not made a decision to move forward with any proposal to modify the 2002 Fill Rule. The agencies agree that any such proposal in the future would be subject to public comment and participation fully consistent with the requirements of the Administrative Procedures Act.

SPRUCE MINE PERMIT

On June 11, 2009 EPA, the Corps and OSM signed a Memorandum of Understanding that established enhanced coordination procedures for the additional review of 79 mining permits in Appalachia. These agencies did so under the guise that it would expedite review of these outstanding permits. About half of those companies withdrew their permits because they did not want to deal with the EPA. Another third of the permits are still under review over a year and a half later. And on January 13, 2011, EPA's rejection of the active Spruce Mine permit showed that the Agency truly has no intention of creating jobs in Appalachia. EPA has signaled to mining companies that the permits they currently have could be revoked at anytime, and that they will hold up permits in the queue without any certainty that the projects will ever move forward. EPA claims elsewhere that it is attempting to provide regulatory certainty so that industry can make long-term investments, but its actions speak much louder than its words.

Question 49: How can any industry that relies on an EPA permit have confidence that EPA will not revoke a permit once it is issued?

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Answer: Over the 39-year history of the Clean Water Act (CWA), EPA has used its authority pursuant to CWA Section 404(c) with care, and only in cases where projects would cause unacceptable adverse effects to human health or the environment. Since Congress passed the CWA in 1972, only 13 projects have been subject to final 404(c) action by EPA. EPA recognizes that action to revoke a previously issued permit should only occur under exceptional circumstances. The Spruce No. 1 Mine presented a unique circumstance in which significant new information became available demonstrating the project's unacceptable adverse effects. Moreover, EPA's action did not affect current mining underway on the project site, which it allowed to continue. EPA's decision protects two streams on the project site that had not yet been affected by mining activities. EPA is not currently reviewing any other previously permitted Appalachian surface coal mining projects pursuant to CWA Section 404(c) and we do not anticipate doing so. When viewed in the context of the tens of thousands of CWA authorizations that have been issued since 1972, and EPA's use of its CWA Section 404(c) authority in only 13 cases, EPA does not believe its actions have contributed to creating an environment of regulatory uncertainty.

COAL COMBUSTION ASH

Following the 2008 TVA Kingston coal ash spill, EPA submitted proposed regulations to OMB which would define coal ash as waste under RCRA Subtitle C. The proposed rule was then sent back to the Agency following many meetings with stakeholders.

Question 50: Please provide the status of the coal combustion rule.

Answer: On June 21, 2010 EPA co-proposed two options for regulating the disposal of coal combustion residuals (CCRs) under the Resource Conservation and Recovery Act (RCRA); one under subtitle C and one under subtitle D. The comment period closed on November 19, 2010.

EPA received more than 450,000 comments on the proposal and EPA is currently analyzing and evaluating all of the comments received.

Question 51: Is EPA still considering a hazardous waste designation for coal ash?

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Answer: EPA is currently evaluating all of the public comments received on the June 2010 proposed regulation, and thus is still considering regulations under both RCRA subtitle C and subtitle D.

In our proposal for regulations under subtitle C, EPA proposed to list CCRs as "special wastes" that are regulated under hazardous waste authority. This was done in an effort to reduce any stigma effects that might occur for the beneficial use of coal combustion residuals. In addition, EPA has not proposed to change the May 2000 Regulatory Determination for CCRs that are beneficially used. These residuals are currently exempt from hazardous waste regulation.

EPA continues to believe that the Bevill exclusion should remain in place for CCRs that are beneficially used in an environmentally sound manner.

MISSISSIPPI RIVER BASIN

EPA has re-proposed to establish a new Mississippi River basin program to reduce nutrient loading as a way to help address the hypoxia problem downstream in the Gulf of Mexico. The 2011 budget proposed to fund the program at $16 million, whereas the 2012 budget proposes to start the program with $6.6 million.

Question 52: What results does EPA expect to achieve from $6.6 million spread across such a large area?

Answer: EPA's long-term vision for the Mississippi River Basin (MRB) program is to work collaboratively with states and stakeholders in the Basin to implement strong, watershed-based nutrient reduction strategies in the highest priority watersheds in the Basin. The goal is to demonstrate how effective nutrient reduction strategies and enhanced partnerships, especially with agricultural interests at both the state and federal level, can be replicated and yield significant progress in mitigating nonpoint source driven nutrient pollution.

The agency expects the MRB program to strengthen existing partnerships with U.S. Department of Agriculture and U.S. Geological Survey to promote sustainable agricultural practices, to reduce nutrient loadings in the Mississippi River Basin, to implement monitoring programs to measure nutrient reductions, and to use an adaptive management approach as appropriate.

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In FY 2012, EPA will build upon our strong coordination with U.S. Department of Agriculture (USDA) and U.S. Geological Survey to invest in the highest priority watersheds in a small number of states in the Mississippi River Basin through a competitive grant process among the states. The states selected for funding will: implement strong, watershed-based nutrient reduction programs for point and nonpoint sources contributing sediment, nitrogen, and phosphorus loading that contribute to water quality problems in state waters and ultimately, the Gulf of Mexico. These programs will target funds towards 3-4 states in the Mississippi River Basin generating the greatest nonpoint source loadings of sediment, nitrogen, and phosphorus and should include monitoring to document actual results from implemented practices as well as plans and schedules for the development of state nutrient water quality standards. EPA and the selected states will also coordinate with USDA on the Natural Resources Conservation Service (NRCS) Mississippi River Basin Healthy Watershed Initiative.

URBAN RIVERS INITIATIVE

The 2012 budget re-proposes to establish a new urban rivers initiative designed to cleanup targeted waterways in urban environments.

Question 53: Are urban waterways not currently addressed through other EPA programs? For example, the Hudson River is currently being cleanup under Superfund authorities in order to reduce the PCBs in the sediment.

Answer: While current EPA programs address particular aspects of urban water restoration, water quality issues in urban settings are dire and complex and require specific attention.

This program focuses on effective coordination of resources and on more actively engaging communities in restoration of their local waterways. Under this initiative, EPA will assist communities, particularly underserved communities, in restoring urban waterways and the surrounding land.

Urban waters are some of the most severely impaired waters in the country and present highly complex restoration issues and challenges. They are often impaired by pathogens, excess nutrients, and contaminated sediments that result from sanitary sewer and combined sewer overflows, polluted runoff from urban landscapes, or legacy contamination. Urban patterns of development also limit community connection to nearby waters, limiting local stewardship.

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Question 54: How does this new program propose to differ from existing programs?

Answer: The program will provide a place-based focus for key existing water programs addressing stormwater management, green infrastructure, combined sewer overflows, sanitary sewer overflows, source water protection, watershed planning, monitoring and assessment, fish advisories and also integrating sustainability and environmental justice goals. EPA will work with a variety of federal, state, tribal, and local partners to more effectively use existing programs to foster increased connection, understanding, and stewardship of local waterways. EPA will help communities become active participants in addressing their water quality issues and reaping the health, economic, and environmental benefits of their waterways.

This program is designed to:

(1) Improve local water quality in selected urban areas.

(2) Increase local capacity to effectively engage on urban waters issues in order to accelerate measurable improvements to urban water quality;

(3) Develop successful models for urban water restoration that can be adopted for use in other areas across the country; and

(4) Better integrate water quality improvement activities with community revitalization efforts, in order to create sustained local support over the timeframe required for water quality restoration.

A key element of the program is the development of innovative, cost-effective approaches that can be shared with communities across the country.

Question 55: Further, why establish a specific pot of funding for urban waterways as opposed to targeting funding for waterways based on water quality issues regardless of where they are located?

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Answer: Urban waters are some of the most severely impaired waters in the country and present highly complex restoration issues and challenges. They are often impaired by pathogens, excess nutrients, and contaminated sediments that result from sanitary sewer and combined sewer overflows, polluted runoff from urban landscapes, or legacy contamination. Urban patterns of development also limit community connection to nearby waters, limiting local stewardship.

ETHANOL/RENEWABLE FUELS STANDARD

Question 56: In January, EPA approved the use of ethanol in engines after model year 2001. For engines prior to 2001, there is not enough data for EPA to state whether it is safe to use gasoline with 15percent ethanol -- the higher ethanol blend could lead to corrosion in those older engines. Allowing E15 in only subset of engines, places consumers at high risk of unknowingly or mistakenly putting E15 in products for which it has not been approved placing the burden on the consumer to read a label at a gas station to know what they are putting in their gas tank is appropriate.

It will be some time before we see gas stations offering a fuel blend with 15percent ethanol. When they do, what could happen to an individual driving a car from model year 1998, if he or she would use fuel with an ethanol blend of 15 percent?

Answer: Last fall, concurrently with the first partial waiver decision for E15, EPA issued a proposed rule to help mitigate the potential for misfueling of vehicles, engines and equipment (including boats and other marine vehicles) not covered by the partial waiver. The proposed rule called for labeling of E15 pumps and product transfer and survey requirements to help ensure E15 is properly labeled. EPA expects to issue a final rule later this spring. EPA has also begun discussions with stakeholders about establishing a public outreach and education campaign to accompany the introduction of E15 into the marketplace. In that rule, the introduction of E15 into vehicles, engines, and equipment not covered by the partial waivers will be prohibited by federal law.

There are a number of emission-related concerns with the use of E15 in vehicles, engines, and gasoline-powered equipment not covered by the partial waivers, including light-duty motor vehicles model year 2000 and older. For model year 2000 and older motor vehicles, these concerns include the potential for catalyst deterioration or catalyst failure, as well as materials compatibility issues that could lead to extremely elevated exhaust and evaporative emissions.

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Question 57: How long would it take before the engine would begin to experience performance issues?

Answer: Unlike for model year 2001 and newer motor vehicles, there is very little, if any, test data with respect the effect of E15 use in model year 2000 and older light-duty motor vehicles. Given this lack of data, we cannot specify how long it would take for pre-model year 2000 light-duty motor vehicles to experience emission-related problems from E15. The impact of E15 varies by vehicle model and with driving habits. As described in our answer to the previous question, our engineering assessment identifies a number of emission-related concerns with the use of E15 – some vehicles may experience an immediate emissions effect while others may experience long term degradation of their emissions control systems.

Question 58: In the interim, what steps is the Agency taking to mitigate this issue?

Answer: EPA is concerned about the potential misfueling of model year 2000 and older light-duty motor vehicles with E15 and is taking several steps to ensure that E15 manufacturers, gasoline retail stations, and consumers properly blend, market, and use E15. The E15 partial waivers include several misfueling mitigation conditions that must be met before E15 may be introduced into commerce. Those conditions include:

- Labels on E15 fuel pumps indicating use is only for model year 2001 and newer motor vehicles
- Product transfer documents tracking E15 fuel through the supply chain so E15 can be properly blended, stored and labeled
- Surveys conducted by E15 manufacturers to ensure proper ethanol content and labeling of fuel pumps

Fuel and fuel additive manufacturers that wish to introduce E15 into commerce must submit a plan for meeting those conditions and EPA must approve the plan before E15 can be introduced E15 into commerce. Additionally, EPA is in the process of finalizing the proposed E15 misfueling mitigation rulemaking that will, once issued, facilitate and help ensure effective implementation of those conditions. Finally, EPA is already in the process of working with ethanol producers and other stakeholders to help establish an industry-led public outreach and consumer education campaign to ensure that consumers make the right fuel choices at the pump.

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HYDRAULIC FRACTURING

In March, EPA's Science Advisory Board was scheduled to review EPA's draft study plan on the impacts of hydraulic fracturing, or "fracking" on drinking water. This study was requested by this Subcommittee in 2010 due to concerns that some have about the process despite the EPA having already studied hydraulic fracturing once before, and finding in 2004 that the process posed no risk to drinking water.

Question 59: How does this study differ from what was conducted in 2004?

Answer: This study will be broader in scope, going beyond evaluating vertical hydraulic fracturing and the direct injection into coal bed methane wells to horizontal hydraulic fracturing in deeper shale deposits. In addition, the study conducted in 2004 was primarily a literature review. The current study includes a literature review and will also undertake research, including laboratory studies, field studies, and modeling (scenario assessment).

Question 60: The EPA website indicates that initial research results are expected by the end of 2012 with the goal of a report by the end of 2012. Given the interest to this Subcommittee, what additional information about the study's timeline can EPA provide at this time?

Answer: EPA anticipates that a draft report of the SAB review of EPA's draft study plan will be made available to the public before the next meeting of the SAB panel. That meeting will be held as teleconference calls on May 19 and 25, 2011. We anticipate a final SAB report in July 2011. Research will begin this year with a report published at the end of 2012. This report will synthesize the results from individual research projects. Some aspects of the study, however, are longer-term and are expected to be reported on in 2014.

Question 61: In 2012, EPA proposes to conduct 5-10 additional case studies on geographic and geological situations in order to better characterize the effects of hydraulic fracturing.

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Will these case studies feed into the study that is currently underway? Or are the proposed case studies in addition to, but an outgrowth from the same directive from the Committee?

Answer: In June 2010, the SAB recommended that EPA conduct 5-10 case studies as a part of the current study. Case studies will provide an understanding of how potential risks may vary in different geologic and geographic situations. The number of case studies EPA conducts is dependent on funding and is a part of the study that is currently under way under the current directive from the Committee. More case studies would allow EPA to examine the potential impacts of hydraulic fracturing under a wider range of conditions in order to reflect the spectrum of impacts that may result from hydraulic fracturing activity.

Question 62: Please provide additional information about where these studies may be located so as to inform the Subcommittee about how representative or comprehensive these studies may be of the nation as a whole.

Answer: We have not yet made final decisions regarding the locations of potential case studies. The February 2011 Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources identifies a number of potential locations for retrospective and prospective case studies. These are:

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Retrospective Case Study Candidate Locations
Bakken Shale *Killdeer and Dunn Co., ND*
Barnett Shale *Wise and Denton Cos., TX*
Marcellus Shale *Bradford and Susquehanna Cos., PA*
Marcellus Shale *Wetzel Co., WV, Green and Washington Cos., PA*
Raton Basin (CBM) *Las Animas Co., CO*

Potential Prospective Case Study Candidate Locations
Bakken Shale *Berthold Indian Reservation ND*
Barnett Shale *Flower Mound/Bartonville TX*
Marcellus Shale *Greene County, PA or other location to be determined*
Niobrara Shale *Laramie County, WY*

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CARBON CAPTURE AND STORAGE

Question 63: The 2012 budget proposes a $2 million increase to research carbon capture and storage. This pales in comparison to what the Department of Energy is spending. What is the EPA researching that DOE is not? Please explain how this is not redundant or duplicative.

Answer: As carbon capture and sequestration (CCS) technology moves toward commercial scale deployment, the Office of Air and Radiation needs to address several critical air and climate-related issues. The FY 2012 President's Budget Request includes an increase of $2M in the EPM account to address these issues. Issues and related activities include, but are not limited to:

- determining the applicability of the Clean Air Act, and other environmental statutes, to the capture, transport, and storage components of a CCS project,
- evaluating technical and economic implications of applying carbon dioxide capture to currently regulated industry sectors, including the potential for increases or decreases in emissions of other criteria pollutants resulting from CCS retrofits, and
- developing a framework for the permitting of the carbon dioxide capture component of a CCS project.

In addition to the work described above, the Office of Research and Development conducts research on geologic sequestration of carbon dioxide funded within the S&T account. The FY 2012 request for this research under the Safe and Sustainable Water Resources Research Program is $3.0 million. This research is focused on providing sound scientific support for protecting underground sources of drinking water under the Agency's Underground Injection Control (UIC) program. The key elements of EPA's research program include:

- *Mechanical well integrity* - this research investigates potential well failure mechanisms and evaluates effectiveness of testing approaches using filed and laboratory experimentation and modeling studies to improve the capacity to prevent, detect, mitigate and respond to well integrity issues
- *Biogeochemical and hydrologic models of the fate and transport of carbon dioxide and displaced fluids in subsurface formations* - this research evaluates effects of carbon dioxide leakage on the biogeochemical processes such as low pH, increased mineral dissolution or release of metal contaminants into groundwater and evaluate the impact on changes to the subsurface microbial communities.
- *Development of monitoring and modeling approaches for characterizing and managing sites in support of SDWA underground injection (UIC) program* - this program develops cost-effective monitoring schemes to track plume migration and detect leaks.

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In FY 2012, the program funded within the S&T account, will continue laboratory and field investigations on risk characterization (monitoring, modeling) and will also address risk management and mechanical well integrity. Our work is tightly aligned with EPA's authority under the Safe Drinking Water Act (SDWA).

EPA works closely with DOE in accessing field sites, sharing data and models, and fostering collaboration with researchers. For example, EPA has a significant interagency agreement with the DOE Lawrence Berkeley National Laboratory (LBNL) supporting CCS modeling and laboratory studies. The interagency agreement was initiated in 2006 and is ongoing. An EPA/DOE invitational workshop is planned for June 1-2 2011, at the LBNL on carbon dioxide geologic sequestration and water resources with the explicit purpose to discuss next steps in furthering coordination and collaboration.

SUPERFUND

The 2012 budget proposes $1.236 billion for the Superfund program, a $70 million reduction from 2010 levels. One concern with regard to the Superfund budget is that only $2 out of every $3 proposes to fund cleanup activities, with the third dollar funding other administrative or overhead activities. And when large reductions are proposed, as is the case for 2012, proportional reductions are applied to the cleanup programs rather than derived from the bloated overhead or administrative activities as one might expect.

Question 64: With only $2 out of every $3 dollars proposed for cleanup, is there not a more efficient way of allocating scare resources to these sites?

Answer: The Agency continues to analyze and maximize the amount of funding which is allocated specifically toward cleanup, as well as minimize administrative related activities. $1.05 billion of the $1.24 billion Superfund FY 2012 President's Budget Request goes directly toward the Superfund remedial, removal, homeland security, enforcement, compliance and federal facilities programs (85percent). Superfund enforcement allows the Agency to clean up more sites by negotiating cleanup agreements with viable potentially responsible parties (PRPs). Since the program's inception, EPA has achieved more than $8 in private party cleanup commitment for every $1 spent by EPA on Superfund civil enforcement costs.

The remaining part of the program budget is directed toward other functions that ultimately support site cleanups. These functions make up a small portion of EPA's Superfund appropriation. Without these services, the Superfund program would not have the science or operational tools needed to support Agency decisions. As is the case with other EPA programs,

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a small portion of the Superfund appropriation request is directed toward a variety of functions that keep programs running, as well as support congressional allocations to Science and Technology and the Office of Inspector General. Management and support functions include facility infrastructure and operations, information technology, human resources, budget and financial systems, and acquisition management functions.

The Agency, however, continues to try to improve the efficiency of the Superfund program. To this end, the Agency is continuing a multi-year effort to integrate and leverage its land cleanup authorities to address a greater number of contaminated sites, accelerate cleanups, and put sites back into productive use while protecting human health and the environment. The Integrated Cleanup Initiative represents EPA's commitment to bring more accountability, transparency and progress to contaminated site cleanups. EPA has made an implementation plan for the Initiative publicly available for comment and will continue to provide updates and feedback as the Initiative proceeds. Updates on the Initiative can be found at http://www.epa.gov/oswer/integratedcleanup.htm.

The Agency is also continuing to improve the effectiveness of our acquisition practices and reducing the use of high-risk contracting authorities as part of the Superfund Contracts 2010 reassessment of the Superfund acquisition process under the President's Memorandum on Government Contracting and OMB's Memorandum on Improving Government Acquisition.

EPA also has a number of technical and financial management tools to ensure that its Superfund resources are managed effectively and efficiently.

Technical tools include:

- Triad – a cost effective site characterization program;
- Value Engineering – specialized cost control techniques;
- National Risk-Based Priority Panel – helps to ensure we address highest risk sites first;
- Contaminated Sediments Technical Advisory Group – monitors and provides advice regarding large, complex contaminated sediment Superfund sites;
- National Remedy Review Board – evaluates our most costly sites;
- Optimization Reviews – to ensure the most efficient operation of existing ground water treatment and monitoring systems; and,
- Project Management – a program-wide focus to ensure maximum efficiency and effectiveness in how the Superfund remedial program is managed.

Financial management tools include:

- Policies and procedures to ensure that Superfund costs are appropriately identified and charged;

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- Timely and efficient de-obligation of prior year funds to make them available for re-obligation;
- Issuance of guidance to use special account funds before appropriated funds, as appropriate;
- Annual performance measures to ensure the efficient planning, distribution, and utilization of Superfund resources; Annual review of the Agency's internal controls to verify that policies and procedures are being properly implemented and that any needed corrective actions are performed; and
- Obtaining better prices for goods and services via increased use of Federal Strategic Sourcing Initiative (FSSI) and other strategic sourcing vehicles, using competitive Firm-Fixed Price acquisitions to perform some remedial actions historically performed under Cost Reimbursement contracts, and negotiating better prices for goods and services.

SUPERFUND: CONSTRUCTION COMPLETES

EPA failed to meet its construction complete target for 2010. Perhaps the Agency should consider revisiting the Integrated Cleanup Initiative which focuses on interim, process targets as measures of success rather than on goals that push the program closer to final cleanup achievements such as site-wide ready for reuse.

Question 65: How does the program expect to increase the number of construction completes from 18 in 2010 to 22 in 2012, while at the same time cutting $30 million from the Remedial program?

Answer: The Superfund program is working toward a goal of 22 site-wide construction completions in FY 2012. In support of this goal, the program is managing a pool of candidate sites that includes EPA funded sites, responsible party lead sites, and sites addressed by other Federal agencies. In this regard, it is important to note that Federal Facilities and responsible party lead sites generally are not directly impacted by a potential reduction in appropriated resources in the Superfund Remedial program. Sites move in and out of the pool of candidates based on a number of factors - including, but not limited to, the identification of new areas of contamination and other site specific conditions and traditional construction issues such as equipment availability and weather. Therefore, achieving the construction completion goal may continue to be a challenge for the Superfund program.

While the Superfund program is working to achieve the goal of 22 construction completions in FY 2012, in FY 2011 the Agency is beginning to report on a new program

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measure to capture "Remedial Action (RA) Project Completions." The program has a goal of achieving 113 RA Project Completions in FY2012. Superfund construction projects are generally multi-year endeavors, and several construction projects are often necessary at a site before site-wide construction is achieved. The new RA Project Completion measure emphasizes incremental progress in reducing risk to human health and the environment and complements one of the principal elements of EPA's Integrated Cleanup Initiative (ICI), which is to increase the Superfund site project management focus and manage projects to completion as a means to identify opportunities to increase project completion timeframes.

Additionally, the Superfund Program tracks progress of sites through the Sitewide Ready-for-Anticipated Use (SWRAU) measure. In FY 2012, the SWRAU target is 65. This measure reflects the importance of considering future land use as part of the cleanup process by tracking the number of National Priorities List (NPL) sites that meet the following criteria: 1) all aspects of the cleanup are in place and have been achieved for any media that may affect current and reasonably anticipated future land uses, so that there are no unacceptable risks and 2) all land use restrictions or other controls required as part of the cleanup are in place.

Question 66: How many construction completes does the program anticipate from Recovery Act funds in 2012?

Answer: The Superfund program will work toward a goal of 22 construction completions in FY 2012. In support of this goal, the program is managing a pool of candidate sites that currently includes a combination of sites that received Recovery Act funds and sites that did not (including Federal Facilities, responsible party lead sites, and sites funded through congressional appropriations). Sites continually move in and out of the pool of candidates based on a number of factors, including the identification of new areas of contamination and other site specific conditions and traditional construction issues (e.g., equipment availability, weather). Due to these dynamic factors, it is difficult at this time to estimate the number of Recovery Act-funded sites that will achieve construction completion in FY2012. Of our current universe of FY 2012 candidates, four sites received Recovery Act funds.

To date, four of the 51 sites that received Recovery Act funds have achieved construction completion (1 site in FY 2009 and 3 sites in FY 2010). All four of these sites received Recovery Act funds in FY 2009 to start construction on a new remedial action project. Without Recovery Act funds, it is unlikely that the Superfund program could have started these projects in FY 2009. Therefore, construction completion at each of these sites would have been delayed until other resources became available to start construction. A similar situation exists for the Recovery-Act funded sites that are in the current universe of sites as candidates for construction completion in FY 2011 and FY 2012. The majority of these sites also received Recovery Act funds to start a

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new remedial action, which would have otherwise been delayed until other funding resources became available. Remaining Recovery Act funds will be used to accelerate on-going work, even if sites cannot achieve construction complete in 2012.

MOBILE SOURCE FEES PROGRAM

Question 67: Approximately what percentage of the program costs are offset through these fee collections?

Answer: Although EPA has not calculated the precise percentage of program costs that the Agency offsets through fees, the 2004 Fees Rule methodology for setting fee rates and recovery targets was designed to offset almost all of EPA's recoverable program costs. These fees are deposited into a special fund in the Treasury as required by statute and EPA's use of revenues from the fees is subject to appropriations.

EPA proposed an initiative as part of the FY12 budget process to update the fees rule to collect about $7M annually in additional fees revenue. EPA continues to collect fees according to provisions established in the 2004 Fees Rule. Under those provisions EPA would expect to collect $21.1M in fees revenues in 2012.

Question 68: The Congressional Justification proposes to establish a new renewable Fuels Program fee while updating the existing fee program in order to collect an additional $7 million in 2012. The new fee would be imposed on the registration and reporting on fuels and fuel additives, but the budget does not indicate who the fee would be imposed upon. What sectors would be affected by the new fee?

Answer: Although EPA has not initiated a rulemaking to determine the specific sectors and users that would be affected by the proposed Fuels Program fee, generally speaking such a fee would likely cover any producer or importer of fuel that wishes to introduce a new fuel or fuel additive into commerce, if the fuel is not already registered under title 40 of the Code of Federal Regulations, part 79. Examples of the kinds of costs that would be covered in the new fee include items such as direct and indirect personnel costs, physical overhead, consulting, and

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other indirect costs including material and supply costs, utilities, insurance, travel and rents, as well as management and supervisory costs.

Question 69: Who are the "users" in this scenario?

Answer: Please see response to the question above.

Question 70: When finalized what percentage of program costs will then be financed through user fees?

Answer: When EPA undertakes a new rulemaking action to update the fees program, EPA will establish program full cost recovery goals as part of the regulatory development process. The current program was designed to recover all of EPA's recoverable program costs through user fees. With the expansion of responsibility afforded EPA by the Renewable Fuels Standard and mobile source greenhouse gas rules, lab upgrades are an example of activities that could be addressed in a new fees rule. In determining the amount sufficient to recover full costs, EPA would use guidance established in the Clean Air Act, the Independent Offices Appropriation Act, OMB Circular A-25, and any other applicable guidance.

E-MANIFEST USER FEES

The 2012 budget proposes $2 million to fund the e-manifest system and indicates that legislative language will be sent to authorize the collection of e-manifest user fees to fund the development of the system. Nearly 140,000 regulated entities from 45 industries produce up to 5 million hazardous waste paper manifests per year. The paper manifests are required to be kept for a minimum of 3 years. All of the paper tracking and record keeping amounts to a cost of $200 to $500 million per year. In short, this type of a system is long overdue.

Question 71: Please provide the Committee with a sense for when the Administration will submit user fee language for consideration.

Answer: The Administration's E-Manifest proposal is currently in the final stages of development. We expect to transmit a proposal for Congressional consideration shortly.

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ENERGY STAR: VERIFICATIONS AND USER FEES

Last year the Energy Star program received a less than favorable review from a GAO investigation that identified programmatic deficiencies leading to false products such as a gas-powered alarm clock to qualify for the Energy Star label. In response EPA instituted several reforms including 3rd party verification. Several companies have raised concerns that this will increase their costs of obtaining the Energy Star qualification. The 2012 budget proposes to collect user fees for the Energy Star program yet states fee collections would not begin until 2013.

Question 72: Please provide, by fiscal year, estimates for fees collected from 2012-2021.

Answer: The Federal Receipts section of the Analytical Perspectives component of the President's Budget for Fiscal Year 2012 states that "Fee collection would start in 2013 after EPA undertakes a rulemaking process to determine products to be covered by fees and the level of fees, and to ensure that a fee system would not discourage manufacturers from participating in the program or result in a loss of environmental benefits" (p. 230). The Analytical Perspective volume of the Budget also includes a table (p. 228) that includes an initial estimate of $5 million per year from 2013 to 2021. Until EPA completes updates to the program, estimates the total cost to the government to implement the labeling program, and determines the feasibility of charging fees to product manufacturers, the total potential fee collection will be uncertain. The $5 million annual collection shown in the Budget serves as a placeholder until the analyses are completed.

Question 73: Does EPA require new legislative authority in order to collect the fees?

Answer: No.

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Question 74: If not, why not?

Answer: The Independent Offices Appropriation Act (IOAA) establishes broad authority for federal agencies to assess and establish user fees for a service or thing of value provided by the agency to an identifiable recipient. The relevant text states as follows:

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

The Office of Management and Budget's (OMB) Circular No. A-25 was issued under the authority of the IOAA and also establishes Federal policy regarding fees assessed for government services and for the use of Government goods or resources. EPA is also guided by OMB Circular No. A-25. The IOAA would provide authority to assess and establish fees for the ENERGY STAR product labeling program. User fees collected under this program will be credited to the general fund of the Treasury.

Alternatively, legislation would be required in order for EPA to spend the collected fees to administer the program. EPA is analyzing whether such a mechanism would be a preferred approach, and if so, will work with OMB and Congress to pursue appropriate legislation.

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EPA REGULATIONS

Question 75: Please provide for the Subcommittee a table of rules scheduled to be proposed or finalized in 2012 by EPA office, including the proposed funding in the 2012 budget for work on each rule and the program project area in which that funding resides.

Answer: Regulations currently expected to be proposed or finalized in FY2012 by EPA programs may be found using the Agency's Rulemaking Gateway at the following link: http://yosemite.epa.gov/opei/RuleGate.nsf/. Rulemakings that are primarily technical amendments or routine in nature are typically not included in the Rulemaking Gateway.

EPA's FY2012 budget request contains data regarding program funding consistent with previous budget request submissions and can be found at the following link: http://www.epa.gov/planandbudget/annualplan/fy2012.html. EPA's budget cannot be separated into non-overlapping pots of funding, where each pot represents an individual rule. For one thing, in many cases, an individual EPA employee works simultaneously on more than one rule. Also, where appropriate, a particular piece of EPA technical work can be put to use in more than one rulemaking.

EPA IRIS ASSESSMENT OF HALOGENATED PLATINUM COMPOUNDS

In 2005, EPA announced its intent in the Federal Register to initiate an Integrated Risk Information System (IRIS) assessment of elemental platinum due to concerns with potential ambient platinum emissions from automobile catalytic converters. In 2009, without explanation or adequate notice, EPA changed the scope of its risk assessment to halogenated platinum salts and compounds, including chloroplatinates. Chloroplatinates are vital intermediate materials for key downstream applications such as automobile pollution control, pharmaceutical manufacture, petroleum refining and fertilizer production. There are no substitutes for chloroplatinates.

Question 76: Exposure to chloroplatinates can result in respiratory sensitization. There is no documentation of sensitization to chloroplatinates outside the workplace.

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Answer: Based upon EPA's review of the scientific literature, studies have not been conducted to date that have evaluated allergic sensitization to chloroplatinates due to non-occupational exposure. However, since occupational exposures indicate this type of exposure may pose a risk to humans, EPA decided to include halogenated platinum salts and compounds in its assessment.

Question 77: Since the ambient exposure to platinum is from elemental platinum and platinum oxides, why did EPA change course to focus its IRIS assessment on halogenated platinum compounds? What led EPA to conclude there is any ambient exposure to halogenated compounds such that an IRIS assessment would fall within the scope of NCEA's mission? What scientific studies did EPA use as a basis to shift the focus of the IRIS assessment? When the EPA IRIS program decided to study platinum compounds, why did it not give notice of this change in the Federal Register?

Answer: The Air Program informed ORD that it needed the assessment of platinum and platinum compounds to inform its evaluation of platinum fuel additives for diesel engines in EPA's diesel retrofit program. EPA has posted a general statement (http://www.epa.gov/cleandiesel/documents/420b08014.pdf) regarding emissions from the use of platinum-based fuel additives that can be found under "related information and links" at: http://www.epa.gov/cleandiesel/verification/verif-list.htm. Researchers at the University of Wisconsin have confirmed the presence of soluble platinum with anionic character (i.e., soluble platinum in the form of a salt) in emissions from combustion engines operating on platinum additives (Shafer et al., 2005). This is the fraction in which halogenated platinum salts would be found. Because of this finding and the potential exposures involved, EPA needs to be informed by a finalized assessment of halogenated platinum salts. OAR's request for the assessment of platinum and platinum compounds was not related to any concerns regarding emissions from catalysts commonly used on automobiles.

Researchers at the University of Wisconsin are currently developing methods to identify the components (e.g., chloroplatinates) of the soluble fraction. Because of the confirmed presence of soluble platinum in ambient exposures, and the potential for the presence of halogenated platinum salts within that soluble fraction, EPA decided to proceed with an IRIS assessment. As noted above, the Air Program has indicated the need for the assessment to inform decisions related to the use of platinum-based fuel-borne catalysts. Based upon this information, EPA believes the potential exists for exposure to halogenated platinum salts. In addition, platinum compounds have been detected in urban soils, roadside dusts, and suspended air particulates and are comprised of two distinct forms, soluble and insoluble platinum. Insoluble platinum includes elemental platinum and platinum oxide. Likewise, soluble platinum includes halogenated platinum salts (e.g., chloroplatinates). The current scientific evidence

confirms the presence of soluble platinum in the environment (Zereini et al., 2001; Artelt et al., 1999), but has not identified halogenated platinum salts, probably due to a combination of low concentrations of the chemicals in the environment and limitations in available analytical methods. Through evaluation of the health effects literature, scientific support for the identified critical effect, allergic sensitization, or related health effects due to exposure to platinum compounds is well documented (Cristaudo et al., 2005; WHO, 2000, 1991; Merget, 2000; Merget et al., 2000, 1999, 1988; Calverley et al., 1999, 1995; Linnett and Hughes, 1999; Bolm-Audorff et al., 1992; Baker et al., 1990; Pepys, 1984; Pepys et al., 1972; Marshall, 1952; Hunter et al., 1945). EPA determined that the only sufficiently robust database to derive a human health toxicity value was for halogenated platinum salts. EPA announced its decision to focus on halogenated platinum salts when the draft Toxicological Review was submitted for public comment in February 2009. This preliminary Agency decision to focus on the health effects of halogenated platinum salts was announced in the Federal Register (http://www.epa.gov/fedrgstr/EPA-RESEARCH/2009/February/Day-05/r2466.htm) immediately after the first round of Agency and Interagency Review. EPA consulted with its Agency and Interagency reviewers in making its decision to focus on halogenated platinum salts. EPA has acknowledged that it could have been clearer about this change in direction when communicating to the public. EPA released the draft IRIS assessment for public comment and external peer review in February 2009.[1]

Question 78: The Committee understands that more than one member of the external peer review panel remarked on either the lack of evidence of general population exposure or the irrelevance of the workplace epidemiology reference study used. Is the EPA IRIS program aware of any actual observation of any actual human exposure to halogenated platinum salts outside of a workplace where such halogenated platinum salts are used? If so, please describe the circumstances of that actual non-workplace human exposure. If not, please state whether EPA believes that actual human exposure to halogenated platinum salts is a matter of general public health concern outside of workplace exposure, and why.

Answer: As indicated in the Answer to Q77, EPA's OAR is evaluating platinum fuel additives for diesel engines in EPA's diesel retrofit program. EPA has posted a general statement (http://www.epa.gov/cleandiesel/documents/420b08014.pdf) regarding emissions from the use of platinum-based fuel additives that can be found under "related information and links" at: http://www.epa.gov/cleandiesel/verification/verif-list.htm. Due to the use of platinum as a fuel additive, the potential exists for general public exposure to these halogenated platinum compounds through inhalation and oral routes of exposure. While this is the focus of the need for the assessment, there will be future uses some of which are also discussed in Q77. OAR's

[1] http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=203203

request for the assessment of platinum and platinum compounds was not related to any concerns regarding emissions from catalysts commonly used on automobiles.

The confirmed presence of soluble platinum in ambient exposures, and the potential for the presence of halogenated platinum salts within that soluble fraction, supports EPA's decision to proceed with an IRIS assessment. Research efforts to characterize ambient exposure to platinum compounds are on-going and indicate halogenated platinum salts may be present within the soluble fraction of roadside dust. Research to evaluate and characterize the emissions from combustion of diesel fuel containing platinum additives is underway at the University of Wisconsin. Platinum compounds have been identified in urban soils, roadside dusts, suspended air particulates, and arctic ice (Rauch et al., 2005; Zimmerman and Sures 2004; Gomez et al., 2002; Babante et al., 2001; Hees et al., 1998). This potential engenders a public health concern due to the evidence of platinum sensitization in humans.

Question 79: The proposed reference concentration in the draft assessment is 8,000 times lower than any ever established by EPA and below levels that can be measured. What scientific data did the agency rely upon for the proposed reference concentration? What leads the agency to believe this is the most toxic material it has ever evaluated especially given that the health effect of concern has only ever occurred in the workplace?

Answer: The IRIS program bases human health assessments and the resulting human health toxicity values on the best available science. The best available dose-response information for halogenated platinum salts is a study on allergic sensitization of workers in a facility using halogenated platinum salts. Merget et al (2000) is the basis of the draft Reference Concentration (RfC) along with several supporting epidemiological studies (Linnett and Hughes, 1999; Bolm-Audorff et al., 1992; Baker et al., 1990; Brooks et al., 1990). These data, and the characterization of uncertainty, are the primary factors in establishing an RfC. The assessment describes the uncertainty associated with the derivation of the reference concentration. By definition, if continuous, lifetime environmental exposures to halogenated platinum salts are determined to be below the RfC, EPA believes such exposures will not result in deleterious human health effects.

Question 80: If implemented, this reference concentration could result in regulatory standards necessitating re-engineering of industrial processes with significant financial consequences, likely resulting in movement of U.S. platinum refining off shore. Does EPA find that risk assessments that would drive regulatory standards to the point that key U.S. industries

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such as manufacturing of automobile pollution control technologies would be reliant on foreign suppliers in the country's best interest?

Answer: EPA's focus is in regard to a very small segment of the platinum market involving the use of platinum fuel additives. EPA shares the strong desire to continue the production of pollution control technologies that enable significant mobile source emissions reductions.

It is important to remember that an IRIS human health assessment is a scientific and technical report. In the risk assessment/risk management paradigm, an IRIS assessment is on the risk assessment side of the paradigm providing information on Step 1: Hazard Identification, and Step 2: Dose-Response Assessment, of the four-part risk assessment process (NAS, Risk Assessment in the Federal Government: Managing the Process, 1983). Combined with specific exposure information (Step 3: Exposure Assessment), government and private entities can use IRIS to help characterize (Step 4: Risk Characterization) public health risks of chemical substances in site-specific situations. The supporting science, statutory and legal considerations, risk management options, public health considerations, cost/benefit considerations, economic factors, social factors, and other considerations are weighed to begin management of the risk after the four steps of risk assessment are concluded.

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EPA IRIS ASSESSMENT OF INORGANIC ARSENIC

EPA issued a revised draft IRIS assessment of inorganic arsenic in 2010. The revised assessment provides for a 17-fold increase in the cancer potency factor from oral exposure to inorganic arsenic. The revised IRIS assessment restrictively reinterprets the same 50 year-old data set of inorganic arsenic in drinking water wells in Taiwan as the previous assessment, and cuts off its review of scientific data after 2007, excluding consideration of over 300 studies in the published literature since that date. Despite its lack of reliance on current science, the revised IRIS assessment would drive regulatory standards for drinking water and soil clean up to levels – below background in many cases -- that would wreak havoc for local communities and create the misimpression that significant parts of the drinking water and food supply are unsafe.

Question 81: Since the draft assessment was released in 2010 why did the Agency arbitrarily cut off its review of studies in the published literature at 2007, leaving over 300 studies un-reviewed? How can this failure to rely on current science, including some recently published studies from highly respected researchers on inorganic arsenic's mode of action, be squared with EPA's strong public commitment to reliance on the best available science?

Answer: There is a substantial body of scientific evidence regarding the chemistry, exposure, and potential health effects of inorganic arsenic. EPA will consider this large body of evidence, in its entirety, in the final assessment of inorganic arsenic. Specifically, EPA evaluated the evidence published prior to 2008 in the draft assessment released in early 2010. Although there have been many publications since December 2007, few were identified by EPA as affecting either the cancer evaluation or the estimate of the oral cancer risk estimate for inorganic arsenic. EPA will consider these newer studies, as well as published data from ongoing research efforts, when revising the draft assessment in response to the 2011 Scientific Advisory Board (SAB) report.[2] EPA's consideration of the more recent studies will be available and described in the revised draft assessment that will undergo Final Agency review and an EPA-led Interagency science discussion prior to posting on the IRIS database.

Question 82: The last peer review by the EPA Science Advisory Board of the previous assessment of inorganic arsenic was competed in 2007. That SAB report made several recommendations that were not addressed in the 2010 draft assessment. In particular, the 2007

[2] http://yosemite.epa.gov/sab/sabproduct.nsf/9FCEE4E20ABD6EB485257846007 91AC2/$File/EPA-SAB-11-003-unsigned.pdf

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SAB report suggested EPA consider the possibility that a safe threshold determination for exposure to inorganic arsenic at low levels could be made, consistent with EPA's 2005 Cancer Guidelines. The 2010 assessment seems to ignore that recommendation. Please explain why that recommendation, in addition to the other recommendations in the report, was not addressed.

Answer: The 2007 SAB report[3] noted the possibility of a nonlinear dose-response at low exposures to inorganic arsenic. The report also concluded that uncertainty in the mode-of-action for inorganic arsenic supported the use of a linear low dose extrapolation approach to determine cancer risk for inorganic arsenic. In the Charge Questions[4] submitted to the 2010 SAB Arsenic Workgroup, EPA specifically requested comment on modeling approaches to inorganic arsenic cancer risks. This 2010 SAB Arsenic Workgroup, in their 2011 SAB report, supported the EPA's use of a linear approach given the complexity of the mode-of-action of arsenic. The March 1, 2011 letter from the SAB Chair, and SAB Arsenic Workgroup Chair, to Administrator Jackson states, "In 2007, the SAB noted that there was a possibility of a nonlinear dose-response at low exposures to arsenic, but due to the lack of a complete understanding of the mode-of-action by which inorganic arsenic causes cancer in humans, the choice of a specific nonlinear model could not be justified. The SAB supports the agency's choice of using a default linear approach given the complexity of the mode-of-action of arsenic."

Question 83: Has the methodology from which the cancer potency factor is derived been independently peer reviewed? If not, why?

Answer: Yes, the 2007 SAB panel peer-reviewed the cancer modeling methodology for inorganic arsenic in its review of EPA's 2005 External Review Draft Toxicological Review of Ingested Inorganic Arsenic.[5] The 2007 SAB report included several recommendations for revision and corrections to EPA's 2005 Draft. EPA considered all of the conclusions and recommendations from the 2007 SAB report in revising the draft assessment.

Question 84: The charge questions to the Science Advisory Board for review of the 2010 assessment were very narrowly drawn resulting in a workgroup composition unsuited for a broader review. This seemingly compromises the independent integrity and utility of the Science Advisory Board. What compelled the Agency to artificially confine the limits of the peer review process?

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[3] http://yosemite.epa.gov/sab/sabproduct.nsf/EADABBF40DED2A0885257308006741EF/$File/sab-07-008.pdf
[4] http://yosemite.epa.gov/sab/sabproduct.nsf/C74350B789B646D4852576D900693B14/$File/ORD-NCEA+Charge+Memo+for+ARSENIC-WG+Feb+26+2010.pdf
[5] http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=494513

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Answer: The SAB completed, in 2007, an independent peer review of the 2005 External Review Draft Toxicological Review of Ingested Inorganic Arsenic. After revising the draft assessment and in response to comments received from external stakeholders, EPA went well beyond the normal peer review process and opted to conduct a second external peer review focused on EPA's implementation of the recommendations received from the 2007 SAB panel. In other words, the 2010 SAB panel review was a second peer review of the revisions that were made as a result of the 2007 SAB panel review. The scope of the review was discussed at the SAB face-to-face meeting on April 6-7, 2010, as well as during the chartered SAB meetings on June 16, 2010 and November 22, 2010. The following text was contained in the Charge to the 2010 SAB Arsenic Work Group (emphasis added):

> *"The goal of this focused external peer review is to evaluate EPA's implementation of the key SAB (2007) external peer review recommendations. This focused review should concentrate on EPA's Response to the SAB comments in Appendix A and the corresponding revisions in the 2010 draft IRIS assessment. Please provide specific response to the Charge below. If there are recommendations for further changes or additions to the assessment, please provide specific information on how those changes could be implemented with the currently available scientific information."*

Question 85: Many small water systems in Idaho and other Western states are experiencing difficulty complying with the current drinking water standard for arsenic of 10 parts per billion (ppb). I am told that a revised standard based on the proposed IRIS risk values would likely be less than 1 ppb, which seems impossible to justify on many levels. What value are IRIS risk assessments when they pose such a dilemma for risk managers in the program offices and regions in development of regulatory and permitting standards that are totally unrealistic?

Answer: While it is possible that external groups have used the draft IRIS value to calculate a potential regulatory number (such as "less than 1 ppb"), EPA has not calculated a regulatory number because EPA has not embarked on any effort to revise the drinking water standard. It is important to remember that an IRIS human health assessment is a scientific and technical report. In the risk assessment/risk management paradigm, an IRIS assessment is on the risk assessment side of the paradigm providing information on Step 1: Hazard Identification, and Step 2: Dose-Response Assessment, of the four-part risk assessment process (NAS, Risk Assessment in the Federal Government: Managing the Process, 1983). Combined with specific exposure information (Step 3: Exposure Assessment), government and private entities can use IRIS to help characterize (Step 4: Risk Characterization) public health risks of chemical substances in site-specific situations. The supporting science, statutory and legal considerations, risk management options, public health considerations, cost/benefit considerations, economic factors, social factors, and other considerations are weighed to begin management of the risk after the four steps of risk assessment are concluded. Thus, the scientific human health

assessment being developed for arsenic will be only part of the information evaluated by the Agency when the Agency embarks on any regulatory decisions associated with this chemical. While it is possible that external groups have used the draft IRIS value to calculate a potential regulatory number, EPA has not embarked on any effort to revise the drinking water standard. Additionally, it is not EPA's practice to use draft toxicity values in setting standards.

Question 86: The EPA Science Advisory Board charged to review the Agency's assessment of dioxin for IRIS released its draft report in February 2011. The SAB indicated that EPA's failure also to include non-linear modeling to estimate the cancer toxicity of dioxin was "inconsistent with the EPA (2005) cancer guidelines," which clearly state that "nonlinear extrapolation having a significant biological support may be presented in addition to a linear approach when the available data and a weight of evidence evaluation support a nonlinear approach, but the data are not strong enough to ascertain the mode of action applying the Agency's mode of action framework." (pp. 3-23/24). Given the language in EPA's guidelines, the wealth of available data regarding the carcinogenic mode of action for inorganic arsenic, and the 2007 arsenic SAB recommendation for EPA to also evaluate non-linear approaches, why did EPA not conduct comprehensive non-linear modeling for inorganic arsenic and instead rely on the traditional linear approach to estimate a cancer potency factor?

Answer: Although the 2007 SAB report noted the possibility of a nonlinear dose-response at low exposures to inorganic arsenic, it concluded that uncertainty in the mode-of-action for inorganic arsenic supported the use of a linear low dose extrapolation approach to determine cancer risk for inorganic arsenic. The 2011 SAB report (developed by the 2010 SAB panel) supported the EPA's use of a linear approach given the complexity of the mode-of-action of arsenic. The March 1, 2011 letter from the SAB Chair, and SAB Arsenic Workgroup Chair, to Administrator Jackson states, "In 2007, the SAB noted that there was a possibility of a nonlinear dose-response at low exposures to arsenic, but due to the lack of a complete understanding of the mode-of-action by which inorganic arsenic causes cancer in humans, the choice of a specific nonlinear model could not be justified. The SAB supports the agency's choice of using a default linear approach given the complexity of the mode-of-action of arsenic. Although extensive new research has been done in this area, there is not enough information in the literature to fully define the multiple modes-of-action for arsenic carcinogenicity." (See reference 1.) The Executive Summary of the 2011 SAB report also states, "The SAB concludes that there are multiple potential mechanisms for arsenic carcinogenicity and potential target tissues. The SAB notes that although a large amount of research is available on arsenic's mode-of-action, the exact nature of the carcinogenic action of arsenic is not yet clear. Therefore, there is not enough information in the literature to define a mode-of-action for all of the relevant cancer endpoints for this assessment." (See reference 1.)

The 2010 External Review Draft "Toxicological Review of Inorganic Arsenic (cancer)" includes both linear and non-linear models. Specifically, EPA applied the quadratic, quadratic exponential, and linear exponential models to the Taiwanese dataset and found no substantive

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effect on the estimated cancer potency estimates (i.e., oral cancer slope factor). The 2011 SAB report agreed with the EPA that non-linear modeling did not materially change the cancer potency estimates derived from the linear model (see reference 1).

Question 87: The draft assessment relies upon a reinterpretation of drinking water samples taken over a half-century ago from wells in Taiwan. The Committee is concerned with EPA's reliance on these data to the exclusion of more recent peer reviewed data. The Committee is aware that questions have been raised about the underlying reliability of these ancient data, particularly because of high and low-dose classification confusion and because inclusion of certain geographic data greatly distorted the analysis and increased the risk factor by eight fold. Given the Administration's stated commitment to using the very best, most reliable, and scientifically defensible science, how can the Agency justify its reliance on data that have been the subject of persistent scientific doubt, especially given the enormity of the implications of these data in calculating the cancer potency factor for inorganic arsenic?

Answer: The epidemiological data from Taiwan have been retained in EPA's revised draft assessment because the NRC (1999, 2001), SAB 2007, and SAB 2011 reviews have consistently recommended the use of these data as the most appropriate dataset for assessing the cancer risk due to exposure to inorganic arsenic. Recent epidemiological studies (2008 to present) were not reviewed in EPA's assessment, although some consideration was given to these studies through public comments and discussion by the 2010 SAB panel. As recommended by the 2010 SAB review panel (in its 2011 report), EPA's consideration of the more recent studies will be available and described in the revised draft assessment that will undergo Final Agency review and an EPA-led Interagency science discussion prior to posting on the IRIS database.

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OZONE STANDARD

Question 88: Given that government resources are limited, isn't it wasteful to have two reviews of the ozone air quality standards underway simultaneously?

Answer: Given the iterative nature of EPA's review process for all national ambient air quality standards (NAAQS), it was inevitable that a reconsideration of the 2008 ozone NAAQS would overlap with the next periodic review of those standards. In the Administrator's judgment, a reconsideration of the 2008 ozone rule was necessary to ensure the national ambient air quality standards (NAAQS) for ozone meet the substantive requirements of section 109(b) of the Clean Air Act. The importance of the ozone NAAQS to public health and welfare weighed heavily in favor of reconsidering parts of the 2008 final rule as soon as possible. The reconsideration is based entirely on the scientific literature available in the 2008 review.

The reconsideration is wholly distinct from the process set forth in sections 108 and 109 of the Clean Air Act requiring the Agency to conduct a review of the standards every five years. EPA began its next periodic review of the ozone standards in late 2008, after the prior review had been completed. As part of this review, EPA will consider the new scientific evidence that has become available since the completion of the science assessment in the last NAAQS review.

EPA recognizes that the time period for the reconsideration overlaps significantly with the next periodic review of the ozone NAAQS. Taking the time needed to give full consideration to the information available at the time of the 2008 rulemaking and to public comments received on the 2010 proposal is essential given the importance of the ozone NAAQS in protecting public health and welfare.

Question 89: It is now three years since the previous ozone standards were finalized. Why is EPA still reconsidering that standard, specifically relying pre-2006 out-of-date science, when it should be fully engaged in the next five year review of the standards?

Answer: EPA decided to reconsider the 2008 ozone rule, based on the scientific and technical record that existed at that time, in order to ensure the ozone national ambient air quality standards (NAAQS) meet the substantive requirements of section 109(b) of the Act. The

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reconsideration rests on the more than 1,700 scientific studies available in the rulemaking record as of 2008. It is important to note that EPA's Office of Research and Development conducted a provisional assessment of relevant studies completed since the last assessment of the science, and found that they do not materially change the state of the science from the Criteria Document released in 2006. Thus, it remains appropriate for the Administrator to continue to rely on the same scientific record to complete the reconsideration, and to save new information since the 2008 review to be considered as part of the next periodic review of the ozone standards.

In a process parallel to, but separate from, the Agency's reconsideration of the 2008 standards, EPA has already made significant progress in conducting the next periodic review of the ozone NAAQS pursuant to Clean Air Act sections 108 and 109. The current schedule for this next review involves a proposed decision in the fall of 2013 and a final decision in the summer of 2014. As part of this review, EPA will consider the new scientific evidence that has become available since the last review of the science. The first draft of the new Integrated Science Assessment for ozone was released March 28, 2011 for review and public comment by EPA's panel of science advisors, the Clean Air Scientific Advisory Committee (CASAC).

Representative Simpson

BREAKOUT OF ARRA FUNDING

Question 90: For the record, please provide a break-out of the ARRA funds by account and program. For each account and program please show the amount and percentage of ARRA funds enacted, the amount obligated, amount expended and number of projects or grants.

Answer:

American Recovery & Reinvestment Act
Environmental Protection Agency
As of April 1, 2011

Program Financial Data	Dollar Totals			Percentages	
EPA ARRA Program	Allocations (1)	Obligations	Outlays	% Obligations of Allocations	% Outlays of Obligations
Clean Water SRF	$4,003,148,155	$4,003,148,155	$3,165,957,364	100.0%	79.1%
Drinking Water SRF	$1,945,842,269	$1,945,842,269	$1,596,058,363	100.0%	82.0%
State Clean Diesel Grant Program	$293,937,995	$293,906,085	$200,035,668	100.0%	68.1%
LUST Trust Fund Program	$187,791,115	$187,716,083	$119,867,472	100.0%	63.9%
Superfund	$578,248,162	$578,098,162	$463,606,168	100.0%	80.2%
Brownfields	$96,393,093	$96,391,598	$40,824,155	100.0%	42.4%
EPA Inspector General	$20,000,000	$10,805,022	$10,789,850	54.0%	99.9%
M&O Totals	$71,500,000	$49,701,549	$38,330,832	69.5%	77.1%
Program Totals:	$7,196,860,789	$7,165,608,923	$5,635,469,872	99.6%	78.6%

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TITLE 42 AUTHORITY

Question 91: Please provide the status of appointments under Title 42 authority by year and position.

Answer: In 2006, based in part upon the findings and recommendations from the National Academies of Science (NAS)[i], EPA sought authority under Title 42 to address challenges of recruitment and retention of critical environmental research scientist and science leadership positions.[ii] A subsequent review and report on EPA's use of Title 42 Authority by the National Academies of Sciences published in April 2010, recognized EPA's success in effective use of the authority. The National Academies of Science committee indicated that "EPA has approached the use of Title 42 authority prudently...outstanding candidates have been identified and hired and top scientists have been retained." The report also provides best practices and recommendations for implementation of Title 42 Authority. The committee recommended that EPA should be "granted expanded authority to define the number of Title 42 positions on the basis of its programmatic needs and available budget."

The following table provides a list of Title 42 hires as of April 1, 2011.

Fiscal Year	Entry on Duty Date	Position	Location
2006	09/17/06	Research Chemist (Bioinformatics)	National Center for Computational Toxicology
	09/17/06	Research Physicist (Computational Systems Biology)	National Center for Computational Toxicology
	09/28/06	Research Biologist (Systems Biology)	National Health and Environmental Effects Research Lab
2007	01/21/07	Research Microbiologist	National Exposure Research Lab
	09/02/07	Research Biologist (Developmental Systems Biology)	National Center for Computational Toxicology

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	09/30/07	Supervisory Research Biologist (Director, Clinical Research Branch)	National Health and Environmental Effects Research Lab
	09/30/07	Supervisory Research Biologist (Director, National Center for Computational Toxicology)	National Center for Computational Toxicology
2008	06/22/08	Supervisory Exposure Scientist (Director, Atmospheric Modeling and Analysis Division)	National Exposure Research Lab
	08/17/08	Associate Director for Health	National Exposure Research Lab
	09/28/08	Supervisory Health Scientist (Director, National Center for Environmental Assessment – RTP)	National Center for Environmental Assessment
2009	04/26/09	Supervisory Physical Scientist (Director, Land Remediation and Pollution Control Division)	National Risk Management Research Laboratory
2010	05/09/10	Director, Sustainable Technology Division	National Risk Management Research Laboratory
2011	01/16/11	Supervisory Health Scientist (Director, Environmental Public Health Division)	National Health and Environmental Effects Research Lab
	01/16/11	Supervisory Research Biologist (Director, Integrated Systems Toxicology Division)	National Health and Environmental Effects Research Lab
	01/30/11	Supervisory Biologist (Director, Toxicity Assessment Division)	National Health and Environmental Effects Research Lab
	02/13/11	Supervisory Physical Scientist (Director, Ecosystems Research Division)	National Exposure Research Lab

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	02/23/11	Supervisory Biologist (Director, Microbiological and Chemical Exposure Assessment Research Division)	National Exposure Research Lab

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PM RESEARCH CENTERS

Question 92: Please provide the 2010, 2011, and 2012 funding history of the PM Research Centers, by center.

Answer: The Particulate Matter (PM) Research Centers concluded their work in FY 2010 and are in the process of completing their summary of findings. They received no additional funding in FY 2010 and will receive no funding in FY 2011.

In FY 2010, the STAR Grants program awarded new grants to four Clean Air Research Centers to expand on the work of the Particulate Matter Research Centers. These Centers are supporting research on the health effects of exposure to PM, ozone and other air pollutants. The table below identifies the resources for the four Clean Air Research Centers.

All four of these Clean Air Research Centers are five-year projects. "FY 2010 Actuals" represents the first year of funding. FY 2011 and FY 2012 funding represents future EPA support for the Clean Air Research Centers, assuming funding is received in the out year appropriations. The FY 2011 and FY 2012 funding has been committed as part of the multi-year grant commitments. However, RFAs acknowledge that funding is based on appropriations.

Center/ Institution	Description	FY 2010 Actuals ($M)	FY 2011 Annualized CR* ($M)	FY 2012 President's Budget* ($M)
Emory University	The Emory/Georgia Tech Collaborative: Multi-Scale Assessment of Health Effects of Air Pollution Mixtures Using Novel Measurements and Models	$1.6	$1.6	$1.7
President and Fellows of Harvard College	Air Pollution Mixtures: Health Effects Across Life Stages	$1.5	$1.5	$1.6

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University of Washington	University of Washington Center for Clean Air Research	$1.7	$1.7	$1.7
Michigan State University	Great Lakes Air Center for Integrative Environmental Research	$1.7	$1.7	$1.6
Total		$6.5	$6.5	$6.6

* All out year funding for assistance agreements is contingent on annual appropriations.

Representative Simpson

STAR Grants

Question 93: Please outline in more detail the 2012 proposal to develop centers for Life Cycle Chemical Safety and Sustainable Molecular Design through STAR grants.

Answer: The proposed Life Cycle Chemical Safety and Sustainable Molecular Design Centers would advance sustainable approaches to designing, producing, and using chemicals. The Centers would be competitively awarded STAR research centers. The Centers would increase scientific knowledge concerning the properties of chemicals and compounds and the methods for modifying properties, and would play a significant role in advancing the science of promoting innovative, green chemical design.

The Centers would draw together various scientific disciplines to develop its approaches, including: materials science; chemistry; biology; toxicology; ecology; risk assessment; engineering; and social and behavioral science. Potential areas of research include:

1. Developing life cycle approaches that help characterize the behavior of novel compounds in various environments, and which provide the basis for predicting human health and ecological impacts;
2. Developing new approaches that identify opportunities at various points along a novel compound's life cycle, to control, reduce, or eliminate the environmental and health hazards;
3. Developing social and behavioral methodologies and tools to assess and characterize societal and cultural factors that determine the acceptance or rejection of emerging materials, compounds, and chemicals;
4. Assessing the underlying societal forces and stimuli resulting in specific uses (or misuses) of emerging materials, compounds, and chemicals; and
5. Developing approaches for incorporating social and behavioral considerations into assessment of materials, compounds and chemicals for both intended and unintended consequences.

EPA plans to issue requests for proposals in May of this year. The Agency expects to provide applicants four months to submit their proposals. EPA anticipates making a maximum of 3 Center awards for a 4-year period. These awards would not be made until FY 2012, provided Congress appropriates the requested funding.

Representative Simpson

Question 94: Provide the 2010, 2011 and 2012 budgets for the STAR fellowships program and the number of fellowships supported by those budgets.

Answer:

	STAR Fellowship Awards	STAR Fellowships Resources ($M)
FY 2010 Enacted	138	$7.7
FY 2011 Annualized CR*	138	$7.7
FY 2012 President's Budget*	105	$14.0

* The number of fellowships to be awarded in FY 2011 and FY 2012 are based on estimated resources levels and are estimates only. FY 2012 reflects the maximum number of fellows that could be supported at President's Budget levels.

Question 95: Please provide an updated chart with the number of STAR fellowships awarded since 1995.

Answer: EPA's investment in the STAR Fellowships program ensures America develops the next generation of scientists and engineers able to provide technologically innovative sustainable solutions to our Nation's environmental challenges. According to the National Academies of Sciences report on The Measure of Star, EPA's fellowship program "is the only federal fellowship program exclusively designed for students pursuing advanced degrees in environmental sciences. It has achieved its goals, as evidenced by the extraordinary competition for the fellowships and the rigorous, independent selection process."[6] The numbers of new Science to Achieve Results (STAR) fellowships awarded each year since 1995 are provided in the following table:

FISCAL YEAR	STAR Fellowship Awards
1995	101
1996	105
1997	118
1998	124
1999	127
2000	108

[6] For more information, see http://www.nap.edu/catalog.php?record_id=10701

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2001	100
2002*	0
2003	83
2004	124
2005	128
2006	112
2007	69
2008	51
2009*	0
2010	138
2011 **	138
2012**	105

* No new STAR fellowships in 2002 and 2009, although 100 and 51 STAR fellows were continued in 2002 and 2009 respectively. In 2002, the Administration proposed to eliminate funding for the program. Funds were eventually restored, but the result was zero new fellows in 2002. Beginning in 2010, the program moved towards forward funding these fellowships for two years.

** The number of fellowships to be awarded in FY 2011 and FY 2012 are based on estimated resources levels and are estimates only.

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INFORMATION TECHNOLOGY

Question 96: Please provide a more detailed break out, with comparisons to prior years, for the projects included in the $95 million requested for IT/Data Management.

Answer: The following table provides a detailed breakout for IT/Data Management with comparisons to prior years.

(Dollars in thousands)

	FY 2009 Actual	FY 2010 Enacted	FY 2011 Pres Bud	FY 2012 Pres Bud
Total Program Project	$112,128.3	$119,068.0	$118,891.0	$108,036.0
Envirofacts	$2,347.3	$3,438.9	$3,283.9	$2,550
Geospatial Information and Analysis	$8,667.9	$11,134.3	$11,091.3	$10,610
Infrastructure	$64,904.0	$70,564.0	$69,373.2	$59,560
Internet Operations and Maintenance Enhancements	$7,447.5	$8,463.6	$7,270.2	$5,900
Policy & Planning	$17,034.2	$13,702.9	$17,748.0	$20,720
Electronic Records & Content Management	$3,473.8	$3,821.4	$3,420.3	$2,810
Reliability & Privacy	$1,501.3	$865.7	$1,007.0	$330
Information Access	$6,752.3	$7,077.3	$5,697.2	$5,550

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PESTICIDE REGISTRATION AND REREGISTRATION

Question 97: Please provide more detailed tables of program activity for each of the 3 program projects that show funding for 2010, 2011, and 2012 for the registration and re-registration programs as well as endangered species activities and all other major activity areas.

Answer:

Program Project		2010 Enacted ($000)	2011 Enacted ($000)	2012 PresBud ($000)	TOTAL ($000)
Protect Human Health	Registra on	$ 23,956.00	$ 23,956.00	$ 21,443.00	*$ 69,355.00*
	Reregistra on*	$ 21,036.00	$ 21,036.00	$ 18,426.00	$ 60,498.00
Protect the Environment	Registra on	$ 11,858.00	$ 11,858.00	$ 10,347.00	$ 34,063.00
	Reregistra on*	$ 16,294.00	$ 16,294.00	$ 12,935.00	$ 45,523.00
	Endangered Species**	$ 2,824.00	$ 2,824.00	$ 2,906.00	$ 8,554.00
Realize the Value	Registra on	$ 3,334.00	$ 3,334.00	$ 2,662.00	$ 9,330.00
	Reregistra on*	$ 2,683.00	$ 2,683.00	$ 2,052.00	$ 7,418.00

*Includes Registra on Review and Red Implementa on.

**Endangered Species resources represent ONLY implementa on numbers only and do not include resources spent within the other programs (such as Registra on Review, Reregistra on, Registra on) for li ga on issues risk assessments and other analysis costs.

Representative Simpson

SUPERFUND

Question 98: The 2012 budget assumes the reinstatement of the Superfund tax beginning January 1, 2011. When will legislation be sent to Congress for consideration?

Answer: On June 21, 2010, EPA Administrator Lisa Jackson on behalf of the Administration transmitted draft legislation to Congress to reinstate Superfund taxes. The draft legislation proposed reinstating the Superfund excise taxes and the corporate environmental income tax beginning in January 2011 and expiring on December 31, 2020. We support reauthorization of the taxes as represented in this transmission.

The President's FY 2012 Budget proposes reinstating the Superfund excise taxes and the corporate environmental income tax beginning in January 2012 and expiring on December 31, 2021.

Question 99: What cleanup accomplishments are linked to the funding already spent from special accounts?

Answer: The types of cleanup accomplishments from special account resources are the same as the Superfund program cleanup accomplishments funded through annual appropriations. Special account resources and annual appropriations fund response actions, including activities such as remedial investigations, feasibility studies, removal actions, remedial actions, and post construction activities.

EPA has successfully leveraged its Superfund program appropriated funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of FY 2010, EPA had collected more than $3.7 billion (including interest) in more than 1,000 site-specific special accounts. Of this amount, EPA has obligated $1.9 billion for site response actions and developed multi-year plans for nearly 100percent of the remaining $1.8 billion in special accounts that remains available to fund response actions. However, special accounts often do not have enough funds for all response actions needed at a site. As a result, both special account and annually appropriated resources are used to successfully perform the cleanup work required at most sites.

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Question 100: Last year we inquired about the status of EPA's negotiations with DOD on outstanding Federal Facility agreements. Please provide an update regarding the negotiations at the DOD sites.

Answer: Federal Facility Agreements (FFAs) remain outstanding at four sites: Andrews (MD) Air Force Base; Air Force Plant 44 (AZ), Redstone Arsenal (AL) and Tyndall (FL) Air Force Base. Agreements are now in place at about 137 other DOD Superfund sites on the National Priority List (NPL), as required by law.

Negotiations continue at Andrews, Air Force Plant 44 and Redstone Arsenal. Tyndall has not met its obligations under CERCLA and remains out of compliance with a 2007 imminent and substantial endangerment order under the Resource Conservation and Recovery Act (RCRA). EPA will continue in its efforts to get the Air Force to meet its environmental obligations.

Question 101: Please provide the balance in the Superfund and Leaking Underground Storage Tank Trust Fund as of October 1, 2010 as well as 2010 actuals and estimates for 2011 tax receipts, interest earned, and expenditures.

Answer: As of October 1, 2010, the balance of the Superfund Trust Fund was $125 million, and the balance of the LUST Trust Fund was $3.2 billion.

2010 actuals for the Superfund Trust Fund are $3 million in tax receipts, $70 million in interest earned which includes $5 million to special accounts, $53 million in cost recoveries, and $1.311 billion in expenditures which was subject to a $1.2 million rescission under P.L. 111-88, a $2.6 million rescission in American Reinvestment and Recovery Act (ARRA) resources under P.L. 111-226, and a $4.1 million rescission in ARRA resources under P.L. 111-203. 2010 actuals for the LUST Trust Fund are $169 million in tax receipts, $134 million in interest earned, and $113 million in expenditures which was subject to a $9 million rescission in ARRA resources under P.L. 111-226.

In FY 2011, the Superfund Trust Fund is projected to collect $0 in tax receipts, collect $104 million in cost recoveries, earn $96 million in interest which includes $25 million to special accounts, and make $1.332 billion in expenditures. In FY 2011, the LUST Trust Fund is projected to collect $179 million in tax receipts, earn $121 million in interest, and make $113 million in expenditures.

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GREEN INFRASTRUCTURE

The FY 2012 budget request also continues language, makes portions of the SRF available for green infrastructure. The 2010 Interior bill mandated that not less than 20 percent of the funds be used for these types of projects. For the record please provide a list, by State, of the number of water and energy efficiency improvements and other environmentally innovative activities.

Question 102: What types of projects have been funded through this authority?

Answer: The first type of Drinking Water State Revolving Fund (DWSRF) Green Project Reserve (GPR) projects are water efficiency projects. A substantial portion of these projects involved the installation of new water meters in previously unmetered areas and replacement of leaking water mains. The second type of DWSRF GPR energy efficiency projects commonly involve upgrading or replacing old equipment with energy efficient equipment (pumps, motors, etc) and installing on-site renewable energy generation. The third type of GPR consists of a few innovative and green infrastructure DWSRF GPR projects or components of projects. These projects typically are very small components of the overall project. An example of a green infrastructure project was rainwater harvesting, where the run-off will be used to irrigate the landscaped areas at a water treatment plant.

According to the Clean Water Benefits Reporting System (CBR) data, green infrastructure projects included wet weather management techniques such as bioswales, green roofs, and porous pavement. Energy efficiency projects included wastewater treatment plant upgrades with premium efficiency motors and pumps, aeration system improvements and electrical system improvements. It also included renewable energy, such as the installation of solar panels, wind turbines, biogas, and combined heat and power (CHP) systems at wastewater treatment facilities. Water efficiency improvement projects included additional wastewater treatment necessary for reuse purposes and conveyance systems to deliver treated wastewater. Environmentally innovative projects included rehabilitation and replacement of decentralized wastewater systems and treatment facility improvements for biosolids recycling, among others.

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Summary of DWSRF 2010 GPR Assistance Agreements:

State	Assistance Agreements including Green Infrastructure	Assistance Agreements including Water Efficiency	Assistance Agreements including Energy Efficiency	Assistance Agreements including Innovative Environmental Projects
Alaska		1	1	
Arkansas		3		
Arizona		1	1	
Florida			1	
Indiana		6	7	
Maine		11		5
Mississippi		5	2	
Montana			3	
Nebraska		1		
New Jersey			3	
Oklahoma			1	
South Dakota		2		
Texas	1	1	1	1
Utah		2	1	
Total	1	33	21	6

- 53 assistance agreements, some of which met multiple GPR categories.
- Project Benefits Report (PBR) data for FY10 as of 4/11/2011.

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Summary of CWSRF 2010 GPR Assistance Agreements:

State	Assistance Agreements including Green Infrastructure	Assistance Agreements including Water Efficiency	Assistance Agreements including Energy Efficiency	Assistance Agreements including Innovative Environmental Projects
Arizona		1	1	
Colorado			1	
Florida	3	3		
Idaho		1	1	
Indiana		1	9	1
Iowa	1			
Kansas	1			
Maine			3	
Mississippi			1	
Montana		1		
Nebraska	1			
New York	1	1	2	
Oklahoma	2			
South Dakota	2			
Utah	1		1	
Washington	4	2	2	
Wisconsin			1	
Total	16	10	23	1

- 44 assistance agreements, some of which met multiple GPR categories.
- 50 GPR projects
- CBR data for FY10 as of 4/11/2011

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Question 103: How many Green projects have been funded with ARRA Funds? projects, dollar amount, percentage of projects and percentage of funds used for green projects.

Answer:

Summary of DWSRF ARRA Green Project Reserve (GPR) Funding				
Category	**# of GPR Assistance Agreements**	**GPR Funding**	**% of Total GPR Funding****	**% of Total ARRA Funding****
Water Efficiency	331	$356 million	66%	20%
Energy Efficiency	243	$142 million	26%	8%
Environmentally Innovative	53	$40 million	7%	2%
Green Infrastructure	3	$1 million	0.2%	0.1%
GPR Total	513*	$539 million	100%	30%

* Some projects had components that fell into multiple GPR categories.

**Percents are rounded.

Note: Data from Project Benefits Report (PBR), December 31, 2010

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Summary of CWSRF ARRA GPR Funding				
Category	# of GPR Assistance Agreements	GPR Funding	% of Total GPR Funding**	% of Total ARRA Funding**
Green Infrastructure	259	$209 million	18%	6%
Water Efficiency	103	$153 million	14%	4%
Energy Efficiency	278	$606 million	54%	16%
Environmentally Innovative	113	$160 million	14%	4%
GPR Total	649*	$1.1 billion	100%	29%

* 649 assistance agreements, some of which met multiple GPR categories.
**Percents are rounded.

Note: Clean Water Benefits Reporting System (CBR) data as of 12/31/2010

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STATE AIR QUALITY GRANTS – BREAKOUT FUNDING BY CAA AUTHORIZATION

Question 104: Please provide a table that further breaks out the funding within this program project allocated to Section 103 activities, Section 105 activities and Section 106 activities. Please include funding for 2010, 2011 and 2012.

Answer:

State and Local Air STAG Distribution

	Fiscal Year		
	2010	2011*	2012
CAA Section 105			
State/Local Continuing Air Programs for meeting NAAQS and addressing air toxics	171,130,000	175,380,000	183,630,000
New NAAQS and air toxics implementation programs			37,420,000
Greenhouse gas permit program development			25,000,000
CAA Section 103			
Fine Particulate (PM2.5) Monitoring**	42,500,000	38,250,000	34,000,000
National Air Toxics Trends Site Network	5,000,000	5,000,000	5,000,000
Community Scale Air Toxics Monitoring	7,350,000	7,350,000	4,850,000
NAAQS Monitoring Equipment			15,000,000

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CAA Section 106

N.E. Ozone Transport Commission	600,000	600,000	600,000
Total	226,580,000	226,580,000	305,500,000

* Reflects the FY 2011 Annualized CR

** The Agency began the transition of funding authority for PM2.5 monitoring from section 103 to section 105 in FY 2011.

Question 105: Please provide a table that further breaks out the funding within this program project allocated to each of the NAAQS. Please include funding for 2010, 2011 and 2012.

Answer: Distributions of those portions of funds that can be attributed to a specific NAAQS are shown for FY 2010 and the annualized FY 2011 CR. A distribution of funds by NAAQS for FY 2012 has not been shown because: (a) EPA still needs to discuss the prospective distribution of FY 2011 funds with state and local agencies, and (b) the Agency is working with state and local agencies to adopt and implement an updated allocation rationale.

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State/Local Continuing Air Program FYs 2010-2012 ($Ms)

		Fiscal Year	
	2010	2011*	2012
Ozone	72.6	73.9	
Particulate Matter (e.g., PM10, PM2.5)	86.4	84.0	
Visibility	8.8	8.9	
NO2	1.5	1.5	
Pb	3.0	3.0	
CO	3.1	3.2	
SO2	3.5	3.6	
Air Toxics	45.3	46.1	
Acid Rain	2.4	2.4	
Total	226.6	226.6	305.5

* Annualized CR level

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MULTIMEDIA TRIBAL IMPLEMENTATION GRANTS COMPLEMENT GAP GRANTS

Question 106: The 2012 budget request includes $20 million for a new Multimedia Tribal Implementation Grant program. How many Tribes are ready to begin implementing their own environmental programs? How many Tribes will receive funding from the $20 million?

Answer: Based on the on-going success of the General Assistance Program (GAP), a qualitative review of other EPA Tribal grant programs, and feedback from Tribes, we estimate that approximately half of all Tribes in the contiguous United States are ready to begin implementation activities. The exact number of Multi-Media Tribal Implementation (MMTI) grants awarded will depend on the number of proposals submitted to EPA by the proposal deadline, the amount requested in the proposals, and EPA's objective review of the proposals received. EPA anticipates that most awards will range from $150,000 to $300,000, resulting in approximately 100 Tribes receiving MMTI grants under the proposed FY 2012 funding level.

Question 107: Please explain in more detail how these grants will be distributed under this program? Will this be a competitive grant program?

Answer: EPA will not distribute the funding by formula or entitlement and will use objective criteria that require Tribes to demonstrate an ability and readiness to implement environmental management programs. The Multi-Media Tribal Implementation (MMTI) grant program will be governed by the Agency's Competition Order (Order 5700.5A1). Under that Order, grants provided exclusively to Tribal governments would be exempt from competition.

Proposals will be evaluated by a national evaluation panel chosen for their expertise in the range of activities associated with environmental protection in Indian country. The national evaluation panel will be composed of EPA headquarters and regional staff. Eligible proposals will be evaluated on several factors, including:

1. The extent of environment and/or public health issues affecting the community that the project will address. The proposal will be evaluated on how well the proposed activities address impacts from pollution in various environmental media (air, water, land, indoor environments, etc.), including significant community exposures to toxic pollutants and environmental concerns from multiple sources/stresses. The evaluation will look for any particularly vulnerable ecosystems, communities, and/or populations.
2. The degree to which expected environmental results of the proposed project are identified. The proposals will be evaluated on the likely outcomes and outputs of the proposed project. Outputs and outcomes are expected to be linked to the proposed activities and resulting improvements to environmental and/or human health conditions.

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3. The feasibility and likely effectiveness of the proposed activities. The proposal will be evaluated on the extent and detail to which the applicant has a comprehensive, well thought-out plan with activities, milestones, timelines (dates tasks will be carried out and outputs produced), and responsible persons to achieve the purpose of the project.
4. The existing programmatic capability of the applicant to accomplish the proposed project. Proposals will be evaluated on the effectiveness of the applicant's current environmental protection program and how the MMTI funding will build upon the applicant's administrative, legal, compliance/enforcement, technical, and/or communication capacities.

Question 108: The 2012 budget requests an increase in the Tribal GAP grant. How will Tribes use this additional funding in 2012?

Answer: EPA's objective is to assist all Tribal governments to regulate environmental quality on Indian reservations by developing Tribal capacity to administer environmental protection programs. Since its inception, the average Tribal environmental protection program received $110,000 per Tribe per year. This figure has remained unchanged for more than a decade with no adjustments for inflation. Tribal governments have continued to build their capacity to administer environmental protection programs in an ever increasing number of program areas and have successfully adopted efficiencies in an effort to cope with this static base funding amount. Based on EPA's work with Tribal governments, it is apparent that Tribal governments are no longer able to sustain existing capacity or develop additional capacities.

The Agency has calculated that the current average cost for a basic, minimal Tribal environmental protection program is $156,000. The requested increase will allow an average Tribe to hire and retain a qualified Environmental Director as well as a halftime Environmental Technician. Substantial progress in developing media-specific programs where Tribes face challenging environmental regulatory workloads would require additional qualified persons. Similarly, the $156,000 estimate does not include support for special projects such as baseline environmental assessments, water and soil sampling, data analysis, and enforcement activities. On average, a Tribe with a $156,000 GAP grant can expect to fund one and a half positions including fringe benefits, training, education, limited travel, limited office space, and general supplies and equipment. A qualified Environmental Director generally administers the entire Tribal environmental program and enters Tribal government service at a pay scale similar to a GS-11 step 5 position with a science or engineering Bachelors or Master's degree and two or three years of experience in the environmental field.

Representative Simpson

Question 109: How are these two grant programs coordinated with other Agency Tribal efforts? Specifically how would air quality work that may be funded under the new $20 million for Tribal Multimedia Grants differ from air quality work under the existing Tribal Air Quality Management grant program?

Answer: The Multi-Media Tribal Implementation (MMTI) program is intended to fund Tribal environmental program implementation activities generally not covered by established grant programs. EPA is coordinating internally to ensure that any program implementation work funded under the MMTI would be used to complement, not duplicate or replace, existing EPA grant programs.

For example, current air quality work funded by existing Tribal Air Quality Management program grants provides for program development, training, education, monitoring, emissions inventory development, Clean Air Act (CAA) permit reviews, indoor air quality assessments, and other related activities. As the "Tribal Air Grants Framework: A Menu of Options" states, CAA §103 and §105 grants allow EPA to "help build Tribal knowledge and increase a Tribe's capacity to manage air quality issues." In contrast, MMTI program funds will be used for targeted, limited duration activities that mitigate or remove direct, well-documented threats to human health and the environment.

MMTI projects will produce specific, measurable environmental results that address a recipient's most serious environmental issues. The program's flexibility would allow Tribes to address environmental issues related to the various media programs administered by EPA, including ambient and indoor air quality, drinking water, emergency response planning and preparedness, lead-based paint, pesticides, solid and hazardous waste, surface and ground water, underground storage tanks and wetlands.

Representative Simpson

US-MEXICO BORDER GRANTS

Question 110: For the record, please provide an updated table of annual appropriations, obligations, unliquidated obligations and outlays in the US-Mexico program.

Answer: The tables below provide the requested information.

Annual Appropriations by Fiscal Year

(Millions)

Fiscal Year	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11
Appropriation	100	75	50	50	75	75	50	50	50	50	50	20	20	17	10

Annual Obligations, Disbursements and Unliquidated Obligations to the North American Development (NAD) Bank

Thru FY10

Fiscal Year	Obligations (millions)	Disbursements (millions)	Unliquidated Obligations Balance (millions)
1997 - 2004	501.4	180.4	321.0
2005	42.9	57.9	306.0
2006	38.7	48.3	296.4
2007	43.0	65.6	273.8
2008	9.9	92.3	191.4
2009	2.5	63.5	130.4
2010	18.8	29.2	120.0
Totals	657.2	537.2	N/A

Notes:

1. The ULO balance at the end of the second quarter (March 31, 2011) totaled $114.4M.
2. Obligations and disbursements are reported by Fiscal Year. "Unliquidated Obligations" constitutes the cumulative balance as of the end of that fiscal year.

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3. A new grant awards process that EPA fully implemented in FY09 delayed the award of $6.5M in FY09 construction funding to FY10 because the associated projects had to complete planning and design prior to the award of construction funding.
4. Funds reported represent obligations to the NADBank for construction. The information does not include Congressionally directed funds to El Paso and Brownsville, TX, or planning and design work.

RESCISSION

In 2010 EPA was directed to rescind $40 million of unobligated balances from either the Superfund or the STAG accounts. The 2012 budget proposes to rescind $50 million from those accounts.

Question 111: For the record please provide a table listing the amounts by program project proposed for rescission.

Answer: Once a FY 2012 budget is enacted, the Agency will review existing balances to determine the available resources for the proposed cancellation.

We do not know the specific program projects impacted at this time but would look to those funds within the State and Tribal Assistance Grant and Hazardous Substance Superfund Trust Fund accounts where utilization rates are low, beginning with the "oldest" money in terms of fiscal year.

HOMELAND SECURITY

Question 112: With a 30% reduction to the homeland budget, is EPA adequately prepared to respond to, and decontaminate, a wide-area urban biological or radiological incident?

Answer: While the FY 2012 President's Budget proposes a 30% decrease in EPA's homeland security funding from the FY 2010 Enacted level, this reduction is, in part, expected as a result of the progress the Agency has made on various projects, such as the Water Security Initiative, as well as a result of increased cooperation with other departments and agencies.

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EPA has the basic capabilities necessary to fulfill its leadership and support responsibilities under the National Response Framework (NRF). EPA is continually working to enhance these capabilities. At this time, the Agency has developed baseline capabilities to respond to and decontaminate all-hazard type events, including incidents involving some biological, chemical, and radiological threat agents. These baseline capabilities include response plans and procedures, trained response personnel, limited laboratory capability and capacity, and equipment.

While EPA does possess baseline capabilities, a wide-area biological or radiological incident, depending upon the size and scope of the release, could be especially challenging. EPA currently estimates that remediation following an urban wide-area anthrax attack could take up to fifteen years and the goal of our current work is to shorten that time-frame. For the past several years, EPA has worked extensively with our federal partners, including DHS and DOD, to prepare for these types of incidents. Through such programs as the Integrated Biological Restoration Project and the Wide Area Recovery and Resiliency Program, the interagency community is engaging with state and local agencies to increase preparedness for a wide-area chemical, biological or radiological incident. Also, EPA is enhancing our radiological response assets and capabilities by working with DHS and DOE through the Nuclear Incident Response Teams (NIRT). The NIRT is working on joint-planning, training and exercises, equipment purchases and maintenance.

Question 113: Please also provide a quantitative description of the preparedness, lab capacity, training, personnel, and equipment gaps in each area ~ biological, chemical and radiological-and EPA's plan for incrementally reducing those gaps using the funds requested in 2012.

Answer: The primary objective of EPA's emergency response program is to achieve "all-hazards" preparedness. Therefore much of the personnel, training, lab capacity, and equipment assets are intended to support all types of response scenarios. While EPA has some assets that are unique to a certain type of response, most of the assets are not tracked quantitatively for a specific threat agent.

While EPA cannot quantify the exact gaps that exist in the arena of overall preparedness for biological, chemical, and radiological incidents, we do know that for a major incident we cannot close the existing gaps with current funding. However, EPA can start to incrementally reduce the gaps using our FY 2012 funds and by leveraging the resources and work of other agencies, namely DHS and DOD.

The critical gaps that require additional research and investment include, but are not limited to, the following:

- Sampling efficiencies
- Efficacy of decontaminants
- Dose-response relationship

Representative Simpson

- Development and prioritization of environmental lab capacity
- Decontamination capacity and capabilities

EPA has been actively engaging partner agencies to leverage resources to work towards filling the gaps listed above. For example, the Biological Operational Test and Evaluation (BOTE) Phase I Study is a jointly funded effort by EPA and DHS that will provide the agency with critical data necessary to respond and remediate a biological incident, namely anthrax. The goals of the study are as follows:

- Conduct and evaluate field-level facility remediation studies of various decontamination technologies
- Evaluate the effectiveness of waste/wash water collection, treatment, and disposal procedures
- Determine the total cost of applying the selected decontamination technology or remediation method/strategy (i.e., including waste management)
- Identify any damage to the building or contents/materials
- Assess potential exposure risk due to re-suspension

This is just one example of a major effort underway to fill the critical gaps in homeland security preparedness that would not be possible without collaboration with other federal partners. An additional example is the Wide Area Recovery and Resiliency Program (WARRP), a joint effort that includes leadership from DHS, EPA, DOD, HHS, and DOE. The purpose of this program is to study, develop, and demonstrate solutions (i.e., plans, operational capabilities and interagency coordination) that will enable a timely return to functionality, basic services as well as the re-establishment of social and economic order. WARRP focuses on a coordinated systems approach to the recovery and resiliency of wide urban areas, including all types of critical infrastructures, key resources (both civilian and military) and high traffic areas (transit/transportation facilities) following a chemical, biological, or radiation incident.

Overall, for FY 2012, the President's Budget request for EPA will be used to maintain EPA's current baseline capabilities and to further basic scientific research on CBR agents. EPA's budget request also assumes that further progress on CBR preparedness and response will be accomplished through cooperation on projects with the interagency community.

Representative Simpson

EPA PERSONNEL AND FTE

Question 114: What is the average Grade at EPA and how does that compare to other Federal Agencies of similar size and mission?

Answer: EPA's mission to protect human health and the environment requires high-level scientific and technical expertise. The average pay grade at the EPA is 12.7, expressed as a General Schedule or Equivalent Grade for permanent employees.

While there is no direct comparison because each Federal agency and department performs unique a function, among Cabinet-level agencies EPA is most related to the Department of Agriculture (USDA), Department of Interior (DOI), and Department of Commerce's National Oceanic and Atmospheric Administration, which also provide natural resource services under either Budget Function 300 (Natural Resources and Environment) or Function 350 (Agriculture). As a regulatory agency, comparison to the Department of Health and Human Services' Food and Drug Administration is also relevant. However, as an independent agency, EPA believes the best comparisons in terms of both size, mission, and agency-wide scientific and technical expertise include the Nuclear Regulatory Commission (NRC) and the National Aeronautics and Space Administration (NASA) with pay grade averages of 13.0 and 13.2, respectively (see table below).

Department/Agency	Average Grade or Equivalent	Total Permanent Employment
EPA	**12.7**	**16,925**
Cabinet-Level Comparisons		
USDA	9.3	79,878
DOI	9.8	50,426
DOC-NOAA	12.0	5,613
HHS-FDA	12.0	10,941

Representative Simpson

Independent Agency Comparisons		
NRC	13.0	3,713
NASA	13.2	16,771
Government-Wide		
USG	10.2	1,245,367

(Note: All data are from OPM's Fed Scope Database December 2010, General Schedule and Equivalent Grade for permanent employees only.)

Question 115: What percent of your workforce are Grade 14s, 15s, and SES?

Answer: The following table provides the percent of EPA's workforce at Grades 14, 15, and SES level. All data are from People Plus as of 4/1/2011 and include permanent employees only.

	December 31, 2010		**April 1, 2011**	
Grades	**Percentage**	**Onboards**	**Percentage**	**Onboards**
GS-14	17.0%	2,911	16.8%	2,885
GS-15	13.9%	2,373	14.0%	2,396
SES	1.6%	283	1.6%	283
Total	32.5%	17,082	32.4%	17,174

Representative Simpson

Question 116: Provide the number of SES positions by account and indicate how many are Schedule C and Career?

Answer: EPA has a total allocation of 313 Senior Executive Service (SES) positions in FY 2010 and FY 2011, of which, 26 are Schedule C. 275 are Career SES positions and 9 SES positions have been designated for the Office of the Inspector General.

The table below provides SES and Schedule C positions by account:

EPA	Career SES	Non-Career SES	Total SES	Schedule C
O ce of the Administrator	18	11	29	23
O ce of Air and Radia on	21	1	22	1
O ce of Administra on and Resources Management	14	1	15	1
O ce of the Chief Financial O cer	8		8	
O ce of Enforcement and Compliance Assurance	26		26	1
O ce of Environmental Informa on	6		6	
O ce of General Counsel	12	3	15	
O ce of Interna onal and Tribal A airs	6	1	7	
O ce of Chemical Safety and Pollu on Preven on	24		24	
O ce of Research and Development	33		33	
O ce of Solid Waste and Emergency Response	16	1	17	
O ce of Water	20	1	21	
Region 1	4	1	5	
Region 2	7	1	8	

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Region 3	8	1	9	
Region 4	7	1	8	
Region 5	7	1	8	
Region 6	6	1	7	
Region 7	6	1	7	
Region 8	5	1	6	
Region 9	8	1	9	
Region 10	7	1	8	
*Vacancies	6		6	
Total EPA	**275**	**29**	**304**	**26**
*****Office of the Inspector General***	***9***		***9***	
Grand Total EPA, All Accounts	**284**	**29**	**313**	**26**

*Vacancies reflect positions allocated to EPA by the Office of Personnel Management (OPM) for which EPA is currently recruiting candidates.

**The SES positions allocated to the Office of the Inspector General are allocated separately by the OPM within each Federal agency, per the Inspector General Reform Act of 2008.

Question 117: How many EPA employees are currently eligible for retirement? Please also provide this as a percentage of EPA's total FTE.

Answer: As of December 31, 2010, EPA has 3,138 permanent employees currently eligible for retirement; this represents 18.4% of EPA's total on-board personnel and 18.0% of EPA's total FTE.

Representative Simpson

Question 118: How many current EPA employees will be eligible for retirement in the next 5 years? Please also provide this as a percentage of EPA's total FTE.

Answer: As of December 31, 2010, EPA has 6,184 employees eligible for retirement in the next five years (up to 2015); this represents 36.0% of EPA's total on-board personnel and 35.9% of EPA's total FTE.

The number of FTEs for 2010, 2011, and 2012 are the official FTE levels for the Agency. In anticipation of the budget either remaining constant or declining in future years, the number of FTEs for 2013, 2014, and 2015 are projected at a steady state. This is also true for forecasting onboard FTEs which estimates a 0% growth/loss projection.

Year	Number of Employees Eligible for Retirement	Number of Employees (On-boards)	Percentage of Total On-Boards	Number of EPA FTEs	Percentage of EPA Total FTEs
2010	3,138	17,082	18.4%	17,417.0	18.0%
2011	3,686	17,174	21.5%	17,570.7	21.0%
2012	4,285	17,174	25.0%	17,202.1	24.9%
2013*	4,887	17,174	28.5%	17,202.1	28.4%
2014*	5,516	17,174	32.1%	17,202.1	32.1%
2015*	6,184	17,174	36.0%	17,202.1	35.9%

* Note that FTE totals for 2013 through 2015 are flat-lined from the 2012 President's Budget request levels.

Representative Simpson

Question 119: For the record, please provide a breakdown of regional vs. headquarters FTE and funding for FY 2010 actual, FY2011 estimate and FY 2012 request.

Answer:

(Dollars in Thousands)

	2010 Actuals*		2011 Annualized CR		2012 Pres Bud	
HQ/RT	Dollars**	FTE	Dollars**	FTE	Dollars**	FTE
HQ***	$1,233,635.2	8,743.2	$1,231,972.0	9,266.4	$1,264,312.0	9,183.3
RT	$1,026,086.3	7,850.2	$1,038,266.0	8,150.6	$1,071,878.0	8,018.8
EPA Totals	$2,259,721.5	16,593.4	$2,270,238.0	17,417.0	$2,336,190.0	17,202.1

*Actuals do not include ARRA funds or Reimbursable funds

**Payroll dollars only.

***HQ FTE totals include approximately 3,000 FTE located in field offices that are not in the Washington, DC area.

Representative Simpson

GENERAL BUDGET: OPERATING PLAN

Question 120: For the record please provide by program project the operating plan levels vs. carryover balances for the past 3 years.

Answer: Please find attached a spreadsheet addressing the information requested above. The amounts in the Carryover columns are the balances carried over from the previous year and before. For example, FY 2008 carryover amounts are from funds appropriated in FY 2007 and before in the case of no-year funds.

FSMP

Question 121: Please provide the latest schedule timeline for the Financial Systems Modernization Project (FSMP) project milestones with associated annual costs.

Answer: In FY 2010 the Environmental Protection Agency (EPA) restructured its financial systems implementation plan to concentrate near-term efforts on the Core Financial System component as its highest priority business need. To more effectively manage the Financial Systems Modernization Project, EPA deferred work on the non-core components until the Core Financial System is implemented. EPA has organized the project plan for the Core component into a development phase of less than 18 months with clear project checkpoints at 90-120 day intervals. Project evaluations are being conducted at these checkpoints within EPA through a project review board that includes EPA's Chief Financial Officer and Chief Information Officer. The table below exhibits the latest checkpoint schedule status for the Core Financial System component (checkmark in Status column indicates successful milestone completion):

Checkpoint	Description	Completion Date	Status
Checkpoint 1: OMB Decisional Review/Approval	OMB project approval and technical and workflow configuration	07/30/2010	✓
Checkpoint 2: Testing & Design	Systems test development, report design and development, and preliminary cutover analysis	10/31/2010	✓
Checkpoint 3: Integration	System testing execution, integration design, and environment configuration	01/31/2011	✓
Checkpoint 4: Testing and	Activities to prepare for data	04/30/2011	✓

Representative Simpson

Environmental Set Up	conversion dry runs, user acceptance testing, and system training		
Checkpoint 5: Conversion Dry Run	User acceptance testing results, dry run analysis, performance load testing, and integration testing	07/31/2011	
Checkpoint 6: System Cutover	Successful completion of system validation and launch activities	11/01/2011	

The Core Financial System component is on schedule to "go-live" in October, 2011. The Core Financial System component annual budgets are included in the table below.

	2010 ENA (x1000)	**2011 ENA (x1000)**	**2012 PB (x1000)**
Core Financial System Component	$10,687.0	$19,209.0	$9,963.0

In restructuring the financial systems implementation plan, EPA deferred the development and implementation of the remaining non-core component systems that were originally included in the business case. The Agency will be submitting a revised business case(s) and schedule to OMB for consideration. EPA recently initiated plans to begin migrating our human resources, time and attendance, and payroll information technology services to an OMB-approved Human Resources Line of Business (HRLoB) Federal Shared Service Provider thus avoiding the need to develop a new payroll accounting and time and attendance system as previously planned.

BED BUGS

The resurgence of bed bugs is both a public health and an economic issue. Cities across the nation are grappling with this epidemic and looking for guidance both in terms of remediation and prevention. It is important that any federal guidance be comprehensive and includes safe, non-chemical solutions as part of an integrated approach to bed bug infestation management.

Question 122: The EPA's leadership of the Interagency Task Force on Bed Bugs is commendable and places the agency at the center of efforts to address the bed bug problem.

Question 123: Will the Task Force develop national guidelines for bed bug remediation and prevention?

Representative Simpson

Answer: The Federal Bed Bug Task Force is preparing a bed bug strategy based on the experience and programmatic scope of experts from seven federal agencies, and input from a wide range of stakeholders during the second Bed Bug Summit held last February. This strategy will be the federal government's coordinated work plan for addressing the national problem of bed bugs. In particular, the plan will outline how the government at a federal level can more effectively promote solutions to the bed bug problem, including examination of gaps that currently form barriers to efficient response. Practitioners have found that locale-specific factors, such as predominant housing characteristics in an area or presence of pesticide resistance, drive the bed bug control approach taken by individual communities. However, EPA is committed to assisting remediation and prevention activities at the community, state, and regional levels.

Question 124: If so, is there a timetable for doing so, and can EPA provide a sense of what those guidelines would entail?

Answer: The workgroup is currently identifying content, scope, and timeline for the strategy. In the meantime, EPA is actively working on advancing the information available to the public, facilities managers, and pest control officials by awarding grants to communities, updating our web page, and outreach to industry and pesticide registrants. On April 6, 2011, EPA announced the award of grants totaling $550K to five institutions: University of Missouri St. Louis, Texas AgriLife Extension Service (Texas A&M University), Maryland Department of Health and Mental Hygiene, Rutgers University, and Michigan Department of Community Health. Also, any new pesticide requests that might be submitted for bed bug uses will receive an expedited review.

Question 125: Will the EPA support including non-chemical solutions as part of those guidelines?

Answer: Yes. For bed bugs, EPA believes that a comprehensive and multifaceted program will include a variety of educational, non-chemical, and chemical approaches for bed bug management and control. Many involved in addressing bed bug infestations are now recognizing that no chemical is a silver bullet and that effectively managing bed bugs requires a comprehensive, collaborative approach. In the "Joint Statement on Bed Bug Control in the United States" (http://www.cdc.gov/nceh/ehs/publications/bed_bugs_cdc-epa_statement.htm), EPA and the Centers for Disease Control recommend that pest management and environmental health professionals throughout the U.S. continue to use Integrated Pest Management strategies as they address the bed bug issue.

Representative Simpson

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[i] The NAS report can be found at: h p://www.nap.edu/openbook.php?record_id=9882&page=1

[ii] Congress granted EPA special pay and hiring authority under Title 42 in the FY 2006 Appropriations Act.

FY 2008 - 2010 Carryovers and OppPlans
Simpson 120
(Dollars in Thousands)

Program Project	FY 2008		FY 2009		FY 2010	
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]

FY 2008 - 2010 Carryovers and OppPlans
Simpson 120
(Dollars in Thousands)

[illegible]	FY 2008		FY 2009		FY 2010	
[illegible]	Deadline	Carryover	Deadline	Carryover	Deadline	Carryover
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

FY 2008 - 2010 Carryovers and OppPlans
Simpson 120
(Dollars in Thousands)

Program Project	FY 2008		FY 2009		FY 2010	
	OpPlan	Carryover	OpPlan	Carryover	OpPlan	Carryover
[illegible]	0.0	0.0	0.0	0.0	0.0	0.0
[illegible]	0.0	0.0	0.0	0.0	20,000.0	0.0
Not Specified	0.0	62,814.3	0.0	50,079.3	0.0	26,027.0
Totals:	**7,469,485.5**	**2,116,233.4**	**7,645,678.8**	**1,762,825.6**	**10,322,875.4**	**1,749,053.4**

Representative Moran

Questions Submitted for the Record by Representative Moran

CHESAPEAKE BAY RESTORATION

Question 1: How much of the $67 million requested for Chesapeake is designated for States and localities? Please describe the funding breakout.

Answer: Of the FY 2012 request for the Chesapeake Bay Program, $40.1 million (60 percent of the request) would be available to state and local governments and, to a lesser extent, local organizations. This includes $25.3 million in state implementation and enforcement grants; $8 million in innovative competitive grants for nutrient and sediment reduction, cooperative basin strategy implementation and water quality and living resources; $2.9 million in water quality and accountability monitoring grants; $2 million in small watershed grants; and $1.9 million in grants to state educational institutions.

GREENHOUSE GAS REGULATIONS

Question 2: Please describe the Greenhouse Gas Regulations requirements of Industry (including types of industry). Also please include the economic analysis (without including proprietary data).

Answer: With respect to the Clean Air Act (CAA) Permitting programs, specifically the Prevention of Significant Deterioration (PSD), and the Title V Operating Permit Program, these programs generally work the same way for greenhouse gases (GHGs) as they have worked for other CAA pollutants for more than 30 years. However, because GHGs are emitted in larger quantities, the regulation of GHGs under the CAA had the potential to trigger permitting for millions of sources not traditionally subject to the programs, and at great overall cost to sources as well as permitting agencies. To address this situation, EPA issued a GHG permitting regulation in May 2010, known as the GHG Tailoring Rule. The Tailoring rule establishes a common sense approach to tailor the scope of the Clean Air Act's permitting programs so that they apply only to the largest sources of GHGs, such as power plants, refineries, and cement production facilities.

For the first step of the Tailoring Rule, which began on January 2, 2011, PSD or Title V requirements apply to sources' GHG emissions only if the sources are subject to PSD or Title V anyway due to their non-GHG pollutants. Therefore, EPA does not require sources or modifications to evaluate whether they are subject to PSD or Title V requirements solely on their GHG emissions.

Representative Moran

Step 2 will build on Step 1. In this phase, PSD permitting requirements will cover for the first time new construction projects that emit large amounts of GHG emissions (i.e., emissions of at least 100,000 tons per year (tpy)) even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing facilities that increase GHG emissions by at least 75,000 tpy (equivalent to CO_2 emissions from burning 370 railcars' worth of coal) will be subject to PSD permitting requirements, even if they do not significantly increase emissions of any other pollutant.

Attached you will find the Regulatory Impact Analysis EPA completed that estimates the significant cost savings to sources and permitting authorities as a result of the narrower scope of the permitting programs established in the Tailoring Rule. The RIA reflects the benefits and costs of regulatory relief to smaller sources of greenhouse gases (GHG) and permitting authorities provided by the Tailoring rule (over six million sources of GHG emissions will be allowed to operate without a title V operating permit and tens of thousands new or modifying sources will not be subject to PSD requirements for GHG). An economic analysis has not been conducted to assess the benefits and costs of greenhouse gas permitting for the limited number of large GHG sources that will be required to comply with Title V and PSD requirements or for the affected permitting authorities.

WATERS POLLUTION

Question 3: GAO testified that one of EPA's greatest challenges is controlling water pollution from non point sources. EPA reduced the program to provide States with assistance to manage this pollution by about $36 million. What was the rationale for this cut?

Answer: Nonpoint source pollution, caused by runoff that carries excess nutrients, pesticides, pathogens, toxics, and other contaminants to waterbodies, is the greatest remaining source of surface and ground water quality impairments and threats in the United States. As such, EPA is maintaining its strong commitment to an effective national Nonpoint Source Program. To better understand the effectiveness of various state Nonpoint Source Programs in reducing or eliminating nonpoint source pollution, EPA plans, in cooperation with state partners, to complete a detailed study, by September 2011, of how states are implementing their Section 319 nonpoint source programs to protect and restore nonpoint source-impaired waters. Based on the results of the study, EPA will engage the states in developing recommendations on program revisions, as appropriate, to maximize program effectiveness in protecting and restoring water quality and to assure program accountability. EPA will also begin in FY 2012 to implement some program reforms, including incentives to states to implement more effective nonpoint source management programs.

Due to budget constraints, we had to make the difficult decision to reduce the Section 319 funding. Our expectation is that the study will identify effective strategies that even in these difficult budget times will enable states to use a range of tools to more effectively implement their programs.

Representative Moran

Question 4: GAO testified that one of EPA's greatest challenges is controlling water pollution from non point sources. EPA reduced the program to provide States with assistance to manage this pollution by about $36 million. What was the rationale for this cut?

Answer: Nonpoint source pollution, caused by runoff that carries excess nutrients, pesticides, pathogens, toxics, and other contaminants to waterbodies, is the greatest remaining source of surface and ground water quality impairments and threats in the United States. As such, EPA is maintaining its strong commitment to an effective national Nonpoint Source Program. To better understand the effectiveness of various state Nonpoint Source Programs in reducing or eliminating nonpoint source pollution, EPA plans, in cooperation with state partners, to complete a detailed study, by September 2011, of how states are implementing their Section 319 nonpoint source programs to protect and restore nonpoint source-impaired waters. Based on the results of the study, EPA will engage the states in developing recommendations on program revisions, as appropriate, to maximize program effectiveness in protecting and restoring water quality and to assure program accountability. EPA will also begin in FY 2012 to implement some program reforms, including incentives to states to implement more effective nonpoint source management programs.

Due to budget constraints, we had to make the difficult decision to reduce the Section 319 funding. Our expectation is that the study will identify effective strategies that even in these difficult budget times will enable states to use a range of tools to more effectively implement their programs.

CLEAN UP OF DOD SUPERFUND SITES

Question 5: GAO's 2010 report on DOD-related Superfund sites identified several obstacles to cleaning up those sites. One obstacle is that the contractors that DOD uses are forced to operate within price caps and meet deadlines which may conflict with regulatory review times and encourage shortcuts. What is EPA's role in overseeing the cleanup of these sites?

Answer: EPA has statutory oversight authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for federal facility Superfund sites. EPA is supportive of Performance Based Contracting (PBC) generally, but its use at Superfund cleanup sites may present challenges and must be administered consistent with the obligations of EPA and the states to provide legal oversight and ensure protectiveness. PBC does not relieve a Department or Agency from meeting CERCLA statutory requirements.

EPA, through its oversight authority, will continue to help ensure that federal Departments and Agencies meet CERCLA requirements and perform cleanups that are protective of human health and the environment.

Representative Moran

CLEAN WATER AND DRINKING WATER INFRASTRUCTURE

Question 6: The Inspector General reported that he has seen no evidence of any significant progress in moving toward a comprehensive approach in addressing the funding gap. Moreover, the EPA budget for FY 2012 reduces funding for the State Revolving Funds by $947 million. Are we not going to find ourselves with a more expensive problem once this infrastructure further degrades over time? What is the answer, other that funding through the SRFs?

Answer: The President's request for FY12 maintains the balance between the need for reducing federal spending and ensuring that there is sufficient investment in our nation's water and wastewater infrastructure.

In addition to providing funding through the SRFs, the Agency will also continue to implement its Sustainability Policy to support the sustainability of water systems and improve the long-term financial, managerial, and environmental sustainability of the water sector. As part of that strategy, EPA is working to ensure that federal dollars provided through the SRFs act as a catalyst for efficient system-wide planning, improvements in technical, financial and managerial capacity, and the design, construction and on-going management of sustainable water infrastructure.

While SRF funding is the only source of credit for many systems, some systems are able to take advantage of the private lending market, bond market, and other private means to borrow funds for infrastructure. Additionally, systems have fees for water use, or other local income streams, such as property taxes, available to them, that can be used to meet infrastructure needs if the community chooses to do so.

Representative Moran

ECONOMIC IMPACT OF REGULATIONS

Question 7: You recently issued a boiler regulation that frankly has upset some environmentalists. It is estimated that the new final rule will cost half as much as the previous proposal. How did the new rule differ from the proposed rule? Specifically, what changes were made to reduce the cost of the final rule?

Answer: Multiple changes were made in response to public comments on the Boiler Maximum Achievable Control Technology (MACT) Rule. Changes that decreased costs include changes to subcategories, extending work practice standards to additional subcategories, decreased monitoring requirements, and incorporation of additional data and data corrections. The following table shows some of the major changes to the Boiler MACT Rule that resulted in decreased costs. While the costs were decreased, the benefits of the final rule are estimated to be greater than the benefits when the rule was proposed.

	Final Rule	Proposed Rule	Impact on Sources
Changes in subcategories:	Created a solid fuel category instead of separate biomass and coal subcategories for PM, mercury, and HCl	Separate biomass and coal subcategories	How will requirements change for biomass fueled boilers? Most biomass units will not need wet scrubbers. For coal? Coal units will need similar controls to those at proposal.
	Added subcategories for combination suspension/grate burners, limited-use units, and non-continental liquid units.	These units were included in other subcategories	Compliance will be achievable for units in the new subcategories, although many will need to improve performance
	Units combusting gases other than natural gas and refinery gas can qualify for work practice standards by demonstrating that their fuel contaminant levels are similar to natural gas	Natural gas and refinery gas-fueled units were subject to work practice standards, while units combusting other gases were subject to	Expect that many Gas 2 units will qualify for work practice standards

Representative Moran

		numeric emission limits	
	Replaced emissions limits with work practice standards for new boilers with a heat input capacity less than 10 million British thermal units per hour and extended work practice standards to limited-use units.	Work practice standards for existing small boilers. New small boilers required to meet emissions limits	Does not discourage replacement of old inefficient small units; allows limited use units to continue to be available for short-term use.
Emissions Reductions	529,000 tons	432,000 tons	
Annual Costs	$1.4 billion	$ 2.9 billion	
Benefits	$22 to $54 billion	$17 – $41 billion	

Representative Moran

BIOMASS

Question 8: Will the language included in section 1746 of HR 1 stop EPA's Biomass delay for the remainder of the fiscal year?

Answer: The language in section 1746 of HR1 states the following: "[n]one of the funds made available to the [EPA] by this division or any other Act may be expended for purposes of enforcing or promulgating any regulation (other than with respect to section 202 of the Clean Air Act) or order, taking action relating to, or denying approval of state implementation plans or permits because of the emissions of greenhouse gases due to concerns regarding possible climate change."

The Agency believes that the provision would have likely prohibited the Agency from promulgating the biomass deferral as the deferral would require "promulgating [a] regulation" and "taking action relating to" "the emissions of greenhouse gasses due to concerns regarding possible climate change." Because the enacted full-year continuing resolution for FY 2011 ultimately did not include this provision, EPA is still on track to promulgate a rule that will defer permitting requirements for CO_2 emissions from biomass-fired and other biogenic sources for three years.

Representative Moran

ASSISTANCE TO STATES AND LOCALS

Question 9: EPA is investing an additional $52 million in state assistance grants to support National Ambient Air Quality Standards and $30 million to assist States in permitting greenhouse gas emissions sources. How do we know that these resources are sufficient for States? How will the funding be distributed?

Answer: EPA is requesting $53.9 million to support states as they implement newly revised National Ambient Air Quality Standards (NAAQS). EPA has committed to accelerating the schedule for completing NAAQS reviews in order to meet the five-year deadline in the Clean Air Act (CAA) for reviewing the standards for each pollutant. Many standards had not been updated since the 1970s.

Under the CAA, States have primary responsibility for implementing the NAAQS. States are already implementing the ozone standards established in 1997, and 1979; the 1997 PM_{10} and $PM_{2.5}$ standards, the 2006 $PM_{2.5}$ standard; the 2008 lead standard; the 2010 NO_2 standard; the 1971 CO standard; and the 2010 SO_2 standard. Additionally the Agency has proposed a reconsideration of the 2008 ozone standard. The additional funding in the FY 12 request is intended to assist States in implementing the numerous requirements resulting from the revised standards.

The newly revised NAAQS (lead, NO2, and SO2) also include new ambient monitoring requirements. A portion of the increased request for FY 2012 includes funding to assist States in purchasing and installing ambient air monitors that needed to meet the revised monitoring requirements.

Many States are also implementing new permitting requirements for large sources of greenhouse gases (GHGs). Adding GHGs to the permitting programs has increased the number of covered sources; EPA estimates that 550 new sources will be subject to Title V operating permits and 900 more actions will fall under permits required for prevention of significant deterioration.[1] The increased assistance to States in FY 2012 will assist in avoiding delays in evaluating and approving permits. The funding will be distributed using an allocation methodology that includes a base amount for all States issuing permits and an amount based on the anticipated number of sources and the estimated emissions from the electrical generating and industrial sectors.

[1] http://www.epa.gov/NSR/documents/20100413piecharts.pdf

Representative Moran

HYDRAULIC FRACTURING

Question 10: What is the schedule for completion of the Hydraulic Fracturing study directed by this Committee?

Answer: Research will begin this year with a report at the end of 2012. This report will synthesize the results from individual research projects. Some aspects of the study, however, are longer-term and are expected to be reported on in 2014.

SUPERFUND ENFORCEMENT - DOJ

The request for 2012 reduces the Superfund program by $70 million, or 5.4 percent. The budget states that this reduction will postpone remedial construction starts, slow down ongoing construction projects, and likely curtail site assessments. What is more troubling is the reduction of 30 FTE that will decrease EPA enforcement available to identify, locate and reach settlement to recover trust fund dollars or get the Potentially Responsible Party to clean up the site.

Question 11: Will this reduction affect the Department of Justice staff that receives funds from this appropriation or will this all be EPA enforcement staff?

Answer: The reduction of 30 FTE is EPA enforcement FTE. The Agency's Superfund Enforcement request includes $24.9 million for the Department of Justice to provide litigation support. This represents a reduction of $700,000 which is commensurate with the reduction to EPA's enforcement level.

MULTIMEDIA TRIBAL IMPLEMENTATION GRANTS COMPLEMENT GAP GRANTS

Question 12: EPA is requesting $20 million for a new program to assist tribes in implementing environmental programs. Can you explain how these grants will complement the Tribal General Assistance program that is also being requested in FY 2012 at a level of $71.4 million?

Answer: Tribal environmental and health needs are vast. The Tribal General Assistance (GAP) program primarily focuses on capacity building, not implementation. Without this tribal investment, a Multimedia Tribal Implementation (MMTI) program is not possible. Various tribes have negotiated agreements with EPA, in place or in development, which lay out the needs, priorities, and direction of their environmental program.

Representative Moran

The MMTI program will build on the capacity realized under GAP. MMTI project selection criteria will require recipients to demonstrate that they have the capacity to implement environmental protection programs. Though previous uses of GAP resources is not a prerequisite, tribes that have used GAP resources effectively to build environmental protection program capacity might be more likely able to demonstrate implementation capability and are more likely to qualify for MMTI program funding.

By statute, EPA's Tribal General Assistance Program (GAP) provides funding to tribes and intertribal consortia to develop tribal capacity to manage environmental programs. With the exception of solid and hazardous waste activities, program implementation activities are not eligible under GAP – also in accordance with GAP's authorizing statute. Therefore, there will be no overlap between GAP and MMTI funding due to the different nature of capacity building vs. program implementation.

RESCISSION

In the fiscal year 2012 request, EPA included a $50 million rescission that would come from old STAG funding. In H.R. 1 the bill includes a $300 million rescission for EPA that is undesignated and requires EPA to report back to the Committee on where it would take the funds.

Question 13: If that $300 million rescission in H.R. 1 were included in any fiscal year 2011 or 2012 bill, where would EPA propose the funds come from?

Answer: If a $300 million rescission was to be enacted, the Agency would conduct a review of existing balances to determine the available resources for the rescission.

We do not know the specific programs impacted at this time but would look to those funds where utilization rates are low, beginning with the "oldest" money in terms of fiscal year.

MISSISSIPPI RIVER BASIN

You are again proposing to establish a new Mississippi River basin program to reduce nutrient loading as a way to help address the hypoxia problem in the Gulf of Mexico. This program will award $6 million in grants to Mississippi basin states and outlines a broad framework of collaboration with the states, the Department of Agriculture, and the US Geological Survey. The program also includes 7 EPA personnel.

Representative Moran

Question 14: What is your long-term vision for this program, and what results can we expect?

Answer: EPA's long-term vision for the Mississippi River Basin (MRB) program is to work collaboratively with states and stakeholders in the Basin to implement strong, watershed-based nutrient reduction strategies in the highest priority watersheds in the Basin, as outlined in the March 2011 memorandum, "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions." (See http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf)The goal is to implement effective nutrient reduction strategies and enhanced partnerships, especially with agricultural interests at both at the state and federal level, and yield significant progress in mitigating nitrogen and phosphorus pollution.

In FY 2012, EPA will build upon our strong coordination with USDA and invest in the highest priority watersheds in 3-4 states in the Mississippi River Basin through a competitive grant process among the states. The states selected for funding will: implement strong, watershed-based nutrient reduction strategies for point and nonpoint sources contributing sediment, nitrogen, and phosphorus loading that contribute to water quality problems in nearby waters and the Gulf of Mexico. These programs should target funds towards watersheds generating the greatest nonpoint source loadings of sediment, nitrogen, and phosphorus and include monitoring to document actual results from implemented practices. EPA and the selected states will also coordinate with USDA on the Natural Resources Conservation Service (NRCS) Mississippi River Basin Healthy Watershed Initiative .

The agency expects the MRB program to strengthen existing partnerships with U.S. Department of Agriculture and U.S. Geological Survey to promote sustainable agricultural practices, to reduce nutrient loadings in the Mississippi River Basin, to implement monitoring programs to measure nutrient reductions, and to use an adaptive management approach as appropriate.

TOXIC SUBSTANCES CONTROL ACT

GAO has continually found limitations in EPA's ability to show health effects on many chemicals used by consumers every day.

Question 15: Does EPA need statutory changes to effectively regulate chemicals?

Answer: No response provided to date.

Representative Moran

Question 16: Short of reforming the Toxic Substances Control Act (TSCA) are there additional resources that could lead to better and more effective regulation of known hazardous chemicals?

Answer: No response provided to date.

Question 17: Why, does EPA not have an action plan for BPA and other similar chemicals in plastics?

Answer: No response provided to date.

ENFORCEMENT

Question 18: GAO has noted that many States operate the day-to-day enforcement of Federal laws. Who at EPA is responsible for ensuring States do their jobs? Is it the region or headquarters? Is there some sort of metric EPA uses to rate the performance of States?

Answer: EPA and the states share responsibility for the implementation and enforcement of environmental statues. Ensuring effective and consistent enforcement of environmental laws at the state and Federal levels is a top priority for this Administration and the Agency is committed to helping states maintain a level playing field for business during these challenging economic times. Towards that end, EPA has made it a priority to conduct enhanced oversight of state enforcement programs, focusing on the most important sources and the most serious violations. Through the State Review Framework, the Office of Enforcement and Compliance and the Regions together routinely conduct oversight of state enforcement programs, and define actions to improve the level of performance. The results of these reviews, and progress in implementing the actions, are made available to the public on the Internet[2].

[2] For more information on the State Review Framework, visit http://www.epa.gov/oecaerth/state/srf/index.html

Representative Moran

ENFORCEMENT

Question 19: GAO reported that EPA has been slow to improve long-standing problems with often incomplete and unreliable enforcement data. What is EPAs strategy for improving enforcement data? What is EPAs progress in implementing GAO's recommendations to improve its data issues?

Answer: Improving the quality and accessibility of environmental data is a cornerstone of the Agency's *Regaining Ground in Compliance Initiative* that is included in the President's FY 2012 Budget. The Initiative would expand electronic reporting to promote efficiency and improve data quality, while increasing the public disclosure of compliance data to spur changes in behavior and increase incentives for pollution reductions. In addition, through EPA's State Review Framework (SRF), many issues pertaining to data quality are being addressed in order to promote consistent and transparent enforcement across state enforcement programs. The SRF identifies specific corrective actions that will improve the level of state performance, including the accuracy of enforcement data.

To further improve the quality of enforcement data, EPA began a Data Verification Process with the states in 2009. This provides an annual mechanism for states to review their enforcement and compliance data for accuracy and completeness. EPA will leverage this process as a key component of EPA's State Review Framework program.

In addition, the Enforcement and Compliance History Online (ECHO) website offers easy public access to information from EPA's national enforcement and compliance databases, providing incentives for EPA's state co-regulators to submit and maintain complete and accurate data. ECHO also provides an online feedback loop via the Agency's error correction process.

ECHO has improved the transparency of enforcement and compliance data, most recently providing easy access to data regarding state compliance monitoring and enforcement performance. The agency has improved and will continue to improve the access to more complete enforcement and compliance data through the enhancement of ECHO. For example, EPA plans to propose a rule to require industry to electronically report CWA National Pollutant Discharge Elimination System (NPDES) data to EPA and states (rather than paper submissions). Electronic reporting of information will significantly improve the quality and the completeness of the CWA NPDES data which will be provided to the public through ECHO.

Questions Submitted for the Record by Representative Rogers

CLEAN WATER ACT'S DEFINITION OF "FILL MATERIAL"

On January 13, 2011, Chairmen Rogers and Simpson sent a letter to EPA Administrator Jackson in response to press reports that EPA had been considering a revision of a rulemaking to clarify the Clean Water Act's definition of "fill material." Specifically, the letter requested, by January 31, 2011, any information "regarding the status of any work the EPA may be undertaking on this issue, including EPA's justification for why such a change is necessary or desirable; what actions or reviews may have been conducted to date; copies of any documents or correspondence that have circulated within EPA on this topic; and the timeframe for producing any proposals for changing the definition." The letter also requested that EPA keep the House Committee on Appropriations apprised of any developments in this area.

In EPA's response, dated January 25, the Administrator writes, "EPA has not made a regulatory proposal to modify this definition. Any such proposal in the future would be subject to significant public comment and participation."

Question 1: Does EPA continue to assert that the Agency has not circulated any proposal to modify this definition?

Answer: EPA has taken no further action on this issue since we wrote to you in January.

Question 2: If yes, do you agree that no appropriations will be necessary to fund such a regulatory revision?

Answer: We do not anticipate requesting an increase in appropriations even if we were to decide to proceed with a rulemaking.

Representative Calvert

Questions Submitted for the Record by Representative Calvert

AIR QUALITY TESTING

The committee has previously encouraged the EPA to establish a competitively awarded, national research facility to address many of the important issues relating to particulate matter, ozone, and atmospheric transformations and their modeling and monitoring that would be available for use by a variety of sectors including US industry, universities, other national laboratories, state and local governments, etc. In addition, this committee noted that the new generation atmospheric chamber at the University of California, Riverside is the only chamber in the U.S. designed to study atmospheric transformations of pollutants under conditions that accurately and simultaneously mimic the temperature, humidity, light and atmospheric concentrations of the actual atmosphere, conditions required to carry out the research needed to understand these critical, health-related pollutant issues.

Question 1: What steps has the EPA taken to establish a national research user facility as described?

Answer: The goal of EPA's air quality research program is to comprehensively examine air pollution from its source(s) through transformation to health outcomes. The program accomplishes this by complementing the expertise of our own scientists with that of scientists in academia through our Science to Achieve Results (STAR) program. The STAR program has established a nationally respected program of peer reviewed, competitively awarded research projects and facilities. These grants are awards to research applicants who respond to Requests for Applications (RFAs) that address relevant research needs or questions developed with policy and decision makers in the agency. In FY 2010, the STAR Grants program awarded grants to four Clean Air Research Centers. These Centers are supporting research consistent with the air quality research program's goal above.

In addition, specific RFAs in recent years have addressed more targeted questions regarding atmospheric chemistry, including climate interactions. For these studies, EPA has drawn upon the varied researchers and facilities available in academia. The UC Riverside investigators are invited, as are all other US investigators, to apply for funding if they think their facility can fulfill the research needed in an RFA. Further, EPA encourages collaboration among researchers such that if investigators outside the Riverside area want to team up with UC Riverside researchers and use the UC Riverside facility in their proposal responding to an RFA, such collaborations are also welcome.

Representative Calvert

Question 2: How has the EPA explored the possible partnership with the University of California, Riverside to establish this important national resource using their unique facility and associated instrumentation?

Answer: EPA recognizes the important work that is being conducted at the UC Riverside laboratory and encourages their work and applications in response to our RFAs. For that and other reasons, EPA and the University of California, Riverside signed a Memorandum of Understanding (MOU) designed to increase EPA's outreach to diverse and underserved communities by offering internships, joint projects, and scientific research opportunities to students and faculty. EPA's partnership with the UC Riverside will promote innovative climate change solutions and will help inner-city communities improve their environmental health.

The agreement between EPA and UC Riverside provides numerous benefits for both parties including:

- EPA internships during the summer and academic year;
- Agency participation in career fairs to make students, faculty, and alumni aware of employment opportunities at EPA;
- Faculty and student participation from UCR in public policy forums, presentations, and other events at EPA;
- EPA staff participation in lectures, conferences, and other events at Riverside;
- Provision of EPA expertise and/or resources for environmental curriculum development and teaching at UCR; and
- Riverside faculty serving as visiting scientists at EPA, joint research projects and EPA staff members serving as mentors or coaches for UCR students.

Representative Calvert

DIESEL EMISSIONS REDUCTION PROGRAM (DERA)

Question 3: How many of the 11 million vehicles and engines in the legacy fleet have been retrofitted through the DERA program to date?

Answer: Since 2008, Congress has appropriated more than $460 million for the DERA program, including $300 million as part of the American Recovery and Reinvestment Act of 2009. With this funding, approximately 50,000 engines have been retrofitted, and EPA has awarded:

- $249 million in competitive grants to fund implementation of EPA or CARB verified and certified diesel emission reduction technologies;
- $137 million in funds to participating States to implement grant and loan programs for clean diesel projects;
- $45 million in competitive grants through the SmartWay finance program to establish national low-cost revolving loans or other financing programs that help fleets reduce diesel emissions; and
- $32 million in competitive awards through the Emerging Technologies Program to foster the development and field evaluation of cutting-edge technologies.

Question 4: If they have not all been retrofitted, why was the decision made to request no additional funding for this program?

Answer: Budget constraints for fiscal year 2012 mean that EPA has to make tough choices; clearly the cost-effective DERA program is an example. While the DERA grants accelerate the pace at which dirty engines are retired or retrofitted, pollution emissions from the legacy fleet will be reduced over time without additional DERA funding as portions of the fleet turnover and are replaced with new engines that meet modern emissions standards.

During FY 2012 EPA will continue to administer already-funded on-going DERA projects funded through the regular DERA program and through Recovery Act funds.

Question 5: If the program was cut in FY2012 because of excess unspent funds from previous fiscal years and ARRA, what steps have been taken to increase the speed at which DERA grants flow out of EPA?

Answer: EPA has on-going processes in place to monitor the outlay rate for DERA grants, including checking milestones for progress with each individual grantee. EPA will

Representative Calvert

continue to pay close attention to each grantee and assist each with meeting their milestones and drawing down funds as quickly as possible.

Question 6: If unobligated funds can be dispensed with, would you recommend to the President that he continue to fund the DERA program in future fiscal years?

Answer: Cutting emissions from the existing legacy fleet is an important public health and environmental challenge that EPA is ready to meet, so EPA will reevaluate the need for funding this program in future fiscal years.

Representative Calvert

ENVIRONMENTAL PERMITTING

Question 7: Has the EPA identified those states whose environmental requirements, in certain instances, exceed those standards the EPA is charged with enforcing?

Answer: The Environmental Protection Agency (EPA) does not routinely track or identify states whose environmental requirements exceed federal requirements established and enforced by EPA. States have the ability to exceed minimum requirements set by EPA and to enforce their individual stringent environmental laws and regulations. EPA has not tracked these state-level activities.

Question 8: If so, to what extent has the EPA delegated its approval authority to those states?

Answer: State authorization is the process that states must go through to have EPA approve the transfer of primary implementation responsibility for an environmental program to the state (e.g. Clean Water Act section s 402 or 404). Initially, a state develops a specific environmental program (e.g., RCRA hazardous waste program) and has the program approved by EPA. For a state to receive final authorization, it must be equivalent to and consistent with federal program requirements. However, states may impose requirements that are more stringent or broader in scope than the federal requirements. Although each authorized state has primary responsibility for enforcing its environmental program, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with the environmental federal statute for that program. In addition, under the Clean Water Act, EPA has an oversight responsibility for approved state and tribal permitting programs. Pursuant to this authority, EPA has the discretion to review permits and may object to a permit if it is not consistent with state's approved program and the minimum requirements of the federal program.

Question 9: If a state's environmental regulations exceed federal regulations and if a project must meet more stringent state as well as federal standards before it is permitted, do you believe it is absolutely necessary for that project to undergo review by both the EPA and the state or, if authorizing authority were available, would you support a streamlined federal process or delegate more responsibility to the state?

Answer: EPA generally avoids duplicative efforts and does not generally review projects under programs that have already been delegated or otherwise transferred to the states. EPA does conduct selective oversight of state permitting to ensure Federal standards are being met. EPA is supportive of improving processes for delegating responsibility to the state based on regulatory and statutory requirements.

Representative Calvert

Question 10: Do current practices of delegating certain EPA permitting responsibilities to states result in a cost savings either for the government or the applicant, faster review times, or both? To what extend does the EPA's delegation authority reduce bureaucratic duplication between the state and federal levels?

Answer: Under existing law, where delegation is made appropriately and where the delegated state acts in accordance with the underlying federal safeguards, cost savings and faster review times can result.

Question 11: Has the EPA's experience with delegating environmental authorities been positive? Do you believe the EPA's model could be used as a template for delegating environmental other authorities from across the government to the states?

Answer: The majority of the federal environmental statutes allow for delegation or otherwise transferring authority to implement a regulatory program to states for portions of the programs. With adequate oversight, this process can ensure national consistency with minimum standards while providing flexibility to states in implementing rules. EPA and states have successfully implemented environmental programs together using this model for many years. We would be more than happy to discuss our process for transferring authority to implement regulatory programs to states.

Representative LaTourette

Questions Submitted for the Record by Representative LaTourette

DRAFT PESTICIDE REGISTRATION NOTICE 2010 – X

To further the Committee's understanding of the rationale behind EPA's draft Pesticide Registration Notice (PR Notice) 2010-X entitled *False or Misleading Pesticide Product Brand Names*, I have 4 follow up questions to those that I asked Administrator Jackson at EPA's budget hearing.

Question 1: In Assistant Administrator Stephen Owens' letter to me on this matter, he stated, "Use of false or misleading terms may result in risks to consumers or the environment if product users are misled to believe that they do not need to follow safety precautions or use directions." Some of the potentially affected brand names are over 40 years old. What evidence does EPA have to suggest that consumers find product brand names confusing?

Answer: EPA is aware of registrants' concerns about the draft PR Notice 2010-X concerning false or misleading pesticide product brand names. As background, for a registrant to lawfully sell and distribute a pesticide in the United States, the product cannot be "misbranded" as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [see FIFRA § 12(a)(1)(E)]. FIFRA defines "misbranded," in part, as having labeling that "bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular" [see FIFRA § 2(q)(1)(A)]. Therefore, if a brand name or product name that appears on a product's labeling is false or misleading, it would be a violation of FIFRA to sell or distribute the product. In addition, EPA could not grant a registration to a product that would be misbranded [see FIFRA § 3(c)(5)(B)].

The draft PR Notice 2010-X provides examples of brand names that may be considered to be false or misleading and describes a process for ensuring that brand names are not false or misleading by making changes such as replacing them or including qualifiers or disclaimers. EPA is currently contemplating narrowing the scope of the notice so that it focuses solely on safety- and composition-related terms, which would reduce by more than half again the number of potentially affected products.

Question 2: In the same letter from Mr. Owens, he stated that "EPA believes that only a very small number of products will be affected by the final PR Notice," and "EPA believes that very few registrants, if any, would actually need to change their product brand names and... no significant adverse impacts should occur in the marketplace." However, an industry estimate suggests that the proposal could impact more than 5,000 currently registered pesticide products and result in a potential loss of approximately $2.5 billion in brand equity. Can you please elaborate on what analysis EPA did to support the conclusion that only a very small number of products will be affected, and give your opinion on why there is such a large discrepancy between EPA's prediction of the proposal's affect and that of the industry?

Representative LaTourette

Answer: In evaluating the public comments received on the draft PR Notice, EPA has counted the products bearing brand names for federally registered pesticide products that contain the 21 terms listed in the draft notice as potentially false or misleading. EPA has found a total of 1,322 federally registered product brand names (not including distributor products) containing those listed terms. Further, EPA is currently contemplating narrowing the scope of the notice so that it focuses solely on safety- and composition-related terms, which would reduce by more than half again the number of potentially affected products. Moreover, the draft guidance neither bans product names containing the example terms, nor does it require brand names to be revised. Rather, it clarifies that product names containing certain terms could potentially be false or misleading and provides options available to registrants for addressing such issues with the Agency.

Question 3: In releasing this proposal, what type of economic analysis has EPA done on the economic impacts to pesticide manufacturers, garden centers, retail stores and other businesses that sell pesticide products?

Answer: The proposed PR Notice, once it is final and effective, would only clarify EPA's interpretation of existing legal requirements and would not impose any new requirements on either the Agency or upon applicants or registrants, and thus EPA did not complete an economic analysis. EPA is aware of the number of products that bear names containing the terms identified in the draft PR Notice (see answer to previous question) and is considering narrowing the scope of the notice, which would decrease the number of products that might be affected. Therefore, EPA estimates that only a very small percentage of all pesticide product brand names for current federally registered products would be likely to take any action in response to the PR Notice. Further, the PR Notice offers registrants simple and workable alternatives to changing or removing names such as by using disclaimers, qualifying statements, changing font type and size, and other methods short of removal or changes of trademarked names

Question 4: Can EPA provide the Committee with assurances that it will refrain from requiring registrants to change existing product brand names through the registration process until a formal policy is finalized?

Answer: Yes. EPA agrees that we should not implement the draft PR Notice until we have duly considered all public comments received and have issued a final and effective PR Notice.

WASTEWATER UTILITIES

Regional and municipal wastewater utilities throughout the country are facing shrinking revenues and a reduction in other traditional funding sources due to the distressed economy. At

Representative LaTourette

the same time, they are continuing to work toward compliance with current permit and consent decree requirements. I am concerned that EPA continues to promulgate new regulations, addressing nutrients, boilers and sewage sludge incinerators, and stormwater to name just a few. No wastewater utility has the financial capability to address all of these mandates at the same time.

Question 5: Please explain what, if any mechanisms that EPA has in place to help financially struggling regional and municipal wastewater utilities comply with EPA's new regulations.

Answer: The Clean Water State Revolving Fund (CWSRF) grants provides funding for the construction of publicly owned wastewater facilities, implementation of nonpoint source pollution control and estuary protection projects. CWSRFs have funded over $84 billion in water quality projects, providing 28,190 assistance agreements to date. Since the revolving funds are administered by the states, project funding varies according to the priorities, policies, and laws within each state. Eligible applicants also vary by state. To further assist communities, the CWSRFs have provided over $2.9 billion of ARRA funding as additional subsidization in the form of principal forgiveness, grants, and negative interest loans. Although more limited than the authorization provided by the ARRA, the FY10 enacted appropriation also authorizes the CWSRFs to provide additional subsidization..

Question 6: How will the EPA use the flexibility that already exists in the Clean Water Act (CWA) and other environmental statutes to enable the regulated community to prioritize environmental efforts and use limited resources to address the most serious environmental issues?

Answer: EPA recognizes the challenging economic conditions facing communities today in addressing municipal wastewater requirements and utilizes the flexibility under the law and applicable federal policies and guidance to the extent available to consider the unique financial circumstances that may affect a particular community. For instance, in the context of resolving CWA enforcement actions, EPA conducts an analysis to ensure that the most cost-effective controls are selected to address municipal wastewater requirements and to determine when flexibility in the schedule for compliance is appropriate to accommodate the financial conditions of a community. Factors considered in this analysis may include the municipality's ability to raise funds, the local unemployment rate, the degree of financial burdens on the community to implement control measures, and whether the proposed controls incorporate the use of green infrastructure. NPDES permits and enforcement agreements that incorporate green or gray infrastructure solutions require enforceable performance criteria, implementation schedules, monitoring plans and protocols, progress tracking and reporting, and operation and maintenance requirements. Regardless of the technology used, EPA looks for a demonstration of sound modeling and technical approaches as well as planning for overall wet weather control approaches to satisfy regulatory requirements.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 3 1 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Steven C. LaTourette
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman LaTourette:

Thank you for your letter of December 8, 2010, to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson expressing your concerns about EPA's draft Pesticide Registration (PR) Notice 2010-X: False or Misleading Pesticide Product Brand Names. Administrator Jackson asked me to respond on behalf of the Agency since my office is responsible for the regulation of pesticides.

First, as background, EPA issued this draft notice to invite public comment on a proposal intended to provide clarifying guidance to registrants to help them avoid or take corrective action on false or misleading pesticide product brand names. Use of false or misleading terms may result in risks to consumers or the environment if product users are misled to believe that they do not need to follow label safety precautions or use directions.

Your letter raises the question of EPA's authority in this area. EPA has clear authority over pesticide labeling and a mandate to prohibit false or misleading claims on pesticide labeling. Specifically, section 2(q)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that a pesticide is misbranded if "its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular." Pursuant to section 12(a)(1)(E) of FIFRA, it is unlawful to sell or distribute a misbranded pesticide. Further, section 3(c)(5)(B) of FIFRA requires EPA to determine that pesticide labeling meets the requirements of FIFRA, including that it not be false or misleading.

EPA has several regulations that implement these authorities. 40 CFR §156.10(a)(5) states that a pesticide or device "is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims." Subsections (i) through (x) of this regulation specify categories and some examples of false or misleading claims. 40 CFR §156.10(b)(2)(ii) specifies that product brand names cannot be false or misleading.

Your letter states that this action constitutes a regulation amendment. As noted above, the regulations concerning this issue specifically indicate that brand names cannot be false or misleading and establish the broad and clear principle consistent with the statutory mandate. However, regulations need not specify every potential situation that may arise. Rather, those are dealt with by applying the law and regulations on a case-by-case basis. This PR Notice is not an amendment to the regulations. PR Notices are a longstanding mechanism that EPA uses to help registrants comply with the regulations by providing clarifying but interpretive guidance. Since EPA believes it is important to receive public input on this type of guidance, we proposed it for public comment. However, this type of program guidance does not require formal rulemaking.

We are sensitive to the significant investment that some registrants make in developing and protecting their brand names. However, EPA believes that only a very small number of products will be affected by the final PR Notice. In addition, there are approaches available that could provide options for qualifying or disclaiming potentially false or misleading product brand names. Therefore, EPA believes that very few registrants, if any, would actually need to change their product brand names and that no significant adverse impacts should occur in the marketplace.

We appreciate your concern about implementing the guidance in the PR Notice before it has been finalized. EPA has not requested any changes in product names based solely on the draft PR Notice. Instead, the Agency continues to implement its existing regulatory authorities discussed above to prevent false or misleading pesticide product brand names.

Your letter questions whether this action would provide additional protection for human health and the environment and asserts that it could create consumer confusion. Most pesticides are inherently toxic in order to carry out their intended purpose and must be used in accordance with the label to prevent unreasonable adverse effects to humans or the environment. Products bearing false or misleading terms, whether in the product name or elsewhere on the label, can present risks to users. Recent Federal Trade Commission (FTC) consumer perception surveys indicate broad environmental labeling claims such as "green" and "eco-friendly" imply to many consumers that a product may have no negative environmental impacts, which in the case of pesticides is generally not true. Thus, the FTC study supports EPA's position.

You request that we reevaluate the draft notice and address manufacturers' concerns. Public protection is a priority concern for EPA. Therefore, the Agency is giving careful consideration to all of the public comments received. In determining our final action, EPA hopes to continue to strike the appropriate balance between allowing manufacturers flexibility in the marketplace and applying the statutory requirements to ensure public health and environmental protection.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

Stephen A. Owens
Assistant Administrator

Representative Cole

Questions Submitted for the Record from Representative Cole

REGULATORY ENFORCEMENT

Question 1: You mention in your testimony that the 2012 budget maintains funding for a strong regulatory enforcement presence. Why should burdensome regulation be given priority over programs that assist with compliance?

Answer: In FY 2012, compliance assistance will remain a valuable tool in EPA's enforcement and compliance assurance program. The Agency will continue to employ assistance tools as part of an integrated strategy that uses all elements of our enforcement program (monitoring, assistance, incentives, and traditional enforcement approaches) to improve compliance with environmental laws and help businesses, Federal facilities, local governments, and tribes meet their environmental responsibilities.

REGULATORY ENFORCEMENT

Question 2: Major changes to Clean Air (Particulate and Ozone attainment) and Clean Water are being considered. Why should we make regulations more burdensome when you have said these acts as now applied are saving lives? How is the EPA considering the burden on rural areas, especially production agriculture areas when formulating regulations such as these?

Answer: Although our current regulations have made progress, there are more lives to save and more illnesses to prevent. The Clean Air and Clean Water Acts continue to protect the public health and welfare of many Americans, particularly children, who are impacted by poor air and water quality. We predict that several recent rules will save many additional lives and prevent additional illnesses at reasonable costs by requiring technologies that are already widely available and cost-effective.

The Agency works closely with the agricultural sector to address their unique challenges and will continue to work closely with this sector as we move forward with our newest regulations. For example, EPA recently reviewed oil spill prevention regulations under the Clean Water Act, and decided that certain dairy sanitary standards could also help protect against spills. We revised the regulations to exempt containers of milk and milk products, thus reducing compliance costs by more than $140 million each year, at over 50,000 dairy farms nationwide.

In addition, as part of the development of each new regulation issued by the Agency, there is generally an examination of the potential economic consequences. The Agency follows the requirements of Executive Order 12866 (September 30, 1993) and examines the costs and

benefits of all significant regulatory actions. In choosing among alternative regulatory approaches, Agencies are to select those approaches that maximize net benefits. However, for some regulations, statutory provisions govern, and even prohibit, EPA's consideration of the economic impact in decisions when proposing new rules and regulations. Finally, when allowed by statutory provisions, the Agency considers opportunities to reduce burden on small businesses, such as small farms. We frequently promulgate alternative compliance options for these small entities.

Question 3: How does the EPA calculate future job and revenue losses when promulgating regulations? What is the threshold where job loss is too severe to go forward with regulations?

Answer: When examining employment impacts of regulations, EPA strives to use the best available economic data and analytical methods. These methods will vary depending upon the precise nature of the regulation. Wherever possible, EPA relies upon high-quality peer-reviewed academic work. For example, in estimating short term employment impacts from the Industrial Boiler NESHAP and NSPS rule (the "Boiler MACT"), EPA based its analysis on the peer-reviewed and data-driven approach taken by Morgenstern, Pizer, and Shih in "Jobs Versus the Environment: An Industry-Level Perspective," which was published in the Journal of Environmental Economics and Management.

Representative Cole

NSR RULE FOR INDIAN COUNTRY

Question 4: When will EPA publish its Clean Air Act new source review rule, or "NSR" rule, for Indian Country? Can you tell us when EPA will publish the final rule for Indian Country and how aggressively EPA will then move to correct these long-standing tribal permitting inequities?

Answer: EPA expects to issue this final rule in Spring 2011 to address the long-standing regulatory gap in Indian country. The rule includes an implementation plan that provides environmental protection while ensuring that we have appropriate resources to issue permits in Indian country.

We are also currently developing general permits for many common source categories in Indian country to streamline the implementation of the minor NSR program and we will continue to provide information and training to Tribes about the program. These preparations include: training modules, forms needed for permitting or registration, and information to be made available on the EPA website.

Question 5: The White House says the final "NSR" rule for Indian Country cleared OMB a month ago. Can you tell us when EPA will publish the final rule for Indian Country and how aggressively EPA will then move to correct these long-standing tribal permitting inequities?

Answer: EPA expects to issue this final rule in Spring 2011 to address the long-standing regulatory gap in Indian country. The rule includes an implementation plan that provides environmental protection while ensuring that we have appropriate resources to issue permits in Indian country.

We are also currently developing general permits for many common source categories in Indian country to streamline the implementation of the minor NSR program and we will continue to provide information and training to Tribes about the program. These preparations include: training modules, forms needed for permitting or registration, and information to be made available on the EPA website.

Representative Cole

DESERT ROCK ENERGY FACILITY

Question 6: Were Due Process and basic notions of fairness considered when you rescinded a properly issued permit on the Desert Rock power plant?

Answer: EPA wishes to clarify for the record that its air program staff did not rescind the Prevention of Significant Deterioration (PSD) permit for the Desert Rock Energy Facility. Rather, after initial issuance of the permit in July 2008, EPA's decision to issue it was appealed by several environmental organizations[1,2] and the State of New Mexico[3] (Petitioners) to EPA's Environmental Appeals Board (EAB), which subsequently remanded the permit back to EPA's Region 9 office for further review.[4] The EAB's remand was based on two separate grounds. First, the EAB concluded that it was appropriate to grant a motion filed by EPA for a voluntary remand of the permit. Second, based on the administrative record for the permit, the EAB independently concluded that the entire permit should be remanded because of one overarching issue related to the Best Available Control Technology (BACT) analysis conducted by the Region.

The EAB was established in 1992 to function as an administrative appeals court within EPA and serves as the final Agency decision maker on administrative appeals under all major environmental statutes that the Agency administers. The EAB consists of four environmental appeals judges, which generally sit in a three-judge panel for a particular case. The EAB is an impartial body independent of all Agency components outside the immediate Office of the Administrator.

Upon review of the facts contained in the permit record for this case, briefs filed by the Petitioners, and reply briefs submitted by both the permit applicant and counsel for EPA, the EAB independently found that the permit was deficient because the applicant and the Region failed to properly consider the use of integrated gasification combined cycle (IGCC) technology as an emissions control measure in the required BACT analysis. Because of the fundamental nature of this deficiency, in September 2009, the EAB remanded the permit in its entirety to the Region for further review. In addition, the EAB granted a motion filed by Region 9 at the request of staff in the Administrator's office in April 2009 that the EAB remand the permit to Region 9 so EPA could voluntarily reconsider its approach to several issues raised in the appeal of the permit; the consideration of IGCC technology in the BACT analysis was also among the

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[1] Earthjustice et. al. (2008). *Petitioners' Supplemental Brief.* Retrieved from EPA Environmental Appeals Board website at: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/7c0e2fa7cd40282f852574a900678970!OpenDocument

[2] Center for Biological Diversity. (2008). *Petition for Review.* Retrieved from EPA Environmental Appeals Board website at: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/7c0e2fa7cd40282f852574a900678970!OpenDocument

[3] Attorney General of New Mexico. (2008). *State of New Mexico's Petition for Review and Supplemental Brief.* Retrieved from EPA Environmental Appeals Board website at: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/7c0e2fa7cd40282f852574a900678970!OpenDocument

[4] *In Re: Desert Rock Energy Company LLC*, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06 (EAB Sep. 24, 2009), 14 E.A.D. __

issues cited in Region 9's voluntary remand request. Before granting the Region's remand request, the EAB considered arguments about fairness and due process that had been made by the permit applicant in a written opposition the April 2009 request. The EAB concluded that the April 2009 request was not made in bad faith and that granting the request would not violate the due process requirements of the United States Constitution.

Following issuance of the remand order from the EAB in September 2009, EPA has made attempts to work with the permit applicant to discuss how it could amend its permit application to address the deficiencies identified by the EAB, the matters that EPA had sought to reconsider, and other requirements that had arisen since the permit was initially proposed. The applicant has not amended its permit application with the information that EPA must have in order to proceed. Nevertheless, EPA remains willing to work with the applicant to address these issues at any time.

Question 7: If built it has been said that the Desert Rock plant would be the cleanest coal plant in the U.S. If this doesn't meet clean air standards would any coal plant?

Answer: Under the Clean Air Act (CAA) and applicable regulations, a Prevention of Significant Deterioration (PSD) permit must contain emissions limitations based on application of the Best Available Control Technology (BACT) for each regulated NSR pollutant. The BACT requirement is set forth in section 165(a)(4) of the CAA, and in the federal PSD regulations at 40 CFR 52.21(j). As discussed above, EPA's Environmental Appeals Board remanded the PSD permit for the Desert Rock Energy Facility in large part because of the applicant's and the Region's failure to adequately demonstrate that the emissions limitations in the initial permit were based on application of BACT for this particular facility. While this significant flaw in the administrative record left the Desert Rock permit without a solid legal foundation, we do not believe the identified need for EPA and this permit applicant to more thoroughly evaluate pollution control technology options (and justify the selected options) ultimately has any significant bearing on the ability of this or other applicants to obtain a PSD permit.

Representative Cole

HYDRAULIC FRACTURING

Question 8: As to the ongoing EPA study of hydraulic fracturing, when will the study be finished?

Answer: EPA will synthesize results from its study in two reports. We anticipate that the first report will be available at the end of 2012. Some aspects of the study, however, are longer-term and are expected to be reported on in 2014.

Question 9: Is new federal legislation among the options being studied?

Answer: No. The ongoing EPA study on the relationship between hydraulic fracturing and drinking water is a research study. The results of this study will provide decision-makers at all levels (e.g., government, industry, consumers) with sound scientific knowledge that can inform their decisions. Though it will look at the efficacy of wastewater treatment and other processes, the study will not examine the existing regulatory framework or propose options for future legislation.

Question 9b: If fracking regulation is left to the states, or is federally regulated, how would you propose to respect and protect tribal sovereign governmental authority over fracking on lands within Indian Country?

Answer: EPA recognizes that the United States has a unique legal relationship with tribal governments based on the Constitution, treaties, statutes, Executive Orders, and court decisions. This relationship includes recognition of the right of tribes – as sovereign governments – to act with self-determination, as well as an acknowledgment of the federal government's trust responsibility to tribes. Tribes may elect to obtain primacy for the Underground Injection Control (UIC) program, and two tribes (Fort Peck and Navajo nation) already have primacy for Class II oil and gas programs. Where there is a federal program, an EPA region would implement the UIC program on behalf of the tribe if the tribe does not seek primacy.

Question 10: If the hydraulic fracturing study leads to a recommendation of no new rulemaking, and an organization petitions the EPA to study fracking a year after that determination would the EPA expend the time and resources to undertake another study?

Answer: The study will not produce recommendations, for or against, additional rulemakings. If EPA determined that a petition had merit (e.g., introduced new data relating hydraulic fracturing to drinking water impacts of concern), EPA would consider requests for additional study. EPA also recognizes that there are other important potential research areas related to hydraulic fracturing, including effects on air quality, aquatic and terrestrial ecosystem

Representative Cole

impacts, seismic risks, public safety concerns, occupational risks, and economic impacts. These topics are outside the scope of the current study, but could be examined in the future.

SPILL – SENECA NATION OF INDIANS

Question 11: The Seneca Nation of Indians in western New York has informed me that a current spill is affecting the Quaker Run watershed running into the Allegheny Reservoir on the Seneca's Allegany Territory. What is EPA doing about that spill, and with what results?

Answer: EPA Region 2 has reached out to the Seneca Nation of Indians (SNI) to discuss concerns regarding water quality issues in the Allegheny Reservoir. Although no specific spill has been identified, EPA Region 2 remains in contact with SNI's environmental compliance personnel regarding oil spills into waterways.
Representative Cole

Representative Lummis

Questions Submitted for the Record by Representative Lummis

REGULATORY ACTION UNDERWAY FOR CLEAN AIR ACT AND CLEAN WATER

In response to my question about how many regulatory actions were underway on the Clean Air Act and Clean Water Act, Secretary Jackson replied "2 or 3." Yet, a recent House Energy and Commerce Committee report indicates that the agency has, in the past four years, either concluded or is actively pursuing 69 separate regulatory actions.

Question 1: So that I can accurately account for the disparity, please provide me with a full accounting of completed, or pending rulemakings, and completed, or pending agency guidance over the past four years.

Answer: Administrator Jackson's response of "2 or 3" regulatory actions referred to major publicly proposed Clean Air Act and Clean Water Act rules such as: the National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units (CAA), the Transport Rule (CAA), and the Criteria and Standards for Cooling Water Intake Structures (CWA).

Regulations currently expected to be proposed or finalized in FY2012 by EPA programs may be found using the Agency's Rulemaking Gateway at the following link: http://yosemite.epa.gov/opei/RuleGate.nsf/. If you do not find on the Gateway all of the information that you need, please feel free to have your staff contact EPA's Office of Congressional and Intergovernmental Relations to identify the additional information you seek.

AIR PERMITS IN ALASKA'S OUTER CONTINENTAL SHELF

With regard to air permits in Alaska's OCS, this Committee stated in the FY2010 appropriations conference report that they were "concerned about the ability of the Agency to effectively carry out its responsibilities to process oil and gas permits in the Outer Continental Shelf (OCS)." The Committee specifically directed EPA "to allocate sufficient funds and personnel to process OCS air permits in a timely manner" .... and within 90 days to "provide a detailed timeline for issuance of the pending permits."

Question 2: Has the EPA followed this directive? If so, please provide me with the detailed timeline as requested by this Committee. If not, why not? Further, what is the current status of air permits in the Alaska OCS? Finally, this Committee also asked that EPA to submit to the Committee a "plan to address this issue consistently among all affected regional offices" . . . with the expectation that the EPA would "set clear, reasonable national guidelines for issuing

Representative Lummis

OCS air permits." Has EPA done this? If so, please provide me with those guidelines. If not, why not?

Answer: Yes, EPA has followed the above directive. This report was submitted to the Appropriations Committees on March 18, 2010. A copy is attached. This report includes EPA's efforts to promote consistency and to set clear, reasonable national guidelines for issuing OCS air permits.

The current status of air permits for exploratory drilling on the Alaska OCS is included in the following table:

Representative Lummis

Status of Air Permits in the Alaskan OCS – 4/13/11
(all for exploratory drilling)

Permit Applicant ***Permit Type***	**Location**	**Status**	**Anticipated Schedule**
Shell Oil *PSD application for Discoverer drill ship (2012 drilling season)*	Chukchi Sea (NW of Alaska)	Final permit signed 3/ 31/ 10; appealed and remanded to Region 10 by EAB on 12/30/10. The Region has requested additional information that Shell has agreed to submit. Shell has indicated that they will request additional permit revisions.	EPA will issue a revised final permit later this year. Timing is affected by the extent of permit revisions requested.
Shell Oil *PSD application for Discoverer drill ship (2012 drilling season)*	Beaufort Sea (N of Alaska)	Final permit signed 4/9/10; appealed and remanded to Region 10 by EAB on 12/30/10. EPA has requested additional information that Shell has agreed to submit. Shell has indicated that they will request additional permit revisions.	EPA will issue a revised final permit later this year. Timing is affected by the extent of permit revisions requested.
Conoco-Phillips *Title V operating permit application for jack-up rig (2013 drilling season)*	Chukchi Sea (NW of Alaska)	Application determined complete 4/13/10. EPA has requested additional information that ConocoPhillips has agreed to submit.	EPA will issue a final permit later this year. Timing is affected by when adequate information is submitted.
Shell Oil *Minor New Source Review (NSR)/Title V permit applications for Kulluk floating drill rig- (2012 drilling season)*	Beaufort Sea (N of Alaska)	Application received 2/28/11. Determined incomplete 3/23/11. Partial response submitted by Shell 3/29/11. EPA expects additional information from Shell.	EPA will issue a permit later this year. Timing is affected by when a complete application is submitted.

Representative Lummis

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 18 2010

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Dianne Feinstein
Chairman, Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Madam Chairman:

Enclosed for your review is the Environmental Protection Agency's (EPA) Report to Congress on the Outer Continental Shelf (OCS) Permits as requested in the FY 2010 Conference Report of the Department of Interior, Environment and Related Agencies Appropriations Act, 2010 (House Report 111-316).

House Report 111-316 directs EPA to report within 90 days of enactment with a detailed timeline for issuance of the pending permits, and submit its plan to address this issue consistently among all affected regional offices. We have enclosed a brief report detailing a timeline for the issuance of pending permits and a plan to make the issuance of OCS permits consistent among all affected regional offices. The report also contains a listing of anticipated permit applications Regions 4 and 10 expect to receive in the near future and a listing of current staffing for processing OCS Air Permits in these Regions.

Thank you for your support. Should you need additional information or have further questions, please contact Ed Walsh at (202) 564-4594.

Sincerely,

Barbara J. Bennett
Chief Financial Officer

Enclosure

Representative Lummis

BOILER MACT RULE

Question 3: Has the EPA estimated the change to electric rate-payers as a result of the forced shutdown of plants caused by the Boiler MACT rule? If so, please provide me with that data. If not, why not?

Answer: EPA modeled the economic impact of the Boiler MACT rule using a multimarket model. The Agency estimated that energy prices will increase by 0.0279%. The model is described in the Regulatory Impact Analysis (RIA). The final RIA for the Boiler MACT is found at: http://www.epa.gov/ttn/ccas/regdata/RIAs/boilersriafinal110221_psg.pdf.

The overview of the multimarket model and results are in section 4.1 to 4.1.2. Detailed results are in Appendix B and a more detailed description of the model is in Appendix A. A brief summary of the detailed description of the model is below:

- Industry sectors and benchmark data set
  - 100 industry sectors
  - a single benchmark year (2010)
  - industry employment data
- Economic behavior
  - industries respond to regulatory costs by changing production rates
  - market prices rise and fall to reflect higher energy and other non-energy material costs and changes in demand
  - customers respond to these price increases and consumption falls
- Model scope
  - 100 sectors are linked with each other based on their use of energy and other non-energy materials. For example, the construction industry is linked with the petroleum, cement, and steel industries and is influenced by price changes that occur in each sector. The links allow EPA to account for indirect effects the regulation has on related markets.
  - production adjustments influence employment levels
  - international trade (imports/exports) responds to domestic price changes
- Model time horizon ("short run") for a single period (2014)
  - fixed production resources (e.g., capital) lead to an upward-sloping industry supply function
  - firms cannot alter input mixes; there is no substitution among intermediate production inputs
  - price of labor (i.e., wage) is fixed
  - investment and government expenditures are fixed

Representative Lummis

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

I understand that EPA is drafting financial assurance requirements for the hardrock mining industry under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Please provide answers to the following questions regarding this rulemaking:

Question 4: I understand that EPA believes that Section 114(d) of CERCLA does not allow the agency to delegate all or parts of a Section 108(b) financial assurance program to the states. Has EPA considered incorporating state programs to avoid duplicative efforts? If not, please explain and provide legal authorities as to why the agency believes it is limited in preserving comprehensive and effective state programs.

Answer: CERCLA Section 114(d) does not itself address whether Section 108(b) financial assurance programs may be delegated to the States. It is, however, a preemption provision, providing in part that no owner or operator of a facility "who establishes and maintains evidence of financial responsibility in accordance with this subchapter shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance."

As we develop the proposed rule, EPA is seeking options consistent with its CERCLA authorities that recognize the important accomplishments of our state partners. The Agency is also gathering information regarding state financial assurance requirements that apply to hardrock mines. In addition, to help EPA better understand the potential effects of new CERCLA 108(b) requirements on state programs, the Agency has met with the Association of State and Territorial Solid Waste Management Officials and the Interstate Mining Compact Commission, and plans to meet with other interested groups, including the National Association of Attorneys General, and the Western Governors Association, to hear their concerns. In accordance with section 6(c) of Executive Order 13132 on Federalism, EPA will also consult with state and local elected officials early in the process of developing the proposed rule, to provide them meaningful and timely input into its development. These combined efforts will help inform the Agency's evaluation of the effects of the proposed rule.

Representative Lummis

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

Question 5: Section 108(b) of CERCLA by its express language shows that Congress did not intend to displace financial assurance requirements under other federal laws. Please describe in detail EPA's outreach to other federal agencies that current have robust financial assurance requirements in developing a CERCLA 108(b) program to avoid duplication. How has this information informed the agency in developing its program under CERCLA 108(b)? Has the agency considered a "gap filling" approach that complements rather than overrides existing federal programs?

Answer: EPA has met with other federal agencies that currently have financial assurance requirements in our development of the CERCLA 108(b) regulations. Specifically, the Agency has met with staff and management from the Bureau of Land Management (BLM), U.S. Forest Service (USFS) and the Nuclear Regulatory Commission. EPA staff also conducted site visits with U.S. Forest Service and State staff to several USFS- and BLM-regulated mines in Idaho and Montana during September 2010. In addition, EPA conducted reviews of existing BLM and USFS regulations pertaining to financial responsibility for mines and is coordinating with BLM and USFS staff to fully understand their regulations. The information EPA has gathered in these discussions and visits is informing EPA's development of regulatory options under CERCLA 108(b).

Representative Hinchey

Questions Submitted for the Record by Representative Hinchey

WASTEWATER DISCHARGE PERMIT PA -- 0026825

Question 1: Please provide a copy of a report titled "Pass Through Analysis Clairton Municipal Authority NPDES Wastewater Discharge Permit PA – 0026825

Answer: EPA has not yet issued this report. Depending on whether Clairton, PA, continues to accept waste, which, if they do not, would make the report unnecessary, EPA will make the report available as soon as it is completed.

HYDRAULIC FRACTURING

Question 2: Does EPA have any documents, memos, reports or other information related to the claim that there has never been a documented case of hydraulic fracturing contaminating drinking water? If so, please provide such information, including any documents, memos, or reports.

Answer: EPA does not possess any documents, memos, reports or other information that suggests "there has never been a documented case of hydraulic fracturing contaminating drinking water". The Agency does have evidence indicating that hydraulic fracturing fluids may have contaminated water resources. However, the Agency has not conclusively determined whether such impacts are the result of hydraulic fracturing itself or another aspect of production, such as improper casing or cement work.

As part of a 2004 study, EPA reviewed reported incidents of drinking water well contamination believed to be associated with hydraulic fracturing while studying potential impacts of hydraulic fracturing on underground sources of drinking water near coal bed methane reservoirs. The incidents reviewed by EPA in the 2004 study did not include original analysis or sampling, rather, it relied on preexisting information.

At Congress's request, EPA's Office of Research and Development has undertaken a new study of potential impacts from hydraulic fracturing on drinking water. In this study, EPA will assess impacts drinking water resources.

EPA's new study will include original analysis and sampling and will include retrospective case studies with both existing and new information to be collected, and prospective case studies, which gives EPA the opportunity to assess various locations and management strategies. EPA will examine the potential impacts to surface and underground drinking water sources that may occur at every step in the hydraulic fracturing process in the

current study -- from water acquisition, well construction, and hydraulic fracturing to produced water management.

HYDRAULIC FRACTURING

Question 3: Does EPA have any ongoing investigations that pertain to groundwater contamination from hydraulic fracturing operations? If so, please list those investigations and provide all documents related to those investigations.

Answer: EPA has active groundwater investigations in three areas with oil or gas development that have been disclosed to the public. In every case, EPA is focusing on the *entire range* of onshore natural gas development activities as well as any other potential sources of contamination– not just hydraulic fracturing itself.

EPA has recently issued two emergency orders under section 1431 of the Safe Drinking Water Act to address an imminent and substantial endangerment to human health in both Texas and Montana. However, EPA has not concluded that hydraulic fracturing was the cause of the contamination to underground sources of drinking water in either case.

In Parker and Hood Counties, Texas (Range Resources and Range Production – copy attached), citizens complained about methane in private drinking water wells which had shown no signs of methane contamination for years prior to the gas drilling activities. These citizens were at risk of explosive levels of methane, and exposure to benzene, a known carcinogen. EPA's investigation is necessary to determine the nature and extent of contamination and an appropriate remediation plan. The Texas order requires appropriate actions by the oil company to study the nature and extent of the contamination and to address the potential endangerment.

In the East Poplar oilfield on the Fort Peck Indian Reservation in Montana, the aquifer contamination has been the subject of multiple EPA orders dating to 1999 (Murphy Exploration & Production, Pioneer Natural Resources, Samson Hydrocarbons Co. – copy attached) and a lengthy study by the US Geological Survey that began in the mid-1990s. The groundwater contamination includes brine water, with total dissolved solids exceeding 200,000 mg/l and benzene. In this case, EPA concluded that historic practices in this oilfield involving produced brine management and improper well plugging led to the contamination. With the Poplar orders,

Representative Hinchey

EPA has focused on protecting public health from contaminants in underground sources of drinking water.

Additionally, EPA is conducting a groundwater investigation in Pavillion, a small Wyoming town located within the boundaries of the Wind River Indian Reservation. In 2008, a group of residents approached EPA with complaints of sudden adverse changes in the quality of their well water, which they believed could be associated with natural gas development in the area.

In response to the Pavillion complaints, EPA commenced an investigation into the nature and cause of the reported contamination. Hydraulic fracturing occurred in tight sandstone units at depths as shallow as 1,400 feet in an underground source of drinking water. We will evaluate all of the data collected and make the best determination of potential sources based on the preliminary data. Results of our work are anticipated this summer. The operator is currently funding alternate drinking water for the community under a voluntary agreement.

Meanwhile, at the direction of Congress, EPA has undertaken a scientific study into the potential impacts of hydraulic fracturing and associated activities on water resources. Work is underway, and preliminary results from this study are expected in late 2012.

EPA would be happy to brief your staff on the status of the SDWA orders, the Pavillion study, the scientific study, and our ongoing efforts to protect the public at these sites.

Representative Hinchey

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202

December 7, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7007 0710 0002 1385 1927)

Mr. Mike Middlebrook
Vice President of Operations
Range Resources Corporation and
Range Production Company
100 Throckmorton Street, Suite 1200
Fort Worth, TX 76102

Re: Findings and Emergency Order
Docket No. SDWA-06-2011-1208
Butler Unit, Lease No.: 253732, Well # 1-H
Teal Unit, Lease No.: 253779, Well #1-H

Dear Mr. Middlebrook:

As a result of investigatory work performed, the U.S. Environmental Protection Agency (EPA) Region 6 has determined that an imminent and substantial endangerment to a public drinking water aquifer has occurred (or may occur) through methane contamination which is directly related to oil and gas production facilities under your operation. The Agency has data to indicate that two private drinking water wells, and potentially more, have been significantly impacted by the methane contamination which presents a potential threat of explosion due to high levels found dissolved in the drinking water and methane vapors present in the headspace of the drinking water wells, and therefore presents a potential imminent endangerment to the health of persons using those private drinking water wells.

Due to these conditions, I am enclosing an Emergency Order (Order) issued to Range Resources Corporation and Range Production Company (Range or Respondents) pursuant to Section 1431 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i. This Order is issued to Range as owner and/or operator of the referenced oil and gas production facilities. Presently, the operation of these facilities presents, or may present, an imminent and substantial endangerment to public health. The Order describes the actions you must take to ensure the Butler Unit and Teal Unit production facilities pose no imminent and substantial endangerment to public health through methane contamination of an underground source of drinking water.

Representative Hinchey

ENVIRONMENTAL PROTECTION AGENCY
REGION VI

IN THE MATTER OF:	Docket Number: SDWA-06-2011-1208
RANGE RESOURCES CORPORATION and RANGE PRODUCTION COMPANY	
Respondents.	**EMERGENCY ADMINISTRATIVE ORDER**
(Texas RRC Operator I.D. No. 691703)	
Proceedings Under Section 1431(a) of the Federal Safe Drinking Water Act, 42 U.S.C. § 300(i)(a).	

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to the authority of Section 1431 of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300(i).

EPA may issue such Orders upon receipt of information that contaminants are present in or are likely to enter an underground source of drinking water and may present an imminent and substantial endangerment to the health of persons, and EPA has determined that appropriate State and local authorities have not taken sufficient action to address the endangerment described herein and do not intend to take such action at this time, as described in Section 1431(a) of the Act, 42 U.S.C. § 300(i)(a).

The Administrator delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division.

Federal law provides that violation of any terms of this Order may subject Respondents to a civil penalty of up to $16,500 per day of violation, assessed by an appropriate United States District Court, under SDWA § 1431(b), 42 U.S.C. §300i(b), as modified by the Debt Collection Improvement Act, 31 U.S.C. § 3701 and codified at 40 C.F.R. § 19.4.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

Ref: 8ENF-UFO December 16, 2010

CERTIFIED MAIL and EMAIL
RETURN RECEIPT REQUESTED

The Corporation Company
For Murphy E&P Company
124 W. Capitol Avenue, Ste 1900
Little Rock, Arkansas 72201-3717

CT Corporation System
For Pioneer Natural Resources USA Inc.
P.O. Box 7054, Suite 1650
Billings, Montana 59103-7054

Prentice-Hall Corporation
For Samson Hydrocarbons Company
211 E. 7th Street, Suite 620
Austin, Texas 78701-3218

Re: Fort Peck East Poplar Oil Field
Safe Drinking Water Act Emergency Administrative
Order Docket No. SDWA-08-2011-

Dear Respondents in the above-referenced matter:

Enclosed please find your copy of a final Safe Drinking Water Act Emergency Administrative (order). This order's effective date is December 21, 2010. If you should have any questions about this matter, please feel free to contact Nathan Wiser of my staff, at (303) 312-6211, or Jim Eppers, Attorney, at (303) 312-6893.

Sincerely,

Sandra A. Stavnes, Director
UIC/FIFRA/OPA Technical Enforcement Programs

Enclosure

Representative Hinchey

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

In the matter of :	)	
Murphy Exploration & Production Co.,	)	**Emergency Administrative Order**
Pioneer Natural Resources USA, Inc., and	)	
Samson Hydrocarbons Co.	)	Docket No. SDWA-08-2011-
Respondents.	)	
East Poplar Oil Field	)	
Fort Peck Indian Reservation	)	
Montana	)	
Proceedings under Section 1431(a) of the Safe Drinking Water Act, 42 U.S.C. §300i(a)	)	

STATUTORY AUTHORITY

1. The following findings are made and order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1431(a) of the Safe Drinking Water Act (the Act), 42 U.S.C. §300i(a). The authority to take this action has been properly delegated to the undersigned EPA officials.
2. Violation of any term of this order may subject Respondents to a civil penalty of up to $16,500 for each day in which such violation occurs or failure to comply continues, pursuant to §1431(b) of the Act, 42 U.S.C. §300i(b). In addition, actions or omissions which violate any requirements of the SDWA or its implementing regulations may subject Respondents to a civil penalty of not more

Representative Hinchey

NATURAL GAS

Question: 4 Has EPA prepared any reports that examine what preventive measures natural gas drilling companies should have taken prior to explosions or fires at sites owned or operated by gas companies? If so, please provide those reports.

Answer: To date, EPA has not prepared any reports regarding the prevention of fires or explosions related to natural gas drilling operations.

NATURAL GAS

Question 5: As reported in *The New York Times* on March 3, 2011 in a story entitled "Politics Seen to Limit E.P.A. as It Sets Rules for Natural Gas," EPA had planned on requesting that New York impose a moratorium on hydraulic fracturing in the New York City Watershed. Why was this recommendation removed? Please provide all documents and correspondence between Region 3 and Region 2 relating to this matter.

Answer: EPA is conducting a national study to better understand potential impacts of hydraulic fracturing on drinking water resources. In December 2009, EPA Region 2 submitted comments on the New York State Draft Supplemental Generic Environmental Impact Statement on gas drilling and hydraulic fracturing. In preparing our comments, EPA considered the call for a moratorium on hydraulic fracturing in the New York City watershed from various elected officials and environmental organizations. The Agency decided that because hydraulic fracturing is a national issue and would be under study in the near-term, a determination on how to address potential impacts of hydraulic fracturing should be handled consistently across the country.

There are no documents or correspondence between Region 3 and Region 2 relating to this matter.

Representative Hinchey

HYDRAULIC FRACTURING STUDY

Question 6: Please provide any correspondence EPA received from the natural gas industry or its trade associations relating to the agency's selection of Science Advisory Board members for its ongoing hydraulic fracturing study.

Answer: The Science Advisory Board (SAB) Staff Office received written comments relating to the Agency's selection of Science Advisory Board members for its ongoing hydraulic fracturing study from members of the public who are from the natural gas industry or its trade associations (please see attached documents).

Representative Hinchey

Attachments

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Representative Hinchey

Comments from Dan Arthur, ALL Consulting

From: "Dan Arthur" <darthur@all-llc.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 10/01/2010 04:37 PM

Subject: RE: Comments on the EPA short list for its hydrualic fracturing study

Mr. Hanlon,

I just received Mr. Wilson's letter and thought I would respond to some of the allegations made about me. I also understand the significance of the subject study and welcome a more detailed discussion or critical review of any potential COI issues. Although I hadn't anticipated Mr. Wilson's letter, I understand his perspective and intense feelings on many issues. Below are some general responses and I'd be open to discussing these and other issues in detail:

Issue 1: Mr. Wilson provided a quote on the second page of his letter. Unfortunately, the text he quotes comes from three separate sections of the report. There is no full quote in the document as Mr. Wilson has made. Although all of the text Mr. Wilson provided is included in the document, it is not compiled as Mr. Wilson has shown, which is disappointing to me! Regardless, I too was formerly employed with the U.S. Environmental Protection Agency in Region V. While at Region V, I served as an Enforcement Officer with the Underground Injection Control (UIC) Program, part of what was then under Region V's Water Division. While there, I served as an EPA expert on enforcement cases and was involved in the first Criminal Indictment under the amendments of the SDWA where an oil operator from Michigan was sent to Jail for 90 days for falsifying a mechanical integrity test. I also served on the EPA National Mechanical Integrity Test Workgroup and evaluated wells throughout Region V for groundwater protection as well as violations, etc. During my time at EPA, I participated in the DOE/API study that is referred to in the text that Mr. Wilson quotes. Further, through a U.S. Department of Energy project and in collaboration with the Ground Water Protection Council

Representative Hinchey

and several state agencies, we used the logic developed in the subject study and integrated it into the Risk Based Data Management System (RBDMS) that several states agencies use to manage their Underground Injection Control and oil & gas programs. Additionally, as part of the research conducted for the Shale Gas Primer, both myself and members of our research project team toured several shale gas development sites and witnessed and collected data/information from multiple high volume hydraulic fracturing jobs in areas such as Pennsylvania, Arkansas, Texas, Oklahoma, and Louisiana. Additionally, our Geologists (and myself) participated in field tours of various shale gas plays – examining outcrops of the Marcellus, Woodford, and Fayetteville shales. And lastly, if you examine the document Mr. Wilson refers to, you will note that we utilized something like 300 references. We also had the document peer reviewed – including review by a member of EPA's National Technical Workgroup.

In any event, I can understand that Mr. Wilson may have his own opinion on the subject of hydraulic fracturing, but the information presented in the subject document are correct. And by the way, the referenced document was specifically developed without a "Conclusion" section. Rather, our goal was to provide information without necessarily supporting or objecting to shale gas. The document is a "primer"...

Issue 2: Mr. Wilson also refers to my involvement (and ALL's involvement) in a Statewide EIS. The subject EIS was a multi-agency effort with the leads being BLM, the Montana Board of Oil & Gas Conservation, and the Montana Department of Environmental Quality. EPA, along with some other agencies and tribes were collaborators. Mr. Wilson was the lead for EPA. Further, a major focus of the effort was coal bed methane development in the Montana portion of the Powder River Basin. Simultaneous to the Montana project, the BLM in Wyoming was also conducting a study on the Wyoming Portion of the basin. As such, the project required collaboration with multiple BLM Field Offices and two separate State offices – along with multiple state agencies, federal agencies (e.g., DOE, EPA, etc.) and two tribes.

I do recall multiple conversations where Mr. Wilson was present when the discussion of impacts to the various watersheds was discussed. The Tongue was particularly significant because the Northern Cheyenne Tribe adjoins the western bank of the Tongue River and the river is a high-quality watershed. Regardless, we had multiple discussions on the subject and many that were the discussion of interim analysis. Further, because development in Wyoming was ahead of development in Montana, we leveraged off of a good bit of analysis already completed in Wyoming. None-the-less, there was much controversy over the issues based in part because this

Representative Hinchey

was the first time this type of analysis had been considered or attempted for this region. There was concern that the various watersheds would be flooded and at the same time there was concern they would all go dry. Further, there was much discussion on the methods used for analysis, differences used in Wyoming versus Montana, water quality standards between the two states, and many other issues. Ultimately, I recommended that BLM conduct a water quality report which was done in a collaborative effort between the BLM in Montana and the BLM in Wyoming (ALL was the contractor on the Montana side) with review done by many others (including EPA). These studies and analysis remain part of the public record.

Issue 3: Mr. Wilson suggests that I and my work with ALL Consulting is financed by the oil and gas industry and as such I have a financial interest. He brings up multiple examples that he uses to support his point. The truth is that ALL Consulting is a multi-disciplinary company. Our clients include state and federal government (e.g., BLM, DOE, USACE, FDIC, DOD, USFS, MBOGC, AOGC, ADEQ, ODNR, MDEQ, NYSERDA); non-profits (e.g., Ground Water Protection Council); Industry (e.g., Chesapeake Energy, Classic Hydrocarbons, A3 Environ, AECOM, Savage Services, U.S. Ecology, Pet Love, Veolia, Southwestern Energy, etc.); Associations (e.g., API, IOGA NY); property Groups; law firms; and others. The Shale Gas Primer that Mr. Wilson refers to was a U.S. Department of Energy research project in which ALL was contracted by the Ground Water Protection Council (GWPC) to conduct the research and prepare the subject document. Like most consulting companies, we serve a broad array of

clients on a variety of issues. Clearly we provide consulting to oil & gas industry clients, but one the largest service groups is stationed at Ft. Polk in Louisiana supporting the Department of Defense on issues that have nothing to do with oil or gas development.

Additionally, similar to coal bed methane development in Montana, neither I nor ALL Consulting benefits directly with respect to any particular outcome of the study on hydraulic fracturing. We do not receive income based on production or development, rather we support projects that tend to be on technical issues. Personally, I take such studies very seriously and recognize that whatever results come from the subject study, a solid technical basis will be critical.

In Closing...

Representative Hinchey

I am honored to be considered for the advisory committee and it relates to issues that I have been involved in from the onset of my career while working with EPA. I chose to leave EPA for a career in consulting and research. I do not believe I have a conflict of interest, although if consulting to the oil or gas industry or if conducting research in areas of related to natural gas development are an issue, then I would tend to think that all of the proposed candidates would also have a conflict. As I'm sure Mr. Wilson is aware, even many University professors receive grants and funding from industry or the Department of Energy. Furthermore, I would think using Mr. Wilson's philosophy, even environmentalists that get funding to oppose energy development would have a potential conflict? But for myself and ALL Consulting, we are not tied to any one industry or any single client or group of clients. We have a history of being diversified and have maintained that diversity for the eleven (11) years that our firm has been in business.

In any event, I want to make sure you and EPA understand that I am very open to discussing these issues further and ask that any COI review be performed in an open and objective manner opposed to simply relying on Mr. Wilson's letter.

Thanks,

Dan Arthur

ALL Consulting

O: 918-382-7581

C: 918-740-9930

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Representative Hinchey

prohibited. If you have received this communication in error, please notify the sender immediately by return email and destroy all copies of the email (and attachments if any).

From: Weston Wilson [mailto:anwwilson@comcast.net]

Sent: Friday, October 01, 2010 12:21 PM

To: hanlon.edward@epamail.epa.gov

Cc: darthur@all-llc.com

Subject: Comments on the EPA short list for its hydrualic fracturing study

see also the attached WORD file:

From: Weston Wilson <anwwilson@comcast.net>

To: Edward Hanlon/DC/USEPA/US@EPA

Cc: darthur@all-llc.com

Date: 10/01/2010 01:18 PM

Subject: Comments on the EPA short list for its hydrualic fracturing study

see also the attached WORD file: [attachment "Letter to Ed Hanlon EPA from Wes Wilson Oct 1 2010.doc" deleted by Edward Hanlon/DC/USEPA/US]

Weston W. Wilson

Denver, Colorado

Representative Hinchey

October 1, 2010

Edward Hanlon

Designated Federal Officer

U.S. Environmental Protection Agency

Washington, D.C.

sent via email

Dear Mr. Hanlon:

I have reviewed the EPA short list of applicants for the Committee to provide guidance for EPA's Hydraulic Fracturing Study. I was employed for 33 years by EPA Region 8 in the NEPA program and have years of experience predicting and mitigating adverse environmental impact of oil and gas development. In 2004, I provided a report to Congress on EPA's failure to protect ground water from the impacts of oil and gas production based on EPA's original study of hydraulic fracturing for coal bed methane. (My 2004 report to Congress is available online at: http://latimes.image2.trb.com/lanews/media/acrobat/2004-10/14647025.pdf.)

As you may be aware, EPA's 2004 study had a narrow scope, lacked field data, and relied upon the endorsement of a peer review panel with five out of seven members that appeared to have a financial conflict of interest in the outcome of EPA's study.

According to EPA's policy, external peer reviewers should be chosen to ensure an independent and objective evaluation. The affiliations of peer reviewers should be identified on the public record to avoid under mining the credibility of the peer-review process by conflicts-of-interest. EPA's managers are encouraged to assure peer reviewers do not have a legal or perceived conflict of interest that creates the appearance that the peer reviewer lacks impartiality or objectivity. According to EPA's policy handbook, conflicts-of-interest could occur if reviewers are affected by their private interests or when the reviewers and their associates would derive economic or other benefit from incorporation of their point of view in an Agency product. (See: Science Policy Handbook, Office of Science Policy, U.S. Environmental Protection Agency,

Representative Hinchey

Office of Research and Development, December 2000, EPA 100-B-00-001, Sections 3.4.5-6. http://epa.gov/osa/spc/htm/prhandbk.pdf.)

Based on information available in the public record, it appears that the following individual on the EPA 'short list' may derive financial benefit from incorporation of his point of view in this Agency work product.

Daniel Arthur, ALL Consulting, Tulsa, Oklahoma. Mr. Arthur is a principal in ALL Consulting. He and his firm receive a substantial portion of their income from the oil and gas industry. ALL Consulting with Mr. Arthur as principle author produced "Shale Gas, A Primer" in 2009 which concluded that there was minimal environmental risk of oil and gas operations involving hydraulic fracturing. In this document, Mr. Arthur states: "Taken together, state and federal requirements along with the technologies and practices developed by industry serve to reduce environmental impacts from shale gas operations. Ground water is protected during the shale gas fracturing process by a combination of the casing and cement that is installed when the well is drilled and the thousands of feet of rock between the fracture zone and any fresh or treatable aquifers. It is expected that the probability for treatable groundwater to be impacted by the pumping of fluids during hydraulic fracture treatments of newly installed, deep shale gas wells when a high level of monitoring is being performed would be even less than the 2 x 10-8 estimated by API." Mr. Arthur makes such conclusions without analysis of data to substantiate or validate his assertion.

This seems to be a pattern. In 1998 for example, while working for EPA Region 8, other EPA colleagues and I identified a miscalculation by Mr. Arthur and his firm. A miscalculation that, if left unchecked, would have financially benefitted the oil and gas industry. At the time, ALL Consulting was funded by the BLM Miles City Office to prepare an EIS to assess the impacts to irrigated agriculture due to the discharge of Powder River Basin coal bed methane produced water. Without proper analysis, Mr. Arthur wrongly concluded that the discharge of produced waters would not raise salinity in the Tongue River sufficiently to adversely impact irrigated lands adjacent to the river. When questioned by me, Mr. Arthur could not produce any

collaborating analysis to back his written assertions of predicted minimal change in the salinity in the river. Mr. Arthur's improper analyses were subsequently corrected by the BLM, EPA, and State of Montana professional staff. The revised analysis by these federal and state civil servants showed that produced water from coal bed methane would significantly reduce the productivity

Representative Hinchey

of irrigated crops by raising the salt content of the river. Subsequently the State of Montana reduced its salinity criteria, (the sodium adsorption ratio or SAR) by five fold from an SAR of 10 to an SAR of 2. This change in standards was needed in order to protect the Tongue River from damage that could have resulted had Mr. Arthur's water quality miscalculation not been identified.

Mr. Arthur and his work for ALL Consultants financed by the oil and gas industry has included support planning for oil and gas development projects in the Powder River Basin, Williston Basin, Fort Worth Basin, Michigan Basin, and Anadarko Basin. ALL Consultants has developed proprietary cost models as well as produced water management models to align management schedules tied to drilling and completion plans. According to the company's website, ALL Consulting has assisted in the certification of more than 300,000 barrels per month of production, obtained permits for producers and injectors, has developed spill plans for more than 200 facilities relating to more than 3,500 producing wells, permitted every class of injection well throughout the county, and has obtained both minor and major aquifer exemptions under the UIC program.

Accordingly, Mr. Arthur should be precluded by EPA from serving on this advisory board due to a clear financial interest that Mr. Arthur has as a result of obtaining his primary source of income to him and his firm from the oil and gas industry. I would be pleased to discuss this further with you.

Thank you and your colleagues for undertaking this vital national study and for your consideration of the above information about Mr. Arthur.

Sincerely,

original signed by:

/s/ Weston W. Wilson

Environmental Engineer

Representative Hinchey

(EPA retired)

cc: Dan Arthur, ALL Consultants, Tulsa, Oklahoma

Representative Hinchey

Comments from Kenneth S. Bromfield, Dow Hydrocarbons and Resources LLC

From: "Bromfield, Ken (KS)" <bromfiks@dow.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 09/30/2010 10:17 AM

Subject: Letter in support of Greg Klecka's candidacy for Hydraulic Fracturing Panel

Dear Mr. Hanlon:

I'm submitting the following letter in support of Greg Klecka's nonimation for the EPA Science Advisory Board Panel for the Review of the Hydraulic Fracturing Study Plan. Thank you for considering Greg's candidacy.

<<Letter in Support of Greg Klecka's candidacy.PDF>>

Kenneth S. Bromfield

US Commercial Director

Energy Business

Dow Hydrocarbons and Resources LLC

A Subsidiary of The Dow Chemical Company

1254 Enclave Parkway

Houston, Texas 77077-1607

Phone: (281) 966-2143

Fax: (281) 966-4870

Representative Hinchey

Email: bromfiks@dow.com

[attachment "Letter in Support of Greg Klecka's candidacy.PDF" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

The Dow Chemical Company
1254 Enclave Parkway
Houston, Texas 77077
USA

September 30, 2010

Mr. Edward Hanlon
SAB Staff Office
EPA Science Advisory Board Panel

Dear Mr. Hanlon:

I enthusiastically support Greg Klecka's candidacy for the EPA Science Advisory Board Panel for Review of the Hydraulic Fracturing Study Plan.

For more than twenty years Greg has been a leader in toxicology and environmental research at Dow. In addition, through his work on external commissions, workgroups, and committees, he has been recognized as a national and qualified expert in his field. Greg's breadth of technical knowledge and practical experience make him uniquely qualified to serve on this panel. Greg's inclusion would also help balance the panel as he is the only candidate on the list that represents a large natural gas consumer.

Thank you for considering Greg's candidacy.

Sincerely,

Kenneth S. Bromfield
US Commercial Director
Energy Business
Dow Hydrocarbons and Resources LLC
A Subsidiary of The Dow Chemical Company
1254 Enclave Parkway
Houston, Texas 77077-1607
Phone: (281) 966-2143
Fax: (281) 966-4870
Email: bromfiks@dow.com

Representative Hinchey

Comments from Angie Burckhalter, Vice President - Regulatory Affairs, Oklahoma Independent Petroleum Association

From: "Angie Burckhalter" <aburckhalter@oipa.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 09/30/2010 01:22 PM

Subject: Hydraulic Fracturing - SAB Ad Hoc Panel - OIPA's Comments on the Candidate List

Mr. Hanlon:

The attached file provides OIPA's comments on the list of nominated candidates for the EPA's SAB ad hoc Panel for the Hydraulic Fracturing Study. If you have any questions, please let me know.

Best Regards,

Angie Burckhalter

V.P. - Regulatory Affairs

Oklahoma Independent Petroleum Association

3555 N.W. 58th Street, Suite 400

Oklahoma City, OK 73112

405-942-2334, x-221

aburckhalter@oipa.com

Representative Hinchey

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[attachment "9-30-10 oipa HF SAB Ad Hoc panel candidates (final).pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

From: "Angie Burckhalter" <aburckhalter@oipa.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 10/28/2010 07:36 AM

Subject: Hydraulic Fracturing - SAB Ad Hoc Panel - OIPA's Comments on the Candidate List

Dear Mr. Hanlon:

Per your request, the following provides examples of some of the candidates you are considering that have taken anti-oil and gas development, anti-hydraulic fracturing positions, or expressed the need for federal regulation of hydraulic fracturing before a study has been completed. We recommend EPA conduct a web search of each candidate as it relates to hydraulic fracturing to better help you make a decision on whether the candidate would bring a fair and impartial position to the ad hoc panel and provide unbiased recommendations regarding the hydraulic fracturing study.

Theo Colborn

Anthony Ingraffea

Sandra Steingraber

Daniel Teitelbaum

Best Regards,

Angie Burckhalter

V.P. - Regulatory Affairs

OIPA

405-942-2334, x-221

Representative Hinchey

aburckhalter@oipa.com

-----Original Message-----

From: Hanlon.Edward@epamail.epa.gov [mailto:Hanlon.Edward@epamail.epa.gov]

Sent: Wednesday, October 06, 2010 10:14 AM

To: Angie Burckhalter

Subject: Re: Hydraulic Fracturing - SAB Ad Hoc Panel - OIPA's Comments on the Candidate List

Dear Ms. Burckhalter,

Thank you for submitting your comments regarding the September 10, 2010 List of Nominated Candidates for the EPA Science Advisory Board Panel for the Review of Hydraulic Fracturing Study Plan. I have a question regarding your comments. You noted that a number of candidates have taken anti-oil and gas industry development or anti-hydraulic fracturing

positions, or expressed the need for federal regulation of hydraulic fracturing, and that these candidates should not be included on the Panel. I do not know which nominees you are referring to. If you would like to note which nominees you are referring to, I will include your comments in consideration of these individuals.

Thank you again for submitting your comments regarding this Panel.

Representative Hinchey

Ed Hanlon

****

Ed Hanlon

Designated Federal Officer

EPA Science Advisory Board Staff Office

202-564-2134 (phone/voice mail)

202-565-2098 (fax)

202-564-2221 (SAB main number)

hanlon.edward@epa.gov

Regular mail: USEPA Science Advisory Board (1400R), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460

Office location/Courier Address: USEPA Science Advisory Board, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 31150, Washington, D.C. 20004

From: "Angie Burckhalter" <aburckhalter@oipa.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 09/30/2010 01:22 PM

Subject: Hydraulic Fracturing - SAB Ad Hoc Panel - OIPA's Comments on the Candidate List

Mr. Hanlon:

Representative Hinchey

The attached file provides OIPA's comments on the list of nominated candidates for the EPA's SAB ad hoc Panel for the Hydraulic Fracturing Study. If you have any questions, please let me know.

Best Regards,

Angie Burckhalter

V.P. - Regulatory Affairs

Oklahoma Independent Petroleum Association

3555 N.W. 58th Street, Suite 400

Oklahoma City, OK 73112

405-942-2334, x-221

aburckhalter@oipa.com

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[attachment "9-30-10 oipa HF SAB Ad Hoc panel candidates (final).pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

OIPA **OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION**

September 30, 2010

Mr. Edward Hanlon
Designated Federal Officer
Environmental Engineering Committee
Science Advisory Board
U.S. Environmental Protection Agency
(hanlon.edward@epa.gov)
1200 Pennsylvania Ave., NW.
Washington, D.C. 20460

Re: Hydraulic Fracturing Study Plan Ad Hoc Panel

Dear Mr. Hanlon:

The Oklahoma Independent Petroleum Association (OIPA) is providing comments on the list of nominated candidates for the Environmental Protection Agency's (EPA's) Science Advisory Board (SAB) Ad Hoc Panel for the Hydraulic Fracturing Study.

The OIPA represents approximately 2,000 small to large independent crude oil and natural gas producers that operate in Oklahoma that utilize hydraulic fracturing and have a significant interest in the outcome of the study.

In its Fiscal Year 2010 Appropriation Conference Committee Directive to EPA, the U.S. House of Representatives stated that:

> *"The conferees expect the study to be conducted through a transparent, peer-reviewed process that will ensure the validity and accuracy of the data."*

In addition, the EPA SAB Staff Office states that a balanced Panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the general charge. In specific, EPA outlined criteria that should take precedent in the selection of candidates for the Panel which include scientific and/or technical expertise, knowledge, and experience, and the absence of appearance of a lack of impartiality.

We think it is imperative that EPA select candidates from the oil and gas industry that have hands-on experience in areas such as unconventional resource plays (i.e. shale, coal-bed methane, and tight gas sands); hydraulic fracturing operations; well design, construction and operations; water and waste management; and groundwater remediation. Individuals such as Lloyd Hetrick with Newfield Exploration, and Darren Smith and Frank Walles with Devon Energy can bring a wealth of practical, real world experience to the Panel.

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Telephone 405-942-2334 Fax 405-942-4636 Toll Free 1-800-838-6472

Representative Hinchey

Lloyd Hetrick is a registered Professional Engineer and a Certified Safety Professional with over 31 years of experience in the exploration and production industry. His area of expertise is well failure analysis and prevention, well design and well operations as well as a technical expert on water issues related to drilling and completion operations. He develops company-wide best practices for water protection and zonal isolation during hydraulic fracturing and analyzes well failures for root causes and assists with appropriate corrective actions. His knowledge and experience would be a significant benefit to the Panel.

Frank Walles is a recognized petroleum systems expert (State Licensed and national organization Certified Geologist) in unconventional resource plays (i.e. shale, CBM, Tight Gas Sands) that require hydraulic fracture stimulation with horizontal well technology. He is a technical expert in targeting formations through detailed inorganic and organic system characterization, including gas and liquids chemistry and gas isotopes. His has significant practical experience in hydrocarbon basins throughout the United States. His extensive industry-based expertise is essential for understanding baseline and potential contamination issues related to hydrocarbon exploration and production.

Darren Smith has been working in the upstream oil and gas industry providing water, waste management, and groundwater remediation support for fifteen years. His water quality and environmental toxicology background are needed to advise a study of potential groundwater impacts. He has a wealth of practical experience complying with the environmental regulations that govern the industry, a perspective that will prove to be very useful on the Panel.

In addition, it is critical that EPA select candidates that will be fair and objective and can provide unbiased recommendations as it relates to the Hydraulic Fracturing Study. A number of the candidates on the list have taken anti-oil and gas industry development or anti-hydraulic fracturing positions. Some of the candidates have already expressed the need for federal regulation of hydraulic fracturing before the study has been completed. We think EPA should not select these types of candidates for the Panel as their lack of objectivity will undermine the process and draw in to question the credibility of the study.

Finally, there are a significant number of candidates from academia. We request EPA give priority consideration to those Professors with Petroleum and/or Geological Engineering Departments from Universities in oil and gas producing states.

We appreciate the opportunity to provide comments on the list of candidates for the Panel that will provide expert advice on the Hydraulic Fracturing Study Plan. Thank you in advance for your consideration.

Sincerely,

Angie Burckhalter
V.P. - Regulatory Affairs

Representative Hinchey

Comments from Doug Flanders, Director of Policy, Colorado Oil & Gas Association

From: Doug Flanders <doug.flanders@coga.org>

To: Edward Hanlon/DC/USEPA/US@EPA

Cc: Doug Flanders <doug.flanders@coga.org>

Date: 09/29/2010 06:27 PM

Subject: The Colorado Oil & Gas Association (COGA) comments regarding individuals to potentially serve on the SAB's "Ad Hoc Panel"

Mr. Hanlon –

Please see the Colorado Oil & Gas Association's attached comments regarding the individuals and make-up of the Science Advisory Board's Ad Hoc Hydraulic Fracturing Panel.

Thank You.

Doug Flanders

Director of Policy

Colorado Oil & Gas Association

1660 Lincoln Street, Suite 2710

Denver, CO 80264

p: 303-861-0362 f: 303-861-0373

Follow COGA online at

Representative Hinchey

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[attachment "image001.png" deleted by Edward Hanlon/DC/USEPA/US] [attachment "image002.png" deleted by Edward Hanlon/DC/USEPA/US] [attachment "image003.png" deleted by Edward Hanlon/DC/USEPA/US] [attachment "image004.png" deleted by Edward Hanlon/DC/USEPA/US] [attachment "COGA Comments on Peer Review Candidate.pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

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September 29, 2010

By Email

Mr. Edward Hanlon
Designated Federal Officer
Science Advisory Board
U.S. Environmental Protection Agency
Mailcode 1400R
1200 Pennsylvania Ave., NW
Washington, DC 20460-4164

Re: Invitation for Public Comment on the List of Nominated Candidates for the EPA Science Advisory Board Panel for the Review of Hydraulic Fracturing Study Plan

Dear Mr. Hanlon:

The Colorado Oil & Gas Association (COGA) submits the see comments to the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) in response to the recent nomination of approximately 82 individuals to potentially serve on the SAB's "*Ad Hoc* Panel" for EPA's draft Hydraulic Fracturing Study Plan (the Study Plan). COGA is a Colorado nonprofit corporation formed to foster and promote the beneficial, efficient, responsible and environmentally sound development, production and use of Colorado oil and natural gas.

COGA had the opportunity to make comments during the EPA Hydraulic Fracturing Study Public Meeting in Denver, Colorado on July 13, 2010. In our comments, we stated,

> "We encourage the EPA to adhere to the intent of Congress and not provide a political platform to those seeking to restrict the use of hydraulic fracturing in the United States. … COGA would like to ensure that EPA selects peer reviewers with technical expertise in the practice, monitoring, science, and technology of hydraulic fracturing. … In conclusion, we believe that the study must (1) have active participation of industry and its partners; (2) stay within the parameters of the study as passed by Congress; (3) be peer-reviewed in an open and transparent manner; and, (4) recognize the regulatory authority that the states have had over oil and gas activities for decades."

We also provided the study entitled "2008 Pathway Analysis and Risk Assessment For Solids and Fluids Used In Oil and Gas Exploration and Production in Colorado" which was prepared by Quality Environmental Professional Associates. The following comments regarding the selection of panelists for the SAB *Ad Hoc* Panel are in line with our previous statement.

COGA believes that the SAB *Ad Hoc* Panel should include an equal number of candidates with experience in the oil and gas industry on the one hand, and other relevant types of academic or scientific experience on the other. The SAB's own guidance materials indicate that panel members should have the "scientific education, training, and experience to evaluate basic and applied science issues" relevant to the particular panel's charge. Since the *Ad Hoc* Panel will be considering issues involving the potential relationship between hydraulic fracturing – a key oil and gas industry technology – and drinking water, COGA believes that it is critically important that a large share of the panel members have significant experience with this important technology. Although hydraulic fracturing has been in use for many decades, there are numerous wide-spread misconceptions about fracturing operations and their potential effects. Industry members who have detailed knowledge about the "real-world" application of fracturing technology and an understanding of oil and gas industry practices are needed to serve on the panel so that EPA can receive a balanced perspective.

The nominations received by EPA already include at least two key individuals who have excellent industry qualifications – Mr. David King and Dr. Vikram Rao. COGA supports the nomination of both. David King is a petroleum engineer who has worked in the oil and gas industry since 1978 and possesses significant familiarity with all aspects of hydraulic fracturing operations. He earned a bachelor of science in engineering from the University of Alabama and worked for many years on a broad range of projects involving petroleum and natural gas well stimulation and completion matters. He recently retired after serving as the President of Halliburton's Completion and Production Division. Mr. King is a member of the Society of Petroleum Engineers and was a registered petroleum engineer in Louisiana.

Dr. Rao has a wealth of oil and gas industry experience that would be extremely helpful to the Panel. After receiving his doctorate in engineering from Stanford University, Dr. Rao worked for over 30 years in the industry, holding executive management positions in research and development, product launch, reservoir studies, and sales and marketing. He has great familiarity with hydraulic fracturing technology and its use for the recovery of unconventional oil and natural gas resources. Dr. Rao currently serves as the Executive Director of the Research Triangle Energy Consortium, a non-profit energy firm founded by Duke University, North Carolina State University, the University of North Carolina at Chapel Hill and RTI International. He also is the author of more than 40 publications and has been awarded 26 patents, in fields that include oil and gas technology, non-ferrous metal refining and alloy formulations.

In contrast, COGA is opposed to the nomination of Dr. Theo Colborn. COGA believes that the Panel needs to include members who bring a balanced, open-minded perspective to its deliberations. Given Dr. Colburn's prior well-known activities in strong opposition to hydraulic fracturing, COGA is concerned that she could undermine the Panel's ability to provide fair and balanced guidance to EPA in connection with the draft Study Plan. For example, she has recently co-authored a report titled "*Natural Gas Operations from a Public Health Perspective*"

and has published several critiques of the oil and gas industry through The Endocrine Disruption Exchange, in which she has made numerous unfounded claims against hydraulic fracturing. COGA further believes that Dr. Colborn lacks the expertise in petroleum engineering, hydrogeology, geophysics, chemistry or related fields specifically sought by the SAB for the Panel, since her degrees and training are in pharmacy, fresh water ecology, and zoology.

COGA supports the SAB Staff Office's efforts to form a balanced panel with a diversity of expertise, experience and viewpoints. In order to do so, COGA believes that the Panel should include equal representation from experts with industry experience and from other fields of expertise. Consistent with that belief, COGA supports the nomination of Mr. David King and Dr. Vikram Rao.

Again, we thank you for the opportunity to submit these comments.

Sincerely,

Doug Flanders
Director of Policy
Colorado Oil and Gas Association

Representative Hinchey

Comments from Paul Hagin, Rock Mechanics Team, Chevron Energy Technology CompaNew York

From: "Hagin, Paul N" <Paul.Hagin@chevron.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 09/28/2010 04:14 PM

Subject: recommendation for Mark Zoback - EPA/SAB/HF study

Dear Edward,

Thank you for your leadership in selecting the members of the Science Advisory Board for the EPA's hydraulic fracturing study. I feel strongly that Mark Zoback should be included on the board, because his technical expertise represents a perfect balance between hands-on field experience and an academic understanding of how hydraulically-induced and naturally occurring fractures form in the Earth. I will elaborate on my recommendation following the criteria provided in the Invitation for Public Comment document.

"Specific criteria to be used in evaluating a

candidate include: a) scientific and/or technical expertise, knowledge, and experience; b)

availability and willingness to serve; c) absence of financial conflicts of interest; d) absence of

appearance of a lack of impartiality; e) skills working in committees, subcommittees, and

advisory panels; and, for the panel as a whole, f) diversity of scientific expertise and viewpoints."

Representative Hinchey

A) Mark Zoback has studied and lectured on the subjects of Tectonophysics and Reservoir Geomechanics for more than a decade, and has a deep understanding of rock strength, Earth stresses, and how the interactions between strength and stress impact decisions in drilling and completions engineering. Mark has a balanced history of work-experience, having spent time with the oil industry as well as the USGS, and has carried out several hydraulic fracturing studies for scientific research. In addition, Mark was one of three Principal Investigators on the SAFOD scientific drilling program (http://earthquake.usgs.gov/research/parkfield/safod_pbo.php), and therefore has relevant expertise in predicting and mitigating risks associated with the drilling of wellbores.

B) Mark exhibits all of the qualities of a great teacher – he makes time for issues he cares about, makes time for students and partners, leads by example, and goes above and beyond willingness to participate by striving to make a significant impact.

C) Mark does not have any financial conflicts of interest.

D) Mark is impartial regarding the outcome of the study. He is partial to getting the science right.

E) Mark has exceptional communications and leadership skills, and experience serving on committees and advisory panels. He has served as chair of the Geophysics department and President of the faculty senate at Stanford University. He recently participated on the Deepwater Horizon scientific advisory committee.

F) He has a unique perspective on hydraulic fracturing as he understands, and can represent, both the industrial and environmental points of view. I also feel that Mark has a unique point-of-view, and that the study would suffer if his point-of-view was not represented on the committee.

Thank you for your time and consideration,

Sincerely,

Paul Hagin

Paul Hagin

Reservoir Geomechanics

Rock Mechanics Team

Representative Hinchey

Chevron Energy Technology Company

6001 Bollinger Canyon Road, Room D2340

San Ramon, CA, 94583-2324

Office: 925.842.0543

Lab: 510.242.1587

Email: Paul.Hagin@chevron.com

Representative Hinchey

Comments from Peter Hennings, Manager Structure and Geomechanics, ConocoPhillips Upstream Technology

From: "Hennings, Peter" <Peter.Hennings@conocophillips.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 09/30/2010 09:54 PM

Subject: Note of recommendation for Dr. Mark Zoback SAB Ad Hoc Panel to review Hydraulic Fracturing Study Plan

Dear Mr. Hanlon,

Please accept this letter in strong support of Dr. Mark Zoback of Stanford University to serve on the Committee to study the Hydraulic Fracturing Study Plan. In my professional capacity as a manager of research in ConocoPhillips Technology Company I can attest that Dr. Zoback is a world leader in the study of the physics and processes operative in the Earth's crust that need to be understood for consideration of potential regulation and hazard analysis associated with hydraulic fracturing. Dr. Zoback and his students lead research in this area (often seminal subsurface trials) and routinely generate results that serve both academic and industry interests. Dr. Zoback has no agenda to push other that ensuring that adequate science and practical consideration be combined to formulate policy that serves the public interest and is workable for industry.

Please contact me if you would like additional comments or clarification.

Regards,

Representative Hinchey

Peter Hennings

Manager Structure and Geomechanics

ConocoPhillips Upstream Technology

281-293-6711

peter.hennings@conocophillips.com

Representative Hinchey

Comments from Dusty Horwitt, Senior Counsel, Environmental Working Group

From: Dusty Horwitt <dusty@ewg.org>

To: Edward Hanlon/DC/USEPA/US@EPA

Cc: Heather White <white@ewg.org>

Date: 10/01/2010 04:15 PM

Subject: Environmental Working Group Comments on the Hydraulic Fracturing Study Plan SAB

Dear Mr. Hanlon: Attached are comments from Environmental Working Group regarding EPA's Scientific Advisory Board for the Review of Hydraulic Fracturing Study Plan. Please let me know if you have any questions.

Dusty Horwitt

Senior Counsel

Environmental Working Group

1436 U St., NW; Suite 100

Washington, DC 20009

202-939-9133 [attachment "EWGSABComments10.1.2010.pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

ENVIRONMENTAL WORKING GROUP

1436 U Street NW, Suite 100
Washington, DC 20009
T: 202.667.6982
F: 202.232.2592

Mr. Edward Hanlon
Designated Federal Officer
U.S. Environmental Protection Agency

Re: Invitation for Public Comment on Nominated Candidates for the EPA Science Advisory Board Panel for the Hydraulic Fracturing Study Plan

October 1, 2010

Dear Mr. Hanlon:

Environmental Working Group (EWG) is pleased to provide these comments on the list of nominated candidates for the EPA Science Advisory Board (SAB) Panel for the Review of the Hydraulic Fracturing Study Plan.

EWG would like to ensure that this panel is knowledgeable about hydraulic fracturing, impartial and reflective of a diversity of backgrounds. The *Los Angeles Times* found that the seven-member review panel for EPA's 2004 study of hydraulic fracturing contained two members who worked for the natural gas and oil industry and four others who had previously worked for the industry.[1] For this new panel to have six out of seven reviewers with close drilling industry connections would be unacceptable. The EPA should also ensure that no one on this panel stands to benefit financially from this study of fracturing. This consideration should prohibit current drilling industry employees from serving.

We wish to comment on one particular nominee for the SAB, Michael J. Economides, who appears to lack the impartiality required to serve on the panel. In a Sept. 13, 2010 op-ed piece for the Syracuse Post-Standard, Mr. Economides wrote:

> ...the chemicals deployed during fracking operations are few in number and are not threatening. They are mostly gelling agents used to thicken water, providing for the transportation of particulates during the drilling process. In fact, these agents are not much different from common kitchen flour.[2]

By misstating publicly available information and accepted science on hydraulic fracturing, Mr. Economides appears to be biased in favor of a predetermined outcome to EPA's study – an outcome that would show no risks from fracturing.

While not all fracturing chemicals will be used in any one well, the range of fracturing chemicals likely to be used is not "few in number," as Mr. Economides states.

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[1] Hamburger, Tom and Alan C. Miller. "A Changing Landscape: Halliburton's Interests Assisted by White House," Los Angeles Times, October 14, 2004 at A1.
[2] Economides, Michael J. "Environmentalists Wrong on Hydrofracturing," September 13, 2010 A-11.

Representative Hinchey

Drilling companies recently disclosed to the New York Department of Environmental Conservation the identity of some 250 chemicals used or proposed for use in hydraulic fracturing in the Marcellus shale.[3]

Nor are all chemicals used in fracturing operations "not threatening." The EPA itself reported in its 2004 study of hydraulic fracturing that "the use of diesel fuel in fracturing fluids poses the greatest threat to [underground sources of drinking water] because BTEX compounds in diesel fuel exceed the MCL at the point-of-injection (i.e. the subsurface location where fracturing fluids are initially injected)." BTEX refers to benzene, toluene, ethylbenzene and xylene, while MCL means "maximum contaminant level."[4] The EPA has found that benzene can cause cancer, and toluene, ethylbenzene and xylene can cause liver and kidney damage and nervous system disorders.[5] Three fracturing companies signed an agreement with EPA in 2003 stating that they would not use diesel in limited situations, but the U.S. House of Representatives Energy and Commerce Committee found this year that B.J. Services violated the agreement and that B.J. Services and Halliburton injected diesel in fracturing operations in at least 15 states in 2005, 2006 and 2007.[6]

Nor is diesel the only threatening chemical used in hydraulic fracturing. Drilling companies disclosed to the states of New York and Pennsylvania the use of two dozen petroleum distillates in fracturing operations including kerosene, mineral spirits and Stoddard solvent. These petroleum distillates typically contain the same BTEX components that are of great concern in diesel fuel which is also a petroleum distillate. Our review of the scientific literature on petroleum distillates and drilling information disclosed to New York State found that the petroleum distillates used in a single well could contain enough benzene to contaminate more than 100 billion gallons of drinking water to unsafe levels. New York State uses that much water every ten days.[7]

We urge you to choose experts for this SAB who understand and can dispassionately assess the potential risks of fracturing. Mr. Economides' op-ed shows that he lacks such understanding and disposition. Please let us know if you have any questions.

Sincerely,

Dusty Horwitt
Senior Counsel
Environmental Working Group

---

[3] New York Department of Environmental Conservation (NYDEC DSGEIS). 2009. Draft Supplemental Generic Environmental Impact Statement Relating to Drilling for Natural Gas in New York State Using Horizontal Drilling and Hydraulic Fracturing, Sept. 30, 2009, at 5-45 to 5-51.
[4] U.S. Environmental Protection Agency, Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs, Final, June 2004, at 4-11.
[5] Consumer Fact Sheet on Benzene, Consumer Fact Sheet on Toluene, Consumer Fact Sheet on Ethylbenzene, Consumer Fact Sheet on Xylene. Accessed online August 18, 2009 at www.epa.gov.
[6] Waxman, Henry A. and Edward J. Markey. Memorandum to Members of the Subcommittee on Energy and Environment. Examining the Potential Impact of Hydraulic Fracturing, February 18, 2010.
[7] Drilling Around the Law, Environmental Working Group, Jan. 20, 2010. Accessed online Oct. 1, 2010 at http://www.ewg.org/drillingaroundthelaw.

Representative Hinchey

Comments from Wil Kirchner, Marathon Oil

From: "Kirchner, Wil" <wdkirchner@marathonoil.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 11/04/2010 08:52 AM

Subject: EPA's Draft Hydraulic Fracturing Study - Comments on proposed Nominees

Dear Mr Hanlon,

The proposed nominee panel does not have balanced expertise regarding the principle risks associated with hydraulic fracturing and potential contamination of groundwater sources. As the panel is current proposed, it pre-supposes that hydraulic fracturing will release toxic chemicals into the groundwater. This expert panel has no representation who can help assess the likelihood of this occurrence, therefore has no way to assess the actual risks to the environment or human welfare.

I strongly recommend replacement of one, or more of the proposed nominees with an expert(s) on geomechanics, who has specialization in fracture propagation under conditions experienced in hydraulic fracturing. If such a nominee is not placed on the panel, their deliberations and results will not be useful to either the public or policy decision makers.

Sincerely,

Wil Kirchner

Representative Hinchey

On September 10, 2010, the SAB Staff Office posted a List of eighty-five Nominated Candidates for a Panel under the auspices of the SAB that will provide independent expert advice on EPA's draft Hydraulic Fracturing Study Plan to investigate the potential public health and environmental protection research issues that may be associated with hydraulic fracturing. This List of Candidates is posted on the SAB Web Site at the following Web Site address: http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/D3483AB445AE61418525775900603E79/$File/List+of+Candidates-Hydraulic+Fracturing+Study+Plan-9-10-10+Final.pdf. Public comments on this List of Candidates were received by October 1, 2010.

The SAB Staff Office is seeking public comment on the following SAB members to be considered for this SAB Panel. Comments should be submitted to the attention of Mr. Edward Hanlon, Designated Federal Officer, no later than November 22, 2010. E-mailing comments (hanlon.edward@epa.gov) is the preferred mode of receipt.

Representative Hinchey

Comments from Stephanie R. Meadows, American Petroleum Institute

From: "Stephanie Meadows" <Meadows@api.org>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 10/01/2010 02:38 PM

Subject: Invitation for Public Comment on the List of Candidates for the EPA Science Advisory Board Panel for the Review of the Hydraulic Fracturing Study Plan

Dear Mr. Hanlon:

Please find attached a copy of API's response letter on the announcement of the EPA Science Advisory Board on the List of Candidates for the EPA Science Advisory Board Panel for the Review of the Hydraulic Fracturing Study Plan.

Should you have any questions regarding this transmission, please do not hesitate to contact me.

Regards,

Stephanie

Stephanie R. Meadows

Upstream Senior Policy Advisor

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

Representative Hinchey

Phone: 202/682-8578

Fax: 202/682-8426

Email: meadows@api.org[attachment "10 October 1 Letter to EPA on SAB Candidates List.pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

Stephanie R. Meadows
Senior Policy Advisor
Environmental Issues

Upstream

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October 1, 2010

Via E-Mail
Mr. Edward Hanlon,
Designated Federal Officer
Science Advisory Board
U.S. Environmental Protection Agency
Mailcode 1400R
1200 Pennsylvania Ave., NW
Washington, DC 20460-4164

Re: Invitation for Public Comment on the List of Candidates for the EPA Science Advisory Board Panel for the Review of Hydraulic Fracturing Study Plan

Dear Mr. Hanlon:

The American Petroleum Institute (API) is a national trade association representing over 400 member companies involved in all aspects of the oil and natural gas industry in the United States. Our members have extensive experience with the drilling and completion techniques used in gas shale development and in developing America's oil and natural gas resources in a safe and environmentally responsible manner. We made a statement during the April 7-8, 2010 Science Advisory Board's Augmented Environmental Engineering Committee (EEC) public meeting, specifically expressing that the industry stands ready to assist EPA in the development of the study plan as well as the study's execution. API noted that the industry not only has the experts in the field, but a tremendous knowledge and experience base to offer the Agency – on the operational practices, on chemical characterization and monitoring, on modeling, treatment technologies and management practices, and on the potential risks posed by these operations. Beyond the expertise of industry, we also feel it is essential that interstate organizations, such as the Interstate Oil and Gas Compact Commission (IOGCC) and the Groundwater Protection Council (GWPC) become active partners with EPA providing the critical background data and information necessary to properly inform the study design.

As a result, API was pleased to see the July 20, 2010 Federal Register Notice titled *Request for Nomination of Experts for SAB Hydraulic Fracturing Review Panel* (75 Federal Register 42087). We continue to support the nomination process as a vital step in securing a final Panel that is balanced in its representation of experts and one that holds the proper technical skills and relevant experience base.

An equal opportunity employer

Representative Hinchey

Mr. Edward Hanlon
October 1, 2010
Page Two

As mandated by Congress, the proposed study is intended to address the "relationship between hydraulic fracturing and drinking water resources." As such, experts selected for the Panel should have experience in using existing tools and experience to directly address a Study Plan intended to explore the potential relationship and impacts. It is imperative that the Panel include individuals experienced in upstream oil and natural gas operations which are unique in engineering, scale, distribution, materials, and timing. After all, the safe, protective, and productive practices used in the oil field were developed over many years of research and practices.

Therefore, API strongly urges that a critical number of Panel members (at least one third of the total membership) have direct experience working in the modern oil and natural gas industry. We would further recommend that candidates selected from academia and the regulatory and consulting arenas possess direct knowledge of and working experience on upstream issues (again, at least one third of the total Panel membership) including but not limited to:

- Practical experience in operational aspects of oil and natural gas exploration & production, including hydraulic fracturing;
- Practical experience in applying petroleum geology and geophysics to oil and natural gas recovery schemes;
- Practical experience in upstream water and waste management;
- Practical experience in applying soil/groundwater fate and transport principles to address the distinct upstream issues; and
- Knowledge in rock mechanics as it relates to hydraulic fracturing; the stimulation of fracture migration is a fundamental part of completion planning and protection of groundwater sources.

The remaining third of the Panel should be comprised of knowledgeable stakeholders, including representation from the interstate organizations mentioned above. In order to keep the Panel from becoming unwieldy and from losing the key focus (e.g., on the relationship between hydraulic fracturing and drinking water), API suggests limiting the size of the Panel to between 10 and 12 members.

Finally, and perhaps most importantly, API views the purpose of the panel as providing an objective technical review of EPA's final Study Plan. The Panel is not meant to develop or advocate policy of any type. We would encourage selection of candidates who recognize and adhere to this charge and request that the leadership of the Panel be mindful of this as it works to assist EPA's Office of Research and Development (ORD) throughout the Study Plan review and beyond.

Should you have any questions regarding the comments and recommendations offered to you, please do not hesitate to contact me. I appreciate your continued hard work in pulling this balanced Panel together.

Regards,

Stephanie R. Meadows

Representative Hinchey

Comments from Barry Russell, President and CEO of the Independent Petroleum Association of America (IPAA)

From: "Brushe, Shannon" <Shannon.Brushe@FTIConsulting.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 09/29/2010 04:08 PM

Subject: IPAA comments re: HF study advisory panel

Mr. Hanlon –

I am submitting the attached letter on behalf of Barry Russell, President and CEO of the Independent Petroleum Association of America (IPAA), for your review. The letter is in regards to the ad hoc committee forming to address EPA's Hydraulic Fracturing Study Plan.

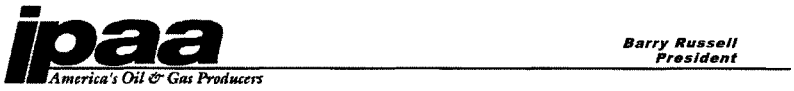
Thank you in advance for your time, and please let me know if I can put you in contact with Mr. Russell, or any of our representatives from IPAA.

Best,

Shannon Brushe

202-346-8858[attachment "EPA SAB Panel Letter 09 29.pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey



Barry Russell
President

September 29, 2010

Mr. Edward Hanlon
Designated Federal Officer
EPA Science Advisory Board
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Dear Mr. Hanlon:

On September 10, 2010, EPA's Science Advisory Board (SAB) released the names of 82 individuals nominated to serve on an *ad hoc* committee charged with providing "independent expert advice on EPA's draft Hydraulic Fracturing Study Plan." As part of that announcement, SAB invited interested parties to submit comments on the composition of that initial pool, and on the standards and criteria that should be used in assembling a first-rate panel capable of applying an objective, scientific eye to the issue at hand.

Consistent with that task, the Independent Petroleum Association of America (IPAA) strongly supports the creation of an advisory panel composed of individuals with strong backgrounds in science and engineering, and a proven ability to execute analysis based on an objective review of scientific data with what SAB's announcement refers to as an "absence of appearance of a lack of impartiality."

Taking a closer look at the pool of nominees presented earlier this month, IPAA is encouraged to see individuals with diverse, well-established technical backgrounds and a wide-range of general talents and experience – from geologists, mathematicians and engineers, to hydrologists, oceanographers and public health professionals. There even appears to be a poet on this list.

Unfortunately, a number of nominees' past comments betray a strong and unambiguous antipathy toward shale development in general, and hydraulic fracturing in particular.

For example, one candidate identified by SAB is the author of a recently released white paper (partially funded by EPA) that cites hydraulic fracturing as a "toxic" process, and then recommends that Congress pass legislation assigning the agency unprecedented authority to regulate it. Another candidate issued a study earlier this year arguing the development of natural gas from wells undergoing fracture stimulation is worse for the environment than the mining of coal – a study so riddled with errors that he was forced to withdraw it within days of its release.

IPAA believes these nominees and several others listed in your document lack the balance needed to evaluate the implications of hydraulic fracturing on drinking water in a credible way, instead opening the results of the study to questions of bias. EPA's willingness to review and consider the pressing concerns regarding the need to safeguard the integrity of this science-based review suggests the panel must withstand the test of balance in its assessments.

EPA's pursuit of its second nationwide study on hydraulic fracturing in the past six years comes at a critical point in the ongoing debate over the nation's energy and economic future. At a time of unprecedented economic uncertainty, the development of clean-burning, American natural gas from shale and other fracturing-dependent reservoirs continues to generate jobs and revenue at a pace that belies the difficult times in which the country finds itself today. At the same time, EPA has an obligation to ensure the process of acquiring those resources is safe, as it did most recently in 2004. Certainly the politics of this issue have changed dramatically since then. EPA's job is to assess whether the science has.

Representative Hinchey

IPAA appreciates the opportunity to present its concerns in the development of the current EPA hydraulic fracturing study. IPAA believes a well structured, scientifically sound assessment of fracturing will once again demonstrate that this essential technology is safe and well regulated in its current framework. Consequently, EPA needs to ensure that its evaluation process remains similarly well structured and scientifically sound.

Sincerely,

Barry Russell
President and CEO

Independent Petroleum Association of America 1201 15th Street, N.W. Suite 300
Washington, DC 20005
(202) 857 4722 ♦ Fax (202) 857 4799 ♦ www.ipaa.org

Representative Hinchey

From: "Brushe, Shannon" <Shannon.Brushe@FTIConsulting.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 10/08/2010 01:04 PM

Subject: RE: IPAA comments re: HF study advisory panel

Mr. Hanlon -

I've confirmed with IPAA that the letter refers to the candidates Theo Colborn and Robert Howarth. The association's concerns are reiterated by Lee Fuller, vice president of gov't relations for IPAA, in the following article from Platts. Please let me know if I can answer any other questions.

--

GAS DAILY: IPAA challenges candidates for EPA frack panel

Environmentalists with a proven history of anti-fracking bias should not be allowed to serve on a scientific advisory board that the Environmental Protection Agency is assembling as part of its study of hydraulic fracturing, a group of independent gas and oil producers said last week.

In a letter to the EPA on Wednesday, Barry Russell, president and CEO of the Independent Petroleum Association of America, pointed out that among the 82 candidates that the EPA suggested serve on the committee were several outspoken fracking critics.

Representative Hinchey

The IPAA letter was in response to a call the EPA sent out to oil and gas companies, industry associations, environmental groups and other stakeholders, asking for comments on the proposed make-up of the scientific advisory board. Eighty-two candidates, including veterans of the energy industry and academics who have studied the scientific aspects of fracking, were nominated to serve on the panel. The deadline for comments was Friday.

The advisory board is expected to provide expert advice on various aspects of the practice of hydraulic fracturing as part of a two-year congressionally mandated study that the EPA is doing of the well-completion practice and its potential impacts on groundwater. In his letter, Russell cited two nominees in particular for criticism: "the author of a recently released white paper (partially funded by EPA) that cites hydraulic fracturing as a 'toxic' process," and a candidate who issued a study earlier this year on wells undergoing fracture stimulation that was "so riddled with errors that he was forced to withdraw it within days of its release."

Lee Fuller, IPAA's vice president of government relations, identified the candidates as Theo Colborn, president of the Endocrine Disruption Exchange, and

Robert Howarth, a Cornell University professor.

Colborn and Howarth did not respond to calls for comments by press time. Russell said the two nominees as well as several others "lack the balance needed to evaluate the implications of hydraulic fracturing on drinking water in a credible way, instead opening the results of the study to questions of bias."

Representative Hinchey

The Environmental Working Group in its comments to EPA opposed the inclusion of one candidate on the scientific advisory board: Michael Economides, a University of Houston professor of petroleum engineering.

Dusty Horwitt, senior counsel of the Environmental Working Group, said Economides lacks impartiality because he wrote an op-ed for the Syracuse Post-Standard newspaper in favor hydraulic fracturing. "He said fracking chemicals are perfectly safe and few in number and that these agents are not much different than common kitchen flour," Horwitt said. "Apparently, Mr. Economides thinks it's OK to have kerosene cupcakes for your birthday."

Lauren Pagel, policy director of Earthworks, said she questioned the IPAA's opposition to the inclusion on the panel of members with divergent views on fracking. "It doesn't make much sense to me. There needs to be a balance. There need to be wide variety of experts on it, folks advocating for the public interest as well as academics and former oil and gas folks." — Jim Magill

-----Original Message-----

From: Hanlon.Edward@epamail.epa.gov [mailto:Hanlon.Edward@epamail.epa.gov]

Sent: Wednesday, October 06, 2010 10:37 AM

To: Brushe, Shannon

Subject: Re: IPAA comments re: HF study advisory panel

Dear Ms. Brushe,

Representative Hinchey

Thank you for submitting your comments regarding the September 10, 2010 List of Nominated Candidates for the EPA Science Advisory Board Panel for the Review of Hydraulic Fracturing Study Plan. I have a question regarding your comments. You noted that one candidate is the author of a recent white paper, and another candidate issued a study earlier this year, and that other candidates lack balance. I do not know which nominees you are referring to. If you would like to note which nominees you are referring to, I will include your comments in consideration of these individuals.

Thank you for submitting your comments regarding this Panel.

Ed Hanlon

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Ed Hanlon

Designated Federal Officer

EPA Science Advisory Board Staff Office

202-564-2134 (phone/voice mail)

202-565-2098 (fax)

202-564-2221 (SAB main number)

hanlon.edward@epa.gov

Regular mail: USEPA Science Advisory Board (1400R), 1200 Pennsylvania

Representative Hinchey

Ave., N.W., Washington, D.C. 20460

Office location/Courier Address: USEPA Science Advisory Board, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 31150, Washington, D.C. 20004

Representative Hinchey

Comments from J. Barton Seitz, Baker Botts LLP, Representing Halliburton Energy Services, Inc.

From: <bart.seitz@bakerbotts.com>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 10/01/2010 04:47 PM

Subject: Comments of Halliburton Energy Services, Inc. - List of nominated candidates for the SAB Panel for Review of the Hydraulic Fracturing Study Plan

Mr. Hanlon,

On behalf of Halliburton Energy Services, Inc., please find attached Halliburton's comments on the list of nominated candidates for the SAB Panel for the Review of the Hydraulic Fracturing Study Plan.

Respectfully,

J. Barton Seitz

BAKER BOTTS LLP

THE WARNER

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WASHINGTON, D.C. 20004-2400

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Representative Hinchey

<<Halliburton comments.pdf>>

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[attachment "Halliburton comments.pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

HALLIBURTON ENERGY SERVICES, INC.

COMMENTS FOR THE SAB PEER REVIEW PANEL NOMINATIONS

October 1, 2010

Halliburton Energy Services, Inc. ("HESI") hereby submits these comments on the list of nominated candidates for the "Panel for the Review of the Hydraulic Fracturing Study Plan" (the "Peer Review Panel") as part of the study on hydraulic fracturing being undertaken by the U.S. Environmental Protection Agency ("EPA"). We appreciate the opportunity to submit these comments.

HESI is a leading provider of services to the oil and gas industry and is the global leader with respect to hydraulic fracturing services. HESI helped pioneer the use of hydraulic fracturing in the 1940's and has been hydraulically fracturing wells in a wide variety of geographic settings and formations for over 60 years. During this time, HESI has hydraulically fractured hundreds of thousands of wells and has been responsible for numerous innovations in the field of hydraulic fracturing. HESI has also conducted independent research on hydraulic fracturing technologies and potential relationships to underground sources of drinking water. This wealth of experience makes HESI particularly well qualified to comment on the SAB's proposed nominations for the Peer Review Panel.

HESI recommends that the SAB be guided by the Board's own specific standards and guidelines, which call for experienced and balanced representation among the Panel members. In its original announcement about the Panel, the SAB indicated that it would be seeking nationally recognized and qualified experts in a broad range of engineering and other technical disciplines.[1] Now that approximately 84 candidates have been nominated for the Panel,[2] the SAB's own guidance indicates that "[e]xpertise, knowledge, and experience are the primary factors that determine whether an individual is invited to serve on an SAB Panel."[3] At the same time, the SAB has traditionally sought to assure that its panels achieve an "overall balance . . . of the points of view presented, as mandated by the Federal Advisory Committee Act," and that a balanced panel is typically characterized by "inclusion of the necessary domains of knowledge, the relevant scientific perspectives . . . and the collective breadth of experience to address the charge adequately."[4]

Consistent with these standards and the Peer Review Panel's specific "charge," HESI requests that the designated Panel members include appropriate representation from the oil and gas industry and other individuals with specific expertise, knowledge of and experience with hydraulic fracturing operations. As the SAB is well aware, the chief purpose of the Peer Review

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[1] *See* 75 *Fed. Reg.* 42,087 (July 20, 2010).

[2] *See* EPA SAB Staff Office, *Invitation for Public Comment on the List of Nominated Candidates for the EPA Science Advisory Board Panel for the Review of Hydraulic Fracturing Study Plan*, (Sept. 10, 2010), available at http://yosemite.epa.gov/sab/sabproduct.nsf/0/D3483AB445AE61418525775900603E79/$File/List+of+Candidates-Hydraulic+Fracturing+Study+Plan-9-10-10+Final.pdf.

[3] SAB, Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, EPA-SAB-EC-02-010 at 9 (Sept. 2002).

[4] *Id.* at 10.

Panel is "to review EPA's draft Study Plan and review the Study results if SAB is requested to do so."[5] Since the EPA Study is intended to focus directly on the "relationship between hydraulic fracturing and drinking water" and hydraulic fracturing is a highly-specialized oil and gas well stimulation technology, the Panel members should include key industry representatives who are well-familiar with this key technology. Indeed, HESI urges that the SAB designate Panel members who have industry experience involving: (1) oil and natural gas well drilling, completion and stimulation operations; and/or (2) the specific use of hydraulic fracturing technology to recover unconventional natural gas or petroleum resources. HESI's recommendation would help assure that the Panel has the type of "balance" and specialized technical experience required to satisfy the SAB's selection criteria and advisory panel guidance.

Two of the individuals recently nominated for the Peer Review Panel – Mr. David King and Dr. Vikram Rao – possess the essential expertise and hydraulic fracturing experience necessary to be selected for the final Panel, and Halliburton fully supports their nominations. Mr. King is a petroleum engineer who earned his Bachelor of Science degree in Engineering from the University of Alabama. He has been a long-time member of the Society of Petroleum Engineers and was a registered petroleum engineer in Louisiana. For over thirty years, Mr. King has been involved with and managed a broad range of oil and gas-related services, including hydraulic fracturing operations and related petroleum and natural gas well stimulation and completion matters. He recently retired after serving as the President of Halliburton's Completion and Production Division. Mr. King's expertise and extensive experience in the oil and gas industry make him well suited to serve as a member of the SAB Panel.

Dr. Vikram Rao similarly is a well-qualified oil and gas industry expert who would be an invaluable member of the Peer Review Panel. Dr. Rao has earned Bachelor's and Master's degrees in Engineering and also holds a Doctorate in Engineering from Stanford University. Dr. Rao worked for over 30 years at Halliburton, holding executive management positions in research and development, product launch, reservoir studies, and sales and marketing, ultimately serving as Senior Vice President and Chief Technology Officer for the company before retiring. Over the course of his career, Dr. Rao has worked extensively with hydraulic fracturing and other innovative technologies in the oil and gas services sector. Dr. Rao is currently the Executive Director of the Research Triangle Energy Consortium, a non-profit energy firm based in North Carolina, where he provides expert technical advice to energy companies, technology companies, non-governmental organizations and universities. He also is the author of more than 40 publications and has been awarded 26 patents, in fields that include oil and gas technology.

In sum, HESI recommends the selection of a balaneed, well-qualified Peer Review Panel that includes Panel members with substantial oil and gas industry experience. HESI further recommends that Mr. David King and Dr. Vikram Rao be named to the Panel based on their excellent credentials, significant industry experience and broad knowledge of hydraulic fracturing matters. These recommendations are consistent with the SAB's own guidance and prior practice and would help to assure that the Panel is able to provide effective advice about hydraulic fracturing operations and their potential relationship to drinking water.

[5] 75 *Fed. Reg.* at 42,087.

Representative Hinchey

Comments from Kathleen M. Sgamma, Director of Government Affairs, Western Energy Alliance (formerly IPAMS), Denver, Colorado

From: Kathleen Sgamma <KSgamma@westernenergyalliance.org>

To: Edward Hanlon/DC/USEPA/US@EPA

Date: 10/01/2010 10:04 AM

Subject: Western Energy Alliance Comments on SAB Nominees

Dear Mr. Hanlon,

Please accept the attached comments on the nominees for EPA's hydraulic fracturing study SAB panel. Thank you for the opportunity to comment.

Kathleen M. Sgamma

Director of Government Affairs

Western Energy Alliance (formerly IPAMS)

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Representative Hinchey

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[attachment "Western Energy Comments on Peer Review Candidates.pdf" deleted by Edward Hanlon/DC/USEPA/US]

Representative Hinchey

WESTERN ENERGY
ALLIANCE
Formerly IPAMS

October 1, 2010

Via email to hanlon.edward@epa.gov

Mr. Edward Hanlon,
Designated Federal Officer, Science Advisory Board
U.S. Environmental Protection Agency
Mailcode 1400R
1200 Pennsylvania Ave., NW
Washington, DC 20460-4164

Re: Comments on the List of Nominated Candidates for the EPA Science Advisory Board (SAB) Panel for the Review of the Hydraulic Fracturing Study Plan

Dear Mr. Hanlon:

Western Energy Alliance submits these comments in response to the recent nominations of candidates for the SAB peer review panel for the upcoming EPA Hydraulic Fracturing Study Plan (the "Study Plan"). Western Energy Alliance is a non-profit trade association representing over 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the Intermountain West. Thank you for the opportunity to comment on the SAB.

Western Energy Alliance recommends that the SAB panel include a representative number of individuals (at least one third of the panel) with direct experience working in the modern oil and gas industry and with substantial familiarity with hydraulic fracturing (HF) operations. Furthermore, we recommend that candidates from the academic and regulatory arenas possess direct working experience in oil and gas. HF is a highly technical, complex process and only a limited number of members of academia have significant experience with this technology. At the same time, this technology is critically important to our domestic economy because it is helping industry recover vast new quantities of previously unreachable petroleum and natural gas. Given this situation, we believe that industry participation in the peer review panel would not only be consistent with the SAB's traditional practice, but would help assure that the panel includes experts with the breadth of knowledge and experience necessary to properly advise EPA about HF matters.

The SAB Staff Office has indicated that it is seeking qualified experts in petroleum engineering and geology with experience in HF and well testing/ mechanical integrity to serve on the SAB panel. Western Energy Alliance wishes to express its strong support for two of the nominated individuals who possess these key qualifications. First, we support Dr. Vikram Rao, who has a doctorate in engineering from Stanford University and is currently the Executive Director of the Research Triangle Energy Consortium, where he provides technical advice to energy and technology firms. Dr. Rao worked for over 30 years in the oil and gas industry and has significant familiarity with HF

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technology and its application. Dr. Rao's high level of expertise and diverse experience in various roles makes him well-suited to serve on the SAB panel.

In addition, Western Energy Alliance supports the nomination of David King based on his more than three decades of engineering and senior management work in the oil and natural gas industry. During these years he was involved with and managed various oil and gas-related services, including hydraulic fracturing operations. Mr. King is a petroleum engineer who earned his bachelor of science in engineering from the University of Alabama. He also is a member of the Society of Petroleum Engineers and was a registered petroleum engineer in Louisiana. Mr. King's first-hand experience with HF and extensive knowledge of oil and gas well stimulation operations makes him extremely well-qualified to participate in the SAB panel.

At the same time, Western Energy Alliance objects to the potential involvement of Dr. Theo Colborn on the panel. Dr. Colborn holds degrees in pharmacy, fresh water ecology, and zoology, none of which are included among the qualifications specifically listed by the SAB. Therefore, she does not possess the specific technical expertise needed by the SAB panel for reviewing EPA's Study Plan. In addition, Dr. Colborn has been a long-time activist opposing HF, and her participation on the panel could potentially hinder the panel's ability to provide objective, scientific recommendations to EPA. The purpose of the SAB panel is to provide an objective technical review of EPA's final study plan. The panel is not meant to be an advocacy body. Western Energy Alliance strongly urges EPA to select candidates with appropriate qualifications who recognize and adhere to the objective, scientific rationale for the panel.

Another troublesome aspect of Dr. Colborn's potential participation on the SAB is the fact that she has recently released a report, *Natural Gas Operations from a Public Health Perspective,* which advocates for EPA regulation of HF by passage of the FRAC Act in Congress.[1] This report was partially funded by EPA, which raises questions of a conflict of interest with having Dr. Colborn on the board. In order to maintain the scientific integrity of the SAB panel, Western Energy Alliance strongly recommends that Dr. Colborn not be included.

In addition to the expertise of industry, Western Energy Alliance believes it is imperative that members of the Interstate Oil and Gas Compact Commission (IOGCC) and the Groundwater Protection Council (GWPC) serve on the panel and become active partners with EPA in providing the critical background data and information necessary to properly inform the study design.

In closing, Western Energy Alliance urges that the peer review panel include industry representatives who can bring essential, first-hand knowledge of hydraulic fracturing technology and operations to the panel's deliberations. Thank you again for the opportunity to submit these comments.

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[1] T. Colborn, et. al., *Natural Gas Operations from a Public Health Perspective,* http://coloradoindependent.com/wp-content/uploads/2010/09/Natural-Gas-Manuscript-PDF-09_13_10.pdf

Representative Hinchey

Sincerely,

Kathleen M. Sgamma
Director of Government Affairs

WESTERN ENERGY ALLIANCE

Representative Hinchey

NATURAL GAS

Question 7: Has EPA signed any Memoranda of Understanding with any non-governmental organization including industry or academics related to natural gas or natural gas drilling/extraction? If so, please provide copies of all such documents.

Answer: In 2003, EPA signed a Memorandum of Agreement with BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation on the *Elimination of Diesel Fuel in Hydraulic Fracturing Fluids Injected into Underground Sources of Drinking Water During Hydraulic Fracturing of Coalbed Methane Wells*. A copy of the document is at the following link: http://www.epa.gov/ogwdw000/uic/pdfs/moa_uic_hyd-fract.pdf

Question 8: Has EPA signed any Memoranda of Understanding with other federal agencies related to natural gas industry or natural gas drilling/extraction? If so, please provide copies of all such documents.

Answer: No, EPA has not signed any Memoranda of Understanding with other federal agencies related to natural gas industry or drilling/extraction.

Representative Flake

Questions Submitted for the Record by Representative Flake

ETHANOL/E15

Question 1: EPA's move from E10 (10% ethanol) to E15 (15% ethanol) fuel to be carried out over the next several months effectively represents a 50% increase in the ethanol mandate for a mature industry that has long benefited from government largess. It is my understanding that the E15 waiver was based on research done by the Department of Energy (DOE) that was limited to the impact of E15 on the vehicle's emissions systems. It is also my understanding that the automobile manufacturers and fuel refiners are conducting joint research to determine how E15 affects the performance and durability of the vehicle and that the preliminary results show that some of the vehicles that your waiver would allow to fill up with E15 at the gas station are showing problems with that product.

Did the EPA's research ensure that E15 would not harm all components of the vehicle (i.e., gas tank, fuel line, engine valves, check engine light system)?

Answer: The data and other information upon which EPA based its two partial waiver decisions cover both exhaust and evaporative emissions control components – the engine and its control system and the entire vehicle fuel system (i.e., gas tank, fuel line, engine valves, check engine light system). EPA based our waiver decisions on the potential impacts of E15 in four areas: (1) exhaust emissions – immediate and long-term (known as durability); (2) evaporative emissions – both immediate and long-term; (3) the effect of materials compatibility on emissions; and (4) the effect of drivability and operability on emissions.

EPA largely based its decisions on DOE's Catalyst Study. This study evaluated the long-term effects of ethanol blends on the durability of the exhaust emissions control system, especially the catalytic converter (catalyst), and the durability of the evaporative emissions control system. In addition, the study included a tear-down analysis of engine components and fuel system components exposed to ethanol and showed no negative impact. The study also looked at the effects of E15 on the on-board diagnostic system and showed no malfunction indicator (i.e., check engine) light codes specific to ethanol. Information from the DOE Catalyst Study was supplemented by other test data and information, including evaporative emissions control system information from studies conducted by the Coordinating Research Council (sustaining members include the American Petroleum Institute and a group of automobile manufacturers) as well as data that is part of EPA's motor vehicle emissions compliance program. EPA concluded that the DOE Catalyst Study and other test data and information thoroughly demonstrate that E15 will not have any significant adverse impact on emissions, including both immediate and durability-related, of model year 2001 and newer passenger vehicles.

Representative Flake

Question 2: What steps will the EPA take to withdraw its partial waiver if the auto/oil research shows that E15 does indeed have detrimental effects on the existing vehicle fleet?

Answer: EPA will consider what steps are appropriate with respect to the partial waivers if and when research indicates that E15 will cause or contribute to the failure of emission standards by the existing vehicle fleet covered by the waivers.

Question 3: EPA is no doubt aware of the recent approval of the amendment by Representative Sullivan of Oklahoma during consideration of the legislation funding the remainder of fiscal year 2011 that would bar funding for implementing the waiver for E15; will EPA take the sentiment of the House of Representatives into account?

Answer: EPA is aware of the amendment by Rep. Sullivan and more generally of the concerns that have been raised with respect to the partial E15 waivers. Petitions for review of both waivers are currently before the U.S. Court of Appeals for the District of Columbia Circuit. EPA believes the technical and legal basis for the waivers is sound, and EPA intends to fulfill its legal responsibilities under the waiver decisions. For example, if a business wants to market E15 and submits a plan for mitigating misfueling as required by the waivers, EPA will review the plan to determine whether it is appropriate and meets the conditions of the waiver.

STORMWATER

EPA's regulations under the current CWA stormwater program are limited to requiring permits at active construction sites. That is, during the construction process while soils are being disturbed, the site operator must get a Section 402 discharge permit. EPA is currently developing new requirements that would require permits after construction has ceased. These could result in new post-construction stormwater permits at already built-out sites.

Question 4: Does EPA think it already has the authority from Congress, to develop new regulations to control stormwater runoff after the construction process ends? Wouldn't EPA need authorization from Congress to enact new post-construction stormwater regulations?

Answer: Section 402(p) of the Clean Water Act (CWA). established a phased approach to regulating stormwater discharges. Thus far, EPA has regulated medium and large municipal separate storm sewer systems (MS4s), MS4s located within urbanized areas, and industrial discharges, including construction discharges from active construction sites that disturb one acre or more of land. Congress has provided EPA the authority to regulate additional stormwater discharges, including discharges from newly developed and redeveloped sites, to protect water

quality under section 402(p)(6). EPA can use its authority under section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA in order to protect water quality (see Environmental Defense Center. v. EPA, 344 F.3d 832, 873-76 (9th Cir. 2003)). On December 28, 2009, EPA announced its plans to initiate national rulemaking to designate for regulation stormwater discharges from new development and redevelopment and make other regulatory improvements to strengthen its stormwater program. EPA believes this rulemaking is needed to protect waterbodies from harmful pollutants that are generated from the creation of impervious surfaces.

Question 5: In the context of a small business impact review panel, EPA told participants that new regulatory requirements could mean that already-built properties might need to have the "hydrology of the land before construction" mimic a "forest, prairie, meadow." How would EPA propose that land with homes and buildings on it have the characteristics of a forest, prairie, or meadow? What kind of economic impact would such a requirement have on property owners?

Answer: Current regulations require regulated municipal separate storm sewer systems (MS4s) to develop, implement, and enforce a program to reduce pollutants in post-construction runoff from new development and redevelopment projects. EPA is considering provisions to strengthen this requirement including establishing specific performance standards for managing stormwater from sites after they are newly developed or redeveloped.. A key component of a

performance standard would be to identify situations where meeting the standard would not be practical, and EPA expects that redeveloped sites in particular would qualify for adjustments to such a standard. As part of the rulemaking, EPA is evaluating existing performance standards by states and municipalities and considerations for redeveloped sites. EPA's rulemaking will include a regulatory impact analysis, which would assess economic impacts associated with the requirements.

LEAD PAINT IN COMMERCIAL BUILDINGS

EPA's current lead paint regulatory program applies to renovation and remodeling activities in older "target housing," built before 1978. EPA now plans to take its lead paint regulatory program for residences, and apply it to all types of commercial buildings – including offices, stores, factories, plants, and hotels.

Question 6: Has EPA ever studied the differences between the residential and commercial building sectors, in terms of the lead paint hazards each may pose?

Answer: The Lead-based Paint Hazard Reduction Act of 1992 passed by Congress directed EPA to promulgate regulations addressing renovations that disturb lead-based paint not only in target housing, but also in "public buildings constructed before 1978, and commercial

Representative Flake

buildings". Pursuant to this Congressional directive, EPA is in the process of addressing renovation jobs on public buildings constructed before 1978 and commercial buildings. As a first step, EPA is developing a rule to address renovations on the exterior of public building constructed before 1978 and commercial buildings that, by virtue of their close proximity, create lead-based paint hazards in and around housing and child-occupied facilities (which are defined as buildings frequented by children under the age of six).

EPA conducted extensive studies on renovation activities conducted on a variety of buildings, both residential and public and commercial. (http://www.epa.gov/lead/pubs/leadtpbf.htm#Renovation). These studies evaluating lead exposure associated with renovation and remodeling activities are listed individually in the response to Question 9, below. In addition, EPA has conducted a study to evaluate lead dust generated in actual renovation situations, including hazards created by the use of various renovation and paint removal practices on different building components, known as "EPA's Dust Study" (USEPA. Characterization of Dust Lead Levels After Renovation, Repair, And Painting Activities. November 13, 2007). These studies provide a comprehensive picture of lead dust generation by renovation activities. EPA will use these studies, along with any other suitable studies identified as the result of a search of the scientific literature (e.g., NIOSH Health Hazard Evaluation Report #99-0113-2853; Department of Health and Human Services, July 2001), to identify lead paint hazards generated by renovation activities on public and commercial buildings. EPA plans to have its approach in applying this data and information to renovation activities on public buildings constructed before 1978 and commercial buildings evaluated by EPA's Science Advisory Board. When EPA proposes the regulations for renovations on the exteriors of public buildings built before 1978 and commercial buildings, there will be a public comment period where all stakeholders will have an opportunity to provide comments to the Agency on all aspects of the rule.

Question 7: What are the likely increases in cost associated with expanding this regulatory program? What are the likely economic impacts in terms of jobs lost due to increased costs?

Answer: As a general matter, as part of the rulemaking process, EPA assesses the costs and benefits of any regulation it is required by Congress to implement. EPA is still gathering information to inform the development of an assessment of costs and benefits of this future proposed rule.

As part of developing the proposed rule, EPA is currently organizing a Small Business Advocacy Review (SBAR) panel. The panel is made up of representatives from the agency conducting the rulemaking (EPA in this case), the Small Business Administration, and the Office of Management and Budget and will consult with small entities on cost and economic implications of the proposed regulation for small entities.

Additional analysis is required for regulations that impose more than a certain level of costs on society or raise novel policy or legal issues. For example, the Unfunded Mandates Reform Act requires, among other things, a cost-benefit analysis and consideration of a number

of regulatory options for regulations that require the expenditure of funds by state, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Executive Order 12866 gives the Office of Management and Budget the authority to review regulatory actions that are categorized as significant, including rules that may have an annual effect on the economy of $100 million or more. For the proposed public and commercial renovation regulations, EPA will prepare an economic analysis that complies with the applicable requirements of the Executive Order.

REPORTS TO CONGRESS ON LEAD AND STORMWATER

Frequently, legislation will direct an agency to first study an issue, and then report back to Congress before it enacts new rules and regulations. This is certainly the case with the stormwater permit requirements under the Clean Water Act (CWA), and the lead-paint program under the Toxic Substances Control Act (TSCA).

Question 8: The Clean Water Act direct EPA to first conduct a study and then report to Congress before developing new stormwater permit regulations. Yet, it appears EPA is well down the path of developing a brand new stormwater program to regulate precipitation that may runoff from "already-developed sites." When can Congress expect the report from EPA before we see these new stormwater regulations?

Answer: On December 28, 2009, EPA announced its plans to initiate national rulemaking to establish a program to reduce stormwater discharges from new development and redevelopment and make other regulatory improvements to strengthen its stormwater program. EPA is developing a supplement to the Reports to Congress used to support the December 8, 1999 stormwater regulations authorized under 402(p)(6). EPA expects that the Report will be sent to Congress during the summer of 2011, before the rulemaking proposal is published.

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REPORTS TO CONGRESS ON LEAD AND STORMWATER

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Question 9: Similarly, the Toxic Substances Control Act states that before EPA issues any regulations on renovation activities in commercial buildings, it must first conduct a study to determine which renovation activities cause lead paint hazards "on a regular or occasional basis." When can Congress expect the report from EPA before we see new lead paint regulations on commercial buildings?

Answer: EPA has conducted extensive studies on renovation activities (http://www.epa.gov/lead/pubs/leadtpbf.htm#Renovation), including:

- Lead Exposure Associated with Renovation and Remodeling Activities, Final Summary Report, January 2000 (EPA 747-S-00-001) [primarily residential buildings, but also includes data on schools, office and industrial buildings]
- Executive Summary - Lead Exposure Associated with Renovation and Remodeling Activities: Phase IV, Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovation of Old or Historic Homes, March 1999 (EPA 747-R-99-001) [residential buildings]
- Executive Summary - Lead Exposure Associated with Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood-Lead Study, March 1999 (EPA 747-R-99-002) [residential buildings]
- Lead Exposure Associated with Renovation and Remodeling Activities: Summary Report, May 1997 (EPA 747-R-96-005) [primarily residential buildings, but also includes data on schools, office and industrial buildings]
- Lead Exposure Associated with Renovation and Remodeling Activities: Phase II, Worker Characterization and Blood-Lead Study, May 1997 (EPA 747-R-96-006) [residential and commercial buildings]
- Lead Exposure Associated with Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study, Volume I: Technical Report, May 1997 (EPA 747-R-96-007) [primarily residential buildings, but also includes data on schools, office and industrial buildings]
- Lead Exposure Associated with Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study, Volume II: Appendices, May 1997 (EPA 747-R-96-008) [primarily residential buildings, but also includes data on schools, office and industrial buildings]
- Draft final report on characterization of dust lead levels after renovation, repair, and painting activities. http://www.epa.gov/lead/pubs/duststudy01-23-07.pdf [primarily residential, but includes data from a school building]

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These studies provide a comprehensive picture of lead dust generation by renovation activities and lead exposure associated with renovation and remodeling activities.

WETLANDS

The pending 2011 wetlands guidance, if issued, will be the third iteration of guidance to clarify the government's authority over wetlands since the 2001 *SWANCC* ("swank") decision. Many believe that the pending wetlands guidance will amount to an expansion of federal jurisdiction over "waters of the United States."

Question 10: By issuing guidance instead of a rule, you seem to be violating the Administration's tenets of "open government," "transparency" and "public participation." Are you not circumventing Administrative Procedure Act requirements and robbing the public of a meaningful opportunity for notice and comment? Why are changes in wetland policy not being handled via a formal rulemaking process?

Answer: EPA and the U.S. Army Corps of Engineers (Corps) have released for public comment draft clean water protection guidance intended to clarify those waters over which the agencies will assert jurisdiction consistent with the CWA, implementing regulations, and Supreme Court interpretations. The guidance does not broaden the reach of the Clean Water Act (CWA) beyond that currently provided by the CWA and implementing regulations, and in fact provides for a narrower scope of jurisdiction than that which existed prior to recent Supreme Court decisions. The draft guidance would not take effect until after the agencies solicit and fully consider public comments. We believe this approach is fully consistent with the Obama Administration's tenets of ensuring transparency and open government, and is more transparent than that followed by previous Administrations in releasing similar guidance.

TIGHTENING AIR QUALITY STANDARDS FOR OZONE

It is my understanding that the agency recently announced that it will delay a decision to tighten ground level ozone standards until July of 2011. If the original recommendation is followed to tighten the standard down, it would likely drastically increase the number of counties violating the air quality standard.

Question 11: Does it make sense to go with a tighter standard when the implementation of the current standard is still underway?

Answer: The Clean Air Act requires EPA to review the ozone National Ambient Air Quality Standard (NAAQS) every five years based on the current science, and make any revisions that are appropriate in light of the current science. While some areas have not yet

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achieved the 1997 standard, many areas have already met the current standards. In addition, we expect current strategies will contribute significantly toward bringing more areas into attainment with that standard. State and federal actions – including programs to reduce emissions from power plants and vehicles – will help many areas meet the ozone standards. Furthermore, any controls adopted to meet the 1997 ozone standards will help states meet any new standards as well.

As EPA moves forward with the reconsideration of the 2008 ozone NAAQS and with the next periodic review of the ozone standards, the Agency remains committed to identifying cost-effective implementation solutions to help states and local areas meet any revised standards. Such solutions include national rules designed to assist states in reducing emissions of key ozone precursors such as oxides of nitrogen (NOx) and volatile organic compounds (VOC). At the present time, EPA is moving forward with a number of national rules designed to reduce harmful emissions of these pollutants from cars, power plants and other industrial facilities. These rules include: new emissions standards for industrial, commercial, and institutional boilers and process heaters finalized on February 21, 2011; the Transport Rule proposed July 6, 2010; new source performance standards (NSPS) for coal- and oil-fired electric utilities proposed March 16, 2011; and NSPS for natural gas processing plants to be proposed by April 29, 2011. Together, these rules will significantly reduce ozone in the United States by reducing emissions of NOx and VOC.

Question 12: Does the science clearly point to the need for a tighter standard to meet the requirements of the change being "requisite to protect the public health?"

Answer: The ozone review completed in 2008 under the previous administration resulted in identical primary and secondary ozone standards set at 0.075 parts per million (ppm). In

January 2010, based on her reconsideration of the information available in the 2008 rulemaking, Administrator Jackson initiated a rulemaking to reconsider parts of the 2008 final rule. Specifically, the Administrator is reconsidering the level of the primary standard to ensure that it is sufficiently protective of public health, and is reconsidering all aspects of the secondary standard to ensure that it appropriately reflects the available science and is sufficiently protective of public welfare. Based on her review the Administrator has serious cause for concern regarding whether the revisions to the primary and secondary ozone standards adopted in the 2008 final rule satisfy the requirements of the Clean Air Act, in light of the body of scientific evidence before the Agency.

Based on thorough consideration of both the scientific evidence and the ozone exposure and risk assessments conducted by EPA, the Administrator therefore proposed to revise the standard to a level between 0.060 and 0.070 ppm. As outlined in the January 2010 rulemaking, the Administrator proposed that the upper end of the range should be set at 0.070 ppm which does not include 0.075 ppm. This proposal was based on the Administrator's thorough review of key scientific and technical information, including epidemiological studies, human clinical

studies and the results of EPA's exposure and risk assessment. The proposed standard range of 0.060 to 0.070 ppm is consistent with CASAC's recommendations.

CONSTRUCTION EFFLUENT LIMITATION

Question 13: Is it true that the agency has estimated that cost of compliance with the new numeric limit will be nearly one billion dollars a year to comply with, but will control less than one quarter of one percent of all total sediment runoff?

Answer: In December 2009, the Agency published new effluent guidelines to help reduce water pollution from construction sites. Construction activities, such as excavating and grading, significantly disturb soil and sediment. If that soil is not managed properly, it can easily wash off during storms and then pollute nearby rivers and streams. This regulation is projected to reduce the amount of sediment discharged from construction sites by about 4 billion pounds each year, at an annual cost of about $953 million, once fully implemented. Because of the phase-in period for the numeric limit, the costs will be much smaller in the first few years as the rule takes effect.

Sediment discharges to waterbodies are vast. The role of construction activity as a percentage of all sediment discharges is relatively small: EPA's analysis for the December 2009 rule found that sediment discharged from construction sites comprises less than one percent of the total discharge of sediment from all sources. Although small in relative terms, the amount of discharge from construction is substantial. As one of the identifiable point source contributors, as opposed to non-point sources such as agriculture, construction is a significant source of sediment pollution to water. For some waterbodies, construction discharges are a major contributor to sediment discharges. To illustrate, from 1992 to 2001, more than half of all construction took place in less than 5 percent of the waterbodies. Thus, the sediment discharges to those waterbodies are substantial and could be addressed through controls on construction. EPA estimated that the rule would reduce the discharge of sediment into water by about 4 billion pounds per year.

Benefits from reducing discharges of sediment and turbidity include improved water clarity, protection of drinking water supplies, improvements in aquatic environments, and reduced need for dredging navigational channels, reservoirs, and drinking water sources. The benefits from the new requirements will result, in large part, from the use of sediment and erosion control management practices and runoff controls. The numeric limit for turbidity will help demonstrate compliance and help construction site owners track and maintain their own progress.

After issuing the December 2009 rule, EPA found an error in the numeric limit for turbidity and concluded that the underlying dataset did not support that limit. The Agency

prepared a regulatory action for publication in the Federal Register to suspend the December 2009 limit. On November 5, 2010, EPA published a direct final rule and also issued a companion proposed rule to suspend the limit. The Agency received no adverse comment with respect to suspending the limit, and on January 4, 2011, the suspension was effective. The Agency began a careful review of the existing dataset and also looked to expand the dataset in an effort to better characterize the performance of the treatment systems. Over the next few months, EPA collected several additional datasets and also gathered more information about the systems represented by the original data. Some of these studies are summarized below.

Question 14: Aside from the problematic cost/benefit ratios, has EPA conducted any research to demonstrate that the limit can be met consistently or to otherwise justify this new turbidity limit on larger construction sites?

Answer: Although EPA did not conduct any new, independent research on meeting the numeric limit, the Agency's regulatory record contains numerous examples of documented applications of various technologies that will meet the limit. The studies show that the limit is not only achievable, but in many instances that much lower discharge levels can be achieved. Data in the record represent construction at a variety of construction projects. For an example of the type of information available in the record, see a summary of passive treatment studies at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2008-0465-1958. Since the publication of the rule in December 2009, EPA has been in contact with vendors who have been successful in developing systems that yield results well below the promulgated numeric limit.

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Questions Submitted for the Record by Representative Kaptur

GREAT LAKES RESTORATION INITIATIVE

Before going into my questions about the Great Lakes Restoration Initiative, it is important to recognize how important this program has been for restoration of the Great Lakes. Two years ago, while speaking about restoration in general terms, the great lakes were left behind while other great watersheds such as the Chesapeake Bay and Puget Sound had been receiving significant support from the Environmental Protection Agency.

Question 1: Could you provide for the record a few examples of successful restoration activities that have occurred as a result of the $475 million in fiscal year 2010 to the GLRI program?

Answer: While implementation of GLRI's investments is in an early stage—and, therefore, the ecological impact from these investments is still unfolding, the partnership of agencies and stakeholders is beginning to show early results. For example:

- A temporary barrier was constructed to keep Asian carp from migrating up the Wabash River to Ohio's Maumee River watershed, when the two rivers connect during heavy rainstorms. The Indiana Department of Natural Resources (DNR) completed its work in a matter of months using $640,00 in funding transferred from the U.S. Fish and Wildlife Service to the Indiana DNR.
- Construction of emergency barriers to keep Asian carp—an invasive species that could significantly damage the Great Lakes—from reaching the Chicago Area Waterway System via the adjacent Des Plaines River, using $7.25 million. USFWS used GLRI funding to implement more than 120 on-the-ground projects, such as the Shiawassee River wetlands project in Michigan, which resulted in the conversion of 141 acres of agricultural land to wetlands. The effort was completed with the help of a vigorous partnership including Ducks Unlimited and the Saginaw Bay Watershed Initiative Network.
- Federal, state, tribal and local governments are implementing 17 EPA pollution prevention and reduction grants totaling more than $8.6 million in GLRI funding. Expected results include a reduction in releases of:
    - Mercury by more than 2,500 lbs/year
    - Lead by 9,800 lbs/year
    - Nutrients by 2.8 million lbs/year
    - Pesticides of more than 32,000 lbs/year
    - Pharmaceuticals, through collections totaling more than 11 million pills, and E-waste, through collections totaling 8 million pounds.

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- The Sustain Our Great Lakes program is a public-private partnership between EPA, USFWS, USFS, NOAA, National Fish and Wildlife Foundation, and the ArcelorMittal steel company. Current projects are restoring more than 100 miles of stream riparian habitats and more than 1,500 acres of wetlands. One project, the Upper Manistee Riparian Corridor Restoration Project in the Lake Michigan basin, is removing 12 dams and improving a stream road crossing along the North Branch of the Manistee River and Flowing Well Creek. The project is expected to result in 14 stream miles restored for fish passage, a natural flow regime for 20 miles of stream, restoration of the native brook trout population, and restoration of native vegetation on 650 acres of wetland and upland habitats.

Question 2: In my district, the Great Lakes Restoration Initiative has funded a cleanup of the Ottawa River. We have been trying to begin this cleanup for almost thirty years. For the record, could you please elaborate on the dramatic leveraging of funds that have occurred as a result of the Ottawa River Legacy Act project and the potential economic and environmental effects of the cleanup?

Answer: $24.5M in federal Great Lakes (pre-GLRI) funding leveraged an additional $24.5M in contributions from the non-federal sponsor, the Ottawa River Group, and resulted in a massive, $49M sediment remediation project that removed over a quarter of a million cubic yards of contaminated sediments from the Ottawa River and its tributaries. The Ohio EPA identified the Ottawa River as the most contaminated tributary in the Maumee River Area of Concern, with high levels of PCBs in its sediments and fish consumption advisories within its lower 8.8 miles. Sediment remediation (completed in 2010) and recent source control efforts by the City of Toledo and the Ohio EPA are expected to result in immediate improvements in the ecological functioning of the river, significant decreases in contaminant transport into the ecologically sensitive Maumee Bay, reductions in risks to human health, and the ultimate removal of fish consumption advisories for the river.

Of the $47.5M in project costs to date, approximately $10M in services were provided directly by local entities. An additional $25M in services were provided by contractors located within the Midwest Region and the Great Lakes drainage basin. Although long term economic benefits have not yet been estimated, EPA has analyzed contractor and contractor hiring plans, travel plans, procurement plans, and subcontracts and according to that analysis, shorter term impacts to the local economy include the following:

- Approximately 18-20 local hires to support landside and waterside operations during the 10 month construction season.
- Local purchases of stone and aggregate, construction fill, fuel, and supplies to support the construction vehicles, dredging equipment and support boats.
- An economic boost to the local restaurants and hotels during project construction. A conservative estimate of hotel nights for contractor lodging would be in the range of 3,000 nights with approximately twice as many restaurant meals.

Question 3: Please provide a list of projects funded under GLRI to protect the Great Lakes from the Asian Carp?

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Answer: The Great Lakes Restoration Initiative (GLRI) provides a portion of funding for the Asian Carp Control Strategy Framework developed by a partnership of federal, state and municipal agencies. Specifically, GLRI funds are slated for action-oriented activities to prevent Asian carp from establishing self-sustaining populations in the Great Lakes. Funding also assists efforts to guide those action-oriented activities, such as eDNA monitoring, Asian carp surveillance, and the research and development of new technologies. Some of these projects include:

- Selective toxin development.
- Seismic technology to disrupt spawning and divert or eradicate Asian carp.
- Development of a risk assessment that considers options to prevent the establishment of self-sustaining populations of Asian carp, based upon the availability of food and suitable habitat.
- Identification of Asian carp attraction pheromones and rapid new genetic-based detection methods.

An initial listing of GLRI Asian carp projects is listed in the May 2010 FY 2010 Asian Carp Control Strategy Matrix online at http://www.asiancarp.org/Documents/AppendixA_ACCSM.pdf An updated list is being prepared.

Question 4: If GLRI is not funded in 2011, please outline what steps would not have been able to occur to protect the great lakes from Asian Carp?

Answer: GLRI was funded at $300 million in FY 2011.

Question 5: Some economists have estimated that the Great Lakes fishery produces between $5-$7 billion. If the Asian Carp reach the great lakes, can you please elaborate on the economic impact for the great lakes region?

Answer: While the true economic impact of Asian carp becoming established in the Great Lakes cannot be estimated with a high degree of accuracy at this time, the assumption of the Framework is that the partnership of state, federal and municipal agencies should act to prevent such establishment from happening.

Question 6: In addition to accelerating work on the Chicago Waterways System, GLRI funds have been used to prevent the spread of Asian Carp into the Maumee and Wabash Rivers. For the record, could you please elaborate on the projects funded under the GLRI program in FY 10 and planned for FY 11 that would be funded by GLRI specifically in the Wabash-Maumee region?

Answer: As an immediate preventive measure based on risk characterization that USACE and its partners conducted, Indiana Department of Natural Resources (IN DNR)

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installed mesh fencing across a section of Eagle Marsh, creating a temporary barrier to reduce the likelihood of Asian carp migration from the Wabash to the Maumee drainage basin. By the end of October 2010, the fence spanned approximately 1,300 feet across the marsh and is 2 feet above the 100-year flood elevation. Also included in this measure is operation and maintenance including herbicide application, burns, repairs, equipment, and personnel costs. A contract between IN DNR and an academic institution was finalized to perform eDNA sampling through the Little River, McCulloch Ditch, Junk Ditch, St. Marys River, and the Indiana portion of the Maumee River. Sampling began in September 2010.

Question 7: Should the house CR funding level of $225 million be approved, there could be significant impacts on the asian carp control plan proposed for FY 11. Could you please elaborate on the projected limitations of projects for the program should congress provide a final appropriation at this level?

Answer: The GLRI was funded at $300 million in FY 2011, and as such, Asian carp activities will continue as initially planned.

Question 8: What consequences would this house cut have on the implementation of the program generally?

Answer: The GLRI was funded at $300 million in FY 2011 and EPA will continue to address the most important Great Lakes priorities in each of the GLRI Focus Areas (Toxic Substances and Areas of Concern; Invasive Species; Nearshore Health and Nonpoint Source Pollution; Habitat and Wildlife Protection and Restoration; and Accountability, Education, Monitoring, Evaluation, Communication, and Partnerships).

Obligation of funds for the Great Lakes Restoration Initiative has occurred in many cases, without coordination with local congressional offices. For instance, when planning an event in NW Ohio, the Environmental Protection Agency did not even have a list of the program dollars that were being spent in the region. With program funds distributed among multiple federal agencies, EPA was unable to track the dollar figures from GLRI beyond EPA at this program announcement.

Question 9: What plans does EPA have in place to ensure that in FY 2011 this same problem will not occur?

Answer: Since EPA's first year funding announcements, EPA has improved tracking and accountability mechanisms. These mechanisms provide additional accountability and transparency not available in previously existing federal systems. The Great Lakes Accountability System is now publicly available at http://glri.us/ under the "Projects" tab and https://restore.glnpo.net/glas_pub/qareports.htm. It includes project level information from the federal agencies.

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Question 10: What steps has EPA taken to ensure that the obligation of funds from the multiple federal agencies is effectively coordinated?

Answer: The federal agencies work together through the Interagency Task Force (IATF) to establish targets for obligations. EPA holds regular (twice monthly) meetings through IATF's Regional Working Group to ensure timely and coordinated obligations. Agencies work together through subgroups within to effectively coordinate their complementary activities.

Question 11: Has EPA considered announcing the announcement of funds among all the federal programs on one day?

Answer: Such an approach has been discussed; however, in order to most quickly and efficiently get projects started, funding is often used to supplement and enhance existing programs with previously established schedules and processes that take place throughout the year. Doing a single announcement would be more expensive and delay action.

On the first list of EPA grants for GLRI in 2010, the agency had incorrectly listed the allocation of dollars for certain programs in the wrong states. EPA listed a city in Michigan as part of Ohio. For GLRI to be successful, EPA must do a better job of coordinating with members of Congress about how these funds are being implemented in their districts.

Question 12: To this end, how does EPA intend on using local watershed committees to do the outreach of funds administered by the Great Lakes Restoration Initiate?

Answer: EPA typically works with the entities selected for funding to conduct outreach regarding our joint efforts. The availability of the Great Lakes Accountability System, which includes reporting on a watershed basis, will support these efforts.

In the omnibus appropriations bill introduced by the United States Senate but never approved, language was included which directed the Environmental Protection Agency use the Western Lake Erie Basin Partnership to assist in implementing GLRI within the watershed.

Question 13: While this language will not be included in the final appropriations language, what steps does EPA intend on taking to involve the Western Lake Erie Basin Partnership in the Great Lakes Restoration Initiative in Fiscal Year 2011 or 2012?

Answer: EPA sits on the Western Lake Erie Basin Partnership (Partnership) Executive Committee, regularly works with it on GLRI activities, and expects to continue to do so. On September 29, 2010, a contingent of the Partnership--including a representative from EPA's Great Lakes National Program Office, the U.S. Army Corps of Engineers, and USDA's Natural

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Resources Conservation Service--met with you and your staff in your Washington, D.C., office to discuss how the three agencies can better coordinate its efforts in the Western Lake Erie Basin area. In October, after FY 2010 GLRI grants were issued, EPA again met with the Partnership to get its input and to discuss the GLRI priority of shovel-ready projects. EPA committed to meet with the Partnership again for that purpose in subsequent years. Applications for Western Lake Erie Basin projects are eligible for selection under EPA's FY 2011 GLRI Request for Applications and can be expected to be eligible under competitive GLRI offerings in FY2012. *With 10 years of coordinating activities already occurring within the western Lake Erie basin as part of a collaborative effort between EPA, Army Corps of Engineers, the Natural Resource Conversation Service and the multiple states, EPA has an opportunity to expand the collaborative activities at a regional level by partnering with these local organizations.*

Question 14: For the record, please provide a list of projects funded within the western Lake Erie basin with GLRI funds from 2010?

Answer: Following is a list of GLRI projects within or partially within the western Lake Erie basin, as identified by hydrologic unit code:

GLRI amount	Project Title	Organization
$ 1,266,400	Restoring Lake Erie Fish Passage in the River Raisin AOC	City of Monroe
$ 270,600	Ottawa River Watershed Scrap Yard Program	City of Toledo
$ 2,000,000	Farm Bill Programs for Habitat and Wildlife Protection	Dept. of Agriculture-Natural Resources Conservation Service
$ 16,928,000	Farm Bill Programs for Reducing Ag Nonpoint Source Loading	Dept. of Agriculture-Natural Resources Conservation Service
$ 5,000,000	Great Lakes Basin Program for Soil Erosion & Sediment Control	Dept. of Agriculture-Natural Resources Conservation Service
$ 8,714,000	Purchase of Development Rights through Easement Programs	Dept. of Agriculture-Natural Resources Conservation Service
$ 200,000	Expanded long-term Great Lakes contamination monitoring	Dept. of Commerce-National Oceanic and Atmospheric Admin.
$ 100,000	Ballville Dam, OH	Dept. of Defense-U.S. Army Corps of Engineers
$ 697,000	Western Lake Erie Basin, OH, IN & MI	Dept. of Defense-U.S. Army Corps of Engineers
$ 80,761	Conservation Genetics of the Endangered Clubshell and Rayed Bean	Dept. of Interior-U.S. Fish and Wildlife Service MN

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$ 38,800	Partners for Fish & Wildlife Program - Indiana	Dept. of Interior-U.S. Fish and Wildlife Service MN
$ 141,019	Partners for Fish and Wildlife Program - Ohio	Dept. of Interior-U.S. Fish and Wildlife Service MN
$ 3,598,000	Chemical Tools to Control Asian Carp and Zebra Mussels	Dept. of Interior-U.S. Geological Survey MI
$ 1,500,000	Fish Habitat Enhancement Strategies for the Huron-Erie Corridor	Dept. of Interior-U.S. Geological Survey MI
$ 192,653	Pointe Aux Peaux Wetland Restoration	Ducks Unlimited Inc.
$ 812,000	North Central Ohio Sediment Reduction Project	Huron County (OH) Soil & Water Conservation District
$ 196,148	Habitat and Water Quality Improvements to the Bear River Watershed	Little Traverse Bay Bands of Odawa Indians
$ 475,530	Clean Sweep: Expand Pesticide and Pharmaceutical Collection	Michigan Department of Agriculture
$ 228,337	Building Beach Manager Capacity	Michigan Dept. of Natural Resources & Environment
$ 245,528	Great Lakes Connections	Michigan Dept. of Natural Resources & Environment
$ 1,350,000	River Raisin Wetland Enhancement and Habitat Evaluation	Michigan Dept. of Natural Resources & Environment
$ 1,500,000	Sterling State Park Marsh and Prairie Restoration	Michigan Dept. of Natural Resources & Environment
$ 741,857	The River Raisin Nitrate Total Maximum Daily Load Reduction Project	Michigan Dept. of Natural Resources & Environment
$ 100,000	Improving Communication about Ohio Beach Water Quality	
$ 250,000	Sanitary Surveys to Reduce Pollution in Lake Erie	Ohio Department of Health
$ 125,000	North Bass Island Habitat Restoration	Ohio Department of Natural Resources
$ 168,000	Reforestation of Maumee Bay & Mary Jane Thurston State Parks	
$ 75,000	Ohio Environmental Council Support	Ohio Environmental Council
$ 1,195,000	Ohio EPA Lake Erie Nearshore Monitoring Program	Ohio Environmental Protection Agency
$ 202,000	Phosphorus Reduction Using Variable Rate Technology	Ohio Environmental Protection Agency
$ 2,075,000	State Capacity Initiative	Ohio Environmental Protection Agency
$ 250,000	TMDL for Ottawa River (Lima) Watershed	Ohio Environmental Protection Agency
$	Lake Erie Synthesis and Coordination	Ohio Lake Erie Commission

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200,000	Team	
$ 250,000	Toledo Harbor Sediment Management and Reuse	Ohio Lake Erie Commission
$ 250,000	Toledo Harbor Sediment Management and Reuse	Ohio Office of Budget & Mngmt State Acct.
$ 1,365,684	Restoring Ottawa River Wetlands and Habitat	Partners For Clean Streams Inc.
$ 497,486	Best Management Practices in the Maumee River Basin	Purdue University
$ 500,000	Restoring the Lake Erie Corridor through Green Streets	Southeast Michigan Council of Governments
$ 497,331	Phragmites Control in Western Lake Erie Coastal Wetlands	The Nature Conservancy-OH
$ 1,452,419	Wet Prairie Restoration in the Maumee Area of Concern	The Nature Conservancy-OH
$ 550,228	Prevention of Surface Water Contamination from Biosolids	University of Toledo
$ 999,999	Protecting Critical Habitat at Kelleys Island Preserve	Western Reserve Land Conservancy
$ 57,279,780	Total	

When GLRI began, the Agency had the difficult task of designing, implementing and explaining a new program to the public with dozens of local, state and federal agencies in a very short time period.

Question 15: What advances has EPA made in over the last two years in coordinating the interagency response and with implementation of the many projects funded?

Answer: By spring 2010, EPA finalized IAs and grants with the 15 federal and binational organizations participating in the GLRI. These IAs, totaling more than $255 million, ensure coordination, provide accountability and direct the work of the agencies. EPA is now in the process of issuing some $155 million in FY2011 funding through interagency agreements. Interagency efforts have resulted in the following coordination successes, among others:

- Asian Carp (Focus Area 2 – Invasive Species) – With about $2 in GLRI funding for every $1 in federal agency base budgeting, federal, state and municipal agencies developed an *Asian Carp Control Strategy Framework* to ensure integration of efforts. Specifically, these efforts resulted in harmonized Asian carp environmental DNA (eDNA) monitoring and surveillance via an assigned program manager responsible for overseeing the successful transfer and development of data across state, federal, and non-governmental entities. Second, risk assessments to predict whether or where Asian carp could become established in the Great Lakes are also underway. DOI's Fish and Wildlife Service (USFWS) and Geological Survey (USGS), DOA's Corps of Engineers (USACE), DOC's National Oceanic and Atmospheric Administration (NOAA), DHS's Coast Guard

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(USCG), Fisheries and Oceans Canada, and the Ontario Ministry of Natural Resources are now performing complementary risk assessments to evaluate the potential impacts of Asian carp in the Great Lakes. These integrated efforts can inform future management actions.

- Contaminated Sediment (Focus Area 1 – Toxic Substances and Areas of Concern) – Coordination between EPA and USACE on contaminated sediment dredging projects in toxic hotspot Areas of Concern (AOCs) has reduced the potential for duplication to optimize taxpayer dollars. This has led to better coordinated sediment cleanups by dovetailing navigation dredging and environmental dredging in AOCs. For example, FY 2011 GLRI funding is expected to be used to fund strategic navigational dredging of the Ashtabula River by USACE.
- Assessing Nearshore and Coastal Conditions (Focus Areas 3 & 5 – Nearshore Health and Nonpoint Source Pollution & Accountability, Education, Monitoring, Evaluation, Communication and Partnerships) – The 2010 National Coastal Conditions Assessment supported field work in the Great Lakes that was leveraged by a number of GLRI efforts. Close agency coordination reduced the potential for duplication and led to complementary sampling efforts using already deployed field staff across agencies. Results will provide data for determining the necessary steps for restoring aquatic habitats, identifying which contaminants are found in our fish, and inform future management actions to keep the water safe for swimming, surfing, boating, and recreating.

Question 16: What next steps does EPA plan on taking to ensure that the various federal agencies not only coordinate on projects they fund but in monitoring the implementation of these projects and, depending on their success, what projects to fund in subsequent fiscal years?

Answer: EPA is coordinating with the other federal agencies, especially those with core capabilities in monitoring, tracking progress and refining future decisions, to report on the progress of the first year of GLRI funding. The report, which is expected to be delivered within the next two months, will describe the coordinated efforts to date as well as planned future activities. In selecting projects for each year's funding, the GLRI will strategically invest in the five focus areas of the Action Plan, with an emphasis on completing on-the-ground action and achieving the Action Plan measures of progress and coordinating to prioritize restoration based on experiences to date. Federal agencies are increasingly collaborating through subgroups focused on like activities to ensure improved coordination and avoid duplicating efforts. The federal agencies are also continuing to make improvements to the accountability mechanisms in place for GLRI and to ensure the role of science in GLRI by consulting with the EPA Science Advisory Board.

TUESDAY, MARCH 8, 2011.

DEPARTMENT OF THE INTERIOR 2012 BUDGET REQUEST

WITNESSES

HON. SALAZAR, SECRETARY, DEPARTMENT OF THE INTERIOR
DAVID HAYES, DEPUTY SECRETARY, DEPARTMENT OF THE INTERIOR
PAMELA HAZE, DEPUTY ASSISTANT SECRETARY—BUDGET, FINANCE, PERFORMANCE AND ACQUISITION

OPENING REMARKS OF CHAIRMAN SIMPSON

Mr. SIMPSON. The committee will come to order. Mr. Secretary, I would like to welcome you along with David Hayes and our good friend, Pam Haze, to today's subcommittee hearing addressing the fiscal year 2012 budget priorities for the Department of Interior. Let me begin by wishing you a belated happy birthday. I understand last week was your birthday. Happy birthday from all of us.

My colleagues and I hope to cover a lot of ground with you today on energy production, grazing, land acquisition, climate change, and other issues. From our recent conversations I know that you are continuing to set an ambitious agenda for the Department on many fronts, and while I do not necessarily agree with every decision you have made, I appreciate the fact that we have had a productive conversation about these issues. It is in that spirit that we look forward to today's hearing.

I would like to begin by making several points on a few specific issues before we receive your testimony. First, it is no secret the western members of both parties, including myself, have some very strong objections to your Wild Lands Secretarial Order granting BLM the authority to identify and manage lands in the west as wilderness. We have talked about this, and I believe, frankly, it is a troubling precedent. I believe that only Congress has the authority to make new forms of land designations, and I can guarantee you that any bill emerging from this subcommittee this year will probably include a funding prohibition relating to Wild Lands policy. If not on the underlying bill that comes from the committee, then it will be offered on the floor certainly by some western member and will probably be adopted.

Secondly, the second largest increase in the Department's budget request falls within the Land and Water Conservation Fund, which is fully funded at $900 million. My biggest concern is that the budget request proposes historic increases for land acquisition while also proposing dramatic reductions in other areas like maintenance of existing facilities, construction which is reduced by 46 percent Department wide, and wild land fire. The DOI budget eliminates rural fire assistance and cuts hazardous fuels funding by $49 million.

A reasonable person could conclude the Department is increasing land acquisition too quickly and at the expense of other very important deserving priorities.

The last issue I will mention is the most important, and that is energy. Oil prices have risen by more than 10 percent this year, and with the unrest in the Middle East and north Africa, we are already seeing $4 a gallon gas in some areas of the United States. According to a March 3 Raspis poll, 58 percent of the public is now convinced that they will be paying $5 for a gallon of gas by July. The survey also found that 76 percent believe the United States does not do enough to develop its own gas and oil resources.

The moratorium put in place following the Deepwater Horizon accident was lifted last fall, but the Administration has issued just one Deep Water permit in the Gulf since that time, and that permit was issued just last week. A federal judge has called this de facto Deep Water drilling moratorium unreasonable, unacceptable, and unjustified.

The public will have no patience and Congress will have no patience for more delays and more excuses as oil prices begin to rise, especially when we have untapped resources here in the United States not being utilized. We need to pursue a domestic energy production on the grand scale of the Manhattan Project or putting a man on a moon so that we can put people to work, boost the domestic energy production, and lessen our dependence on foreign oil.

In closing, Mr. Secretary, no hearing with you would be complete without expressing our thanks to your fine professional staff. The truth is that the committee could not do its work without the assistance of Pam Haze and the folks in your budget shop and other professionals who work every day to help find solutions to some very difficult challenges, and we welcome you here this morning.

Mr. SIMPSON. And with that I am happy to yield to the gentleman from Virginia, Mr. Moran, for an opening remark.

OPENING REMARKS OF CONGRESSMAN MORAN

Mr. MORAN. Thank you very much, Chairman Simpson. Secretary Salazar, it is nice to see you, and thank you for your leadership and that of Mr. Hayes, our Deputy Secretary, and of course, Pamela Haze, our Deputy Assistant Secretary, for all things, fiscal management as well as the budget.

The Interior Department, as we all know, is directly responsible for managing 20 percent of America's land as well as all of its Indian trust responsibilities. It is a terribly important mission, generates millions of jobs, produces energy for our economy and to maintain our standard of living and is entrusted with protecting our natural heritage for future generations.

As we all saw far too plainly after the BP Transocean Deepwater Horizon oil disaster, the way we manage these resources is terribly important and can have huge consequences if not done correctly.

Last year I had a habit of quoting a great conservationist at the beginning of each hearing. I have one for us, and it is from one of my very favorable, most favorite Republican, actually he and Abraham Lincoln are two of my favorite presidents whether they be Republican or Democrat, this is Teddy Roosevelt's quote. So let me quote this quote, and listen closely, Mr. Lewis, if you would not

mind. I think this is terrific. "The greatest good for the greatest number includes the number within the womb of time compared to those which now alive form but an insignificant fraction. Our duty to the whole, including unborn generations, bids us to restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of wildlife and the larger movement for the conservation of all of our natural resources is essentially democratic in spirit, in purpose, and in method."

So for anyone that wants to read further, they can get it out of Roosevelt's publication called, "A Book Lover's Holidays in the Open."

Following a marathon of public listening sessions, the Secretary has moved forward with a responsive plan to increase funding for Land and Water Conservation Fund. I know you received an enormous amount of public support for the Land and Water Conservation Fund, and so you have raised it to a $900 million authorized level.

But moving in the opposite direction the new House Majority reduces the same account in the fiscal 2011 budget to less than $57 million, just virtually wiping it out. My heart, of course, and I know in this respect I speak for the ranking member of the full Appropriations Committee, who I hope we will hear from also, but it is with the Secretary's budget. That is the responsible budget. But, of course, the increase comes at the expense of other ongoing Interior Department programs.

While we need to see that each and every federal dollar is wisely spent, we also do not want to abandon the opportunity to invest in the proper management of our priceless natural resources and ensure that essential habitat, scenic vistas, outdoor recreational opportunities that are now at risk of disappearing are not lost to future generations. The fragile nature of our current economic recovery and quite frankly, the fragile nature of much of our environment, means that the decisions we make in this room will have a profound long-term impact on the United States of America, especially in the west and the south, where changing climate is altering landscapes, forests, and fresh sources of water.

Last week we heard from the GAO and the Interior Department's Inspector General, and it was a very informative hearing, and I thank the chairman for holding it. One thing that we learned is that existing law and policy does not allow the American taxpayers to recoup a fair market price on the extensive fossil fuel and hard rock minerals that industry extracts from the publicly-owned lands in this country. The royalty rate is too low, which is clearly shown by the GAO testimony. States get a higher royalty rate when they manage similar natural resources on state-owned lands, not to mention what the private sector will charge.

We also need to determine if the fees imposed on the oil and gas industry to drill in public waters and on public lands reflect the current value of that oil and gas.

Now, one other thing in terms of the Wild Lands Policy, because this, I know, we are going to get into more discussion, I suspect you have the votes, Mr. Chairman, but the Wild Lands Policy is not something new. I am not sure why this change of Secretary Nor-

ton's, which was a recent policy change in the Bush Administration, why it is such a big deal for the Forest Service planning has considered wild values of land since the 1920s. So it is consistent with overall Federal policy.

But we will have further discussion on that. I am glad we are having this hearing today, of course, and hearing from the Secretary, and I hope we can continue our commitment to America's great natural resources, and I thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. Mr. Dicks.

OPENING REMARKS OF CONGRESSMAN DICKS

Mr. DICKS. Thank you, Mr. Chairman. I appreciate you holding this hearing, and I want to welcome Secretary Salazar, Deputy Secretary Hayes, and Deputy Assistant Secretary Pam Haze, who we worked with for many years and appreciate greatly.

I want to join those welcoming you to testify before the Interior and Environmental Appropriations Subcommittee, to hear your views on the ongoing effort to finalize the budget for fiscal year 2011, and to hear about the Obama Administration's budget proposal for fiscal year 2012. I want to echo the sentiments of Mr. Moran in highlighting the difference between the Obama Administration's budget proposal for fiscal year 2012, and the bill the House passed last month to fund the government the remainder of this fiscal year.

I do not think that this is hyperbole to label H.R. 1 as one of the most short-sighted bills with regard to the environment that has ever been considered in the Congress. H.R. 1 cut more than $860 million from the 2010 spending levels for the Department of Interior. In order to reach this level of cuts H.R. 1 eliminated the Fish and Wildlife Service State and Tribal Wildlife Grant Program, as well as the North American Wetlands Conservation Program.

In addition, this legislation would cut climate-change-related activities in the Department of Interior by nearly 30 percent. If one of the definitions of conservatism is to preserve resources for future generations, then unfortunately this bill does not do that.

And, again, I want to point out that cutting spending in the Department of Interior and across the federal budget is the wrong economic policy. I am joined by a large preponderance of economists in the belief that the Republican plan to cut and grow does not work in the real world.

In contrast, the Obama Administration's fiscal year 2012 budget request would provide modest growth to the Department of Interior, which is a much more responsible position. Before I list some of the budget highlights contained, I need to remind everyone that during the previous Bush Administration, spending for Interior programs were cut more than 16 percent in real terms.

Highlights of the fiscal year 2012 budget request include full funding of the Land and Water Conservation Fund, an actual increase in the State and Tribal Wildlife Grant Program, and a small increase for the North American Wetlands Conservation Program, which, again, was eliminated in H.R. 1. The Administration's fiscal year 2012 budget request also increases the USGS National Climate Change and Wildlife Science Centers by $10 million to $25 million.

I also look forward to hearing about the Administration's proposal for its Great Outdoor Initiative and what the Interior Department is going to guarantee that energy extraction from public lands and off shore areas is done in a way that is environmentally sound and is a good deal to the taxpayer.

And I agree with Mr. Moran. I think that we are not getting adequate royalties, and we should do something about that in this time of concern about the deficit. The royalties would help us reduce the deficit, and it would be a positive factor.

Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. Mr. Secretary, looking forward to your testimony. The floor is yours.

Secretary SALAZAR. Thank you very much, Chairman Simpson. May I ask Your Honor how long I have for my opening statement?

Mr. LEWIS. An hour and a half.

Secretary SALAZAR. An hour and a half?

Mr. SIMPSON. We will generally give the Secretary 15 minutes or so.

Secretary SALAZAR. Okay. Thank you.

Mr. SIMPSON. We are not going to call you on time.

Secretary SALAZAR. Okay. That is good. I just wanted to make sure that I was doing what the chairman or the ranking member would want me to do.

OPENING STATEMENT OF SECRETARY SALAZAR

Let me, first of all, say to you, Mr. Chairman, thank you for your leadership of this committee and Congressman Moran and the Ranking Member, thank you for your leadership as well. In the same spirit, Chairman Simpson, you and then Chairman Dicks and I had meetings about the future of Interior and the budget, I think this committee has long recognized the importance of how we husband the natural resources of America and American citizens. The bipartisan spirit which the two of you templated last year is hopefully something that can continue this year as we deal with some very difficult times across the country on many of the issues you addressed ranging from energy to what we do with respect with the conservation agenda for the country. Thank you for your service from all parts of the country and for all you do. I look forward to engaging in this communication this afternoon, as well as in additional communications moving forward in the months and perhaps years ahead.

Let me also thank your staff because without the staff on both the majority and the minority sides we would not be able to have the kind of oversight and the continuity of the programs that we have had. I think on both sides we have seen great work on behalf of the staff working with Pam Haze, who has worked for multiple administrations, Democrats and Republicans. To my Deputy Secretary, David Hayes, I appreciate how hard he has worked at being a real problem solver for the American people on so many fronts over the last 4 years.

We have tough problems ahead of us no doubt, both budgetary and policy issues that we need to address, but at the end of the day I do believe and have confidence that in working together we can resolve these issues in the best interest of the American people.

As Secretary of the Interior let me assure you as I have now begun my third year of service on behalf of the American people, I value the opportunity and it is a privilege to serve all of you and to serve the American people. My job, I think you have heard before, is one that I define very simply. It is to be the custodian of America's natural resources and America's natural heritage.

I work on it every day. I am proud of the fact that in each of America's 50 states and out into the oceans there are great responsibilities that I have on behalf of the American people. From the north slope of Alaska and down to the Everglades to the great national parks of Idaho and Virginia, to 553 wildlife refuges. We do a lot on behalf of the American people. We certainly could not do it without the help of this committee, and we need to continue to move forward on that agenda.

2012 BUDGET

Let me say, at the bottom line as I look at this budget and other issues we will discuss here, it is a budget about the creation of jobs. It is a budget about the creation of jobs relative to a robust energy future for the United States of America, both onshore as well as offshore. It is about the creation of jobs as we look forward to the renewable energy future of America which affects many of your states. I would say, in fact, all of your states. It is about a robust conservation agenda because of the number of jobs associated with hunting and fishing and biking and the many aspects that really make tourism, both an economic generator as well as a conservation legacy we want to pass onto our children.

Our budget for 2012 as presented to this committee and to the Congress by the President is essentially a freeze budget. It is a freeze budget. Inherent in this freeze budget we have done what the President instructed us to do, to go over the budget of the Department of Interior line by line and see where it is that we could make cuts and how we could find efficiencies which is something that this committee I am sure has wanted us and instructed us to do and that is to find savings where we can find savings.

BUDGET CUTS

The cuts presented in this budget are a total of $1.1 billion. That is a significant amount of money given the size of this budget, and these are not just the kinds of cuts that are ordinary. These are significant cuts. When you look at what we did on the administrative side of the budget, which is a good place to always look for greater efficiencies, you have a $42 million cut in travel by the Department of the Interior. Even in these days of great need for information technology, we have been able to find savings in information technology that will save the taxpayers $36 million. We have reformed and are reforming the procurement practices of the Department of the Interior so when these procurement reforms are put into place, there will be an additional $53 million in savings for a total of $179 million.

You can go through the cuts, and we can tell you we have tried to make some tough choices but also have made some reviews of the Department of Interior so we can be a more effective government on behalf of the American people.

ENERGY

I would like to speak briefly about energy because that is an issue which all of you are interested in and concerned about, and I am sure will be focused on in some of your questions. First, with respect to conventional energy, we have had a robust program on energy because we believe it is necessary for us to be able to power the economy of the United States. All of you have lived through the very difficult times in the last year where we have had the most difficult economic times that this country has seen probably since the Great Depression. We are coming back, and we recognize the importance of making sure that we are powering our economy, and that does include the importance of energy, both conventional as well as renewable.

The oil and gas side of our program has, I think, been clear. To have a robust oil and gas program for the United States, both in America's oceans as well as on America's lands. With respect to America's oceans and the production that we have in the Gulf of Mexico, which is about 30 percent of the oil that is produced domestically and about 11 percent of our natural gas, it is important we have the support of this committee and of the Congress if you want us to move forward with a robust energy program in the Gulf of Mexico. The Gulf is a huge and important resource for us, but you lived with me through the Deepwater Horizon nightmare, which was a national crisis that affected each and every one of you. I am sure that you agree that we ought to move forward in having a safe program that is safe to workers as well as protective of the environment. The funding request that we have here for the Bureau of Ocean Energy Management, Regulation and Enforcement will allow us to move forward in that regard.

In addition, we will continue to move forward with a robust onshore program, leasing public lands through the Bureau of Land Management and the U.S. Forest Service. I can get into the specifics of the numbers of oil and gas permits and acreage that we have leased out.

One statistic that sticks out in my mind because I think it paints a picture of what is happening on the public land in the west. In 2010 alone we have issued over 5,000 permits for drilling on the public lands onshore. In 2011, the year that we are in, our hope is that we exceed 7,000 permits onshore. Those are statistics that I think illustrate the fact that the President's program has included a robust oil and gas component to the energy portfolio of America.

With respect to renewable energy, it has been a priority of mine since I became Secretary of Interior. It is a high priority of the President of the United States, and a high priority of the members of this committee as well. I am proud to report that in 2010, we were able to permit about 3,700 megawatts of renewable energy power, much of it solar energy in the southwest, particularly in the areas of Arizona, California, and Nevada, where there is a huge amount of interest and opportunity, as well as wind energy in places like Wyoming and all across the country as well as in the Atlantic offshore.

Our 2012 budget will continue to build on that renewable energy effort with the goal of having 10,000 megawatts of renewable energy power that has been authorized on the public lands of America and America's oceans by the end of 2012.

CONSERVATION

I would like to briefly move from energy to saying a word or two about conservation. I think, the conservation agenda for this country is the greatest precedent this country has recognized, and is a very important agenda for future generations. As Abraham Lincoln during the middle of the Civil War, which was the most difficult crisis that this Nation has ever gone through as a Nation whose future hung in the balance, set aside the lands of Yosemite because he thought those lands should be forever preserved for the American people.

It was at the beginning of the last century when Teddy Roosevelt became the wilderness warrior on behalf of the American people when he saw the wasteland that was occurring as America continued to develop a sense of protecting the great lands for hunters and fishermen and others who enjoyed the Great Outdoors of America, and the same with Franklin Roosevelt during the Great Depression. During those very difficult times they became the great conservation leaders of America.

The investments that you see here with respect to conservation are continuing with that tradition, and let me say that at the end of the day this is about jobs. When you look at outdoor recreation, the outdoor recreation foundation itself has studied the number of jobs that come from outdoor recreation. It is about six and a half million jobs created just from outdoor recreation every year. That does not account for all the other jobs that come with heritage tourism in each one of your states.

When we look at the jobs that are created through conservation investments and the investments that are made in this budget, it is part of making sure that we stand up the economy, again, because these are jobs that cannot be exported elsewhere.

WATER

Finally, I want to make a comment with respect to water. For many of your states, Congressman Calvert and others, I know how carefully you watch the water issues of our country. We have moved forward with a WaterSMART Program with Reclamation where the investments that Congress has authorized are already paying significant savings. In 2010, 37 WaterSMART projects will enable us to save about 490,000 acre feet of water because of the efficiencies that are being put into place. We need to continue those kinds of investments in the water infrastructure and water programs of America.

In conclusion, Mr. Chairman and Ranking Member Moran and all the members of the committee, we look forward to working with you on this budget as we address the very difficult issues both budgetary and policy, that the United States of America faces today.

[The statement of Ken Salazar follows:]

STATEMENT OF KEN SALAZAR, SECRETARY OF THE INTERIOR BEFORE THE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT AND RELATED AGENCIES HOUSE COMMITTEE ON APPROPRIATIONS ON THE 2012 PRESIDENT'S BUDGET REQUST

March 8, 2011

Mr. Chairman and members of the Committee, I am pleased to be here today to present the details of the 2012 budget request for the Department of the Interior. I want to thank the members of this Committee for your strong interest and support of our Department. Your efforts have helped to build a strong foundation for our initiatives.

The 2012 budget builds on that strong foundation with $12.2 billion requested for the Department of the Interior. This budget includes $11.2 billion for programs funded by the interior, Environment and Related Agencies appropriation. The 2012 budget is a freeze at the 2010 level, including significant reductions and savings totaling $1.1 billion, while funding key priorities.

The budget demonstrates that we can responsibly cut the deficit, while investing to win the future and sustain the national recovery. Our budget promotes the actions and programs that America told us are important in 50 listening sessions across the Country. With that inspiration we developed a new 21st Century conservation vision – America's Great Outdoors. The budget continues to advance efforts that you have facilitated in renewable energy and sustainable water conservation, cooperative landscape conservation, youth in the outdoors, and reforms in our conventional energy programs.

Introduction

Interior's mission is simple but profound – to protect America's resources and cultural heritage and honor the Nation's trust responsibilities to American Indians and Alaska Natives. Interior's people and programs impact all Americans.

The Department is the steward of 20 percent of the Nation's lands including national parks, national wildlife refuges, and the public lands. Interior manages public lands and the Outer Continental Shelf – providing access for renewable and conventional energy development and overseeing the protection and restoration of surface-mined lands. The Department of the Interior is also the largest supplier and manager of water in the 17 western States and provides hydropower resources used to power much of the country. Interior is responsible for migratory wildlife and endangered species conservation as well as the preservation of the Nation's historic and cultural resources. The Department supports cutting edge research in the earth sciences – geology, hydrology, and biology – to inform resource management decisions at Interior and improve scientific understanding worldwide. The Department of the Interior also fulfills the Nation's unique trust responsibilities to American Indians and Alaska Natives, and provides financial and technical assistance for the insular areas.

The Department makes significant contributions to the Nation measured in economic terms. The Interior Department supports over 1.3 million jobs and over $370 billion in economic activity each year. Parks, refuges, and monuments generate over $24 billion in economic activity from recreation and tourism. Conventional and renewable energy produced on Interior lands and waters results in about $295 billion in economic benefits and the water managed by Interior supports over $25 billion in agriculture. The American outdoor industry estimates 6.5 million jobs are created every year from outdoor activities.

In measures that cannot be translated into dollars and cents, the Department protects the Nation's monuments and priceless landscapes, conserves wildlife and fisheries, offers unparalleled recreational opportunities, protects and interprets the cultural collections that tell America's history, and manages resources that help to fulfill the Nation's demands for energy, minerals, and water. Through its trust responsibilities on behalf of American Indians and Alaska Natives, Interior supports tribal self-governance and the strengthening of Indian communities. For affiliated island communities, the Department fulfills important commitments providing much needed technical and financial assistance.

2010 – A Year of Challenge and Success

At the start of the Administration in 2009, I set Interior on a course to create a comprehensive strategy to advance a new energy frontier; tackle the impacts of a changing landscape; improve the sustainable use of water; engage youth in the outdoors; and improve the safety of Indian communities. These priority goals integrate the strengths of the Department's diverse bureaus and offices to address key challenges of importance to the American public. Interior has been making progress in these areas, including:

- Approving 12 renewable energy projects on public lands that when built, will produce almost 4,000 megawatts of energy, enough energy to power close to one million American homes, and create thousands of construction and operational jobs.
- Designating more than 5,000 miles of transmission corridors on public lands to facilitate siting and permitting of transmission lines and processing more than 30 applications for major transmission corridor rights-of-way.
- Establishing three of eight planned regional Climate Science Centers and nine of 21 Landscape Conservation Cooperatives.
- Increasing the number of youth employed in conservation through Interior or its partners increased by 45 percent over 2009 levels.
- Reducing overall crime in four Indian communities as a result of a concerted effort to increase deployed law enforcement officers, and conduct training in community policing techniques, and engage the communities in law enforcement efforts.

The tragic events resulting from the explosion and sinking of the Deepwater Horizon drilling rig in April of last year drew the attention of the world to the Gulf of Mexico. Much of the focus of Interior's bureaus and offices in 2010 was on oil spill response, Gulf Coast restoration, strengthening safety and environmental standards for offshore energy production, and re-

organizing and reforming the former Minerals Management Service (MMS). Nonetheless, the Department advanced other key priorities and strategic goals that will improve the conservation and management of natural and cultural resources into the future:

- Interior, along with the Department of Agriculture, the Environmental Protection Agency, and the Council on Environmental Quality, participated in the White House Conference on America's Great Outdoors and held 50 public listening sessions across the Country that have helped shape a conservation vision and strategy for the 21st Century. We have released a report, *America's Great Outdoors: A Promise to Future Generations,* that lays out a partnership agenda for 21st century conservation and recreation.
- In the spirit of America's Great Outdoors, we welcomed new national wildlife refuges in Kansas and Colorado and proposed a new conservation area in Florida at the headwaters to the Everglades. These refuges mark a new era of conservation for the Department, one that is community-driven, science-based, and takes into account entire ecosystems and working landscapes.
- The Department worked with others to develop an action plan to bring relief for the drought-stricken California Bay-Delta area, invested over $500 million in major water projects over the past two years, and moved forward on long-standing water availability issues in the Colorado River Basin.
- In December, I issued my recommendation to Congress to undertake an additional 5.5 miles of bridging on the Tamiami Trail in the Everglades above and beyond the 1-mile bridge now under construction. When combined with other planned work in the Everglades Agricultural Area and water conservation areas, this project should restore 100 percent of historic water quantity and flow to Everglades National Park.
- With the help of Congress, we brought about resolution of the *Cobell* v. *Salazar* settlement and resolved four long-standing Indian water rights issues through enactment of the Claims Resolution Act of 2010. We also completed negotiation of a new Compact of Free Association with the island of Palau which awaits Congressional approval.
- In December of last year, the President hosted the second White House Tribal Nations Conference bringing together tribal leaders from across the United States; we are improving the Nation-to-Nation relationship with 565 Tribes.

Interior's Budget In Context

In his State of the Union address in January, President Obama spoke of what it will take to "win the future." He challenged the Nation to encourage American innovation, educate young people, rebuild America, and shrink the burden of mounting debt. Interior's 2012 budget request responds to this challenge. The investments proposed in this budget are balanced by reductions in other programs – recognizing the Nation's need to live within its means to ensure a legacy of economic strength.

Taking Fiscal Responsibility – Interior's 2012 budget must be viewed in context of the difficult

fiscal times facing the Nation and the President's freeze on discretionary funding. The 2012 budget reflects many difficult budget choices, cutting worthy programs and advancing efforts to shrink Federal spending. The budget contains reductions totaling $1.1 billion or 8.9 percent of the 2010 Enacted/2011 CR level. Staffing reductions are anticipated in some program areas, which will be achieved through attrition, outplacement, and buy-outs to minimize the need to conduct reductions in force to the greatest extent possible. These reductions are a necessary component of maintaining overall fiscal restraint while allowing us to invest additional resources in core agency priorities.

This budget is responsible. The $12.2 billion budget funds important investments by eliminating and reducing lower priority programs, deferring projects, reducing redundancy, streamlining management, and capturing administrative and efficiency savings. It maintains funding levels for core functions that are vital to uphold stewardship responsibilities and sustain key initiatives. The 2012 request includes $11.2 billion for programs funded by the Interior, Environment, and Related Agencies appropriation. This is $69.2 million, or less than one percent, above the 2010 enacted level and $87.6 million above the 2011 annualized CR level. The 2012 request for the Bureau of Reclamation and the Central Utah Project Completion Act, funded in the Energy and Water Development Appropriations Act, is $1.1 billion in current appropriations, $88.3 million or eight percent below the 2010 enacted level and $78.3 million or seven percent below the 2011 CR level.

Permanent funding that becomes available as a result of existing legislation without further action by the Congress results in an additional $5.6 billion, for $17.8 billion in total budget authority for Interior in 2012.

Program Reductions and Terminations – Interior's $12.2 billion budget proposal includes $913.6 million in program terminations and program reductions of which $188.0 million are featured in the President's list of terminations and reductions. This also includes the elimination of $47.6 million in congressional earmarks not related to land acquisition or construction.

These cuts were identified as part of a top to bottom review that considered mission criticality, the ability of partners to support the function, duplication or overlap, relevance to key initiatives, program performance, the relevance of timing and if the activity could be deferred, and short- and long-term strategic goals.

Examples of the tough decisions made in 2012 include terminating the $7.0 million Rural Fire Assistance program which is duplicative of other fire assistance grant programs managed by the Department of Homeland Security and Department of Agriculture. The National Park Service's Save America's Treasures and Preserve America programs are eliminated in 2012 to focus NPS resources on the highest priority park requirements. The NPS Heritage Partnership Programs are reduced by half to encourage self-sufficiency among well-established National Heritage Areas while continuing support for newer areas. In the Bureau of Indian Affairs, the Indian Guaranteed Loan Program is reduced 63 percent in 2012 pending an evaluation of the program's effectiveness and alternatives to improve program performance.

Program reductions are proposed in every bureau and office in the Department. One area that is

reduced Interior-wide is construction. The budget includes $178.8 million for the Bureau of Land Management, Fish and Wildlife Service, and National Park Service construction programs; in total this is a reduction of $100.2 million or 36 percent from the 2010 enacted/2011 CR level. To achieve these reductions, the Department has frozen construction of new facilities in 2012 and deferred construction of replacement facilities. Interior's 2012 request for construction focuses on the highest priority health and safety and mission critical projects and defers lower priorities. The Department is committed to the repair and rehabilitation of current assets and funding for facility maintenance is held nearly level.

Administrative Savings – The budget includes $99.4 million in reductions reflecting administrative cost savings as part of the Administration's Accountable Government Initiative. These reductions will be generated by efficiencies throughout Interior, changing how the Department manages travel, employee relocation, acquisition of supplies and printing services, and the use of advisory services. These reductions are in addition to $62.0 million in travel, information technology, and strategic sourcing savings identified as part of the President's 2011 request. These reductions are sustained in the 2012 request along with bureau-specific efficiencies.

- The Department will achieve $42 million in savings in travel and relocation through improved management at the program level and re-examination of Departmental policies.

- An estimated $53 million in savings will be achieved through acquisition improvement initiatives including shared contracts to use Interior-wide for the acquisition of commodities, supplies, and services. In 2011, Interior is implementing Department-wide strategic sourcing initiatives for office supplies and copier-based multifunctional devices. Savings from expanded strategic sourcing is one component of a comprehensive plan to improve acquisition practices throughout Interior.

- Efficiency savings from expanded strategic sourcing is one component of a comprehensive plan to improve acquisition practices throughout Interior. Another component to reduce advisory services spending will achieve an approximate $15 million in savings.

- Through careful planning, strategic investments, and unprecedented cooperation, significant opportunity exists to realize efficiencies in the Department's IT infrastructure of an estimated $36 million, including energy and cost savings. The Department has identified five primary focus areas: risk-based information security services, infrastructure consolidation, unified messaging, workstation ratio reduction, and radio site consolidation.

- The Department's 2012 budget reflects a freeze on Federal salaries for 2011 and 2012 and requirements to address fixed cost increases are limited to anticipated changes in the Federal contributions to health benefits, GSA rent increases, changes in workers and unemployment compensation costs, and specific contract requirements for P.L. 93-638 agreements.

Cost Recovery – The budget proposes to increase cost recovery to offset the cost of some resource development activities that provide clear benefits to customers.

The budget proposes to increase fees for offshore oil and gas inspections from $10.0 million in the 2010 enacted budget to $65.0 million in 2012. These fee collections incorporate a more robust inspection program and expand the scope of offshore inspection fees to include offshore drilling rigs, given the need for greater scrutiny of drilling operations as a core component of deepwater oil and gas development. This is consistent with the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. The report states that the oil and gas industry should be "required to pay for its regulators" so that the costs of regulation "would no longer be funded by taxpayers but instead by the industry that is permitted to have access to a publicly owned resource."

Similarly, the budget proposes to collect $38.0 million for onshore oil and gas inspection activities conducted by BLM. The budget also proposes new fees totaling $4.4 million for coal and other minerals inspections conducted by BLM to recover the costs of inspecting these operations.

Likewise, the budget proposes to decrease OSM grants to state programs that regulate the coal industry, to encourage those states to increase cost recovery fees for coal mine permit processing.

Investments for the Future

America's Great Outdoors–Last year, the Administration initiated a national dialogue at the White House Conference on America's Great Outdoors. In 50 listening sessions held across the Country, the public communicated their conservation and recreation priorities, and the result is a report to the President, *America's Great Outdoors: A Promise to Future Generations.* The report outlines how the Federal Government can support a renewed and refreshed conservation vision by working in collaboration with communities, farmers and ranchers, businesses, conservationists, youth and others who are working to protect the places that matter to them and by engaging people across the country in conservation and recreation.

The report calls for the government and its partners to help conserve and recreate on the lands and places that Americans care about most. To this end, the report recommends expanding access to green spaces for recreation, restoring and connecting open spaces and rural landscapes to power economic revitalization and species conservation, , and increasing our investment of revenue from oil and gas development in the protection of open spaces. The report calls for the revision of government policies to improve program effectiveness and alignment, and leverage local, community driven efforts and asks the Federal government to be a better partner with States, Tribes, landowners, local communities, the private sector and others to meet shared conservation goals.

The 2012 President's budget identifies resources that are targeted on these outcomes with $5.5 billion for programs included in the America's Great Outdoors initiative, an increase of $363.0 million over the FY 2010 level. The components of this budget request include land management operations, programs funded through the Land and Water Conservation Fund, and grant programs focused on partnerships that conserve natural resources, restore, rivers and trails, and preserve the Nation's historic assets.

The 2012 budget for America's Great Outdoors includes $4.6 billion for core operations, an increase of $13.5 million, in the land and resource management bureaus – BLM, FWS, and NPS. Increases in Interior's land management bureaus will enhance cultural and interpretative programs throughout our network of national parks, refuges and public lands. This funding will also support day–to-day operations, improve the condition of facilities, and address natural resource management needs. More than 285 million Americans and foreign tourists visited the Nation's national parks in 2009, nearly 11 million more than in 2008, a 3.9 percent increase. This was the fifth busiest year for the national park system, just missing the all-time visitation record set in 1987. The increased visitation to the national parks reinforces the importance and value Americans place on their treasured landscapes.

The initiative also includes $675.0 million for programs funded from the Land and Water Conservation Fund. The components of this request are: $375.0 million for Federal land acquisition, $200.0 million for an expanded LWCF State grants program including competitive grants, and $100.0 million for Cooperative Endangered Species Conservation Grants.

The 2012 budget for Interior and the U.S. Forest Service includes full funding, $900 million, for the Land and Water Conservation Fund. This funding is drawn from revenue generated each year from oil and gas development. This fulfills the vision for the LWCF, with a dedicated source of funding generated from the depletion of resources to be used annually to advance resource conservation and recreational opportunities. For the 2012 budget, the Department coordinates Interior bureaus' and the Forest Service's land acquisition priorities and presents a joint conservation strategy that maximizes conservation outcomes in key geographic focal areas.

The 2012 budget also includes $150.0 million for fish and wildlife conservation grants, an increase of $7.0 million, including $50.0 million for the North American Wetlands Conservation Fund, $95.0 million for State and Tribal Wildlife Grants, and $5.0 million for Neotropical Migratory Bird Conservation Grants. An additional $72.4 million is proposed for NPS partnership programs, including $62.4 million for historic preservation grants to States and Tribes, an increase of $6.5 million and $10.0 million for the Rivers, Trails and Conservation Assistance program, an increase of $1.1 million.

The 2012 America's Great Outdoors initiative focuses on investments that will lead to healthy lands, waters and resources while stimulating the economy – goals that are complementary. Through strategic partnerships, Interior will support and protect historic uses of lands, restore lands and resources, protect and interpret historic and cultural resources, and expand outdoor recreation opportunities. All of these activities have significant economic benefits in rural and urban communities. An economic impact analysis completed by the Department in December 2009 estimates that in 2008 more than 400 million visits to the Nation's parks, refuges, and public lands generated nearly $25 billion and over 300,000 jobs in recreation and tourism, contributing significantly to the economic vitality of many communities.

New Energy Frontier - The 2012 budget continues the Department's New Energy Frontier initiative to create jobs, reduce the Nation's dependence on fossil fuels and oil imports, and reduce carbon impacts. Facilitating renewable energy development is a major component of this strategy along with effective management of conventional energy programs.

The Department has made significant advances in its priority goal to increase approved capacity for renewable energy production on Interior lands by at least 10,000 megawatts by the end of 2012, while ensuring full environmental review. To date, BLM has approved projects that, when built, will generate approximately 4,000 megawatts of energy. The budget requests $72.9 million for renewable energy programs in 2012, an increase of $13.9 million above the 2010 enacted/2011 CR level.

While we work to develop renewable energy sources, domestic oil and gas production remain critical to our nation's energy supply and to reducing our dependence on foreign oil. As was underscored by the tragic explosion of the Deepwater Horizon and the oil spill that followed, we must take immediate steps to make production safer and more environmentally responsible. The recently-released report from the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling concludes that neither industry nor the government were adequately prepared to respond to a blowout in deepwater. We have been aggressively pursuing reforms to raise the bar on safety standards for offshore drilling – including new standards for how well they are drilled and for the safety systems to prevent blowouts, as well as requiring operators to demonstrate that they are able to respond promptly and effectively to a loss of well control in deepwater. We are also making fundamental changes to improve the effectiveness of government safety oversight and environmental protection.

The Commission's recommendations are, in many ways, a strong validation of the reforms that we at the Department of the Interior have been undertaking to promote safety and science in offshore oil and gas operations. Moreover, the Commission's findings and recommendations bolster the case for Interior's comprehensive reforms and the reorganization of offshore oil and gas oversight that will remedy conflicted missions, stand up a stronger regulatory framework, create an internal review unit to investigate problems in a timely manner, improve agency and industry management of safety and environmental protection, and expand the team of inspectors, engineers and other safety personnel. Many reforms have already been accomplished including:

- Implementation of strong new safety and environmental standards including: a safety rule that raises standards for everything from drilling equipment and well design to casing and cementing; a requirement that companies establish comprehensive risk management programs; a requirement that operators demonstrate capability to deal with a catastrophic blowout; limiting the use of categorical exclusions so that proposed lease sales and drilling projects go through rigorous environmental reviews under the National Environmental Policy Act (NEPA); and requiring companies to put their signature on the line to state that their rigs comply with safety and environmental laws and regulations.
- Termination of the controversial royalty-in-kind program, which accepted oil and natural gas from producers in lieu of cash royalty payments, in favor of a more transparent and accountable royalty collection system.
- Dissolution of the Minerals Management Service with the transfer of minerals revenue management to the Office of Natural Resources Revenue in the Office of the Secretary and creation of the Bureau of Ocean Energy Management, Regulation and Enforcement as an interim organization while further structural changes are made.

- Formulation of a plan for reorganization of the former MMS that will separate the offshore resource management and the safety and environmental enforcement programs into two independent organizations – the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement.
- Development and implementation of regulations and guidance to operators to heighten standards for drilling safety, including requiring operators to demonstrate the ability to respond to a deepwater blowout.
- Continuing to pursue changes responsive to the recommendations of the Safety Oversight Board, the National Academy of Engineering, and the National Commission on the BP Deepwater Horizon oil Spill.
- Completion of a review of ethics issues related to the Department's management of the OCS program and creation of the Investigations and Review Unit.
- Implementation of a recruitment strategy for BOEMRE to expand the field of inspectors and engineers including recruitment tours of petroleum engineering programs at universities across the country.
- Establishment of the Offshore Energy Safety Advisory Committee to advise BOEMRE on issues related to offshore energy safety, including drilling and workplace safety, well intervention and containment, and oil spill response.

The 2012 budget includes $506.3 million for the components of the former Minerals Management Service to continue our efforts at reorganization and reform of both offshore energy development activities and mineral revenue collection. This includes a total program of $358.4 million for the Bureau of Ocean Energy Management, Regulation and Enforcement, an increase of $119.3 million, or 50 percent, over the 2010 enacted level, after adjusting for the transfer of mineral revenue collections to the new Office of Natural Resources Revenue. The budget proposes to offset BOEMRE program funding with $160.2 million in offsetting rental receipts and cost recoveries and $65.0 million from oil and gas inspection fees.

The budget makes investments to increase capacity for leasing and environmental review, safety and environmental enforcement, and oil spill research. This request will enable Interior to hire over 100 inspectors, engineers, and other safety and enforcement staff by the end of 2012. The 2012 budget includes funding for the Investigations and Review Unit to respond to allegations or evidence of misconduct and unethical behavior; oversee and coordinate internal auditing, regulatory oversight and enforcement systems and programs; and ensure the organization's ability to respond to emerging issues and crises, including spills and accidents. Funding is also included to support the use of sound science in all of the Department's offshore energy activities.

The 2012 budget request also includes $147.9 million for the Office of Natural Resources Revenue located in the Office of the Secretary. The proposed $38.7 million increase over the 2010 enacted level will allow us to strengthen auditing and compliance efforts for royalty revenue collections and to complete the transition of the royalty-in-kind (RIK) program to royalty-in-value collections.

Youth in the Great Outdoors – Furthering the youth and conservation goals of the America's Great Outdoors initiative, the 2012 budget proposes to continue engaging youth by employing and educating young people from all backgrounds. The 2012 budget includes $46.8 million for youth programs, an increase of $7.6 million above the 2010 enacted/2011 CR level.

Interior is uniquely qualified to engage and educate young people in the outdoors and has programs that establish connections for youth ages 18 to 25 with natural and cultural resource conservation. These programs help address unemployment in young adults and address health issues by encouraging exercise and outdoor activities. For example, Interior is taking part in the First Lady's *Let's Move* initiative to combat the problem of childhood obesity. The Bureau of Land Management, National Park Service and Fish and Wildlife Service have *Let's Move Outside* programs to promote physical activity for children and families on the Nation's public lands. Interior has long-standing partnerships with organizations such as the 4-H, the Boy Scouts, the Girl Scouts, the Youth Conservation Corps, and the Student Conservation Association. These programs leverage Federal investments to put young people to work and build a conservation ethic.

In 2010, Interior met its high priority performance goal to employ 15,900 in conservation-related careers through the Department or its partners. This is a 45 percent increase from 2009. The 2012 goal is to increase this youth employment by 60 percent.

Cooperative Landscape Conservation - The 2012 budget realigns programs and funding to better equip land and resource managers with the tools they need to effectively conserve resources in a rapidly changing environment. Significant changes in water availability, longer and more intense fire seasons, invasive species and disease outbreaks are creating challenges for resource managers and impacting the sustainability of resources on public lands. These changes result in bark beetle infestations, deteriorated range conditions, and water shortages that negatively impact grazing, forestry, farming, as well as the status of wildlife and the condition of their habitats. Many of these problems are caused by or exacerbated by climate change.

The 2012 Budget includes $175.0 million for cooperative landscape conservation, an increase of $43.8 million. The budget funds the completion of the Climate Science Centers and Landscape Conservation Cooperatives, the organizing framework for the Department's efforts to work collaboratively with others to understand and manage these changes. These efforts will allow the Department to meet its priority goal to identify resources vulnerable to climate change and implement coordinated adaptation response actions for 50 percent of the Nation by the end of 2012.

The request for USGS climate variability science is $73 million, which includes $14.3 million for carbon sequestration research. USGS is conducting cutting edge research in biological and geological carbon sequestration, to investigate the potential of removing carbon dioxide from the atmosphere for storage in vegetation, soils, sediments, oil and gas reservoirs and saline geologic formations. The 2012 budget will advance USGS research to assess rates and potential capacity for carbon storage in ecosystems, and evaluate the Nation's potential resources for geological storage.

Water Challenges – Interior is working to address the 21st Century pressures on the Nation's water supplies. Population growth, aging water infrastructure, changing climate, rising energy demands, impaired water quality and environmental needs are among the challenges. Water shortage and water use conflicts have become more commonplace in many areas of the United States, even in normal water years. As competition for water resources grows, the need for information and tools to aid water resource managers also grows. Water issues and challenges are increasing across the Nation, but particularly in the West and Southeast due to prolonged drought. Traditional water management approaches no longer meet today's needs.

The request for the Bureau of Reclamation funded in the Energy and Water Development Appropriation proposes to fund WaterSMART at $58.9 million. This program is a joint effort with the USGS. The USGS will use $10.9 million, an increase of $9.0 million, for a multi-year, nationwide water availability and use assessment program.

The Department is working hard to address water issues throughout the West. Most of the work is led by the Department's Bureau of Reclamation funded through the Energy Water Development Appropriation. Many of the Department's other bureaus, like Fish and Wildlife Service, and the U.S. Geological Survey, partner and offer additional support to these efforts.

The Bay-Delta is a source of drinking water for 25 million Californians and sustains about $400 billion in annual economic activity, including a $28 billion agricultural industry and up until recently supported a thriving commercial and recreational fishing industry. Our efforts in the Bay-Delta are focused on co-leading an inter-agency effort with the Council on Environmental Quality (CEQ) to implement the December 2009 Interim Federal Action Plan for the California Bay-Delta Conservation Plan. In coordination with five other Federal agencies, we are leveraging our activities to address California water issues, promote water efficiency and conservation, expand voluntary water transfers in the Central Valley, fund drought relief projects, and make investments in water infrastructure. Over the past two years, we have invested over $500 million in water projects in California. We have also, in close coordination with NOAA and the state of California, worked on the California Bay-Delta Conservation Plan, a long-term plan aimed at restoring both reliable water supplies and a healthy Bay-Delta ecosystem.

On February 18 we announced the initial 2011 Water Supply Allocation for Central Valley Project water users. We were pleased to report that some of the CVP contractors and waters users will receive a 100 percent allocation due to the precipitation and snowpack in the Sierra Nevada Mountains and improved carryover reservoir storage. Agricultural water service contractors South-of-Delta have an initial allocation of 50 percent but this is an improvement on the 46 percent initial allocation they've averaged over the past 20 years. These allocations represent good news given recent years, but many challenges remain. We will continue to work with our Federal, State and local partners to improve water supply reliability while addressing significant ecological issues.

Our 2012 budget for the Bureau of Reclamation includes $53.1 million for the Central Valley Project Restoration Fund that is offset by collections estimated at $52.8 million. The 2012 budget for Reclamation includes $39.7 million for the California Bay-Delta Restoration account

and $35.1 million for San Joaquin River restoration. An additional $6.9 million is included in the budget for the FWS and USGS activities in support of Bay-Delta ecosystem restoration.

Strengthening Tribal Nations - The 2012 Budget for Indian programs is $2.5 billion, a decrease of $118.9 million. The reduction includes completion of a one-time $50.0 million forward funding payment to tribal colleges, completion of $47 million in public safety projects normally funded by the Department of Justice, and $ 14.5 million for completed water settlements.

The BIA budget includes reductions that are tougher choices, including reductions of $27.0 million in Trust Real Estate Services, $14.2 million in central oversight programs, and $5.1 million in the Indian Guaranteed Loan Program.

The 2012 budget provides $89.6 million in increases including: $42.3 million for programs that advance the Nation-to-Nation relationship; $20.0 million to enhance public safety and justice programs; $18.4 million to improve trust land management; and $8.9 million for education programs. The 2012 budget includes an increase of $29.5 million for contract support and the Indian Self-Determination Fund – this was the highest priority of the Indian Tribes. These funds will enable Tribes to fulfill administrative requirements associated with operating programs.

The 2012 budget supports achievement of a priority goal to reduce violent crime by at least five percent within 24 months on targeted tribal reservations through a comprehensive and coordinated strategy. The budget includes $354.7 million, an increase of $20.0 million, for law enforcement operations, detention center operations and maintenance, tribal courts, and conservation law enforcement officers.

Indian Land and Water Settlements – The 2012 budget includes $84.3 million in the Bureau of Reclamation and Bureau of Indian Affairs to implement land and water settlements.

The Bureau of Reclamation's budget includes $51.5 million, an increase of $26.7 million, for the initial implementation of four settlements authorized in the Claims Resolution Act of 2010. The legislation included water settlements for the Taos Pueblo of New Mexico and Pueblos of New Mexico named in the Aamodt case, the Crow Tribe of Montana, and the White Mountain Apache Tribe of Arizona.

The Claims Resolution Act of 2010 establishes trust funds for Tribes to manage water systems and settlement funds to develop infrastructure. The primary responsibility for constructing these water systems was given to the Bureau of Reclamation, while the Bureau of Indian Affairs is responsible for the majority of the trust funds, which includes $207.2 million in mandatory funding in 2011.

These settlements will deliver clean water to the Taos Pueblo and the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque in New Mexico, the Crow Tribe of Montana, and the White Mountain Apache Tribe of Arizona. In addition to funding for the initial implementation of these four settlements, Reclamation's budget includes $24.8 million for the Navajo-Gallup Water Supply project. In the 2012 budget, Reclamation is establishing an Indian Water Rights Settlements account to assure continuity in the construction of the authorized projects and to

highlight and enhance transparency.

The Bureau of Indian Affairs 2012 budget includes $32.9 million for ongoing Indian land and water settlements, a reduction of $12.9 million, reflecting completion of the Pueblo of Isleta, Puget Sound Regional Shellfish, and Soboba Band of Luiseno Indians settlements.

Land Remote Sensing – For forty years, Landsat satellites have recorded the global landscape, creating an archive of both natural and man-made changes. This imagery generates $935 million in value for the U.S. economy by driving innovation in the agricultural, water management, and disaster response sectors. For example, foresters around the country use Landsat imagery to remotely map and monitor the status of woodlands in near real-time. This allows them to track the devastation caused by the pine bark beetle in the Rocky Mountains and monitor drought and fire-prone areas.

Landsat fills an essential need for data that is refreshed on a time scale and with a level of resolution and granular detail that is otherwise not available. Commercial data is not available that fill a void that could be created in the absence of continuous Landsat coverage.

The 2012 budget for the U.S. Geological Survey includes $48.0 million to begin planning activities with the National Aeronautics and Space Administration for an operational Landsat program. Consistent with the Administration's National Space Policy, the 2012 budget enables the USGS to assume management responsibility for a new operational Landsat program that will ensure continuity of Landsat data in the future. USGS will provide data requirements and funding, while NASA, drawing on its historic expertise, will build the Landsat satellites on a reimbursable basis for the USGS. This new operating structure is consistent with the approach used for NOAA's JPSS weather satellites, and will ensure sufficient oversight while avoiding duplication.

The 2012 budget will enable USGS to gather and prioritize Federal user community requirements for land image data, conduct trade studies on key design alternatives related to the development of the imaging device, initiate the procurement process through NASA for the Landsat 9 and 10 instruments and spacecrafts, and establish a science advisory team, in order to launch Landsat 9 in FY 2019 and Landsat 10 in FY 2024.

Also included within a new separate account for National Land Imaging is an increase of $13.4 million to complete the retooling of the ground receiving stations to be able to receive data from the new instruments on Landsat 8, expected to be launched in December of 2012.

Mandatory Proposals

Interior continues to generate more revenue for the U.S. Treasury than its annual discretionary appropriation. In 2012, Interior will generate revenue of approximately $14.1 billion and propose mandatory legislation estimated to generate another $3 billion in revenue and savings over ten years. The budget assumes the enactment of legislative proposals that we plan to submit to Congress in the coming weeks. These proposals will reform abandoned mine reclamation and

hardrock mining on Federal lands, and collect a fair return to the American taxpayer for the development of Federal resources.

Reform Abandoned Mine Land Reclamation–The Administration proposes to reform the Abandoned Mine Lands program to reduce unnecessary spending and ensure that the Nation's highest priority abandoned coal and hardrock sites are reclaimed. First, the budget proposes to terminate the unrestricted payments to States and Tribes that have been certified for completing their coal reclamation work as these payments are no longer needed for reclamation of abandoned coal mine lands. Second, the budget proposes to reform the distribution process for the remaining reclamation funding to competitively allocate available resources to the highest priority coal abandoned mine lands sites. Through a competitive grant program, a new Abandoned Mine Lands Advisory Council will review and rank the abandoned mine lands sites, so that the Office of Surface Mining can distribute grants to reclaim the highest priority coal sites each year.

Third, to address the legacy of abandoned hardrock mines across the U.S., Interior will create a parallel Abandoned Mine Lands program for abandoned hardrock sites. Like the coal program, hardrock reclamation would be financed by a new abandoned mine lands fee on the production of hardrock minerals on both public and private lands displaced after January 2012. The BLM would distribute the funds through a competitive grant program to reclaim the highest priority hardrock abandoned sites on Federal, State, tribal, and private lands.

Altogether, this proposal will save $1.3 billion over the next ten years, focus available coal fees on the Nation's most dangerous abandoned coal mines, and hold the hardrock mining industry responsible for cleaning up the hazards left by their predecessors.

Reform Hardrock Mining on Federal Lands – The budget proposes to provide a fair return to the taxpayer from hardrock production on Federal lands. The proposal would institute a leasing program under the Mineral Leasing Act of 1920 for certain hardrock minerals including gold, silver, lead, zinc, copper, uranium, and molybdenum, currently covered by the General Mining Law of 1872.

After enactment, mining for these metals on Federal lands would be governed by the new leasing process and subject to annual rental payments and a royalty of not less than five percent of gross proceeds. Half of the receipts would be distributed to the States in which the leases are located and the remaining half would be deposited in the Treasury. Existing mining claims would be exempt from the change to a leasing system, but would be subject to increases in the annual maintenance fees under the General Mining Law of 1872. The Office of Natural Resources Revenue will collect, account for, and disburse the hardrock royalty receipts. This proposal would generate an estimated $100 million in revenue over ten years.

Fee on Non-producing Oil and Gas Leases – The Administration will submit a legislative proposal to encourage energy production on lands and waters leased for development. A $4.00 per acre fee on non-producing Federal leases both onshore and offshore would provide a financial incentive for oil and gas companies to either get their leases into production or relinquish them so that the tracts can be leased to and developed by new parties. The proposed

$4.00 per acre fee would apply to all new leases and would be indexed annually. In October 2008, the Government Accountability Office issued a report critical of past efforts by Interior to ensure that companies diligently develop their Federal leases. Although the report focused on administrative actions that the Department could undertake, this proposal requires legislative action. This proposal is similar to other non-producing fee proposals considered by the Congress in the last several years. The fee is projected to generate revenues to the U.S. Treasury of $25 million in 2012 and $874 million over ten years.

Net Receipts Sharing for Energy Minerals – The Administration proposes to make permanent the current arrangement for sharing the cost to administer energy and minerals receipts, beginning in 2013. Under current law, States receiving significant payments from mineral revenue development on Federal lands also share in the costs of administering the Federal mineral leases from which the revenue is generated. In 2012, this net receipts sharing deduction from mineral revenue payments to States would be implemented as an offset to the Interior Appropriations Act, consistent with the provision included in 2010 and continued under the 2011 CR. Permanent implementation of net receipts sharing is expected to result in savings of $44 million in 2013 and $441 million over ten years.

Repeal Oil and Gas Fee Prohibition and Mandatory Permit Funds – The Administration proposes to repeal portions of Section 365 of the Energy Policy Act, beginning in 2013. Section 365 diverted mineral leasing receipts from the U.S. Treasury to a BLM Permit Processing Improvement Fund and also prohibited BLM from establishing cost recovery fees for processing applications for oil and gas permits to drill. Congress has implemented permit fees through appropriations language for the last several years and the 2012 budget proposes to continue this practice. Starting in 2013, upon elimination of the fee prohibition, BLM will promulgate regulations to administratively establish fees for applications for permits to drill. In combination with normal discretionary appropriations, these cost recovery fees will then replace the permit fees set annually through appropriations language and the mandatory permit fund, which would also be repealed starting in 2013. Savings from terminating this mandatory funding are estimated at $20 million in 2013 and $57 million over three years.

Geothermal Energy Receipts – The Administration proposes to repeal Section 224(b) of the Energy Policy Act of 2005. Prior to passage of this legislation, geothermal revenues were split between the Federal government and States, with 50 percent directed to States, and 50 percent to the Treasury. The Energy Policy Act of 2005 changed this distribution beginning in 2006 to direct 50 percent to States, 25 percent to counties, and for a period of five years, 25 percent to a new BLM Geothermal Steam Act Implementation Fund. The allocations to the new BLM geothermal fund were discontinued a year early through a provision in the 2010 Interior Appropriations Act. The repeal of Section 224(b) will permanently discontinue payments to counties and restore the disposition of Federal geothermal leasing revenues to the historical formula of 50 percent to the States and 50 percent to the Treasury. This results in savings of $6.5 million in 2012 and $74 million over ten years.

Deep Gas and Deepwater Incentives – The Administration proposes to repeal Section 344 of the Energy Policy Act of 2005. Section 344 mandated royalty incentives for certain "deep gas" production on the OCS. This change will help ensure that Americans receive fair value for

federally owned mineral resources. Based on current oil and gas price projections, the budget does not assume savings from this change; however, the proposal could generate savings to the Treasury if future natural gas prices end up below current projections.

Repeal of Authorities to Accept Royalty Payments In Kind – The Administration proposes to solidify a recent Departmental reform terminating the Royalty-in-Kind program by repealing all Interior authorities to accept future royalties through this program. This change will help increase confidence that future royalty payments will be properly accounted for. The budget does not assume savings from this change because the Administration does not anticipate restarting the program; however, if enacted, this proposal would provide additional certainty that a new Royalty-in-Kind program would not be initiated at some point in the future.

Federal Land Transaction Facilitation Act – The Administration proposes to reauthorize this Act, eliminating the 2011 sunset date and allowing lands identified as suitable for disposal in recent land use plans to be sold using the Act's authority. The Act's sales revenues would continue to be used to fund the acquisition of environmentally sensitive lands and the administrative costs associated with conducting sales.

Federal Migratory Bird Hunting and Conservation Stamps – Federal Migratory Bird Hunting and Conservation Stamps, commonly known as Duck Stamps, were originally created in 1934 as the annual Federal license required for hunting migratory waterfowl. Today, 98 percent of the receipts generated from the sale of these $15.00 stamps are used to acquire important migratory bird areas for migration, breeding, and wintering. The price of the Duck Stamp has not increased since 1991, while the cost of land and water has increased significantly. The Administration proposes to increase these fees to $25.00 per stamp per year, beginning in 2012. Increasing the price of Duck Stamps will bring the estimate for the Migratory Bird Conservation account to approximately $58 million. With these increased receipts, the Department anticipates additional acquisition of approximately 7,000 acres in fee and approximately 10,000 acres in conservation easement in 2012. Total acres acquired for 2012 would then be approximately 28,000 acres in fee title and 47,000 acres in perpetual conservation easements.

Compact of Free Association – On September 3, 2010, the U.S. and the Republic of Palau successfully concluded the review of the Compact of Free Association and signed a 15-year agreement that includes a package of assistance through 2024. Under the agreement, Palau committed to undertake economic, legislative, financial, and management reforms. The conclusion of the agreement reaffirms the close partnership between the U.S. and the Republic of Palau. Permanent and indefinite funding for the compact expired at the end of 2010. The 2012 budget seeks to authorize permanent funding for the Compact as it strengthens the foundations for economic development by developing public infrastructure, and improving health care and education. Compact funding will also undertake one or more infrastructure projects designed to support Palau's economic development efforts. The Republic of Palau has a strong track record of supporting the U.S. and its location is strategically linked to Guam and U.S. operations in Kwajalein Atoll. The cost for this proposal for 2012-2021 is $188.5 million.

Extend Service First Authority – The budget includes legislative language to extend authority for the Service First program. The laws creating Service First give Interior and Agriculture the

authority to establish pilot programs that leverage joint resources. Service First allows certain land management agencies to conduct activities jointly or on behalf of one another; collocate in Federal offices or leased facilities; make reciprocal delegations of respective authorities, duties, and responsibilities; and transfer funds and provide reimbursements on an annual basis, including transfers and reimbursements for multi-year projects. This authority is currently set to expire at the end of 2011. The extension included in the budget will make the Service First authority permanent to continue these arrangements that have saved costs and improved effectiveness.

Conclusion

Thank you for the opportunity to testify on the President's 2012 budget request for the Department of the Interior. We have a tremendous opportunity to improve the future for our children and grandchildren with smart investments. This budget has fiscal discipline and restraint, but it includes forward looking investments. For America to be at its best and win the future, we need lands that are healthy, waters that are clean, and an expanded range of energy options to power our economy. I thank you again for your continued support of the Department's mission. I look forward to working with you to implement this budget. This concludes my written statement. I am happy to answer any questions that you may have.

Ken Salazar
Secretary of the Interior

Ken Salazar, a fifth-generation Coloradan, was confirmed as the 50th secretary of the U.S. Department of the Interior on Jan. 20, 2009, in a unanimous vote by the U.S. Senate.

Prior to his confirmation, Salazar served as Colorado's 35th U.S. senator, winning election in November 2004 and serving on the Finance Committee, which oversees the nation's tax, trade, social-security, and health-care systems. He also served on the Agriculture, Energy and Natural Resources, Ethics, Veterans Affairs and Aging Committees.

As a U.S. Senator, Salazar was a leader creating and implementing a vision for a renewable-energy economy that is less dependent on foreign oil. He was involved in every major bipartisan legislative effort on energy since 2005, including helping craft the Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007. Salazar also tackled the challenge of providing affordable health care by fighting to broaden the Children's Health Insurance Program and by working to improve health care for older Americans.

Salazar has been a champion for farmers, ranchers, and rural communities, leading efforts to pass the 2007 Farm Bill and to create food and fuel security for America. He worked to help veterans in rural communities get better access to health care by creating the Office of Rural Health in the Department of Veterans Affairs and by pressing that agency to open new rural outreach clinics in Colorado.

He also exercised a leadership role in championing a new defense and foreign policy that restores American security and influence around the world and pressed for a change in mission in Iraq to better advance America's national security interests. Salazar worked to strengthen our military to ensure that we are able to confront emerging threats.

From 1999 to 2004, Salazar served as Colorado's thirty-sixth Attorney General, winning statewide elections in 1998 and 2002. He chaired the Conference of Western Attorneys General and received the Profiles in Courage award from his fellow state attorneys general for his dedication to preserving and promoting the rule of law.

As Colorado's attorney general, Salazar led efforts to make communities safer, fight crime, strengthen the state's sex offender laws, address youth and family violence, enhance and enforce Colorado's consumer protection laws, combat fraud against the elderly, and protect Colorado's environment. He established the first-ever Colorado Attorney General Fugitive Prosecutions Unit to apprehend and prosecute fugitive murderers, the first-ever Attorney General Gang Prosecution Unit, and an Environmental Crimes Unit.

From 1987 to 1994 Salazar served in the Cabinet of Gov. Roy Romer as chief legal counsel and executive director of the Colorado Department of Natural Resources, where he crafted reforms for oil, mining, and gas operations to better protect the environment and the public. He fought to uphold Colorado's interstate water compacts, created the Youth in Natural Resources program to educate thousands of young people about Colorado's natural resources, and authored the Colorado constitutional amendment creating Great Outdoors Colorado. He served as the first chairman of that movement, helping make it one of the most successful land conservation efforts in the United States.

Salazar's family settled in the American West before the United States was a country. After settling in New Mexico four centuries ago, his family planted roots in Colorado's San Luis Valley, where they have farmed and ranched the same land for five generations. Raised on a remote ranch without electricity or telephone, Salazar learned the values of hard work, family, and faith. Thanks to his parents' lessons, he and his seven brothers and sisters all became first generation college graduates.

A farmer for more than thirty years, Salazar was a partner with his family in El Rancho Salazar. He and his wife have owned and operated small businesses, including a Dairy Queen and radio stations in Pueblo and Denver.

Salazar worked for 11 years as a water and environmental lawyer with some of the top firms in the West. During his time in the private sector and as Colorado's Attorney General, Salazar worked on cases from the trial courts to the Colorado and U.S. Supreme Courts.

He received a political science degree from Colorado College in 1977, and graduated with a law degree from the University of Michigan in 1981. He also received honorary doctorates of law from Colorado College in 1993 and the University of Denver in 1999. Salazar and his wife, Hope, have two daughters, Melinda and Andrea, and one granddaughter, Mireya.

Deputy Secretary of the Interior

David J. Hayes

David J. Hayes was confirmed as Deputy Secretary of the Department of the Interior on May 20, 2009. He was nominated for the position on February 27, 2009, after serving as a leader in President Obama's Transition Team, heading the agency review process for the Department of Energy, Department of Agriculture, Department of the Interior and Environmental Protection Agency.

Deputy Secretary Hayes is the second highest ranking official at the Department of the Interior. By statute, he serves as the Department's Chief Operating Officer and has authority over all of the Department's bureaus and agencies. He is involved in implementing the Secretary's priorities for the Department, including climate change, conservation of our treasured landscapes, responsible energy development on our public lands and offshore resources, fulfilling our trust responsibilities to American Indians and Alaskan Natives, western water issues, and other matters relating to Interior's mission to conserve our nation's natural and cultural resources.

Throughout his career, Deputy Secretary Hayes has been involved in developing progressive solutions to environmental and natural resources challenges. He previously served as the Deputy Secretary and counselor to the Secretary of the Interior in the Clinton Administration. He is a former chairman of the Board of the Environmental Law Institute; he served as a Senior Fellow for the World Wildlife Fund, and was the Vice-Chair of the Board of American Rivers. Hayes was a consulting professor at Stanford University's Woods Institute for the Environment and he has written and lectured widely in the environmental and natural resources field. He also worked for a number of years in the private sector where he chaired the Environment, Land and Resources Department at Latham and Watkins, an international law firm.

Hayes is a native of Rochester, New York. He graduated summa cum laude from the University of Notre Dame and received his J.D. from Stanford University, where he was an editor of the Stanford Law Review. He is the former Chairman of the Board of Visitors for Stanford Law School.

Hayes and his wife Elizabeth reside in Arlington, Virginia and he has three children, Katherine, Stephen and Molly.

Pamela K. Haze
Deputy Assistant Secretary – Budget, Finance, Performance, and Acquisition

Pamela Haze is the Deputy Assistant Secretary – Budget, Finance, Performance and Acquisition. She was appointed to this position in October, 2009. She is responsible for oversight and management of the Department's programs and policies in budget, finance, acquisition and property management, performance management, and small and disadvantaged business.

Prior to her appointment as the Deputy Assistant Secretary, Ms. Haze was the Director of the Department's Office of Budget, a position she occupied beginning on January 5, 2007. She served as the Deputy Director and Co-Director of the Office of Budget from December, 1999 to December 2006.

Ms. Haze has spent the majority of her 31-year Federal career with the Department of the Interior. She worked for Interior bureaus including the Fish and Wildlife Service, the U.S. Geological Survey, the Bureau of Land Management, and the Bureau of Outdoor Recreation. Her experience with Interior agencies includes working as a planner, hydrologist, field biologist, contaminant biologist, program analyst, administrator, budget analyst, and manager.

Ms. Haze has experience with other Federal agencies including the Small Business Administration and the Office of the Federal Inspector for the Alaska Natural Gas Transportation System, an agency that was in operation during the 1980's to facilitate completion of the Alaska natural gas pipeline. She also worked for Cambridge Scientific Abstracts.

Ms. Haze received an undergraduate degree in wildlife biology and a graduate degree in environmental science/ecology at George Mason University.

Mr. SIMPSON. Thank you, Mr. Secretary. I appreciate you being here again today.

OIL SPILLS

First let me say thank you to the employees at DOI for the work they did during the Deepwater Horizon disaster that occurred. Most people do not understand how much time you and DOI employees spent down there trying to deal with that mess, and there are always fingers to point, saying we could have done this or should have done that or whatever, but it is a difficult time reacting to a natural disaster like that. And I know I kept in close in contact with many of the agencies and stuff that were working down there, but I do want to thank you and the employees publicly for the work they did during that difficult time.

BOEMRE REORGANIZATION

Having said that, you have proposed a reorganization and are reorganizing MMS to what is it now, BOEMRE. When we spoke with the IG when we had a hearing with the IG and the GAO, they said a couple of things. One was that we are uncertain about royalties that the Federal government is receiving, whether it is the correct amounts, because we do not have a way of making sure that what is being reported is the actual amounts. Not that anybody out there or any company is trying to falsify records, but sometimes it is just inaccurate. We have no way of checking that to make sure that we are getting the right amount of revenue.

And secondly, that this organization is having a difficult time keeping the people onboard so that we have professional people onboard, experienced people, to oversee the oil and gas industry, particularly in the Gulf, you know, offshore.

Could you go through the reorganization, what you plan to accomplish with this reorganization, how you think it might improve our oil and gas leases, and so forth?

Secretary SALAZAR. I would be delighted to do so, Chairman Simpson. First, let me just say thank you for the comment on the Deepwater Horizon. It did occupy a significant amount of time of more than a thousand employees of the Department of Interior. We did it for the right reasons. We have over 40 national wildlife refuges and national parks in the Gulf, and it was important to protect the people and the environment of the Gulf. It was also important for us to make sure the production in the Gulf of Mexico continued, and as you know from the statistics I think have been shared with you, 2010 continued to be a time where we continued to produce a significant amount of oil and gas from the Gulf of Mexico. Even in the midst of crisis we were able to continue that effort and continue to do the kinds of changes that will assure us that we have safe development of our oil and gas in the Nation's oceans in the future.

With respect to your question on revenue and on the reorganization, let me take the revenue side first. We have been reforming the revenue side of what the Department of Interior does over the last several years and have as part of the reorganization created an Office of Natural Resources Revenue. As a Department with such an important mission, which is to collect more money for the

United States of America and its taxpayers than any other agency other than the Department of the Treasury, the Department's mission, which we take very seriously, had difficult problems when I became Secretary of Interior.

The elimination of the Royalty-in-Kind program as well as the implementation of the recommendations from the GAO and others have been those efforts that have helped us move forward to achieve the goal here, and that is to get a fair return to the American taxpayer. I will have David Hayes, my Deputy Secretary, comment on that in just a minute because we are conducting a study on returns, and I want him to comment on that if he will for a second.

On the reorganization we are proposing to all of you, the essence of what we did there was to take a look at how other countries had organized themselves with respect to ensuring they had safe ocean energy exploration drilling, and production and looked at the models of Norway and the UK and other places as well as our own issues here internally in the United States. The result is we have de-conflicted the missions that existed with MMS for the last 30 years, ever since it was set up by Secretary Watt back in the beginning of the 1980s.

The missions we saw were first a mission of revenue collection on behalf of the American taxpayers, and that part of the agency was completely split off, and those are the revenue collectors. They have nothing to do with the permitting or with the environmental reviews. They simply are the money collectors. That mission is deconflicted from the other missions of the Bureau of Ocean Energy Management, Regulation and Enforcement.

The second de-conflicting part of this effort has been to develop a program within the Bureau of Ocean Energy Management, Regulation and Enforcement that actually does the management of the leasing programs, and will go into the Bureau of Ocean Energy Management.

The other part of the mission will be to make sure we have the safety and environmental enforcement. These are essentially the cops on the beat to make sure there is compliance with regulations and with the requirements of federal law.

We are in the midst of the implementation of that reorganization, and part of it has been completed. We hope to be able to complete the rest of it in this fiscal year.

I would like Deputy Secretary Hayes to respond as well.

ROYALTIES

Mr. HAYES. Thank you. I will be very quick. On the royalties side, we are finishing a very substantial study to make sure our royalty rates onshore are competitive and fit with what private parties are getting as well. We are proposing a rule in the near future to consider raising the onshore royalty rates from the 12 percent that goes back to 1920, substantially lower than the offshore. That is in the offing, and we will have a public process in the near future on that.

EMPLOYEE RETENTION

The final point speaks to Chairman Simpson's point that it is hard to keep folks on board because of the salary issues, these are serious issues. We were supporting the legislation proposed last year that would provide more flexibility in our hiring, and of course, there is a budgetary aspect of this. Because of the thin funding traditionally of MMS, we have not been able to be as aggressive as we would like to with hiring. Director Bromwich is very much involved in recruiting good folks, but we will need your help in order to get those folks onboard and keep them.

PERMITTING

Mr. SIMPSON. Mr. Secretary, could you tell me what is the outlook for issuing permits in the future, the deep water permits and others in the Gulf? There has been criticism that there has only been one permit issued since the moratorium. That was last week, I guess. What is the outlook in the near-term future?

Secretary SALAZAR. I think the outlook is good. In the shallow water part of the Gulf of Mexico we have issued 37 permits for those rigs so they can move forward to drilling. In the deep water we moved forward with the first one last week and expect there will be others that will be forthcoming, and they will be the templates for how we issue oil and gas drilling permits in the deep water.

I think, Chairman Simpson, for you and the members of this committee, the last thing you would want us to do is to issue a permit that essentially creates another Macondo Well situation. In order for us to make sure that that does not happen, we needed to look at what the oil spill containment capabilities were within the oil and gas industry and the Gulf.

Deputy Secretary Hayes, Director Bromwich, and I on Friday a week ago, were in Houston where we spent a whole day with the Marine Well Containment Corporation, as well as with the Helix Containment Program, where they gave us a preview of what it is they have manufactured to deal with another Macondo Well oil spill, and those mechanisms are just coming onboard now. I applaud the industry for having moved forward with it, and based on those programs we expect to be able to issue additional permits in the deep water.

I will say this, we still have significant additional work to do. Industry has significant additional work to do so we can ensure the American people we do everything we humanly can do to prevent another Macondo Well Deepwater Horizon national crisis again.

Mr. SIMPSON. Thank you. Mr. Moran.

HOUSE RESOLUTION 1

Mr. MORAN. Mr. Secretary, by now you have had a chance to look over the full-year continuing resolution, referred to as H.R. 1, passed the House. It includes a dump truck load of anti-environmental riders. Never before have so many bad provisions been discussed in so little time. Literally in the early hours of the morning when sane people were sleeping, I trust you have a sufficient life that you were asleep, Mr. Secretary, instead of watching us debate

these things, but besides the objectionable environmental riders, H.R. 1 does real harm to essential Interior Department programs.

So can you please tell us about some of the cuts that this bill contains? For example, which are worse, the elimination of the Land and Water Conservation Fund or the elimination of State Wildlife Grants or many of the other reckless cuts?

Would you identify some of the cuts that are of greatest concern in H.R. 1 today, Mr. Secretary?

Secretary SALAZAR. Thank you, Ranking Member Moran. Let me just say, I think it is going in the wrong direction while the principle of trying to get Deficit Reduction is something which I think has bipartisan support. I think the cuts included in H.R. 1 as they affect the Department of Interior will be a part of what keeps our economy from moving forward.

Let me be specific. When you think about the hunting heritage of America, the 87 million Americans who hunt and fish and the money they spend in hunting and fishing, and the fact that the conservation programs we have in this country have been built on the backs of hunters and anglers of America for over 100 years to date. The $48 million cut that is proposed in the North American Wetlands Conservation Fund will essentially keep us from protecting 400,000 acres of wetlands.

To the duck hunters and to others who view the importance of these conservation lands as recreation but also to everybody who should view them as an important economic contributor to the Nation, I think that is one great example of a cut which is misplaced.

Mr. MORAN. Absolutely. The anti-environmental riders beyond the program cuts that you mentioned, we tried to restore that, we lost overwhelmingly, of course, but we tried to take money from the Diesel Emission Program, which the Administration does not seem to support next year, but we failed in that. But it seems that many of our dirtiest industries have stepped forward to undo decades of bipartisan pro-environmental progress.

Which parts of H.R. 1 do you think are the greatest problems for the Interior Department and our Nation's environmental and public health? Is there anything that stands out in that regard in terms of the environmental riders?

WILD LANDS

Secretary SALAZAR. Let me take the opportunity, Chairman Moran, maybe to answer a question which I know the chairman and others have asked, and it has to do with respect to wild lands and the concerns I have heard from some members of Congress.

The fact of the matter is how we take care of our public lands is a very important responsibility which we at the Department of Interior have and which this Congress has. The Wild Lands Order which I issued in December is simply an effort to, one, honor what the law requires of us. The courts have said we have to do this in the BLM, and we have not been doing it. To create an inventory of these wild lands, and in addition to that, to make sure that we are doing it with the kind of public outreach that is required in the process of putting together these plans around the country, so there will be significant outreach to the governors and to affected communities before anything is put into place.

It does not at all infringe on the authority of the Congress. We recognize and I submit to all of you here it is only the Congress that can designate wilderness areas, and indeed, even in this Congress I have already seen legislation introduced by both Republicans and Democrats to designate certain areas as wilderness.

Our approach on the Wild Lands policy has been to try to get it from the bottom up. What it is communities want us to do with these places that are special and should, in fact, be protected. I think there is good bipartisan support for that concept. You know, I believe the Wild Lands Order amendment in the CR gets in the way of executing that policy and the law.

Mr. MORAN. Mr. Chairman, I just have one other question for this round, if you do not mind.

AMERICA'S GREAT OUTDOORS

With regard to America's Great Outdoors, you have talked about a substantial funding increase for the national parks, stateside park and recreation grants. You have got a pretty significant increase to a total of $200 million and 60 percent of it is going to be competitive.

Some of my good friends on the other side have said that we should not be buying anymore land when we cannot afford to take care of what we have. That is the response we are going to get.

But we are not really talking about buying new national parks and wildlife refuges, are we? Does not the Land Acquisition Program purchase in-holdings which can increase management efficiency and protect sensitive areas of high interest to the public? Would you just address that bit within the context of the Great Outdoors Program, Mr. Secretary?

Secretary SALAZAR. We will, Congressman Moran, move forward with land acquisition that I think is best exemplified by what the ranching community did in the Flint Hills of Kansas where I, along with former Senator Brownback and the Kansas Cattlemen's Association and Livestock Growers and the Farm Bureau inaugurated a national conservation area of 1.1 million acres by having the ranchers themselves preserve these ranches in working order so they can pass it onto their fifth and sixth generations and preserve the last of the remaining tall grass prairie habitat in the United States of America.

It is a good thing for conservation and for hunters and for anglers. It is also a good thing for the ranchers who care so much about the preservation of their heritage. That is the approach at the heart of these investments from America's Great Outdoors.

IN-HOLDINGS

With respect to in-holdings, there are crown jewels in our National Wildlife Refuge System, as well as the National Park System, which we need to make sure we are protecting. Part of what is in this budget is the preservation of the Grand Teton National Park in dealing with the in-holdings within Grand Teton. I do not think that Americans would want to see those in-holdings essentially become the trophy homes of people, because I think it is inherent in our concept of our national park systems that those national parks belong to the people of America for their enjoyment.

Mr. MORAN. Very good. Thanks very much, Mr. Secretary. Thank you, Mr. Chairman.

Mr. SIMPSON. Mr. Rogers.

STREAM PROTECTION ZONE RULE

Mr. ROGERS. Mr. Secretary, thank you for being here. Let me talk to you a bit about the Stream Protection Zone Rule at OSM. In December, '08, OSM issued a clarification of the stream buffer zone rule after a 5-year process that included 40,000 public comments, two proposed rules, and 5,000 pages of environmental analysis from five different agencies.

That final rule in '08 provides coal operators with greater leeway with the 100-foot buffer provision if compliance is deemed impossible, but it requires mining companies to minimize the amount of debris they dump outside the mined area and to minimize the footprint of the disposal area.

That clarified and codified surface mounting practices that had been in effect over 30 years. Now, despite finalizing that rule in just '08, after all of that work, OSM is proposing to amend the rule already, which by its own admission is much broader in scope than the 2008 stream buffer zone rule. This proposed rule would result in significant changes to 15 major elements of its coal-mining regulatory program, representing the largest rewrite of surface mounting regulations in the past 30 years.

And according to the Department's own Environmental Impact Statement, which was inadvertently leaked, this proposed regulation could eliminate more than 29,000 coalmining and related jobs and wipe out a significant amount of coal production, more than 20 percent of surface mining in the east and up to 50 percent of underground mining nationwide.

What is your justification for such a significant rewrite of existing regulations when your own economic analysis indicates it will eliminate thousands of high-wage American jobs and jeopardize our domestic energy security?

Secretary SALAZAR. Thank you, Chairman Rogers. Let me first say the rule that had been in place until 2008 had been in place since President Reagan was President, and the Department of Interior had put together a rule from OSM that essentially governed these kinds of activities.

In our view the rule which was published in the last days of the Bush Administration essentially repealed what had been a good practice that had been in place since the days of Ronald Reagan being President of the United States. We have engaged a public process to do a rewrite of a stream protection rule. I will ask the Deputy Secretary to comment on where we are on that process, if I may.

Mr. HAYES. Thank you, Mr. Congressman. As you know, the final rule that came out the end of the prior Administration was challenged in court. There was a substantial legal challenge. We were not sure we could defend the rule based on the challenge. We thought the prudent thing to do would be to address the issues raised in the challenge through a public process, and we have started a new rulemaking. We have yet to come out with a proposed rule.

With regard to the Environmental Impact Statement you referenced, that was not a Department product. We had a contractor on board who did a draft, an early draft of an economic analysis that we disagreed with. It was leaked. It is not our work. We are looking at completely revamping it. We have no intention of going forward with a rule that will not be appropriate. We are looking forward to coming out with a reasonable rule with sound economics, and we will look forward to working with you as we proceed through the public process.

Mr. ROGERS. Well, there are thousands of jobs on the line, not to mention the supply of the Nation's coal energy, which I remind you produces 52 percent of America's electricity. So this is no insignificant thing we are talking about, and I am puzzled that you would take this effort after we had spent so much money and time and effort on addressing this issue in just '08. This is not a political thing. This is important to the Nation's wellbeing, and so I am puzzled.

Now, will this new regulation if it is enacted comply with the President's executive order to account for the accumulated costs of regulations?

Secretary SALAZAR. It will comply with that order.

Mr. ROGERS. And what will be the estimated cost of putting an impact statement in place?

Secretary SALAZAR. Deputy Secretary Hayes, do you have that number?

Mr. HAYES. No, sir. We are doing the economic analysis now. We thought that the economic analysis done by this contractor was inadequate. As soon as we have that information, we will share it with you, Congressman.

Mr. ROGERS. Who was the company that you are referring to?

Mr. HAYES. I do not recall the name of the company offhand. I would be happy to provide it to you. We were actually so unhappy with their work that we issued a demand that they provide us with a new version of the work, and if it is not adequate, our plan is to terminate them as a contractor.

Mr. ROGERS. Well, was that done before or after the '08 rule was put in place?

Mr. HAYES. That is part of the current rulemaking. We want to make sure we have sound economics. The numbers that you provided are not numbers that we agree with. We do not want to have that kind of impact. We do not think the proposal would, in fact, have that kind of impact.

Mr. ROGERS. So the company you are referring to did their work after the '08 rule was in place?

Mr. HAYES. Yes. It is part of the current rulemaking because the prior rulemaking, as I mentioned, was challenged in court, and we did not feel it could be defended.

Mr. ROGERS. And was this company involved in the '08 rule?

Mr. HAYES. I do not believe so.

Mr. ROGERS. So after the '08 rule was put in place after 5 years of work, you then hired a company to look at it.

Mr. HAYES. No.

Mr. ROGERS. What did you do?

Mr. HAYES. We hired a company to help us do the economic evaluation associated with the new rulemaking we were proceeding with.

Mr. ROGERS. And you did not like what they came back and told you.

Mr. HAYES. No. The work product they provided that was leaked was not adequate from our point of view. It was not a good work product.

Mr. ROGERS. So you were not satisfied.

Mr. HAYES. That is correct.

Mr. ROGERS. You did not like what they told you.

Mr. HAYES. We did not believe it was a good work product, and we challenged them. It is a normal back and forth in terms of a contract, Congressman. We challenged them to improve it. We are not going to go public with an economic analysis that is not sound.

Mr. ROGERS. So is this company still engaged?

Mr. HAYES. As of a few days ago I believe so. Yes.

Mr. ROGERS. You should know one way or the other.

Mr. HAYES. Well, we are watching it very carefully, but we were unhappy with their work product.

Mr. ROGERS. Well, are they still involved?

Mr. HAYES. As far as I know they are. We just asked them to provide us with a better work product, and I have not seen the evaluation yet.

Mr. ROGERS. You told them what you wanted to hear.

Mr. HAYES. No. To the contrary. We want a good work product.

Secretary SALAZAR. If I may, Chairman Rogers, I think that the important thing to note are first the policy and where we are. There are two important policies that I think members of this committee can agree on.

One is that we need to protect the environment as coal mining continues, which means the protection of streams. Secondly, we need to continue to support the coal industry with rules that are reasonable.

We will try to draft a rule that is reasonable, which is now still in process. There is no final rule that has been put on the table. The President's energy package, which is something we try to implement, has coal as being a part of that energy package. We recognize the amount of coal that powers our economy today. It is not our desire here to put the coal industry out of business.

We want to come up with a rule that achieves the policy objective here of protecting the streams. The rule which had been in place since President Reagan was President until 2008 is part of what we are considering along with other options as we go forward with this rulemaking process.

REPROGRAMMING FROM STATE REGULATORY GRANTS

Mr. ROGERS. Well, is any of the monies that is being spent on this procedure, is any of that money reprogrammed from state regulatory grants?

Secretary SALAZAR. You know, I am not sure of that answer, Chairman Rogers. We can get back to you on where exactly the money has come from. We will get back to you on that. We do not know the answer.

Mr. ROGERS. Well, if it is reprogrammed from state regulatory grants, would you also supply us your authority with which to do that? Is that agreeable?

Secretary SALAZAR. Chairman Rogers, we will get back to you on that. I do not know where the funding stream has come from for the contract that you were speaking about with Deputy Secretary Hayes. I will get that information to you.

Mr. ROGERS. Would you also furnish to the committee the report of that company with which you disagree?

Secretary SALAZAR. Yes.

Mr. ROGERS. Now, has OSM worked with states to rectify their concerns over this procedure?

Secretary SALAZAR. The answer to that is Joe Pizarchik, the Director of the Office of Surface Mining, has had multiple meetings with state officials, including officials in Kentucky, and he continues to work on the rule, and as the Deputy Secretary said, the rule is still in process. There is no final rule.

Mr. ROGERS. And finally what kind of time table do you see on that proposed rule?

Secretary SALAZAR. David.

Mr. HAYES. We are several months away yet, Congressman. We are looking for a draft rule perhaps in the summer to fall, so we are proceeding. There is a court-supervised schedule, because this was instigated through litigation. We are working with the court to make sure that we have adequate time so this rulemaking will be solid.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. Mr. Dicks.

COBELL

Mr. DICKS. I was very pleased that we were able to get a deal on the Cobell case. Could you tell us where we are on that? What has happened?

Secretary SALAZAR. First of all, thank you for your leadership and the leadership of Congressman Cole and so many people on this committee who helped get that through. David Hayes, who led the negotiations on it, has been overseeing what is happening with Cobell implementation. I would like him to comment on that.

Mr. HAYES. Thank you, Mr. Secretary, and Congressman Dicks. We are in the phase of the case where the court has notified all of the class members as to whether they want to opt into the class or not. The court will have a fairness hearing likely mid-year at which time we hope that the court will approve the final settlement.

Once approved, again, hopefully mid-year, we will move out with the implementation. There are two streams of implementation, of course. There are the payments out to the class members. That will be administered by essentially a bank that has been engaged by the plaintiffs under court supervision and then there is the Land Consolidation Program, which is a $1.9 billion program that we will administer to help buy back fractionated interest of Indian lands.

We are not able to begin the public implementation of the effort until after the final settlement, which we hope will occur in mid-

year. We are gearing up internally so as soon as the court approves the settlement, we will be able to go out to Indian Country, begin our government-to-government consultations, and move out with the Land Consolidation Program without delay.

Mr. DICKS. Is there any indication that the court who was a big advocate——

Mr. HAYES. Right.

Mr. DICKS. Is there any indication that there would be any problem in the court?

Mr. HAYES. We do not believe so, Congressman. We are expecting the class action to be approved and the full settlement to be approved.

Mr. COLE. Would the gentleman yield for a related question?

Mr. DICKS. Yes.

Mr. COLE. Thank you. There is some discussion in the House about legislation to cap attorney fees. As I understand it, the court really would ultimately make the determination on attorneys' fees. We set an upper limit, but we gave the court some latitude.

I would like your opinion as to whether it would be wise for us to get back into this at the attorney fee level. I have serious questions that this is a very good idea.

Mr. HAYES. Well, I agree with you, Congressman. The attorneys' fees issue was part of the settlement. We did have an agreement with the plaintiffs to cap those fees. The plaintiffs' attorneys have nonetheless asked the court for some approval to go beyond that cap. That is a live issue right now that is being briefed in front of Judge Hogan, and the Judge will apply ruling law. We expect the decision will come down relatively soon.

I think it is in the hands of the court where it should be with the background of the back and forth that I think is well understood.

Mr. COLE. I thank the gentleman.

DELISTING OF THE NORTHERN ROCKIES WOLVES

Mr. DICKS. Before I forget it I want to say how much we miss Tom Strickland and appreciate his good work, and he did a very good job and was very, you know, very responsive and so in his memory I am going to ask this next question about the delisting of the Northern Rockies wolves. This is an issue that affects Idaho, Washington, Montana, Wyoming, and Minnesota, too. Of course.

But this particular decision, can you give us an update on kind of, you know, where you are on this, and what you think the best outcome is? Now, I understand this is very sensitive in Idaho, very sensitive in Montana and in Wyoming, but Idaho and Wyoming have moved further ahead in terms of their plans to protect the wolves. Wyoming still is resisting. Give us an update on this.

Secretary SALAZAR. Thank you very much, Chairman Dicks, and let me just say that I appreciate the work and the leadership of Chairman Simpson and the committee in coming up with language that would help us get beyond the issue, so let me talk just a little bit about wolves.

First on Tom Strickland. Tom is a soldier, came and did his job for 2 years as he had committed, did an extraordinary job, and we have a great team at Interior that will continue to carry on the

great work we do on behalf of the country. We miss him, but he has finished his mission and I think he is getting ready for his second mission.

On the wolf issue, it has been our view that the Northern Rocky Mountain wolf population has been recovered, and one of the requirements in order to de-list a species is we have recovery plans approved by the Fish and Wildlife Service that would comply with the law.

In the case of Idaho and Montana, they have those kinds of plans in place. We attempted to issue a rule allowing for the de-listing of the wolf in those two states and allow the hunt to move forward as a management mechanism for the wolf populations in those states.

We believed then, as we continue to believe today, the Wyoming recovery program needs some revision in order for it to come into compliance. The new governor of Wyoming, Governor Mead, has been working with the Fish and Wildlife Service, and we are cautiously optimistic we will also be able to develop a program that is legally sufficient within the State of Wyoming. At that point we will be able to say the Endangered Species Act essentially has achieved a victory here, and the wolf in the Rocky Mountain range has been prevented from going into extinction. The states have a management program in place that will ensure that the wolf will not become extinct, and that is what we have been working on.

I think through a combination of the legislative efforts going on here, and we will continue to see whether or not there are other administrative approaches we could take. We are hopeful that we will be able to get to a resolution on the issue.

Mrs. LUMMIS. Will the gentleman yield briefly?

Mr. DICKS. Yes, I yield.

Mrs. LUMMIS. The U.S. Fish and Wildlife Service did approve Wyoming's wolf management plan based on its sound science, it was subsequently a court, based not on that science but other matters not included in the legal criteria, that ruled the Wyoming plan was inadequate. Now that has been overturned by a federal district court in Wyoming.

Thanks, Mr. Chairman.

Secretary SALAZAR. If I may just to complete the colloquy here, whenever you get involved in any of these issues, you are bound to get yourself in litigation. I do not know how many times the Department of Interior has been sued over these issues, and you have conflicting opinions relative to the legal adequacy of the wolf recovery plan, including the one in Wyoming.

But we are practical people, as I said. Both Tom Strickland and David Hayes, I see them as problem fixers, and that is what we have been trying to do. We have agreement we have a recovered wolf population in the Rocky Mountain region. We just need to figure out a way of threading the needle to get to the result that will withstand those kinds of challenges within the court system, and that is what we are trying to do.

Mr. SIMPSON. Mr. Lewis.

OPENING COMMENTS BY CONGRESSMAN LEWIS

Mr. LEWIS. Thank you, Mr. Chairman. Welcome, Mr. Secretary. It is a pleasure to be here with you.

I have had the privilege of working with David Hayes for a lot of years, a very competent professional, but I have not had the privilege of working with the other Haze in our audience, but her reputation goes before her as a very talented and competent and serious public official. We do appreciate your work very much.

Mr. Secretary, last week as has been indicated, the subcommittee met to talk with both GAO and the Office of Inspector General to discuss many of the matters and the challenges faced by the Interior Department. My line of questioning today will very much flow around those circumstances.

STOVE PIPING

In our hearing last week I specifically described a parallel challenge that Norm Dicks and I faced together over a number of years in a Defense Subcommittee, where for many, many, many a year we struggled to get the, believe it or not, the Navy and the Marine Corps to be able to communicate with each other. Just could not seem to get their software to match each other, and it is a process that is maybe an extreme illustration of the propensity for bureaucracies to build these smokestacks or walls between each other in order to protect their own bailiwick.

And, indeed, I believe some of those challenges faced by your Department that came to our attention last week involved questions like resources protection, financial management, and IT infrastructure, the problems that one has there could be greatly aided or improved or overcome by way of adopting one of the systems around that allow people to communicate with each other.

David Hayes has had some exposure to a guy in my territory who develops GIS systems, probably has the most significant development of such systems anywhere in the world. He is a fellow who has been immensely successful across the government in terms of agencies using these systems, including the Department of Interior.

But within your subcommittee-agencies they use these systems, many of them overlap, parallel, and otherwise and yet a fellow who is not worried about profits it would seem since he and his wife are going to leave all stuff to the environment eventually, he literally would urge you to develop an internal mechanism to coordinate between so that these sub-agencies of Interior are talking to each other.

And I do not know whether you have examined that kind of prospect, but it is very clear that between your agencies talking to each other is going to be kind of basic making some of the progress that I think we should be making.

I would be interested in your comment regarding that.

Secretary SALAZAR. Congressman Lewis, I fully agree with you. I think you are right in terms of the analogy you made to the Department of Defense initiatives that you and Congressman Dicks have worked on in the past relative to Interior. Where you have had historically each one of the agencies upgrading in a silo, and one of the things that we have tried to do over the last 2 years is

to try to break down those silos, and as you well know it is a very difficult thing to do.

If you take, for example, one of the issues that was raised in the GAO report, information technology. When I became Secretary of Interior, frankly, it was impossible to use e-mail because of the fact that we had the overhang of the Cobell case and the protections that had been put into place. The technology at the Department of Interior was a very old technology, notwithstanding the fact that as I recall there was a billion dollars plus that was being invested in technology across different bureaus, but there was no coordination among the different silos.

The Deputy Secretary working closely with the Assistant Secretary for Policy, Management and Budget has taken on the information technology reform effort so the Department could operate more as a department and communicate across bureaus. In fact, what we have done is we have also said as we get better on information technology, we also have to find ways of doing it more efficiently.

One of the significant reductions in dollars is to information technology, knowing that we are trying to cut down the silos of the Department and believe we can do a much better job than has been done in the past.

WATER

Mr. LEWIS. Thank you, Mr. Secretary. When I first got to know Deputy Secretary Hayes, he was wallowing around in the waters of Colorado, and as you know in the southland and the west we particularly are concerned about water issues and problems.

I cannot say that Secretary Hayes has done all that I might want to see him do or accomplish relative to our problems along the delta, but I will leave that to others to discuss perhaps today, because I want to raise a parallel challenge that is a very, very real challenge.

One of the great successes we have had over the years in my judgment in the arena of flood control and water conservation has to do with the Santa Ana River Project, controlling the flooding impact along the Santa Ana River that impacts many, many a community and eventually it affects them, to the ocean. The very peak of that project is an operation known as the Seven Oaks Dam. Seven Oaks Dam initially was a major flood control effort that would be the beginning point of controlling flooding and damage and otherwise along the river line.

We altered that Seven Oaks Dam project to the tune of several hundreds of millions of dollars to also have the project, Seven Oaks Dam, be one of conservation, providing significant conservation, and indeed, as a result of our recent flooding out there, there is almost a Lake Gregory behind the Seven Oaks Dam, kind of sitting there with much silt our people would suggest.

SANTA ANA SUCKER

It is my concern that as we have dealt with the problems along the delta, that the Santa Ana sucker could have similar impacts in the Santa Ana River basin. A species about to be declared in a fashion that could have huge economic impacts within all of south-

ern California. We were talking about a study earlier that we were very concerned about making sure was carefully evaluated because it might be full of some holes. Some were suggesting even that it might not tell you what you want to hear.

Well, the Santa Ana sucker study that was done to say the least is far from a professional piece of work. I hope you would look at that study with the same kind of careful analysis as you suggest we are doing with the other. The sucker along the Santa Ana River could literally have dramatic impact upon development, opportunity for living, the entire environment along the Santa Ana.

And, indeed, it is not our business in the Interior or in the Federal Government at a regional level or local level to use, if you will, to use endangered species or potentially endangered species, as essentially a regional planning mechanism. And it is the concern of some that we are about to do that with that Santa Ana sucker, and thereby cut off not just the flood control flows or the impact of flood controls along the Santa Ana but cut off dramatically the potential for conservation, providing huge new water supply for a very important basin that could be very directly linked in the future to whether we have rationing or do not have rationing in southern California.

I do not think this President or this Secretary or otherwise want to be anywhere closely tied to the eventuality of water rationing in the southland. Indeed, it could destroy federal policy directions in a manner that perhaps would undermine even your wildest dreams relative to the Interior.

So with that I would be interested in comments about the Santa Ana sucker or otherwise.

Secretary SALAZAR. I will ask David to comment if he knows anything at all on the Santa Ana River issues. I frankly spend a lot of time working on these water issues in California, as many of you on this committee know, including Congressman Calvert. Much of that has been spent up in the San Francisco Bay Delta and the Sacramento and San Joaquin Rivers where we have done a lot in the last 2 years under the leadership of Deputy Secretary David Hayes and Mike Connor from the Bureau of Reclamation. I think without knowing anything at all frankly about the Santa Ana Sucker because this is the first time that someone has raised it with me, Congressman.

What I would say is it is important for us to be proactive and to get ahead of these issues so we avoid the kind of train wrecks we have seen in the San Francisco Bay Delta. We worked very closely with Governor Schwarzenegger and with the water users to try to move forward with a comprehensive plan on the San Francisco Bay Delta. We are doing that now with Governor Brown and his people and are hopeful we will be able to do something there that hopefully will deal with the issues for the long term.

Getting ahead of these issues is important, and let me have David comment because he works on these issues and he may know something more on the Santa Ana Sucker than I do.

Mr. HAYES. First I want to thank you for all your compliments sent my way. It is very energizing, and I really enjoyed working with you on the 4.4 plan and dealing with the issues on the Colo-

rado and have continued to enjoy working with you on the ongoing issues.

I am not familiar with the Santa Ana sucker issue, but you can be sure after this hearing we will be making some calls as soon as we get back.

Mr. LEWIS. I appreciate that. Mr. Chairman, if we could kind of fill our record with some of those issues. It could become one of the major items over time here. Thank you.

Mr. SIMPSON. Ms. McCollum. Congresswoman McCollum.

BUREAU OF INDIAN EDUCATION SCHOOLS

Ms. MCCOLLUM. Thank you, Mr. Chairman. Mr. Secretary, this Administration has taken great strides in rebuilding the trusted relationship with the 565 federally-recognized Tribal Nations, and the Administration with the Democratic caucus working together, we finally passed the Indian Healthcare Improvement Act, which will not be tied to reauthorization time and time again. Bipartisan, we passed the Tribal Law and Order Act, and I want to thank you for making tribal issues a priority and for your commitment to tribal sovereignty.

Now, since being elected to Congress, and even prior to Congress, I have worked with the Tribal Nations in Minnesota and have been aware of some of the pent-up needs that many Tribal Nations have. I could talk about healthcare facilities, but today I am going to focus on schools.

I want to talk to you specifically about the Bureau of Indian Education School Construction. This is an issue where we still have a long way to go, and I am interested in learning more about the backlog and what we can do as a committee bipartisan to help you put an end to this, what I am going to describe is a tragic situation.

I have visited schools across this country, but I am going to talk about two, one in Leech Lake, Minnesota, and one at the Pueblo Laguna, New Mexico. It should have been condemned. In fact, it is my understanding at one point, Pueblo Laguna, New Mexico, was condemned, but a coat of paint miraculously took it off the list.

These schools still tend to serve Native American children. Now, the Buy-O-Nay-Ge-Shig High School in Leech Lake is ranked as number 42 in the IBE's 50 worst schools list. Nearly 300 students go to the school. They have serious structural, mechanical, and electrical deficiencies, leaky roofs, poor lighting, sewer backups, mold, overcrowding. Well, I could go on and on. But bottom line is that they do pose an immediate life, health, and safety risk to students and faculty.

Now, I want to work with this Administration to become more focused on the success of Native American children. High school students' graduation rate for Native students hovers at 50 percent. We know that if we invest in educational needs, that we will ensure that we can increase that from 50, I believe working together, to 100. We do that by giving students a safe and appropriate place to learn, and these students know that their future is valued, and it is a priority not only for their parents, but for our country.

My question to you, Secretary Salazar, is how do we work together, because I know there is bipartisan support in this area, how do we work together with the Administration to fix this?

Where can we help you discover more urgency to address this? These schools either need to be renovated or replaced, and I would like to hear how a priority list for school construction is being determined, how it will be updated, and how much funding it will take to fix up the necessary backlog.

I want to point out the Laguna, which had suffered an earthquake that I was at, they have seismographic units taped to the wall where the cracks are. I was in one part of the building, which is totally condemned, and another part of the building is being used.

Now, I am not an engineer, but commonsense would tell you that that is not a good environment for children. I know this is something you want to work on. I am asking you to tell all of us how we can work together to address this huge backlog of unmet needs for our Nation's school children of the first Americans.

Secretary SALAZAR. Thank you very much, Congresswoman McCollum, for your leadership on these issues. I think sometimes in our history as a country, in fact, very often in our history as a country we have left Native American issues to a very low priority. The consequence is we have a huge backlog of issues that we have been addressing in the Native American world.

Let me say first from the President's point of view and my point of view this is an issue of urgent priority, and we have done a number of things over the last several years to demonstrate our commitment to the Native American communities of our country. They include some of the things that you reviewed, but in addition I will say for a long time before I became Secretary of Interior we did not have even the official positions filled within the Assistant Secretary of Indian Affairs and the related bureaus.

I am proud to say at this time we have a Director of the Bureau of Indian Education in place who is serving with the great leadership of Assistant Secretary Larry Echo Hawk. The rest of the entire team are able to now, for the first time, address many of the issues which are important for us to address, and they include economic development issues, energy issues on reservations, implementing the Cobell litigation, and the trust reform issues we are working on.

With respect to education, we have put in a significant investment into the renovation of many of the schools. We recognize there are more than 40,000 Native Americans who attend these BIE schools all around the country, but even as we have made those investments with the help of the Congress over the last 2 years, we recognize that there is still a long way to go.

What we are doing is engaging in a consultation process with the Tribes to come up with a list of priority needs. Knowing there is a significant backlog and significant amount of money it would take to provide the kinds of upgrades to be the kinds of schools where any American should be happy to send their children to school. Unfortunately, that is not the case with Indian Country right now.

Ms. MCCOLLUM. Mr. Secretary, are you in a position, because I know you have been working very, very hard on this issue, but are you in a position to give the chairman of the committee, the ranking member of the committee, not only a list of schools but, ten-

tatively, how much it would cost to just get up to standards? Some of these schools are going to have to be replaced so that when we are looking at the budget, Mr. Chairman, we are making cuts, we know whether or not we are adding to the backlog. We will not be able to solve the entire problem, but at least start moving in the right direction.

Thank you, Secretary Salazar. Thank you for your work all of you.

Secretary SALAZAR. We would be delighted to provide you with that list.

Mr. SIMPSON. Mr. Calvert.

ROYALTIES

Mr. CALVERT. Thank you, Mr. Chairman. Mr. Secretary, thank you for coming today. I have just a quick comment before I get to questions. We have had these issues about oil and gas royalties. We had some testimony as you heard about recently, but it seems to me it is not so much the royalty fee, it is the collection that is the problem.

In the private sector, you are going to make sure you collect every nickel and every dime in royalty. You are going to understand exactly what that lease states, the transparency of that lease, and get that information.

So as a comment I wonder if you might look into a pilot program to use private collection contractors to collect those royalties and compare that success rate with your government collections along with your associated costs and see who does better. And if, in fact, private collections are a better way to go, and if you need legislative authority to do that, I do not know if you do or you do not, you know, let the chairman know. I am sure we can work that out, but it would seem to me based upon that testimony we had you had up to $50 billion left on the table. That is serious money. So we should not let that happen.

GAS PRICES

So just as part of a comment. As you know, the price of gasoline today in southern California is $3.88 a gallon. In some areas it exceeds $4 a gallon. This is a short-term problem and a long-term problem. In California we have over 12 percent unemployment. I am hoping that we are getting through this recession, but something like this, if it goes for any period of time, will tank any recovery that may be going on.

I am hopeful you have a short-term plan to modify these gasoline prices. Supply is the long-term issue. Scarcity is the problem. And a long-term plan to make sure that not every Gaddafi in the world comes along and brings this country to our knees, which it seems to be right now.

So do you have a short-term plan and a long-term strategy to lower these energy costs? Especially in the short term. I think most folks back home want to hear what we are going to do to try to get these gasoline prices down.

Secretary SALAZAR. Congressman Calvert, let me just say this is an issue of high priority which we are watching. I think with respect to the latter part of your comment I think this is an oppor-

tunity where we might be able to work in a bipartisan fashion to put together a long-term framework for the energy independence of the United States. We should not be in the position where Gaddafi and Libya essentially are able to create these kinds of disruptions.

I am hopeful that this is one area where we can be able to find some common ground where we have a robust energy portfolio that takes advantage of some of the energy opportunities we have here in this country, including oil and natural gas and the renewable energy portfolios we have spoken about.

I hope we have that kind of an opportunity for collaboration. What we have done as I said at the beginning of the hearing is we have, in my view, what has been a robust oil and gas program. The critics sometimes say we do not, but I think when you look at the statistics and the numbers over the last several years, we have a program and a direction from the President that goes through the Secretary of Interior that says we look at oil and gas as a very important part of our economy. We have taken significant steps to make sure we are doing it in the right places and with the right kind of safety measures in place. That is where we need to work with the Congress and with this committee to make sure the funding we requested, to make sure activities in the Gulf of Mexico and elsewhere are able to continue are ones that can continue.

Mr. CALVERT. Thank you, and you might take a look at that royalty problem.

WATER

Getting back to water, California has a population of over 40 million people. We have got a lot of demands on our water. As you know, water has been a big issue and continues to be a big issue even though we have had considerable rainfall and snow pack this year. No state has experienced a greater unemployment rate, and within any state has seen worse economic activity than the Central Valley in the State of California. Some areas are experiencing up to 50 percent unemployment.

There is a lot of hope out there in the Central Valley. I guess, Secretary Hayes, you are going to make a decision here to increase those allocations again. Is there any word on what you are going to do as far as increasing water supply in the Central Valley? Or is that an answer for the Secretary.

Secretary SALAZAR. I am going to have David comment on it because he has spent a huge amount of his time as Deputy Secretary attempting to resolve the issues both for the short term and the long term. I will say we have an action orientation to this, Congressman Calvert, and even the forecasts that we have made, unlike the last 20 years, knowing it is so important for farmers to be able to know what their water supply looks like in the months of January and February we are providing much more timely projections so farmers can then make their plans as they go to the bank and decide what they are going to plant or not.

We have made a number of those changes as well as major investments in infrastructure. In terms of this year's allocations I am going to have the Deputy Secretary speak to those.

Mr. HAYES. Yes, and per the Secretary's comment we are now doing our projections and our allocations on an every-2-week basis

instead of every month. The last projection had most water users at 100 percent. South of the Delta was at 50 percent, I believe.

There are some constraints such as the San Luis Reservoir was full. It could not take more water. We are approaching the period now where there are some restrictions on some pumping because of the endangered species, although I am happy to report, as you know, that a couple of weeks ago all the parties, the water users, the conservation organizations, the state and federal regulators, reached an agreement to modify the current operational approach and to settle the litigation for this year to free up some additional water for delivery south of the delta.

Of course, we are pleased, we are all fortunate with Mother Nature helping out so much in California this year. We will continue to monitor it, Congressman, and work with you and your office. There are structural problems as you well know in getting water south of the delta, and the good news here is all the parties are working very hard toward a long-term solution through the Bay-Delta Conservation Planning Effort, and Governor Brown and his new team are really engaged. We are excited to be working with them. We are working very closely with all the water users and the conservation interests, and that holds the hope of actually solving this problem long term, which we are all so anxious to do.

MULTI-SPECIES HABITAT CONSERVATION PLANS

Mr. CALVERT. Well, I appreciate that. Do I have 1 minute left, Mr. Chairman? Just another comment on the Multi-Species Habitat Conservation Plans. As you know, there are a few of them around the country, the largest is in my area of Southern California. And there is a comment that we do not see a lot of people in the Department of Interior that are trained on multi-species habitat conservation. They tend to look at these plans species by species, and they need to be a little more proactive in that. I do not know if there is a training program for these employees to deal with that or field managers that are experienced with Multi-Species Habitat Conservation Plans, but, a lot of time and effort went into creating them.

This was Secretary Babbitt's thing, to do, and we have put a lot of time and effort to put them together in southern California, and we need to get some more positive interaction with the Department of Interior. That is just a comment, so I would hope you can take a look at that constructively.

Thank you, Mr. Chairman.

Mr. SIMPSON. Before we go on with Mr. Hinchey I am going to take a 5-minute break and give people a chance to stand up, and then we will come back and hear about fracturing.

[Recess.]

Mr. SIMPSON. We will be back in order. Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman. This may not work. Oh yeah, it is working, all right. Secretary Salazar and Secretary Hayes, thank you very much and it is a pleasure to be with you. And it is a great pleasure to listen to you. I deeply appreciate everything that you are doing and I commend you for the way in which you have operated this department.

Over the last year we have seen very dramatic and very important reforms that will strengthen, preserve, and protect the country's amazing array of natural resources as well as improve out economy. The reorganization of that en masse as we know and the Wild Lands Policy so much more welcome developments. For all of these things we must thank you very much and hopefully you will be able to continue to do the kinds of positive things that you have been doing over the last year or so.

HYDRAULIC FRACTURING

I wanted to ask a question about the hydraulic fracturing operation which is getting a lot of interesting attention now. The natural gas drilling has gotten a lot of attention; for example, in the New York Times over the last week or so some very interesting stories that they have produced. And I have been in touch with your department about this topic on a number of occasions over the past few years.

Specifically I believe that the Department should require the drilling companies publicly disclose what chemicals, what materials they are injecting into the ground during this hydraulic fracturing process while still on public lands. I think it is just common sense, something that really should be done. Some states like Wyoming, very exemplary have strong public disclosure requirements, but a lot of other states do not. When it comes to public lands, the department has the authority to require disclosure.

In late November the Department announced that it was developing a policy to address disclosure of hydraulic fracturing chemicals for these leases on public lands. I wonder if you could speak to us and talk a little bit about the status of the initiative and what we can expect to see some form of a proposal in the context of this issue.

Secretary SALAZAR. Thank you very much, Congressman Hinchey, for raising this issue or putting it on the radar screen of this committee and this Congress. First, I think the future of natural gas is a very positive one. I think this is one area where perhaps as the Congress looks at the future of energy programs for the country this is an area where there may be some bipartisan support to craft energy legislation that does get us energy independence given the abundance of natural gas we have in the country at a very fractionated cost of what we are having to pay for a barrel of oil today.

If we could figure out a way to use more of the natural gas we domestically produce, I think it is one of those great opportunities to help us power the economy of the United States as well as address the imperatives of energy independence. I am very hopeful we can have a robust natural gas feature and as the President has often said, natural gas is one of those key components of the energy portfolio needed for America.

I will also say from my point of view I think one of the areas that can inhibit a robust natural gas program in the country is if we see the kind of backlash that we are seeing in places like New York and other states where citizens and certain groups have become very concerned about the injection of pollutants into the underground where they don't know what is being injected into the un-

derground. I think in this committee, where the members of this committee are so familiar with the importance of preventing pollution because it is a lot less costly to prevent it than have to address it after it occurs.

It seems to me this is an area we need to explore together. At the end of the day, disclosure is something that is important and something that not only states like Wyoming, but very responsible companies in the oil and gas industry have been advocates of disclosure of what is being injected into the underground. We will move forward with a policy that addresses hydraulic fracturing, but we are doing it in a way where we are reaching out to companies who have been participating in forums that we have held on disclosure. We hope in the next several months to be able to have a policy we can move forward with. I am hopeful the industry will be able to be supportive of the policy for disclosure because I think it is the Achilles heel that could essentially kill the future of natural gas as a significant part of our energy portfolio for the future.

Mr. HINCHEY. I thank you very much for what you are saying and I agree with you completely. The energy situation that we are experiencing now is something that is very challenging; the price of oil going up so dramatically and if we could utilize this very significant organization of energy in our country as natural gas elements we could be a lot stronger on this whole issue. But we have to do it in a way that is not going to provide us with serious problems that are going to then occur as a result of the drilling. So I deeply appreciate your insight into this and the work that you are doing because this is something that really needs to be done.

A lot of damage is being done in a lot of places across the country. And a lot of the damage that is being done is only a minimal exposure of the damage now. Over time it is going to be a lot more serious in this reckless way in which materials are being injected without any honest organization and revealment of what these materials are. So thanks, thanks very much. I appreciate this and this is something that we are going to have to continue to work on very closely and effectively.

WILD LANDS

Let me ask you a question about Wild Lands Policy, if I may. Last week the House Natural Resources Committee held a hearing on the Department's recently announced Wild Lands Policy which incidentally was the subject of a rider in H.R. 1. There has been a lot of discussions about how this policy was developed and whether the Interior Department has the authority under the Federal Land Policy Management Act to take some steps to preserve lands with wilderness characteristics.

The Wild Lands Policy was developed to deal with the Norton Levitt Settlement which prohibited BLM from carrying out one of its core missions: identifying and administratively protecting public lands with wilderness characteristics. This legacy policy of the Bush Administration exposed some of our Nation's most sensitive wild places to development activities that would have undoubtedly destroyed their special character. It needed to be reformed. So I wonder if you might be able to tell us, for example, can you compare for us the process that led to the Wild Lands Policy and how

the Department intends to implement its going forward—how it is going to do that? With the process that the Department undertook in 2003 when it developed and implemented the Norton Levitt Policy and its Utah Resource Management Plans and also in addition does not the definition of multiple use set out at the Federal Land Policy and Management Act specifically contemplate that BLM will not uniformly permit all uses on all places on public lands, meaning that in some areas oil and gas development will be prioritized when in other places wilderness will be prioritized?

Secretary SALAZAR. Thank you, Congressman Hinchey. You know it is an important question. Obviously it has drawn a lot of sparks from many different places, especially BLM states in the west. Let me say the following: first, we believe that conservation for the 243 million acres or so that BLM manages is one of the multiple purposes for which we should manage those lands. When the Congress passed the Federal Land Policy Management Act, it clearly stated that BLM would manage its lands for multiple purposes. From our point of view, that includes conservation and the management of lands with wilderness characteristics.

We believe and I believe, the issuance of a Secretarial Order was something I was required to do by the law as set forth in FLPMA and has had been set forth by circuit courts of appeal that had actually ruled on the question. Second, it is the right thing to do in terms of managing our public estate for multiple purposes, including more wilderness characteristics. I would make a few key points with regard to the policy, how we intend to go forward. First, it will be part of a BLM land use process and nothing will be done to designate these lands with wilderness characteristics without going through the process of receiving input from the states and affected local communities.

Secondly, the Secretarial Order, if you read the language specifically in the order, recognizes the need for the protection of existing rights. Lastly, to the last point you made, it is a multiple use governance set out in the Secretarial Order so it may be that you do have oil and gas moving forward in areas that are sensitive, if that is seen as what is required in terms of the multiple use management of the BLM. I would hope as we continue to have conversations with the members of Congress and others we can find that the commonsense conclusion here is the conservation purposes of the BLM lands is one of the important purposes for which we should be managing these lands.

OIL AND GAS ROYALTIES

Mr. HINCHEY. Yes, absolutely, I agree. I thank you very much for what you are talking about. I think it is very important. One more brief question on oil and gas royalties. At a hearing this subcommittee held just last week, it was a consensus that we need to make sure the taxpayers are getting the best return possible when it comes to our oil and gas leasing program. Given that this House is considering drastic cuts to vitally important domestic investments along with record high oil prices and profits, I think these oil and gas companies can afford high royalties without it impacting the price at the pump.

The 2012 budget assumes that Interior will administratively implement oil and gas royalty rate reforms including adjustments to the standard onshore royalty rate. So I wonder what kind of benefits to the taxpayer will these reforms provide? Do we know that yet and when can we expect to see this policy be enacted?

Secretary SALAZAR. Congressman Hinchey, our driving principle from day one has been to get a fair return to the American taxpayers. We have studies under way both with respect to the offshore as well as with respect to the onshore. Shortly before the Bush Administration left office, the offshore royalty rates were lifted to above 18 percent. On the onshore, the 12.5 percent royalty rate has been in place since the Mineral Leasing Act was passed in 1920. What we are looking at is to make a determination of what the appropriate royalty rate would be and the BLM and Interior have been working on a study so we can place the royalty rate at a position where we can ensure that the American taxpayer, the American citizen is getting a fair return on the property they own.

It is always interesting to me to take a look at the places like Texas and others which have a much higher royalty rate than we do for any of our federal public lands concerning oil and gas. How we exactly will come out with the reform is something we have under way as part of our study. It may be if you are drilling an oil and gas well into areas where you already know there is all the geophysical information that you know you are going to hit the riches of the oil and gas, it may be there you need to have a different kind of royalty rate than where you are just doing wells. But that is something we are looking at—how we move forward with a royalty structure which at the end of the day will ensure a fair return to the American taxpayer.

Mr. HINCHEY. Mr. Secretary, I thank you very, very much and I deeply appreciate everything that you have said to the questions asked of you. Thank you.

Mr. SIMPSON. Mr. Cole.

HYDRAULIC FRACTURING

Mr. COLE. Thank you very much, Mr. Chairman. Mr. Secretary, thank you very much for being here. I did not mean to get into hydraulic fracturing, but we would have no hearing complete without it. I just want to make this point because I actually have a series of other things just for the record. As you know this is not a new technology. It has been used for over 50 years and we have many states that regulate this very well. Certainly Oklahoma does, Wyoming does as you mentioned in your remarks. I would be very careful about a national regulatory system when this is already done pretty well at the state level. So I agree with your remarks that this extraordinary natural gas find that we have has an enormous potential for the country and frankly great potential for bipartisan cooperation because it does work across the board for many constituency concerns. But I also worry that you can overregulate it and we have a lot of fear mongering going on, particularly in places that are not used to oil and gas protection. And frankly it may well be a problem in a sense that they do not have strong state regulatory traditions and expertise built up over decades. So I would

just ask you look at this at the state level solution if you can. Let me——

Mr. MORAN. Would the gentleman yield to the Department?

Mr. COLE. I would certainly yield.

Mr. MORAN. Thank you, Mr. Cole. There may be another factor and again that whereas Wyoming, Oklahoma, and so on have regulated it well, they have a different geology as I understand it than some of the areas in Pennsylvania and New York that are now getting into hydraulic fracturing. That may be one other factor that you know the geologic strata that they are fracturing is different in these—the Atlantic states than it is in Oklahoma and Wyoming. I am just throwing that out as one consideration.

Mr. COLE. I am not sure that is actually the case. I think it has more to do with the timing of the oil and gas industry and when it was introduced. Pennsylvania is actually an old oil and gas state. And we have a lot of people that moved to Oklahoma 100 years ago from Pennsylvania to develop oil wells. But the technology has changed dramatically. But anyway, I would be happy to have that discussion with you because I do think it is an area we can find some common ground on.

LAND INTO TRUST

I want to take you to another area, if I may. I have got three or four things that I want to talk to you about that are very different, one of which is that I really appreciate what you and the Administration have done in Indian Country. We talked about the Cobell Settlement. Frankly, this committee has done a lot on a bipartisan basis to raise funding levels where they needed to be, working with the Administration in the Law and Order Bill. But I know one of the things that you are most concerned about and I would like for you to address for this committee because again this committee tried to help you last year and I think did. We just were not able—one thing we can all agree on here is we all beat up on senators for a change. But the Carcieri issue I know has got to create enormous strains and burdens for you in Interior as to whether or not you can put land into trust and for whom. Could you tell us a little bit about what the consequences will be if we cannot get a clean fix for the Carcieri Supreme Court decision through Congress?

Secretary SALAZAR. Thank you very much, Congressman Cole, and thank you for your leadership on so many Native American issues over so many years and particularly your great work on Cobell along with Congressman Moran and many others who were involved on that particular issue. On the Carcieri fix, we need to have it in order to avoid the uncertainty that currently prevails with respect to Tribes that were recognized in the post-1934 timeframe. The consequence of not having it is it throws into question a whole set of initiatives as we try to make sure Indian Country has an opportunity to build the detention centers and schools and mental health facilities and anything else where rural property is involved.

It is creating a tremendous amount of uncertainty with respect to a subset of the 564 Tribes that we recognize here in the United States. The Carcieri fix will be very helpful for us to move forward.

Mr. COLE. And just for the record, it is my understanding that most of the cases of Land and Trust, Carcieri or not, that you are dealing with have nothing to do with gaming. Is that your insight? The overwhelming majority really are economic development, housing, senior citizens, those type of things?

Secretary SALAZAR. You are absolutely correct. Gaming is the issue that creates a tremendous amount of controversy, but the vast majority of all the applications have nothing at all to do with gaming.

2012 FUNDING

Mr. COLE. Okay. Let me take you to another place. I know there is considerable disagreement over H.R. 1, but as I am sure you are probably aware right now you are operating of course under the 2010 budget because we did not get a budget done last year. The BIA funding and the Indian Healthcare funding under H.R. 1 is actually higher than what you are operating under today thanks to Mr. Simpson. He actually plussed it up. And so those are two areas you would actually get more money in as opposed to less. I would ask you under your own budget are those gains preserved in 2012?

Secretary SALAZAR. I will have the Director of the budget, Deputy Assistant Secretary Haze answer that question.

Ms. HAZE. Representative Cole, if we were to remain at the 2010 level that is a higher level than was proposed in the 2011 President's budget for a number of programs.

Mr. COLE. So in other words the current H.R. if it were to become law would actually be higher than the President's budget?

Ms. HAZE. Correct. Correct in construction and—

Mr. COLE. From an Indian standpoint the Republican budget is higher. I just want to make that point—it is usually lost in debates somehow. Let me ask you something very parochial and this is more an attitudinal question than one I would expect to be answered definitively.

WATER RIGHTS

Oklahoma has probably the last undefined water rights west of the Mississippi and this is an area that is now becoming not necessarily contentious, but there are states around us that have legitimate water claims on the Red River. We have Texans that are interested in buying water from Oklahoma. Within our state most of the excess water is located in southeastern, south central Oklahoma. We have urban areas that are trying to buy up rights—Oklahoma City and what have you for their future growth. And we have obviously local people that are concerned that they will lose the quality of their environment through all of this.

What I wanted to ask you, is there also an Indian component here as there always is in Oklahoma. The Chickasaws and the Choctaws have historic claims to these water rights as well. And it is my understanding that in any kind of negotiated settlement and that is where we would hope to be at some point, the Department of Interior, Department of Justice would have a trust responsibility to make sure that whatever the final settlement was, you know, the appropriate involvement, recognition of Indian rights would be part of that. Is that a fair statement? Will you be drawn

in just by your trust responsibilities to be at least an overseer of any settlement that was ultimately reached?

Secretary SALAZAR. The answer to that, Congressman Cole, is yes. Since Deputy Secretary David Hayes is leading all of our Indian water rights negotiations I think it would be appropriate for him to remark on your question. I will say this at the outset I think you are so right in terms of focusing in on these water issues because I think as Chairman well knows in the west we always say that whiskey is for drinking and water is for fighting.

These are the kinds of cases which in many of the states which have gone on for 20, 30, 40, 50 years without any kind of resolution. They end up creating a cloud of uncertainty on water rights in a state and frankly provide a significant amount of money to lawyers and engineers for decades at a time. Frankly, if a semblance can be put together that is a tough way to follow Idaho and Montana and Colorado, and I think there is in Arizona. I think it is applicable as well to Oklahoma.

Let me have David comment just a little bit on the capacity and our process. Thank you.

Mr. HAYES. Yes, Congressman, we do feel that this is an important area of our trust responsibility to help tribes with their reserve water rights and typically we are involved. There are some capacity issues. We have negotiating teams, but we have budget constraints. At any one time we may have some constraints in our ability to work with tribes. Particularly when those issues are maturing we make every effort to put a team in the field to work with the tribal attorneys and with the state interests and ultimately with Congress to put a settlement together.

Mr. COLE. I think we are reaching that point in Oklahoma that these issues are now very mature and I think the new governor wants to work on—there are a lot of different parties there. This does not have to be a contentious thing. Nobody has drawn their guns at one another yet, but I would—along the lines which was mentioned earlier when Mr. Lewis made his comment, ask that on this settlement—on Oklahoma that you start looking down the road because I have no doubt at some point in the next few years there will be some sort of effort for a grand settlement. And again if the tribes are not involved in it in some sort of equitable way I am sure you will start hearing from them at Interior and in Justice asking for your help. So this may be a case where your early involvement could be really valuable in preventing 30, 40, or 50 year lawsuit and frankly letting us use the resource in a responsible manner that numerous parties can participate in.

Secretary SALAZAR. Happy to help.

Mr. COLE. Thank you. I yield back, Mr. Chairman.

Mr. SIMPSON. Mr. Flake.

SOUTHWEST BORDER

Mr. FLAKE. Thank you, Mr. Chairman. Mr. Secretary, let me turn to Arizona and the border region in particular. As you know, in the 2,000 mile border with Mexico, there are about 820 miles or 43 percent that are tribal, federal, or some form of public ownership. The Department of Interior manages most of that through the

National Park Service or the Bureau of Land Management or Fish and Wildlife Services or other agencies.

In particular, the Tucson sector, which is central Arizona and eastern Arizona on the border, has a high concentration of this kind of diverse federal/private/state lands and it makes it difficult there. For example, the Tucson sector has to deal with two national wildlife refuges, two national parks, a national forest, and the Tohono O'odham Indian nation as well.

GAO did a study late last year and noted that the majority of the 26 stations responsible for patrolling federal lands along the southwest border indicated that they have experienced delays and restrictions in patrolling and monitoring due to the public lands issues. And specifically they noted it has routinely taken several months for the Border Patrol to obtain permission from land managers to move mobile surveillance systems because of the need to perform the complete environmental historical assessments. Sometimes the Border Patrol notices that by the time they get permission it has been several months and the need has changed and the traffic has shifted. Are you aware of these kinds of delays? If so, what are we doing to mitigate the problem?

Secretary SALAZAR. Congressman Flake, thank you for your question and let me say that the Department of the Interior recognizes the role that we play on the southern border where 41 percent of those lands are managed by Interior, either as wildlife refuges, national parks, BLM lands, or tribal lands. I personally have taken three trips as Secretary of the Interior to different parts of the border including, one to the Tucson sector which you discussed. We have a good working relationship with Homeland Security and the Border Patrol. We addressed the issues on border crossings and I believe the best thing that happened in the last several years is the relationship we now have is a very coordinated response. We have I think at least 100 law enforcement officers working very closely with the Border Patrol of Homeland Security to make sure we are doing the right things to secure the border.

Mr. FLAKE. So taking several months in some cases to get permission for the mobile surveillance unit to change no longer occurs?

Secretary SALAZAR. You know because I was at Tucson sector and I actually spoke with the officials both from Interior as well as from the other agencies involved. I can tell you as issues have arisen we have made sure we are addressing them as quickly and as effectively as we can. I think problems that were there historically are not problems, at least that was reported to me by the different federal agencies I met with when I was in Tucson sector.

Mr. FLAKE. Specifically in the Oregon Pipe National Monument GAO reported that "when border patrol requested additional access, the monument's land manager determined that additional border patrol access would not necessarily improve protection of natural resources." Obviously that is something that has to be taken into account. But how do land managers factor into decision making the effect on border security? How are those decisions made and who is consulted? Is that a decision made locally? Does it go up the chain? Of course you would say, "yeah, it might have an effect on the environment if you put a mobile unit here but that

is not our only consideration." I would just like to have some sense of how those decisions are made.

Secretary SALAZAR. The decisions made are intended to achieve the objective of securing the border. The task forces we have put together under the MOU which we have with Homeland Security are intended to do that. As issues arise we have a person who is in charge of coordination on these border security issues. To the extent, Congressman Flake, that you have specific examples, of issues of concern I would be happy to address those. When I was at the Tucson sector what I did was I pulled together all of the federal agencies who were involved on the border security issue. When I was informed by the lead from each one of the agencies within those Tucson sectors that the issues between the different agencies which caused historic problems, which I think were addressed in the GAO report, that we have addressed those issues effectively. If we have not I want to know.

Mr. FLAKE. So you have an individual there that we can contact to address that issue?

Secretary SALAZAR. We do in the Tucson sector as well as we have a person who is overall in charge of border security within the Department of Interior.

Mr. FLAKE. I met with several of the ranchers when I was there and they have a lot of issues. They have issues with the border patrol sometimes not being actually on the border, but rather inland a little too far. They did note that they work well with the Fish and Wildlife Service on the preserves and I appreciate that.

SOUTHWEST BORDER MITIGATION

Let me just talk for a second about mitigation efforts. In a letter to the Department of Homeland Security, Representative Bishop noted that between 2007 and 2009, Homeland Security provided about $10 million for mitigation projects. There is also an agreement that an additional $50 million in mitigation funds be transferred, if they have not already. Obviously the mitigation efforts Homeland Security undertakes are due to impacts to the environment in wilderness areas. But, if you take Oregon Pipe National Monument for example, everyone has noted the prevalence of trash and other things that come with illegal immigration. How is that factored in? Is not having greater control or monitoring, and not just allowing hot pursuits but allowing more effective monitoring, a benefit? Does that impact some of the mitigation, or lessen the need for some of the mitigation costs, because it is actually a help to the wilderness areas? If we stop illegal immigration through these areas, a lot of the problems that we see that are very detrimental to the environment there are helped out. And yet, it seems that the Department of Homeland Security is paying mitigation costs for simply doing the job that we need to do.

Secretary SALAZAR. Let me say first, I think when anybody litters on our public lands whether they are here illegally or whether they are here legally, it is wrong. Frankly there is too much littering that happens in our public lands all across the country. The question on Oregon Pipe specifically—I have flown over it. I have visited it and I recognize the whole issue of border security has a consequence on the national park itself and on the ecological values

associated with the national park. The mitigation monies were agreed upon as provisions of the law and the funding by the Congress to build a fence between Mexico and the United States. It was intended to mitigate against the ecological consequences of the fences being built. Frankly in many of those areas the kind of fencing that has gone in has been sensitive to some of the ecological concerns that we had. Notwithstanding, there are still these issues we are working through to make sure there is appropriate mitigation for areas where the environment is being impacted. We are working very closely with Homeland Security to make sure those measures are appropriate.

Mr. FLAKE. All right, just in closing I just want to say that the nature of border crossings have changed substantially over the year. It used to be the exception to the rule that crossers would have ties to smuggling rings or drug cartels. Now, it is almost the exception that they are not. And the detrimental impacts on the environment, and more particularly in Arizona on the taxpayers with respect to healthcare, education, and criminal justice costs, are substantial. If we could have a better working relationship between the land managers on our federal lands near the border and our federal agents who are charged with protecting them, it would help us all. And so I look forward to working with you on that.

Secretary SALAZAR. Appreciate that very much. Let me just say in closing, I spoke in my opening comments about importance of conservation. The national parks and refuges and BLM lands are part of the economic engine of America. As we look at the difficult economic times we are facing as a country, looking at places like Oregon Pipe and so many of the other natural resources, assets you have in Arizona I believe need to be looked at in that perspective as well. For me when I am in the border country as I was in Oregon Pipe, I recognize that there are parts of it which have been closed because of issues relating to criminality on narco-trafficking. It is an issue of great concern to me. I think there are ways in which we can continue to work together, Congressman Flake. I know that you have a particular interest in the area and I look forward to working with you to see how we can move forward. Secretary Napolitano spends a great amount of her time working on these issues and I think this is another place where there is a possibility we can put together a bipartisan way forward as we deal with these border security issues.

Mr. SIMPSON. Mrs. Lummis.

COSTS OF ENDANGERED SPECIES ACT IMPLEMENTATION

Mrs. LUMMIS. Thank you, Mr. Chairman. Mr. Secretary, my first couple questions are about the implementation of the Endangered Species Act and its costs. What is your most recent report on how many Endangered Species Act listed species have recovered and been delisted and at what cost to the taxpayers?

Secretary SALAZAR. Let me ask whether the Deputy Secretary or would the Budget Director have an answer to the question. If we do not we can try to get something back to you that will be the response. I will say this, Congresswoman, as you look at the issue of endangered species you know just over the last several years in our delisting of the whooping crane and other iconic species I think it

is important to recognize that there have been major successes with respect to the implementation of the Endangered Species Act. For our children and our grandchildren, I think it is important that they will be able to know a bald eagle or a golden eagle or a whooping crane still walks this planet. We do have significant successes in terms of the implementation of the Endangered Species Act.

Now it does not mean it is perfect. It does not mean it cannot be improved. I think Congressmen Calvert earlier was mentioning how we should be perhaps looking at multispecies conservation in a better way. A lot of what we are trying to do with the landscape conservation cooperatives is trying to look at how we can manage a habitat in a better way that is more effective. If there are ways in which we can improve it then we will be doing it.

Mrs. LUMMIS. Now I share your interest in conserving species and in species diversity in America. I am just curious about which ones really have been successfully recovered and delisted.

Secretary SALAZAR. You know what we could do is I can get you a list, Congresswoman Lummis, on that exact question on which species happen to be covered and which ones have been delisted. We can get it to you.

Mrs. LUMMIS. And are you able to assign costs to those programs?

Secretary SALAZAR. We will get you information. I do not know how precise it will be but we will get you some information on cost.

ROCKY MOUNTAIN WOLVES

Mrs. LUMMIS. Okay. Thanks very much. You may be aware that with regard to wolves in the Rocky Mountains, the original goal was 30 breeding pairs and 300 wolves and that was going to be the initial recovery goal. Right now the official count is more than 1,600 wolves and 113 breeding pairs and the real number is probably higher. That is just the latest official count. At the same time we have seen one herd of elk and another of moose just decimated. It is the moose in the Gros Ventre in Wyoming and the Lolo elk herd in Montana that have been the most decimated by wolf recovery.

And so my question is about the cost of balancing the recovery of wolves with other species that are sacrificed in the process. At what point is the Department obligated to step in and prevent the complete destruction of the Gros Ventre moose herd which is declined by 90 percent in terms of survivability of the young moose calves and the same with the Lolo elk herd. It has been a 90 percent mortality of the calves in the elk herd at Lolo. When do you step in?

Secretary SALAZAR. Well, I think the events of the last several years have indicated where we are very clearly. We believe the wolf population in the Northern Rocky Mountains has been recovered. I think the numbers tell us that. I think the numbers in Wyoming as well tell us that. The law requires us to make sure we have recovery programs in place. Idaho certainly has done that as has Montana. Wyoming, we believe, needs to improve on its recovery program and we are engaged in very constructive conversations right now with Governor Mead. Hopefully we will be able to move forward with a program that one, keeps the wolf from going extinct

and is on the program where we can take it off of the endangered species list. And two, allows management of the population that will include the hunts which have been authorized in places like Idaho and Montana.

Mrs. LUMMIS. Well, you know I appreciate our different perspectives on this. I can tell you that this issue is the biggest source of frustration for not only people in Wyoming but for hunters who want to, and who have spent a lot of money to restore a very robust elk and moose population that is now being decimated by a predator who was introduced under the nonessential experimental population section of the ESA.

WILD LANDS

Be that as it may, I will move on now and talk about wild lands which is also creating some interesting conversations in my State of Wyoming. I know you issued your wild lands initiative in December and last week issued further guidance on the wild lands program and the guidance indicates that the BLM field offices must inventory all its lands for wilderness characteristics, then during the RMP process the lands have to be protected so as not to foreclose on the option of designating them as wild lands in the final plan. The catch I see is that the authority to designate WSA's ended in 1993. So my first question is what do you believe is the authority that you possess to prioritize wild lands above other designations?

Secretary SALAZAR. Since the Deputy Secretary was involved in helping me draft the Secretarial Order, he can look at the law as well as I have. I will have him answer the question because I think I had answered it as well.

Mr. HAYES. Congresswoman, the authority is Section 201 and 202 of the Federal Land Policy Management Act. This is not Section 603 Wilderness Study Area Designation, that did expire. The general provisions in FLPMA per the Secretary's previous comments give the BLM the authority, really the responsibility to determine which of the multiple uses make the most sense for a given area of public lands and at a certain time that can be managing for wilderness characteristics. That is not for all time. That is why the RMP process is so important, the planning process.

This is a public process, there is essentially a two step process. One, identify the lands with wilderness characteristics. Then have a public process and decide during this period of the management plan—are we going to have leasing for oil and gas in those areas? What uses are we going to have or should we during the period of the RMP process keep those wilderness characteristics and keep them in conservation from hunting, angling, and other sorts of uses. Those decisions can be revisited with the next RMP. This is not a permanent designation. It is not a permanent protection. That is for Congress to do. Only Congress can make a permanent wilderness area designation. This is just common sense looking out and deciding what to do.

The circumstance where we saw this need really, Congresswoman Lummis, was the situation in Utah where there is a huge amount of land that has wilderness characteristics that was recently inventoried in connection with the last RMP. There is no

guidance provided to our BLM folks, industry folks, recreation folks as to how to manage that landscape, no guidance whatsoever. Decisions should be made as part of the RMP so folks will know whether those lands are going to continue to be managed with wilderness characteristics and identified as wild lands or perhaps some of them not because they are close to oil and gas and there are some resources there that should be developed. The idea is to have clear guidance.

In the absence of guidance in Utah virtually 50 percent of every oil and gas lease is now protested because a lot of those are in these areas with wilderness characteristics. There is no guidance so they are protested. We want more clarity from all parties involved. We think the RMP process and public process is the right way to go to provide that clarity.

OIL AND GAS DEVELOPMENT

Mrs. LUMMIS. Thank you, Mr. Secretary and Mr. Deputy Secretary. I would also like to talk a little bit about some energy development issues. On May 10 of 2010, Interior issued a directive that state offices must reform their leasing procedures for oil and gas development. You have delayed approval of leases for an additional year to 14 months due to the additional process that is going to be required in my state, which of course delays the production and the jobs and the revenue. At the same time your budget request in the fiscal year 2012 touts your approval of 12 renewable projects on public land that when operable are worth 4,000 megawatts of energy. There are budget increases proposed for funding solar and wind but decreases for conventional fuels. Of course you know in my state in the Green River Formation in Wyoming, Utah, and Colorado as well there is enough oil shale to supply the entire U.S. with energy for somewhere in between 100 and 400 years. And so I am curious about these 12 renewable projects on public land that are still not on line and how many taxpayer dollars were spent to approve those while we are not approving traditional sources that are sustainable over the next century and multiple centuries?

Secretary SALAZAR. Thank you, Congresswoman Lummis. If I may, bottom line is we continue to approve permits for oil and gas drilling on public lands and I think the record will speak for itself. In 2010, we approved about 5,000 permits and in 2011 we expect we will approve 7,000 permits. If you will permit me, Mr. Chairman, maybe for purposes of the record I ought to review some of the energy information. I think it is important to you and to this committee to understand it. First, we have had a decrease in oil imports over the last several years. We are down from importing 60 percent of foreign oil to 50 percent in 2010. That is an important thing to happen.

Mrs. LUMMIS. Mr. Secretary, is that because we are producing more energy in the United States?

Secretary SALAZAR. We are as a matter of fact. In the last 2 years the oil production from the Federal U.S. Outer Continental Shelf has increased by more than a third from 446 million barrels to 600 million barrels in 2010. On the lands you are concerned about, onshore public lands, the production increased by five per-

cent over the last year. The total U.S. natural gas production in 2010 in the United States was a five percent increase over 2008 and is at its highest level for more than 30 years. I could continue to review more statistics, but the point I want to emphasize here is we have had a program that has said oil and gas is essential to the energy economy of the United States of America and we have been implementing the program.

The reform issues you raised are in part trying to address the uncertainty created with all the protests and all the litigation occurring when we came into office. By having a roadmap knowing where it is appropriate to develop oil and gas and where it is not will help us in the development of our oil and gas resources in the right places, and that is what those reforms are.

URANIUM

Mrs. LUMMIS. I would like to switch, Mr. Secretary, to a question about uranium deposits in Arizona. You issued a draft EIS that has one alternative for a full withdrawal of an area carved out of the Arizona wilderness that would disallow extraction of high quality uranium that is near but not in Grand Canyon National Park. And producers of uranium in Wyoming tell me that that would be a real blow to domestic uranium production even if Wyoming's resources came online. Because as you know, we import 90 percent of the uranium that we consume here in the United States in our own nuclear facilities. And so my question is does the draft EIS indicate a threat exists of irreparable environmental harm from the time of exploration to mining that has gone on that is significant enough to justify a withdrawal or even a partial withdrawal?

Secretary SALAZAR. Let me say in the EIS there are, I believe, four alternatives from no action to the withdrawal of I think 1.1 billion acres to numbers in between. I think it is important to say the Grand Canyon and its water resources and the importance of maintaining the quality of those water resources are important to the seven states sharing the water of the Colorado River and important to the economy of all of those states.

In addition, we also recognize that nuclear energy is part of our energy future. It is a part of the President's energy program and there are resources available within the United States. We will move forward with the process in the Grand Canyon to reach a decision, that is a best decision to protect national interests and will not prejudge the outcome of the EIS process which is underway at this point in time. I will suffice it to say it is an important enough issue that I have been involved in the issue for the last several years and will continue to be involved until we make the final decision.

Mrs. LUMMIS. Mr. Secretary, do you know whether the draft EIS indicated that the threat exists of irreparable environmental harm? Did it say that in the draft EIS anywhere?

Secretary SALAZAR. In the draft EIS I will say this, the decisions I made on the temporary withdrawal were in fact based on the possibility of irreparable harm. When you look at the water issues and the other interests which we are protecting at the Grand Canyon National Park and that environment, my view is this is a serious

issue that merited the kind of consideration it was getting through the EIS processes involved.

ROCKY MOUNTAIN WOLVES

Mrs. LUMMIS. Thank you, Mr. Chairman, and I would like to just make a personal plea to the Secretary that in working with Governor Mead on the issue of wolves that you give it the most sincere effort you can muster. When I go home the wolf issue dominates discussions over things that should be higher priorities in Wyoming, and more important issues to our country in my opinion. It is because of the loss of hunting opportunities and the number of third and fourth generation outfitters that are going out of business in these areas—families that are looking for work elsewhere because their family outfitting business has gone under.

In Wyoming those businesses go under because hunters cannot get elk permits. These little businesses are in the areas of Cody, Dubois, Jackson, Star Valley, those are all the areas where the wolves are reducing the number of animals that can be hunted, so of course, the Game and Fish issues fewer permits.

So I will tell you there are cultural and jobs involved in the management of these issues. I would appreciate your most sincere and earnest intention in working with Governor Mead to try to develop a solution. And thank you for your testimony today.

Secretary SALAZAR. Thank you very much, Congresswoman.

LITIGATION COSTS

Mr. SIMPSON. Thank you, Secretary Salazar for being here today. I would suggest before we close this hearing that as you know there are differences of opinion obviously on the Wild Land designation of this country—I think it is going to increase losses because I think every decision you make on Wild Lands, whether you are going to allow for oil and gas drilling or wind turbines or recreation or whatever, you will be sued over it. That is a concern to me and I would like at some point in time to get into a broader discussion how much of your budget is actually spent to try to defend your decisions in court. How much money have you spent in court rather on managing the lands? Between the Interior and the Forest Service, I think it is huge amounts of money. And yet on the other hand you do not want to take away people's rights to have a say in how we manage our public lands. How do we do that? How do we find some compromise where we can maintain people's rights to have a say in management of the lands but not spend so darn much money in court and instead spend it on the management of our public lands.

So I will be happy to work with you on the Wild Lands issue. I know that there—I am tempted to ask since Mr. Moran, my good friend, came back, how many proposals or acres in Upstate New York or Alexandria is BLM looking at to designate as wild lands, but I am not going to ask that. There are many other questions that we have but most of them will be for the bureau heads, whether it is the wild horse program and the amount of money which we are spending on trying to maintain that herd and what we are doing there. I think the request this year is something like $78 million or something like that. Whether it is the Idaho bull trout—I

will ask Fish and Wildlife Service about that, its impact on them. But I do appreciate you being here today and taking the time and answering the questions of the committee.

Mr. MORAN. Mr. Chairman would you yield for a moment since this came up——

Mr. SIMPSON. Not if you are going to respond to what.

Mr. MORAN. No, I am not now, that is——

Mr. SIMPSON. I know.

Mr. MORAN. Since this has come up so much, the legal cost, maybe you could supply us with a figure on the percentage of the budget that is attributable to legal defense in the court system? I know Mrs. Lummis has raised that on many more than one occasion, so let's just find out what it actually is costing in terms of the rest of the program. Whether it is—really is debilitating our ability to implement other programs.

Mr. SIMPSON. If I could, it is not—and I do not know how you come up with this—It is not just the amount of money you are spending in court. It is the amount of money you are also spending trying to make a decision bulletproof so that it is not taken to court. I have asked a former chief of the Forest Service, I said how much money when you make a decision to do, say, a timber cut, how much of the money is spent actually making what is you consider a good, sound, scientific decision and how much trying to make it bulletproof in court because you know you are going to end up in court? And he said depending on the decision, probably somewhere between 25 and 50 percent is making what we believe to be a good, sound, scientific decision, between 50 and 75 percent trying to make it bulletproof. How much money are we spending that we should be spending on managing our public lands that end up in court in trying to prevent it from going to court that ultimately you are not going to preempt it? So it is a difficult issue. And if somebody has the answer to it I would be a happy camper and retire happy.

Mr. COLE. The answer is loser pays, Mr. Chairman.

Mr. MORAN. It would be good to get a sense of you know if you have any idea of what that is costing us and you know what the risk such as C–Y–A policy. You know if a risk adverse approach it would be good to know how much that is factoring in the decision making. Fifty percent seems a little high, but you know what I think both sides are going to go up in understanding.

Secretary SALAZAR. If I may, Mr. Chairman, Congressman Moran, we will get some information to you that will be responsive to your question. I have a personal view on this and I do think so much of the money that ends up being spent on litigation could be avoided if we were smart relative to what we do with respect to our planning for conservation. When you look at, for example, the Landscape Conservation Cooperatives, I think Congressman Calvert raised the question about how we manage more multispecies when we are appealing with issues in southern California.

So much of it has to do with how we manage the habitat that will serve multiple species. Part of what we have right now in place is such a high level of fragmentation, we are not able to do that. Because of the silos some of you have addressed we are not able to do that very effectively across the public lands and with the pri-

vate land owners as well on the willing, voluntary participation approach. As we move forward with the Landscape Conservation Cooperatives, that is an effort to try to manage these issues across a whole landscape as opposed to coming in and dealing with one species at a time and one issue at a time.

LAND AND WATER CONSERVATION FUND

I would submit to you that I know one of the major questions this committee has raised questions about today is the Land and Water Conservation Fund of $900 million in the President's budget. I think when we look at the United States today in 2010 and have a population of 307 million people, but we know that by the year 2040 our population is going to increase by more than 100 million, where are we going to shoehorn in those 100 million people in a way that allows us to make sure we still continue our conservation ethic? We hope to move a couple million of them into Wyoming, Congresswoman Lummis. Maybe a few into Oklahoma, but there is an urgency in my view to be proactive in terms of how we do conservation planning over the future. A way of doing it in a way like I illustrated with the Foothills National Conservation Area in Kansas where we can take care of these lands protect private property rights, protect the ranchers and farmers and at the same time make sure we are doing right by the way of protecting critical habitats.

Mr. SIMPSON. Well, I have you know—I agree with you. One of the reasons we have been working on some wilderness legislation in Idaho and other things is that I honestly think these lands that become wilderness designations are going to become more important in the future rather than less as we get more and more people. We are going to look for places we are not going to get away from people, you know. How can you go—how can you find solitude in this world? And I think those states that have those are going to be increasingly sought after. And that is why we have tried to resolve some of those issues and help.

Mrs. LUMMIS. Mr. Chairman, I would add that the acquisition, because of that very point, the acquisition of property by the federal government I do not believe is always the best answer. I think frequently the best answer is the acquisition of conservation easements on working landscapes. You get three times the bang for your buck if you have a conservation easement versus acquiring fee title to the property. In addition, the steward of the land comes with the land. So you do not have the same management issues of having either an absentee land owner or a semi-absentee land owner. There are so many advantages to conservation easements as a tool that we should be using more of rather than acquisition of these simple acts would. Thanks, Mr. Chairman.

Mr. MORAN. Well, I can understand the tax incentives and so on, too, but the only thing I was going to raise with regard to what the Secretary was saying, Mr. Chairman, is if we are going to expand our populations as has been done into the southwest Nevada, Arizona, Colorado, Wyoming, and Wyoming is not really in the southwest, but in particularly in those southwest areas, the quantity and quality of our water supply is just so essential and a lot of this land acquisition is so we can maintain the water sources

that—a lot of what Interior is doing is trying to maintain those water sources. And if you can go back into why we established the National Forest and the National Parks a lot of them was to try to—you know we had deluded these forests and we had to acquire the land to clean it up so we could get the water flowing smoothly and not allow it to become filled with sediment and contaminants.

So anyway, I know there are probably are some areas where we can find agreement and I certainly appreciate your testimony and your leadership, Mr. Secretary. I know the Chairman does as well. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. Again, thank you, Secretary Salazar. It has been a pleasure to work with you over the past years. I look forward to working with you to solve some of these problems.

Secretary SALAZAR. It is my honor. Thank you, sir.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, Office of the Secretary
Hearing: Department of the Interior FY 12 Budget Oversight Hearing
Tuesday March 8, 1:00pm Rayburn 2359

Questions for the Record from Chairman Simpson

Goals for Domestic Energy Production

You have been an outspoken proponent of renewable energy and your budget request reflects that interest again this year. The administration has outlined very specific goals for domestic renewable energy production.

Simpson Q1: Should the administration have similar goals for domestic oil and gas production to ensure that we are making progress toward decreasing our reliance upon foreign sources of oil?

ANSWER: The Outer Continental Shelf Lands Act (OCSLA) declares the Outer Continental Shelf (OCS) a vital national resource reserve to be made available for expeditious and orderly development while maintaining competition, subject to environmental safeguards and other national needs. The Department of the Interior is making every effort to support domestic energy development while increasing safety and environmental protection. A domestic energy source cannot be considered reliable in a broad sense if the potential for a catastrophic accident such as we have seen within the past year both domestically and internationally is not minimized.

Our assessment of the Federal offshore oil and gas program following the Deepwater Horizon event was that there were readily identifiable actions that the Department could adopt and which the industry should be required to undertake that could reduce the program risks in a meaningful way. For now, it is mostly up to the industry to demonstrate that it can implement the changes that the Department has released through rules, regulations, and notices to lessees. As evidenced by recent permit approvals, industry has been demonstrating its ability to meet and satisfy the enhanced safety requirements associated with offshore drilling, including the capability to contain a deepwater loss of well control and blowout.

Simpson Q2: You are now in the scoping process of the next 5 year plan for the OCS. What production goals would you like to be realized as a part of that 5 year plan and how are you proposing to achieve that?

ANSWER: On May 14, 2011, President Obama laid out his strategy to continue to expand responsible and safe domestic oil production, leveraging existing authorities as part of his long-term plan to reduce our reliance on foreign oil. The President directed the Department to conduct annual lease sales in Alaska's National Petroleum Reserve – while respecting sensitive

areas, to speed up the evaluation of oil and gas resources on the OCS in the mid and south Atlantic, and to create new incentives for industry to develop their unused leases both on and offshore. Also, to give companies more time to meet higher safety standards for exploration and development, the Department is extending drilling leases in the Gulf of Mexico that were impacted by the temporary moratorium, as well as certain leases off the coast of Alaska. The Administration is also establishing a new interagency working group to ensure that Arctic development projects meet health, safety, and environmental standards.

As the Department looks to the future and identifies areas to offer for oil and gas development under the next five-year program, decisions will be based upon the best scientific information available. The Department is producing an Environmental Impact Statement to support completion of the 2012 – 2017 OCS leasing program. The EIS will inform our decisions on when and where to offer leases and will help identify specific requirements that may be needed to ensure potential risks to the environment are appropriately managed and mitigated.

Increasing domestic energy production is an important part of a strategy to decrease oil and gas imports and new leasing is only one mechanism. As the Department's March 29, 2011, Report to the President (Oil and Gas Lease Utilization – Onshore and Offshore, Report to the President) provided, there are millions of leased acres that have not been developed, onshore and offshore. These are resources that belong to the American people, and they expect those supplies to be developed in a timely and responsible manner and with a fair return to taxpayers. According to the Report, more than 70 percent of the tens of millions of offshore acres under lease are inactive, neither producing nor currently subject to approved or pending exploration or development plans. This includes almost 24 million inactive leased acres in the Gulf of Mexico, which potentially could hold more than 11 billion barrels of oil and 50 trillion cubic feet of natural gas. The Department has proposed policies such as instituting a non-producing lease fee to provide companies with additional incentives for more rapid development of oil and gas resources from existing and future leases. The Department continues to consider additional policy options with the intent to encourage diligent development of domestic energy resources.

Oil and Gas Royalty Collection

The GAO has recently designated the Department's collection and management of Federal oil and gas resources as a government-wide high risk issue. In testimony before the Committee last week, the GAO and the Department's own Inspector General, Mary Kendall, said revenue collection has remained a top management challenge for over 10 years resulting in the loss of billions of dollars to the U.S. Treasury.

Simpson Q3: Why has this particular issue remained unaddressed for so long? What specifically is the Department doing to address these concerns?

ANSWER: The GAO's high risk report identified three major shortcomings in Interior's revenue collection policies, including ensuring that (1) the federal government receives a fair return on its oil and gas resources, (2) Interior completes its oil and gas production verification inspections, and (3) Interior's data on production and royalties are consistent and reliable.

These issues are being addressed by the Department. Specifically, the Office of Natural Resources Revenue (ONRR) has a comprehensive risk-based audit and compliance program to target underpayments and to ensure that royalties do not go uncollected. Since GAO's 2008 report, ONRR has undergone several reforms to catch underreporting sooner. Up front systems edits now put more emphasis on industry to report correctly through a series of royalty and production edits to ensure that data is correct before it arrives at ONRR. Current technology and system capabilities have opened new avenues for ONRR to identify and analyze erroneous data on a real-time basis. ONRR has initiated a data mining effort to provide earlier detection of missing or inaccurate royalties. In the FY 2012 Budget request, ONRR is seeking funding of $1.98 million and 12 FTE to expand data mining reviews addressing earlier detection of missing or inaccurate royalties in direct response to GAO's recommendation.

Raising Fees on Onshore and Offshore Oil and Gas Producers

This year's budget request continues the recent trend of proposing fee increases on industry for both onshore and offshore energy production to pay for increased inspections. These fee increases are assumed in the budget request for the Department for next year even though the Administration knows that additional fees are dead on arrival in this Congress.

Simpson Q4: If the Department did a better job of collecting and managing royalties, couldn't the government pay for increased inspections out of *these* revenues instead of proposing higher taxes on industry that will be ultimately passed on to consumers?

ANSWER: Through the reforms, the Department is creating a new culture of safety and a vastly improved regulatory regime. But our success ultimately depends on receiving adequate resources to implement these reforms internally and conducting aggressive oversight to ensure that regulatory requirements – old and new – are being met by operators. As the Department has emphasized on numerous occasions, additional resources are absolutely critical if it is to accomplish meaningful and lasting change in the way in which the Department manages the nation's offshore energy resources and provides effective oversight.

Simpson Q5: If the subcommittee and Congress are unwilling to increase fees on industry, is the Department prepared to make recommendations on specific cuts to pay for these inspections?

ANSWER: The President's National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling report recommended the use of industry fees to "provide adequate leasing capabilities and regulatory oversight for the increasingly complex energy-related activities being undertaken on the OCS". It also argued that the oil and gas industry "should do significantly more and provide the funds necessary for regulation [which] would no longer be funded by taxpayers, but instead by the industry that is being permitted to have access to publicly owned resources." This funding will be used to hire new inspectors, improve the tools and systems necessary to implement the risk-based inspection program, and expand offshore transportation resources. The proposed inspection fees are needed to provide the safety and enforcement improvements that are critical to creating a sustainable and environmentally responsible domestic offshore energy industry.

Non-Producing Fee Proposal

The Department has proposed a new non-producing fee of $4 per acre. This is based upon the premise that oil and gas companies do not want to produce oil and gas from the leases that they have already spent millions on, but need to be prodded into recouping their initial investment. This idea of a new non-producing fee, I believe, has always been founded upon a false premise.

Simpson Q6: After all the pressure of the last year on your department to issue permits, are you still of the opinion that industry does not want to diligently pursue oil and gas development on federal leases?

ANSWER: The Department's policy on lease diligence is based on considerations that balance the multiple goals contained in the OCSLA, including making the OCS "available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs..." The OCSLA makes several references to diligence with regards to terms and conditions of leases, bid submittal, and the management of the leasing program.

On March 11, 2011, President Obama asked the Department to determine the amount of public lands that have been leased to oil and gas companies and remain undeveloped, noting that companies should be encouraged to produce energy from leases that they are holding. This information that was subsequently provided to the President in a March 2011 Report (Oil and Gas Lease Utilization – Onshore and Offshore, Report to the President) indicating that the Department offered substantial acreage for potential oil and gas development in 2009 and 2010 that was not subsequently leased by bidding parties. In addition, for areas that are under lease, there are tens of millions of acres currently idle – that is, not undergoing exploration, development, or production.

In the case of marginal or speculative tracts, there is a tendency for companies acquiring those tracts to hold them undrilled for the early years in their primary terms. Whether those tracts are ever drilled depends to some extent on evolving market conditions. Overall, the Department prefers that acquired leases be drilled promptly, and that tracts which companies do not intend to drill expeditiously remain available in the government's inventory for leasing by companies that are willing to drill them sooner.

The proposed non-producing fee is a market mechanism which would discourage companies from acquiring low valued tracts and then holding them undrilled through most if not all of the leases' primary term. The fee would only apply to new leases, so companies may adjust their bonus bids at time of sale to account for the cost of the anticipated fee. However, at the margin, the fee can discourage companies from acquiring tracts they are unlikely to develop and serve as an incentive for earlier drilling on those tracts which are acquired anyway. Either way, the anticipated outcome would be that the government's policies would align more accurately with its leasing and drilling goals.

Alaska Oil Drilling

After investing many years and nearly $5 billion in Alaska, Shell Oil has abandoned efforts to drill in Alaska this year because of the Department's suspension of drilling permits and the EPA's delay in issuing air permits. Shell's drilling efforts were to occur in shallow water and the company had taken extraordinary steps to ensure safety and minimize risks. The Administration has made the situation in Alaska so difficult that Shell is literally walking away from a $5 billion investment out of sheer frustration.

Simpson Q7: Given this example, why would any company want to make an investment in offshore Alaska?

ANSWER: The Beaufort and Chukchi OCS areas have very high petroleum potential, with mean estimates of undiscovered technically recoverable oil and gas resources amounting to 23 billion barrels and 104 trillion cubic feet. This potential is by far higher than the technically recoverable petroleum potential in any offshore areas under U.S. jurisdiction outside of the Gulf of Mexico OCS. Petroleum potential of this size will likely continue to attract companies to northern Alaska and the adjacent Arctic OCS areas.

Shell's exploration programs for the Beaufort and Chukchi Seas could resume in 2012. Meanwhile, other companies (Statoil and ConocoPhillips) are also planning future exploration drilling and seismic programs in the Chukchi Sea. The Department will continue to perform its obligation under the OCSLA to facilitate exploration, development, and production activities in a responsible safe and environmental manner.

Simpson Q8: Does the Department have a timetable for lifting the drilling moratorium off the coast of Alaska?

ANSWER: There is no drilling moratorium off the coast of Alaska. In the case of the Chukchi Sea, existing litigation bars exploratory drilling. Oil and Gas Lease Sale 193 took place in February 2008 and leases were issued. This sale was litigated and the U.S. District Court for the District of Alaska found some deficiencies in the environmental impact statement for Chukchi Sea Oil & Gas Lease Sale 193. The Department is addressing the litigation by preparing a Supplemental EIS to satisfy the District Court's remand. In addition to the remand issues, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is including a very large oil spill analysis which not only strengthens the environmental analysis in that document, but will prove useful when reviewing applications that BOEMRE anticipates receiving from lessees to conduct future activities on their leases.

Wild Lands Policy

Mr. Secretary, we've talked about this before and you know that I value your efforts to address land management challenges facing the Department. But as you and Bob Abbey know, I'm very concerned about your December, 2010 Secretarial Order giving the BLM the authority to identify and manage as wilderness wild lands in the West. Only the Congress has the authority to designate wilderness. I'm afraid that you are setting a dangerous precedent that circumvents

not only congressional intent but also the people in the West who would be directly affected by it. There will be lawsuits. Congress will intervene (the House already included a funding prohibition on the Wild Lands policy in the recent year-long CR).

Simpson Q9: Is the Department willing to change course on the Wild Lands policy or will it take congressional action to do it?

ANSWER: As you know, Section 1769 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-110, prohibits the use of appropriated funds to implement, administer, or enforce Secretarial Order 3310 through September 30, 2011. The Department is complying with Section 1769.

Climate Change Coordination

As you know, I've expressed concern over the last couple of years about the rapid growth in budgets for activities related to climate change across many of the bureaus within the Department of the Interior, as well as the EPA, the Forest Service, and even the Smithsonian—all accounts contained in this subcommittee's jurisdiction. Climate change funding in our bill has grown from $197 million in FY 2008 to $433 million in the President's request last year.

I'm not a climate change naysayer but I am concerned about a lack of coordination among the various recipients of climate change funding in our bill. As we look toward the future, it seems like this would be an area worth reviewing in more detail.

Simpson Q10: Have you or anyone at the Department closely examined the coordination or duplication of climate change funding within the various bureaus?

ANSWER: As the primary land, water, and wildlife manager for the Nation, the Department of the Interior has an obligation to prepare for and address the impacts of climate change on America's resources. That strategy cannot be limited to just one bureau or office, but instead requires building capacity across the Department, forging shared goals with partners, and working together to define and implement conservation strategies that meet the challenges of climate change. The strategy also includes ensuring that DOI is leveraging resources and ensuring that bureaus are not duplicating efforts, but instead are working together based on their respective strengths and missions.

Secretarial Order No. 3289, "Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources," signed by Secretary Salazar on September 14, 2009 and amended on February 22, 2010, established the Department's first-ever coordinated strategy to address current and future impacts of climate change on our land, water, wildlife, cultural heritage, and tribal resources. An integral part of that strategy is the development of an internal oversight structure to ensure that DOI bureaus are working together, maximizing available resources, and that DOI as a whole is working collaboratively with our Federal, State, tribal, and private partners. The Energy and Climate Change Task Force, co-chaired by the Deputy Secretary and the Counselor to the Secretary, and comprised of all Assistant Secretaries and Bureau Directors, has responsibility for coordinating and implementing the Department's climate change adaptation strategy. The Climate Change Working Group, comprised of deputy-

level officials as well as bureau science advisors from across the Department, supports the Task Force, ensuring accountability and cross-bureau communication.

The FY 2012 budget request reflects DOI's coordinated approach to climate change adaptation. The approach ensures that management decisions are grounded in science and coordinated with land and resource managers both across DOI bureaus as well as in other Federal agencies, States, tribal governments, and private organizations. Key to this strategy is leveraging all available scientific information about resource health and trends and developing approaches that maximize benefit while minimizing costs.

Simpson Q11: Given present budget constraints, would it make sense to have the USGS or another entity be the lead agency overseeing federal climate change efforts in order to ensure limited dollars are being prioritized and allocated efficiently and effectively?

ANSWER: Climate change is a very large issue with many facets that affect each Federal agency differently. It would not be possible or appropriate for a single agency to be responsible for overseeing all of the climate change efforts across the Federal government. Instead, these activities are coordinated through interagency groups, such as the Climate Change Adaptation Task Force and the U.S. Global Change Research Program, and processes administered through the EOP, such the budget process and regulatory review process.

Similarly, no single bureau within the Department of the Interior could be solely responsible for climate change activities within DOI. Instead, each bureau is working to address the impacts of climate change on its mission, while coordinating to build capacity and prevent duplication. USGS is taking the lead on creating a network of Climate Science Centers that will develop the regionally-specific, climate-related research, information and tools needed by land and resource managers as they make decisions. DOI's land and resource management bureaus will, in turn, use that information to make sound decisions about how our Nation's resources should be managed to adapt to a changing climate and other stressors through the network of Landscape Conservation Cooperatives. The bureaus are working together with Departmental oversight through the Energy and Climate Change Task Force.

LWCF/Federal Land Acquisition

Mr. Secretary, land acquisition under the Land and Water Conservation Fund (LWCF) is fully funded in the budget request at $900 million at the expense of other critical priorities including the need to manage and maintain land and facilities that we already own. The GAO has cited as a major management challenge the Department's inability to adequately maintain its facilities and infrastructure which can impair public health and safety, reduce employee's morale, and increase the need for costly major repairs or replacement of structures and equipment.

Construction accounts within the Department's budget request for next year are reduced by $220 million (-46 percent). And, the FY12 budget for Interior Wildland Fire eliminates the rural fire assistance program and cuts hazardous fuels by $49 million. Anyone looking at your LWCF budget request could reasonably conclude that you're increasing land acquisition too quickly and at the expense of other very important and deserving programs.

Simpson Q12: How do you justify historic increases for land acquisition while failing to address systemic funding issues like maintaining facilities and infrastructure?

ANSWER: Through the America's Great Outdoors listening sessions and public input process, we learned that there is a powerful consensus across America that outdoor spaces—public and private, large and small, urban and rural—remain essential to our quality of life, our economy, and our national identity. Americans communicated clearly that they care deeply about our outdoor heritage, want to enjoy and protect it, and are willing to take collective responsibility to protect it for their children and grandchildren.

Americans support concrete investments in conservation. Last November, voters across the country overwhelmingly approved a variety of measures for land conservation, generating a total of $2 billion in new land protection funds. Of 36 proposals on State and local ballots for conservation funding, 30 passed – an approval rate of 83 percent. This is the highest rate during the past decade and the third highest since 1988.

Consistent with these results at the State and local levels, the feedback received during the AGO listening sessions indicated that full funding of the LWCF program is a high priority for the American people. Respondents also suggested that LWCF funding could be more effectively used if it was strategically focused on specific project types and/or locations.

Interior's 2012 request, together with the Forest Service's request, fully funds the LWCF at $900.0 million. Activities funded under LWCF ensure public access to the outdoors for hunting, fishing and recreation; preserve watersheds, viewsheds, natural resources and landscapes; and protect irreplaceable cultural and historic sites. LWCF funds are also used to protect historical uses of working lands, such as grazing and farming.

According to a return-on-investment analysis by the Trust for Public Lands, for every $1.00 invested in Federal land acquisition through LWCF, there is a return of $4.00 – a ROI of four to one. The ROI can be even higher when future returns beyond 10 years are added to the equation. The $675.0 million DOI LWCF request will contribute an estimated $1.0 billion in economic output and support about 7,600 jobs as determined by the Office of Policy Analysis, Department of the Interior. Along with this significant economic impact, full funding of LWCF in 2012 will increase the Federal Government's ability to engage in strategic conservation that yields community benefits and measurable ecological outcomes.

Interior's acquisition programs work in cooperation with local communities, rely on willing sellers, and maximize opportunities for easement acquisitions. Proposed acquisition projects are developed with the support of local landowners, elected officials, and community groups. This year, the Departments of the Interior and Agriculture took a more strategic approach to the use and application of LWCF land acquisition funds. The Departments collaboratively identified opportunities throughout the country where LWCF funds could be used to leverage other Federal resources, along with those of non-Federal partners, to achieve the most important shared conservation outcome goals in the highest priority landscapes.

Over 97 percent of Interior's acquisition request will be used for inholdings – isolated parcels of non-Federal land that lie within the boundaries of parks, refuges, or other Federal units. Acquisition of inholdings does not generally require any significant additional operating costs as no new staff or equipment are required to manage newly acquired lands within existing boundaries.

LWCF funds for Federal acquisition will support simpler, more efficient land management; create access for hunters and anglers; create long-term cost savings; address urgent threats to some of America's most special places; and support conservation priorities that are set at the State and local level.

Simpson Q13: Do you believe Congress should fully fund LWCF while proposing dramatic reductions for construction accounts and wildland fire accounts?

ANSWER: Truly these are tough times with limited budgets that force difficult decisions. In the 2012 budget, the Department sustained its capacity to maintain its existing inventory of constructed assets. In FY 2012, no new construction starts were allowed and maintenance levels were held level with the 2011 President's Budget request. While construction was not eliminated, construction funds are focused on large or major maintenance type projects.

Funding reductions in the 2012 Wildland Fire budget are primarily attributable to the termination of the Rural Fire Assistance program, which is duplicative of other assistance programs administered by the Forest Service and the Department of Homeland Security; a refocusing of the Hazardous Fuels Reduction program on the wildland-urban interface where fuels treatments are most effective in reducing the threat of catastrophic wildfire to communities; and administrative savings that will not impact program performance. The budget fully funds the 10-year suppression average. The Department estimates that it will meet its target of containing 95 percent of unplanned and unwanted wildland fires during initial attack.

EAJA

We all know that many legitimate goals of the Department of Interior are undermined by litigation filed by a variety of environmental organizations regardless of merit. In fact, I would suggest that many of these organizations exist primarily to file lawsuits and prevent worthy projects from moving forward. As a result of the Equal Access to Justice Act (EAJA), many of these groups are able to sue at will and have their legal costs entirely covered by American taxpayers. My colleague, Cynthia Lummis, has been a leader in raising concerns about this abuse of the legal system.

I recognize that Congress had good intentions when it created EAJA, and I believe that there needs to be recourse for Americans—including veterans and the elderly—who are treated unfairly or unjustly by their government. But my concern stems from the amount of money being spent to reimburse those who sue to gum up the works and by the complete lack of transparency and accountability over the legal fees paid out under EAJA. Most of all, I'm concerned about the impact these abuses are having on the ability of your Department to make good, timely land management decisions.

Simpson Q14: How much of your budget goes to paying EAJA fees? Who within the Department tracks these payments?

ANSWER: The Department does not track EAJA fee payments and cannot specify how much of the budget is used to pay EAJA fees.

Simpson Q15: Shouldn't the public have access to how much the Department pays in EAJA fees and to whom these fees are paid?

ANSWER: When Equal Access to Justice Act fees are awarded, information regarding the amount of the award to whom they are paid is publicly available as part of the court record.

Grazing Permits

You're well aware that the grazing program has experienced increasing costs due to very significant increases in litigation. As a result of this litigation—and more robust environmental reviews being conducted by the Department—the BLM now has an extensive backlog in renewing grazing permits. This is an issue that we've discussed—and I've discussed extensively with Bob Abbey and Pam Haze—as well. Mr. Secretary, I'd like to work with you, the Department, and the appropriate authorizing committees to begin addressing this backlog issue this year.

Simpson Q16: Can you and your staff provide for the record information on the current grazing permit backlog?

ANSWER: Of the approximately 17,800 total grazing permits and leases (permits) issued by the BLM and in effect at the end of FY 2010, more than 4,600 permits were unprocessed. The BLM expects approximately 1,680 permits will expire in FY 2011, which is about the same number of permits that the agency plans to process in FY 2011. Additionally, the BLM expects to receive approximately 1,000 grazing preference transfer applications in FY 2011. The BLM anticipates 5,300 to 5,700 permits will remain unprocessed at the end of FY 2011.

Simpson Q17: If our subcommittee was to really begin tackling this issue, what would it take in terms of dollars and language to get the job done?

ANSWER: The needs of the program are articulated in the President's FY 2012 Budget Request. The renewal of livestock grazing permits and leases (permits) is the highest priority for the BLM's Rangeland Management program, and the agency is working diligently to process grazing permits as they expire and after a transfer of grazing preference. The BLM is continuing to improve permit renewal procedures by prioritizing allotments in environmentally sensitive areas. However, the BLM is facing several challenges that are impacting the agency's ability to reduce the number of unprocessed permits. The processing of permits for allotments with land health concerns or resource conflicts is time intensive and often requires land health evaluations, Endangered Species Act Section 7 consultations, and possible administrative appeals and

litigation. Additionally, court decisions, such as those in Idaho, are impacting the resources available to process permits and complete other work.

The FY 2012 Budget Request proposes legislative language (Section 413) regarding extension of grazing permits. The provision specifies that permits issued as a result of a grazing preference transfer can be re-issued, under the existing NEPA, for the remaining years left on the pre-transferred permit if there is no change in the mandatory terms and conditions. This provision will enable the BLM to process permits more efficiently by significantly streamlining the work on approximately 15 to 20 percent of the BLM's annual permit renewals. As in previous years, the proposed legislative language also would allow grazing to continue until a permit renewal is fully processed, thereby enabling the BLM to focus its attention on allotments with land health concerns or resource use conflicts as well as provide greater certainty to the industry.

Idaho Bull Trout Decision

Mr. Secretary, I am concerned that it seems as though some of the decisions coming out of the Department don't appear to be coordinated very well between agencies. For example, a number of local officials in Idaho are frustrated that the bull trout decision released by the Fish and Wildlife Service last year has placed an extra burden on the BLM, making it nearly impossible for the BLM to complete work on grazing permits and other responsibilities for which my constituents depend on the agency.

Simpson Q18: Can you tell me how you work to coordinate decisions Department-wide? When one agency makes a decision, do you take into account the impact of that decision on other agencies and on their budgets?

ANSWER: The Department encourages its bureaus to resolve issues as close to the field office level as possible. During the designation process for bull trout critical habitat, the Fish and Wildlife Service facilitated multiple opportunities for coordination with other Department of the Interior bureaus. For example, the Fish and Wildlife Service's Pacific Regional and field offices met with other Interior bureaus numerous times in several forums to discuss the designation. Furthermore, prior to publication of the proposed rule, the Fish and Wildlife Service shared the draft proposed with other Interior bureaus and incorporated edits to address those agencies' concerns.

Interior bureaus also had an opportunity to review the proposed rule in January 2010 during the public comment period. Both BLM and the Bureau of Reclamation provided comments. All comments were reviewed and the Service modified the final rule as appropriate. Finally, in September 2010, for the official review by the Office of Management and Budget, BLM and other Interior bureaus were given an opportunity to review the draft final rule. The Service made revisions to the October 2010 Final Rule based on comments from these Interior bureaus and others.

Simpson Q19: Can you specifically speak to this situation with the bull trout and how it could be resolved through better coordination or recognition of the increased financial burden placed not only on the BLM but on counties in my state?

ANSWER: The economic analysis for bull trout critical habitat designation indicated that the incremental costs of critical habitat would be minimal, and that a significant financial burden would not be placed on BLM, other Federal entities, or counties due to this designation. The economic analysis indicated the primary costs would be borne by Federal agencies through the need to consult on proposed projects in accordance with Section 7 of the Endangered Species Act. This cost was estimated to be $5-7 million per year over the entire range of the species, which encompasses portions of five States. This cost estimate reflects both the administrative costs due to re-initiations of consultation, costs of new consultations in currently unoccupied habitat, and includes possible incremental project modification costs. As most of the designated habitat is already occupied by bull trout (96 percent), Federal agencies have already completed consultations with the Service to avoid jeopardy to the species, and need only reinitiate consultations to ensure their activities do not result in adverse modification of habitat. The cost of re-initiation of consultation is minimal, and the Service is working with other bureaus and Departments to streamline the process in order to hold down costs and reduce time required. Based on the economic analysis, the Service determined there would be little financial burden on counties due to the increase in costs associated with actions that are conducted, funded, or permitted by Federal agencies. If there are actions that could potentially affect a county, the Service would work with local entities to limit the burden to them, most likely through the Service's consultation streamlining teams.

Currently the Service has various consultation streamlining teams working with Federal agencies. In Idaho and other western states, these teams efficiently conclude consultations and other Section 7 issues by communicating on a regular basis to promote early planning. The Idaho Fish and Wildlife Office has streamlining teams working with the BLM on a regular basis across the State of Idaho. The main purpose of these teams is to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions, which ultimately promotes the conservation of listed species.

Wild Horse and Burros

The Department announced recently that the BLM intends to scale back wild horse gathers in the West over the next two years and expand the use of fertility controls. Your budget request increases base funding for the Wild Horse and Burro program by $11 million over the present fiscal year for a total of $75 million. The costs associated with this program continue to rise to the point that we're probably only a couple years away from this becoming a $100 million program. I know that the National Academy of Science is looking at longer-term solutions to this challenge that continues without end.

Simpson Q20: Why is it taking so long to implement an effective strategy to manage these herds?

ANSWER: Putting the BLM's Wild Horse and Burro program on a sustainable, cost-effective track while ensuring the humane treatment of these animals is one of the Department's top priorities. Toward that end, the BLM is accelerating fundamental reforms to how it manages wild horses and burros on public lands after an extensive public review process. To achieve the goal of improving the health of the herds and America's public lands, the BLM plans to enlist the

help of partners, improve transparency and responsiveness in the program, and reaffirm science as the foundation for management decisions. It will take time to implement these reforms, but as a first step the BLM intends to increase adoptions and broaden the use of fertility control from treating 500 mares in 2009 to treating a target of 2,000 mares beginning in FY 2012. Additionally, the BLM plans to reduce the annual number of wild horses gathered and removed from the range from 10,000 to 7,600 horses to maintain the current population while an independent technical review of the Wild Horse and Burro program is ongoing. The results of that review will help the BLM ensure that its management is guided by the best available science.

Simpson Q21: The BLM has previously stated that it needs to remove 10,000 wild horses from the range. Now you're saying you'll only remove 7,600 and will instead rely on fertility control. This conflicts with preventing overgrazing and protecting western rangelands and the livestock and native wildlife that depend on them. Is this really the best policy?

ANSWER: Congress has asked the BLM to find ways to manage these animals in a cost-effective, humane manner, and we are committed to do that. Finding ways to place the program on a sustainable track is a priority. Ultimately, this will depend on the BLM's ability to identify safe, effective, and humane options for suppressing population growth without removing horses from the range, and boosting adoptions of horses that are removed from the range. Over time, better balancing of removal numbers with adoption demand should result in fewer unadopted animals held in short- or long-term holding and reduced costs. To achieve these goals, the BLM has issued a proposed strategy for the Wild Horse and Burro program. The BLM intends to reduce the annual number of wild horses gathered and removed from the range from 10,000 to 7,600 horses; continue to pursue public-private partnerships to hold excess horses gathered from Western public rangelands; and increase significantly the number of mares treated with fertility control, from 500 in 2009 to a target of 2,000 in FY 2012. Also, the BLM is in the process of awarding a contract to the National Academy of Sciences to review previous wild horse management studies and make recommendations on long-term sustainable management of wild horses and burros in light of the latest scientific research. We expect to receive these recommendations in 2013.

Simpson Q22: What is the increased cost to administering the fertility vaccine? What's the current success rate of the fertility vaccine?

ANSWER: The unit cost of one dose of Porcine Zona Pellucida (PZP) vaccine is about $310. The cost to administer a dose to a mare in a wild horse herd is about $1,750 per mare, which includes gathering, treating, and then returning the mares to the range. In gathers emphasizing fertility control treatment, the BLM tries to gather as many members of the herd as possible (usually about 80 percent of the herd) to maximize the number of mares treated. As the herd is gathered, the BLM separates and treats the appropriate mares, removes younger animals for adoptions, and then returns the treated mares and stallions to the range.

Early research indicated the 22-month time-release (pellet) vaccine (PZP-22) was 80 to 90 percent effective at preventing foaling if applied during November through February. However, preliminary data from ongoing studies indicates the PZP treatment may be less effective than

previously thought. Recent PZP-22 studies being conducted by the Humane Society of the United States, in collaboration with BLM, demonstrated about 50 to 75 percent efficacy at reducing foaling.

Simpson Q23: Has the Department abandoned its plan to acquire lands for "horse parks" in the Midwest and East?

ANSWER: Public comments received on the BLM's Wild Horse and Burro Program Strategy Development Document indicate there is little, if any, public support for acquiring lands for wild horse preserves in the East. The public encouraged the BLM to provide sanctuaries for unadopted wild horses in partnership with private landowners and non-profit organizations. In response to these comments, the BLM released two Requests for Applications in March 2011 soliciting proposals to establish ecosanctuaries for unadopted wild horses. The BLM expects the ecosanctuaries to provide a cost savings and a natural and healthy habitat for the horses.

Wildland Fire Cohesive Strategy

The GAO has for more than 10 years cited the lack of a cohesive wildland fire strategy as a major management challenge of the Department. With the passage of the FLAME Act in 2009, Congress once again directed the Department and the Forest Service to produce and submit to Congress a cohesive fire strategy within one year. Two years have now passed.

Simpson Q24: Is the Department any closer today to submitting a cohesive fire strategy to Congress than it was when I asked the question one year ago?

ANSWER: On March 25, 2011, the Departments of the Interior and Agriculture delivered two documents to Congress. The documents, *A National Cohesive Wildland Fire Management Strategy* and the *Report to Congress: The Federal Land Assistance, Management and Enhancement Act of 2009* respond to the requirements of the FLAME Act and are consistent with recommendations made in recent reports by the Government Accountability Office (GAO). Together, these documents provide the foundation for a long-term cohesive wildland fire management strategy. Both documents, along with continued updates, are available at: www.forestsandrangelands.gov.

Simpson Q25: Why has it taken so long to address an issue the GAO has raised repeatedly for more than 10 years?

ANSWER: The challenges of fire management are dynamic, formidable and growing more complex every year. Developing an effective strategy must be a broad, all-encompassing and science-based collaborative effort among all government and non-governmental stakeholders. Achieving a united, comprehensive effort to successfully address the multiple issues of wildland fire management has required additional time and attention to ensure inclusive participation.

The development and release of *A National Cohesive Wildland Fire Management Strategy* and the *Report to Congress* represent a significant milestone in meeting this charge.

Everglades Restoration

Mr. Secretary, you have placed a lot of emphasis in the Everglades as a special landscape. Last year you broke ground on a one mile bridge along the Tamiami Trail as a first step to restoring water flow to Everglades National Park, and you have recently announced the completion of plans for additional bridging of the trail.

Simpson Q26: Can you tell the Committee what progress you've made this last year and what needs to be done in the years ahead to ensure that the Everglades and other areas you manage in the region are adequately preserved?

ANSWER: The Department and its Federal partners are fulfilling the Administration's commitment to the Everglades with proposed increased Federal funding and leadership. During the last year, the Army Corps of Engineers and its local sponsor, the South Florida Water Management District, broke ground on six projects, with one more ground-breaking planned for this summer. In addition to the Tamiami Trail one-mile bridge, which is the key component for the Modified Water Deliveries Project funded by this Committee, the Army Corps broke ground on the first and second phases of the Comprehensive Everglades Restoration Plan's (CERP) 55,000-acre Picayune Strand project. Picayune Strand is the largest habitat restoration project underway and benefits multiple species including the endangered Florida Panther and West Indian Manatee. It restores more natural water flow to Ten Thousand Islands National Wildlife Refuge and also to the western portion of Everglades National Park and Big Cypress National Preserve. Interior provided Federal funding in the late 1990s to assist the State of Florida in acquiring the lands for the Picayune Strand and we are pleased that this project is now underway.

In addition, the Army Corps also broke ground on the Site-1 Impoundment which will provide 4.2 billion gallons of drinking water for Palm Beach County and lessen urban water demands on A.R.M. Loxahatchee NWR. Interior and the Army Corps also assisted the South Florida Water Management District in implementing early starts for both the C-111 Spreader Canal and the Biscayne Bay Coastal Wetlands CERP Projects. The C-111 Spreader Canal restores more natural water flow to Florida Bay and the Biscayne Bay Coastal Wetlands Project restores more natural water flow to Biscayne Bay. Later this year, the Army Corps will break ground on the first phase of the CERP Indian River Lagoon Project, which will help to reduce damaging flood releases from Lake Okeechobee to the St. Lucie estuary.

In addition to the ground-breakings, Interior also stepped up efforts to combat exotic, invasive species by proposing a rule to ban the importation and interstate commerce for Burmese Pythons and other constrictor snakes, shutting off a source of supply. The Department has published the draft rule for public comment and anticipates issuing a final rule later this year.

In an effort to further improve water quality, Interior scientists worked with EPA to develop a blue-print to improve water quality to ensure that clean water is delivered to the Everglades. Interior is working closely with the State of Florida to help implement these water quality improvements.

The Department continues to assist in the planning for the next suite of CERP projects, as well as assisting in the completion of reports to Congress to consider for the authorization of future restoration projects in the next Water Resources Development Act.

Lastly, at the Secretary's request, the UNESCO World Heritage Committee put Everglades National Park back on the List of World Heritage in Danger, symbolizing our restoration commitment and restoring science in decision-making. The list is designed to inform the international community of conditions which threaten the characteristics for which a property or place was inscribed on the World Heritage List, and to encourage corrective action.

In addition to this work over the last year, important new opportunities are taking shape. Interior's proposal, completed last year, to construct an additional 5.5 miles of bridging in the Tamiami Trail has the potential to restore historic water flows to Everglades National Park and reconnect important habitats for wildlife, including many endangered species. The State's acquisition of 28,000 acres of land from the U.S. Sugar Corporation, also completed last year, provides new opportunities for the storage and treatment of water into the Everglades ecosystem and allows the Department to update its plans with new science. And building on the success of the Corps' Kissimmee River restoration and USDA's wetlands reserve program, Interior launched a major partnership initiative to preserve a rural working landscape and to conserve up to 150,000 acres in the Northern Everglades, including a proposal to establish the Everglades Headwaters National Wildlife Refuge and Conservation Area in 2011. Interior is preparing a draft land protection plan for the Everglades Headwaters proposal and will release it to the public this summer for review. The partnerships being formed would protect and improve water quality north of Lake Okeechobee, restore wetlands, and connect existing conservation lands and important wildlife corridors to support the greater Everglades restoration effort. The proposed conservation area and refuge would protect important habitat for 88 Federal and State listed species, including the Florida panther, Florida black bear, whooping crane, Everglade snail kite and the Eastern indigo snake.

In the years ahead, Interior needs to move forward on these important new opportunities to ensure that it increases water supplies for environmental purposes and restores more natural water flow to the Everglades; continues efforts to improve water quality; and undertakes measures to restore and conserve habitat.

Simpson Q27: What are the key challenges facing restoration as you move forward and how are you incorporating the recommendations of the National Academy of Sciences?

ANSWER: One of the key challenges is maintaining a productive partnership with the State and other stakeholders and ensuring that resources continue to be allocated to this effort. The Department places a high priority on intergovernmental partnerships and has reached out to the incoming administration of Governor Rick Scott to stress the importance of the Everglades restoration effort. The Department continues to closely collaborate with the Army Corps of Engineers and other Federal agencies on the work underway to ensure that it stays on track and that planning efforts focus on the next suite of projects that complements ongoing work. In that regard, in response to the recommendations of the National Academy of Sciences, Interior is focusing future planning efforts on the central and southern Everglades, which include the two

million acres managed by the Federal government. Interior also is working closely to address the Academy's recommendations as they relate to trying to achieve more natural water levels in the water conservation areas and in continuing efforts to improve water quality.

Conservation

Currently in the Fish and Wildlife Service, there are 21 Landscape Conservation Coalitions, 8 Climate Science Centers, 18 Habitat Joint Ventures, and 13 Fish Habitat Partnerships, all directed by 8 regional offices. Add to that, the Bureau of Land Management's National Landscape Conservation System and its 12 State offices and the Bureau of Reclamation's 5 geographic regions. None of these entities use common boundaries or geographic delineations for their activities. Given the current budget problems we are facing in this Nation, we cannot keep adding layers of bureaucracy.

Simpson Q28: If we are truly going to get to landscape-level conservation that is integrated from top to bottom, don't we need to all be looking at the landscape from the same perspective?

ANSWER: The lands and resources managed by the Department of the Interior are facing increasingly complex and widespread environmental challenges, such as the devastation from the pine bark beetle, unprecedented coastal erosion, and species moving into new habitats where they never before were found. These changes are affecting whole landscapes – not just the lands managed by the Federal government –across jurisdictional boundaries. For this reason, the Department is developing a network of 8 climate science centers and 21 landscape conservation cooperatives that divide the entire United States into units of study based on ecosystems, not jurisdictional boundaries.

The boundaries for Landscape Conservation Cooperatives were developed by FWS and USGS to identify areas of relatively similar geography and ecological conditions. Within this framework, LCCs and their partners will identify issues that are contained within these boundaries, as well as matters (such as species, migration corridors, and rivers) that require coordination between multiple LCCs. We know that many ecological and landscape level issues do not follow pre-defined "boundaries"; therefore to help establish landscape level conservation approaches, a national coordinating mechanism is being developed by the LCC community to ensure maximum attention to cross-boundary issues.

At the same time, the regional Climate Science Centers will serve as a resource for developing larger regional information bases into which specific LCCs and specific issues can be embedded. Climate Science Center regions are intentionally "fuzzy" – the work of CSCs will be bounded by the problems and ecosystems they are asked to address by LCCs and partners. The CSCs will act as a "national network" bringing expertise to issues wherever they may appear on the landscape. Neighboring CSC regions will have regular and active contacts to coordinate work. Finally, the National Climate Change and Wildlife Science Center (NCCWSC) will provide national oversight to improve inter-CSC ties.

Any boundary set involves conflicts with other existing boundary systems (i.e., existing State or Federal region boundaries), and issues that cross boundaries (e.g., species that migrate or shared

watersheds). When the Department developed the current boundaries, it recognized them as a way to logically group practical landscape level processes, not hard walls. The Department recognized that the key factor in any decisions about how to allocate resources or address problems is within the ecosystem context. Decision making and science will not be limited by the LCC and CSC boundaries; they will follow the outlines of the scientific issue at hand, whether that involves a local watershed or a transcontinental migration. The Department believes this is truly the best way to see the landscape from a common perspective.

Simpson Q29: Isn't there an opportunity as you are just beginning the Landscape Conservation Cooperatives and the Climate Change Science Centers to find some efficiencies by combining these with existing landscape-level partnerships, such as the joint ventures?

ANSWER: Landscape Conservation Cooperatives (LCCs) are modeled on the successes of Joint Venture, Fish Habitat Partnerships, and similar conservation efforts. Long-standing partnerships such as the Joint Ventures in most cases have very specific missions. Joint Ventures, for instance, implement bird conservation plans within a specific geographic area or for a specific taxonomic group. The LCCs expand landscape conservation efforts to include all of our natural, cultural, and historic resources.

The LCCs will not replace existing partnerships or duplicate similar efforts underway, but instead provide a forum for sharing information, consolidating the scientific and management expertise of individual partners, and identifying crucial information gaps. Joint Ventures are among the crucial existing partnerships for LCCs. In some cases, Joint Venture Management Boards have assumed leadership positions within LCCs, and in many other instances, Joint Ventures participate directly in LCCs by serving on one or more LCC Steering Committees. Joint Ventures and LCCs will have common needs for information, and science and planning capacity. As the LCCs and Climate Science Centers (CSCs) mature, they will learn from each other, share information and staff, and benefit from integration with Joint Ventures and other partnerships and programs. In addition, resource agencies that depend on Joint Ventures and LCCs to provide landscape scale assessment information to inform their conservation decisions and their conservation delivery activities will benefit from an integration of conservation priorities for birds, other terrestrial species and aquatic species.

For all LCCs and CSCs, the Department has established the clear expectation that they will avoid duplication and work with existing partnerships to enhance and build on existing capacities by identifying unmet science needs and delivering information and products most crucial for wise management decisions in the 21st century.

Land Acquisition / PILT

I'm particularly concerned by Interior's proposal to terminate the National Wildlife Refuge Fund, which, like the PILT mandatory program, compensates counties for their loss of tax dollars as a result of the acquisition of additional federal lands. As you know, this was an issue debated on the House floor during consideration of H.R. 1. I'm sure you also know that PILT expires at the end of FY12. I'm curious whether the proposed termination of the National

Wildlife Refuge Fund is a sign of things to come as this Congress considers the reauthorization of PILT.

Simpson Q30: What is the rationale for terminating the National Wildlife Refuge Fund?

ANSWER: The NWRF is not being terminated. The budget eliminates the discretionary funding contribution to the National Wildlife Refuge Fund. The mandatory receipts collected and allocated under the program would remain a source of revenue for counties. Refuges have been found to generate tax revenue for communities far in excess of tax losses from Federal land ownership. National Wildlife Refuge lands provide many public services, such as watershed protection, while placing relatively few demands on local governments for schools, fire, and police services. National Wildlife Refuges bring a multitude of visitors to nearby communities, which provide substantial economic benefits. Hunters, birdwatchers, beach goers, hikers and others bring money into local economies, generating millions of dollars in tax revenue to local, county, State and Federal levels. For example, nearly 35 million people visited national wildlife refuges in 2006, creating almost 27,000 private sector jobs and producing about $543 million in employment income, based on a 2006 economic analysis conducted by the Service, *Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation.*

Simpson Q31: Will you provide for the record any supporting analysis that leads you to conclude that the acquisition of federal lands, and the recreation revenues they generate, more than makes up for the loss of tax revenue?

ANSWER: Copy of the report *Banking on Nature* can be found at www.fws.gov/refuges/about/bankingonnature.html.

I'm told there are 187 counties in the West whose PILT payments are already at their maximum authorized level, because those counties already have significant federal holdings. Subsequently any new federal acquisitions will take additional land off the tax rolls without any corresponding compensation through PILT.

Simpson Q32: Which of the proposed FY12 projects resides in one or more of those 187 counties?

ANSWER: The Department of the Interior could only verify 132 counties whose PILT payments are already at their maximum. Please see the attached Excel spreadsheet for the answer to this question for the Bureau of Land Management, Fish and Wildlife Service and the National Park Service.

DEPARTMENT OF THE INTERIOR
Federal Land Acquisition with Counties

2012 Presidents Budget

Bureau	Project Name	County	State	Is this project within a county whose PILT payment is already at their Maximum? (Y or N)
Bureau of Land Management				
BLM	Blackfoot River SRMA	Missoula, Powell	MT	N
BLM	Blanca Wetlands ACEC	Alamosa	CO	N
BLM	California Wilderness	Kern, San Bernardino	CA	Y - San Bernardino
BLM	Carrizo Plain National Monument	San Luis Obispo	CA	N
BLM	Cascade-Siskiyou National Monument	Jackson	OR	N
BLM	Dominguez-Escalante National Conservation Area	Mesa	CO	N
BLM	Gunnison Gorge National Conservation Area	Delta	CO	N
BLM	Merced National Wild and Scenic River	Mariposa	CA	N
BLM	North Platte River SRMA	Natrona	WY	Y-Natrona
BLM	Panoche-Coalinga ACEC	Fresno	CA	Y-Fresno
BLM	Rio Grande National Wild and Scenic River	Taos	NM	N
BLM	San Pedro Riparian National Conservation Area	Cochise	AZ	N
BLM	Sandy River ACEC/Oregon National Historic Trail	Clackamas	OR	N
BLM	Santa Rosa and San Jacinto Mountains National Monument	Riverside	CA	Y-Riverside
BLM	Sheep Mountain ACEC	Park	WY	N
BLM	Trinity National Wild and Scenic River	Trinity	CA	N
BLM	Upper Sacramento River ACEC	Tehama	CA	N
BLM	Upper Salmon River SRMA	Lemhi	ID	N
BLM	Upper Snake/South Fork Snake River ACEC/SRMA	Bonneville, Madison	ID	N
Fish and Wildlife Service				
FWS	Alaska Maritime NWR	Aleutians E. Kenai Penin. Kodiak Is., N.W. Arctic, North Slope, Unorganized	AK	Yes-Kodiak
FWS	Alligator River NWR	Dare, Hyde	NC	N
FWS	Anahuac NWR	Chambers, Galveston	TX	N
FWS	Arapaho NWR	Jackson	CO	N
FWS	Balcones Canyonlands NWR	Burnet, Travis, Williamson	TX	N
FWS	Bayou Teche NWR	St. Mary	LA	N
FWS	Bear River MBR	Box Elder	UT	N
FWS	Big Muddy NF&WR	Cooper, Howard, Jackson, Lafayette, Osage, Ray, Saline, St. Louis	MO	N
FWS	Blackwater NWR	Cecil, Dorchester	MD	N
FWS	Cache River NWR	Arkansas, Desha, Jackson, Monroe, Praire, Woodruff	AR	N
FWS	Cahaba River NWR	Bibb	AL	N
FWS	Cape Romain NWR	Charleston	SC	N
FWS	Cherry Valley NWR	Monroe	PA	N
FWS	Chickasaw NWR	Dyer, Lauderdale	TN	N
FWS	Crane Meadows NWR	Morrison	MN	N
FWS	Cypress Creek NWR	Alexander, Johnson, Pulaski, Union	IL	N
FWS	Dakota Tallgrass Prairie WMA	Dickey, Ransom, Richland, Sargent	ND/SD	N
FWS	Edwin B. Forsythe NWR	Atlantic, Burlington, Ocean	NJ	N
FWS	Ernest F. Hollings ACE Basin NWR	Beaufort, Charleston, Colleton, Hampton	SC	N
FWS	Flint Hills Legacy Conservation Area	Various	KS	N
FWS	Grasslands WMA	Merced	CA	N
FWS	Hakalau Forest NWR	Hawaii	HI	N
FWS	Humboldt Bay NWR	Humbolt	CA	N
FWS	Innoko NWR	Unorganized	AK	N
FWS	Kanuti NWR	Unorganized	AK	N
FWS	Laguna Atascosa NWR	Cameron, Willacy	TX	N
FWS	Lower Hatchie NWR	Lauderdale, Tipton	TN	N
FWS	Lower Rio Grande Valley NWR	Cameron, Hildalgo, Starr, Willacy	TX	N
FWS	Lower Suwannee NWR	Dixie, Levy	FL	N
FWS	Middle Mississippi River NWR	Jackson, Monroe, Randolf, Jefferson, Perry	MO	N
FWS	Neches River NWR	Various surrounding river	TX	N
FWS	Nestucca Bay NWR	Tillamook	OR	N
FWS	Nisqually NWR	Pierce, Thurston	WA	N
FWS	North Dakota WMA	All Counties	ND	N
FWS	Northern Tallgrass Prairie NWR	Jasper, Kossuth, Lincoln, Otter Tail, Rock, Stevens	MN/IA	N

Bureau	Project Name	County	State	Is this project within a county whose PILT payment is already at their Maximum? (Y or N)
FWS	Ottawa NWR	Lucas, Ottawa	OH	N
FWS	Patoka River NWR	Gibson, Pike	IN	N
FWS	Rachel Carson NWR	Cumberland, York	ME	N
FWS	Rappahannock River NWR	Caroline, Essex, King Geroge, Richmond, Westmoreland	VA	N
FWS	Red Rock Lakes NWR/Centennial Valley	Beaverhead, Madison	MT	N
FWS	Rocky Mountain Front Conservation Area	Cascade, Chouteau, Glacier, Hill, Lewis and Clark, Liberty, Pondera, Powell, Teton, Toole	MT	N
FWS	Sacramento River NWR	Butte, Glenn, Tehama	CA	N
FWS	San Bernard NWR	Brazoria, Fort Bend, Matagorda	TX	N
FWS	San Diego NWR	San Diego	CA	N
FWS	San Joaquin River NWR	Stanislaus, San Joaquin	CA	N
FWS	San Pablo Bay NWR	Napa	CA	N
FWS	Savannah NWR	Chatham, Effingham, Jasper	GA	N
FWS	Silvio O. Conte NWR	Cromwell, Franklin, Hamden, Hampshire, Coos, Essex, Windham	MA/CTNH /VT	N
FWS	St. Marks NWR	Jefferson, Taylor, Wakulla	FL	N
FWS	St. Vincent NWR	Franklin	FL	N
FWS	Stone Lakes NWR	Sacremento	CA	N
FWS	Togiak NWR	Unorganized	AK	N
FWS	Trinity River NWR	Liberty	TX	N
FWS	Tualatin River NWR	Washington	OR	N
FWS	Tulare Basin WMA	Kern, Pixley	CA	N
FWS	Turnbull NWR	Spokane	WA	N
FWS	Umbagog NWR	Oxford, Coos	ME	N
FWS	Upper Mississippi River NW&FR	Carroll, Jo Davisess, Rock Island, Whiteside, Jackson, Scott, Houston, Wabasha, Winona, Buffalo, Crawford, Grant, Lacrosse, Trmpealeau, Vernon	MN/WI	N
FWS	Waccamaw NWR	Georgetown, Horry	SC	N
FWS	Willapa NWR	Pacific	WA	N
FWS	Yukon Delta NWR	Unorganized	AK	N
FWS	Yukon Flats NWR	Unorganized	AK	N
National Park Service				
NPS	Big Cypress National Preserve	Collier, Miami-Dade	FL	N
NPS	Everglades National Park	Miami-Dade	FL	N
NPS	Kennesaw Mountain National Battlefield Park	Cobb	GA	N
NPS	Petrified Forest National Park	Apache, Navajo	AZ	N
NPS	San Antonio Missions National Historical Park	Bexar	TX	N
NPS	Wind Cave National Park	Custer	SD	N
NPS	Pecos National Historical Park	Santa Fe	NM	N
NPS	Haleakala National Park	Maui	HI	N
NPS	St. Croix National Scenic River	Sawyer, Washburn	WI	N
NPS	Voyageurs National Park	St. Louis	MN	N
NPS	Sleeping Bear Dunes National Lakeshore	Benzie, Leelanau	MI	N
NPS	Santa Monica Mountains National Recreation Area	Los Angeles	CA	N
NPS	Acadia National Park	Hancock	ME	N
NPS	Colorado National Monument	Mesa	CO	N
NPS	Theodore Roosevelt National Park	Billings	ND	N
NPS	Guilford Courthouse National Military Park	Guilford	NC	N
NPS	Grand Teton National Park	Teton	WY	Y-Teton
NPS	Virgin Islands National Park	St. Johns Island	VI	N
NPS	Chattahoochee River National Recreation Area	Fulton	GA	N
NPS	Ice Age National Scenic Trail	Dane	WI	N
NPS	Palo Alto Battlefield National Historical Park	Cameron	TX	N
NPS	Katmai National Park and Preserve	Lake and Peninsula Borough	AK	Y-Lake and Peninsula
NPS	Hopewell Culture National Historical Park	Ross	OH	N
NPS	City of Rocks National Reserve	Cassia	ID	Y-Cassia
NPS	Glacier National Park	Flathead	MT	Y-Flathead
NPS	Appalachian National Scenic Trail	Windsor	VT	N
NPS	Great Sand Dunes National Park and Preserve	Alamosa, Saguache	CO	N
NPS	Little River Canyon National Preserve	Cherokee	AL	N
NPS	Grand Teton National Park	Teton	WY	Y-Teton

Bureau	Project Name	County	State	Is this project within a county whose PILT payment is already at their Maximum? (Y or N)
NPS	Piscataway Park	Charles	MD	N
NPS	Richmond National Battlefield Park	Hanover	VA	N
NPS	Ebey's Landing National Historical Reserve	Island	WA	N
NPS	Golden Gate National Recreation Area	San Mateo	CA	N
NPS	Olympic National Park	Clallam	WA	N

Simpson Q33: For every federal land acquisition project proposed in the budget, are the affected counties consulted?

ANSWER: Local communities, including towns, cities, counties, boroughs and States are consulted through land management planning. This is early in the process and is not directly associated with a specific land purchase or conservation easement. During this planning process, input from neighbors and other affected parties are strongly encouraged through public meetings, information sessions and briefings.

Simpson Q34: Please provide for the record the name of the county of every federal land acquisition project proposed for FY12.

ANSWER: Please see the attached Excel spreadsheet for the answer to this question for the Bureau of Land Management, Fish and Wildlife Service and the National Park Service.

DEPARTMENT OF THE INTERIOR
Federal Land Acquisition with Counties

2012 Presidents Budget

Bureau	Project Name	County	State	Is this project within a county whose PILT payment is already at their Maximum? (Y or N)
Bureau of Land Management				
BLM	Blackfoot River SRMA	Missoula, Powell	MT	N
BLM	Blanca Wetlands ACEC	Alamosa	CO	N
BLM	California Wilderness	Kern, San Bernardino	CA	Y - San Bernardino
BLM	Carrizo Plain National Monument	San Luis Obispo	CA	N
BLM	Cascade-Siskiyou National Monument	Jackson	OR	N
BLM	Dominguez-Escalante National Conservation Area	Mesa	CO	N
BLM	Gunnison Gorge National Conservation Area	Delta	CO	N
BLM	Merced National Wild and Scenic River	Mariposa	CA	N
BLM	North Platte River SRMA	Natrona	WY	Y-Natrona
BLM	Panoche-Coalinga ACEC	Fresno	CA	Y-Fresno
BLM	Rio Grande National Wild and Scenic River	Taos	NM	N
BLM	San Pedro Riparian National Conservation Area	Cochise	AZ	N
BLM	Sandy River ACEC/Oregon National Historic Trail	Clackamas	OR	N
BLM	Santa Rosa and San Jacinto Mountains National Monument	Riverside	CA	Y-Riverside
BLM	Sheep Mountain ACEC	Park	WY	N
BLM	Trinity National Wild and Scenic River	Trinity	CA	N
BLM	Upper Sacramento River ACEC	Tehama	CA	N
BLM	Upper Salmon River SRMA	Lemhi	ID	N
BLM	Upper Snake/South Fork Snake River ACEC/SRMA	Bonneville, Madison	ID	N
Fish and Wildlife Service				
FWS	Alaska Maritime NWR	Aleutians E, Kenai Penin, Kodiak Is., N.W. Arctic, North Slope, Unorganized	AK	Yes-Kodiak
FWS	Alligator River NWR	Dare, Hyde	NC	N
FWS	Anahuac NWR	Chambers, Galveston	TX	N
FWS	Arapaho NWR	Jackson	CO	N
FWS	Balcones Canyonlands NWR	Barnet, Travis, Williamson	TX	N
FWS	Bayou Teche NWR	St. Mary	LA	N
FWS	Bear River MBR	Box Elder	UT	N
FWS	Big Muddy NF&WR	Cooper, Howard, Jackson, Lafayette, Osage, Ray, Saline, St. Louis	MO	N
FWS	Blackwater NWR	Cecil, Dorchester	MD	N
FWS	Cache River NWR	Arkansas, Desha, Jackson, Monroe, Praire, Woodruff	AR	N
FWS	Cahaba River NWR	Bibb	AL	N
FWS	Cape Romain NWR	Charleston	SC	N
FWS	Cherry Valley NWR	Monroe	PA	N
FWS	Chickasaw NWR	Dyer, Lauderdale	TN	N
FWS	Crane Meadows NWR	Morrison	MN	N
FWS	Cypress Creek NWR	Alexander, Johnson, Pulaski, Union	IL	N
FWS	Dakota Tallgrass Prairie WMA	Dickey, Ransom, Richland, Sargent	ND/SD	N
FWS	Edwin B. Forsythe NWR	Atlantic, Burlington, Ocean	NJ	N
FWS	Ernest F. Hollings ACE Basin NWR	Beaufort, Charleston, Colleton, Hampton	SC	N
FWS	Flint Hills Legacy Conservation Area	Various	KS	N
FWS	Grasslands WMA	Merced	CA	N
FWS	Hakalau Forest NWR	Hawaii	HI	N
FWS	Humboldt Bay NWR	Humbolt	CA	N
FWS	Innoko NWR	Unorganized	AK	N
FWS	Kanuti NWR	Unorganized	AK	N
FWS	Laguna Atascosa NWR	Cameron, Willacy	TX	N
FWS	Lower Hatchie NWR	Lauderdale, Tipton	TN	N
FWS	Lower Rio Grande Valley NWR	Cameron, Hildalgo, Starr, Willacy	TX	N
FWS	Lower Suwannee NWR	Dixie, Levy	FL	N
FWS	Middle Mississippi River NWR	Jackson, Monroe, Randolf, Jefferson, Perry	MO	N
FWS	Neches River NWR	Various surrounding river	TX	N
FWS	Nestucca Bay NWR	Tillamook	OR	N
FWS	Nisqually NWR	Pierce, Thurston	WA	N
FWS	North Dakota WMA	All Counties	ND	N
FWS	Northern Tallgrass Prairie NWR	Jasper, Kossuth, Lincoln, Otter Tail, Rock, Stevens	MN/IA	N

Bureau	Project Name	County	State	Is this project within a county whose PILT payment is already at their Maximum? (Y or N)
FWS	Ottawa NWR	Lucas, Ottawa	OH	N
FWS	Patoka River NWR	Gibson, Pike	IN	N
FWS	Rachel Carson NWR	Cumberland, York	ME	N
FWS	Rappahannock River NWR	Caroline, Essex, King Geroge, Richmond, Westmoreland	VA	N
FWS	Red Rock Lakes NWR/Centennial Valley	Beaverhead, Madison	MT	N
FWS	Rocky Mountain Front Conservation Area	Cascade, Chouteau, Glacier, Hill, Lewis and Clark, Liberty, Pondera, Powell, Teton, Toole	MT	N
FWS	Sacramento River NWR	Butte, Glenn, Tehama	CA	N
FWS	San Bernard NWR	Brazoria, Fort Bend, Matagorda	TX	N
FWS	San Diego NWR	San Diego	CA	N
FWS	San Joaquin River NWR	Stanislaus, San Joaquin	CA	N
FWS	San Pablo Bay NWR	Napa	CA	N
FWS	Savannah NWR	Chatham, Effingham, Jasper	GA	N
FWS	Silvio O. Conte NWR	Cromwell, Franklin, Hamden, Hampshire, Coos, Essex, Windham	MA/CTNH /VT	N
FWS	St. Marks NWR	Jefferson, Taylor, Wakulla	FL	N
FWS	St. Vincent NWR	Franklin	FL	N
FWS	Stone Lakes NWR	Sacremento	CA	N
FWS	Togiak NWR	Unorganized	AK	N
FWS	Trinity River NWR	Liberty	TX	N
FWS	Tualatin River NWR	Washington	OR	N
FWS	Tulare Basin WMA	Kern, Pixley	CA	N
FWS	Turnbull NWR	Spokane	WA	N
FWS	Umbagog NWR	Oxford, Coos	ME	N
FWS	Upper Mississippi River NW&FR	Carroll, Jo Davisess, Rock Island, Whiteside, Jackson, Scott, Houston, Wabasha, Winona, Buffalo, Crawford, Grant, Lacrosse, Trmpealeau, Veroon	MN/WI	N
FWS	Waccamaw NWR	Georgetown, Horry	SC	N
FWS	Willapa NWR	Pacific	WA	N
FWS	Yukon Delta NWR	Unorganized	AK	N
FWS	Yukon Flats NWR	Unorganized	AK	N
National Park Service				
NPS	Big Cypress National Preserve	Collier, Miami-Dade	FL	N
NPS	Everglades National Park	Miami-Dade	FL	N
NPS	Kennesaw Mountain National Battlefield Park	Cobb	GA	N
NPS	Petrified Forest National Park	Apache, Navajo	AZ	N
NPS	San Antonio Missions National Historical Park	Bexar	TX	N
NPS	Wind Cave National Park	Custer	SD	N
NPS	Pecos National Historical Park	Santa Fe	NM	N
NPS	Haleakala National Park	Maui	HI	N
NPS	St. Croix National Scenic River	Sawyer, Washburn	WI	N
NPS	Voyageurs National Park	St. Louis	MN	N
NPS	Sleeping Bear Dunes National Lakeshore	Benzie, Leelanau	MI	N
NPS	Santa Monica Mountains National Recreation Area	Los Angeles	CA	N
NPS	Acadia National Park	Hancock	ME	N
NPS	Colorado National Monument	Mesa	CO	N
NPS	Theodore Roosevelt National Park	Billings	ND	N
NPS	Guilford Courthouse National Military Park	Guilford	NC	N
NPS	Grand Teton National Park	Teton	WY	Y-Teton
NPS	Virgin Islands National Park	St. Johns Island	VI	N
NPS	Chattahoochee River National Recreation Area	Fulton	GA	N
NPS	Ice Age National Scenic Trail	Dane	WI	N
NPS	Palo Alto Battlefield National Historical Park	Cameron	TX	N
NPS	Katmai National Park and Preserve	Lake and Peninsula Borough	AK	Y-Lake and Peninsula
NPS	Hopewell Culture National Historical Park	Ross	OH	N
NPS	City of Rocks National Reserve	Cassia	ID	Y-Cassia
NPS	Glacier National Park	Flathead	MT	Y-Flathead
NPS	Appalachian National Scenic Trail	Windsor	VT	N
NPS	Great Sand Dunes National Park and Preserve	Alamosa, Saguache	CO	N
NPS	Little River Canyon National Preserve	Cherokee	AL	N
NPS	Grand Teton National Park	Teton	WY	Y-Teton

Bureau	Project Name	County	State	Is this project within a county whose PILT payment is already at their Maximum? (Y or N)
NPS	Piscataway Park	Charles	MD	N
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NPS	Golden Gate National Recreation Area	San Mateo	CA	N
NPS	Olympic National Park	Clallam	WA	N

Wildland Fire Center

I understand the Department of the Interior has an Office of Wildland Fire that is now replacing the Office of Wildland Fire Coordination.

Simpson Q35: Could you tell me exactly what this organization does? How many employees does it have in Washington, DC and the new Boise office? What is this organization's annual budget?

ANSWER: The Office of Wildland Fire Coordination remains the current name of the organization. The Department of the Interior will work closely with Congress on this issue.

Questions for the Record from Ranking Member Moran

HR1-House Passed- The Worst Environmental Bill Ever

Mr. Secretary, by now you have had a chance to look over the full year CR, HR-1, that passed the House and that includes a dump truck load of anti-environmental riders. Never before have so many bad provisions been discussed with so little time, literally in the wee-hours of the morning when sane people are sleeping.

Moran Q1: Besides the objectionable environmental riders, HR 1 also does real harm to essential Interior Department programs. Can you please tell us about some of the cuts that this bill has? Which are worse, the elimination of a Land and Water Conservation Fund program, the elimination of State wildlife grants, or any of the many other reckless cuts?

ANSWER: HR 1 includes reductions totaling $770 million below the 2010 enacted budget, for Interior programs under the jurisdiction of this Subcommittee. This is a reduction of nearly 7 percent from 2010. Hardest hit were conservation programs and partnership programs that provide funding to States and others.

HR 1 eliminates most project funding for land acquisition and state assistance – a cut of $210 million. Reductions in land acquisition of $170 million will significantly delay our ability to acquire inholdings to expand hunting and fishing opportunities, help to resolve management issues, protect historic sites, and conserve habitat for endangered and threatened species. These cuts also eliminate $40 million for grants to States that are leveraged to provide outdoor space and recreation opportunities for local communities.

The bill eliminates funding for three priority grant programs in the Fish and Wildlife Service, a cut of $220 million. First, the North American Wetlands Conservation Fund is eliminated. This fund leverages Federal funding more than two-fold. The cut of $48 million will mean a real loss of $100 million and the loss in capacity to restore 400,000 acres of wetlands.

Second, State and Tribal Wildlife Grants are also eliminated. These are the only source of funding for States to manage non-game species and protect species and habitats that have already been determined to be at-risk. The States match this funding. Elimination of this program with a cut of $90 million – really means a cut of $180 million. This includes elimination of $7 million in grants to Tribes and a $5 million competitive grant program. In 2010 FWS funded white-nose bat syndrome research through these grants to the States and Tribes.

And third, the $83 million reduction in funding for the Cooperative Endangered Species Conservation program virtually eliminates the program. This program provides grants to States for endangered species conservation and recovery. CESCF grants require a minimum non-Federal match of 25 percent, and States often pass CESCF funding on to municipalities, Tribes, and private landowners to enlist their support in species conservation efforts.

HR 1 also cuts funding for the principle operating accounts in the BLM, USGS, FWS, and NPS. Such impacts will seriously impact mission delivery. Climate change programs are reduced by

$50 million or 40 percent, impacting our ability to conduct ongoing monitoring on refuges, research into carbon sequestration, and restoration of public lands.

Moran Q2: Mr. Secretary, can you also please talk about some of the anti-environmental riders in HR-1? It seems that many of our dirtiest industries have stepped forward to undo decades of bipartisan, pro-environmental progress. Which parts of HR-1 are the greatest problems for the Interior Department and for our Nation's environment and public health?

ANSWER: Section 1778 of HR 1 prohibits the use of funds to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010. Secretarial Order No. 3301 directs the BLM to consider, with the public, in its planning processes whether lands with wilderness characteristic should be projected as "Wild Lands." It does not itself create any Wild Lands designations, or require that any particular lands be so protected.

Further, where made, a Wild Lands designation would differ significantly from Wilderness. Wilderness designations require legislation, cannot be revisited without additional action from Congress, and necessarily preclude certain activities, such as the staking of new mining claims, and all forms of motorized equipment and mechanized transport. A Wild Lands designation by contrast, can only be made after consultation with the public through a land-use planning process, can be revisited without legislation, and will not necessarily preclude all forms of motorized and mechanized travel, or the staking of new mining claims.

This policy is a straightforward, common sense initiative that restores balance to the management of public lands. It reaffirms the BLM's responsibility to take into account all of the resources for which it is responsible – including wilderness characteristics – when it conducts its transparent public land use planning process.

The Wild Lands policy provides States, Tribes, local communities and the public a strong voice in how we manage backcountry areas for our children, grandchildren and future generations.

Moran Q3: Given the substantial operational funding cuts in HR-1, do you have any feel for how this could affect the hundreds of gateway communities all over the country that depend on tourism, hunting and fishing on the public lands? Will there be impacts on rural jobs and on local jurisdiction's ability to collect revenue?

ANSWER: According to the 2009 report "The Economic Impact of Department of the Interior's Programs and Activities" Interior has a significant impact on the economy of the Nation.

Interior supports over 1.4 million jobs for Americans and over $370 billion in economic activity. Our parks, refuges, and monuments generate nearly $25 billion in recreation and tourism. Conventional and renewable energy produced on our lands and waters results in $292 billion in impacts. The water we manage supports over $25 billion in agriculture.

Millions of Americans and foreign visitors enjoy the resources of the Department of the Interior. There were more than 414 million visits in 2008 to Interior-managed lands, including over 310

million visits to National Parks and National Refuges. We support about 316,000 jobs in tourism and recreation across all 50 states. The most recreation-related jobs are in California (34,951 jobs), Arizona (25,806 jobs), Utah (18,164 jobs), North Carolina (11,912 jobs), and Colorado (13,768 jobs). We also support about 726,000 jobs in energy and minerals. The most energy and mineral jobs are in Wyoming (96,983 jobs), New Mexico (80,731 jobs), Louisiana (58,361 jobs), Texas (37,831 jobs), Colorado (26,844 jobs) and Utah (19,956 jobs).

Visitors to Interior recreation sites support tens of thousands of jobs in rural areas, including Wyoming (16,800 jobs), Tennessee (12,200 jobs), and Colorado (10,900 jobs). In states that are 50 percent or more rural, Interior visitation supports about 200,000 jobs and $15.3 billion in output. State and local governments benefit from numerous grant and payment programs administered by Interior. These programs support a wide variety of essential government activities.

Interior supports jobs in a wide range of areas: both public-sector and private-sector, seasonal and full-time, and in both urban and rural communities. In terms of jobs, ecosystem restoration activities have the biggest pay-off: every $1 million invested creates an average of 30 jobs. Investments in recreation also have big pay-offs; every $1 million invested creates about 22 jobs, which are largely private-sector jobs.

Interior's impact to the Nation is wide and diverse. The cuts included in HR 1 will impact Interior and, if enacted, will be part of what keeps our economy from moving forward.

Continuing Resolutions and Management Difficulties

Moran Q4: The Interior Department is still operating under continuing resolutions. Can you please provide a brief description of some of the difficulties this creates, and include a summary, by major bureau, of impacts on your ability to manage your responsibilities, engage in contracts, and hire summer temporaries?

ANSWER: We look forward to the Congress enacting a full year appropriation for the Department of the Interior. We have worked closely with OMB and Congressional staffs to identify those programs that have anomalies that need to be addressed under the continuing resolutions. Under a continuing resolution we are required to operate under the terms and conditions of the 2010 enacted appropriation, refrain from starting new programs, and not implement the program of work proposed in the 2011 President's budget request. One of the most significant impacts is to construction and land acquisition accounts, which consist largely of projects. The Department continues to execute previously appropriated projects, however without Congressional direction for 2011, the Department cannot move forward with any other work planned for 2011.

Perhaps what is most disruptive to operations is the unusually wide range of uncertainty in what will be the final outcome of the 2011 budget negotiations. All of our program managers are being especially cautious in their spending patterns. However should the final outcome for 2011 include deep reductions, we may face situations where we have exceeded the final appropriated amount, and may need to reprogram funds to avoid an anti-deficiency situation.

Ocean Energy and BP Spill and Future Funding Needs

Moran Q5: Mr. Secretary, I appreciate the incredibly hard work you have performed during and after the tragic BP-Transocean Deepwater Horizon oil disaster. Can you please take a minute to reflect on the massive inter-agency effort during and after the disaster? What are some of the key lessons you have learned from this massive effort?

ANSWER: It would not be possible to reflect on the Federal response to the Deepwater Horizon oil spill without recognizing the commitment and dedication that Department of the Interior employees have displayed in protecting the Nation's communities and resources throughout the response, which continues to this day. Over 2,200 employees representing multiple Interior bureaus and offices have sacrificed personal and family schedules to spend long days, weeks and months responding to the oil spill, often over a series of deployments. Interior staff has worked tirelessly in the Unified Command with the U.S. Coast Guard, NOAA, EPA and other Federal agencies to establish the flow rate and quantity of the oil spill; contain the source and cap the well; monitor and assess oiled beaches, marshes and waters; provide input and guidance on response and cleanup strategies; protect natural and cultural resources, including our national parks and refuges; facilitate consultation with affected Tribes; build a Natural Resource Damage Assessment case and plan for Gulf Coast restoration; and serve in numerous other capacities at the incident command posts and in the field.

Although most of the immediate crisis response work has ceased, the impacts of the spill continue to be felt in the Gulf Coast region and the response continues. The Department, along with Federal, State, local, and non-governmental partners continue to study ongoing effects to determine what the full, long-term impact will be to the Gulf Coast natural resources.

Interior is working with the Department of Commerce through NOAA, the States of Alabama, Florida, Louisiana, Mississippi, and Texas, and the Department of Defense to develop a comprehensive natural resources damage assessment and restoration plan, identifying the injury to natural resources from the spill and developing a restoration plan that restores the region's natural resources to their pre-spill condition. Determining the extent and magnitude of injury requires a rigorous scientific process that can take several years to complete, but the Department – along with the other Natural Resource Trustees in this case – is committed to full restoration of natural resources in the affected areas of the Gulf to the condition that existed before the Deepwater Horizon spill.

Responding to this crisis requires significant coordination and cooperation between Federal, State, and local governments, and the Federal response has reflected this unified and collective approach. However, it is important to make improvements to bolster Federal preparedness and response to oil spills. The Department of the Interior is working with other Federal agencies to review and evaluate recent after-action reports, such as those written by the President's National Commission on the Deepwater Horizon Oil Spill and the U.S. Coast Guard's Incident Specific Preparedness Team. Many of the lessons learned in these reports will be helpful for Interior to identify and implement improvements. Topics of significant focus include the use of chemical dispersants; reevaluating oil spill and all-hazards response authorities, plans and organizations;

and preparing for oil spill response in inaccessible, vulnerable environments that are central to current exploration and drilling, such as the Arctic.

We have also been looking internally at ways to improve response coordination among Interior bureaus and offices. The Deepwater Horizon oil spill required an effort that went beyond the scope and scale of any other oil spill response in which the Department has been involved. This often required staff to step into new roles to apply their skills and expertise. To prepare Interior responders for the next major disaster, we are working to capture the best practices in improved business processes and standard operating procedures. Such efforts include clarifying roles and responsibilities where there was confusion; improving communications, data and information sharing; and establishing an accessible training program on oil spill and all-hazards response for those whose core functions are not in response.

Beyond bolstering staff preparedness and training, we're following up on lessons learned that are central to the mission of Interior. This includes ensuring that Tribes are appropriately consulted; park and refuge lands, cultural resources, and historic properties are protected; and best available science is consistently and effectively integrated into oil spill and hazardous materials release planning, preparedness, and response. These efforts focus on improving planning and preparedness for large scale, prolonged disasters that the Deepwater Horizon oil spill exemplified, while maintaining the processes and organizations that enable the Department to respond to locally-based oil spills or all-hazards incidents on a regular basis.

Moran Q6: How is the Natural Resource Damage Assessment process proceeding?

ANSWER: The affected natural resource trustees are working together on a comprehensive Natural Resource Damage Assessment to identify and quantify a broad range of injuries to natural resources, natural resource services, and supporting habitats and ecosystems in the Gulf. Our objective is a transparent, scientifically-based assessment that will identify what is necessary to address the impacts of the spill on public resources, so that the Gulf ecosystem can be restored and protected for future generations. At the same time, emergency restoration actions to prevent or minimize ongoing injury are also currently underway. Studies being conducted include evaluation of potential impacts to fish, marine mammals, sea turtles, avian species, and their associated habitats such as submerged aquatic vegetation, shorelines, beaches, marshes, mangroves, near shore water, and deep ocean habitats. The NRDA assessment team is collecting data to determine acute and chronic impacts to the ecosystem of the Gulf of Mexico.

In addition to collecting vast amounts of injury data, the Trustees have also focused on the ultimate goal of long-term restoration. The Natural Resource Trustees involved in this case are: Alabama, Florida, Louisiana, Mississippi, Texas, the Department of the Interior, and NOAA. In order to comply with Oil Pollution Act and National Environmental Policy Act requirements, ten public scoping meetings have been held in the Gulf States to garner public input on broad categories of potential restoration projects across the Gulf.

Also crucial to long-term restoration is holding the responsible parties accountable. To date, the Department of the Interior has been reimbursed for over $20 million in assessment costs from BP, one of the potentially responsible parties for the spill. On April 21, 2011, the Trustees

announced a $1 billion agreement with BP to fund early Gulf Coast restoration projects. That amount will be divided among the Trustees per the agreement for restoration projects, pending Trustee approval. The agreement will accelerate Gulf Coast restoration efforts by providing needed resources before the damage assessment process is completed. At the end of that process, the Trustees will take into account any benefits that were realized from these early restoration projects. In addition to funding early restoration projects, BP will continue to fund the damage assessment and, together with the other responsible parties, will ultimately be obligated to compensate the public for all injuries associated with the incident.

Moran Q7: Mr. Secretary, last week we heard from the GAO that they have added Interior's management of oil and gas on its government-wide high risk list. This is not a good thing. I am very concerned about the remaining challenges for Interior's onshore and offshore oil and gas management.

Mr. Secretary, I am glad that you have made so many changes at the MMS, including bringing in from outside of government a proven leader, Michael Bromwich. You discussed the major reform effort you are undertaking for off-shore energy management. This includes reforming the structure of the government agencies, but also it requires substantial additional resources to increase inspection, auditing and environmental work.

I do note that I am pleased that HR-1 did recognize to some extent that more funding is needed for the Bureau of Ocean Energy Management.

Mr. Secretary, I know that when you came into office you immediately focused on past ethical lapses at the former MMS, and that you have aggressively acted to reform the offshore oil and gas program.

Your budget request includes substantial funds to implement these reforms. How important is it for you to get this request in full? How long do you think it will take to make meaningful improvements at the Bureau of Ocean Energy and the Office of Natural Resource Revenue?

ANSWER: The Department has laid the groundwork for far-reaching organizational change. The success of our reforms now depends in large part on providing the financial resources, tools, training and culture to be effective. Improving the safety of offshore drilling and the effectiveness of government oversight of this inherently risky activity will require a substantial infusion of resources into the offshore regulator.

As detailed in the report of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, the Minerals Management Service (MMS) never had the resources to provide the rigorous and effective oversight of offshore oil and gas activity that is necessary. This weakness became more significant as industry continued its pursuit of higher-risk projects in deepwater and other frontier areas such as the Arctic. The Department agreed with the Commission's strong recommendation for a substantial increase in the resources devoted to government oversight of offshore activities because an effective regulator is so clearly in the interest of the public and the industry.

Industry representatives including the American Exploration & Production Council, the International Association of Drilling Contractors, the Independent Petroleum Association of America, the National Ocean Industries Association, and the U.S. Oil and Gas Association have expressed support for providing additional resources to BOEMRE to the House and Senate Appropriations Subcommittees on Interior, Environment, and Related Agencies.

The reorganization the Department is undertaking will help ensure strong and effective management and oversight of our nation's offshore energy resources, and so the Department is moving forward quickly and responsibly with reforms that are crucial to ensuring that Interior carries out its responsibilities effectively and in a manner that facilitates the balanced, responsible, and sustainable development of the resources entrusted to the Department.

Moran Q8: I note that the FY 2012 budget request for the Bureau of Ocean Energy Management also increases the inspection fees to offset some of the need for more government oversight that has been the hallmark of every analysis of the Gulf of Mexico disaster. I also note that it is quite common for governments at all levels to have reasonable fees charged to industries to cover necessary costs. For instance, at the Nuclear Regulatory Commission, 90% of its costs are paid by the industry.

Can you please explain these inspection fees?

ANSWER: The FY 2012 budget includes a $55 million increase in revenue resulting from a new fee on mobile drilling units (+$17 million) and an increase to the existing fee on fixed OCS structures subject to inspection (+$38 million). Under this proposal, inspection fee revenue will total $65 million in FY 2012.

This inspection fee level roughly offsets the estimated program costs of conducting OCS inspections under the more aggressive inspection regime being put in place. The fees are also consistent with recommendations of the President's National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.

Annual fees for facilities above the water line excluding drilling rigs:

(1) $10,500 for facilities with no wells, but with processing equipment or gathering lines;
(2) $17,000 for facilities with one to ten wells, with any combination of active or inactive wells; and
(3) $31,500 for facilities with more than ten wells, with any combination of active or inactive wells.

Annual fees for drilling rigs:

(1) $30,500 per inspection for rigs operating in water depths of 500 feet or more; and
(2) $16,700 per inspection for rigs operating in water depths of less than 500 feet.

The proposed level of inspection fees provides sufficient funding in FY 2012 to meet industry and public demands for efficient and effective regulation of the OCS while minimizing the net cost to taxpayers.

Moran Q9: Can you please also mention the similar fees for onshore inspections at the BLM you are proposing?

ANSWER: The 2012 BLM budget proposes to shift a significant share of the cost of the inspections to industry, for a savings of $37.95 million in requested appropriations in FY 2012. The estimated collections generated from the proposed inspection fees would fully offset the proposed reduction in appropriated funding. The inspection fee is based on historical spending for inspections, and the number of wells and leases that must be inspected. The fee is designed to recoup the majority of the costs of performing inspections. The fee will be reevaluated each year to ensure funding is adequate to fulfill the agency's inspection and enforcement responsibilities and to meet the needs of the program. This mirrors a similar fee the Bureau of Ocean Energy Management instituted during FY2010 for outer-continental shelf facilities. The new inspection and enforcement fee is not for a new set of inspection and enforcement activities, but is a new funding mechanism for an existing program.

Moran Q10: Mr. Secretary, the recent GAO testimony indicates that Interior collected lower levels of revenues for oil and gas production than all but 11 of 104 oil and gas resources owners, including States and other countries. Give us a feel for what kind of revenue loss is involved here. Does Interior have the administrative authority to enhance its revenue collection?

ANSWER: Assuring receipt of fair market value on OCS lands is mandated by the OCSLA and its amendments and remains a critical responsibility of the BOEMRE. Regional offices, in conjunction with headquarters oversight, perform the functions necessary to thoroughly assess the oil and gas potential and fair market value of OCS tracts offered for lease.

GAO recommended Interior conduct a comprehensive review of the Federal oil and gas system using an independent panel. More recently, in response to the GAO report, Interior has commissioned a study that will include such a reassessment, which the Department expects will be complete in 2011. The results of the study may reveal the potential for implementing policies that result in greater revenues to the Federal government.

Energy Management On-Shore

Moran Q11: There has been so much focus on off-shore energy problems this past year that some have forgotten about the massive oil, gas and coal energy development on BLM-managed lands. At our hearing last week the GAO noted that BLM has not met its statutory requirements for oil and gas production verification inspections. Can you please explain this some more?

ANSWER: The BLM will continue to focus on the inspection and enforcement aspects of oil and gas production. The agency has set up a team to focus on production accountability; the team will work closely with the Office of Natural Resource Revenue (ONRR- formerly part of MMS). During the last year, the BLM has embarked on an extensive program to strengthen training for its existing field petroleum engineering technicians and professionals to assure they have the most current capabilities for inspection and enforcement of oil and gas production. The BLM is taking the steps necessary to provide assurance that the public is receiving its fair share

of oil and gas revenues. The agency will stay focused on production accountability and leasing Federal lands for oil and gas development in a timely and efficient fashion without sacrificing environmental and operation safety.

Moran Q12: Is it likely that the Federal government, and the States since they get half of the royalties, may be short-changed but we really don't know?

ANSWER: Currently, the BLM is striving to perform production accountability reviews on as many high risk cases as it can with existing resources. In FY 2010, the BLM identified 1,786,000 barrels of oil and 20,000,000 MCF of natural gas that were under-reported to the Federal government. Royalty payments are then collected on the identified underreported oil and gas quantities.

Moran Q13: During our hearing last week, the distinguished new member of the subcommittee from Wyoming pointed out that the State receives a higher royalty on its lands than the BLM charges, and that the State requires disclosure of fracking chemical composition even though the BLM does not.

Is there any reason the BLM can't raise its royalty rates to at least match those of the State?

ANSWER: The Administration believes that American taxpayers should get a fair return on the development of energy resources on their public lands. A 2008 Government Accountability Office report suggests that taxpayers could be getting a better return from Federal oil and gas resources, at least in some areas. The BLM has initiated a rulemaking process to authorize increased royalties for new competitive oil and gas leases on Federal land. The rule will amend regulation 43 CFR 3103.3-1, Royalty on Production.

The BLM plans to publish the new rule in draft for public review in 2011 and promulgate the final rule by the first quarter of fiscal year 2012. The budget assumes these reforms will increase Federal oil and gas revenues by $937 million over the next ten years.

Moran Q14: The GAO and the IG also testified that they feel there are many management and oversight problems at the BLM that are somewhat similar to the problems that were found to be systemic at the MMS. Do you think that the BLM is able to provide adequate oversight and environmental review for the thousands of oil and gas wells it is responsible for?

ANSWER: The BLM is able to provide reasonable oversight and environmental review for the oil and gas wells for which it is responsible, although we recognize that there is room for improvement. The agency is continuously improving its capabilities, including the implementation of a new methodology for prioritizing inspections. With the implementation of the new risk-based strategy, each case is evaluated on a number of risk factors, including production, history of compliance, and date of last inspection. This method weighs each of these risk factors to give the BLM a list of production inspection priorities that balance high and low producing wells each year with each operator's compliance history.

Moran Q15: Last week the GAO reported to us that there are major challenges for Interior to balance its environmental protection mission with its development of fossil and renewable energy mission. GAO also reports that the BLM did not correctly use categorical exclusions under NEPA for certain Energy Policy Act related permits.

Please discuss the reforms that you announced in May 2010 and how these may help address some of the problems GAO found.

ANSWER: The BLM in May 2010 finalized several reforms to its oil and gas program that will improve environmental protection of important natural resources on public lands while aiding in the orderly leasing and balanced development of the nation's energy supply. These reforms improve protections for land, water, and wildlife, and reduce potential conflicts that can lead to costly and time-consuming protests and litigation of leases.

The BLM's goal is to front-load the leasing process by undertaking important environmental reviews and soliciting public input in advance of lease sales, instead of issuing leases only to face significant protests and appeals, litigation, judicial restraints on development, job loss, and diminished access to energy resources. Key provisions of the leasing reforms address GAO concerns and will:

- Ensure potential lease sales are fully coordinated both internally and externally, including public participation.
- Require interdisciplinary review of available information, as well as on-site visits to parcels prior to leasing when necessary to supplement or validate existing data.
- Engage the public in the development of Master Leasing Plans (MLP) prior to leasing in certain areas where significant new oil and gas development is anticipated and other important natural resource values are present. The intent is to consider fully all important natural resource values before making a decision on leasing and development in an area.
- Require an "extraordinary circumstances" review screen before applying the categorical exclusions in the Energy Policy Act of 2005 to oil and gas drilling activities on BLM lands. Categorical exclusions are categories of actions that do not have a significant effect on the quality of the human environment, and for which the BLM is generally not required to prepare extensive environmental reviews. A review for extraordinary circumstances has been required for all administratively-established categorical exclusions, and will now apply as well to oil and gas categorical exclusions established by the Energy Policy Act of 2005.

Moran Q16: The development of oil and natural gas resources on federal lands and offshore areas contributes to domestic energy production but also results in concerns over potential impacts such as on wildlife habitat. Public protests of lease sales are one way that federal resource management agencies, such as BLM, can be made aware of these potential impacts. We have heard from energy industry that protests are preventing the BLM from doing its job.

Can you please reflect on the protests and the way in which the BLM tries to balance its energy production mission with its environmental stewardship mission?

ANSWER: The oil and gas leasing reforms implemented under this Administration were designed to establish a more orderly, open, and consistent and environmentally sound process for developing oil and gas resources on public lands. The BLM's leasing reform policy requires State offices to conduct a more detailed environmental review to fully consider important natural and cultural resource values before making a decision on leasing and development in these areas. These reforms also include engaging the public in the development of Master Leasing Plans (MLPs) where appropriate, to fully consider important natural resource values prior to leasing and developing an area. Through its efforts to engage the public early and often in the developing of leasing plans, the BLM expects to reduce the numbers of protests it receives.

America's Great Outdoors

I am very interested in the President's America's Great Outdoors initiative. As you noted, the outdoor industry supports 6.5 million jobs and the Interior Department plays a major role in this. Visitation to the National Parks is up substantially, and this includes a lot of foreign tourism, which helps our trade balance. I do think the $900 million target for the LWCF is appropriate; after all, the original deal for offshore oil drilling was to reinvest some of the funding coming from that one-time fossil fuel resource in our Nation's permanent natural heritage.

Moran Q17: Mr. Secretary, can you talk a bit about the funding increase for the National Park State-side Park and recreation grants? I understand you are asking for a large increase to a total of $200 million, and that 60% of this will be competitive. Why is this so important, and how will the State-side program work?

ANSWER: The American public places great value on outdoor recreation. This was made clear at the 51 America's Great Outdoors public listening sessions held by the Department and other Federal agencies last summer. Americans from across the country shared specific and creative ideas about conservation, recreation, and connecting people to the outdoors. Through the AGO listening sessions and more than 100,000 comments from a broader public input process, we learned that there is a powerful consensus across America that outdoor spaces—public and private, large and small, urban and rural—remain essential to our quality of life, our economy, and our national identity. Americans communicated clearly that they care deeply about our outdoor heritage, want to enjoy and protect it, and are willing to take collective responsibility to protect it for their children and grandchildren.

In response to these comments, the America's Great Outdoors report recommended focusing a portion of LWCF funds on projects that achieve the initiative's goals related to large-scale land conservation, urban parks and community green spaces, and river restoration and access. The President's budget requests a total of $200.0 million for the NPS State Conservation grant program. Of this amount, $78.0 million, or 40 percent of the total request for State Conservation grants, would be equally apportioned among the 50 States plus the District of Columbia and the Territories, which share one apportionment. This will provide each State approximately $1.52 million, except as noted above with regard to the District of Columbia and the Territories.

A total of $117.0 million would fund competitive State Conservation grants. These grants will support the America's Great Outdoors initiative priorities with a strong focus on supporting the

establishment or enhancement of parks and green spaces in urban areas that lack open space and outdoor recreational opportunities, as well as other large scale areas where access to natural areas has been limited and where there are opportunities to protect larger ecosystems. Priority areas for investment in urban areas are: (1) Waterfronts that connect urban communities with water and waterside parks and open spaces; (2) Signature parks that serve as community anchors, such as City Park in New Orleans or Millennium Park in Chicago; (3) Renewed green spaces and urban garden spaces that have suffered from urban blight; and (4) Natural areas within a city or community that reconnect people with the outdoors, like Jamaica Bay Wildlife Refuge in Brooklyn, New York.

The President's budget does not propose any amendments to the Land and Water Conservation Fund Act. Consistent with the Act, projects that receive funding through the new competitive grant component must be aligned with State Comprehensive Outdoor Recreation Plans (SCORP) and enhance outdoor recreation opportunities. Projects are still subject to the 50:50 match requirement, and no State can receive more than 10 percent of the total grant funding in any given year, which would total about $17.9 million. The NPS will continue to work with the States in terms of ensuring that all State Conservation grant projects are consistent with the SCORPs, and will work with States to formulate projects that could be eligible for the new competitive funds.

The program criteria for the new competitive component are being developed. The America's Great Outdoors report recommends a number of factors that should be considered, including the demonstrated need for and benefits of the project; alignment of the project with strategic plans for recreation, open space, and conservation; identified partnerships, collaboration, leverage, and community support for the project; demonstrated sustainability and stewardship of the project over time; maximized employment opportunities for young people that connect them to the outdoors; identified opportunities for outdoor education; demonstrated plan for safe and accessible routes; and multiple identified benefits, such as wildlife corridors/ecosystem connectivity, flood control, economic revitalization, heritage tourism, and outdoor recreation. Over the next few months the Department will collaborate with the States and other partners to refine criteria that will help ensure selection of projects that will contribute significantly to the Nation's and States' outdoor recreation and conservation needs.

The initiative also has substantial increases for federal land acquisition. Some of my good friends on the other side have said that we shouldn't buy more land when we can't afford to take care of what we have.

Moran Q18: But we aren't talking about buying new national parks or wildlife refuges, are we?

ANSWER: No, the FY 2012 President's budget does not request any funds for the addition of any new parks or wildlife refuges. In fact, 97 percent of Interior's acquisition request will be used for inholdings as can be seen in the response below. The request is focused on collaborative conservation with other Federal, State and local governments as well as the local community and partners. In 2012, 14 of the projects will invest funding in conservation easements which allow the owner to maintain title of the land while restricting development.

Moran Q19: Doesn't the land acquisition program purchase inholdings, which can increase management efficiency, while also protecting sensitive areas of high interest to the public?

ANSWER: Over 97 percent of Interior's acquisition request will be used for inholdings – isolated parcels of non-federal land that lie within the boundaries of parks, refuges, or other federal units. Acquisition of inholdings does not generally require any significant additional operating costs as no new staff or equipment are required to manage new lands within existing boundaries. Purchase of inholdings increase management efficiencies such as law enforcement, habitat conservation efforts, and recreational opportunities as well as support conservation priorities that are set at the State and local level.

Climate Change

We have seen from the Republican press releases on HR-1 that they do not feel it is important for Interior to increase its science on climate change, and it is not important for the Department, which manages 20% of America's land, to begin adapting to the changes already underway.

Moran Q20: Can you please summarize some of the changes that your land managers are already seeing on the ground, such as rising sea levels destroying refuges, drought leading to wildfire and disease, and disruption to ecosystems caused by invasive species?

ANSWER: Our land managers across the country are currently managing many ecological changes on the ground. National Wildlife Refuges are witnessing the substantial effects of sea-level rise. For example, Boneyard Beach at Cape Romain National Wildlife Refuge near Charleston, South Carolina is losing ground at the rate of 25 to 30 square feet per year. At Blackwater National Wildlife Refuge in Maryland, over 8,000 acres – or 12 square miles – of marsh have been lost since the 1930s, the result of sea level rise, erosion, subsidence, salt water intrusion, and invasive species.

The Arctic National Wildlife Refuge in Alaska is observing thinning and decreasing sea ice, significant coastal erosion, and warming permafrost. Studies show that the State of Alaska has warmed at three times the rate of the lower 48 States since the mid-1970s. Fire frequency, size, and severity appear to be increasing for Alaska's boreal region since the 1980's, including many areas within Federal lands. The year 2004 had the largest fire season since records were kept beginning in the early 1950s.

Scientists report that wildfire frequency in western U.S. mountains increases during hotter springs and summers, which have become more common in recent decades. Wildfires at elevations between 5,500 and 8,500 feet have occurred more often during warm years and are associated with earlier spring snowmelt. Studies also show that years with high numbers of fires tend to coincide with drought years.

National parks are witnessing substantial landscape-scale changes. Montana's Glacier National Park, for instance, has only 27 glaciers today, down from an estimated 150 glaciers in 1850, and the remaining largest glaciers are on average only 28 percent of their previous size.

Land managers in the National Wildlife Refuge System, Bureau of Land Management, and National Park Service have inventoried and monitored the spread of invasive plants and animals. Conservation experts tracking invasive plant infestations have found that they cover 100 million acres in the United States and are spreading at the rate of up to 14 percent per year – an area twice the size of Delaware. Aquatic species spread unseen through waterways and can expand in range explosively.

Examples of the impacts of invasive species include proliferating tamarisk in the West, which increases the frequency of fire, competes for scarce water supplies, and pushes out native riparian species, such as cottonwoods and willows, which are decreasing in abundance. Large constrictor snakes in the Florida Everglades and surrounding wetlands have recently increased in numbers to the point where threatened and endangered species, especially birds and wood rats, are at higher risk than ever before. Nutria, introduced to provide fur trade opportunity, have instead decimated wetlands in Louisiana and Maryland. Technical reviews estimate that between 35 and 46 percent of endangered and threatened species in the United States have been listed because of harm from invasive species.

Moran Q21: Your budget request continues to focus on climate change science and adaptation. What portions of your climate change budget request do you feel are the most important?

ANSWER: Funding for the climate change adaptation initiative was formulated as an integrated and balanced program that leverages science, adaptation actions, monitoring and ongoing programs to improve decision making. Most importantly, DOI's efforts are aimed at ensuring that our Nation's resources remain resilient in the face of unprecedented landscape-scale challenges.

As described above, the American landscape is changing – impacting lives and livelihoods across the Nation. Some communities are facing decreased water availability and drought conditions. Other communities are threatened by catastrophic flooding and wildfires. Our Nation's coastlines confront accelerated erosion and increasing risks to structures and infrastructure. New pests and unwanted yet virulent invasive species are infesting communities around the country. The Department has a responsibility to assess the impact that these changes are having and identify strategies to protect the natural, cultural, and historic resources managed by the Department. The 2012 budget request reflects that responsibility while maintaining fiscal discipline through leveraging existing information and data, activities, and the fiscal resources of other Federal agencies, States, Tribes, and non-governmental partners.

Moran Q22: My friends have been very concerned about the Climate change science centers at the USGS and the Landscape Conservation Cooperatives managed by the Fish and Wildlife Service and other bureaus for the purpose of adapting to climate change. Can you please explain the relationship between the Science Centers and the Landscape Conservation Cooperatives and how you are working to ensure there is no duplication of effort?

ANSWER: The Landscape Conservation Cooperatives (LCCs) and Climate Science Centers (CSCs) are designed as a network with complementary roles and responsibilities.

The eight regional CSCs managed by USGS will provide fundamental scientific information, tools, and techniques that resource managers can apply to anticipate, monitor, and adapt to climate change impacts. Much of the information and tools provided by the CSCs, including physical and biological research, ecological forecasting, and multi-scale modeling, will be in response to the priority needs identified by the LCCs. The CSCs are constructed such that their primary 'clients' are the LCCs. Each CSC oversight body (i.e., their Science Advisory Committee) will consist of representatives from each of the appropriate LCCs as well as other key partners. This body will establish the scientific priorities and agenda for the CSC.

The 21 Landscape Conservation Cooperatives are landscape-scale applied conservation science partnerships that support and enhance on-the-ground conservation efforts by applying science – such as that provided by CSCs – to specific conservation decisions. For example, scientific information about the likely future fire regime in a region (based on changes such as invasive plants) would be of high relevance to both resource managers and fire managers. Likewise, information on how land use will affect water flows in a region could be used by managers to determine where populations of trout or other game fish are likely to persist.

The CSCs and LCCs are designed to work closely together. USGS is a member of many LCC steering committees, which establishes LCC science priorities. In addition, each LCC will be represented on the relevant regional CSC(s), to ensure that LCC needs are well understood and to assist in establishing *regional* proprieties for CSC science. As CSC projects are undertaken, both Federal and university scientists will work closely with LCC or other management staff to ensure the maximum applicability of their work.

Both LCCs and CSCs are entities whose tasking entails ensuring communication to avoid just the duplication of effort. At each level (representing different geographic scales), the LCC and CSC's provide a forum for managers and scientists to discuss, compare, coordinate, integrate and ultimately, leverage federal and other investments to ensure the most public value.

In addition, LCCs and CSCs have begun working toward their mutual goal of developing integrated data management networks to facilitate easy sharing of information; these systems will maintain consistency with information standards (e.g., shared data standards, databases, and GIS protocols) across DOI and the larger climate community to enable coordination and information sharing.

Within the Department of the Interior, oversight for the LCC/CSC network is the responsibility of the Energy and Climate Change Task Force, co-chaired by the Deputy Secretary and the Counselor to the Secretary and comprised of all Assistant Secretaries and Bureau Directors. A Climate Change Working Group, on which all DOI bureaus sit, and which is chaired by representatives from the USGS, Fish and Wildlife Service, and the Deputy Secretary's Office, supports the Task Force, ensuring accountability and cross-bureau communications.

Wild Horses

Mr. Secretary, I know how difficult the wild horse issue is and I appreciate that you are trying to change it. The modifications of the National Wild Horse and Burros Program announced by

BLM represent first steps in a long-overdue overhaul of this program. With more than 40,000 horses in long-term holding facilities at a cost of $37 million a year and growing, we cannot afford to wait any longer to make fundamental changes.

The federal government's management of wild horses and burros should be based upon sound science, transparency, and the input of all stakeholders. We here in the Subcommittee want to work with you and the BLM to ensure our nation's wild horses are preserved for future generations.

Moran Q23: What are your greatest needs at BLM for the wild horse program?

ANSWER: The needs of the BLM's Wild Horse and Burro program are articulated in the President's FY 2012 Budget Request. Finding ways to place the wild horse and burro program on a sustainable track is a priority. Toward that end, the FY 2012 President's Budget Request places a greater emphasis on fertility control, adoptions, and animal welfare. The BLM intends to increase adoptions and broaden the use of fertility control. The BLM is reducing removals and maintaining the current populations while an independent technical review of the Wild Horse and Burro program will assist the agency in ensuring that wild horse management is guided by the best available science. Additionally, the BLM is soliciting proposals for wild horse ecosanctuaries to provide a cost savings and a natural and healthy habitat for the horses.

Moran Q24: Do you see a future where there can be more widespread methods of caring for the horses and more contraception in the wild?

ANSWER: Finding ways to put the Wild Horse and Burro program on a sustainable path will depend on the BLM's ability to identify safe, effective, and humane options for suppressing population growth without removing horses from the range, and boosting adoptions of horses that are removed from the range. To achieve these goals, the BLM has issued a proposed strategy for the Wild Horse and Burro program. The BLM intends to reduce the annual number of wild horses gathered and removed from the range from 10,000 in FY 2011 to 7,600 horses in FY 2012; continue to pursue public-private partnerships to hold excess horses gathered from western public rangelands; and increase significantly the number of mares treated with fertility control, from 500 in 2009 to a target of 2,000 beginning in FY 2012. The BLM also plans to offer more trained horses for adoption and hold more adoption events to meet our goal to increase the number of wild horses adopted by members of the public by 33 percent, from 3,000 to 4,200 annually. BLM is also supporting an independent technical review of the Wild Horse and Burro program that will assist the agency in ensuring that wild horse management is guided by the best available science.

Indian Country, Cobell and Needs at BIA

I would like to congratulate you for your role in seeing an end to the Cobell lawsuit. That is a major accomplishment. Now I see that your request has a decrease for historical accounting and Indian land consolidation.

Moran Q25: To what extent does the Cobell suit completion give you more opportunities in you Indian Country budget?

ANSWER: On December 8, 2010, the President signed into law the Claims Resolution Act of 2010 which includes the $3.4 billion Cobell settlement. Under the terms of the settlement, approximately $1.5 billion will be distributed to the class members to compensate them for their historical accounting claims and to resolve potential claims that prior U.S. officials mismanaged the administration of trust assets. The second part of the settlement establishes a $1.9 billion fund for the voluntary buy-back and consolidation of fractionated land interests to address the continued proliferation of thousands of new trust accounts caused by the division of land interests through succeeding generations. The land consolidation program will continue to provide individual Indians with an opportunity to obtain cash payments for divided land interests and consolidate ownership(s) for the benefit of tribal communities. In response to this provision, funds for the Indian Land Consolidation Program are not requested in the Indian Affairs budget in FY 2012. In addition, as an added inducement to facilitate the purchase of fractionated land interests, up to $60.0 million of the $1.9 billion for land acquisition will be contributed to an existing, non-profit organization for the benefit of educating American Indians and Alaska Natives. Upon final approval by the U.S. District Court for the District of Columbia, the *Cobell* v. *Salazar* settlement agreement will be implemented. We view this settlement as an integral element to ongoing improvements and trust reforms. As a result of these improvements and the Secretary's commitment to tribal consultation, we will have enhanced opportunities to coordinate with Tribes on the Indian Affairs budget.

Moran Q26: Your budget request for the BIA appears to be pretty tight. I see that you are reducing construction, and have some measured increases for programs to strengthen Tribal Nations. I note the increase of $29.5 million for contract support. Why is this such a priority in Indian Country?

ANSWER: During formulation of the Indian Affairs (IA) budget, the Assistant Secretary engages in tribal consultation to ensure that tribal priorities are reflected in the request each year. This consultation occurs formally through the quarterly meetings of the Tribal Interior Budget Council (TIBC), which is comprised of IA senior leadership, two tribal representatives from each of the 12 Bureau of Indian Affairs (BIA) Regions, and two tribal co-chairs. The tribal members are designated representatives of the Tribes in their respective Regions to ensure that the priorities of Tribes on a nationwide basis are represented to the greatest extent possible during budget consultation.

Tribal priorities weigh heavily in the FY 2012 budget request, as it includes additional funding to bring the level of Contract Support closer to meeting 100 percent of the reported need. Funding Contract Support remains a top tribal priority as it impacts a significant number of Tribes on a nationwide basis as the vast majority of Tribes have at least one self-determination contract or self-governance compact and are thus eligible to receive Contract Support funding to cover their administrative- costs.

Moran Q27: Your BIA budget also has a $20 million increase for various Tribal justice efforts, including detention centers and law enforcement. This also was a priority for the subcommittee

when both Mr. Dicks and I chaired it. What is the law enforcement situation in Indian Country and are you beginning to make a difference?

ANSWER: Staffing Indian Country law enforcement is one of the most crucial issues impacting public safety in Indian Country. Based on a staffing analysis conducted in FY 2010, the BIA found the staffing ratio for the six BIA law enforcement districts and tribal law enforcement programs were below the national parity staffing ratios for similar locations. Even with the funding increases provided over the last four years, there is still a considerable gap in officers needed to meet safe staffing levels and national averages in both BIA and tribal programs. The additional funds will allow BIA to continue the fight to bridge the officer staffing gap in an effort to restore safety and protect the communities in Indian Country.

The BIA utilized funding in FY 2010 to make many positive changes, including effective distribution of funds to law enforcement programs. The funding increase strengthened the Indian Affairs' law enforcement presence in Indian Country by adding additional BIA and tribal officers to serve as the front line of protection for Indian Country communities. With the requested level in FY 2012, the BIA will carry on efforts to increase the number of police officers in Indian communities, increase community policing efforts, strengthen the area of corrections, improve automated officer support, and improve officer training to provide the highest quality of safety for the public as well as officers within Indian communities. The FY 2012 budget request also supports staffing at new detention centers constructed with Department of Justice American Recovery and Reinvestment Act grant funding.

One of the top priorities of this Administration with regards to Indian Affairs is the High Priority Performance Goal (HPPG) for law enforcement. The initiative is focused on achieving a significant reduction in criminal offenses of at least five percent within a 24 month period on four targeted tribal reservations by implementing a comprehensive strategy involving community policing, tactical deployment, and critical interagency and intergovernmental partnerships. The targeted reservations are Standing Rock Sioux Tribe (North and South Dakota), Chippewa Cree Tribe (Montana), Eastern Shoshone and Northern Arapaho Tribes (Wyoming) and the Mescalero Apache Tribe (New Mexico.) BIA has implemented a general crime reduction plan at the four reservations in support *of a comprehensive Indian Country crime reduction strategy.* This plan's multi-faceted approach to crime reduction will succeed by utilizing proper leadership/management principles, adequate staffing and resources, accurate analysis of current and historic criminal activity/trends, community assessments, intelligence based law enforcement assignments and proactive operations, crime prevention programs, and most importantly, accountability at all levels of the operation. Properly applying these fundamental principles of law enforcement have always been necessary to effectively reduce criminal activity which leads to an improved quality of life for the citizens of the community.

The tribal leaders have been an important part of this initial process and will continue to be involved in the development and implementation process. Based upon feedback from tribal leaders and tribal citizens at the four targeted sites, the initiative is making a difference by reducing the violent crimes occurring within the tribal communities.

In the area of training, the BIA Indian Police Academy (IPA) has developed partnerships with two higher educational institutions to promote continuous educational opportunities for Indian Country law enforcement and detention personnel. The partnership with the United Tribes Technical College (UTTC) in Bismarck, North Dakota included providing the institution with funding for its criminal justice program and assigning full-time BIA instructional staff at the institution to coordinate and facilitate law enforcement and detention training at UTTC. The partnership with East Central University in Ada, Oklahoma included providing this institution with funding for its tribal law enforcement training program. The IPA has utilized additional funding to contract training programs to be held at specific training sites around Indian Country that are more accessible for BIA and tribal public safety employees to attend. The contracted programs specifically address the BIA training initiatives in the areas of: Leadership/Management, Domestic Violence, Background and Adjudications, Criminal Investigations, and Detention.

In the area of detention services, the BIA utilized funding in FY 2010 to assist with housing Indian Country offenders in Adult and Juvenile Correction facilities and through contracting additional bed space from various county and State facilities. As a result of the population increases, longer sentences and capacity limitations, there is a greater need for contract beds in local jails and prisons to house the offenders. These contract facilities also provide specialty services such as substance abuse, programming and other services to offenders.

Funding was also utilized to increase staffing and promote safer detention centers at both direct service and Tribally-operated facilities in Indian Country. For a number of years detention facilities have been seriously understaffed and most facilities are operating far under minimally safe staffing levels as defined by the Department of Justice National Institute of Corrections. Fiscal Year 2010 funding was utilized to upgrade BIA correction officer positions and bring them in line with similar positions in other Federal agencies.

In the area of Tribal Courts, BIA has utilized the additional funding to further the development, operation, and enhancement of tribal justice systems and Courts of Indian Offenses (commonly known as CFR Courts.) Some approaches to accomplish this include providing technical assistance and training; conducting research concerning the operation of tribal justice systems; and promoting cooperation and coordination among tribal justice systems and the Federal and State judiciary systems. Over 60 tribal court systems have been reviewed to evaluate the various funding needs. The results of this analysis revealed the tribal courts are in need of numerous corrective action plans to improve tribal court systems. This program will continue to provide detailed corrective action plans to outline needed improvements and associated costs to bring tribal courts up to appropriate levels of efficiency to process the increased caseloads in Indian Country. Additional tribal court reviews are currently being conducted and tracked under BIA law enforcement performance measures which are highlighting areas of needed improvement.

Moran Q28: The GAO testimony mentioned the potential problems that may affect pending Indian land in trust issues due to the Supreme Court case of Carcieri v. Salazar. Can you tell us how many tribes may be affected by this ruling?

ANSWER: The *Carcieri* decision has created confusion regarding the scope of the Secretary's authority to acquire land in trust for all tribes. The Department will review all fee to trust applications to determine whether the applicant tribe was "under federal jurisdiction" pursuant to the Indian Reorganization Act of 1934. This review is being undertaken on a case-by-case basis. As such, the Department does not have a firm number of how many Tribes are affected by the *Carcieri* ruling. The detailed analysis required as a result of the *Carcieri* decision impacts all Tribes in the fee-to-trust process, as the Department must devote significant resources to conduct this analysis for each tribal applicant. This diversion of resources slows down the Department's ability to process all pending fee-to-trust applications.

National Mall Needs and Options

The National Mall continues to be a problem. There is a tremendous amount of construction activity going on right now that is beginning to fix dilapidated structures.

Moran Q29: What is in the new budget for the Mall, and to what extent do you think that the non-profit sector could raise additional revenue to do some of the restoration that is needed so much?

ANSWER: As National Mall planning began in 2006, deferred maintenance for the park was estimated at more than $450 million. Projects provided for under the American Recovery and Reinvestment Act reduced this need by more than $50 million, so the current deferred maintenance estimate for the National Mall is about $400 million. The FY 2011 Budget proposed $16 million to reconstruct the soil and turf on the National Mall that are highly compacted or completely eroded. The Department is currently working to develop a contract for Mall turf renovation between 3rd and 7th Streets which would reduce the deferred maintenance backlog to approximately $384 million. The primary purpose of turf renovation is to improve the sustainability of the Mall, which is used heavily on a constant basis for a wide variety of purposes. This project, for the center grass panels, would remove poor soil and mix it with a special combination of new soil, sand, clay and organic material. It would also install a new drainage system, a new irrigation system, and would install 500,000 gallons of underground cistern space to capture rainwater to use for irrigation.

The FY 2012 Budget proposes $3.3 million to evaluate the condition of the slurry wall located on the west edge of the World War II Memorial, which has failed, and either repair or replace the structure, make necessary repairs to the drainage system to prevent future damage, and reduce the quantity of ground water flow to decrease the burden on storm water discharge systems. The construction effort will correct unsafe conditions and protect the memorial infrastructure. This investment would additionally reduce deferred maintenance of National Mall assets.

One of the major objectives of the National Mall Plan is to enable the National Mall to sustain high levels of use, a goal which can primarily be achieved by addressing the deferred maintenance on the Mall. To implement the plan, which is now completed, Interior and NPS are proposing a fundraising effort with the Trust for the National Mall as the authorized non-profit partner to supplement Federal dollars appropriated for Mall renovation. Market research indicates public support for the Mall; the Trust is launching a national campaign to raise $350

million over several years. Funding will be targeted to priorities laid out in the National Mall Plan.

There will be innumerable demands for museum and memorial sites on the National Mall, supported politically, over the coming years. To accommodate them without violating the intent of the Commemorative Works Act, we need to do what Congress did a century ago -- with the Lincoln Memorial -- and expand or enlarge the Mall on available nearby federal land. None of the current federal plans addresses Mall expansion or the larger future needs of the Mall across jurisdictions (Smithsonian, National Park Service, National Gallery, Architect of Capitol, Department of Agriculture, and so on.) None of the ad hoc expansion ideas floating around have the clout and prestige of being called "The Mall." We need a unifying concept.

Much of the federal land available for Mall expansion along the Potomac is under Interior's jurisdiction -- and much of it is already designated by Congress for future memorials.

Moran Q30: A private group of scholars, designers, and academics is ready to lead a planning effort. Are you prepared to support Mall expansion on Interior-administered lands?

ANSWER: Expanding the title of the National Mall to other areas is an idea promulgated by members of a small advocacy group who have participated in various Federal planning efforts. However, a plan for the placement of future monuments and museums already exists so the action they propose is not necessary.

In support of the Commemorative Works Act, the National Capital Planning Commission prepared a plan to implement a cohesive and unifying vision in the *Memorials and Museums Master Plan* completed by the National Capital Planning Commission and stakeholders in 2001. That plan identifies locations for 100 future memorials and museums to be located throughout the Capital area including locations on Interior Department administered lands. A number of memorials have been sited using this plan including the Dwight D. Eisenhower Memorial, the Air Force Memorial, Veterans Disabled for Life Memorial, and the Victims of Communism Memorial.

Strengthening Accountability of Insular Area Programs

GAO discussed the need for better Interior Department oversight of funds provided for Insular areas, especially for the freely associated States of Micronesia, Marshall Islands and Palau.

Moran Q31: Can you please summarize what staffing the Interior Department has to oversee these funds that are nearly $400 million per year.

ANSWER: The Office of Insular Affairs has 12 employees in Washington, Hawaii and the territories who work full time on grant management issues. Another 9 employees are involved in supervisory or part time roles on matters involving the oversight of funds.

Moran Q32: What should be done to better manage these funds and help the Insular governments, while assuring there is no fraud, waste or abuse?

ANSWER: We believe that increased technical advice and the numbers of on-site reviews should be offered by Federal program managers and those with knowledge of accounting for Federal dollars. The Office of Insular Affairs will seek to hire additional personnel with audit background to enforce internal controls and compliance standards. Technical assistance training to increase local workforce capacity also helps to address the challenge of shortages of qualified personnel in the remote islands.

Moran Q33: I see that the US Government has completed negotiations with the Republic of Palau for renewal of the terms of the Compact of Free Association. Why is it important for the Congress to ratify this agreement and for the US to continue to provide assistance to our friends in Palau?

ANSWER: Palau is strategically located in the westernmost point in a U.S. security zone that stretches from California to the Philippines. Coupled with our assets in Hawaii and United States' territories, our influence in the Freely Associated States of Palau, the Marshall Islands, and Micronesia creates a security zone that spans the entire width of the Pacific.

The U.S. has two separate, but critical foreign policy goals with Palau. One is to reinforce our full authority and responsibility for the security and defense of Palau. Its location makes it a vital part of the United States' military strategy. The second goal is to keep Palau allied with the U.S. on controversial issues in multilateral forums.

Continued assistance to Palau will maintain the viability of the Palau Trust Fund, established by the Compact, through 2045. It will also provide key resources for capital improvements and ensure the maintenance of the Palau road and international airport. In exchange for the financial assistance proposed by the Administration, Palau will commit to undertake urgent economic, financial, management and major capital improvement reforms.

Moran Q34: The Insular economies are in a terrible situation now, especially in American Samoa and the Commonwealth of the Northern Marianas. What can you in Interior and the US government do to help?

ANSWER: The Department recognizes the economic difficulties in the territories, especially in American Samoa and the Commonwealth of the Northern Mariana Islands. Although we are constrained by resources, the Department strives to empower these communities to overcome these challenges and seize upon opportunities as they arise. The FY 2012 budget directs over $33 million to American Samoa for operations and capital improvements and $9.5 million to the CNMI, in addition to technical assistance and other grants. The Department is also pursuing strategies to foster economic development, that lead to sustainable energy solutions, and to promote sound financial management in the governments to improve the quality of life for island residents.

Moran Q35: I see that the military build-up on Guam that moves 15,000 persons from Japan to Guam is continuing. What role does Interior have in this major change to this small, but important territory?

ANSWER: The Department has been at the forefront of intergovernmental efforts to address the needs "outside the fence" of the growing military installations to assure that the needs of Guam's civilian community are met. The 2012 budget allocates $6 million in capital improvement funds, a $10.1 million appropriation transfer from DOD for school transportation needs and $1.12 million for public safety equipment. The Technical Assistance program will provide $1 million to assist the government of Guam to improve their tax system and collections, grant writing processes, land use and acquisition processes. The budget provides $720,000 to Guam for the purchase and maintenance of ambulances. The budget also includes resources to station two full time employees of the Office of Insular Affairs in Guam to manage Federal funds associated with the increase in civilian projects in Guam.

Legislative Proposals on Abandoned Mine Land Reclamation, Hardrock Mining, and Non-Producing Oil and Gas Leases

Your budget says you will submit a proposal to reform abandoned mine reclamation which would discontinue the payments to States that no longer have abandoned mines and use the funds for reclamation where there is the greatest need.

Moran Q36: Can you please explain this a bit? What kind of money is involved and what kind of land reclamations would be able to be accomplished?

ANSWER: The budget includes a legislative proposal to reform the coal Abandoned Mine Land (AML) reclamation program to eliminate unnecessary spending and focus reclamation efforts on the Nation's most dangerous abandoned coal mines. First, the budget proposes to eliminate the unrestricted payments to States and Tribes that have completed their abandoned coal mine reclamation. Terminating these payments will save taxpayers $1.2 billion over the next decade.

Second, the budget proposes to reform the allocation of grants for coal AML reclamation to a competitive process. The current production-based formula allocates funding to States that have the most coal production and not necessarily the most critical reclamation needs. A competitive process would ensure that funding addresses the highest priority AML coal sites across the Nation, regardless of which State they are located in and how much coal is currently produced. The proposal directs funding based on a publically-available set of criteria, to identify the AML sites that pose the greatest health, safety, and environmental risks. Application of the funding would be restricted to coal-related reclamation projects only. Based on current cost estimates from the AML inventory, directing funding to the highest priority coal reclamation sites would ensure their reclamation prior to the expiration of the legislative authority for the reclamation fee in 2021.

Third, the budget proposes to create a parallel hardrock AML program, with fees collected by OSM and competitively distributed by the Bureau of Land Management. Similar to the coal industry, hardrock producers left a legacy of abandoned mine sites that create environmental, and health and safety hazards. There is no similar hardrock reclamation fee, leaving States, Tribes, and Federal land managers to address these sites within their budgets. The budget proposes a new reclamation fee on hardrock production. This proposal is still in the process of development, but OSM would be responsible for collecting the new fee, building off of its expertise in

collecting the coal AML fee. The BLM would be responsible for distributing the receipts, using a competitive allocation program that will run in parallel to the competitive coal AML reclamation program.

Moran Q37: Your budget also mentions a future proposal which would require new mines on Federal lands to pay annual rental payments and a royalty of not less than 5%. The receipts would be shared with the States. There have been a lot of attempts over the years to reform the Mining Law of 1872 and it is embarrassing that the Congress has not made progress. What are you going to propose and do you think you will have better luck than in the past?

ANSWER: The Administration's FY2012 Budget assumes legislation to provide a fair return to the taxpayer from hardrock production on Federal Lands. The proposal would remove certain minerals from the operation of the Mining Law of 1872 and add them to the leasing provisions of the Mineral Leasing Act of 1920 (MLA). Minerals covered by this proposal are gold, silver, lead, zinc, copper, uranium, and molybdenum. Under the proposal, new mining on Federal lands for these minerals would be conducted under the MLA's leasing process. Existing mining claims for these minerals would not be affected. In accordance with the MLA's standard leasing process, these minerals would be subject to annual rental payments and to a royalty of not less than 5 percent.

The 2012 budget also assumes a new AML fee based on materials displaced by hardrock mining to address the environmental and physical safety hazards posed by the many thousands of abandoned mines across the country. The fee would be levied on all uranium and metallic mines on Federal and non-Federal lands, including State, public, private, and tribal lands. The fee would be collected by the Office of Surface Mining, Reclamation and Enforcement and made available for the reclamation of Federal and non-Federal abandoned hardrock mines. The BLM would distribute the receipts through a competitive grant program to reclaim the highest priority abandoned hardrock sites. This component is part of a larger proposal to comprehensively reform the reclamation of abandoned mine lands across the nation, by terminating unrestricted payments to States and Tribes that have already cleaned up their abandoned coal mines, and transitioning funding for reclamation of coal AML sites to a competitive program, in order to address the highest priority sites. Altogether, this proposal will ensure that the nation's highest priority hardrock and coal abandoned mine lands are reclaimed, funded by the industries that created them.

We believe both of these proposals reflect pressing needs and deserve full and fair consideration.

Moran Q38: I also note that you propose a $4.0 per acre fee on non-producing oil and gas leases onshore and offshore, which would be an incentive for lease holders to get active. I think this is a great idea. This fee is projected to generate $25 million in 2012 and $874 million over ten years. Does this require legislation or can something be done administratively?

ANSWER: This proposal would apply to leases issued following enactment; it is not intended to apply to existing leases. This fee would provide an additional financial incentive for oil and gas companies to either get their leases into production or relinquish the leases so that the tracts can be re-leased and developed by new parties.

This proposal is part of an Administration initiative to encourage energy development on lands and waters leased for development. A $4.00 per acre fee on non-producing Federal leases on lands and waters would provide a financial incentive for oil and gas companies to either get their leases into production or relinquish them so that the tracts can be released to and developed by new parties. The proposed $4.00 per acre fee would apply to all new leases and would be indexed annually to inflation. In October 2008, the GAO issued a report critical of past efforts by the Department to ensure that companies diligently develop their Federal leases. Although the GAO Report focused on administrative actions that the Department could undertake, this proposal requires legislative action. This proposal is similar to other non-producing fee proposals considered by the Congress in the last several years. This fee is estimated to generate revenues to the Treasury of $25.0 million in 2012 and $874.0 million over 10 years.

Generating Other Revenue Collections and Enhancing Financial Assurances and Bonds

Moran Q39: We recently heard from the Acting Inspector General that the BLM's use of right of ways for various purposes, including energy development, is losing money for the American Taxpayer. Indeed the Inspector General testified that Native American tribes are charging up to 100 times more for a right of way on their land. Why is Interior charging such low rates? Are you looking into alternative means, such as leasing, or different rates for granting use of public lands, particularly as it relates to large development projects that will encumber the land for man years?

ANSWER: The BLM is required by the Federal Land Policy and Management Act (FLPMA) to collect fair market value for right-of-way authorizations on the public lands, including solar energy and wind energy right-of-way (ROW) authorizations.

The BLM updated rental schedules for linear ROWs on the public lands by regulation, with full public review and comment, in October 2008. These regulations established annual rental fees for linear ROWs based on county-by-county land values published periodically by the National Agricultural Statistics Service (NASS) and reflect the fair market value for linear ROW authorizations on the public lands. These rental fees are also adjusted on an annual basis by the Implicit Price Deflator - Gross Domestic Product (IPD-GDP) inflation index.

Solar energy ROW rental fees were established by BLM in June 2010 and reflect the fair market value of solar energy authorizations on the public lands. Solar energy rental fees include an annual base rent for the acreage of the solar energy ROW authorization using county-by-county land values published by NASS. In addition, an annual megawatt (MW) capacity fee is also collected for the MW size of the solar energy facility on the public land. This MW capacity fee varies by solar technology due to the different efficiencies of the different technologies. The total annual rental fee for a solar energy project includes both the base rent and the MW capacity fee.

Wind energy rental fees, initially established by BLM in October 2002, were updated in August 2006 and again in December 2008. The wind energy rental fee also includes a base rent and a MW capacity fee per MW per year. The current wind energy rental fee is being further updated

to revise the base rent using county-by-county land values published by the NASS and to increase the MW capacity fee to be more comparable to solar energy rental fees.

Moran Q40: The GAO testimony last week indicated that the BLM is unable to require oil, gas, coal, and hardrock mine operations on Federal lands to post adequate bonds to ensure that the lands can be reclaimed after the disturbance of these operations. Please explain why this situation exists and what levels of revenues are potentially being lost to the American taxpayer. Can you do something about this?

ANSWER: To manage potential liability on Federal land, the BLM has developed policies for reviewing bond adequacy and for managing idle wells (wells that have not produced for at least seven years) and orphan wells (wells that have no responsible or liable parties). The bond adequacy policy is intended to ensure that BLM Field Offices regularly review bonds and increase them as necessary so that they reflect the level of risk posed by the operator. The BLM's idle and orphan well policy is intended to ensure that nonproducing wells are either plugged or returned to production. This policy directs BLM Field Offices to develop an inventory of such wells and rank and prioritize them for reclamation based on potential environmental harm, among other things.

The BLM currently holds $1.9 billion in financial guarantees in conjunction with the States to ensure final reclamation of hardrock mines. The BLM's surface management regulations and financial assurance process is intended to prevent undue and unnecessary degradation and to ensure reclamation and closure of disturbed lands. With regard to coal and non-energy solid minerals, the BLM also requires financial guarantees to ensure final reclamation before coal and non-energy solid minerals mining occurs.

Moran Q41: GAO also noted that under the General Mining Act of 1872 that the federal government cannot charge royalties or require revenue sharing or adequate reclamation bonds, unlike the 12 western States, including Alaska, that assess multiple types of royalties on mining operations on State owned lands.

What is the level of revenue that is lost because hardrock mining is not managed on Federal lands like it is on State owned lands?

ANSWER: The BLM currently does not track sales from mining claims on public lands and therefore cannot speculate on lost revenue. Until new legislation is enacted to explicitly authorize the Federal government to lease and charge a royalty on select hardrock minerals (as proposed in the President's FY 2012 Budget request), under the 1872 Mining Law, extractions from hardrock mining claims are considered private property.

Moran Q42: GAO also reported that the BLM cannot ensure that oil and gas operators post adequate bonds to reclaim disturbed lands, and that the minimum bond amounts have not been increased for 50 years. GAO found that 12 western States generally required higher bond amounts than the minimum amounts established in BLM regulations.

Please give us a feel for the amount of damaged lands, and the potential loss of revenues from bonds, if the bonds were actually adequate to provide proper environmental cleanups on Federal lands. Does Interior have any plans to address this situation?

ANSWER: The BLM has identified 144 orphaned wells with associated land disturbance that have not yet been reclaimed. The purpose of a bond is to ensure the oil and gas operator meets its obligations to conduct operations in conformance with the terms and conditions of the lease including the payment of required royalties from producing wells. The BLM holds the operator's bond until all liabilities assigned to the bond are taken care of and then the bond is returned to the operator.

The BLM is implementing recommendations from the GAO Oil and Gas Bonds report (GAO-11-292) and is evaluating opportunities for increasing minimum bond amounts through a rulemaking process. The BLM will also be updating policy for conducting bond adequacy reviews.

Moran Q43: The GAO testimony also discussed orphaned oil and gas wells that the BLM is forced to use Federal funds to clean up. What is the extent of this problem? Given the large increase in drilling on BLM managed lands during the past decade, is it likely that this problem of orphan wells will expand? How bad is this problem of orphan wells in the Gulf of Mexico? Is Interior going to address this issue?

ANSWER: The GAO report identified 144 orphaned wells on Federal mineral estate. To manage potential liability on Federal land, BLM has developed policies for reviewing bond adequacy and for managing idle wells (wells that have not produced for at least 7 years) and orphan wells (wells that generally have no responsible or liable parties). BLM's idle and orphan well policy is intended to ensure that nonproducing wells are either plugged permanently or returned to production. At this time, there are no orphaned wells in the GOM.

Renewable Energy and Strengthening Resource Protection

Mr. Secretary, you have made your "New Energy Frontier" a cornerstone of your tenure as Secretary of the Interior. Your goal is to develop at least 10,000 megawatts on Interior managed lands by the end of 2012. You have stated, and your current budget reflects that you intend to do this with full environmental review. Indeed, many of your agencies' performance measures for renewable energy development are in terms of "number of reviews conducted".

However, conducting an environmental review and actually "protecting" natural resources, as is your mission, is different. I would suggest to you that a measure of success is not the number of reviews conducted, but the steps taken to ensure that species and their habitats are protected—either through avoidance or by improving their habitat.

Moran Q44: Given that, what precisely is being done to require that some areas are avoided to protect important species and their habitats?

ANSWER: The BLM has recently identified 20 priority renewable energy projects for 2011 – 10 solar, 5 wind, and 5 geothermal – that will help achieve the Department's goal of permitting 10,000 megawatts of renewable energy capacity by the end of 2012. The BLM is giving these projects priority because they are mostly in low- to medium- resource conflict areas and have demonstrated the ability to complete full NEPA analysis, including public comment periods, within the year. Additionally, the BLM recently released the Draft Solar Programmatic Environmental Impact Statement (EIS), which identifies 24 Solar Energy Zones (SEZs) which, under the Draft PEIS' preferred alternative, would receive priority for processing by the BLM. The BLM designated these SEZs because they have relatively low resource conflicts. The Solar EIS has also specifically identified areas that would be excluded from solar energy development. These areas include Areas of Critical Environmental Concern (including Desert Wildlife Management Areas), critical habitat areas (designated and proposed) for listed species under the Endangered Species Act, Desert Tortoise translocation sites, big game migratory corridors, big game winter ranges, and other land use management prescription areas to protect sensitive species habitat.

Moran Q45: How will you ensure that certain areas will be improved for species?

ANSWER: Mitigation plans are addressed in the NEPA review and analysis for each renewable energy project and are incorporated into the decisions for each project. These mitigation plans include not only onsite mitigation but also mitigation to improve habitat in other areas. These offsite mitigation efforts may include the acquisition of important habitat areas or the funding of habitat improvement projects. These important habitat mitigation areas are being protected for long-term conservation management.

Moran Q46: How will you monitor your progress?

ANSWER: Onsite monitoring programs are required to be implemented by the permittee for each project as a condition of the approval for each project. In addition, the BLM is developing the protocol for a long-term offsite landscape level monitoring program. This landscape level monitoring program will be a collaborative effort among Federal, State, and private parties.

Moran Q47: Are you applying consistent policies across your bureaus?

ANSWER: Yes, the Department of the Interior has established an interagency working group to ensure coordination across the bureaus within the Department and to facilitate the application of consistent policies. This interagency working group meets on a regular basis and coordinated on the development of the Priority Projects for 2011. The interagency working group was instrumental in organizing the Department's Renewable Energy Workshop in February 2011 and collaborated in the release of several policies and guidance documents including the FWS Wind and Wildlife Siting Guidelines, FWS Eagle Conservation Plan Guidance, and BLM Pre-Application and Screening policy memorandum.

Moran Q48: I understand that there is a Draft Programmatic EIS for Solar Energy Development out for public comment. How do you intend the BLM to incorporate adaptation into this

document? My understanding is that it is not addressed, as is required pursuant to your own Secretarial Order number 3289 and direction from CEQ?

ANSWER: The extended public comment period on the Draft Solar EIS ended on May 2, and we are currently reviewing the comments received on the document and the scope of the solar energy program on the public lands. As an element of the "BLM Proposed Solar Energy Program" (described more fully in Appendix A.2. of the Draft Solar EIS), the BLM would implement an adaptive management plan for solar energy development, developed in coordination with potentially affected natural resource management agencies. This adaptive management plan would ensure that new data and lessons learned about the impacts of solar energy projects would be reviewed and incorporated into the program through revised policies and design features. Appendix A (page A-25) specifically addresses the development and implementation of an adaptive management plan.

Moran Q49: You have been working with the Interior agencies to develop "landscape scale" analysis and tools. What are your goals for protecting landscapes while increasing the footprint of renewable energy? What standards are you identifying for your agencies working in these landscapes? Will these standards be consistent across your agencies?

ANSWER: Ecoregional assessments are being prepared to assist in identifying the landscape level environmental risks from renewable energy development and other activities and naturally occurring events on the public lands. These assessments will assist in developing goals for the protection of the most sensitive resources at a landscape scale. The California Desert Renewable Energy Conservation Plan (DRECP) is another example of a collaborative Federal and State agency landscape level planning effort that is currently underway to establish goals for protecting important resources in the California desert and providing opportunities for renewable energy development. These efforts and development of the Solar EIS will ensure that consistent standards are developed and implemented across the agencies with the Department of the Interior for facilitating renewable energy development.

Moran Q50: In the final FY 10 interior appropriations bill, this subcommittee directed the development of a report in consultation with the Forest Service on the criteria to be used for siting renewable energy projects, including the extent to which key natural resource values would be protected, a detailed strategic plan on how coordination between the agencies would occur, what areas would be considered for development, and an analysis of the useful life of the energy sites and how infrastructure would be removed when its usefulness was exhausted. The deadline for that report was within 180 days of enactment. It is now nearly 18 months since the enactment of the FY 10 bill and to date no report has been provided.

Can you explain this delay and tell us when the report might be forthcoming?

ANSWER: The Department finalized the report and delivered it to Congress on May 6, 2011.

Moran Q51: I understand that the ESA consultation workload for renewable energy development and transmission is quite significant. Can you describe the workload and how these needs will be addressed in the FY 12 request?

ANSWER: The BLM is required, pursuant to section 7 of the ESA, to consult with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service for actions that may affect threatened or endangered species. The BLM, to the greatest extent possible, tries to site these projects to avoid effects to listed species. Because the BLM has not completed a full, environmental analysis for all of these projects, it is difficult to forecast the consultation workload. We anticipate that these costs will be absorbed through existing budgets for the renewable energy program (this includes the cost recovery funds that the agency collects from applicants for processing their applications). In response to the growing workload, under the New Energy Frontier initiative, the FWS is requesting a total of $7.0 million for renewable energy activities including technical assistance in project design and Endangered Species Act consultation of renewable energy projects.

Wildfire and Cohesive Strategy

The GAO testimony last week reminded us that the Administration has yet to submit the Cohesive Wildland Fire Management strategy that was required by section 503 of the FLAME Act of 2009. Please explain why this is not done yet and when you expect to get it done.

Moran Q52: Why is it important for the federal and state wildland fire fighters to have such a cohesive strategy?

ANSWER: In response to the FLAME Act of 2009, on March 25, 2011 the Departments of the Interior and Agriculture delivered two documents to Congress: *A National Cohesive Wildland Fire Management Strategy* and the *Report to Congress: The Federal Land Assistance, Management and Enhancement Act of 2009.* The documents were also released to the public. The documents, along with updates on the cohesive strategy effort, are available at: **www.foresandrangelands.gov**

The challenges of fire management are formidable and growing more complex every year. More people inhabit areas prone to wildfire. The Nation has diverse landscapes, demographics, and social values. A united, comprehensive effort, such as a national strategy, should address these differences. DOI agencies have a longstanding and solid record of working with State and local jurisdictions, but the increasing challenges of fire management require Federal, State, tribal, local and non-governmental partners to further seek innovative approaches through open, collaborative and science-based efforts.

Reducing Interior's Deferred Maintenance Backlog

Your staff indicates that the backlog in deferred maintenance for roads, dams, buildings and other structures at the National Parks, Fish and Wildlife Service, BLM and BIA is between $16.5 and $17.1 billion, including $10.8 billion at the National Park Service alone. This is a long-standing problem. The GAO reports that the backlog amount has stabilized, but still is huge.

Moran Q53: Please explain some of the dangers in this situation and what, if anything, can be done about it.

ANSWER: The Department of the Interior reported a backlog between $13.5 billion and $19.9 billion as of the end of FY 2010 for BLM, USGS, BOR, FWS, NPS, and BIA. This includes maintenance and repair activities directed toward keeping fixed assets in an acceptable condition. These activities include preventive maintenance, replacement of parts, systems, or components, and other activities needed to preserve or maintain the asset. Maintenance and repairs, as distinguished from capital improvements, exclude activities directed towards expanding the capacity of an asset or otherwise upgrading it to serve needs different from, or significantly greater than, its current use. Deferred maintenance and repairs are maintenance and repair activities that were not performed when they should have been or were scheduled to be and which, therefore, are put off or delayed for a future period.

Dangers associated with deferring maintenance include the possibility of deficiencies in structures or in systems. These deficiencies will continue to get worse and could even lead to catastrophic failure of one or more asset systems (e.g., HVAC, roof). Even without catastrophic failure, deferring maintenance could lead to worsening conditions that result in higher cost or repair.

There will always be deferred maintenance, especially with an inventory of assets as large as the Department of the Interior's. DOI has taken measures towards mitigating dangers associated with this backlog. In 2012 budget, DOI did not request any funding for constructing new facilities, and maintenance funding levels were held at the 2011 level, even though the overall budget request for Interior was reduced. DOI is implementing new initiatives such as the Real Property Cost Savings initiative that emphasizes disposing of excess assets and instituting a self-assessment approach towards updating condition assessments on an annual basis. DOI has a comprehensive condition assessment program that conducts a condition assessment on all DOI-owned constructed assets, with a current replacement value over $50,000, at least every five years. This assessment program assures that we maintain an up to date and comprehensive inventory of our assets, their condition and maintenance requirements.

American Reinvestment and Recovery Act (ARRA)

Moran Q54: I realize that the Interior Department still has a huge backlog in deferred maintenance. The Congress appropriated substantial resources to the Department under the ARRA program. By bureau, please tell us about the kinds of projects you have been working on with this surge in funding?

ANSWER:
AMERICA'S GREAT OUTDOORS
Through the Recovery Act, Interior is investing more than $1 billion to conserve America's timeless treasures – our stunning natural landscapes, our monuments to liberty, the icons of our culture and heritage – while helping working families and communities prosper again. Interior's investments include an historic $750 million for our National Park System to help preserve and protect national icons and historic landscapes, improve energy efficiency and renewable energy use at park units throughout the nation, improve roads for visitors, remediate abandoned mine sites on park units, and provide historic preservation funding to protect and restore buildings at

historically black colleges. NPS targeted more than 800 projects at some of the nation's most recognizable monuments and landmarks to receive stimulus funds. Two-hundred sixty National Parks that see a combined total of more than 220 million visitors each year are being improved by Recovery Act projects.
In addition, the Fish and Wildlife Service is investing $280 million in habitat restoration, construction of new visitor centers, energy efficiency retrofits, and various deferred maintenance projects that will restore or extend the life of critical facilities across the country. FWS is undertaking more than 700 projects that will provide lasting benefits to the resource base, visitors, and the surrounding communities.

When complete, the Recovery Act will have enhanced or restored nearly 79,000 acres of wetland habitat and more than 169,000 acres of upland habitat. In addition, the Fish and Wildlife Service will restore or enhance 274 miles of stream and riparian habitat and remove or bypass 59 barriers, thereby reopening 459 miles and 40 acres to fish passage.

The Bureau of Land Management is investing $305 million to restore landscapes, clean up abandoned mines, and protect wildlife habitat. BLM also featured more than 100 projects that employed young people.

NEW ENERGY FRONTIER
The Recovery Act is helping America move towards the new energy frontier. BLM is leveraging $41 million of its Recovery Act funding to expand its capacity to authorize renewable energy development on public lands.

In 2011, 3,560 total new megawatts of installed capacity will be authorized for renewable energy development, 700 of which is an increase projected to be attributable to ARRA funding. In 2012, Recovery Act investments are projected to create an increase of 4,020 MW or 51 percent of the 7,865 total new renewable megawatts authorized. The permit processing expedited by the Recovery Act will also produce a 20 percent reduction in pending wind and solar energy applications on BLM lands.

In addition, many bureaus are directing Recovery funds to make their facilities more energy efficient. BLM is using Recovery Act funding to address some critical deferred maintenance and construction needs, including a new $12.3 million Farmington field office, which will be LEED Silver certified. The Fish and Wildlife Service will annually save more than $707,000 from renewable and non-renewable energy improvements funded through the Recovery Act.

EMPOWERING NATIVE AMERICANS
Indian Affairs is investing $500 million in Recovery Act funding nationwide, including projects to build new homes for nearly 200 American Indian and Alaska Native families and provide employment opportunities through On- the- Job Workforce training programs to more than 300 tribal members.

Over 18,000 students, nearly 40 percent of BIE enrollment, will benefit from improved or new schools due to Recovery investments. These projects include construction of three new schools and major additions to four others. Specifically:

- $52 million in Recovery Act funding for replacement of the Rough Rock School on the Navajo reservation. This project will impact 417 K-12 students including 188 residential students, providing approximately 125,000 square feet of new space including renovation of the existing high school. This replacement school project will be LEED certified. In addition, construction has started on a new dormitory for 76 residential students including infrastructure and demolition.
- Recovery Act funds will construct a new school on the Crow Creek reservation in Buffalo County, South Dakota, the single poorest county in the United States. The Crow Creek Tribal School will serve 432 academic students and 160 residential students. The $42 million project includes costs for infrastructure, housing, and demolition.

USGS & SCIENCE
USGS is investing $140 million in Recovery funding to help upgrade and improve some of the USGS laboratories and research capabilities and the energy efficiency, health, and safety of the bureau's facilities. This money is also being used to modernize streamgages, add monitoring equipment to the Advanced National Seismic System, expand our volcano monitoring efforts, collect imagery as part of The National Map, and upgrade research facilities.

In particular, $29.4 million is being used to modernize the Advanced National Seismic System (ANSS) by doubling the number of ANSS-quality stations and upgrading seismic networks nationwide. These improved networks will deliver faster, more reliable and more accurate information – helping to save lives by providing better situational awareness in the wake of damaging earthquakes that can strike this nation at any time. In California, seismic station upgrades are enabling "earthquake early warning" by reducing the delay (from approximately 15 seconds to around one second) between the time the earthquake motion is recorded and the time it is sent to the data center for processing and product generation.

Moran Q55: Were you able to obligate those funds in the limited time available?

ANSWER: Yes, DOI was able to successfully obligate virtually all the funds in the limited time available. Meeting the requirements and timeframes set forth was a huge challenge for our staff, but they put in tremendous effort and performed admirably. Please see the table below.

Bureau *dollars in thousands*	Appropriation	Obligated Amount	% of Appropriation Obligated	Outlayed Amount	% of Appropriation Outlayed
Bureau of Land Management	$ 304,059	$ 301,464	99%	$ 123,485	41%
Bureau of Reclamation	949,691	902,946	95%	271,290	29%
Central Utah Project	50,000	50,000	100%	47,296	95%
U.S. Fish and Wildlife Service	279,276	279,276	100%	138,860	50%
Bureau of Indian Affairs	491,635	490,518	99%	196,692	40%
National Park Service	748,060	747,717	99%	284,230	38%
U.S. Geological Survey	139,568	139,496	99%	64,458	46%
Wildland Fire Managment	15,000	14,567	97%	9,951	66%
DOI Working Capital Fund	5,888	5,545	94%	4,002	68%
Total	**$ 2,983,177**	**$ 2,931,529**	98%	**$ 1,140,264**	38%

http://www.doi.gov/pfm/par/afr2010/AFR_2010.pdf

Moran Q56: What were you able to accomplish with these funds? To what extent have you made a dent on your deferred maintenance backlog for facilities, roads, and fire risk reduction, and abandoned mine restoration projects?

ANSWER:
BLM
When all of the projects are completed, the BLM's ARRA program will have supported the development of 66 renewable energy projects, restoration of about 298,520 acres of wildlife habitat; reduction of about 23,000 acres of hazardous fuels, reclamation of more than 900 mines; rehabilitation or creation of 11,556 miles of trails and 547 miles of roads and 16 bridges; and improvement or construction of 75 capital projects and 200 structures.

USGS
With the ARRA funding, USGS was able to accomplish the following:

- 3 major construction projects and 63 deferred maintenance projects.
- Decreased the USGS FY 2009 backlog in the USGS Deferred Maintenance and Capital Improvement (DMCI) program by $19M or 19% of the total $72M backlog.
- USGS remediated 654 streamgages, cableways, or wells totaling $6.8M in ARRA funding, and $17.2M in streamgage upgrades.
- As a result of the ARRA funding to support Deferred Maintenance the Facility Condition Index (FCI) reduction went from .134 to .099.
- Pre-ARRA FCI = 71,543/532,365 = 0.134 (Fair Condition)
- After $19M ARRA Deferred Maintenance reduction = 52,543/532,365 = 0.099 (Good Condition)

FWS

Recovery Act funds made important contributions to completing much needed deferred maintenance projects both within the Fish and Wildlife Service's National Fish Hatchery System and National Wildlife Refuge System. In total the Fish and Wildlife Service funded $151.5 million of deferred maintenance, reconstruction, repair and energy retrofit projects. In the Fish Hatchery System, $29.5 million, the equivalent of 4 years of a normal deferred maintenance budget, was devoted to projects for functions such as rehabilitating ponds and raceways, repairing water distribution and treatment systems, repairing pumps and utility systems, and rehabbing nursery buildings. In the Refuge System, about $122 million, the equivalent of 3 years of normal deferred maintenance funding allowed repair of a wide array of water control structures, roads, buildings, and visitor facilities as well energy efficiency and renewable energy improvements. Finally the Service devoted $5 million to provide temporary employment for high school and college aged youth. This allowed for completion of a variety of projects related to facility management, wildlife management, and improving visitor experiences for the visiting public while also strengthening an understanding of conservation needs among our young people.

NATIONAL PARK SERVICE

The National Park Service used funding provided by the Recovery Act to address $523 million in documented deferred maintenance projects. The NPS completed 526 deferred maintenance projects, 125 deferred maintenance trails projects, 77 facility construction projects, 47 abandoned mine lands projects, 7 energy efficiency equipment projects, 26 NPS roads projects, and 21 projects with Historically Black Colleges and Universities.

INDIAN AFFAIRS

The performance target for roads in acceptable condition based on the BIA Roads Condition Assessment Criteria was 15% for FY2010, but with approximately 61% of the projects substantially complete the actual 2010 performance was 18%.

The ARRA Housing Improvement Program funds were directed to 16 recipients (Tribes) who demonstrated high housing needs, high unemployment rates, were low risk and had the capacity to timely obligate the funds. The ARRA HIP funds will provide for approximately 185 families to receive a modest home.

In FY 2009, the BIA HIP Program Performance language provided for housing renovations or construction of 170 new homes for the neediest Indian families throughout the country. In FY 2010, HIP data identified 7,093 extremely low income eligible families requesting HIP program assistance, of which 185 of those families were provided with ARRA HIP funds. In FY 2011, the BIA identified more than 7,300 extremely low income families requesting HIP housing.

WILDLAND FIRE

There were 55 hazardous fuels projects that were approved for funding. Two of the original projects were dropped and 2 new projects were later added. Of the 55 funded projects, 52 are either completed or substantially completed. The projects reduced hazardous fuels on 41,240 acres, and more than 138,000 tons of biomass were conveyed for use.

The hazardous fuels projects funded by ARRA will reduce risk from wildland fire and help to protect communities. These projects will also reduce risk and provide other benefits to communities and their environment, (i.e., providing employment and using biomass for bioenergy or for the production of specialized wood products).

The amount of biomass made available by the 55 projects was substantial compared to the amount typically made available through the Department's Hazardous Fuels Reduction program.

Moran Q57: How many jobs do you estimate will be created at the Forest Service with your ARRA funds?

ANSWER: The Forest Service is not part of the Department of the Interior.

Questions for the Record from Mr. Lewis

Last December, the Federal Communications Commission granted conditional approval for a company to build a new ground-based system of up to 40,000 high-power transmission towers across the nation for next-generation wireless internet access. That system would use part of the "L" band of the radio frequency spectrum, which unfortunately is adjacent to the frequency used by the DOD Global Positioning Satellites and millions of federal, state, local government and commercial users.

Lewis Q1: Secretary Salazar, I understand that the Department of Interior as well as other federal agencies such as the Departments of Defense and Transportation, NASA, and FAA have formally raised concerns about the potential for interference to the Global Positioning System (GPS) L1 band used for military, federal and all commercial applications if the FCC decision stands. Could you please tell us what the problem is, from your perspective?

ANSWER: The Federal Communication Commission waiver would allow LightSquared to establish a terrestrial (ground based) network, using a service called "Ancillary Terrestrial Component" (ATC) in a band currently established worldwide for Mobile Satellite Service (MSS). The proposed 40,000 high powered terrestrial base stations of the LightSquared network will transmit signals in a radio band immediately adjacent to the radio band GPS uses. GPS equipment receives signals from satellites at very low power levels (about 1 billionth of a watt, or minus 90 decibels) while the LightSquared stations will be transmitting at very high power (proposed 10 thousand watts). The Department of the Interior, along with the GPS community, is concerned LightSquared's ground-based transmissions will potentially overpower the relatively weak GPS signals from space. Although LightSquared will operate in its own radio band, the strength of LightSquared's transmissions and proximity to the GPS frequencies could cause GPS devices to become overloaded or jammed. For example, this would be like trying to see a distant star during daylight.

Lewis Q2: I understand that the FCC used a "fast-track" approval process in this case. Would you say that FCC adequately studied and fully understood DOI's concerns before it made a decision? Did the FCC talk to anyone at the Department of Interior?

ANSWER: Light Squared filed with the FCC for a waiver and requested expedited processing. The FCC followed established procedures of forwarding the request to the National Telecommunications and Information Administration (NTIA). NTIA rapidly provided notification and documentation to the attendant agencies of the Interdepartmental Radio Advisory Committee, however, the timing was less than optimal because it was during the holiday season break in December. The Department of the Interior, along with other Federal departments, reviewed the proposed waiver and immediately notified NTIA objecting to the FCC granting the waiver before proper testing and analysis was completed. The FCC granted Light Squared a waiver to build their system but made this conditional on LightSquared's resolution of potential Global Positioning Satellite Service (GPS) interference issues.

Unfortunately, the FCC's order to LightSquared asked them to look only at the "overload interference" problem which is only one aspect of potential interference scenarios. The

Department of the Interior believes that all potential interference scenarios must be investigated before the conditions on the waiver are lifted and the waiver granted. The FCC should not make a decision until it has all of the relevant information.

On 3 January, 2011, in an unsolicited letter to the NTIA, the Department said: "Because of the potential impacts to GPS performance, interference issues should be investigated before a wavier is granted. Important technical issues have been raised regarding LightSquared's plans—in particular whether out-of-band emission limits alone will be effective in protecting GPS. The Department of the Interior recommends the NTIA conduct a comprehensive study, with thorough testing, which encompasses Federal and Non-Federal users, prior to a waiver being granted. Through such a study, the impact to GPS spectrum can be properly assessed, and mitigation measures identified, to prevent disruption of GPS operations which have become so critical to the Department and the Nation."

Lewis Q3: Do DOI agencies such as the U.S. Geological Survey, Fish and Wildlife Service, Park Service, and various Bureaus use GPS information and equipment to perform their missions? What would be the impact on each of them if their GPS equipment became unusable?

ANSWER: The Global Positioning System (GPS) is critical to the missions of the Department of the Interior. All fourteen of Interior's, bureaus and offices use GPS. From aviation to natural hazard monitoring, to wildland fire fighting and wildlife tracking, GPS is used by thousands of employees throughout the Department. GPS is used in every State, territory and insular area. At DOI, natural resource uses are the most common application of GPS. For example, Earth scientists from the Department use advanced GPS techniques to monitor the warp of the Earth's crust associated with earthquakes and volcanoes at the millimeter level or better. In another example, wildlife biologists attach GPS instruments to track the movements of California Condors. Simply stated, GPS makes it easier for the Department to carry out its missions—faster, cheaper, and with greater accuracy.

The impact of a GPS outage is significant. In particular, GPS is used for wildland fire fighting, for law enforcement operations, and for monitoring of natural hazards. Interference of GPS signals causes grave risk to the public potentially impacting the Department's ability to monitor and address hazards like earthquakes and volcanoes.

The Department was pleased when the Federal Communications Commission (FCC) Enforcement Bureau announced new efforts (February 2011) to clamp down on the marketing, sale, and use of illegal cellphone and GPS jamming devices that create GPS interference. The FCC said these jammers are serious safety risks.

Lewis Q4: Although many of the DOI agencies operate in more rural areas, what would be the impact to the ability of the federal government to provide efficient services if 40,000 towers are built around the country that causes dead-spots for GPS receivers?

ANSWER: At this point it is not clear what the potential impact of the LightSquared terrestrial based station network in a Mobile Satellite radio band will be. That is why the Department supports comprehensive study and thorough testing of the GPS interference issue.

Lewis Q5: Would it be fair to say that DOI would not support a solution to the possible GPS interference issue if that meant the need for widespread upgrade or replacement of the Department's inventory of GPS receivers?

ANSWER: It is difficult to speculate on the impact of replacing the Department's GPS receivers. However, the Department estimates that it has well over $100 million invested in this technology.

To some degree the Department is continually updating and improving its equipment. As the GPS constellation of satellites is modernized, the Department will need to upgrade its equipment to take advantage of new GPS signals. In addition, other Global Navigation Satellite Systems (GNSS) are emerging in addition to GPS. The Department will also need to improve upon its current GPS equipment to be GNSS compatible and interoperable.

Any short-term requirement for a system-wide replacement would be chaotic, expensive and negatively impact all of the Department's GPS applications. Many of these applications are critical to mission effectiveness and resource efficiency. It may be possible to gradually upgrade receivers over time without significant disruption, but this effort will need to be tightly coordinated and managed to minimize impacts.

Lewis Q6: What plans does your Department have to participate in the unfolding process that FCC will use to resolve this new GPS interference issue?

ANSWER: The Department of the Interior is a member of the National Executive Committee for Space-Based Positioning Navigation and Timing (PNT), a U.S. Government organization established by Presidential directive to advise and coordinate Federal departments and agencies on matters concerning the GPS. Through the government's National Space-Based PNT Systems Engineering Forum the U.S. Government (USG) is conducting its own testing of the potential interference to GPS from LightSquared's terrestrial network. Collaboration between LightSquared and the USG on technical issues is very good. At this time the Department plans to test some of its receivers in the planned USG testing.

LWCF – California Desert

The budget provides around a $500 million increase over FY10/11 enacted levels for land acquisition including the LWCF. You list the California Desert at the top of your list for priority acquisition. San Bernardino County, which composes most of my Congressional District, has lost 809,000 acres from private ownership to the federal government since 2000. For perspectives sake, that's larger than the state of Rhode Island.

Lewis Q7: What are the areas you have identified in the California Desert for acquisition?

ANSWER: To formulate the 2012 Federal land acquisition priorities, the Departments of the Interior and Agriculture worked together on the first ever Federal government-wide process to coordinate land acquisition and conservation strategies for programs funded by the Land and Water Conservation Fund using merit-based criteria. The goal was to collaboratively identify

important landscapes and strategically leverage Federal resources to conserve them throughout the country.

The Interior bureaus and Forest Service identified geographic focal areas with shared strategic conservation objectives, where collaboration is feasible, and where prompt action can protect important natural and cultural resources. The agencies also sought out areas with significant opportunities to leverage additional non-Federal funding; to coordinate with other Federal, State, local, and tribal governments to maximize conservation outcomes; and to realize economic and community benefits, such as new or enhanced outdoor recreation opportunities from strategic investment in land conservation.

The geographic focal areas identified in our 2012 request were not prioritized and were listed alphabetically, which is why California is at the top of the list. The California Desert focal area has three sites with requests in the President's budget including $1.2 million in the Santa Rosa and San Jacinto Mountains National Monument, $4.8 million in the California Wilderness and $3.0 million in the Santa Monica Mountains National Recreation Area.

The request for the Santa Rosa and San Jacinto Mountains National Monument would improve and increase recreational access and public use for the over 1,500,000 visitors who visit the Monument annually. It would also conserve significant scenic, recreational, and wilderness resources. These 160 acres possess critical habitat for the endangered Peninsular bighorn sheep in an area zoned for residential development. The rapid urbanization immediately adjacent to the Monument is threatening the tremendous scenic and wildlife resource values.

The California Wilderness request would purchase 10,800 acres to consolidate public ownership within seven designated wilderness units to preserve wilderness character, and increase opportunities for the public to experience primitive recreation. The members of the public who visit these wilderness units do so because they value the solitude where people can experience freedom from our fast-paced industrialized society. These areas also provide important habitat to a wide variety of animal and plant species.

Within the Santa Monica Mountains National Recreation Area, the requested funds would be used to acquire nine tracts totaling 350 acres of land located within the national recreation area and threatened by imminent development. This Recreation Area is enjoyed by over half a million visitors annually.

Lewis Q8: What kinds of savings are you expecting in management as a result of these acquisitions?

ANSWER: We are expecting to see management savings due to cost avoidance of additional operating and maintenance costs and enforcement. For example, the 2012 request for the Santa Rosa and San Jacinto Mountains National Monument would acquire 160 acres that are currently zoned for residential development and is critical habitat for the Peninsular bighorn sheep. Acquisition of this area would consolidate land ownership within the Monument to conserve scenic resources and provide better control of recreational access points to protect wilderness resources.

The rapid urbanization, immediately adjacent to the Monument, threatens the tremendous scenic and wildlife resource values that the BLM, in partnership with the State of California, USDA Forest Service, local governments, and non-profit organizations, is working to preserve. Increases in population immediately adjacent to the public lands, concomitantly increases costs of education and enforcement. If this area were to be developed into residential property, there would be an increased need for more monitoring to determine the effects of the additional human activities on the critical habitat for Peninsular bighorn sheep (listed as an endangered population in 1998) and an increased need for education and enforcement to ensure compliance with the multijurisdictional, non-motorized trails management program for the Santa Rosa and San Jacinto Mountains Conservation Area as established through the Coachella Valley Multiple Species Habitat Conservation Plan. The trails management program prohibits non-motorized cross-country travel, including hiking from January through September and prohibits dogs except on specified trails.

Renewable Energy Projects

The budget request includes $73 million to support the development of renewable energy on public lands. I understand most of the funding will be used to evaluate the environmental impact a project might have on wildlife and habitat. In my district there have been dozens and dozens of applications for projects on federal land. There are a great many difficulties in getting anything done as the environmental community remains split about whether or not any development is appropriate in the desert.

Lewis Q9: Twelve projects have been permitted. Where are the permitted projects and how many did you deny permits to last year?

ANSWER: In 2010, the BLM approved 9 solar energy projects (6 projects in California and 3 projects in Nevada), 1 wind energy project in Nevada, and 2 geothermal projects in Nevada as part of the fast-track process. There are currently 29 approved wind projects, 9 solar energy projects, and 53 producing geothermal leases on the public lands. The BLM recently identified 20 projects – 10 solar, 5 wind and 5 geothermal – that will receive priority processing in 2011. On March 7, 2011, the BLM approved the first of these priority projects, the Coyote Canyon geothermal project in Nevada.

The BLM works with applicants throughout the permit application and approval process to ensure that they qualify to hold a right-of-way on the public lands, and are technically and financially capable of completing the proposed project in an application. The number of pending solar applications on the BLM public lands has decreased from 130 active solar applications in March 2010 to 97 active solar applications at the end of March 2011.

Lewis Q10: Are the funding increases in this year's budget in anticipation of more applications or is it to address the backlog?

ANSWER: The BLM anticipates more applications for renewable energy projects in the future, and the $3.0 million increase for the BLM's Renewable Energy Management subactivity in the

FY 2012 budget will help the BLM conduct studies and to prepare regional planning studies and environmental reviews of potential wind energy zones in Nevada and Oregon. These studies will be in addition to existing studies being supported with base funds in New Mexico, California, and Wyoming.

Lewis Q11: Are all BLM lands in the California Desert that are eligible for leasing being considered by DOI for solar and wind development? If not, what areas are off limits and why?

ANSWER: The preferred alternative in the Draft Solar EIS identifies 24 Solar Energy Zones (SEZs) of approximately 677,000 acres (339,000 acres in California) where the BLM would prioritize solar energy development, as well as approximately 22 million acres in the 6 southwestern States (1.7 million acres in California) for which the BLM would accept solar energy project applications. As discussed throughout the Solar EIS, not all BLM-administered lands are appropriate for solar energy development. The BLM excluded certain categories of land that are known or believed to be unsuitable for utility-scale development, including, but not limited to: BLM-administered lands currently off-limits to solar energy development, including lands prohibited by law, regulation, Presidential proclamation, or Executive Order (e.g. lands in the National Landscape Conservation System (NLCS) and lands that have slopes greater than or equal to 5%; solar insulation levels below 6.5kWh/m^2/day; or known resources, resource uses, or special designations in local land use plans that are incompatible with solar energy development.

The BLM completed a Wind Energy Programmatic EIS in 2005 that identified some 20 million acres of public land in the western States that were potentially available for wind energy development, with only about 1.6 million acres available in California. The Wind EIS also excluded from wind energy development lands in special designated areas and with sensitive resource values.

BLM Draft solar PEIS

I understand the BLM's recent Draft Solar PEIS is on the street for public comment. I have been told that it does not address possible development of new facilities on public lands withdrawn for military use. Obviously, the first priority for these military lands has to be training of our armed services. However, there are probably some of these lands that are suitable for the development of renewable energy, particularly disturbed areas. I also understand that BLM has the authority to lease these areas with the military's approval but has not done so often because agreement cannot be reached. Part of the problem involves what happens to the revenue, concerns about security on the bases, potential conflict with training activities and companies seeking long term arrangements that may exceed the terms of the military withdrawals.

Lewis Q12: Can you please explain to me what the issues are regarding proposed development of renewable energy resources on withdrawn lands for the military?

ANSWER: Public lands withdrawn for military purposes do not generally provide authority for the use of these lands for renewable energy resources development. The DOD may have authority to provide Enhanced Use Leases for renewable energy facilities to support the on-base needs of a military installation, but has no authority under the provisions of existing withdrawals

to authorize utility-scale renewable energy projects for purposes other than direct support to the military installation. If these lands are no longer needed for the intended purpose and need of the withdrawal, the withdrawal should be relinquished and the lands returned to the BLM for administration.

Lewis Q13: What are DOI and DOD doing to try to overcome the hurdles preventing new development?

ANSWER: The DOI and DOD are continuing a dialogue on the issues regarding renewable energy development on DOD withdrawn lands. These discussions are focused on the authorities of individual withdrawals, the compatibility of renewable energy development with the intended purpose and need of specific withdrawals, and the revocation of withdrawals that are no longer needed for military purposes.

Lewis Q14: I understand that revenues go to the Treasury, but wouldn't it make sense to encourage the military to agree to some development in appropriate places by allowing them to share in the revenue to augment their Base Ops budgets?

ANSWER: Revenues from renewable energy development on the public lands are returned to the Treasury under existing authorities. Revenues from any renewable energy development that would be authorized by the BLM on withdrawn lands would also under existing authorities be returned to the Treasury.

Lewis Q15: If asked, would DOI and DOD work together and come back to the Committee with a report of your progress to resolve this issue in a reasonable time frame?

ANSWER: Yes, we would be more than happy to report back to the Committee on the progress being made to address the issues regarding the development of renewable energy on withdrawn DOD lands.

Questions for the Record from Mr. Calvert

Domestic Energy Production, Oil & Gas Permitting

Mr. Secretary, as I'm no doubt you are aware, the price of gas has skyrocketed over the last few weeks. Gas in my home town in California is averaging $3.93 a gallon and in some parts of my district the price has already well exceeded $4 a gallon for regular unleaded. While I fully support an "All of the Above" energy policy that embraces alternative fuels and renewable energy the fact remains that right now the American economy is one that runs on oil.
The United States imports nearly 60 percent of the crude that we need as a country and we run into increased price volatility when we see unrest in oil exporting countries from around the world. The Energy Information Administration has already cut its forecasts for Gulf oil production dramatically because of slow permitting and economic studies show that delays in obtaining permits will impact Gulf production by as much as 2/3rds. We as a country need you to demonstrate the system that you have in place to process permits and the plan that you have in place to ensure continued domestic production of our resources. To date I continue to see uncertainty in both areas.

Calvert Q1: Can you please explain how permits will be processed by the Department of the Interior from this point forward?

ANSWER: The process that BOEMRE has put in place comes as a result of the Deepwater Horizon tragedy. Now there are significant new safeguards to protect the environment beyond what has ever existed before. These new safety measures include heightened drilling safety standards to reduce the chances that a loss of well control might occur in the first place.
Since October 12, 2010, applications for deepwater oil and gas drilling have been accepted for review and approval. Operators must certify compliance with all existing rules and requirements, including those that recently went into effect, and submit information regarding the availability of adequate blowout containment resources.

Permit applications for drilling projects must meet new standards for well-design, casing and cementing, and be independently certified by a professional engineer. The Department is also strengthening standards in the drilling and production stages for equipment, safety practices, environmental safeguards, and oversight. In addition to these new rules, the Department has also put a focus on containment capabilities in the event of a loss of well control. BOEMRE requires deepwater operators to demonstrate that they are able to promptly regain control of and contain a well in the event of a deepwater blowout that is not stopped by a blowout preventer. Only after operators have demonstrated that they have equipment and systems on hand to contain a subsea blowout will BOEMRE consider their application for a permit to drill in deepwater.

In addition to existing policies, shallow and deepwater permits are also subject to new regulations and standards as set forth in the Interim Final Rule (known as the Drilling Safety Rule), and information requirements outlined in Notice to Lessees (NTL) 2010-N06 (known as the Environmental NTL) and NTL 2010-N10 (known as the Compliance and Review NTL).

As companies resume operations, they will also need to comply with the SEMS Rule (known as the Workplace Safety Rule) within the deadlines specified by the regulation. A SEMS program must be in effect on or before November, 15, 2011.

Calvert Q2: Currently, how many off shore oil and gas permits are pending before the Department of the Interior? Since permitting was halted in the wake of the Deepwater Horizon disaster, how many permits have been approved?

ANSWER: BOEMRE is transparent in reporting the status of permits submitted. The website below provides the status of submitted, approved, withdrawn, and pending permits and is updated daily.
http://www.gomr.boemre.gov/homepg/offshore/safety/well_permits.html

Calvert Q3: Do you intend to approve any additional permits in the future? If so, can you please share with me your timeline for approval, how many we can expect you to approve and how long we can expect to wait?

ANSWER: BOEMRE will approve permits as they are submitted if they meet the heightened safety requirements. The status of the permits is available on the BOEMRE's web site.

Calvert Q4: Of late, some have accused the Administration of issuing contradictory statements on their response to high oil and gas prices. Recently, White House Chief of Staff Daley indicated the Administration is considering tapping into the U.S. Strategic Oil Reserve as a way to increase supply. However, the Administration also chose to appeal a judge's ruling that would require DOI to stop holding up the application process of several deepwater drilling permits.

If this Administration is serious about doing something to lower the cost of gas, why has it chosen to appeal and take a clear step toward further delaying the development of domestic energy sources?

ANSWER: The BOEMRE has not intended and does not intend to slow or delay the development of domestic energy resources. The Deepwater Horizon event demonstrated that prior safety controls were inadequate to address the unique needs of ultra-deep, high pressure wells which involve drilling for oil and gas many miles underground. Such wells did not exist years ago. In the aftermath of the Deepwater Horizon oil spill, it also became clear that problems within the offshore drilling industry were systemic and extended well beyond just newer types of drilling.

BOEMRE has determined that the most effective method for processing drilling applications is an iterative one, whereby permit applications are submitted electronically via the bureau's eWell system and reviewed online. Using the eWell system, BOEMRE engineers can readily identify permit application deficiencies and return such applications to the originator with appropriate notations for what should be corrected. The operator can then submit real-time updates. This coordination continues either until a permit application is approved or it is withdrawn by the operator.

In the case of the permits covered by the order of the District Court for the Eastern District of Louisiana in the Ensco case, the court had demanded that seven permit applications either be approved or denied within 30 days. If the applications had been complete and demonstrated compliance with the relevant operating regulations, these applications would already have been approved. Instead, by ordering the bureau to focus resources on these few applications, the court would have forced the bureau to delay processing of other, more pressing or complete applications. This would not have expedited the approval of permit applications as a whole. In fact, it would likely have forced the bureau to decline the outstanding Ensco-related permit applications and require that the lessees resubmit completely new applications from the beginning – thereby delaying the application process.

In addition, a court order to immediately respond to all outstanding applications for drilling permits would likely force staff to drop other critical priorities such as ongoing inspections and site assessments. Such an order would likely significantly delay or defer the processing of permit applications for requests to modify, which could have a significant detrimental effect on the ongoing operations of OCS operators. A court mandated deadline on drilling permit applications would force the bureau to refocus its resources on those permits and reduce the time dedicated to reviewing requests to modify. As a result, operators would routinely be forced to shut down rigs in order to wait for these approvals – further delaying the development of new productive resources.

Calvert Q5: How does the Administration defend the fact that by dragging its feet on allowing increased domestic energy production it is simply prolonging our dependence on oil from the Middle East and shipping huge amounts of money and jobs overseas?

ANSWER: The delays associated with the moratorium were necessary for the Department to properly research the cause of the Deepwater Horizon event and to determine what will be required to avoid a repeat in the future. The resulting new safety standards and environmental controls did take some time to formulate and implement, however, these reforms were and are necessary to effectuate the OCSLA mandate for "expeditious development subject to environmental safeguards." Now that new safety standards and environmental controls are in place, operators can make the necessary changes in their operations and BOEMRE can approve the resumption in deepwater drilling operations. The costs of the Deepwater Horizon event have been enormous and the impact of another such spill would also be very severe. It is the position of the Department and the Administration that the increase in costs associated with a temporary delay of deepwater drilling, and the implementation of enhanced safety requirements, are more than offset by a decrease in the risks of environmental impacts associated with another potential spill and the costs that would occur in the event of such a spill.

The Department knows that the recent crude oil price increases, which translate into higher prices at the pump, have many causes, including the global economic recovery and unrest abroad. Recent price rises have been the result of external factors, coupled with continued significant global oil demand. The Administration is working to reduce oil demand and has taken steps at home through efficiency, technology, and conservation and to increase domestic production in a manner that is safe and protects our environment.

Calvert Q6: The U.S. offshore has traditionally been considered very stable for energy investment when compared to other oil and gas rich areas of the world. That stability appears to be eroding significantly with increased costs of regulation and now increased costs related to delays in obtaining permits. These items appear to be well within the control of the government and should be given significant attention so that delays can be eliminated or mitigated and we can promote energy investment in America. I'm not by any means suggesting that we sacrifice safety but I am telling you that the processing of paperwork should not result in delays in permitting.

What have you done to streamline permitting and eliminate delays?

ANSWER: BOEMRE is working diligently to help industry adapt to and comply with new, rigorous safety practices. These standards ensure that oil and gas development continues, while also incorporating key lessons learned from the Deepwater Horizon incident.

Our latest effort was on March 28, 2011. At that time, BOEMRE issued guidance for offshore deepwater drillers to comply with safety and containment requirements. The guidance contains no additional regulatory requirements, but instead provides clarifying information to assist the oil and gas industry in complying with existing regulations and guidance. This guidance document gives deepwater drilling operators additional information to help address some of the recurring issues that have been raised in our ongoing discussions with industry.

Calvert Q7: The moratorium and de facto moratorium have made it impossible for companies to advance operations on their leases off-shore, which are significant investments and come with an expiration date. Energy producers view each lease as part of a larger portfolio of leases and make decisions based on the whole, not the part. By limiting production opportunities you are taking away the ability for oil and gas to be produced and for the government to receive significant revenues associated with production. Yet you have thus far refused requests to extend these leases.

Why have you chosen not to extend these leases? Would a lease extension require Congressional action? If so, would you support it?

ANSWER: On May 14, 2011, President Obama laid out his strategy to continue to expand responsible and safe domestic oil production, leveraging existing authorities as part of his long-term plan to reduce our reliance on foreign oil. In order to give companies more time to meet higher safety standards for exploration and development, the Department is extending those drilling leases in the Gulf of Mexico that were impacted by the temporary moratorium, as well as certain leases off the coast of Alaska.

Calvert Q8: Since becoming Secretary, you have delayed the 5-Year OCS Leasing Program, have scaled back the program, and have delayed leasing in the OCS. Given that actual lease sales are not required under the program, please explain your choice to delay and scale back the program.

ANSWER: As a result of the Deepwater Horizon event we learned a number of lessons, most importantly that the Department needs to proceed with caution and focus on creating a more stringent regulatory regime. On May 14, 2011, President Obama laid out his strategy to continue to expand responsible and safe domestic oil production, leveraging existing authorities as part of his long-term plan to reduce our reliance on foreign oil. The President directed the Department to conduct annual lease sales in Alaska's National Petroleum Reserve – while respecting sensitive areas, to speed up the evaluation of oil and gas resources on the OCS in the mid and south Atlantic, and to create new incentives for industry to develop their unused leases both on and offshore. Also, to give companies more time to meet higher safety standards for exploration and development, the Department is extending those drilling leases in the Gulf of Mexico that were impacted by the temporary moratorium, as well as certain leases off the coast of Alaska. The Administration is also establishing a new interagency working group to ensure that Arctic development projects meet health, safety, and environmental standards.

As the Department looks to the future and identifies areas to offer for oil and gas development under the next five-year program, decisions will be based upon the best scientific information available. The Department is producing an Environmental Impact Statement (EIS) to support completion of the 2012 – 2017 OCS leasing program. The EIS will inform our decisions on when and where to offer leases and will help identify specific requirements that may be needed to ensure potential risks to the environment are appropriately managed and mitigated.

Increasing domestic energy production is an important part of a strategy to decrease oil and gas imports and new leasing is only one mechanism. As the Department's March 29, 2011, Report to the President (Oil and Gas Lease Utilization – Onshore and Offshore, Report to the President) indicated, there are millions of leased acres that have not been developed, onshore and offshore. These are resources that belong to the American people, and they expect those supplies to be developed in a timely and responsible manner and with a fair return to taxpayers. According to the Report, more than 70 percent of the tens of millions of offshore acres under lease are inactive, neither producing nor currently subject to approved or pending exploration or development plans. This includes almost 24 million inactive leased acres in the Gulf of Mexico, which potentially could hold more than 11 billion barrels of oil and 50 trillion cubic feet of natural gas. The Department has proposed policies such as instituting a non-producing lease fee to provide companies with additional incentives for more rapid development of oil and gas resources from existing and future leases. The Department continues to consider additional policy options with the intent to encourage diligent development of domestic energy resources.

Calvert Q9: The OCS leasing program brings in billions annually to the U.S. treasury. What analysis have you done on the economic impacts of delayed and scaled back leasing under the OCS leasing program?

ANSWER: The Department is in the process of planning for a sale in the Western Gulf of Mexico within the next year, possibly even before the end of this calendar year. The bonuses that government may have received in August 2010 and 2011, for the acreage to be offered in this upcoming sale are simply delayed - not lost. So, the Department does not envision any losses in revenues, rather a redistribution over time potentially resulting in higher aggregate amounts.

Calvert Q10: You have announced the creation of the Offshore Energy Safety Institute. I'd like an explanation of your authority and funding to create this Institute. Have you coordinated with the Department of Energy, who has traditionally had jurisdiction over energy R&D? Could you provide to this committee the amount of money and personnel that you are committing to this effort? Have you made any determination about the efforts that are already being conducted to address oil and gas R&D and training? Have you discussed this with any Universities who may be better suited to do this than the government?

ANSWER: In the aftermath of the Deepwater Horizon, many have recognized the need for more collaboration on issues related to offshore energy safety, including workplace and drilling safety, blowout containment and spill response.

I initially proposed the creation of an Ocean Energy Safety Advisory Committee (Safety Committee), which has resulted in a collaborative initiative among government, industry, academia and outside experts, that will advise the Department on matters and actions relating to offshore energy safety, including, but not limited to drilling and workplace safety, well intervention and containment, and oil spill response.

The Safety Committee will provide advice on how best to stand up a proposed Ocean Energy Safety Institute (Institute), and on what role the Safety Committee should play in the Institute going forward. The Safety Committee is established in accordance with the Federal Advisory Committee Act (FACA). Secretary Salazar and Director Bromwich established the Ocean Energy Safety Advisory Committee as a permanent advisory body of the Nation's leading scientific, engineering, and technical experts who provide critical guidance on improving offshore drilling safety, well containment, and spill response.

The Federal agencies on the Committee will include BOEMRE, the Department of Energy, the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the Environmental Protection Agency, and the United States Geological Survey. The annual operating costs associated with supporting the Committee's functions are estimated to be $210,000, including all direct and indirect expenses and one staff year.

California Water Issues

Secretary Salazar, as you know California's water supply is of special concern to me and my constituents. My district is heavily dependent on imported water from the California Delta and the Colorado River. When I was Chairman of Water and Power Subcommittee I helped create the Colorado River Quantification Settlement agreement. There have been subsequent legal challenges to this agreement.

Calvert Q11: What is the status of these legal challenges?

ANSWER: As you are aware, the Quantification Settlement Agreement (QSA) is an agreement, signed in 2003, among Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), and Metropolitan Water District (MWD) that quantifies priorities within California's

apportionment of Colorado River water and facilitates long-term transfers of Colorado River water within California. The 2003 Colorado River Water Delivery Agreement (CRWDA), signed by the Secretary, IID, CVWD, MWD, and San Diego County Water Authority (SDCWA), provides for the transfers and the associated changes in the amount and/or location of deliveries of up to approximately 300,000 acre-feet per year of Colorado River water.

Until October 8, 2009, all of the legal challenges to the QSA had been limited to California state court proceedings to which the United States is not a party. The state court action in the Sacramento County Superior Court entitled Imperial Irrigation District v. All Persons is a "validation proceeding" under state law. IID's proceeding asks that the California state court "validate" the actions that IID took when it entered into multiple state and federal agreements in 2003. On January 14, 2010, the California Superior Court issued a final decision in that case, ruling thirteen agreements invalid, including the federal CRWDA, the federal Allocation Agreement, and the federal Conservation Agreement (in each of which the Secretary is a party). The California parties to the QSA have appealed the trial court's decision. The California appellate court has issued a stay of the trial court's decision during the pendency of the appeal. The United States recently filed an amicus curiae brief with the appellate court, setting forth the United States' views on the Superior Court's decision.

On October 8, 2009, California's Imperial County and the Imperial County Air Pollution Control District filed a complaint in U.S. District Court, Southern District of California, challenging the Secretary of the Interior's 2003 execution of the CRWDA. The complaint alleges that the Secretary's Environmental Impact Statement failed to comply with the NEPA and also violated the Clean Air Act by not making a "conformity determination" for the water transfer. The United States was served in late January 2010 and the United States' answer to the complaint was filed on March 29, 2010. The Administrative Record was filed on September 9, 2010. Plaintiffs filed a motion to supplement the Administrative Record on January 14, 2011. The United States filed Defendants Opposition to Plaintiffs Motion to Supplement on Feb 18, 2011. The case was recently transferred to a different federal Judge within the Southern District of California, and as a result, an updated briefing schedule will have to be developed.

All of the parties to the QSA and the CRWDA are united in their desire to maintain the agreements and continue the water transfers. The QSA water transfers are vital to efforts of the State of California to live within its 4.4 MAF Colorado River basic allocation.

Calvert Q12: What is the status of the Bay Delta Conservation Plan? How involved had the Department been in the BDCP Process? Do Interior personnel involved with the creation of the BDCP have access to all the resources they need for a speedy completion of this plan?

ANSWER: The Department of Interior (Department) through the Bureau of Reclamation and the Fish and Wildlife Service, has been and will continue to be fully engaged in the development of the BDCP. The Department is helping to develop a long-term path for reliable water supply, habitat restoration, and response to the Delta's non-water-supply stressors. The Department has dedicated resources to develop the documents needed to expeditiously move the plan forward, including the associated Environmental Impact Statement, and permits under the Federal Endangered Species Act (ESA) that comply with the provisions of these Federal laws.

In December 2009, six Federal agencies (the Department of the Interior (DOI), Department of Commerce, Department of Agriculture (USDA), Department of the Army, Environmental Protection Agency (EPA), and the Council on Environmental Quality) issued an Interim Federal Action Plan (Plan) for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta), describing a variety of Federal actions and investments the Administration has been undertaking or will take to help address California's water supply and ecological crises. The BDCP is a prominent federal action in the Plan. In December 2010, the six agencies issued a report titled "INTERIM FEDERAL ACTION PLAN STATUS UPDATE FOR THE CALIFORNIA BAY-DELTA: 2011 AND BEYOND ". The report includes a thorough status of the BDCP and is available at the following DOI website:
http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=104334

The Department of the Interior (Department) believes that action must be taken to achieve the dual goals of ecosystem protection and water supply reliability. Based on substantial analysis to date, the Federal agencies strongly support a plan that includes a new conveyance facility that would include new north Delta diversion facilities and a new system to convey water from north of the Delta to the south. The operation of such a facility, together with limited export operations from existing facilities in the south Delta, referred to as "dual conveyance," with both operations subject to new science based operating criteria, are intended to provide significantly increased flexibility and optimize both species protection and water supply reliability. This conveyance approach, together with substantial amounts of Delta habitat restoration and a robust monitoring and adaptive management plan, offers great promise to be the most cost-effective and scientifically sound framework to achieve the co-equal goals for the Bay-Delta.

The current working draft of the BDCP released by the BDCP Steering Committee on November 18, 2010 demonstrates significant progress towards this type of comprehensive plan. While substantial work remains on a number of key elements of the plan (described in the report on the website), the Federal agencies believe the progress to date provides a strong foundation for completing the BDCP. The Federal government is also reviewing the recently released report by the National Academies of Science on the BDCP.

Multi-Species Habitat Conservation Plans

In 1982, Multi-Species Habitat Conservation Plans (MSHCPs) were provided in law to preserve habitat at a landscape level rather than through project-by-project preservation actions. When large multiple species habitat conservation plans are implemented, it appears they are managed by the Fish and Wildlife Service on a species-by-species, acre-by-acre, project-by-project basis rather than at the landscape level as intended. My district is home to the largest HCP ever constructed by a local government.

Calvert Q13: How common are MSHCPs in the United States? Are they something that most DOI employees involved with species conservation would have some experience with?

ANSWER: The Service has approved 134 multi-species habitat conservation plans across the nation. The development and implementation of MSHCPs is a specialized expertise that is primarily held by FWS personnel within the Department of the Interior.

Calvert Q14: How many hours of training on MSHCPs and their unique characteristics are provided to regional, district and field managers? Who provides the training? What is the cost? What is the present budget for that training?

ANSWER: Training for developing and approving a habitat conservation plan is provided by our National Conservation Training Center. The basic program of training requires 40 hours of coursework under the instruction of Service staff with on-the-ground experience in HCP development. The training is provided to Service employees without direct charge other than travel expenses; the Training Center's budget for offering this course was $26,500 per session in FY 2010. The Training Center typically offers this class twice a year, with the possibility of additional courses held in the Regions as requested.

Calvert Q15: In reference to Service performance evaluations, are personnel measured for their ability to manage MSHCPs, and if so what benchmarks must they reach to be evaluated at a competency or above level?

ANSWER: We have no performance measure specifically for HCP development. Service biologists normally are Endangered Species Act generalists, and may work on several different types of ESA actions. The following is an example of a performance standard for a staff position working on HCPs in the Pacific Southwest Region:

> **Performance Measure:** Effectively carries out assigned responsibilities to meet the desired goals and objectives.
>
> - Keeps stakeholders informed, maintains liaisons, and effectively cooperates with others as a member of a workteam. Supports team initiatives. Demonstrates respect for team members, considers/respects the views of others, and actively supports team decisions. Treats external and internal customers with courtesy and respect.
>
> - Demonstrates technical policy and procedural competence in assigned areas as identified below.
>
> - Effectively carries out duties in the Endangered Species Program for the region, including activities such as preparation and review of delisting, 5-year status reviews, and recovery planning documents; preparation and review of HCP- and NEPA-related documents; and preparation, review, and oversight of materials for section 6 grants. Assumes a leadership role within the Region as the coordinator of specific projects as assigned.

Calvert Q16: It is my understanding that as part of the implementing agreement for an MSHCP the USFWS states that Critical Habitat will not be designated in the Plan Area because the Plan is specifically set up to preserve the species. It has also come to my attention that since this

MSHCP in my district was established there have been a dozen instances of Critical Habitat being designated within the MSHCP.

Why is this? To what extent is the Service bound to abide by the implementing agreements that they sign when establishing an individual MSHCP?

ANSWER: When designating Critical Habitat, the Service evaluates the physical and biological features essential to the conservation of the species, identifies the areas with those features and determines whether the features may require special management concern. The Endangered Species Act provides that lands with the physical and biological features essential to the conservation of the species and in need of special management consideration may be excluded from Critical Habitat if the Service determines that the benefits of excluding the lands outweigh the benefits of including them.

For the critical habitat designations mentioned, the Service determined that the benefits of including areas within the MSHCP outweighed the benefits of excluding those areas from critical habitat. Recent critical habitat designations for several species have included lands occurring within the boundaries of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). There are 11 species that have designated critical habitat that falls within the MSHCP boundary. Three of these 11 designations are limited to Forest Service lands within the MSHCP boundary. However, Federal lands are not included in the plan. The other eight designations include Federal and non-federal lands within the MSHCP boundary. Ten designations have occurred since the MSHCP was completed and one revision from 2002 was reinstated by the court. In making its final designations, the Service first identified those lands that met the definition of critical habitat under the Act. The Service then considered several factors including relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. The Service is required by the Act to weigh the benefits of exclusion against the benefits of inclusion. In these instances where the Service designated lands within the MSHCP, we reviewed and evaluated the benefits of inclusion and benefits of exclusion and the rationale for inclusion or exclusion is explained in detail in each rule.

The Service met with the Regional Conservation Authority (RCA) on April 13, 2011. At the meeting, the Service committed to three action items:

1. The Service will expeditiously amend the internal Section 7 consultation on the issuance of the MSHCP to include designation of critical habitat since the permit was issued.

2. For all species with designated critical habitat within the boundaries of the MSHCP, except the Santa Ana sucker, the Service will develop a white-paper reviewing whether inclusion of critical habitat within the MSHCP boundaries is warranted, and

3. The Service will collaborate closely with our RCA partners to identify partners we may work with to enhance protection for Santa Ana sucker habitat in Riverside County with the objective of being able to support exclusion of Santa Ana sucker critical habitat from the MSHCP.

Additionally, the Service and the RCA agreed to meet again soon, at which time the Service will identify a date for completing the amendment to the Section 7 consultation, present a timeline for completing the white-paper, and contribute to reporting the results of the partnership collaboration efforts.

The Service recognizes the ongoing efforts of the Western Riverside County Regional Conservation Authority to fulfill its obligations under the MSHCP, and is committed to continuing to work with the RCA in its implementation.

Riverside County Habitat Conservation - ES

Although the population of Riverside County grew by 42 percent in the last decade, and its highly-regarded multiple species habitat conservation plan is intended to accommodate infrastructure development while protecting threatened species, the recession has curtailed the County's ability to acquire needed habitat. Legislation is being crafted to authorize federal loan guarantees for habitat acquisition, so that Riverside county and other sponsors of HCPs can acquire habitat while prices are low.

FCC Towers & Potential GPS Interference

Last December, the Federal Communications Commission granted conditional approval for a new ground-based system of up to 40,000 high-power transmission towers across the nation for next-generation wireless internet access. That system would use part of the "L" band of the radio frequency spectrum, which unfortunately is adjacent to the frequency used by the DOD Global Positioning Satellites and millions of federal, state, local government and commercial users.

Calvert Q17: I understand that the Department of Interior, as well as other federal agencies such as the Departments of Defense and Transportation, NASA, and the FAA have formally raised concerns about the potential for interference with the Global Positioning System (GPS) L1 band used for military, federal and all commercial applications if the FCC decision stands. Could you please tell us what the problem is, from your perspective? How might GPS interference jeopardize the Department of the Interior's mission?

ANSWER: The Federal Communication Commission waiver would allow LightSquared to establish a terrestrial (ground based) network, using a service called "Ancillary Terrestrial Component" (ATC) in a band currently established worldwide for Mobile Satellite Service (MSS). The proposed 40,000 high powered terrestrial base stations of the LightSquared network will transmit signals in a radio band immediately adjacent to the radio band GPS uses. GPS equipment receives signals from satellites at very low power levels (about 1 billionth of a watt, or minus 90 decibels) while the LightSquared stations will be transmitting at very high power (proposed 10 thousand watts). The Department of the Interior, along with the GPS community, is concerned LightSquared's ground-based transmissions will potentially overpower the relatively weak GPS signals from space. Although LightSquared will operate in its own radio band, the strength of LightSquared's transmissions and proximity to the GPS frequencies could cause GPS devices to become overloaded or jammed. For example, this would be like trying to see a distant star during daylight.

The Department is very concerned about GPS Interference.

The impact of a GPS outage is significant. In particular, GPS is used for wildland fire fighting, for law enforcement operations, and for monitoring of natural hazards. Interference of GPS signals causes grave risk to the public, potentially impacting the Department's ability to monitor and address hazards like earthquakes and volcanoes.

The Department was pleased to see the Federal Communications Commission (FCC) Enforcement Bureau announced new efforts (February 2011) to clamp down on the marketing, sale, and use of illegal cellphone and GPS jamming devices that create GPS interference. The FCC said these jammers are serious safety risks.

Calvert Q18: Would you say that FCC adequately studied and fully understood DOI's concerns before it made a decision? Did the FCC consult the Department of Interior at during their review?

ANSWER: LightSquared filed with the FCC for a waiver and requested expedited processing. The FCC followed established procedures of forwarding the request to the National Telecommunications and Information Administration (NTIA). NTIA rapidly provided notification and documentation to the attendant agencies of the Interdepartmental Radio Advisory Committee, however, the timing was less than optimal because it was during the holiday season break in December. The Department of the Interior, along with other Federal departments, reviewed the proposed waiver and immediately notified NTIA objecting to the FCC granting the waiver before proper testing and analysis was completed. The FCC granted LightSquared a waiver to build their system but made this conditional on LightSquared's resolution of potential Global Positioning Satellite Service (GPS) interference issues.

Unfortunately, the FCC's order to LightSquared asked them to look only at the "overload interference" problem which is only one aspect of potential interference scenarios. The Department of the Interior believes that all potential interference scenarios must be investigated before the conditions on the waiver are lifted and the waiver granted. The FCC should not make a decision until it has all of the relevant information.

On 3 January, 2011, in an unsolicited letter to the NTIA, the Department said: "Because of the potential impacts to GPS performance, interference issues should be investigated before a wavier is granted. Important technical issues have been raised regarding LightSquared's plans—in particular whether out-of-band emission limits alone will be effective in protecting GPS. The Department of the Interior recommends the NTIA conduct a comprehensive study, with thorough testing, which encompasses Federal and Non-Federal users, prior to a waiver being granted. Through such a study, the impact to GPS spectrum can be properly assessed, and mitigation measures identified, to prevent disruption of GPS operations which have become so critical to the Department and the Nation."

Calvert Q19: Do DOI agencies such as the U.S. Geological Survey, Fish and Wildlife Service, Park Service, and various Bureaus use GPS information and equipment to perform their

missions? What would be the impact on each of them if their GPS equipment were interfered with?

ANSWER: The Global Positioning System (GPS) is critical to the missions of the Department of the Interior. All fourteen of Interior's, bureaus and offices use GPS. From aviation to natural hazard monitoring, to wildland fire fighting and wildlife tracking, GPS is used by thousands of employees throughout the Department. GPS is used in every State, territory and insular area. At DOI, natural resource uses are the most common application of GPS. For example, Earth scientists from the Department use advanced GPS techniques to monitor the warp of the Earth's crust associated with earthquakes and volcanoes at the millimeter level or better. In another example, wildlife biologists attach GPS instruments to track the movements of California Condors. Simply stated, GPS makes it easier for the Department to carry out its missions—faster, cheaper, and with greater accuracy.

The impact of a GPS outage is significant. In particular, GPS is used for wildland fire fighting, for law enforcement operations, and for monitoring of natural hazards. Interference of GPS signals causes grave risk to the public, potentially impacting the Department's ability to monitor and address hazards like earthquakes and volcanoes.

Calvert Q20: Although many of the DOI agencies operate in more rural areas, what would be the impact to the ability of the federal government to provide efficient services if interference caused dead spots for GPS receivers?

ANSWER: At this point it is not clear what the potential impact of the LightSquared terrestrial based station network in a Mobile Satellite radio band will be. That is why the Department supports comprehensive study and thorough testing of the GPS interference issue.

Calvert Q21: Would DOI support a solution to the possible GPS interference issue if that meant the need for widespread upgrade or replacement of the Department's inventory of GPS receivers?

ANSWER: It is difficult to speculate on the impact of replacing the Department's GPS receivers. However, the Department estimates that it has well over $100 million invested in this technology.

To some degree the Department is continually updating and improving its equipment. As the GPS constellation of satellites is modernized, the Department will need to upgrade its equipment to take advantage of new GPS signals. In addition, other Global Navigation Satellite Systems are emerging in addition to GPS. The Department will also need to improve upon its current GPS equipment to be GNSS compatible and interoperable.

Any short-term requirement for a system-wide replacement would be chaotic, expensive and negatively impact all of the Department's GPS applications. Many of these applications are critical to mission effectiveness and resource efficiency. It may be possible to gradually upgrade receivers over time without significant disruption, but this effort will need to be tightly coordinated and managed to minimize impacts.

Calvert Q22: What plans does your Department have to participate in the unfolding process that FCC will use to resolve this new GPS interference issue?

ANSWER: The Department of the Interior is a member of the National Executive Committee for Space-Based Positioning Navigation and Timing (PNT), a U.S. Government organization established by Presidential directive to advise and coordinate Federal departments and agencies on matters concerning the GPS. Through the government's National Space-Based PNT Systems Engineering Forum the U.S. Government (USG) is conducting its own testing of the potential interference to GPS from LightSquared's terrestrial network. Collaboration between LightSquared and the USG on technical issues is very good. At this time the Department plans to test some of its receivers in the planned USG testing.

Riverside County Habitat Conservation

Although the population of Riverside County grew by 42% in the last decade, and its highly-regarded multiple species habitat conservation plan is intended to accommodate infrastructure development while protecting threatened species, the recession has curtailed the County's ability to acquire needed habitat. Legislation is being crafted to authorize federal loan guarantees for habitat acquisition, so that Riverside county and other sponsors of HCPs can acquire habitat while prices are low.

Calvert Q23: Would you support that legislation?

ANSWER: The Service appreciates the County's continued commitment to administering the HCP and will continue to work with partners to fulfill its obligations. However, the Service has no experience or capability in administering loan programs. The Department would first need to evaluate the specific legislative provisions creating the loan program.

Questions for the Record from Mr. LaTourette

Mr. Secretary, the Cuyahoga Valley National Park in my state is consistently among the ten most visited national parks in America. From your own visits to the park, I know you are well aware of its remarkable resources. In FY10, $4 million in Land and Water Conservation Funds were provided to begin to acquire the Blossom lands at the heart of the park, and your FY11 budget proposed to complete the purchase this year.

LaTourette Q1: Can you give us an update on the status of the Blossom project, and share with us more broadly how you plan to use LWCF funds to meet these sorts of challenges at Cuyahoga Valley and elsewhere?

ANSWER: In the latter stages of action related to the FY 2010 appropriation for NPS land acquisition, the urgent need arose for funding to acquire a portion of the Blossom Music Center property at Cuyahoga Valley National Park. The Center property, the summer home of the world-renowned Cleveland Orchestra and a venue for pop concerts, totals 775 acres, of which 578 acres are undeveloped and 197 acres are associated with the performance complex (amphitheater, parking, visitor service facilities, support facilities, utility systems, etc.). The undeveloped portion is largely natural forest land but does include two cell towers and 12 oil/gas wells. To date, the property, which is zoned residential, has been managed in a manner generally compatible with the park. However, the threat of a sale and development of this property would seriously impact the use of the property. Public support for protecting this property from large-scale, residential development has been high. The National Park Service has entered into an agreement with Musical Arts Association to acquire the undeveloped lands within the larger tract. The MAA will continue to own the developed infrastructure, including the amphitheater, the parking lots, and the visitor/concert service facilities.

An approved appraisal indicated a value of approximately $9.3 million for the 578-acre property and it was determined that the acquisition should be completed in two phases with funding provided in fiscal years 2010 and 2011. Consequently, based on the recommendations of the House and Senate Appropriations Committees, the FY 2010 appropriation for NPS land acquisition included $4 million to complete Phase 1 of the acquisition of the Blossom Music Center property at Cuyahoga Valley National Park. On March 16, 2011, with the assistance of The Trust for Public Land, Phase 1 acquisition was completed: funds in the amount of $3.9 million were obligated to acquire a 233-acre portion of the property. The NPS request for FY 2011 included $5.5 million to acquire the remaining 345 acres and to cover all additional costs necessary to complete Phase 2 of the acquisition. The schedule for Phase 2 will be determined soon.

Questions for the Record from Mr. Cole

Cole Q1: The process for taking land into trust for the benefit of Indian Tribes is unacceptably slow. How can this process be improved?

ANSWER: Over the past year the Department has implemented policy in the Departmental Manual specifically identifying timeframes that responses are due from applicants and timeframes for BIA staff to complete various steps within the process to lessen the amount of time it takes to process an application. BIA has also developed an informational brochure that is available to all interested parties that describes the process and provides contact information which will also contribute to lessening the time it takes to process applications. These efforts will lead to faster decisions regarding the acquisition of land into trust for the responsibilities within the Department's control; however, a significant portion of the responsibility to allow the Department to reach a decision to bring land into trust is borne by the applicant, (i.e., providing Title insurance, hazardous waste surveys, and environmental compliance.) If applicants provide all required information pursuant to 25 CFR 151, the policy directs BIA staff to make decisions within specified timeframes. In addition to these changes, the BIA has also initiated efforts to revise and streamline the Fee-to-Trust Handbook and implement an automated system that will assist in the processing of applications.

Cole Q2: In my state of Oklahoma, the BIA office in Muskogee processes trust applications efficiently but the Anadarko office has a woeful record of processing applications. How can you explain this disparity and how can it be fixed?

ANSWER: The Southern Plains Region Anadarko office processed and approved more fee-to-trust applications than the Eastern Oklahoma Region Musckogee office in 2010. The Anadarko office processed 46 applications, totaling 5,327.80 acres of which 15 of those applications were in Oklahoma for a total of 1,219.86 acres; whereas, in the Eastern Oklahoma Region processed 10 applications, totaling 624.51 acres. A significant portion of the responsibility to bring land into trust is borne by the applicant (i.e., Title insurance, hazardous waste surveys, and environmental compliance). Several tribes in the Eastern Oklahoma Region have staff and resources solely devoted to pursuing land-into-trust applications, whereas the majority of the tribes in western Oklahoma do not have these resources.

Cole Q3: You mention the extension of bridges on the Tamiami Trail in the everglades. Does this bridge cross or come near any tribal lands and if so has its impact on those tribes been evaluated.

ANSWER: The Tamiami Trail (U.S. Highway 41) bisects the Everglades from Miami to Naples and is located directly between Everglades National Park on the south and the State's Water Conservation Areas to the north. The Miccosukee Reserved Area, which is part of Everglades National Park, is the primary area in which members of the Miccosukee Tribe reside. This area is also located directly south and approximately five miles west of the proposed project footprint if the 5.5 miles of additional bridging are authorized. Two other Native American camps, the

Tigertails and the Osceolas, reside adjacent to Tamiami Trail with the Tigertail Camp on the north side of Tamiami Trail and the Osceola camp on the south.

The Department's proposal to implement additional bridging for the Tamiami Trail has fully evaluated the environmental effects of the proposal on all of these tribal areas. The Department incorporated suggestions from the Tribe and its members to ensure that the bridging segments do not come within one-half mile on either side of the boundaries of the Tigertail or Osceola camps. The Department also evaluated the effect of the bridging proposal on archeological resources with no adverse effects and some effects on cultural resources, including the Tamiami Trail and historic structures of one of the airboat tour operators. Notwithstanding this evaluation, the Department understands that the Tribe opposes this proposal.

The Tamiami Trail 5.5 mile bridge proposal is anticipated to significantly benefit Tribal resources (leased lands) in Water Conservation Area 3A. Presently too much water is held in the water conservation areas with damage to tree islands. If additional bridges are implemented in the Tamiami Trail it would be possible to move more water from the water conservation areas to Everglades National Park, thereby achieving more natural water levels in the water conservation areas.

Cole Q4: Why is the Indian Guaranteed Loan Program been reduced before a study of the impact of that reduction has been completed

ANSWER: The FY2012 budget request proposes to continue the Indian Guaranteed Loan Program at $3.1 million, a $5.1 million reduction. The requested level of funding for the program will continue to provide resources to subsidize over $25 million in loans to businesses in Indian Country. In addition, the program will also help to facilitate the use of existing loan programs for Native Americans and Tribes through improved collaboration with other Federal agencies (particularly the Small Business Administration and the Department of Agriculture). The program will work to ensure that these existing loans reach Indian Country while an evaluation is performed to determine if the objectives of the Indian Guaranteed Loan Program can be better achieved through Indian Affairs or other Federal loan programs.

Cole Q5: Was delay in new permitting for shallow water production thoroughly considered before the change from MMS to BOEMRE was hastily implemented?

ANSWER: The change from MMS to BOEMRE was the initial step of the Department's ongoing reorganization. The reorganization of the former MMS will clarify the separate missions across three successor agencies. The Department is striving to provide the agencies with the resources necessary to fulfill those missions including strengthening the regulatory processes related to offshore leasing, exploration and development plan approval, and permitting. In the interim, BOEMRE has already strengthened its regulatory standards for both deepwater and shallow water operations.

BOEMRE approves drilling permits (both for deep and shallow water drilling) that comply with rigorous new safety standards implemented in the wake of the Deepwater Horizon event.

Operators drilling in shallow water must comply with all applicable rules, regulations and information requirements, including tighter drilling safety standards.

In addition to existing policies, shallow and deepwater permits are also subject to new regulations and standards, as set forth in the Interim Final Rule (known as the Drilling Safety Rule) and information requirements outlined in Notice to Lessees (NTL) 2010-N06 (known as the Environmental NTL) and NTL 2010-N10 (known as the Compliance and Review NTL).
As companies resume operations, they will also need to comply with the Safety and Environmental Management System Rule (known as the Workplace Safety Rule) within the deadlines specified by the regulation.

Cole Q6: You say that $55 million of new inspection fees would be collected from oil and natural gas producers and that regulation "would no longer be funded by taxpayers." Have you studied the effect on energy prices to consumers based on these new expenses to producers?

ANSWER: The cost of producing offshore energy would affect the world oil price primarily through any reductions in forthcoming supplies. During the past few years the offshore program has averaged about $7 billion in annual fees collected from bonuses, royalties and rentals. The increase in inspection fees of $55 million per year would therefore raise average revenue collections by less than one percent. Moreover, the size of the fees represent on average only 0.1% of a company's gross revenues from offshore production. Therefore, the Department is confident that such increases will not result in any meaningful reductions in offshore production. And, any such reductions would be of small amounts and therefore have a negligible effect on world supplies and hence the price of oil.

Cole Q7: Does DOI consider natural gas to be clean energy? How is it giving priority to natural gas production amongst other clean energy production?

ANSWER: Safely harnessing the nation's abundant natural gas resources is critical as we work to reduce dependence on foreign oil and move from our heavy reliance on fossil fuels to greater use of clean, renewable, domestic energy sources. DOI has been working diligently to promote greater use of the Nation's natural gas resources to effect this transition. In FY 2010, almost a quarter of domestically produced natural gas came from onshore and offshore public lands. BOEMRE and the Bureau of Land Management are considering policies to encourage greater exploration and production, especially from the abundant acreage already under lease.

New regulations have been published to assure that deepwater oil and gas production can proceed with assurance that operators have the equipment and procedures in place to prevent another loss of well control and oil spill. DOI approval of recent industry plan and permit submissions indicates that industry has indeed met this challenge and the deepwater activities can proceed. In addition, on April 1, BLM Director Bob Abbey announced that BLM will hold a series of regional public forums in 2010 to further discuss the use of hydraulic fracturing techniques to stimulate natural gas production on Federal lands.

Cole Q8: You propose a 67% increase to the price of "Duck Stamps." Have you evaluated the effect this will have on the number of hunters? Do you know how many hunters will stop hunting rather than pay the additional fees? Has the reduction in hunters buying duck stamps been taken into account when determining the additional revenue from the increase.

ANSWER: The Federal Duck Stamp program, an internationally recognized and emulated program, supports the conservation of important migratory bird habitat through the sale of the Migratory Bird Hunting and Conservation Stamp (commonly known as the Duck Stamp). Since 1934, the sales of Federal Duck Stamps have raised in excess of $750 million for the Migratory Bird Conservation Fund (MBCF) enabling the protection of more than 5.3 million acres of prime waterfowl habitat in the National Wildlife Refuge System. Also, lands purchased with Duck Stamp dollars provide Americans with many opportunities to enjoy the outdoors by engaging in numerous activities such as hunting, fishing, hiking and wildlife watching. However, while the price of land has increased dramatically the cost of the duck stamp has remained fixed. In fiscal year 2009, sales of Duck Stamps totaled nearly $25 million. The 2012 budget proposes to increase the price of the Federal Duck Stamp from $15 to $25. Currently, there are between 1.4 and 1.5 million stamps sold each year. The number of stamps sold has not varied significantly over the past 30 years. The most recent price increase in 1991 did not significantly impact the number of stamps sold.

Cole Q9: Projections are that the energy industry is prepared to invest $60-70 billion in developing energy resources in the Gulf of Mexico, and yet there has been a de facto "energy freeze" there by delaying the issuance of drilling permits. If we don't get moving, these companies invest this money overseas to develop foreign energy sources. The President has asked America firms to invest at home, and yet your Department is telling them to offshore this investment and outsource our energy future.

When are you going to end the freeze, open the doors to investment, and let people get back to work in the Gulf?

ANSWER: On October 12, 2010, the Department lifted the moratorium so that deepwater oil and gas drilling could resume, provided that operators certify compliance with all existing rules and requirements, including those that recently went into effect, and demonstrate the availability of adequate blowout containment resources.

BOEMRE is working diligently to ensure that operators meet the regulatory standards necessary to issue permits for safe drilling operations. On February 28, 2011, BOEMRE approved a permit to drill a deepwater oil well in the Gulf of Mexico, the first such permit issued since the Deepwater Horizon event. The permit was issued because the operator successfully demonstrated that it can drill its deepwater well safely and that it is capable of containing a subsea blowout if it were to occur.

Several other deepwater permits demonstrating compliance with safety regulations have since been approved. These first permits are a template allowing other deep-water permits to be issued. The agency has also regularly issued shallow-water drilling permits since last summer.

Additionally, on March 28, 2011, BOEMRE issued guidance for offshore deepwater drillers to comply with safety and containment requirements. The guidance contains no additional regulatory requirements, but instead provides clarifying information to assist the oil and gas industry in complying with existing regulations and guidance. This guidance document gives deepwater drilling operators additional information to help address some of the recurring issues that have been raised in our ongoing discussions with industry.

BOEMRE is proceeding judiciously, with safety at the forefront of its permitting decisions. Drillers still must prove that they can contain runaway wells before being granted a permit.

Questions for the Record from Mr. Flake

Guidance for Land Managers on Restricting Public Access

A November 2010 GAO report noted that land managers and law enforcement officials in the Tucson Sector indicated "that they would like additional guidance to determine when risks related to cross-border illegal activity warrant closure or restricted access to federal borderlands.

Flake Q1: Has the Department made any effort to provide such guidance to date?

ANSWER: After receiving this recommendation from GAO, DOI reviewed existing guidance related to the closing or opening of public lands with regard to safety issues. Substantial guidance currently exists within DOI bureaus in the form of procedures, policy and regulations. DOI is reviewing this material and consulting with field managers to assess whether additional guidance would be helpful. By September 30, 2011 DOI plans to establish a framework, including a listing of factors for managers to use when the need to close or open an area is being considered. The Department of Homeland Security will be consulted in the development of this framework to assure there are no conflicts with their activities and that all of their concerns are addressed. Using this framework, local managers will need to make a judgment based on the best available information on closing or opening public lands.

Mitigation Costs

A Department of Homeland Security letter to Rep. Bishop noted that between 2007 and 2009, Homeland Security had provided nearly $10 million on mitigation projects. There has also been an agreement for an additional$50 million in mitigation funds to be transferred or that may already have been. Clearly, including in Arizona, the level of illegal border crossings is having an impact on the natural resources on federal lands.

Flake Q2: In determining the level of mitigation required for Border Patrol activities, are the positive impacts to the environment of deterring or reducing the level of undocumented crossings taken into account?

Answer: The Department of the Interior and the Department of Homeland Security have worked and continue to work closely to secure our Southwest border. In general, a more secure border results in less illegal activity and less impact resulting from that activity in areas such as Buenos Aires National Wildlife Refuge in Arizona. These beneficial impacts are considered when evaluating the need to mitigate Customs and Border Protection activities.

However, the impacts associated with enhanced border security are not fully offset by the reduction or redirection of illegal activity. In cases where the placement of permanent border infrastructure has impacted the ability of wildlife to move from place to place and diminished the value of habitat, DOI and DHS have implemented off-site mitigation measures under the framework of a Comprehensive Mitigation Agreement. For example, in the Rio Grande Valley of South Texas movement of endangered cats (ocelot and jaguarundi) is impeded by pedestrian barriers. While such barriers reduce or redirect illegal activity, they also significantly affect

habitat quality by fragmenting the landscape and reducing the amount of area available for the cats and other wildlife to forage, reproduce, and ultimately survive. DOI has worked with DHS to modify fence design and location as much as possible to avoid or minimize these types of impacts. Impacts that cannot be avoided are then mitigated by enhancing habitat elsewhere. Likewise, impacts from border infrastructure, which result in direct loss of habitat, soil erosion, or changes in hydrology, can cause flooding or other factors, and may also need to be mitigated by corresponding habitat improvements off-site.

The increased operational activity (patrol and interdiction) required in areas of high illegal activity also result in displacement of wildlife. While increased law enforcement activity is necessary it also results in some impacts to wildlife which could be offset by mitigation.

Uranium

During his State of the Union address earlier this year, the President set a goal for domestic clean energy sources and listed nuclear power among the options. U.S. nuclear facilities import the majority of their uranium, yet in 2009 the Department prohibited new uranium mining on lands around the Grand Canyon National Park. In February of this year, the Department also released a draft environmental impact statement dealing with the issue that includes four options ranging from withdrawing no lands to withdrawing a million acres for 20 years.

Flake Q3: Is the complaint that withdrawing areas from future uranium mining by the Department is working at cross-purposes with the Administration's goals related to nuclear energy production valid?

ANSWER: No decision has been made about whether all or any part of this area will be withdrawn from uranium and hardrock mining. The 2-year timeout was necessary so that we could complete an Environmental Impact Statement on the area under consideration. The Department will make a decision on whether to withdraw these lands later this year.

Flake Q4: Does the Department have a preferred alternative among the four proposed in the draft environmental impact statement?

ANSWER: The Draft Environmental Impact Statement discusses the potential impacts that each of four alternatives would have on the human environment and natural and cultural resources. As permitted by the National Environmental Policy Act (NEPA), the Draft EIS does not identify a preferred alternative.

The four alternatives are:

Alternative A is the No Action Alternative, under which no withdrawal would occur and hardrock mineral exploration and mining would continue throughout the study area in accordance with existing BLM and Forest Service regulations and land use plans.

Alternative B is to withdraw about 1 million acres from hardrock mineral exploration and mining for 20 years subject to valid existing rights. The land is in three parcels: two are north of the

Grand Canyon National Park on BLM Arizona Strip and Kaibab National Forest lands; and one is south of the Grand Canyon also in the Kaibab National Forest. If implemented, this withdrawal would not prevent any other development under laws regulating mineral leasing, geothermal leasing, mineral materials, or public lands.

Alternative C is to withdraw a reduced area of about 650,000 acres from hardrock mineral exploration and mining for 20 years, subject to valid existing rights. This acreage is the largest contiguous area with resources that could be adversely affected by mineral exploration and mining. The resources potentially affected are cultural, hydrologic, recreational, visual, and biologic.

Alternative D is to withdraw a further reduced area of about 300,000 acres from hardrock mineral exploration and mining for 20 years, subject to valid existing rights. This acreage is the largest contiguous area with the highest concentration of resources that could adversely be affected by mineral exploration and mining.

Flake Q5: Does the Department view a 45 days comment period to be sufficient?

ANSWER: After receiving numerous requests, the BLM announced March 29 that it would extend by 30 days the public comment period on the Draft EIS. It concluded May 4. During this 75-day period, four public meetings were held in Arizona and Utah, and comments were accepted via the Internet and at BLM's Arizona Strip District Office, giving the public and other stakeholders ample time to study the documents and make comments.

WEDNESDAY, MARCH 9, 2011.

NATIONAL PARK SERVICE FY 2012 BUDGET REQUEST

WITNESSES

JONATHAN JARVIS, DIRECTOR, NATIONAL PARK SERVICE
MARGARET "PEGGY" O'DELL, DEPUTY DIRECTOR OF OPERATIONS, NATIONAL PARK SERVICE
BRUCE SHEAFFER, COMPTROLLER, NATIONAL PARK SERVICE

OPENING REMARKS OF CHAIRMAN SIMPSON

Mr. SIMPSON. The committee will come to order.

Director Jarvis, I want to thank you and your colleagues for being with us today to discuss the work of the Park Service and your priorities for the coming year. I am going to keep my comments brief so that we can hear from you and provide members the opportunity to ask questions before we attend this morning's joint session with the prime minister of Australia.

I want to make two observations. First, your budget request for next year makes some decisions that I find a little bit puzzling. On the one hand, the budget request for the Park Service land acquisition represents a $234 million increase over the enacted 2010 level. That is an unprecedented increase in just 2 years. On the other hand, the budget request cuts construction funding by $77 million. It seems to me that we ought to be addressing long-term maintenance and repair needs within our parks before acquiring additional acquisitions that will only add to the historic funding backlog.

Secondly, I want to commend you and Bruce Sheaffer for the progress you have made over the last couple of years to address the issue of high unobligated balances within the Rec Fee program. We included report language in the fiscal year 2010 bill raising concerns over these high balances and directing the Park Service to take corrective action. When we first raised this issue, the carryover balance was approaching $300 million. Your written testimony suggests that this balance is now below $90 million.

One of our subcommittee's primary goals is oversight, and your work in the Rec Fee program demonstrates that we can work together to meet our common oversight goals. I look forward to focusing on these and other issues this morning.

OPENING REMARKS OF CONGRESSMAN MORAN

Mr. SIMPSON. But first let me yield to Mr. Moran for any opening remarks he might have.

Mr. MORAN. Thank you, Mr. Chairman.

I have some great quotes here but I am not going to take the time. Do you want me to?

Mr. SIMPSON. If it will make you feel better.

Mr. MORAN. Seriously? Okay. All right. If you want me, Mr. Chairman. He is the boss. As one of the prime movers of the national park movement, Chairman Simpson's old friend John Muir wrote: "Everybody needs beauty as well as bread, places to play in and pray in, where nature may heal and give strength to body and soul." He also wrote: "Society speaks and all men listen"—he meant to say all men and women listen—"mountains speak and wise people listen." So as the caretaker of so many wonderful places, some of the Nation's preeminent mountains, you have to speak and represent the interests of the mountains, and you also have to lead 25,000 employees, provide quality services for over 280 million visitors every year and provide all kinds of technical assistance and conservation education.

The fact is with the exception of the Great Outdoors initiative, which I do support, this is a very tight budget, but given the importance of the parks to our Nation, I trust that there will be bipartisan support for most, if not all, of your budget requests because we need to continue to care for these priceless resources and make them safe for our visitors and make sure they last for our children and their children to enjoy.

So we look forward to the hearing, and we will get on with it. I am sure we will be able to finish up by 11:00. Thanks, Mr. Chairman.

OPENING REMARKS OF DIRECTOR JARVIS

Mr. SIMPSON. Thanks, Jim. As Tommy Smothers once said, I talk to the trees but they never listen to me. I do not know if any of you are old enough to remember that.

Thank you. We look forward to hearing from you, Director.

Mr. JARVIS. Mr. Chairman and the members, thank you for this opportunity to appear before you and present our fiscal 2012 President's budget request for the National Park Service. If I may, I would like to submit the written testimony for the record and just summarize here.

We really appreciate this Committee's support for the work that we do as stewards of our Nation's most cherished natural and cultural resources. We look forward to continuing to work with you as the National Park Service prepares for its second century of stewardship beginning in 2016, this year being our 95th.

As any resource manager can tell you, wise stewardship sometimes involves making very difficult choices. The National Park Service's fiscal 2012 budget request reflects a careful and serious response to the need to reduce federal spending by supporting our highest priorities while proposing significant reductions to a number of worthy programs.

In addition to the program reductions, the budget request includes substantial management savings and efficiencies. The National Park Service is making significant progress in reducing unobligated balances, as you mentioned, Mr. Chairman. The aim of these efforts is a more targeted and focused use of our existing funds limited to those strategic areas we have determined to be the highest priorities of the National Park Service. By focusing avail-

able resources on the areas of greatest need, the NPS can maintain its existing responsibilities while supporting some new initiatives.

The fiscal 2012 budget proposes total discretionary spending of $2.9 billion. That is a net increase of $137.8 million above the FY 2010 appropriation. The budget request includes an increase of $39.5 million for park operations that will serve more than 100 park units. This amount is intended to address operations in new parks, support other new responsibilities, improve mission-critical operations, engage youth in employment and educational opportunities, and protect historical assets at parks commemorating the Civil War sesquicentennial.

Our operations budget is key to helping us continue to protect the critical natural and cultural resources we are entrusted with and to serve visitors who this past year numbered 285 million.

We are supporting the America's Great Outdoors initiative, which includes fully funding the Land and Water Conservation Fund programs at $900 million. The Park Service's budget component of that includes $160 million to acquire around 98,000 acres of land within the authorized boundaries of units of the national park system. These proposed acquisitions were determined through a coordinated process within the Department of Interior among our bureaus as well as with the U.S. Forest Service in the Department of Agriculture. The criteria we used emphasize opportunities to jointly conserve important landscapes, especially river and riparian areas, wildlife habitat, urban areas that provide needed recreational and threshold experiences and those containing important cultural and historical assets. We also looked at the ability to leverage those funds with partners and with other agencies.

Also included in the budget is $200 million for the State side of Land and Water Conservation Fund which would enable communities to enhance outdoor recreational opportunities. A portion of these funds would be allocated through a competitive component targeted at community parks, green spaces, landscape level conservation and recreational waterways. This is a new approach we are taking. These grants would address public concern about the lack of open space and outdoor recreation areas in certain urban and other areas. This was frequently conveyed to us in the listening sessions we held around the country for the America's Great Outdoors Initiative. In conjunction with the State conservation grants, the request includes a $1.1 million increase for the NPS Rivers and Trails Conservation Assistance program to assist communities with technical assistance.

The fiscal 2012 budget maintains funding of $9.9 million for the Secretary's Cooperative Landscape Conservation initiative. This will bring together networks of resource professionals and promotes science-based understanding of the effects of climate change. This will produce practical applications that have broad benefits for resource managers seeking cost-effective approaches to conservation in the face of these economic times.

In order to fulfill these stewardship responsibilities and these critical increases, they are offset by some cost savings and some program reductions. The proposed budget requests no funding for Save America's Treasures and Preserve America grants programs or the Park Partnership Project Grants program.

The request also eliminates funding for Statutory Aid and proposes significant reductions in Construction and the National Heritage Areas program. It also includes budget efficiencies and savings totaling $46.2 million.

I would like to speak to you, and we can discuss in the questions about the efforts we are taking to restrain spending, but I also would like to remind everyone of the economic value of parks. The national parks are drivers of economic growth, particularly in gateway and rural communities. They stimulate spending and job creation. Taxpayer investments in the national parks result in far more than the obvious recreational and educational dividends. In 2009, park visitors spent $11.9 billion and supported 247,000 private sector jobs. So it is not just a matter of stewardship but it is also a great economic investment.

In closing, I would just like to say how much we appreciate the support of this committee and of all the members here. It has been a great relationship and I am sure it will be in the future.

That concludes my remarks, and I will be pleased to take any questions.

[The statement of Jonathan Jarvis follows:]

STATEMENT OF JONATHAN B. JARVIS, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES OF THE HOUSE APPROPRIATIONS COMMITTEE CONCERNING THE FISCAL YEAR 2012 BUDGET REQUEST FOR THE NATIONAL PARK SERVICE

March 9, 2011

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today at this hearing on the Fiscal Year 2012 President's budget request for the National Park Service (NPS).

Introduction

Responding to the need to reduce Federal spending in a difficult economic climate, the FY 2012 budget request for the NPS contains strategic spending increases combined with selected program reductions and eliminations, made only after serious and careful deliberation. The FY 2012 budget proposes total discretionary appropriations of $2.9 billion and $394.5 million in mandatory appropriations for total budget authority of $3.3 billion. This is a net increase of $137.8 million above the FY 2010 discretionary appropriations and an estimated net decrease of $13.0 million in mandatory appropriations from FY 2010.

National parks are drivers of economic growth, particularly in gateway communities. They stimulate spending and job creation. Taxpayer investments in national parks result in far more than the obvious recreational and educational dividends. In 2009, park visitors spent $11.9 billion and supported 247,000 private-sector jobs. The President's budget will ensure that national parks continue to serve the 285 million visitors who come every year to relax in America's great outdoors and learn about the people and places that make up America's story.

The FY 2012 budget request supports continued stewardship of this Nation's most cherished resources through the Administration's America's Great Outdoors initiative – a landmark investment in engaging people, particularly youth, in America's outdoors and conserving our Nation's natural and cultural heritage. It also supports the Secretary's goals of cooperative landscape conservation and engaging America's youth in the great outdoors.

Budget Summary

The FY 2012 budget request reflects the President's commitment to our national parks with an increase of $276.6 million over the FY 2010 enacted level, as part of the Administration's America's Great Outdoors initiative. A key component of this initiative is bolstering operational funding at park units that need it most. The budget requests an increase of $39.5 million for park operations at new parks, and to address new responsibilities, improve mission critical operations, engage youth in employment and educational opportunities, and protect historical assets at parks commemorating the Civil War sesquicentennial.

Further supporting the America's Great Outdoors initiative, the NPS budget request plays a key role in the Administration's proposal to fully fund Land and Water Conservation Fund (LWCF) programs at $900 million in FY 2012. The NPS request is critical to achieving the goals inherent in the LWCF Act of 1965, which was designed to use revenues generated through the depletion of natural resources for State and Federal land acquisition and the enhancement of lands and waters for recreational and conservation purposes. The request includes $160.0 million for Federal Land Acquisition, an increase of $73.7 million from FY 2010, which would be used to leverage other Federal resources, along with those of non-Federal partners, to achieve shared conservation outcome goals in high-priority landscapes. The request also includes $200.0 million for the State Conservation Grants program, of which $117.0 million would be targeted to a new competitive matching grants program for States to create and enhance outdoor recreation opportunities.

The FY 2012 request maintains NPS funding of $9.9 million for the Secretary's Cooperative Landscape Conservation initiative. This initiative will bring together natural resource professionals at the Federal, State, and local level through real and virtual connections to facilitate the wider sharing of information. These networks of resource professionals will be supported by science centers that translate global scientific understanding of environmental change into solutions at the landscape level. A science-based understanding of these issues and their practical applications will have broad benefits for resource managers that are wrestling with the need to find practical and cost-effective approaches to conservation in the face of economic challenges. With this funding, resource monitoring will increase at more than 150 of the most

vulnerable parks in high elevation, high latitude, arid, and coastal areas, such as monitoring for melting permafrost in Alaska and changes in salt marsh salinity along the South Atlantic coast. Additionally, over 500 employees will be trained to incorporate adaptation approaches into resource management.

In order to uphold our stewardship responsibilities and sustain key initiatives, the National Park Service undertook a rigorous review of our ongoing activities and made difficult choices. The proposed budget eliminates funding for Save America's Treasures grants, Preserve America grants, and the Park Partnership Projects program. Further, the request eliminates funding for Statutory Assistance and proposes significant reductions in the NPS Construction and National Heritage Areas programs.

In addition to the program reductions the budget includes management savings and efficiencies totaling $46.2 million, including $18.4 million that will be realized in 2011. The NPS will realize the remaining savings in 2012 by reducing $24.8 million in supplies and material, and $3.0 million in savings for travel and transportation of persons. In proposing the reductions and absorptions requested in the FY 2012 request, we have been careful to protect park operations as much as possible, and we continue to advance innovative approaches to collaboration and cost savings. The consolidation of our workforce management, acquisition, and contracting offices are prime examples of strategies that will, in future years, deliver greater services at less cost.

I would also like to mention the significant progress we have made in responsibly reducing our unobligated balances. Over the past two years, we implemented a number of policy and program changes, including reducing retention percentages at larger fee-collecting parks if their unobligated balances exceeded 35 percent of gross revenue. The result has been a more efficient targeting of funds to where it's needed most for the benefit of park visitors and protecting resources. It has also allowed individual parks more independence in project selection and expedited the approval of small fee projects. The unobligated balance for this program was reduced from $218 million at the end of FY 2009 to $86 million on January 1, 2011.

Operation of the National Park System

The FY 2012 budget requests $2.3 billion for the ONPS, a programmatic increase of $72.9 million over the 2010 enacted level, but a net increase of $35.3 million. This includes $39.5 million for park base increases which would benefit over 100 parks. The funds would be used to sustain and improve the condition of cultural resources; provide for new areas and responsibilities; ensure the continuation and improvement of mission critical operations; engage youth; and work collaboratively with partners. These increases are also a critical component of addressing key goals of the Administration's America's Great Outdoors initiative and connecting the public to the Nation's natural and cultural heritage and treasures. Other major increases improve capacity to perform repair and rehabilitation of park assets ($7.5 million), consolidate workforce management and acquisition offices ($6.8 million), increase baseline inventories of park cultural resources ($4.5 million), enhance cyclic maintenance efforts ($3.2 million), expand security at park icons ($1.8 million), facilitate information sharing and resource protection of park cultural resources ($1.5 million), and address oceans and coastal stewardship ($1.3 million).

The FY 2012 budget proposes a net increase of $5.7 million in support of the Secretary's Youth in the Great Outdoors initiative, which seeks to foster a life-long stewardship ethic in young people. The NPS is dedicated to engaging America's youth in developing a life-long awareness of, and commitment to, our national parks, and we have proposed this investment in 27 parks as part of park base funding to establish youth programs that provide educational experiences and employment opportunities on a continuous basis. This increase builds upon the $13.5 million in youth employment and engagement programs that the NPS received in FY 2010 and the $4.4 million that was provided from recreational fee revenues to youth projects that benefit the visitor experience.

Land Acquisition and State Assistance

The NPS FY 2012 budget proposes funding totaling $360.0 million for Federal land acquisition and State Conservation grants funded through the LWCF, an increase of $233.7 million from the FY 2010 enacted level. Of the total amount, $160.0 million is available for land acquisition projects and administration, including $10.0 million to provide grants to States and local

communities to preserve and protect Civil War battlefield sites outside the national park system through the American Battlefield Protection Program.

Beginning in FY 2011, the Department instituted a coordinated process for prioritizing Federal land acquisition projects among the three Departmental land management bureaus and the U.S. Forest Service. The cross-bureau criteria emphasize opportunities to jointly conserve important landscapes, especially river and riparian areas, wildlife habitat, urban areas that provide needed recreational opportunities, and those containing important cultural and historical assets. Additional criteria for these projects include the ability to leverage partner funds, the degree of involvement with other Interior bureaus for the project, and the urgency for project completion. The FY 2012 land acquisition request totals over 98,800 acres of the highest priority landscapes, spanning the country from Alaska and Hawaii to Maine and Florida and the Virgin Islands. As required by law, the proposed tracts are located within authorized park boundaries.

The request also provides $200.0 million, including administrative costs, for State Conservation Grants funded by the LWCF, a net increase of $160.0 million from the FY 2010 enacted level. Of this total, at least $78.0 million would be distributed equally to States as required by law, an increase of $40.8 million over the FY 2010 enacted level. With the remaining funds, the 2012 budget proposes developing a competitive component targeted at community parks and green spaces, landscape-scale conservation, and recreational waterways. These grants would address the public's concern about the lack of open space and outdoor recreational areas in certain urban and other areas that was frequently conveyed during listening sessions for the America's Great Outdoors initiative.

The competitive component would fund "signature projects" that create more outdoor recreational opportunities and conserve open space where access to natural areas has been inhibited or is unavailable; protect, restore, and connect open space and natural landscapes; and provide access to waterways. The projects would be expected to be larger in scale and would likely require and receive greater amounts of funding than has typically been awarded. NPS estimates that 10 to 50 grants could be funded to support acquisition of open spaces and natural areas and development of facilities for outdoor recreation across the Nation. Under the LWCF

Act, a single State cannot receive more than 10 percent of total grant funds, so no State would receive more than $17.9 million under this proposal. Each State would continue to automatically receive an apportionment that would total approximately $1.5 million. Applications would be evaluated using standard LWCF State grant criteria, as well as new criteria, such as the project's ability to increase and improve recreational access or the use of science and mapping to identify valuable lands for wildlife conservation.

National Recreation and Preservation

The National Recreation and Preservation appropriation funds programs that support local and community efforts to preserve natural and cultural resources. For FY 2012, $51.6 million is requested; a net decrease of $16.9 million from the FY 2010 enacted level. The request includes an increase of $1.1 million for the NPS Rivers, Trails, and Conservation Assistance program to bolster technical assistance to communities that are working to increase and improve recreational opportunities. As a key component of the Administration's America's Great Outdoors initiative, this increase would help provide an important resource to local communities as they work with States to implement projects funded from the proposed $200.0 million for the LWCF State Assistance program.

The budget also includes a request of $2.0 million for the Chesapeake Bay Gateways and Water Trails grants program. This proposal reflects the Administration's continuing commitment to ecosystem restoration, including stewardship of the Chesapeake Bay, pursuant to Executive Order 13508. The funds would provide technical and financial assistance for conserving, restoring and interpreting natural, cultural and recreational resources within the Chesapeake Bay watershed.

As noted above, the budget proposal provides $19 million in savings by not funding Statutory Assistance earmarks or Preserve America Grants and cutting in half Heritage Partnership Program grants to encourage self-sufficiency among well-established National Heritage Areas while continuing support for newer areas. These reductions are proposed to focus NPS resources on the highest priority needs within parks.

Historic Preservation Fund

The NPS plays a vital role in preserving the Nation's cultural history through a variety of programs that address preservation needs nationwide. The FY 2012 request for the Historic Preservation Fund is $61.0 million, a decrease of $18.5 million from the FY 2010 enacted level. The FY 2012 budget provides an increase of $6.5 million, of which$3.5 million is for Grants-in-Aid to States and Territories and $3.0 million is for Grants-in-Aid to Tribes. The total budget request for HPF in FY 2012 is $50.0 million for Grants-in-Aid to States and Territories and $11.0 million for Grants-in-Aid to Tribes. These key increases were provided as part of the America's Great Outdoors initiative to support increased State and Tribal National Historic Preservation Act compliance requirements and an expected 25% increase in the number of Tribal Historic Preservation Offices between 2010 and 2012. No funds are requested for the Save America's Treasures grants program in order to focus NPS resources on the highest priority needs within parks.

Construction

The $152.1 million requested for Construction includes $70.3 million for line-item construction projects. The line-item request, along with recreation fee revenues and park roads funding will provide substantial resources for protecting and maintaining existing park assets. Funding through the American Recovery and Reinvestment Act and previous appropriations has enabled the NPS to make significant gains in addressing outstanding construction projects. The NPS should complete all ARRA-funded construction projects in FY 2012. The request funds 14 projects including continuation of ecosystem restoration at Olympic and Everglades National Parks and critical new projects at Big Cypress National Preserve, the National Mall, and the Flight 93 National Memorial. The budget proposes funding for the highest priority health and safety and mission-critical projects and does not propose funding for new facilities or deferred construction of replacement facilities. It also includes funding for the Great Smoky Mountains North Shore Road settlement agreement.

Performance Integration

In formulating the FY 2012 budget request, the NPS used a variety of tools to incorporate performance results into the decision-making process. These tools include the Budget Cost

Projection Module, the Business Planning Initiative, and the NPS scorecard, as well as continued program evaluations. These tools are used to develop a more consistent approach to integrating budget and performance across NPS, as well as to support further accountability for budget performance integration at all levels of the organization. Given the far-reaching responsibilities of the NPS, we must remain strategic in our thinking and decision-making.

Mr. Chairman, this concludes my summary of the FY 2012 budget request for the National Park Service. We would be pleased to answer any questions you or the other members of the subcommittee may have.

Biography
Jonathan B. Jarvis
Director
National Park Service

Jonathan (Jon) B. Jarvis officially became the 18th Director of the National Park Service on October 2, 2009. A career ranger of the National Park Service, who began his career in 1976 as a seasonal interpreter in Washington, D.C., Jarvis takes the helm of an agency that preserves and manages some of the most treasured landscapes and valued cultural icons in this nation.

Prior to taking the helm as Director, Jarvis most recently served as the Regional Director of the Pacific West Region, with responsibility for 58 units of the National Park System in Washington, Oregon, Idaho, California, Nevada, Hawaii and the Pacific Islands of Guam, Saipan and American Samoa.

Jon Jarvis moved up through the National Park Service as a protection ranger, a resource management specialist, park biologist, and Chief of Natural and Cultural Resources at parks such as Prince William Forest Park in Virginia, Guadalupe Mountains National Park in Texas, Crater Lake National Park in Oregon and North Cascades National Park in Washington. His first superintendency was at Craters of the Moon National Monument in Idaho and he later served as the Superintendent of Wrangell-St. Elias National Park and Preserve in Alaska from 1994 until 1999. He became the Superintendent of Mount Rainier National Park in August of 1999. In 2001 he completed training in the Senior Executive Service Candidate Program of the Department of Interior and in September of 2002, became the Regional Director of the Pacific West Region.

Jarvis served as president of the George Wright Society, 1997-98, a professional organization that sponsors a biennial conference on science and management of protected lands around the world. Mr. Jarvis has published and lectured on the role of science in parks at conferences and workshops around the U.S. In his previous positions, Mr. Jarvis has obtained extensive experience in developing government-to-government relations with Native American tribes, gateway community planning, FERC relicensing, major facility design and construction, wilderness management and general management planning.

A native of Lexington, Virginia, Jarvis has a B.S. in biology from the College of William and Mary and completed the Harvard Kennedy School Executive Program in 2001. He and his wife Paula have two children, Benjamin and Leah.

Biography
Margaret O'Dell
Deputy Director of Operations
National Park Service

In January 2011, Director Jon Jarvis selected Margaret "Peggy" O'Dell to serve as the Deputy Director of Operations for the National Park Service. Prior to assuming her current position, O'Dell served as the Regional Director of the National Capitol Region

O'Dell began her career with the National Park Service as a seasonal interpreter at Jefferson National Expansion Memorial (Gateway Arch) while attending college at the University of Missouri – St. Louis where she earned a B.A. in History. In 1982, she resigned from the NPS to follow her husband, Ben, to Olympic National Park and to raise their children. They transferred to Ozark National Scenic Riverways in 1985 and O'Dell returned to the National Park Service to manage the interpretation and education programs.

While completing a Mid-Level Management Development program, she accepted the Management Assistant position at Ozark with major responsibilities in concessions and project management. Following this assignment, she transferred to Custer, South Dakota and spent two years as Superintendent of Jewel Cave National Monument.

A three and a half year assignment at Harpers Ferry Center, the media design center for the NPS in Harpers Ferry West Virginia followed where she served as the Deputy Manager. She returned to Jefferson National Expansion Memorial as Superintendent from 2004 to 2007 where her efforts focused on strengthening the working relationship with community organizations.

O'Dell graduated from the Department of the Interior's Senior Executive Service Candidate Development Program in May of 2006. As part of her training, she served a six month detail to the Washington DC-based Council on Environmental Quality to coordinate the first-ever White House Conference on Cooperative Conservation. In 2007 she was selected to serve at the Superintendent of the National Mall and Memorial Parks in Washington, D.C.

O'Dell and her husband Ben have three children: Katherine, Anne, and Timothy.

Biography
C. Bruce Sheaffer
Comptroller
National Park Service

C. Bruce Sheaffer, a native of Washington, DC, became the first Comptroller of the National Park Service in 1987.

Mr. Sheaffer oversees all matters relating to the financial programs of the National Park Service. This includes formulating, justifying, and executing the National Park Service yearly budgets that are submitted to OMB and Congress, as well as controlling the accounting and financial reporting system for the Service. Mr. Sheaffer also serves as Chief Financial Officer for the NPS.

Mr. Sheaffer began his NPS career in 1971 as a program analyst in the WASO Program Coordination and Appraisal Division. His assignments involved special program reviews and studies, project evaluation, and program monitoring. In 1976, Mr. Sheaffer became the Chief of the Program Formulation Branch under the Director of Office of Programming and Budget. This branch was responsible for all program and budget formulation strategies for the current and future year budgets. In 1978, all program and budget functions, in the National Park Service, were reorganized into a single Budget Division. Mr. Sheaffer assumed the position of deputy chief of the division as well as Chief of the Budget Formulation Branch. He was also selected to be the Budget Officer of the National Park Service in 1982.

In 1970, Mr. Sheaffer earned a Bachelor of Arts degree in Economics from High Point College in North Carolina and in 1977 he received a Masters degree in Public Financial Management and Budgeting from George Washington University in Washington, DC.

DEFERRED MAINTENANCE BACKLOG

Mr. SIMPSON. Thank you. Let us start off with the backlog maintenance. What is the level of backlog maintenance that we currently have, and what would it take in each year to address it to get that amount coming down substantially?

Mr. JARVIS. Well, the current level of maintenance backlog—and let me just say right up front that the Park Service over the last 10 years, particularly in the last Administration, put a lot of emphasis to really understand this number, and I think we have a better handle on the actual number with a fair amount of real quantitative analysis than we have ever had in the past. The number is about $10.8 billion in terms of our total maintenance backlog. The National Park Service has an extraordinary number of assets—buildings, roads, wastewater treatment facilities across the country—and it tends to be an old infrastructure, much of it built 30, 40 years ago. So the maintenance backlog number is quite high.

Within that subset, though, there are high-priority assets and then there are medium-priority assets. What we have been doing over the last few years is really beginning to shift our focus to the resources that we do have, on our high-priority assets, those that rank very high in the asset priority index system, those considered mission-critical assets. And then there are some assets that are still lumped within that $10.8 billion that are more low priority and in some cases we need to focus on actually getting rid of those assets and getting them off the books as well.

Mr. SIMPSON. Assets like what? Do you have some examples?

Mr. JARVIS. Yes. In some cases it may be an acquisition of a property that has a house on it and the house was acquired as a part of the acquisition process and although it is not needed for public use, it is still sitting on our books. It was assessed and added to our inventory. Those kind of places need to be removed. That is one of the priorities that I have set for our regional directors: to look at those and get them off the books and use whatever discretionary funding they have to get those down and then to focus our funding that we do have.

I will say, though, I am concerned that the construction budget in this budget will not really help us keep up with that. There will be a growth in the maintenance backlog as a result of this level of funding in terms of the deferred maintenance.

LAND ACQUISITION AND STATE ASSISTANCE

Mr. SIMPSON. Is it wise to do additional land acquisition, to put the emphasis on additional land acquisition and decrease that emphasis on our backlog maintenance?

Mr. JARVIS. Well, it is a tradeoff. There is no question about that. The Administration put a priority on full funding of the Land and Water Conservation Fund for this year at $900 million and I believe the Park Service got an appropriate allocation of that request both for State side and Federal side, but in these tough economic times, of course, it is a tradeoff. Keep in mind, these are inside of the boundaries.

Mr. SIMPSON. All of the proposals are inside the boundaries of——

Mr. JARVIS. They are all inholdings, and in all cases there is a willing seller. In all cases, frankly, they create some efficiency of management in terms of consolidation of assets. So it might appear in many cases this is adding cost to us but in most cases it is actually creating a certain level of efficiency for park management. The other thing that we did is look at if we are acquiring lands that have structures on them that are non-historic that we will work to have those removed as a part of the acquisition process so we are not adding to the backlog by gaining non-critical assets in the process.

Mr. SIMPSON. Is one of those acquisitions going to solve the problem in Grand Teton?

Mr. JARVIS. It is. It is going to solve a significant potential threat to the Grand Tetons through the acquisition that we recently negotiated with the State of Wyoming to acquire a highly developable set of properties right in the center of the Jackson Hole Valley.

PROGRAM ELIMINATION

Mr. SIMPSON. Part of the funding that you ended was the Park Partnership program, Save America's Treasures. What was the reasoning behind that?

Mr. JARVIS. Well, I will say up front both of those are good programs, and these were hard decisions we had to make in order to reach the bottom line. I think Save America's Treasures had a positive effect on historic and cultural resources around this country and been quite popular within the historic preservation community as well. The Park Partnership program was originally the Centennial effort that Secretary Kempthorne and others built, and it was a great program for leveraging. It was a program set up to draw matching funds from non-Federal sources. But ultimately, in order to achieve this particular budget, we gave priority to preserve the operational budget of the National Park Service, which is the bread and butter, the park operations, the protection of resources, the providing of public services on the front line of our 394 units. It was certainly my priority to keep that functioning. That is where we provide great services to the American public and to communities. Then with the full funding of the LWCF we had to take the hits in other places, and those are the ones that were chosen.

Mr. SIMPSON. In this limited budget year and probably for several years to come, we are going to have to prioritize as we appropriate money in this budget. Is park operations the highest priority that you have?

Mr. JARVIS. Mr. Chairman, yes, sir. From my perspective, I believe park operations provides the primary benefit to the American public and to these resources so that is our priority.

DEFERRED MAINTENANCE

Mr. SIMPSON. One other question back on backlog maintenance that I forgot to ask, what would it take in terms of an appropriation to start reducing that amount of backlog maintenance?

Mr. JARVIS. We have been doing quite a bit of analysis on this. As a matter of fact, our leadership in the Park Service sat down recently to go through this in excruciating detail. We would need

to be allocating about $677 million a year (currently allocating $590 million a year) to maintain the current level.

Mr. SIMPSON. Mr. Moran.

Mr. MORAN. Thanks, Mr. Chairman.

LAND ACQUISITION AND STATE ASSISTANCE

Mr. Jarvis, the land and water conservation program does have the one increase that is significant that you mentioned. Would you get a bit into how the competitive part of the State side land and water conservation program would work? What kind of criteria might you follow and what types of projects do you think the States are most interested in pursuing?

Mr. JARVIS. Thank you, Congressman. That is a great question, because it is new. As you know, the State side of Land and Water Conservation Fund for many years has been relatively small and almost inconsequential but by increasing it, what we wanted to do and what we heard from the public in the 51 listening sessions around the country related to America's Great Outdoors, was an interest in urban parks. There was an interest in blueways or waterways, and connectivity to rivers. Secretary Salazar has said many times for most of our history we turned our backs to the rivers and we are now turning our faces to the rivers and looking at them as a strong community asset, but in many cases there is no access. Also, there is interest in creating open space and recreational opportunities for young people, and looking for where we can connect communities and link up schools, state parks, city parks and those kinds of things. Those were the broad criteria that came out of the America's Great Outdoors listening sessions.

To get down to the next level of specific criteria, we are going to be engaging in a discussion with the states. We think that is an absolutely essential component. Next week, as a matter of fact, the National Recreation and Park Association, the National Association of State Park Directors and the National Association of State Outdoor Recreation Liaison Officers, who are the ones that really work on the state side, will all be in discussions with us about those criteria specifically because we think that this is a partnership with states and cities about how this should be allocated. Plus, there is a step or two in the way. The state side of the Land and Water Conservation Fund allocation is based on each state's State Comprehensive Outdoor Recreation Plan, or SCORP, and so we are going to be working with the states over this coming year to amend their SCORP so that every state in the country will be competitive for this new process. Forty percent of the money will still be equally distributed to the States. Sixty percent of the $195 million will be for competitive grants; and, $5 million will be for administration.

Mr. MORAN. Great. I think personally that is a terrific idea, the states participating partners in what you develop, and we get some real innovative approaches that can then be replicated in other comparable areas, so it is terrific.

MANAGEMENT EFFICIENCIES

Ms. O'Dell may want to address this. You have got a $39.5 million increase in the base park operations for more than 100 park

sites but on the other hand, the budget has decreases for management efficiencies and there is no clarification of what specifically that is all about. So maybe you could better explain how the park base increase is going to be used and to what extent, though, that is offset by these other across-the-board cuts.

Mr. JARVIS. I will take that. The total in terms of management efficiencies was $46 million, which is roughly a 2 percent reduction across our many programs, though in theory it is focused strategically on some areas. There are areas that we have already begun to apply some efficiencies: travel, for one. The Park Service has a travel ceiling that we have imposed administratively, much to the chagrin of many of our field folks, while looking to use technology, such as video conferencing and teleconferencing, to reduce our overall costs in travel. We have also consolidated some of our operations, particularly in the administrative fields, such as human resources and contracting, focusing them into servicing offices and consolidating those kinds of things. There is also a reduction in there in terms of supplies and materials. In some cases, that makes sense but, frankly, there is lack of a plan about how that is actually going to work.

The challenge with the National Park Service is that we are geographically distributed across the country. We have parks from the Virgin Islands to America Samoa, and it is difficult for them to share the same pile of gravel. But at the same time, we are attempting to mine as many efficiencies in the organization as possible.

Mr. MORAN. We have got this kind of stuff throughout the budget, these management efficiencies. So this is not a new concept. How successful have you been in the past roughly in achieving it, you know, whether it is waste, fraud and abuse, management efficiencies or whatever, across-the-board cuts? When I was a budget officer, we used to round things out that way, if we could not quite balance the budget.

Mr. JARVIS. Well, ultimately it comes down to in many cases as an across-the-board reduction, and so each park winds up with a 1 or 2 percent reduction in their overall operating costs. So you get on one hand 100 or so parks get a base increase, $39 million distributed and then everybody takes a 1 or 2 percent reduction. Park superintendents are smart people and they figure out where they can find that efficiency. One of the things we have been doing around the service is, there are assets that can be shared between parks, there are positions that can be shared, there is equipment that can be shared when parks are in relative proximity. In Idaho, I know parks such as Craters of the Moon and Nez Perce and others share individuals such as safety officers and others. So instead of every park having one of everything, there can be those kinds of efficiencies that can be mined.

NATIONAL MALL

Mr. MORAN. Okay. Mr. Chairman, I have one other area of inquiry that I wanted to get into. Do you want to do a second round or do you want me to raise it now? Okay. Thank you, Mr. Chairman.

National Mall—I think it is a problem frankly. It needs to be cleaned up. It needs to look a little better and a lot of it is just because so many people use it. It is going to look frayed eventually. So I would like to know what is in this budget for the National Mall and the extent to which you think the nonprofit sector could be raising additional revenue to do some of the restoration that is needed, and I have a couple of follow-up suggestions on that.

Mr. JARVIS. I am going to ask Deputy Director Peggy O'Dell to take that question as she served not only as the Superintendent of the Mall but also as the Regional Director for the National Capital Region.

Ms. O'DELL. Thank you for that question, Mr. Moran. I know you have been a great supporter of the Mall for years, so I appreciate that.

I will start with the second half of your question. The Trust for the National Mall has grown in the last 3 years to be a very viable nonprofit for us. They have completed a feasibility study that says they will be an effective fundraiser at a very high level at about the $350 million level over about 7 years. They are working hand in glove with the park staff to determine the best way to apply those private dollars that supplement the appropriation that we have for the National Mall going forward. The increases that we requested for the National Mall include a base increase for the operation of the new Martin Luther King Memorial that will be opening this August, which is a critical facility to staff, and we are requesting to continue to invest in the turf improvements for the grass on the Mall. We are making sure that our management practices will support keeping that turf in good condition.

Mr. MORAN. Mr. Chair, I want to direct this to the chairman as well. There are going to be innumerable demands for more museums and memorial sites on the National Mall, and all of them have their political support base, and if you have a memorial for one ethnicity or cause, every other group is going to want something similar.

Now, to accommodate them all without violating the intent of the Commemorative Works Act, which is authorized in the legislation, it would seem that we need to do what Congress did a century ago with regard to the Lincoln Memorial, and that is to expand or enlarge the mall on available nearby federal land. None of the current federal plans address this mall expansion or the larger future needs of the mall across jurisdiction, whether it be the Smithsonian, the Park Service, the National Gallery, Architect of the Capitol, Department of Agriculture and so on, so they all have jurisdiction over some federal land. But these are ad hoc expansion plans we are dealing with now. You know, they float around there, groups come to see us. We do not want to say no. And they want everything on the mall. We need more of a unifying concept, it would seem, but most of the land is under Interior's jurisdiction designated by Congress for future memorials.

Now, there is a private group of scholars, designers, academics that want a larger, more visionary planning effort to go forward. I think you are familiar with it. What do you think about that, a larger concept of the mall so we do not throw everything into this

already crowded space trying to accommodate everybody's interests? Have you given some thought to that?

Ms. O'DELL. We have, Mr. Moran, and I would say that we largely have that already with the way that Congress has structured the Commemorative Works Act that protects what we know today as the Mall proper by having it designated as the reserve and then the land bordering that is Area One, and it takes a lot of Congressional support to get any future monuments or memorials in that area. In addition to that, we have a citywide plan that has been developed in concert with the District that designates memorial sites throughout the city, which in effect does what that group was calling for: to enlarge the space of the National Mall.

Mr. MORAN. Well, they need to call it the Mall. For example, West Potomac Park, we have land there. I want to register this concern because it seems to me, Mr. Chairman, that our generation particularly thinks every iconic figure needs their own memorial and no generation is going to be as important as our generation, and we really ought to be doing a better job of preserving space for future generations. So I just wanted to throw that out there. Thank you.

Mr. SIMPSON. Part of the problem with the Mall is that we love it to death. It is overused. There has been some contention about the Folk Life Festival that the Smithsonian puts on regarding the use and so forth and where the displays are located. Have you worked with them? Are we resolving the issue for the coming year?

Mr. JARVIS. I will take a shot at that. Actually, let me just suggest that, frankly, for maybe the first time, we have very strong support in the Administration to really protect the Mall and invest in it. I think Solar Decathlon is a perfect example of where we were able to find a solution. Actually, Peggy was the lead on that. They are still holding the event, but in West Potomac Park not here on the main part of the Mall. It satisfies their desire to be in downtown Washington but not right in the center, and that was a fight. Frankly, there was a lot of interest and a lot of pressure on both sides. Secretary Salazar stood up for us and said no, we are not going to allow these large impactful events to occur on the Mall. That has been our position for a long time. We have been working very closely with the Smithsonian to still have the Festival of American Folk Life on the Mall but reduce its impact. And then part of the design of the Mall, the record of decision that we signed last year really begins to look at the Mall and to create these spaces that are hardened and protected and have the infrastructure that can manage these things and not have negative long-term impacts. I think we are on a good path with the Mall.

Mr. SIMPSON. Well, I will tell you that most people who come to Washington from Idaho who have never been here before see pictures of the Mall and they see the aerial photographs and everything is green and beautiful, and the biggest complaint they have when I talk to them is how disappointed they were in how rundown the Mall is—not that we do not maintain it but that it is just rundown from overuse—and I think you will find great support among this subcommittee and Congress in general for bringing the mall up to the standards that I think we all expect it to be.

Mr. JARVIS. Yes, the ARRA funding is a really great first investment, about $34 million. We are working on the reflecting pool right now and then we are taking the Mall piece by piece.

I mean, it was never designed, like you would a sports field. The Mall has a thin layer of organic soil and clay and grass——

Mr. SIMPSON. We went out a couple years ago and tried to dig into it.

Mr. JARVIS. Yes, it is hard as a rock.

Mr. SIMPSON. I am still trying to fix my leg.

Mr. SERRANO. You know, you are making me feel very guilty. I just ran a couple miles there this morning. Maybe I should stop running on it.

Mr. SIMPSON. That is the problem. There are too many people running on it.

Mr. JARVIS. You are compacting the soil out there, Congressman.

SAVE AMERICA'S TREASURES GRANTS

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair. I have three things I want to touch on. First is more just a comment.

Save America's Treasures, I was very disappointed in the President's decision to do that, and I understand that there is a limited amount of funds and we have to make tough choices, but it was a collaboration. It was a collaboration many times that connected the Park Service with urban core and small rural areas to save another story. The national parks tell one story but there is another story of the different cultures that came together to weave the fabric of our society. So I am struggling in this tough time. We are all making sacrifices on what to save and what to protect but America's Treasures is something that also has another ripple effect to it too. In some of the inner cities where they are saving some of these historic buildings, they are saving them in older parts, the urban areas. The building gets saved. It looks attractive to the neighborhood. It has an impact on the economy that sometimes we did not even foresee and then it also is providing opportunities for tradespeople to keep crafts and artisanship going which we are close to losing them in this country. So there are many parts of Save America's Treasures, and I just wanted to be on the record and I think I am going to try to figure out what I can do to be helpful.

LAND ACQUISITION

The point also about backlog of maintenance and being careful about acquisition, Voyageurs National Park was a very contentious park when it was founded starting with Barb West. She did a fabulous job when she was the superintendent there. Our current superintendent is not here right now. He is fabulous. But we have a chance, and it is number 10 on holdings, to I think resolve, put to rest and give some ghosts of Voyageurs National Park a chance to move on to the other side. So I really hope as you go through that that we are mindful of creating that balance and once-in-a-lifetime opportunities.

So those are more comments to the chair on where my head is at on some of this budget process as it deals with the Park Service and Save America's Treasures.

ST. CROIX NATIONAL SCENIC RIVER

All politics is local and so I am going to focus for a second on the Minnesota border with the St. Croix River. And by the way, just for people who are not familiar, Stillwater is an old river town and has an old lift bridge. You call it two lanes. It is basically one. Trucks do not belong on there. They get stuck on there. There is no weigh station, no one kicks them off. The bridge needs to be replaced. I am for replacing it. The Park Service has never objected to the bridge being replaced but just wants it done in a good way.

So here I go, Mr. Director. In 1996, the Park Service evaluated a proposal for a four-lane freeway-style bridge over the lower St. Croix. This is in a historic river town. Ten miles down the river, there is, by bridge standards, a pretty good bridge called I-94 which the States of Minnesota and Wisconsin are looking at adding more lanes to. So having said that, they need a bridge. The Park Service looked at this in 1996 and concluded that the bridge would irreparably harm their river of scenic and recreational values. So then in 2005, when considering another proposal for a freeway-style bridge in approximately the same location, the Park Service issued a draft. It was a draft evaluation which found that the bridge would not adversely affect the river. It was a draft. It was still in a working stage. Then in October 2010, after a federal court struck down the 2005 evaluation, the Park Service conducted a more thorough evaluation and proposed that in fact the bridge's scenic and recreational impacts would be impaired, so it concluded that this massive $700 million bridge could not be built under the Wild and Scenic Rivers Act. I would like you to talk about the history of how the Park Service comes to these conclusions.

But more importantly, I am concerned about a piece of legislation that has been put forward and has been put forward by my colleague Congresswoman Bachmann, and it seeks to reverse the decision of the Park Service last October on the proposed bridge. Now, she claims that her bill is not an exemption for the bridge under the Wild and Scenic Rivers Act but I am going to read from the legislation. "Construction of a four-lane highway bridge over the lower St. Croix River in accordance with section 7 evaluated by the National Park Service October 2005 is hereby deemed to be consistent with the Wild and Scenic Rivers Act." Now, it seems to me that this is Congress telling the Park Service that it needs to create an exemption, and I am quoting from the legislation, "hereby deemed to be consistent." Can Congress deem things to be consistent and then say it is not an exemption? I want to be really clear. A bridge does need to be built there. Stillwater does need relief, and there is a way we can do one with scope and scale and save the taxpayers a lot of money and be prudent and efficient with what we are doing on the 94 corridor, which also crosses this river. So can you tell me, this has got to be happening in other spots than just Minnesota, but I am really familiar with Minnesota here. Is this Congress telling the Park Service what it should do?

Mr. JARVIS. Well, these are all great questions and I know this issue quite well, and——

Ms. MCCOLLUM. That is why I said Voyageurs is done. We are moving on. I have been through Voyageurs and the boundary waters. I know you guys tackled the problem.

Mr. JARVIS. Yes, we are not afraid of tough issues. And by the way, there is a request for land acquisition in Voyageurs in 2012 for $1.5 million, so we are on track to do some good acquisition there.

In terms of the Stillwater bridge, that particular area of the Wild and Scenic River, is an undeveloped section of the shoreline and the Park Service has its responsibilities there under the Wild and Scenic Rivers Act. In the first proposal for that bridge in the 1990s, the professional staff of the organization determined that it would have a significant impact on the outstanding, remarkable values of the Wild and Scenic River for which it was set aside by Congress.

In 2005, a draft resolution, draft opinion, was built on some work around mitigation. There were a variety of design proposals, but a lot of it was offsite kinds of mitigation about what would be done. When challenged by the court, and that ruling was determined to be arbitrary and capricious, as I came on as Director and this issue was boiling up, we did a thorough review of the past opinions and the past analyses as well as the court's ruling and determined that from a legal standpoint, you really cannot mitigate a direct adverse impact on the river with offsite mitigation. That is just not legal according to the Wild and Scenic Rivers Act. And so this was an important precedential issue for the National Park Service and our management of Wild and Scenic Rivers. We really had no choice because frankly, Congress had never given us that kind of authority to say you can mitigate this kind of impact on a Wild and Scenic River.

So that is where we are. We have a very strong legal opinion on this. So then, if there is to be a bridge built, it will require some sort of legislative action on the part of Congress. I cannot speak in any detail as to Congresswoman Bachmann's bill because we have not evaluated it, nor developed an official position at this point.

Ms. MCCOLLUM. It is eight lines. It probably will not take too long. I just want to stress again to the Park Service that Stillwater deserves to have the bridge replaced, but there is a way to do it, and I know, Mr. Chair, that this is not the Transportation Committee, but this decision could be impactful to rivers all across this country and other rulings of the Park Service, so I do not think it is one that this committee or the Policy Committee can take lightly.

Mr. Chair, just also for the record, a four-lane, $700 million bridge which does not have a weigh station at the end of it, how are we going to pay for it?

Mr. SIMPSON. I do not know, but I did notice that Congress did waive pretty much all the environmental laws and everything else to build the Woodrow Wilson Bridge. We just said that we complied.

Mr. Serrano.

NATIONAL MALL

Mr. SERRANO. Thank you, Mr. Chairman. I am sorry my ranking member left because I usually do not disagree with him in public, and I was going to do that very diplomatically. It is not that our generation wants to honor everybody, it is that our generation has been very much involved in dealing with past injustices where a lot of people were not honored that should have been honored and so basically my generation just reminds people that there were women in our history that played a great role, that there were Native Americans, that there were African Americans, that there were Hispanics, that there were territories, and that is what that was about. It gets crowded but it is a national symbol.

TERRITORIES

Speaking about territories, yesterday I left our hearing before I could show a little dismay at the fact that Secretary Salazar makes a very common mistake, which I noticed you did not make, and I congratulate you for it, that is, that they always refer to the 50 states. Well, there are 50 states and there are territories, and you well know that the parks department plays a major role, a major role, perhaps more than a lot of other agencies because what you do with the rainforests in Puerto Rico and what you do with all the other parks is very noticeable and very much seen by tourists and very much a part of what stands out when you speak about the territories. So I congratulate you on that.

SAVE AMERICA'S TREASURES GRANTS

On a personal note, you know, every so often I talk in subcommittee and in committee about the fact that the Bronx has a river, and a lot of people say "what?" and I say, yes, we have a river. We also have Poe Cottage, where Edgar Allan Poe did a lot of writing at the end of his life, and it stands there because the Save America's Treasures has been involved in maintaining it and helping us, and because of what we did when we partnered our office with you folks. It inspired the city and the state to chip in and now they are opening up a visitors center and it is totally revived. The kids in the neighborhood had no clue that this person that they spoke about all the time wrote those eerie things right on the Grand Concourse. Ironically, and this is just a personal side note, he moved there because his wife was ill and he wanted her to breathe fresh air.

Ms. MCCOLLUM. And he moved to New York.

Mr. SERRANO. Well, because at that point at Poe Cottage, you could see Long Island.

Mr. SIMPSON. That was a long time ago.

Mr. SERRANO. In the 1800s, you know, and now at the expense of getting in trouble with my fellow New Yorkers, you would maybe move your wife out of New York to some other district.

But I know these are tough times, and you face a larger challenge, a stronger challenge than anybody else, I think, because when we begin to maybe come around to negotiate on these dramatic budget cuts, we probably will be able to make good arguments about some things that we all believe should not be cut as

drastically as initially proposed. Unfortunately, parks may not fall in that category, and it is not just at the federal level, it is at the local level too.

My son, like us, lost his majority so he is no longer chairman of the parks committee in the New York State Senate, but he is the ranking member of the parks committee, and it is a constant battle to get the governor and the legislature to understand that the parks are important to New York, the state parks, the city parks, the federal parks, the national parks.

GOVERNMENT SHUTDOWN

We will do the best we can to make sure that we give you the resources so that at least in these very difficult times you can survive and keep these treasures going for us.

I am reminded, unfortunately, of something that happened during the last government shutdown. If you recall, Mr. Chairman, it would not be a shutdown like if we have one this time where we haven't passed a bill. We had actually passed some bills, appropriations bills, so some agencies were open, others were not, and the number one complaint was that there were parks that were not open and people came to Washington to see the mall, to see the monuments, you know, things they take for granted. They would come to our offices and say it is closed. I would say yes, we know, and we are trying to get it reopened. So this is a very serious situation.

But let me ask you a question, and I am sure it has been asked before. How much of a cut can you take and still maintain our parks and our facilities to the point where we will not destroy them? And I do not expect you to give us numbers perhaps but just, we all have to be ready to cut. I mean, we took a cut in our staff allocations. We are going to have to cut in many other areas in how we operate Congress. But at what point does it become a problem? And I am not asking you to do what all agencies do except one. All agencies come and say we want more money. Incidentally, there is only one agency in the history of Congress that actually said they needed less money, and that was before my subcommittee and that was the Securities and Exchange Commission, because they did not want to oversee anybody so they just did not want money, and we know about that story. At what point does it become a big problem?

NATIONAL PARKS IN NEW YORK CITY AREA

Mr. JARVIS. Well, thank you, Congressman, for those questions and let me just say about New York, New York has an extraordinary array of national park units in and around New York City and it is an area of strong emphasis for us. There are 11 parks there. We own 23,000 acres within the city of New York, most of it at Jamaica Bay and Floyd Bennett Field, the Statue of Liberty and other places. We also have partnerships such as with Edgar Allan Poe Cottage and Lower East Side Tenement House and others where we work together with the city. So we are bringing those together to raise their prominence in the communities as well as all of our other programs where we assist with community conservation and historic preservation. This is a strong emphasis of

mine and the Secretary's as well. We have a meeting coming up with the mayor to talk about these things.

PARK OPERATIONS

In terms of cuts to the Park Service and where they begin to have an impact, the majority of our budget is operational. That is the operational figure, ONPS. It is $2.3 billion out of $2.9 billion. So any significant reduction has a direct effect on park operations. Now, small parks, you know, the small units that might have 10 to 15 employees and a historic home or a visitor center have limited abilities to absorb any type of significant cut and stay fully operational, to keep open seven days a week and meet the expectations of the American public. You really wind up reducing services. You begin to close during low-visitation seasons or midweek, etc. when you reduce the operational budget. Some of the larger parks have perhaps a little more discretion to shift things around, but you are moving money from one operation, such as maintenance or repair/rehab, to keep the doors open.

You know, one of the great things about the National Park Service is, we are very proud to provide these places to the public. It hurts our pride to not be able to open to the American public and to protect these places, these extraordinary resources that have been given to us one at a time by either the President or the U.S. Congress, and so we will do just about anything to try to keep them operational—volunteers, docents, friends' groups, cooperating associations and others. But as the budget is reduced, absolutely it will have some effects on those kinds of operations, because that is the bulk of our budget.

TROPICAL FORESTS

Mr. SERRANO. On the issue of the territories, we have a rainforest in Puerto Rico, right? Where else do we have a rainforest that is a national——

Mr. JARVIS. Well, the U.S. Virgin Islands, which is a territory as well. I was just there. And then in the Pacific I also have responsibilities in the territories of Guam, Saipan, America Samoa, and then we have freely associated states in Palau and Micronesia where we assist with conservation work. We have tropical forests in Puerto Rico as well as the Virgin Islands.

Mr. SERRANO. Did you say one in Hawaii?

Mr. JARVIS. Yes, absolutely in Hawaii.

TERRITORIES

Mr. SERRANO. Okay. One last point. You know, a couple of years ago, Mr. Chairman, in a bipartisan fashion we inserted at my request language which allowed the territories to be included in the 50 states quarters program. When that program ended, we added D.C. and Puerto Rico and the Virgin Islands and it just ended. Because we did that, it was a no-brainer that the next set of quarters which are coming out which are the national park set of quarters will include the territories. It is too bad that that wasn't a medal in a way that could be sold on behalf of the parks department be-

cause it is going to be a huge success having collectors, and the beauty of this is, people buy them just like the stamps.

So I just hope that as these cuts come down that you become more innovative in servicing our parks and that you continue to be aware of the parks that are in the territories that are very much a part of who we are as a country, and I thank you for your service.

Mr. JARVIS. Thank you. The territories are eligible for the state side of land and water conservation funds so they will be a part of that program.

Mr. SERRANO. All right. Thank you.

FORD'S THEATRE-PETERSON HOUSE

Mr. SIMPSON. I will ask you about becoming more innovative in just a minute but let me ask you first, I have always been and still am a big supporter of historic preservation. Peterson House, where are we with that? And I have also had a Member of Congress come to me, and we were voting on the Floor, and now I can't remember who it was, but we talked about, I think it was the Surratt Boardinghouse, Mary Surratt, where part of the plan to assassinate Lincoln was——

Ms. MCCOLLUM. The Peterson House.

Mr. SIMPSON. The Peterson House is where Lincoln died. Surratt Boardinghouse is where the plan was kind of hatched. We talked about the potential of buying that and adding that to the Park Service. Have you heard anything about that? Okay. What about the Peterson House? Where are we on that?

Ms. O'DELL. The construction for Peterson House is moving forward as planned. We are working cooperatively with Ford's Theater Society on construction. They are building it with the eventual push through of the wall so that we can have a connection between the two facilities. It is moving ahead as planned, sir.

Mr. JARVIS. And Bruce indicated that it would be complete by June of this year.

PARTNERSHIPS

Mr. SIMPSON. By June of this year? Good.

About being more innovative. When the national parks started, they were sponsored by industries or companies. Yellowstone was the Union Pacific's national park, not literally but all of their advertisements were to take visitors to Yellowstone National Park. Have we thought of a way to try to involve the private sector more in sponsoring our national parks and supporting our national parks? Is there a way to do that where they could actually be the primary sorts of sponsors and they could use it in their advertising? You know, they would be licensed to do that sort of thing? Have we thought outside the box in this period of reduced funding? I think we have to look at new things to do things.

Mr. JARVIS. Mr. Chairman, absolutely, and I appreciate that question very much because I think we are becoming a much more entrepreneurial organization than we ever were even in the early days when, as you indicated, there were great sponsors. I think the Burns film talked a lot about that, and you know, Steven Mather, the first director, was very much of a businessman and very entre-

preneurial. He had to build it from scratch. And I think in these economic times, we have to be that way.

We have done some extraordinarily innovative projects with the private sector in the last 10 years. One that comes to mind is the Argonaut Hotel in San Francisco, which is a long-term lease of a historic building to Kimpton Hotels, a boutique hotel that took a historic structure of ours, turned it into a hotel and via the funding that they create through their program, they help fund our visitor center, which is on the first floor right off the lobby. You know, that would not have been thought of years ago, but we are now experimenting with those kinds of historic leases and partnerships. The National Park Foundation, which is our legislatively created partner, I think is really on a good path right now to develop these kinds of partnerships with the private sector.

It is always a balance that the private business would like to rename the Washington Monument in their honor or something and we just say, well, you can't do that. But you can do this instead. I think there are always negotiations for what the private sector would like to achieve. We have some great corporate sponsors out there that we are currently in discussions with.

I was actively involved with the redevelopment of the visitor center at the *USS Arizona* at Pearl Harbor, and we had significant contributions from the private sector and it resulted in a great way to recognize them in such a manner that their contributions were not confused with those that contributed their lives in the attack on Pearl Harbor. Keeping that kind of appropriate recognition and balance is a core responsibility of the National Park Service, but I think that the brand of the NPS is a very, very powerful brand, and we want to both protect it, but also find partners with common values.

Mr. SIMPSON. I thank you.

Any other questions, Mr. Serrano?

Mr. SERRANO. Just a quick comment, and I am glad you mentioned it the way you did. I was going to ask you what possibilities there were of corporate America getting involved, but it has to be done so carefully, because in New York for a while, the New York Mets stadium, it was going to be the Robinson-Clemente Stadium, after Jackie Robinson and Roberto Clemente, who were pioneers for their respective communities, and it ended up being Citi Field. That is fine. The Yankees for all of their bad reputation as big corporate giants refused to advertise other than Yankee Stadium.

So yes, we have this need but we have to be so careful. I would hate to see the Goya Foods of Puerto Rico Rainforest or the——

Mr. JARVIS. You won't see that.

Mr. SERRANO. I just got in deep trouble with Goya Foods. They make great food, by the way.

Mr. SIMPSON. Well, you are absolutely right. It is a balance. I do not want to see Union Pacific Yellowstone National Park, but is there a way that you could use a corporate sponsor that could use what you are trying to protect, the National Park Service symbol, as "We are sponsors of Yellowstone" in their advertising? It is a careful line you have to walk.

Mr. JARVIS. It is a careful line, right.

Ms. MCCOLLUM. I worked in the private sector long ago, and Sears did that with Weather Beater paint when they were restoring some of the early founders' homes, and it was not that Sears owned the home, it was the proud supplier, the proud sponsor. So there are models out there.

ENERGY EFFICIENCY

Energy efficiency—I know that there are some great things that have happened down in the Grand Canyon, I have never been to the Grand Canyon. I have heard that there are some great energy efficiency and solar things that are going on which not only reduce your energy costs but also gives a chance to kind of talk about America's ingenuity to international visitors and to today's children. Just a quick comment. Are you in this budget able to continue with those innovations?

Mr. JARVIS. Yes, absolutely. We just developed what we call our Green Parks Plan, which is all about sustainability: the use of alternative energy and biofuels, reduced lighting and night sky, electric vehicles, and a wide range and use of solar. We just succeeded within this last week of accomplishing net metering agreements with major energy producers in southern California which will allow us to have relatively large solar arrays inside parks. You know, you are not going to put a big solar array in Yosemite Valley without having a visual impact, but there are places that you can, and right now Joshua Tree National Park is producing over 65 percent of its power with solar. We have Death Valley that has one of the largest solar arrays as well. So absolutely, and there are efficiencies.

Recently, talking about working with corporations, Musco Lighting, they predominantly light stadiums, their president is a good friend of the National Park Service and he has been helping us relamp parks. Big Bend National Park, they came in with his team. We relit the entire developed area, reduced annual electric costs by $60,000 and completely preserved the night sky. At the same time we still safe lighting, so by going from a 60-watt incandescent to a quarter-watt LED bulb we still achieved the same objectives. We are doing a lot of that around the country.

Mr. SIMPSON. Anything else?

Mr. SERRANO. No, that is it.

Mr. SIMPSON. Well, listen, countries that have monarchies have the crown jewels, like England or other countries. You truly are the overseers of America's crown jewels, so we appreciate the work you do and look forward to working with you. We will try to do our part to make sure that you can do your job.

Mr. JARVIS. Thank you very much.

Mr. SIMPSON. Thank you.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, National Park Service
Hearing: National Park Service FY 12 Budget Oversight Hearing
Wednesday March 9, 9:30am Rayburn B308

Questions for the Record from Chairman Simpson

Everglades Restoration

In the fiscal year 2010 budget, the Committee provided bill language directing the immediate implementation of the Tamiami Trail one-mile bridge component of the Modified Water Deliveries Project. Secretary Salazar and the Army Corps of Engineers broke ground on that project over a year ago. In addition, the Park Service has recently recommended that an additional 5.5 miles of bridging be implemented along the Tamiami Trail to fully achieve restored flows and improve the wetland habitat within the remaining state and federal Everglades, including Everglades National Park.

Simpson Q1: Can you provide the Committee with an update on progress on the one-mile bridge for the Tamiami Trail? Is it on schedule for completion in 2013 and does the budget request provide sufficient funding to complete this work?

ANSWER: The project is now scheduled for completion by the end of calendar year 2013. The FY 2012 budget request of $8.0 million is sufficient to complete the project.

Simpson Q2: What are the ecological benefits as well as the additional costs associated with the proposal for an additional 5.5 miles of bridging?

ANSWER: When combined with other planned restoration projects, this effort would provide sufficient capacity for restoration of flows and water levels within the Northeast Shark Slough portion of Everglades National Park. Specifically, the additional bridging would eliminate historical hydrologic constraints and allow for more natural sheetflow patterns. The associated increased water volumes and flow distributions would reestablish the seasonal depths and flooding durations that are critical to the survival of fish and wildlife species, including many endangered species. The current cost estimate for completing the additional 5.5 miles of bridging is $310 million. However, if this project is authorized, additional engineering and cost analyses will be done to further refine this estimate.

NPS Centennial

Director Jarvis, this subcommittee worked with Presidents Bush and Obama in Fiscal Years 08, 09 and 10 to provide restored funding for NPS operations to address the operations shortfall with an effort towards eliminating this shortfall by the Centennial of the National Park Service in 2016.

Simpson Q3: Can you please provide both a summary and a detailed account of what NPS did with the funds appropriated under the Centennial Initiative?

I know that America's Great Outdoors included an emphasis on public-private partnerships, yet it appears that the Centennial Challenge is no longer active.

ANSWER: Established in 1916, the NPS will celebrate its Centennial in 2016. In 2008, in preparation for this milestone, the Centennial Initiative was established to aid in the second century of conservation, preservation, and enjoyment of our national parks. The table below shows changes in operational funds appropriated in FY 2008, 2009 and 2010 for the operation of the National park system.

NPS Operational Increases 2008-2010 ($000)				
Appropriation: OPERATION OF THE NATIONAL PARK SYSTEM	FY 2008 Program Changes	FY 2009 Program Changes	FY 2010 Program Changes	TOTAL Program Changes
Increases				
Park, Trails, and Wild & Scenic Rivers Base Operations	+32,210	+43,707	+46,371	+122,288
Seasonal Employees	+40,600		+2,169	+42,769
Facilities and Asset Maintenance	+25,000	+39,050	+4,800	+68,850
Natural and Cultural Resource Stewarship	+430	0	+13,250	+13,680
Visitor and Youth Direct and On-line Services	+6,225	+175	+6,000	+12,400
Law Enforcement and Public Health and Safety	+525	+16,440	+5,551	+22,516
Park Support and Employee Development	0	+21,435	+14,202	+35,637
Total Increases	+104,990	+120,807	+92,343	+318,140
Total Decreases	-37,565	-5,351	-3,000	-45,916
Total Change in Operational Funding	+67,425	+115,456	+89,343	+272,224

The mission of the National Park Service is to preserve unimpaired its natural and cultural resources for the enjoyment of this and future generations. From 2008 to 2010 NPS received a net increase of $272.2 million in operational increases (which includes $45.9 million in reductions) to accomplish its dual mission of conservation and preservation while making its treasures available to the people for education and recreation purposes. In anticipation of its centennial year, from 2008-2010 NPS received $122.3 million in increases for operations at the parks trails, and waterways under its administration plus an additional $42.8 million for 3,000 permanent seasonal positions. NPS received $68.9 million in increases for maintenance, preservation and conservation of natural resources, cultural artifacts, and other properties and assets. NPS received $13.7 million for resource stewardship. NPS was appropriated $12.4 million in additional amounts for visitor services at the parks and to increase its presence on the web. NPS received $22.5 million for the protection and safety of park visitors, including $11.9 million for the U.S. Park Police. NPS also received $35.6 million for administrative purposes, improved management processes, and employee training and development.

These increases were offset by $45.9 million in operational reductions. These reductions include $31.2 million in across-the-board rescissions, $2.6 million in travel reductions, $2.0 million in facility operations savings, $1.6 million in performance contracting savings, $1.0 million in maintenance reductions, and $3.8 million in other non-recurring reductions.

Simpson Q4: Is the administration going to develop a new public-private partnership for the parks, to leverage additional funds beyond solely federal ones?

ANSWER: The Park Partnership Program, previously known as the Centennial Challenge, was eliminated from the FY 2012 budget to focus on the highest-priority park projects and needs. The program was designed to leverage private investments for projects in national parks, but the projects funded have not always been among the National Park Service's highest priorities. The current economic climate has prevented potential partners from committing funding matches for this program. The NPS will continue to use other fund sources such as Challenge Cost Share program funding and recreation fee revenues to complete high-priority partnership projects when the opportunity arises.

Our leadership, along with the leaders of other agencies involved in the AGO Initiative, were charged with building on private, local, State, and tribal priorities for conservation and identifying ways the Federal government could best advance those priorities through public-private partnerships. The response to this charge and the input of the public through the listening sessions was the articulation of a goal to amplify the impact of the AGO Initiative by creating the Partnership for AGO. The congressionally chartered foundations, including the National Park Foundation, National Fish and Wildlife Foundation, National Forest Foundation, and the National Environmental Education Foundation have been challenged to develop this partnership through the engagement of leaders from philanthropy, the private sector, conservation, historic preservation, State and local government, Tribes, recreation, education, and community groups. Part of this partnership will focus philanthropy and private sector investment to meet mutual conservation and outdoor recreation goals as part of the AGO initiative.

Questions for the Record from Ranking Member Moran

HR1-House Passed- The Worst Environmental Bill ever

The full year CR, HR-1, that passed the House, including a dump truck load of anti-environmental riders, did not go after the National Park Service yet it could have quite an impact.

Moran Q1: Can you please tell us about some of the cuts that this bill has for the National Park Service?

ANSWER: Many of the cuts in HR-1 were proposed in the FY 2011 President's Budget. HR-1 eliminates funding for Challenge Cost Share, Preserve America, and Save America's Treasures grant programs, as well as funding for earmarks in statutory aid. HR-1 also includes management efficiency savings proposed in the President's budget. Although HR-1 went beyond the President's proposed cuts for 2011 by eliminating funding for the Park Partnership Project grants program, the FY 2012 Budget proposes the same cut. However, H.R. 1 dramatically reduces funding for Land and Water Conservation Fund programs, which are a key component of the America's Great Outdoors initiative. H.R. 1 eliminates funding for State Conservation Grants and Administration and Civil War Battlefield grants, and also reduces $72 million in funding for Federal Land Acquisition.

Moran Q2: Some of the anti- environmental riders in HR-1 were not aimed at you, but since they apply to all agencies of government, they may never-the-less have an impact on your work. For instance, could the limitation on Chesapeake Bay activities affect the NPS efforts to work on improving Chesapeake Bay?

ANSWER: The NPS Chesapeake Bay Office works in collaboration with partners such as the EPA, FWS, USGS, and NOAA to protect and interpret natural and cultural resources of the Chesapeake Bay and to provide for the enjoyment of the Bay for citizens and visitors. Negative impacts to those partners could dampen the Chesapeake Bay Office ability to act collaboratively on conservation work, youth stewardship projects, public access projects, and educational programming.

While none of the environmental riders directly affected funding for the Chesapeake Bay Office, HR-1 does impact funding for NPS Chesapeake Bay activities on other fronts. As requested in the FY 2011 President's Budget, HR-1 eliminates $1.5 million in earmarks in statutory aid funding that support the Chesapeake Bay Gateways and Watertrails Network and the Star-Spangled Banner National Historic Trail, but the bill does not fund the President's FY 2011 budget request to provide $2 million in permanent funding for Chesapeake Bay ecosystem stewardship programs.

Moran Q3: Given the operational funding cuts in HR-1, do you have any feel for how this could affect the hundreds of gateway communities all over the country that depend on tourism, and hunting and fishing on the public lands? Will there be impacts on rural jobs and on local jurisdiction's ability to collect revenue?

ANSWER: A lot of factors can impact the health of local economies, making it hard to predict the impact of reductions in operational funding at parks on gateway communities. Certainly, the impact would not be consistent from park to park. Reduced operational funding levels may result in a reduction of seasonal staffing at some parks that may impact local employment levels. None of the operational funding cuts are expected to have an immediate impact on visitation to parks that drives the level of tourism and revenue in gateway communities. However, cuts in Federal Land Acquisition could eliminate an avenue to increased visitation at some parks in the long term. Some of these proposed land acquisitions provide easier access to points of interest in the park, new parts of the park's historical story, or increased recreational opportunities, all of which could promote an increase in visitation. Purchasing lands within authorized park boundaries also eliminates the threat of development or resource damage and mitigates associated issues in surrounding park lands. The elimination of funding for State Conservation Grants in HR-1 may or may not also have an impact on gateways communities. The reduced funding level reduces the ability of States and communities to leverage funds to address local recreation expansion efforts but it is unknown at this time to what extent gateway communities have applied for these grants and where they rank in the State Comprehensive Outdoor Recreation Plans.

Continuing Resolutions and Management difficulties

Moran Q4: The Park Service is still operating under continuing resolutions. Can you please provide a brief description of some of the difficulties this creates, and include a summary, by major program, of impacts on your ability to manage your responsibilities, engage in contracts, and hire summer temporaries?

ANSWER: Continuing Resolutions, in general, lead to ineffective and inefficient processes. Many administrative tasks, for example, must be completed for each CR and then again with the annual appropriation. Under a CR, funding is provided incrementally thereby delaying obligations for such things as contracting actions and acquisitions until sufficient funds are available. This especially impacts mission responsibilities in facilities maintenance, construction, and land acquisition programs. All programs are impacted by the reduced buying power of smaller bulk purchases dictated by the incremental funding.

The National Park Service obligates the majority of its funding during the summer months. A prolonged CR delays the hiring of seasonal employees, thereby directly impacting visitor services and other important programs in the parks. Hiring is largely deferred until final funding levels are established. This impacts the capability of offices to fill key vacancies, which impacts the accomplishment of mission critical programs and projects.

With regard to Land Acquisition, the inability to initiate projects delays negotiations with landowners and completion of appraisals, sometimes causing landowners to sell key tracts to other interested buyers who may not have the same conservation and preservation objectives as the NPS. Under a CR there are no new starts in construction projects either. Scheduled implementation of projects and obligation of funds are delayed resulting in larger carryover balances and potential project cost increases.

America's Great Outdoors

I am very interested in the President's America's Great Outdoors initiative. As you noted, the outdoor industry supports 6.5 million jobs and the National Park Service plays a major role in this.

Moran Q5: This initiative has a large funding increase for the National Park State-side Park and recreation grants. I understand you are asking for a large increase to a total of $200 million, and that 60% of this will be competitive. Why is this request so important, and how will the State-side program work?

ANSWER: The American public places great value on outdoor recreation. This was made clear at the 51 America's Great Outdoors public listening sessions held by the Department and other Federal agencies last summer. Americans from across the country shared specific and creative ideas about conservation, recreation, and connecting people to the outdoors. Through the AGO listening sessions and more than 100,000 comments from a broad public input process, we learned that there is a powerful consensus across America that outdoor spaces – public and private, large and small, urban and rural – remain essential to our quality of life, our economy, and our national identity. Americans communicated clearly that they care deeply about our outdoor heritage, want to enjoy and protect it, and are willing to take collective responsibility to protect it for their children and grandchildren.

In response to these comments, the America's Great Outdoors report recommended focusing a portion of LWCF funds on projects that achieve the initiative's goals related to large-scale land conservation, urban parks and community green spaces, and river restoration and access. The President's budget requests a total of $200.0 million for the NPS State Conservation grant program, which is funded out of the Land and Water Conservation Fund. Of this amount, $78.0 million, or 40 percent of the total request for State Conservation grants, would be equally apportioned among the 50 States plus the District of Columbia and the Territories, which share one apportionment. This would provide each State approximately $1.52 million, except as noted above with regard to the District of Columbia and the Territories.

A total of $117.0 million would fund competitive State Conservation grants. These grants would support the America's Great Outdoors initiative priorities with a strong focus on supporting the establishment or enhancement of parks and green spaces in urban and other areas that lack open space and outdoor recreational opportunities, including in places where there are opportunities to protect large-scale ecosystems. Priority areas for investment in urban areas are: (1) Waterfronts that connect urban communities with water and waterside parks and open spaces; (2) Signature parks, such as City Park in New Orleans or Millennium Park in Chicago that serve as community anchors; (3) Renewed green spaces and urban garden spaces that have suffered from urban blight; and (4) Natural areas within a city or community that reconnect people with the outdoors, like Jamaica Bay Wildlife Refuge in Brooklyn, New York.

The President's budget does not propose any amendments to the Land and Water Conservation Fund Act. Consistent with the Act, projects that receive funding through the new competitive

grant component must be aligned with State Comprehensive Outdoor Recreation Plans (SCORP) and enhance outdoor recreation opportunities. Projects would still be subject to the 50:50 match requirement, and no State can receive more than 10 percent of the total grant funding in any given year. The NPS will continue to work with the States in terms of ensuring that all State Conservation grant projects are consistent with the SCORPs, and will work with States to formulate projects that could be eligible for the new competitive funds.

Moran Q6: How will the competitive part of the state-side LWCF program work? What criteria will be followed and what types of projects do you think the States are most interested in?

ANSWER: We are still collaborating with our State partners and other interested parties to refine many of the details associated with how the competitive portion of the State LWCF grant program would work. As currently envisioned, however, the competition would build on the existing structure and processes already used in the LWCF State-side program. Namely, that the competition will still originate in the States, with initial solicitation, screening and evaluation of proposals performed by the State agencies. As an interim step to ensure projects submitted for 2012 are consistent with a State's current State Comprehensive Outdoor Recreation Plans (SCORP), the Department would work with States to administratively align State SCORPs, if needed, by working with them to develop a standardized addendum rather than update all SCORPs by the start of 2012. As a State's SCORP reaches its date of renewal, the NPS would work with the State to fully address AGO priorities. This would minimize the workload for the States, while providing an opportunity to attach other planning documents to the SCORP that reflect State as well as local priorities and are related to the purpose of AGO.

The States would submit a limited number of their top-ranked proposals to the NPS, where they would ultimately compete for the funding on a national basis. Projects would still be subject to the 50:50 match requirement, and no State can receive more than 10 percent of the total grant funding in any given year, which would total about $17.9 million. We also envision that the competitively awarded grants could – depending upon the level of appropriation – be much larger than has become typical given the levels of funding appropriated for State-side LWCF in recent years. If Congress appropriated the full $200.0 million requested in the President's budget, then larger competitive grants, such as $2.5 million or more, could be awarded. Larger grants would allow States an opportunity to pursue larger projects including projects in metropolitan areas where land and development costs are typically much more expensive, and regional conservation and recreation projects involving multiple stakeholders and jurisdictions. We believe larger grants will help incentivize State and local governments to put forward their best proposals for addressing the significant level of need for new outdoor recreation opportunities that exist in the United States today. Each year, the NPS requests that each State estimate the total amount of its need that cannot be met with available levels of funding. In 2010, 92 percent of the States reported that only 10 percent of its total funding need was met, for a total estimated need of more than $18.5 billion.

The program criteria against which the State's top ranked projects will be evaluated are still being developed. The America's Great Outdoors report recommends a number of factors that should be considered, including the demonstrated need for and benefits of the project; alignment of the project with strategic plans for recreation, open space, and conservation; identified

partnerships, collaboration, leverage, and community support for the project; demonstrated sustainability and stewardship of the project over time; maximized employment opportunities for young people that connect them to the outdoors; identified opportunities for outdoor education; demonstrated plan for safe and accessible routes; and multiple identified benefits, such as wildlife corridors/ecosystem connectivity, flood control, economic revitalization, heritage tourism, and outdoor recreation. Over the next few months we will collaborate with the States and other partners to refine criteria that will help ensure selection of projects that will contribute significantly to the nation's and states' outdoor recreation and conservation needs.

In terms of project types, consistent with the LWCF Act, eligible activities under the competitive grant program would be limited to the acquisition and development of lands for outdoor recreation purposes as well as statewide planning efforts that support these activities. The priority areas for LWCF investment identified in the AGO report – large landscape conservation, urban parks and community green spaces, and blueways and other water access – reflect the input generated during the 51 listening sessions and more than 100,000 comments received nationwide. These objectives are consistent with the conservation priorities of many State and local governments as identified at listening sessions and within SCORPs.

America's Great Outdoors

Background: The initiative also has substantial increases for federal land acquisition. I hear from some persons that we shouldn't buy more land when we can't afford to take care of what we have, and the Park Service still has a huge deferred maintenance backlog.

Moran Q7: Why do you feel this federal acquisition is important? You aren't talking about buying new national parks are you?

ANSWER: Federal acquisition is important because all land within authorized boundaries of a park is integral to the overall resource management strategy of a park. Federal ownership of contiguous land within park boundaries creates management efficiencies and eases maintenance and law enforcement issues. In addition, acquisition of some lands eliminates the threat of development or resource damage within the park. Other land acquisitions provide easier access to points of interest in the park, new parts of the park's historical story, or increased recreational opportunities, all of which could promote increased visitation and tourism to gateway communities.

The 2012 request only includes proposals for acquisition of lands within authorized boundaries of existing parks. NPS is not authorized to acquire lands outside the boundaries of existing parks. New parks can only be established through Congressional action.

Moran Q8: Does your land acquisition program focus purchases on inholdings, which can increase management efficiency, while also protecting sensitive areas of high interest to the public?

ANSWER: The National Park Service may only acquire interest in lands within existing national park boundaries. These lands are identified within the Land Protection Plan or the park's

General Management Plan as being necessary for the effective and efficient management of the park unit. Non-federally owned land within park boundaries is not subject to the Land Protection Plan and can result in non-conforming uses or habitat alteration inconsistent with the plan.

Moran Q9: You noted that visitation to the National Parks is up substantially, and this includes a lot of foreign tourism, which helps our trade balance. What are the factors that affect visitation and how are you able to have such a remarkably high visitor satisfaction?

ANSWER: Visitation trends can vary across regions, parks, and seasons. However, there are some common factors that influence the level of visitation parks receive. Factors that tend to increase visitation include rising population levels, increasing employment rates, and significant promotional events such as Ken Burns' *America's Best Idea* video series. Factors that tend to decrease visitation include large inclement weather events, and rising fuel costs. Foreign exchange rates likely influence international visitation, with increases associated with a weaker U.S. dollar.

While these factors influence visitation, park experiences, such as the opportunity to view spectacular landscapes or learn about historic events, underlie the public's demand for national park visits. This public demand reflects the extraordinary natural and cultural resources that the NPS is charged to protect for current and future use. It is the ability of the NPS to manage these valuable resources that results in high visitor satisfaction and that ensures the public's opportunity to enjoy these experiences today and into the future.

Park Operations

Moran Q10: The budget request includes a $39.5 million increase in base park operations that will enhance visitor services at more than 100 park sites. On the other hand, the budget has decreases for management efficiencies that are not spelled out.

Please tell us how the park base increase will be used and to what extent it is offset by these other cuts which will be felt across-the-board?

ANSWER: Park base increases represent efforts necessary to sustain and improve the condition of cultural resources; provide for new areas and responsibilities; ensure the continuation and improvement of mission-critical operations; engage youth; and work collaboratively among parks and with partners to efficiently leverage resources for maximum results. These increases were articulated by individual parks, validated and prioritized by the regions, and support emphasis areas ripe for immediate improvement, such as resource stewardship. Some of these increases are event-driven, such as the sesquicentennial of the Civil War, and others mitigate immediate resource threats or address deficiencies identified in park business plans and other strategic planning tools. Targeted increases also respond to the Secretary's Youth in the Great Outdoors initiative by providing educational and employment opportunities targeted at youth.

The management efficiencies included in the President's Budget reflect the Accountable Government initiative to curb non-essential administrative spending in support of the President's commitment to fiscal discipline and spending restraint. These efficiencies will be targeted to

decrease travel expenses, trim supply purchases, limit employee relocation costs, cut down on printing requirements, and reduce external advisory services. The proposed savings are aimed at administrative functions for all parks and programs. Impacts to visitor services should be minimal.

Moran Q11: I understand from recent research by the National Parks Conservation Association that every federal dollar invested in national parks generates at least four dollars in economic value to the public. They support more than $13 billion of local private-sector economic activity and nearly 270,000 private-sector jobs. I was happy that we worked with presidents Bush and Obama the last three years to address a substantial shortfall in the parks operations account, and am concerned that this shortfall -- which I understand is still several hundred million -- continues. You propose a small 1%, $39 million increase in the park operations budget this year, yet reduced funds for other accounts like construction.

Can you explain why you found it important to invest in the National Park Service operations budget?

ANSWER: The NPS budget proposal includes operational increases for essential stewardship, protection, maintenance, and visitor services which are key to maintaining servicewide and mission critical responsibilities within our national parks. Within a fiscally-restrained budget, the NPS believes that the proposed budget minimizes mission critical operational disruptions by deferring non-emergency construction and maintenance efforts that can be safely accomplished in future years.

National Mall needs and options

Moran Q12: The National Mall continues to be a problem. What is in this budget for it, and to what extent do you think that the non-profit sector could raise additional revenue to do some of the restoration that is needed so much?

ANSWER: As National Mall planning began in 2006, deferred maintenance for the park was estimated at more than $450 million. Projects provided for under the American Recovery and Reinvestment Act reduced this need by more than $50 million, so the current deferred maintenance estimate for the National Mall is about $400 million. The Department and the Park Service are currently working to develop a contract for Mall turf renovation between 3rd and 7th Streets, estimated at $16 million, which would reduce the deferred maintenance backlog to approximately $384 million. The primary purpose of turf renovation is to improve the sustainability of the Mall, which is used heavily on a constant basis for a wide variety of purposes. This project, for the center grass panels, would remove poor soil and mix it with a special combination of new soil, sand, clay and organic material. It would also install a new drainage system, a new irrigation system, and would install 500,000 gallons of underground cistern space to capture rainwater to use for irrigation.

One of the major objectives of the National Mall Plan is to enable the National Mall to sustain high levels of use, a goal which can primarily be achieved by addressing the deferred maintenance on the Mall. To implement the plan, which is now completed, DOI and NPS are

proposing a fundraising effort with the Trust for the National Mall as the authorized non-profit partner to supplement Federal dollars appropriated for Mall renovation. Market research indicates public support for the Mall. The Trust is launching a national campaign to raise $350 million over several years. Funding will be targeted to priorities laid out in the National Mall Plan.

Moran Q13: There will be innumerable demands for museum and memorial sites on the National Mall, supported politically, over the coming years. To accommodate them without violating the intent of the Commemorative Works Act, we need to do what Congress did a century ago -- with the Lincoln Memorial -- and expand or enlarge the Mall on available nearby federal land. None of the current federal plans addresses Mall expansion or the larger future needs of the Mall across jurisdictions (Smithsonian, National Park Service, National Gallery, Architect of Capitol, Department of Agriculture, and so on.) None of the ad hoc expansion ideas floating around have the clout and prestige of being called "The Mall." We need a unifying concept.

Much of the federal land available for Mall expansion along the Potomac is under Interior's jurisdiction -- and much of it is already designated by Congress for future memorials.

A private group of scholars, designers, and academics is ready to lead a planning effort. Are you prepared to support Mall expansion on Interior-administered lands?

ANSWER: Expanding the title of the National Mall to other areas is an idea promulgated by members of a small advocacy group who have participated in various Federal planning efforts. However, a plan for the placement of future monuments and museums already exists so the action they propose is not necessary.

In support of the Commemorative Works Act, the National Capital Planning Commission prepared a plan to implement a cohesive and unifying vision — the 2001 Memorials and Museums Master Plan. That plan identifies locations for 100 future memorials and museums to be located throughout the Capital area including locations on Interior Department administered lands. A number of memorials have been sited using this plan including the Dwight D. Eisenhower Memorial, the Air Force Memorial, Veterans Disabled for Life Memorial, and the Victims of Communism Memorial.

Program Eliminations- Save America's Treasures, etc

Moran Q14: Your proposed budget eliminates some programs which have had considerable Congressional support in recent years. You have eliminated the $25 million Save America's Treasures grant program and the $5 million Preserve America program, as well as reduced the Heritage area support by 50%.

Why do you feel it is necessary to make these dramatic cuts?

ANSWER: In a time of difficult budget trade-offs, the 2012 budget focuses on nationwide historic preservation goals. The FY 2012 budget includes significant increases for grants-in-aid

to States, Territories, and Tribes to operate and provide grants through State and Tribal Historic Preservation Offices to carry out Federal responsibilities under the National Historic Preservation Act. The FY 2012 budget includes $50.0 million for grants-in-aid to States and Territories, an increase of $3.5 million from FY 2010 enacted, and $11.0 million for grants-in-aid to Indian Tribes, an increase of $3.0 million from FY 2010 enacted. These increases will partially offset the reductions to other historic preservation programs, and enable State and Tribal Historic Preservation Offices, rather than the NPS, to focus on those programs that primarily support local heritage tourism and historic preservation.

The budget eliminates funding for Save America's Treasures grants that are duplicative of grants available through SHPOs and THPOs and do not necessarily fund priorities established in statewide comprehensive historic preservation plans. Further, the Federal government has no obligation to provide historic preservation grant funding through this program under the National Historic Preservation Act. Many high quality projects have been awarded through the SAT program, but there is no long term or systematic strategy in awarding grants and at least half of SAT projects are annually earmarked by Congress without using merit-based criteria.

Some high quality projects have also been awarded through the Preserve America grants program as a means of promoting both resource protection and economic growth through public-private partnerships, but there is no long term or systematic strategy in awarding grants. As with SAT grants, the Federal government has no obligation to provide preservation grant funding through this program under the National Historic Preservation Act. The NPS can better achieve its mission in 2012 by focusing available resources on managing national parks as well as other important partnerships that support the mandates of the National Historic Preservation Act.

The proposed reduction to the National Heritage Area program supports the directive in the FY 2010 Interior Appropriations Act for National Heritage Areas to work toward becoming self-sufficient. Although the National Heritage Areas are valued partners of the National Park Service, the program was not intended to serve as a pathway to long-term Federal funding. In FY 2012, the program will focus its available resources on ensuring support for newly designated area planning and supporting areas in the early stages of development.

Moran Q15: As the local representative, I also note that this budget eliminates $2 million for support of the National Capital Arts Performing Arts program. This program has been around for decades, and supports events that are enjoyed by hundreds of thousands of live viewers and millions on TV every year.

Why is this cut?

ANSWER: While the National Capital Performing Arts Program has proved a valuable program for providing performing arts-related personnel such as ushers and performers at many local venues, the program has few direct impacts on the mission of the National Park Service. Elimination of the program would allow the NPS to strategically focus resources on maintaining the most critical park operations and fulfilling its core mission while addressing the realities of the current budget climate.

Chesapeake Bay Ecosystem Stewardship

Moran Q16: The budget includes an increase of $2 million to enhance technical and financial assistance to state, local and non-governmental partners throughout the Chesapeake Bay watershed.

Can you please tell me some more about this program, and how the Park Service activities relate to activities of other federal agencies, states, and other partners?

ANSWER: The NPS provides technical and financial assistance to State, local, and non-governmental partners through the Chesapeake Bay Gateways and Watertrails Network (CBGN), the Star-Spangled Banner National Historic Trail, and the Captain John Smith Chesapeake National Historic Trail. CBGN links over 170 Chesapeake region sites and trails, managed by Federal agencies, States, local governments and non-governmental organizations. Each site and trail offers the public recreational opportunities, heritage tourism experiences, and Bay stewardship activities. Highlights of the program include:

- Providing 1:1 matching grants to State and local governments, local communities, nonprofit organizations, and the private sector. In practice, $1.00 of Federal money has been matched by $1.55 in non-Federal funds.
- Developing both memoranda of understanding and cooperative agreements with States, local governments , non-governmental organizations, and Federal agencies, to improve public access to the Bay and rivers, develop heritage tourism products and experiences, and create educational and stewardship activities for youth and adults.
- Collaborating with partners on building environmental, recreational, and educational experiences at the community level with partial funding and technical expertise from the National Park Service.
- Providing nearly $900,000 in financial assistance for public access development and interpretive planning and development to partners to improve their capacity to provide high quality visitor experiences.

American Reinvestment and Recovery Act

I realize that the Park Service still has a huge backlog in deferred maintenance for some of the 17,000 buildings that it has responsibility for. This includes some of our Nation's most prized cultural resources. The Congress appropriated $750 million for NPS under the ARRA program.

MoranQ17. Can you please tell us about the kinds of projects you have been working on with this surge in funding?

ANSWER: See table below.

NPS ARRA Projects as of 3/25/2011

Type of Project	Number of Projects	Total Obligations ($000)
Deferred Maintenance (DM)	526	118,827
Deferred Maintenance -Trails	125	21,765
Facility Construction	77	422,179
Abandoned Mine Lands	47	22,303
Energy Efficient Equipment	7	9,049
National Park Service Roads	26	118,163
Historically Black Colleges & Universities	21	14,986
Total ARRA Projects	**829**	**727,272**

MoranQ18. Was NPS able to obligate those funds in the limited time available?

ANSWER: The National Park Service was appropriated $750 million with the passage of the American Recovery and Reinvestment Act. By September 30, 2010, when the funding expired, the NPS had obligated $749.7 million, or 99.9% of the funds.

MoranQ19. What were you able to accomplish with these funds? To what extent have you made a dent on your deferred maintenance backlog for facilities, roads, and abandoned mine restoration projects?

ANSWER: The National Park Service used ARRA funding as stipulated in the act and was able to address $523 million of its documented deferred maintenance off its books. By the time all the ARRA HBCU projects are finished, the NPS plans to have addressed safety and structural defects in 21 buildings. At its completion, the ARRA AML funding will have mitigated human safety and health issues by establishing long term treatments at over 700 hazard mine openings.

MoranQ20. How many jobs do you estimate will be created at the Park Service with your ARRA funds?

ANSWER: The NPS requires its contractors to provide NPS an estimate of the number of jobs created in order to accomplish projects funded through ARRA. Our contractors have reported an estimate of 1,456 as of the end of calendar year 2010.

Reducing Deferred Maintenance Backlog

Moran Q21: The National Park Service has a $10.8 billion backlog in deferred maintenance for roads, dams, buildings and other structures of which about 50% is for roads that are funded directly out of the annual $240 million allocation in the Highway Bill. I know that this is a long-standing problem and that the GAO reports that the backlog amount has stabilized, which is a good thing after years of an increasing backlog.

What are your worst maintenance problems?

ANSWER: The current amount of deferred maintenance (DM) associated with the NPS constructed asset portfolio is indeed $10.8 billion. It should be noted that some of this DM is associated with facilities that are of lower priority in terms of mission accomplishment. The worst problems are associated with facilities that are characterized as being mission critical (facilities having an asset priority index [API] of 75 or higher). This subset of the portfolio has an estimated $6.9 billion in DM. Focusing on just the DM associated with the components of these assets that are considered critical to their function such as roofs, foundations, and road surfaces. decreases the estimate to approximately $3.7 billion.

Moran Q22: Your request has an increase for maintenance, but doesn't the large decrease in construction funding mean that you probably will fall further behind again?

ANSWER: The National Park Service's Line Item Construction Program is a critical component in the Service's overall facility management effort. The Service has made a concerted effort to focus the use of program funds on critical, large-scale facility rehabilitation, including $8.0 million for the Everglades Modified Water Deliveries project in FY 2012. The NPS currently receives approximately $350 million annually towards this effort through the Line Item Construction Program and other fund sources. It is estimated that in order to keep the current level of deferred maintenance from growing, an overall investment of about $675 million annually is required. The Park Service will continue to focus on repairing the critical systems of our most high priority assets.

Climate change

We have seen from the Republican press releases on HR-1 that they do not feel it is important for Interior to increase its science on climate change, and it is not important for the Department, which manages 20% of America's land, to begin adapting to the changes already underway.

Moran Q23: I know that many of the National Parks are already feeling the impacts of climate change in very real ways. Can you please summarize some of the changes that your land managers are already seeing on the ground, such as rising sea levels or drought leading to wildfire, vegetation disease, and various other disruptions?

ANSWER: NPS is rising to the challenge of addressing the effects of climate change on our resources. Observations and studies in individual park units have led to the conclusion that climate change may be affecting park resources. Warmer temperatures are accelerating the melting of mountain glaciers in places such as Glacier, North Cascades, and Kenai Fjords National Parks. In Alaska, melting sea ice threatens marine mammals as well as coastal communities, while thawing permafrost disrupts the structural basis of large regions, jeopardizing the physical stability of natural systems, such as wetlands, as well as buildings, roads, and facilities. Snowpacks are also reduced, which affects the timing, temperature, and amount of stream flow in parks, especially in the West. Earlier spring snow melt and late season drying have been documented in national parks and other locations affecting wildfires, outbreaks of pests, and invasion by non-native species. Rocky Mountain NP is among several mountain

parks that have seen increased forest die-back due to bark beetle infestations as warmer winter temperatures allow the beetle populations to survive unchecked. Fire frequency and intensity may also be affected by climate change. Wildfires in the West are occurring both earlier and later in the season now and the average duration of time that a wildfire burns has increased from less than 10 days to more than a month. Cultural resources are also affected by wildland fire frequency and intensity, as hotter fires and our efforts to fight them directly damage both surface and buried archeological sites. Another effect that has been observed is a shift of some mammal populations to higher elevations. National Parks such as Yosemite and Great Basin have documented upslope movement of species such as the American pika and alpine chipmunk, thereby reducing the effective area for their survival as well as those species that prey upon them. Marine parks have observed likely climate change effects to marine resources including coral bleaching and disease caused by increased sea surface temperatures. Since 2005, these effects have led to the loss of more than 50 percent of reef-building corals in the Virgin Islands park units. Coastal parks face rising sea levels that could inundate cultural resources (such as Fort Jefferson at Dry Tortugas NP), erode recreational areas, displace or destroy natural communities, or threaten water supply in places such as Assateague Island National Seashore or Everglades NP. Cross-country skiing, hiking, fishing, camping, and river rafting are just some of the recreational opportunities that are impacted by these changes.

Background: I see that your Climate Impacts Initiative is level funded at $10 million. The NPS component of this Department-wide initiative will provide $5.5 million for adaptation strategy, $3 million to enhance the existing NPS natural resource networks to build a climate change monitoring system, and $1.5 million to create a climate change response office within NPS.

Moran Q24: How is the Park Service working with the other Interior bureaus and the Landscape Conservation Cooperatives and why is this climate change adaptation funding necessary?

ANSWER: The broad scale of global climate change and the impacts that are already occurring makes cooperation and collaboration between Federal and State agencies and communities essential. The National Park Service (NPS) is working with other Interior bureaus to establish Landscape Conservation Cooperatives (LCCs) and other collaborative efforts set in motion by Secretarial Order 3289. To help coordinate these efforts the NPS hired a National Adaptation Coordinator who participates in development of the DOI LCC Network and implementation of adaptation. NPS staff participate in each of the emerging LCCs and NPS co-leads the Great Northern LCC, providing dedicated personnel and on-the-ground project funding. Additionally, NPS supports personnel and projects at the Pacific Islands, North Atlantic, and South Atlantic LCCs, bringing a unique focus on vulnerability assessment and coastal adaptation of cultural resources, facilities and infrastructure, indigenous peoples, and urban landscapes.

NPS is working side-by-side with the U.S. Fish and Wildlife Service to establish consistent standards for data management that will allow managers from both bureaus efficient access to information about resource impacts, which they need to make decisions on Interior lands. NPS is helping develop the National Fish, Wildlife, and Plants Adaptation Plan in collaboration with DOI and other partners, and NPS provides natural resource and science specialists on subcommittees for this effort. NPS also contributed to the consortium of Federal and State agencies, NGOs, and academic partners that recently produced "*Scanning the Horizons: A Guide*

to Climate Change Vulnerability Assessment". This guidebook and associated training provides managers and resource professionals a critical tool to inform possible adaptation responses, consider how wildlife and other resources might fare under various management and climatic scenarios, share results with stakeholders and decision-makers, and use results to advance adaptation planning and implementation.

Park-specific vulnerability assessments are completed or underway in more than 50 parks to identify resources threatened by effects of climate change such as rising sea levels that can destroy lighthouses, roads, and beaches, and melting glaciers and permafrost that threatens infrastructures and natural resources. A total of 22 parks were assessed as part of a collaborative project with the USGS to evaluate coastal vulnerability to potential sea- and lake-level changes. Coastal park units were selected to provide a cross section of different types of coastlines and included a variety of geological and physical settings along the U.S. Atlantic, Pacific, Gulf of Mexico, Gulf of Alaska, Caribbean, and Great Lakes shorelines. The other vulnerability assessments initiated with this first year of funding were selected through a competitive Servicewide call for proposals.

NPS manages the greatest number of structures of any civilian agency and is collaborating with partners to conduct a system-wide facilities risk screening tool for managers. The tool will be used to perform a risk assessment of specific existing facilities and historic structures, as well as to inform decisions about siting or development of new structures. The tool will assist managers in decisions about how to allocate resources to facility management and whether to retrofit, move, or construct structures in park areas that may be vulnerable to the effects of climate change.

And finally, the NPS has taken a lead role in linking science and management to develop and apply a scalable, user-driven, scenario-based approach to long-range planning. Climate change scenario planning is a tool for flexible decision making under uncertainty. It uses quantitative information from climate change models, vulnerability, and risk assessments to explore a range of plausible futures and the management actions that will be most effective under different conditions. During the first year of funding, NPS-sponsored workshops and adaptation planning activities have brought together climate scientists, managers, planners, and partners from FWS, USGS, BOR, BLM, NOAA, USFS, Native American tribes, and a host of NGOs and academic intuitions. Results from these efforts are beginning to inform alternatives and strategies for General Management Plans, Resource Stewardship Strategies, and specific resource plans such as fire management and back country management plans.

Climate change adaptation funding is necessary because while some of the needed adaptation actions have already been initiated, many others will require further planning and development. The cascading effects of climate change will take place over decades to centuries and will create conditions and ecosystems for which there are no modern or historic references. Protecting resource integrity and resilience in such a changing environment will require an unprecedented level of collaboration and a flexible approach that is based on robust science and partnerships for incorporating new and relevant science into decision-making. Progress has been made over the past few years toward developing and implementing adaptation tools, products, and services and the NPS has significantly contributed to these efforts. However, meeting the challenges of

climate change requires stable support and knowledgeable personnel as managers' needs for information and technical assistance evolve with changing conditions and new knowledge.

Civil War 150th anniversary

I'm excited about the 150th Anniversary of the Civil War and the attention it will bring to national historic parks in Virginia and other states. I know that visitors to historic areas like Arlington House are investing in local economies as they learn about our history. At Manassas National Battlefield Park, for example, non-local visitors are spending more than $7 million annually, creating jobs as a result. Rangers at these parks are telling the stories of our history, making these battlefields come alive and deepening our sense of the losses that were incurred, the causes for this bloody conflict, and the impacts of the war's outcome on Americans. I was pleased to see that the FY12 budget includes an additional investment for the revitalization of park operations at Civil War parks.

Moran Q25: Can you please explain why the investment in park operations for Civil War sites is important and what the Park Service is doing to take advantage of this historic opportunity?

ANSWER: The NPS has created an action plan, Holding the High Ground: A National Park Service Plan for the Sesquicentennial of the American Civil War, to commemorate the Civil War Sesquicentennial, which establishes a thematic context for interpreting the Civil War through NPS Civil War battlefield and related sites. As the Sesquicentennial of the Civil War unfolds at many NPS battlefields and other Civil War-related sites, more and more visitors will come to these sites. Consequently, this is an opportune time for the NPS to invest funds in the restoration and protection of battlefield landscapes, preservation of a Civil War National Cemetery, enhancement of living history venues, and to substantially increase the educational and interpretive programs that we are able to provide for our visitors.

These investments will dramatically increase our ability to provide public understanding of the transformational events which occurred at these sites and how this era of American history defined who we are as a nation.

Background: Also in relation to the 150th Anniversary of the Civil War, I was pleased to see $1 million increase for Battlefield Acquisition grants, which generate non-federal funds by requiring a dollar-for-dollar non-Federal funding match. I know there are also important LWCF project proposed in both FY11 and FY12 for sites including Fredericksburg and Spotsylvania National Military Park and Richmond National Battlefield Park. I know that communities surrounding these important historic sites understand the importance of preserving unprotected portions of these battlefields so we can protect the places where so many men lost their lives, and help our grandchildren understand the landscapes on which these battles took place.

Moran Q26: Can you explain what the threats are to Civil War sites and why in a time when we are looking to identify areas where we can save money, the battlefield grants and LWCF funds are an investment we should be making now?

ANSWER: The Civil War Preservation Trust estimates that over 8,700 acres of battlefield land is lost to development every year, or one acre every hour. Although these development pressures and threats to the preservation of Civil War battlefields are nation-wide, they are most acute in the famed "Eastern Theater" of the Civil War. The battle-torn lands between Washington, D.C. and Richmond, the Capitol of the Confederacy; including the Fredericksburg, Spotsylvania, and Richmond battlefields, are facing ever-increasing development pressures from housing and shopping developments as well as demands for increased highway and road networks.

Even though we are looking for ways to save money and reduce the cost of government as we begin the Civil War Sesquicentennial years, every year that we postpone investments in the preservation of Civil War battlefields means more hallowed land is lost forever to development, and the remaining land will be even more expensive in future years. Without these investments now, we will lose the opportunity to preserve and interpret an era that profoundly shaped our country for both current and future generations. Acquisition and preservation of additional lands at these Civil War battlefields ensures that the very factors that draw people to them from across the nation and the potential to generate economic activity is not degraded over time by suburban sprawl. Thus preservation of these lands also ensures that the economic activities associated with visitation will continue in the future.

Youth in the Great Outdoors Initiative

I applaud your work on increasing youth employment and at getting more educational efforts aimed at youth. As John Muir wrote, ***"One day's exposure to mountains is better than a cartload of books."***

Moran Q27: Can you please tell the Committee about your efforts with youth, and why you see this as an integral part of the National Park Service?

ANSWER: Engaging youth in the efforts of the National Park Service and other land management agencies is essential to the conservation and preservation of our Nation's most precious resources. The America's Great Outdoors initiative, the Secretary's Youth in the Great Outdoors initiative, and the First Lady's "Let's Move Outside" campaign support these efforts. The National Park Service is focused on youth employment for young people ages 15-25 years. These opportunities involve projects such as natural and cultural resource management, interpretation, and facility maintenance.

The NPS also has many educational programs for youth such as Junior/Web Rangers, Parks as Classrooms, and History and Civics. These programs provide educational and curriculum based programs to help children learn about and appreciate the resources that this country has in a unique and hands-on way.

It is essential to engage people at a young age to develop a strong sense of stewardship for protecting our resources and educating others about our history. These are the future protectors of our lands, culture, and heritage. Young people are the future rangers, biologists, cultural resource specialists, and many other professions within the NPS. With much of the NPS workforce reaching retirement age, it is critical that young people become engaged, interested,

and skilled in conservation careers to continue to protect the legacy of our nation's most treasured places.

Cultural Resources

I note that the request also has a nearly $6 million increase for cultural resource projects and networks in the Park Service. The NPS has huge responsibilities for cultural resources including millions of archeological artifacts and thousands of artifacts from American history that are captured in so many wonderful National park units.

Moran Q28: Tell us a bit about the extent of need in the Park Service for enhance cultural resources and what is lost by not taking care of the artifacts that the Service is trusted with.

ANSWER: Projects funded from this increase would focus on the inventorying of park cultural resources. Many parks have accurate inventories of some categories of cultural resources, but most parks have significant gaps. For example, the NPS projects a total universe of 2,200 cultural landscapes in the National Park System, but at the end of FY 2010 there were only 576 complete, accurate, and reliable landscape records included in the Cultural Landscapes Inventory. Disasters such as hurricane Katrina and the Deepwater Horizon oil spill, as well as longer term issues such as climate change, demonstrate the importance of baseline documentation as a means of establishing a benchmark for future preservation, restoration, or mitigation efforts.

Without this baseline data, we do not know the true range and scope of significant park cultural resources, we cannot assess the condition of those resources, and consequently we cannot plan the wise or prudent expenditure of scarce funds for their protection and preservation in the future. Once these irreplaceable resources are lost, through either natural or man-made disasters, or through benign neglect because we do not understand their true significance, a piece of our nation's history has been lost.

Moran Q29: How is this budget increase going to be used and what do you think you can accomplish with it?

ANSWER: With this funding, the NPS would be able to improve the protection and preservation of the parks' most significant and vulnerable cultural resources by providing park managers with complete and accurate information they require to effectively prioritize cultural resource management responsibilities. Specifically, cultural resource project funding would accelerate the completion of baseline inventories of cultural resources at the parks. The completed inventories would enable park managers to identify and prepare strategies to protect cultural resources vulnerable to threats such as hurricanes, oil spills, wildfires, floods, and the effects of climate change. The inventories would also serve to inform the allocation of future cultural resource project funding and support the nation's highest priority preservation needs in a systematic and fiscally informed manner.

This funding would also establish a network of cultural resources information that can be easily shared between parks. This includes electronic data about historic structures, archeology sites,

and cultural landscapes that will be more easily and quickly accessed so that managers can determine appropriate strategies for mitigating threats, such as climate change.

A recent survey showed that less than one in six parks have access to the up-to-date, inclusive ethnographic data they require to provide them guidance in making more informed management decisions, such as providing more complete information to park visitors. This budget increase would be used to support ethnographic research which documents, evaluates, and interprets the relationship between the American public, including Native Americans, and the natural and cultural resources in parks. Data for both of these areas would be shared between networks of parks identified as addressing issues of particular significance and vulnerability and would be used for effective civic engagement.

This funding also provides for documentation of park historic properties by the Historic American Buildings Survey, Historic American Engineering Record and the Historic American Landscape Survey to provide permanent records of significant properties facing significant threats in the collections associated with these programs held by the Library of Congress. Through this funding, we will ensure continued access to information about these properties to the American public.

The NPS would accomplish approximately 15 additional historical documentation projects per year and approximately 20 additional ethnographic projects per year geared toward identifying previously unknown cultural resources and understanding their significance. The funding would complete approximately 50 additional National Register of Historic Places documentation projects each year.

The requested funding would allow NPS to integrate data from three Servicewide databases into a single Geographic Information System (GIS) that is a standard tool for identifying and managing resources. A single GIS system would allow NPS managers to more quickly and accurately identify the status of cultural resources, so that managers can determine appropriate strategies for managing resources and mitigating threats. This funding would allow 10-20 parks per year to incorporate their known cultural resources data into GIS and improve the ability of over 300 parks to share this information and expertise through improved data management networks. Providing parks with the information and expertise to effectively utilize GIS for planning purposes will ensure that the NPS's decisions to invest in preserving specific resources are prudent and that the outcomes are sustainable.

Park Police and Security

The Park Police play a vital role in some locations, such as the Nation's capital. You are requesting an increase to enhance service at icon parks, like the Statue of Liberty and the Washington Monument.

Moran Q30: Do you feel that these iconic monuments are at risk to terrorists that might want to make a statement? To what extent is this funding need required for routine patrol or is it needed for special circumstances?

ANSWER: The Icons on the Mall and the Statue of Liberty are high profile national heritage sites of great significance to the American people, of which the value cannot be measured in financial terms alone. Prominent national monuments are attractive to this Nation's enemies because of their national significance, general accessibility, and concentration of people in a confined place. Federal Bureau of Investigation intelligence analysts expect that terrorist interest in attacking a national Icon will continue, since such an attack could have serious economic and psychological consequences. While the United States Park Police (USPP) has not received information about imminent attacks, threats continue to occur, particularly against the Statue of Liberty and the Washington Monument.

In the FY 2012 President's Budget, funding is requested to expand the USPP presence at the Statue of Liberty. Following the events of September 11, 2001, the Statue was closed to the public due to security as well as fire and life safety concerns. The Statue was reopened to the public on August 3, 2004, however access to the Crown Level remained closed due to fire regulation contraventions. The crown was reopened to the public on July 4, 2009. The increase in public access associated with the permanent reopening of the Crown Level requires additional law enforcement staffing to safeguard the monument and visitors from terrorist or other threats.

Funding is also requested to provide for USPP patrol of the new Martin Luther King, Jr. Memorial, which will be located on the National Mall in Washington, D.C. The memorial is expected to be a popular tourist attraction, and is unfortunately likely to face potential threats from those who even now disagree with Dr. King's work and message, in addition to the threats faced by all national Icons and memorials. Increased patrol is therefore necessary in order to protect the memorial and visitors.

Gulf of Mexico and BP-Transocean Deepwater Horizon disaster

I noticed that many National Park employees played key roles in the federal response to the BP disaster in the Gulf of Mexico, and I want to thank them for their fine service.

Moran Q31: What are you seeing with respect to impacts of the oil on park units and wildlife in the Gulf? Is the NPS participating in the Natural resource damage assessment process?

ANSWER: The NPS is participating in the Natural Resource Damage Assessment process as an affected Interior bureau, along with the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Affairs. The NPS is in the process of documenting and quantifying negative impacts to NPS resources from oil or response-related activities. The NPS will participate with the other Federal and State natural resource trustees in developing and implementing a Damage Assessment and Restoration Plan. On behalf of the affected trustees, the NPS is serving as the lead for an emergency restoration project that will re-vegetate sites along the Gulf coast where oiling or response-related activities have impacted vegetation, to the point that erosion is occurring.

Impacts on NPS units have been primarily oiling and mechanical disturbance on beaches and in some sensitive habitats such as submerged aquatic vegetation beds at Gulf Islands National Seashore. The use of some NPS beaches by the public has been impacted as well. We are also

evaluating potential increases in invasive aquatic plants at Jean Lafitte National Historic Park due to freshwater diversions from the Mississippi River and exposure of Kemp's ridley sea turtles to Deepwater Horizon oil at Padre Island National Seashore. In addition, we are working with the incident command to evaluate oiled cultural resources.

Administrative Cost Savings and Management Savings

Back in the days when David Stockman was the Director of the Office of Management and Budget, one could find asterisks in the budget marking where offsetting savings could be achieved through the elimination of waste, fraud and abuse. The savings never materialized. So, I was skeptical when the Obama administration in its fiscal 2011 budget proposed to find administrative and management savings. A similar proposal appears this year in the fiscal 2012 budget. The Park Service is proposing to find $27.8 million in "Administrative Cost Savings and Management Efficiencies."

Moran Q32: Is this an unending source of current and future savings? Can you tell me how you plan to achieve these savings?

ANSWER: It is not an unending source of current and future savings. The NPS has recognized the need for cost savings to help offset rising costs, primarily in fuels and utilities; and to free up funds to be applied towards high priority operational needs that have been identified at the park and regional level. The NPS has been working on a variety of management efficiencies for quite a few years now. A primary focus has been the reduction of travel expenses through teleconferencing and managing for higher priority travel requirements. Other management efficiencies have been put in place where possible, such as sharing of equipment and people-based resources, consolidation of functions and jobs into centralized locations, and taking advantage of bulk purchasing opportunities and discounts.

As part of the Administration's Accountable Government Initiative to curb non-essential administrative spending, the NPS budget includes $27.8 million in savings in 2012 compared to actual 2010 expenditures for the travel and transportation of persons, as well as for supplies and materials. In order to track these savings, the Department will issue travel ceilings against which managers can track travel spending throughout the year. Additionally, the Department is currently developing shared contracts to use Interior-wide for the acquisition of commodities, supplies, and services. These savings will be tracked against prior year obligations.

Moran Q33: Have you achieved any equivalent savings in current fiscal year?

ANSWER: The NPS expects savings as parks and programs follow management's guidance on expected reductions and efficiencies in FY 2011; however, with a highly seasonal operation and a late appropriation, savings will not be apparent until after the end of the fiscal year.

Questions for the Record from Mr. Calvert

Yosemite Staffing

Calvert Q1: How many estimated FTE's does Yosemite National Park have?

ANSWER: In FY 2010, Yosemite NP utilized 302 FTE with park base funding. When all sources of funding, such as recreation fees, reimbursable, and non-recurring projects accounts, are taken into account, the park utilized 726 FTE in FY 2010.

Calvert Q2: How is providing necessary office space for these employees handled?

ANSWER: Yosemite National Park provides office space in Yosemite Valley, El Portal, and outlying districts throughout the park. Space is allocated based on needs and office space available.

Calvert Q3: Does the park service currently have the necessary office or workspace to accommodate all of the park employees who require it?

ANSWER: Current office space is tight at the park, but six trailers have been leased to provide temporary workspace.

Calvert Q4: Are there any plans to move park employees from their current office spaces? If so, can you please describe these plans and the cost would be to the taxpayer?

ANSWER: On behalf of the park, GSA is currently exploring leasing office space in Mariposa, California, approximately 30 miles from the park, as allowed under current authority. The office space would augment the existing office space and be utilized by employees who can perform their job duties from the leased space, and do not require physically working in the park. In general, the affected employees would be those who perform administrative duties. This solution would have the added benefit of reducing the footprint of office space within the park, as the temporary trailers would be removed. Once the space is procured, the cost would be offset from funds currently used to lease the temporary trailers, resulting in no net increase in funds expended.

NPS explored opportunities to collocate with other Interior bureaus or with nearby Forest Service employees using the Service First authority but determined this was not a feasible alternative at this time. Yosemite's office needs are along the Hwy 140 corridor and there are no USFS or BLM facilities available within commuting distance. However, Yosemite has used Service First authorities to co-locate staff with USFS at the Mono Basin Scenic Area Visitor Center on the east side of the Sierra Nevada to reduce operational costs.

Questions for the Record from Rep. Lummis

Grand Teton National Park Concessioners

It has come to my attention that the private contractor that advises the Grand Teton National Park (GTNP) has recommended, and the GTNP has agreed to implement, a liability limit increase of as much as 500% for outfitters and guides that operate on the GTNP. I understand the National Park Service may intend to expand that requirement to operators in other Park units. I am concerned that the increase was announced without prior consultation with the industries that will be unduly harmed by such a drastic change in policy – particularly those small businesses that cannot afford a premium increase of this magnitude.

Lummis Q1: Please provide my office with any and all information related to this announcement, including how the decision was made, with whom the NPS consulted, and if the agency intends to impose similar liability limits to additional operators in other Park units. Further, please provide my office with a justification for this change pursuant to the President's January 17th Executive Order regarding the impact regulations on small businesses.

ANSWER: National Park Service policy requires concessioners to carry various types and amounts of insurance that reflect the nature of the business authorized by their concession contract. This policy ensures that concessioners providing services to park visitors have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of an operator. The insurance also protects the business from significant claims that may interfere with the concessioner's ability to continue operations should it face a large claim without adequate insurance.

In 1988, NPS established minimum insurance requirements for concessioners that reflected the insurance industry liability standards at the time. Since that time, liability standards have changed and as a result so have minimum insurance requirements. Starting in 2006, NPS has engaged consultants to develop specific liability minimums for larger concession contract projects based on the risk associated with the particular concession operations. This is consistent with industry. In addition, the consultants now provide an internal analysis of potential costs of the insurance so NPS may consider those costs in the overall financial analysis conducted to determine the financial viability of the contract and reasonable opportunity for the concessioner to realize a profit.

Every prospectus issued to solicit offers for a new concession contract contains an exhibit on the established minimum insurance types and amounts required as part of the contract. Offerors have an opportunity to ask questions regarding any aspect of the prospectus package prior to submitting a proposal. Offerors are instructed to review the terms and conditions contained in the prospectus and conduct their own independent financial analysis before submitting a proposal. Upon submittal of their proposal, businesses are required to submit an offer letter agreeing to the terms of the contract.

Setting requirements for concessioner insurance in a contract is not a regulatory action. NPS uses existing authorities to require a certain limited liability amount and therefore does not need

to initiate rule-making. Because this action is not regulatory in nature, the Executive Order on Improving Regulation and Regulatory Review and its predecessor E.O. 12866 do not apply and NPS is not required to analyze whether it would have a significant economic impact on concessioners.

As standard practice however, NPS utilizes the process for setting insurance types and minimums in contracts to conduct an analysis of the effect on business and provide an opportunity for public input. For every business opportunity, the NPS conducts a financial analysis that takes into consideration industry norms for operating expenses, including insurance costs, to determine that the contract provides a reasonable opportunity for profit. Offerors have the opportunity during the solicitation process for each contract to question requirements in the contract and other parts of the prospectus including insurance terms.

The NPS believes this business practice is effective in establishing appropriate insurance requirements that protect both park visitors and concession operations, accurately accounts for any effect on business, is consistent with NPS concession contracting authorities and is consistent with industry practices.

THURSDAY, MARCH 10, 2011.

BUREAU OF LAND MANAGEMENT FY 2012 BUDGET

WITNESSES

ROBERT ABBEY, DIRECTOR, BUREAU OF LAND MANAGEMENT
KAREN MOURITSEN, BUDGET OFFICER, BUREAU OF LAND MANAGEMENT

OPENING REMARKS OF CHAIRMAN SIMPSON

Mr. SIMPSON. The committee will come to order.

Mr. Abbey, I would like to welcome you to today's subcommittee hearing addressing the fiscal year 2012 budget priorities for the Bureau of Land Management. My colleagues and I hope to cover a lot of ground with you today on the new Wild Lands policy, grazing, wild horses and burros, energy and other issues. While I do not necessarily agree with all of BLM's priorities in this budget, I appreciate the fact that we can have a productive conversation about these issues.

I would like to begin by making several points on a few specific issues before we receive your testimony. First, as we have discussed, Western members including myself are very concerned with the new Wild Lands policy. I believe this is a troubling precedent, and as I told Secretary Salazar earlier this week, any bill that comes out of this subcommittee this year will most likely include language to defund the Wild Lands policy, whether it is included in the base bill or an amendment that is offered in the House.

Secondly, it seems that this budget chooses the full funding of land acquisition and America's Great Outdoors at the expense of other important programs like the operating account, Management of Lands and Resources, which actually supports private sector jobs in grazing, forestry, mining, and oil and gas development. As you know, I support the Land and Water Conservation Fund but it does not make sense to me that we would fully fund land acquisition by diverting money from land management accounts. With our current budget crisis, I find it puzzling that the BLM requests $50 million for land acquisition and $1 billion for America's Great Outdoors when it has difficulty managing the lands it already holds and has significant problems with many of its current programs.

I am deeply concerned about this proposal, that this proposal will exacerbate an already out-of-control problem facing the BLM, and that is the increasing costs of litigation. When you shift resources from land management to acquisitions you are unable to provide the land managers in your field offices with the resources they need to make environmentally sound decisions, leaving the door wide open to environmental groups looking for an opportunity to sue. I have said this before and it bears repeating, that there are certain things in life that are unavoidable. One is death, one is

taxes and the other is the fact that the BLM will be sued on any decision that it makes.

It does not take an expert accountant to figure out that a large amount of your budget is spent fighting lawsuits in court or attempting to bulletproof your decisions against an inevitable lawsuit. These dollars represent a tremendous amount of taxpayer funding that is being shifted away from on-the-ground management and spent instead in courtrooms. This is a bad deal for the public lands, a bad deal for your agency and a bad deal for the taxpayers. Even more troubling is the net result, that our public lands are increasingly managed by judges while your professional staff and their judgments are being undermined. I know you recognize this problem as do your employees, who are on the front lines of this battle every day in Idaho and other Western states, yet I am very concerned that this budget fails to adequately put resources on the ground to address this situation.

On that note, I am also very concerned that the BLM in Idaho will not be able to hire the seasonal workers needed for grazing and recreation management. Many of the ranchers in my district have been told they will not be able to turn out their livestock until late June. This has a significant impact on the bottom line of the ranching operations and could mean the difference between finishing the year in the red or in the black. These basic important responsibilities of BLM need to be met before it considers other program increases. Mr. Abbey, I hope to work with you on this issue to solve this problem.

The hardrock mining proposal in the budget is also problematic although I believe revising the General Mining Law of 1872 is long overdue. This should be carefully reviewed by the authorizing committees similar to the oil and gas legislative proposals. The budget would basically raise taxes on hardrock mining and use the proceeds to fund land acquisition.

I also want to briefly mention the potential merging of the BLM forestry and range staff in an effort to improve efficiencies. This seems like a solution in search of a problem. Forestry and range programs have different authorizing statutes and different staff and expertise. Both programs are very important to the day-to-day operations of the BLM. I hope that you will reconsider merging these two programs.

In closing, I look forward to working with you on many of these issues and thank you and your staff for the hard work and assistance that we have had in putting together this budget.

Mr. SIMPSON. With that, I am happy to yield to the gentleman from Virginia, Mr. Moran, for any opening statement he might have.

OPENING REMARKS OF CONGRESSMAN MORAN

Mr. MORAN. Good morning, and thank you, Chairman Simpson.

Mr. SIMPSON. Good morning.

Mr. MORAN. Welcome, Mr. Abbey.

Mr. ABBEY. Nice to see you.

Mr. MORAN. BLM is the largest manager of federal lands. Even though most of these lands are in the West, all Americans should appreciate the special places and habitats that are such an impor-

tant part of our Nation's great heritage of public lands, the National Landscape Conservation System (NLCS), especially. It includes 27 million of the most special acres under BLM jurisdiction.

I do have concern for the wild horses and burros which primarily live on BLM-managed lands in the arid West. I am encouraged by new announcements which we can talk about today. The wild horse program I do think needs to change.

BLM also manages vitally important watersheds and habitat as well as fossil energy resources that are important for our citizens but also for our economy. At our GAO hearing last week, we had real concerns about BLM's ability to balance its energy development mission and its environmental stewardship mission. We do not want to develop the publicly owned fossil energy at the expense of our native lands and species. We need to ensure long-term sustainability. Too much of the fossil energy development has permanently and adversely impacted vast areas of public lands. I am encouraged by the direction in this BLM budget request. It is about time that the Congress instituted reasonable fees to help cover the cost of oversight of extraction industries. As the GAO and the IG pointed out, there is a great need for better oversight and for enhanced financial management of the many billions of dollars worth of fossil energy taken out of the public estate.

I am also concerned that in our understandable haste to increase reliance on wind, solar and geothermal energy, we might be choosing in some cases expedient courses that we could later regret. We do owe it to future generations to get it right.

I look forward to a constructive hearing, Mr. Chairman, and thank you for holding it.

Mr. SIMPSON. Mr. Abbey, we look forward to your testimony. The floor is yours.

TESTIMONY OF MR. ABBEY

Mr. ABBEY. Well, thank you, Chairman Simpson and members of the committee, and with me this morning is Karen Mouritsen, our budget officer from the Bureau of Land Management, and we both appreciate the opportunity to appear before you to talk about the President's fiscal year 2012 budget request for the Bureau of Land Management.

As many of you know from the Western United States, the BLM manages more than 245 million acres of public lands, and approximately 700 million acres of subsurface mineral estate nationwide. We believe the funding requested is a sound investment for America. Management of public land resources and protection of public land values results in extraordinary economic benefits to local communities and to this Nation. The BLM's management of public lands contributes more than $100 billion annually to the national economy and supports more than 500,000 American jobs. Revenues generated from public lands make the BLM one of the top revenue-generating federal agencies positively affecting the U.S. Treasury and directly benefiting the U.S. taxpayer. For example, if our budget request was fully funded, for every dollar that the United States Congress invests in the Bureau of Land Management, we anticipate bringing back $5 in fiscal year 2012.

The BLM's fiscal year budget request is $1.1 billion, a decrease of $12 million from the 2010 enacted level. The proposed budget for the BLM makes strategic investments in support of important Administration and Secretarial initiatives including America's Great Outdoors, the New Energy Frontier, Cooperative Landscape Conservation, and Youth in America's Great Outdoors. Investment in these programs today will reap benefits for years to come.

To enhance the conservation of BLM-managed lands and reconnect Americans to the outdoors, the budget calls for a $29.9 million increase in support of the America's Great Outdoors initiative. This includes $15 million for the BLM's 27-million-acre National Landscape Conservation System, which includes special areas such as wild and scenic rivers, wilderness, national monuments and national conservation areas. The budget also includes $8.6 million to support programs and partnerships that engage youth in the outdoors.

The New Energy Frontier initiative recognizes the value of the environmentally sound, scientifically grounded development of both renewable and conventional energy resources on public land. President Obama and Secretary Salazar have stressed the critical importance of renewable energy to the future of the United States. Developing renewable energy creates jobs and promotes innovation in the United States while reducing the country's reliance on fossil fuels. To encourage development on public lands, the BLM proposes a $3 million increase for renewable energy environmental studies.

In the conventional energy arena, the BLM expects its onshore mineral leasing activities to contribute $4.3 billion to the Treasury in fiscal year 2012. We will focus on implementing our oil and gas program reforms that have placed a continued emphasis on oil and gas inspections, environmental enforcement and production verification. The budget proposes an increase of $13 million for processing oil and gas applications for permits to drill. Also, the budget proposes to shift a share of the cost of oil and gas inspection activities from discretionary appropriations to industry fees for a savings of $38 million. A fee for non-producing leases and an increase in the onshore oil and gas royalty rates are also included in our budget proposal.

Another BLM priority in our fiscal year 2012 budget request is the Secretary's Cooperative Landscape Conservation initiative, which calls for bringing better science to the management of BLM-managed lands and includes a $2.5 million increase. Also, putting the BLM's wild horse and burro program on a sustainable track while ensuring humane treatment is a top priority, and I look forward to discussing that particular program with you. The BLM budget proposes $75 million for this program in fiscal year 2012 and places much greater emphasis on fertility control. Finally, the BLM's budget for fiscal year 2012 assumes legislative proposals to reform hardrock mining on both public and private lands.

Our budget request provides funding for the agency's highest-priority initiatives, maximizes public benefits and reflects difficult choices for reductions.

Mr. Chairman, as always, we appreciate the opportunity to appear before your committee to talk about the public lands and the programs that we manage on behalf of the American public.

[The statement of Robert Abbey follows:]

Statement of
Robert V. Abbey, Director
Bureau of Land Management
U.S. Department of the Interior

Before the
House Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies

Hearing on the FY 2012 Budget Request
Of the Bureau of Land Management

March 10, 2011

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear here today to discuss the President's Fiscal Year (FY) 2012 budget request for the Bureau of Land Management (BLM).

The BLM, an agency of the U.S. Department of the Interior (DOI), is responsible for protecting the resources and managing the uses of our Nation's public lands, which are located primarily in 12 western States, including Alaska. The BLM administers more land – over 245 million surface acres – than any other Federal agency. The BLM also manages approximately 700 million acres of onshore subsurface mineral estate throughout the Nation. The BLM's unique multiple-use management of the public lands is accomplished by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources.

Meeting Our Nation's Needs

The BLM is a sound investment for America. Management of public land resources and protection of public land values results in extraordinary economic benefits to local communities and to the Nation. The BLM's management of public lands contributes more than $100 billion annually to the national economy and supports more than 500,000 American jobs. Revenues generated from the public lands make the BLM one of the top revenue-generating Federal agencies, positively affecting the U.S. Treasury, and directly benefiting the U.S. taxpayer.

A key component of these economic benefits is the BLM's contribution to America's energy portfolio. The BLM expects its onshore mineral leasing activities to contribute $4.3 billion to the Treasury in Fiscal Year 2012. The BLM currently manages more than 41 million acres of oil and gas leases, although less than 30 percent of that acreage is currently in production. More than 114 million barrels of oil were produced from BLM-managed mineral estate in Fiscal Year 2010 (the most since Fiscal Year 1997), and the almost 3 billion MCF (thousand cubic feet) of natural gas produced made 2010 the second-most productive year of natural gas production on record. The coal produced from nearly a half million acres of federal leases powers more than one-fifth of all electricity generated in the United States.

The BLM is also leading the Nation toward the new energy frontier with active solar, wind, and geothermal energy programs. The BLM has proposed 24 Solar Energy Zones within 22 million

acres of public lands identified for potential solar development, and in 2010 approved nine large-scale solar energy projects. These projects will generate more than 3,600 megawatts of electricity, enough to power close to 1 million homes, and could create thousands of construction and operations jobs. Development of wind power is also a key part of our Nation's energy strategy for the future. The BLM manages 20 million acres of public lands with wind potential; currently, there are 437 MW of installed wind power capacity on the public lands. Geothermal energy development on the public lands, meanwhile, accounts for nearly half of U.S. geothermal energy capacity.

Energy production is not the only way in which the BLM contributes to local communities and the national economy. The combined economic impacts of timber-related activities on BLM-managed lands, grazing-related activities, and activity attributable to non-energy mineral production from BLM-managed mineral estate total more than $5 billion each year. Recreation on public lands also provides major economic benefits to local economies and communities. In 2010, more than 58 million recreational visits took place on BLM-managed lands and waters, contributing billions of dollars to the U.S. economy. The diverse recreational opportunities on BLM-managed lands draw crowds of backpackers, hunters, off-road vehicle enthusiasts, mountain bikers, anglers, and photographers. In an increasingly urbanized West, these recreational opportunities are vital to the quality of life enjoyed by residents of western states, as well as national and international visitors.

FY 2012 Budget Overview

The BLM's FY 2012 budget proposal reflects the Administration's effort to maximize public benefits while recognizing the reality of the current fiscal situation and the need to reduce the Nation's budget deficit. The proposed budget for the BLM makes strategic investments in support of important Administration and Secretarial Initiatives – including America's Great Outdoors, the New Energy Frontier, Cooperative Landscape Conservation, and Youth in the Great Outdoors. Investments in these programs today will reap benefits for years to come.

The BLM's total FY 2012 budget request is $1.13 billion in current authority, one percent and $12.0 million below the 2010 enacted/2011 continuing resolution level. The budget proposes $933.8 million for the Management of Lands and Resources Appropriation and $112.0 million for the Oregon and California Grant Lands Appropriation, the BLM's two main operating accounts. This represents a net decrease of $25.3 million for these two accounts from the FY 2010 enacted/2011 CR level. While making strategic program increases of $93.3 million for high-priority initiatives, the budget offsets funding increases for these priorities by implementing $25.5 million in information technology and administrative and management savings; shifting $42.4 million in energy and minerals inspection costs to industry; and reducing funding for lower priority programs. The budget also includes several important legislative proposals, including proposals to change the management of hardrock mining, collect fees to be used to remediate abandoned mines, charge a fee on new nonproducing oil and gas leases to encourage diligent development, extend expiring grazing permits, and reauthorize the Federal Land Transaction Facilitation Act and Service First authorities.

It also should be noted that engaging with partner organizations and volunteers in the management of the public lands has been and will continue to be crucial to the BLM's ability to

fulfill our diverse mission and many responsibilities. Partnerships and volunteers are even more critical in lean budget times, such as those we are in now. Through partnerships with organizations and local communities, and through the generosity of volunteers, we effectively leverage our resources, and expand our ability to meet our public land management goals. Partnerships also help to foster a sense of stewardship and community for the people most closely connected to those lands.

America's Great Outdoors

In the rapidly urbanizing west, the BLM public lands are the backyard for over 40 million Americans living in more than 4,000 nearby cities and communities. Over 100 million acres of BLM-managed public lands are within a day's drive of 16 major urban areas. As steward of many of America's spectacular landscapes and some of its rich cultural and natural heritage, and given the proximity of the public lands to these population centers, the BLM is in a unique position to contribute significantly in advancing the President's initiative to reconnect Americans and our youth to the outdoors. The AGO initiative promotes the BLM's multiple-use mission by expanding opportunities for recreation activities – including hunting, fishing, and off-road vehicle use – while enhancing the conservation and protection of BLM-managed lands and resources. All of these activities have a place at the multiple-use table and strengthen the BLM's connection to western communities and to visitors to the public lands.

The BLM's FY 2012 budget request includes $29.9 million in programmatic increases for the AGO Initiative in the operating accounts. Of this amount, $15.0 million will be used by the National Landscape Conservation System (NLCS); $7.0 million will be used in the Recreation Management program; and $7.9 million will be used in the Cultural Resource Management program. The land acquisition account includes a $20.4 million increase for priority land acquisition. Many of these land acquisition projects will provide access to popular recreation areas, and others will preserve natural resources and landscapes and protect irreplaceable cultural and historic sites.

National Landscape Conservation System – The BLM's National Landscape Conservation System totals more than 27 million acres of public land that are designated by Acts of Congress or Presidential proclamations. These areas are managed to conserve, protect, and restore their conservation values, while allowing for appropriate multiple uses. NLCS units include National Monuments and National Conservation Areas, Wilderness Areas, Wilderness Study Areas, Wild & Scenic Rivers, and National Scenic & Historic Trails. The NLCS areas are very diverse, from red-rock deserts to rugged ocean coastlines, from deep river canyons to broad Alaskan tundra. Many areas are remote and wild while others are surprisingly accessible.

The NLCS supports local communities and economies in a variety of ways. Approximately one-third of recreation use of BLM lands occurs within units of the NLCS. These NLCS units include over 2,700 recreation sites and 22 visitor centers, serving 13 million annual visitors. Just outside of Las Vegas, Nevada, the extremely popular Red Rock Canyon National Conservation Area is visited by over 1 million people each year. These visitors generate over $1.7 million in recreation fees, all of which are re-invested at the local site, and have an additional positive impact on the surrounding tourist economy. Rather than building extensive facilities within the NLCS, the BLM supports the creation of recreation facilities in nearby local communities. In

New Mexico, for example, the BLM is working with the Las Cruces Museum of Nature and Science to locate a small visitor center within the city museum. The visitor center will provide educational opportunities about BLM-managed resources at the nearby Prehistoric Trackways National Monument, while tourism supports the local economy. In addition to recreation, the NLCS supports scientists making new discoveries, protection of critical habitat for threatened and endangered species, and protection of nationally significant cultural resources.

The proposed budget's $15.0 million increase for the NLCS provides $9.2 million for the National Monuments and National Conservation Areas program. Major priorities for the increased funding include expanding law enforcement capabilities to protect visitors and the natural resources; developing interpretive and environmental education products and programs to enhance visitors' understanding and appreciation of the resource values; and enabling scientific research that will enhance the Bureau's understanding of significant natural and cultural resources and facilitate better informed management strategies. The proposed budget includes increases of $2.0 million for the National Scenic & Historic Trails program, $2.0 million for the Wild & Scenic Rivers program, and $1.8 million for the Wilderness Management program.

Recreation Management – BLM-managed lands provide a broad range of recreation opportunities such as hunting, camping, fishing, hiking, boating, horseback riding and shooting sports, and can accommodate many motorized activities, extreme sports, and special events. Western communities consider these activities an essential component to their economies and their quality of life. The BLM manages more than 600 Special Recreation Management Areas, along with over 3,500 primitive and developed recreation sites, campgrounds, day-use areas and other facilities, and 40 major visitor centers and visitor contact stations. Over 95 percent of BLM-managed lands and recreational areas are free to the public. The BLM also manages 15,000 miles of recreation use trails and another 98,000 miles of Back Country-Scenic Byways and public access roads and routes, and oversees 3,400 commercial and competitive use permits and concessions, supporting thousands of businesses and communities across the West.

The proposed $7.0 million Non-NLCS budget increase for BLM recreation management will be used to improve visitor health and safety by improving operations at high-demand and urban growth-impacted recreation areas, address off-highway vehicle management, and support various other initiatives such as stewardship education and youth programs, the Visual Resource Management program, and visitor use monitoring efforts. Funds will also be used to expand partnerships that leverage resources and promote volunteerism, such as outdoor programs for disabled children and for wounded warriors (veterans).

Cultural Resource Management – The budget's proposed increase of $7.9 million for the BLM's cultural resource management program (Non-NLCS) will be used to implement conservation strategies and partnerships to manage nationally significant cultural and paleontological resources. The BLM will use $3.2 million of the increase for enhancing conservation and management actions to inventory, stabilize, monitor, and study cultural resources; facilitating partnerships that support community resource stewardship; and digitizing the inventory so that compliance reviews can be streamlined at a significant cost-savings. The BLM will use an additional $2.0 million of the increase to enhance partnerships with state, local, and tribal governments, and with non-profit museums and universities that curate artifacts and

specimens from the public lands. The remaining $2.6 million will be used for enhancing other cultural resource management activities.

Land Acquisition – Input from the America's Great Outdoors nationwide public listening sessions indicated that full funding of the Land and Water Conservation Fund (LWCF) program is a high priority. BLM's total budget request for the LWCF land acquisition program is $50.0 million, an increase of $20.4 million over the FY 2010 enacted/ 2011 CR funding level. The increase helps BLM contribute to the Administration's goal of fully funding the Land and Water Conservation Fund at $900 million in 2012. The Budget funds 19 acquisition projects in eight states that will, at a landscape or ecosystem level, provide access to public lands; improve river and riparian conservation and restoration; conserve or protect wildlife habitat; preserve open spaces; provide for historic and cultural preservation; and create opportunities for public recreation. The BLM works with other federal agencies and multiple state, tribal, and local governments and non-governmental partners in determining the most critical lands to propose for purchase.

New Energy Frontier

The New Energy Frontier initiative recognizes the value of environmentally-sound, scientifically-grounded development of both renewable and conventional energy resources on the Nation's public lands. The proposed FY 2012 budget for the BLM follows this approach and includes priority funding for both renewable and conventional energy development on the public lands.

Renewable Energy – President Obama, Secretary Salazar, and the Congress have stressed the critical importance of renewable energy to the future of the United States. Developing renewable energy resources is central to the Nation's efforts to reduce greenhouse gas emissions, mitigate climate change, and protect the global environment. Renewable energy is also vital to our economic development and energy security. Developing renewable energy will create jobs and promote innovation in the United States while reducing the country's reliance on fossil fuels.

The BLM made significant strides in promoting renewable energy development on the public lands in 2010, including the approval of nine large-scale solar energy projects, and release of a draft Solar Programmatic EIS to provide for landscape-scale siting of solar energy projects on the public lands. The agency also is reviewing over 45 wind energy applications, and continues to work on wind development mitigation strategies with wind energy applicants and other Federal agencies. BLM-managed lands also serve as important corridors for the transmission infrastructure needed to deliver renewable energy to the American people. To encourage and facilitate renewable energy development, the President's FY 2012 budget for the BLM proposes a $3.0 million increase over the FY 2010 enacted/2011 CR level. The increase will be used to conduct site specific studies of potential solar energy sites in Nevada, and regional studies of potential wind energy zones in Nevada and Oregon.

Conventional Energy – Secretary Salazar has emphasized that conventional energy resources on BLM-managed lands play a critical role in meeting the Nation's energy needs. In 2010, conventional energy development from public lands produced 45 percent of the Nation's coal, 14.1 percent of the natural gas, and 5.7 percent of the domestically-produced oil. The

Department's balanced approach to responsible conventional energy development combines onshore oil and gas policy reforms with effective budgeting to provide appropriate planning and support for conventional energy development, which has been the target of increased appeals and protests.

The BLM is committed to ensuring oil and gas production is carried out in a responsible manner. To accomplish this, the BLM performs various types of inspections to ensure that lessees meet environmental, safety, and production reporting requirements. The BLM has begun a pilot program using a risk-based inspection protocol for production inspections, inspecting first those leases with high levels of oil or gas production. The BLM plans to expand this risk-based strategy to the other types of inspections it performs. The risk-based strategy will help the BLM maximize the use of a limited inspection staff to better meet the inspection goals and requirements in the future.

The FY 2012 budget request essentially maintains the BLM oil and gas program capacity at the FY 2010 enacted/2011 CR level. An increase of $13.0 million is proposed to offset a projected decline in fee collections for processing applications for permit to drill (APD) oil and gas on the public lands; a reduction of $3.0 million is proposed to reflect the completion of an energy study required by the Energy Policy and Conservation Act of 2000. The budget also includes an increase of $2.0 million to improve air quality monitoring associated with intensive oil and gas development. This funding will help the BLM ensure that energy development complies with NEPA and Clean Air Act requirements and will aid the BLM in minimizing or addressing potential litigation issues.

The Administration believes that American taxpayers should get a fair return on the development of energy resources on their public lands. A 2008 Government Accountability Office (GAO) report suggests that taxpayers could be getting a better return from Federal oil and gas resources in some areas. Subsequent GAO reports have reiterated this conclusion. The BLM and the Bureau of Ocean Energy Management, Regulation, and Enforcement are cooperating to conduct an international study of oil and gas revenues under different management regimes. The study should be completed and published later this year. To this end, the Administration proposes to implement the following reforms:

- In 2012 the BLM will begin to charge a fee to recover inspection costs for the oil and gas program, allowing a savings of $38.0 million in requested funding. The fee would defray Federal costs and ensure continued diligent oversight of oil and gas production on Federal lands. Fee levels would be based on the number of oil and gas wells per lease so that costs are shared equitably across the industry.
- To encourage diligent development of new oil and gas leases, the Administration is proposing a per-acre fee on each nonproducing lease issued after enactment of the proposal. The $4 per acre fee on new non-producing Federal leases would provide a financial incentive for oil and gas companies to either put their leases into production or relinquish them so that tracts can be re-leased and developed by new parties.
- The BLM will propose a rulemaking in 2011 to increase the onshore oil and gas royalty rate from its current 12.5 percent level. The BLM expects that the royalty rate increase will increase oil and gas revenues by more than $900 million over 10 years.

Cooperative Landscape Conservation / Sage-Grouse Habitat Management
The Secretary's Cooperative Landscape Conservation Initiative recognizes the need to understand the condition of BLM-managed landscapes on a broad level. The BLM is coordinating its efforts with other DOI bureaus and other partners through a network of Landscape Conservation Cooperatives (LCCs). The FY 2012 BLM budget request includes an increase of $2.5 million to support the work of BLM resource managers through the LCCs. Funding will enable managers to conduct eco-regional assessments to provide a better understanding of adverse impacts to the health of BLM lands and the larger western landscapes of which they are a part, and to implement various land health treatments to help combat the effects of these impacts.

Although not part of the Initiative, the budget includes a related increase of $2.0 million to enhance monitoring and assessment of habitat of the greater sage-grouse and the Gunnison sage-grouse, allowing the BLM to continue on-going efforts to conserve and protect important habitat. The BLM – which manages more habitat for the greater sage-grouse than any other government agency – has been working proactively on this issue on a number of fronts, including issuing guidance to its field offices that calls for expanding the use of new science and mapping technologies to improve land-use planning. With the increase, the BLM will implement broad-scale sage-grouse habitat monitoring activities to ascertain the effectiveness of habitat management and the effect of land use authorizations. This new broad-scale monitoring effort will fill critical data and information gaps necessary for sage-grouse habitat protection and restoration. Conservation efforts implemented on BLM-managed land will be of limited benefit if conservation practices are not monitored and applied uniformly across jurisdictional boundaries. Therefore, BLM has partnered with the U.S. Fish and Wildlife Service, the Natural Resource Conservation Service, the Agricultural Research Service and State fish and wildlife agencies in this effort, which will allow the BLM to determine where it should focus its sage-grouse habitat conservation efforts.

Youth in Natural Resources Initiative
Secretary Salazar has pledged through his Youth in Natural Resources initiative to create the next generation of conservation leaders using youth education, engagement, and employment programs. Many of today's youth have fewer opportunities than in previous generations to experience the outdoors, and the BLM is working to foster personal connections between young people and our Nation's public lands and resources. In order to promote stewardship and encourage the pursuit of careers in natural resources, the BLM employs young people through various programs to conduct natural resources work such as inventorying and monitoring, trails construction, and habitat restoration.

In 2010, the BLM received $7.6 million to support programs and partnerships that engage youth in natural resource management; encourage young people and their families to visit, explore, and learn about the public lands; and promote stewardship, conservation, and public service. The Budget proposes to increase support for the Youth initiative by $1.0 million through redirecting $1.0 million in base funding provided to the National Fish and Wildlife Foundation to support a competitive grant program to develop new or expand existing youth job programs. In FY 2012 the BLM will continue to fund youth programs and partnerships and contribute to the Department's goal to increase by more than 50 percent (from 2009 levels) the employment of

youth between the ages of 15-25 in the conservation mission of the Department by the end of 2012.

Other Priority Increases

Wild Horse & Burro Program – Putting the BLM's wild horse and burro program on a sustainable track is one of Secretary Salazar's and my top priorities. To achieve that end, the FY 2012 budget includes a proposed increase of $12.0 million over the 2010 enacted level for efforts to enhance herd fertility control. The BLM is also contracting for a study by the National Academy of Sciences (NAS) to review previous wild horse management studies and make recommendations on how the BLM should proceed in light of the latest scientific research. The NAS expects to complete its review in early 2013. In the meantime, the BLM intends to reduce the annual number of wild horses gathered and removed from the range from 10,000 to 7,600 horses (a 24 percent reduction); continue to pursue public-private partnerships to hold excess horses gathered from Western public rangelands; and increase significantly the number of mares treated with fertility control, from 500 in 2009 to a target of 2,000. Congress has asked the BLM to find ways to manage these symbols of the West in a cost-effective, humane manner, and we are committed to do that.

Secretary's Western Oregon Strategy – The FY 2012 budget proposes an increase of $3.0 million in the O&C account to help the BLM meet multiple concurrent objectives related to Western Oregon forestry management: increase the volume of timber offered for sale; support key resource management planning objectives; increase surveying for rare, uncommon, or endangered species; provide for landscape-level timber sale project environmental analysis; and facilitate joint implementation of a revised recovery plan for the northern spotted owl.

Abandoned Mines & Hardrock Mining Reform Proposals

The Budget proposes legislation to address abandoned mine land (AML) hazards on both public and private lands and to provide a fair return to the taxpayer from hardrock production on Federal lands. The first component of this proposal addresses abandoned hardrock mines across the country through a new AML fee on hardrock production. Just as the coal industry is held responsible for abandoned coal sites, the Administration proposes to hold the hardrock mining industry responsible for abandoned hardrock mines. The proposal will levy an AML fee on all uranium and metallic mines on both public and private lands that will be charged on the volume of material displaced after January 1, 2012. The fee will be collected by the Office of Surface Mining, while the receipts will be distributed by BLM. Using an advisory council comprised of representatives of Federal agencies, States, Tribes, and non-government organizations, the BLM will create a competitive grant program to restore the Nation's most hazardous hardrock AML sites on both public and private land each year. The advisory council will recommend objective criteria to rank AML projects to allocate funds for remediation to the sites with the most urgent environmental and safety hazards. The proposed hardrock AML fee and reclamation program would operate in parallel to the coal AML reclamation program, as two parts of a larger proposal to ensure that the Nation's most dangerous coal and hardrock AML sites are addressed by the industries that created the problems. The 2012 BLM budget request also includes an increase of $4.0 million in regular discretionary appropriations to address high priority AML sites, such as the Red Devil mine in Alaska.

The second piece of the legislative proposal would institute a leasing process under the Mineral Leasing Act of 1920 for certain minerals (gold, silver, lead, zinc, copper, uranium, and molybdenum) currently covered by the General Mining Law of 1872. After enactment, mining for these metals on Federal lands would be governed by a new leasing process and subject to annual rental payments and a royalty of not less than five percent of gross proceeds. Half of the receipts would be distributed to the States in which the leases are located and the remaining half would be deposited in the Treasury. Pre-existing mining claims would be exempt from the change to a leasing system, but would be subject to increases in the annual maintenance fees under the General Mining Law of 1872. However, holders of pre-existing mining claims for these minerals could voluntarily convert their claims to leases. The Office of Natural Resources Revenue in the Department of the Interior will collect, account for, and disburse the hardrock royalty receipts.

Reductions & Efficiencies

The BLM's Fiscal Year 2012 budget proposal reflects many difficult choices to produce a cost-conscious budget, while supporting priority initiatives and maximizing public benefits. Among the reductions in the proposed budget are the following:

- Alaska Land Conveyance Program: reduction of $17.0 million as part of an effort to reevaluate and streamline the conveyance process. Most of the original 150 million acres are already under interim or final conveyance and the BLM will explore opportunities to further streamline the program to focus resources on completing the final transfers.
- Resource Management Planning Program: reduction of $8.2 million for lower priority resource management planning activities. In 2012, the BLM will focus on completing ongoing planning efforts and continue developing strategies to improve the efficiency of its planning process.
- Management of Lands and Resources Appropriation: further reductions totaling $3.3 million in base funding of several programs.
- Information Technology: $3.5 million reduction.
- Construction Program: reduction of $5.0 million in project funding.
- A reduction of $600,000 reflects the discontinuation of funding for two one-time congressional earmarks.

The budget request also includes reductions that reflect the Accountable Government Initiative to curb non-essential administrative spending in support of the President's commitment to fiscal discipline and spending restraint. In accordance with this initiative, the BLM's budget includes a total savings of $22.0 million, including $11.5 million in savings in 2012 against actual 2010 expenditures in the following activities: $5.5 million for travel; $3.2 million for advisory and assistance services; and $2.8 million for supplies and materials. These 2012 reductions build upon management efficiency efforts proposed in 2011 totaling $9.1 million in travel and relocation, information technology, and strategic sourcing; and bureau-specific efficiencies totaling $1.5 million.

Conclusion

The BLM's Fiscal Year 2012 budget request provides funding for the agency's highest priority initiatives, while making difficult but responsible choices for reductions to offset some of these funding priorities. Mr. Chairman, thank you for the opportunity to testify on the BLM budget request for Fiscal Year 2012. I will be pleased to answer any questions you may have.

BLM Director Robert Abbey Biographical Information

Robert Abbey, nominated by President Barack Obama to serve as the Director of the Bureau of Land Management, was confirmed by the U.S. Senate August 10, 2009.

As BLM Director, Abbey provides direction and oversight for more than 245 million acres of public land and 700 million acres of on-shore subsurface mineral estate managed by the agency. In addition, BLM has trust responsibilities on 56 million acres of Indian trust lands for mineral operations and cadastral surveys. These public lands cover about 13 percent of the total land surface of the United States and more than 40 percent of all land managed by the Federal government, making BLM the Nation's largest public land manager. He oversees 11,000 employees and manages an annual operating budget of more than $1 billion. Since becoming Director, Abbey has worked closely with other Federal, tribal, state and local governmental entities in pursuit of common goals related to the management of our Nation's natural and cultural resources.

Prior to his appointment, Abbey was a partner in Abbey, Stubbs, & Ford, LLC, a private consulting firm with offices in Las Vegas and Reno, Nevada. Abbey also served for more than 32 years in public service working with state and Federal land management agencies. He earned numerous performance awards during his career, including the prestigious Secretary of the Interior's Executive Leadership Award in 2004. After devastating wildfires burned more than 1.7 million acres in the Great Basin in 1999, Abbey served as the principal Federal agency proponent for the Great Basin Restoration Initiative, aimed at improving the long-term ecological diversity and stability of the region's ecosystems. For his work, he was recognized in 2004 by the U.S. Senate with a certification of commendation for his work on behalf of the Great Basin.

Abbey began his natural resource career with the Mississippi State Park Commission. He has served in a number of Federal positions with the U.S. Army Corps of Engineers and the BLM, including eight years as the BLM's Nevada State Director. Abbey, a native of Clarksdale, Mississippi, is a graduate of the University of Southern Mississippi where he earned a Bachelor of Science degree. He and his wife Linda have been married for 33 years and have one daughter, Leigh.

Karen Mouritsen
Budget Officer
Bureau of Land Management

Biographical Information

Karen Mouritsen is the Budget Officer for the Bureau of Land Management. Karen has worked for the BLM for eight years in the Office of Budget and the Office of Legislative Affairs. Prior to that, Karen worked for the Office of the Solicitor, U.S. Department of the Interior, on endangered species, land planning, forestry and other natural resource issues, and appropriations and administrative law issues. Karen has a J.D. and a B.S. in mechanical engineering from the University of Texas in Austin.

Mr. SIMPSON. Thank you. Because other members have some committees, I am going to pass right now and allow Mr. Flake to take my time.

SHIFTING INSPECTION COSTS

Mr. FLAKE. Thank you, and thank you for the testimony.

I have a question with regard to shifting some of the energy and mineral inspection costs. You say you have a reduction in budget by 1 percent but you have an increase in spending on select programs by $93.3 million, and that is achieved by shifting $42.4 million in inspection costs to the industry. Can you just explain a little more about where those shifts are and how they are picking up the slack there?

Mr. ABBEY. Thank you for the question, Congressman Flake. We had to make some difficult decisions relative to how we could reduce costs. One of the decisions that we did make as part of our budget request was to shift the inspection and enforcement expenditures to the industry that we were inspecting. In the case of the oil and gas industry, that reflects almost $38 million of inspection and enforcement (I&E) costs from the appropriations to the industry. We also are seeking I&E fees from the coal industry for the inspection and enforcement that we do on coal mines.

RENEWABLE ENERGY

Mr. FLAKE. With solar power, Arizona is moving ahead with siting a lot of facilities on some BLM-managed land or seeking to. I am not a fan of some of the subsidies provided here, but we do not want unnecessary delays with regard to BLM. You say that you have a streamlined procedure now. Can you tell a little more about that? There are some complaints that the process is too long and putting it on BLM-managed land is far more troublesome than elsewhere.

Mr. ABBEY. Well, again, last year we used the term "fast track", and as a result of that, I think there was a misunderstanding of exactly what "fast track" meant. That is not to shortcut the analysis process. You know, we were fortunate to move forward last year to approve the first commercial-scale solar project on public lands ever. At the end of calendar year 2010, we had approved nine commercial scale solar projects that will be built on public lands. As we go forward, we are selecting the applications that are before us. We have over 100 applications for solar projects on public lands. We have screened those applications to determine which ones we believe would have the least impact on sensitive resources that we manage on these public lands so that we could move forward more expeditiously to review and analyze the project proposals to make a determination of which of those projects should be approved to be built on these lands.

Mr. FLAKE. Thank you, and the name is Flake.

Mr. ABBEY. I am sorry, Congressman.

Mr. FLAKE. No, I realize nobody wants to call you a flake unless they are really sure that is the case.

Mr. SIMPSON. But you give us so much flack.

Mr. MORAN. I was going to say, if you give the witnesses a little less flack, maybe they would not confuse the pronunciation.

Mr. FLAKE. Thank you, Mr. Chairman.
Mr. SIMPSON. Mr. Moran.
Mr. MORAN. Thank you, Mr. Chairman.

IMPACT OF H.R. 1

Besides the oil, gas and grazing responsibility, you have tremendous visitation and recreational activities that are a mainstay of local economies, particularly in rural areas, especially in the West. Given the substantial operational funding cuts that are in H.R. 1, the ongoing Continuing Resolution, can you give us a sense of how this might affect the hundreds of gateway communities all over the country that depend on tourism, hunting, fishing on public lands? Is there going to be any impact on rural jobs and in local jurisdictions' ability to collect the revenue that they have become used to?

Mr. ABBEY. Well, that is an excellent question, Congressman Moran, and the impact as I determined from my review of the proposal would reflect primarily in construction projects and land acquisition projects. It would also reduce substantially the monies that we had anticipated for climate change projects including some of the ecoregional assessments that are underway today. Without that funding, we would have to shortcut that analysis and not do any more work relative to those ecoregional assessments which we believe provide us some valuable data that would allow us to move forward and do the appropriate analysis for some of the renewable projects and even conventional energy projects that are before us. So those would be where the primary impacts would occur.

But you did raise the fact of the amount of recreational use that is taking place on these public lands, and we had 59 million visitors to public lands last year. That is fairly significant to those local communities that are adjacent to these public lands where people are visiting. We provide tremendous opportunities, not only for such activities as hiking and horseback riding and bird watching but also for hunting and fishing, which are very important to the constituencies in the West and to those who live throughout the United States who go out West to do that activity.

WILD HORSE AND BURRO MANAGEMENT

Mr. MORAN. Thank you. Mr. Abbey, we have already mentioned how difficult the wild horse issue is, and I appreciate your effort to make changes. I know that BLM has announced a new approach, but with more than 40,000 horses in long-term holding facilities at a cost of $37 million a year and growing, we cannot afford to wait much longer to make some fundamental changes, it would seem. The Federal Government's management of wild horses and burros should be based upon sound science, transparency and I would hope the input of all stakeholders. Can you briefly elaborate on what specific steps the BLM will be undertaking to achieve increased transparency and openness in this program?

Mr. ABBEY. I would be happy to. You know, first and foremost, I believe the status quo is unacceptable as it relates to our wild horse and burro management. If we are to have any chance of reducing the expenditures related to this particular program, we are going to have to learn to do a better job of managing horses on the range versus rounding them up on an annual basis, gathering them

and then shipping them to holding facilities for the rest of their lives. That is a great deal of the expense. It is a high percentage of our total cost of managing wild horses, going as far as holding and feeding horses for up to 30 years in some cases.

So the changes that we are pursuing in concert with the public and many of the stakeholders that have provided input to our program is that we are moving toward a program to achieve greater fertility control of wild horses that are remaining on the public lands. To that end, our proposed action would increase the fertility control of mares on the public lands from approximately 800 this year to 2,000 next year. We believe fertility control is the primary tool that we should be using to control populations. In the meantime, we do have challenges that we face in that particular program. It is one of the more controversial programs that we manage in the Bureau of Land Management, and that is saying a lot given the controversial nature of our programs. There is a lot of passion, there is a lot of emotion attached to those wild horses, and rightly so. They are icons of our Nation's heritage.

So again, we have contracted with the National Academy of Sciences. They are conducting a two-year study to report back to us in 2013 with their findings to help us better understand how we could better use science to help manage wild horses and burros on the range, how we can better control populations on the range so that in the future we have less need to actually remove horses from the range and to hold them in these long-term holding facilities.

Mr. MORAN. With regard to transparency, can the public observe roundups where they are done by BLM or contractors from a reasonable range?

Mr. ABBEY. Well, we certainly hope so. We certainly make that opportunity available to the people who wish to come and observe our gathers. We have had some criticism in some of our gathers relative to the locations of those public viewing areas. We have taken that criticism to heart. We are continuing to work with our contractors as well as our own personnel to make sure that we provide ample opportunity and appropriate opportunities for the public who wish to observe, to have a platform where they can actually observe all the actions that are taking place.

We do need to take into account, as we always do, the safety, not only to the visitors who are out there observing the gather themselves but also safety to our contractors and our own employees.

Mr. MORAN. When I was chairing the subcommittee last year, we included in the bill additional contracting authority to give the BLM the opportunity if you chose to enter into 10-year agreements with those nonprofits and others to care for wild horses. Do you think it would be useful to the BLM to have additional options for the care of horses that have had to be removed from the range?

Mr. ABBEY. Congressman Moran, we would welcome that opportunity. You know, we will be soliciting proposals within the next two weeks from individuals who have an interest in working with us on proposing options for holding wild horses on private lands and also potentially in partnership to hold horses on private lands and working with us to hold horses on public lands, again, as part of our new strategy of trying to devote our financial resources to managing horses on the range rather than expending all the mon-

ies that we are spending today on gathering and removing and then holding horses.

OIL AND GAS ROYALTY RATE REFORM AND DISCLOSURE OF FRACKING CHEMICALS

Mr. MORAN. Mr. Chairman, I have one further question on royalties if I could. This current budget assumes that Interior will administratively implement oil and gas royalty rate reforms including adjustments to the standard onshore royalty rate. At our hearing last week, and I noticed she has joined us now so I thought I would bring this up, our distinguished new member from Wyoming pointed out that the state receives a higher royalty on its lands than the BLM charges and that the state requires disclosure of fracking chemical composition, even though the BLM does not. Is there any reason the BLM——

Mrs. LUMMIS. Excuse me. Even in my state——

Mr. MORAN. I will yield to the gentlelady.

Mrs. LUMMIS. And I apologize for interrupting.

Mr. MORAN. No, it is fine.

Mrs. LUMMIS. Drilling on BLM lands in Wyoming, they have to report to the Wyoming Oil and Gas Conservation Commission just like on private lands, so whether it is state, private or BLM lands, if a well is drilled in Wyoming and they are going to frack it, they have to disclose the contents of the fracking fluids to the Wyoming Oil and Gas Conservation Commission.

Mr. MORAN. No, I understand that, and that is consistent with what I think I was saying.

Mrs. LUMMIS. Excuse me. I yield back. I apologize.

Mr. MORAN. No, that is fine. I am glad you clarified because that is exactly the point I wanted to make.

But I want to ask Mr. Abbey, is there any reason why the BLM cannot raise its royalty rates to at least, for example, match those of the state? Would there not be a considerable benefit to the American taxpayer and to the states since they get half of those royalties?

Mr. ABBEY. We firmly believe that the American public deserves a fair return to the national Treasury from any resource that is developed from public assets. To that end, we are currently analyzing the rates that we have assessed over a number of years. I mean, the 12½ percent has been in place for several decades. So we are reviewing that analysis. We have not only looked at what states are charging as far as royalty rates but we have also looked at what other countries are charging, in many cases the same companies, for operating in their countries. We are pursuing or will be pursuing a regulatory change based upon our analysis to reflect a fair return to the American public and that will likely include an increase in royalty rates that we would assign to development of oil and gas resources on public lands.

Mr. MORAN. Very good. Thank you, Mr. Abbey, and thank you, Mr. Chairman.

WILD HORSE AND BURRO MANAGEMENT

Mr. SIMPSON. Thank you.

I will be interested in watching the wild horse and burro program, $75 million proposal, and you said you want to put this on a sustainable path. How much do you think you are going to be spending on this at an annual rate once you have it on a sustainable path?

Mr. ABBEY. Well, over time the monies would come down, but initially the $75 million is going to be needed for at least the next three or four years and primarily because in order to apply fertility control, Mr. Chairman, we still have to gather horses. We still have to hold horses in order to apply the vaccinations before releasing them back to the range. So again, while we would save some funding from our holding costs, that savings would initially go back to rounding up horses and applying the vaccination.

Mr. SIMPSON. As you know, there are private entities that have approached the BLM regarding taking upwards of 10,000 horses onto land that they have leased in Nevada and other places, and as I talk to them they say they have met with resistance from BLM. I am not saying they are right or anything else. Are you looking seriously at these types of proposals that are being offered?

Mr. ABBEY. We are, and again, I think those proposals have merit. Again, it provides us greater flexibility than what we have applied in the past relative to our actions. We have been working very closely with one individual, Ms. Madeline Pickens, on a proposal that she has introduced to us that would use certain lands in the State of Nevada to hold horses. We do not believe that the lands that she has identified could hold 10,000 but nonetheless that is something we will work through.

But there are some issues that we do need to work on with Ms. Pickens and other individuals who have also approached us with similar ideas and similar concepts. We have not received a detailed, specified plan from Ms. Pickens. We have asked for one so that we could do the appropriate analysis to make a determination based upon what that analysis reflects. You know, I admire Ms. Pickens' passion. I admire her willingness to want to work with the Bureau of Land Management to help us find solutions to keeping additional horses on these public lands or on private lands. We are committed to continuing that dialogue and with anyone else who has similar ideas and willingness to work with us to try to find solutions to these challenges.

GRAZING-JARBIDGE PERMITS

Mr. SIMPSON. I have an issue of particular concern to Idaho. As you may know, on February 28, 17 grazing permits managed by the Jarbidge field office were closed indefinitely as a result of a court order by Judge Winmill. In a 2005 settlement with Western watersheds, BLM had agreed to complete a resource management plan and conduct a more robust EIS on the allotments by 2011, allowing the permits to be reissued under an interim grazing management plan. The sunset date of the interim plan coincided with BLM's own deadlines for completing this work' yet the deadlines have passed and there is no plan in place. As a result, ranchers on those grazing allotments have to move thousands of cattle off the range. I am very concerned that the delay in completing the resource management plan is impairing the stability of activity and

transactions that implicate public lands. It is now projected that there will be at least a three-year delay in completing the RMP, which is directly impacting management. I recognize that there are a number of excuses for the delay and that most of them come down to the lack of resources. What are you doing to ensure that field offices like Jarbidge have the resources they need to effectively manage the land in a complex and litigious environment?

Mr. ABBEY. Well, Mr. Chairman, that is the first time I have heard about a three-year delay. I do know that our offices in Idaho have been working diligently to complete that resource management plan for that particular field office. We have completed a draft resource management plan. We have received quite a few comments regarding that proposed plan. There are a lot of complex issues that have been addressed as part of that draft resource management plan including such proposals like major wind farms in that part of the state, but we are moving forward diligently and expeditiously to complete that resource management plan, so again, I have not heard about a three-year delay, so if you have that information, I need to probably follow up with a phone call.

Mr. SIMPSON. Do you have an idea of when it will be completed?

Mr. ABBEY. Well, our hope was to get it completed this fiscal year.

GRAZING-PERMIT BACKLOG

Mr. SIMPSON. Grazing in general—as you know, we have a backlog of grazing permits and BLM has been trying to address that. We put $1 million into the budget two years ago to address that backlog of grazing permits, and it seems like those in Idaho are the most backlogged. Could you tell how much of that $1 million actually went onto the ground to address the backlog and the problems that the backlog is causing and how you plan to address the backlog of grazing permits? As I said in my opening statement, you are going to get sued no matter what you do, but ultimately we have got to get these grazing permits done.

Mr. ABBEY. You are absolutely right, and permit renewals is a high priority for us in our grazing management program. Idaho received from the $700,000 increase in the 2010 Appropriations Act approximately $105,000 based upon a chart that I have here. You know, we not only received an increase due to your being a primary proponent for that increase of $700,000 but we also redirected $300,000 from our base budget toward permit renewals.

The backlog continues to increase, Mr. Chairman, and we are continuing to devote as many resources as possible because, as I mentioned earlier, this is a priority for us. We are making some progress but we are continuing to be dependent upon the general provisions language that you have been successful in including in our appropriations bills for the last several years so that we can move forward, and where there are no changes in the terms and conditions of the permits that will allow us to continue to issue those permits without going through an elaborate and time-consuming environmental assessment or even an EIS.

Mr. SIMPSON. I mean, the backlog continues to grow. How do we address that and try to get it down to—I mean, because the reality is, there are people who want to get all cows off public lands and

they are going to sue no matter what happens. How do we address that in a reasonable way? Instead of just putting money into it, is there something that needs to be done fundamentally in how we do grazing permits?

Mr. ABBEY. Well, again, I do think there are some aspects of our grazing program that we can streamline including transfers of grazing permits from one individual to another individual instead of having to go through an elaborate analysis to approve such transfers. I do think that there could be an administrative remedy but we may need some help from Congress to pursue that.

At the same time, grazing is no different from any of the other programs that we manage. We have to apply our best efforts up front prior to moving forward and making authorizations so that we can defend those actions that we know are going to be scrutinized and likely litigated, and our hope is that, you know, over time that we will continue to have greater successes in the courts in being able to defend our actions.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair.

OFF-ROAD RACING

I am going to shift around here and talk about something that is pretty different. Director Abbey, on August 14, 2010, as you are aware, an accident in off-road racing permitted on BLM at the Johnson Valley vehicle open area resulted in eight spectator deaths and 12 injuries. This is a senseless and I believe a totally needless tragedy. The report on the incident issued last November by BLM makes it obvious that BLM is incapable of monitoring events such as the California 200 event, during which the casualties occurred. The BLM report states that in the California Desert District, there are 51 law enforcement officers responsible for 11 million acres but only 38 law enforcement officer positions were filled. On the night of the race that resulted in the eight fatalities, the incident report states, and I am quoting from your incident report, "The BLM had one law enforcement officer and no special recreation permit compliance staff or any other personnel on duty on the Johnson Valley open area. The law enforcement officer was on established patrol in this sector covering roughly 500,000 acres." And I am going to read from page 3 of your report: "Of the CDD LEOs, 10 are assigned to the Barstow Field Office, where the California 200 event was held. On August 14, 2010, seven of those positions were filled. However, one LEO was on medical leave, one was at basic law enforcement training, one was on vacation, one was temporarily detailed to another BLM office. Of the three available officers, two were originally assigned to work the permitted race but one called in sick." One officer.

So in other words, BLM turns over thousands or tens of thousands of acres of public land, taxpayer-owned land, to a private company—in this case called Mojave Desert Racing—willing to pay a completely insufficient permit price of $95. Not only does this organization make a profit to operate off-road vehicles, but they do it at night and they do it with 2,000 spectators in attendance without any official oversight from BLM on the monitoring, and that is pretty unbelievable.

Now, I have seen the news videos and I am sure you have and other members of the committee have. It shows hundreds of spectators standing a few feet away, literally the width of this table, from vehicles traveling on a dirt road at 50 to 70 miles per hour. Seeing that video, I could almost say certainly that there was no effort whatsoever to put in public safety, and in fact, BLM, executive's summary of the Johnson Valley incident states, and I quote from that, "Public safety is always the BLM's highest priority." The facts of this incident would indicate that to be a false statement. Tragically, the facts appear to indicate gross negligence on the part of MDR in either the inability or disregard on the part of the Bureau of Land Management to ensure public safety.

So my questions for you are based on what I have been reading in the report that has come out. This is a tragedy, and it highlighted the BLM's permitting process and lack of staffing, and by that, you secede your obligation to protect public safety at these events. In light of the fact that the BLM obviously does not have the resources, the personnel or the permitting process to ensure public safety when racing companies seek to use taxpayer-owned land, one of my questions is, how can the BLM guarantee that it will be responsible for ensuring public safety on federal lands and doing event oversight rather than ceding that to event organizers? Why is there not a permitting process in place where event organizers are sufficiently financially responsible to ensure an acceptable level of BLM law enforcement staffing presence to monitor permit compliance and public safety? Should that not be a financial obligation of the event organizers in seeking permits? You addressed some of that in your report, which I will refer to here as I close.

In regard to taxpayer exposure, I would like your office to provide me and the committee with an event-by-event breakdown of 2010 of how much race organizers paid the BLM in the permitted event and what was the benefit to taxpayers of allowing companies to use public lands for their events? And I hope it is more than just $95.

So with that, this is from your office. It is the special recreation permit. It goes on to say, and I quote again from this, "Proper administration of the SRP requires numerous steps and the full engagement of the BLM staff and managers. The authorized officer may issue an SRP"—which is a type of permit they had—"only after it has been determined that the BLM has the capacity to properly administer the permit. If the field office cannot fulfill or complete all the necessary steps, then no SRP shall be issued," and then you go on to talk about cost recovery. Can you let us know what steps you are taking? Because if you do not have the staff to manage this, then we should not be doing it.

Mr. ABBEY. Well, it definitely was a tragedy that occurred and it happened on my watch and I take that seriously.

Ms. MCCOLLUM. I know you do, sir.

Mr. ABBEY. And there is nothing wrong with our permitting system. There is a capacity issue, and the statement that you just read, the paragraph you just read relative to our new expectations of our own employees, if we do not have the capacity, if we do not have the resources to properly manage those events, then those

events should not be permitted. That is the way that we are conducting business today. It has not always been the case. There has been some fear on the part of our employees that if they said no to a promoter at one of these events that they would be chastised for saying no. But we have an obligation to the safety not only of the event competitors but also to the spectators who are out there on the land observing these events.

Now, that having been said, nationwide, we average about one law enforcement personnel per 1 million acres that we manage. We are putting our law enforcement personnel in really an awesome, I guess, task or assign them awesome tasks of monitoring and patrolling these public lands, and the only way that we can be successful is in partnerships with local sheriffs departments and with other federal agencies and state agencies out there, and we have done a good job of developing those partnerships.

But as it relates to the competitive event that you made reference to in Johnson Valley, there were errors made on the part of the Bureau of Land Management. We acknowledge those errors in our own investigation, in our report and in our determination of what the facts are. We have taken actions to correct those deficiencies and our hope is that that type of event will never occur again through any activity that we permit through our recreation program. That is also another reason why we have requested some additional funding through our recreation program in the 2012 budget request. It is to try to help us provide some additional oversight through the hiring of additional law enforcement personnel to monitor these type of activities but generally speaking just monitoring all activities that are occurring on public lands because with one law enforcement officer per 1 million acres, we cannot do a very good job.

Ms. MCCOLLUM. Thank you, and I think that what we have asked the law enforcement to do is very dangerous. They are out there alone, single patrol, and I notice that you said that you have asked for increased revenue. Part of that increased revenue, the balance side of it, what I saw here on the fee permit, could you address that a little more.

I do not want to put you on the spot but I am going to put you on the spot. I hear clearly what you are saying about not wanting to say no, not wanting to say no because of what the chairman was just talking about with the leasing and the reputation that, you are environmentally driven and everything like that, and environmental issues come up in these kinds of races too. But that is not what I am talking about, and if you do not have the capacity to make sure that sufficient oversight is taking place and there is compliance taking place, then I think that you can hold your head up high and come to this committee and say this is why we said no, it is public safety, and we are not going to fall under political pressure in this arena from other groups because that is not what this is about. I would be very supportive of you saying no and I think the Committee would as well talk a little more about what you are going to do, because taxpayers should not be footing the bill for for-profit companies on this.

Mr. ABBEY. Well, the——

Ms. MCCOLLUM. Do you need legislation or any help from us in order for you to capture those dollars to let these events go forward? I am not trying to stop them. They just need to be done properly.

Mr. ABBEY. No, I fully understand that, and we do not need additional legislative authority to conduct business the way it should be conducted. These type of events come under our cost recovery process. That means the proponent is supposed to be covering the full cost of the Bureau of Land Management employees on the ground providing the oversight and management of those events. It happens throughout our recreation program. The OHV communities have been very good about paying the majority of those recovery costs. In this particular case, I cannot give you any excuses for why that proponent was not assessed the full recovery of what it cost the Bureau of Land Management to staff that event appropriately. I am not saying even if we had the staff out there on that day, the two, three or four employees that should have been there that the event would not have happened, but I think it would certainly have lessened the risk if we had had the appropriate people there on site and doing the necessary patrols to ensure that the spectators were not getting within 15 feet of the actual route that the race competitors were using.

So we have gone back, we have looked in great detail at our permitting process. We have found there is nothing wrong with the permitting system. It is just that we need to implement what we say we are going to do.

Ms. MCCOLLUM. Thank you. Mr. Abbey, I stand ready to help you but I am also going to hold you accountable.

Mr. ABBEY. You should.

Ms. MCCOLLUM. So if there is help that you need, please ask for it.

Mr. Chair, I am going to go to my fourth niece's wedding. My brother was blessed with four daughters. And there will be a police officer there at the wedding. They are paying for it, not the city.

Mr. ABBEY. Thank you.

Mr. SIMPSON. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman, and thanks for being here today, Mr. Abbey. I am of the opinion that the Federal Government owns more land than we can afford to manage or that we can manage, and so the fact that you are spread very thin and your staff is spread very thin is understandable and I appreciate the job you are trying to do with the resources you have been given, the vast amount that you are trying to juggle and all the many demands on that land.

APPLICATIONS FOR PERMITS TO DRILL

I have several questions. I am going to start with APDs. Why is that you anticipate a $13 million shortfall in APD application fees?

Mr. ABBEY. It was based upon a projection that we will have less numbers of applications being filed in our offices and therefore we would not be collecting the fees necessary in order to continue to keep all the individuals that have been part of the oil and gas program fully funded through that fee.

Mrs. LUMMIS. And is that because they are moving out of frustration to drill on private lands because everything gets appealed? I know, and I think I have told you, in Wyoming in 2009 100 percent of lease applications on public lands were contested by environmental groups, 100 percent, every single one. You know, after a while people just throw up their hands and go to private land.

Mr. ABBEY. Well, again, I cannot speak for what rationale the industry may be using to move their resources around. I do know that there is still a great deal of demand for developing oil and gas on public lands that are managed by the Bureau of Land Management. We anticipate upwards of around 5,000-plus APDs being filed with the BLM offices this fiscal year. Given the price of oil, we anticipate a slight increase actually above what we included in our budget request in fiscal year 2012. We have leased 41.2 million acres of public lands for oil and gas. We have about 12.2 million acres under production today. Last year we approved almost 5,000 applications for permits to drill. We had about 1,500 wells actually spudded on public lands. So the industry, again, it is reflective of the market. Given today's market, we are starting to see increasing actions and interest on the part of the industry and we are trying our best to address that demand.

Mrs. LUMMIS. Do you know what dollar per barrel oil sparks that tipping point between when people are less interested and when they are more interested? Is it 100? Is it 80? Any clue?

Mr. ABBEY. I certainly do not know. I do know that when it gets to be $100 a barrel, it gets people's interest whether it is the industry or the American public paying high gasoline prices.

FEE ON NON-PRODUCING LEASES

Mrs. LUMMIS. That leads into my next question, which is about the fees that I understand you are going to be charging or propose to charge for non-active leases as an incentive to surrender the lease so someone else can pick it up or so it can just go dormant. Does your proposal exempt producers from paying those fees on leases they cannot develop because of either bureaucratic delays or environmental lawsuits?

Mr. ABBEY. Congresswoman, it would certainly have to address that. You know, we cannot hold anyone accountable or responsible for an action that they have no control over. So we have not crafted our final rules relative to how that fee would be applied but no doubt that would have to be taken into account. If an industry has a lease, and for some reason is not able to move forward expeditiously and develop that lease for reasons beyond their control, then that would certainly be something that we would take into account as part of how we would assess any new $4-per-acre fee.

Mrs. LUMMIS. And will that fee apply to renewable projects as well? I know wind developers tend to aggregate land and sit on it for a long time too.

Mr. ABBEY. We are not proposing any kind of per-acre fee for diligence but we do have as part of our rights-of-way stipulations in the records of decisions that we are issuing to approve solar and wind a diligence factor that within a certain timeframe they have to make progress in developing their projects.

Mrs. LUMMIS. And you chose to make the distinction between renewables and non-renewables because?

Mr. ABBEY. Because of the different authorities that we are using to authorize those uses. For example, we use our rights-of-way authority to authorize wind and solar projects on public lands. Therefore, we incorporate a diligence stipulation or a diligence factor into those approvals that are issued under rights-of-ways. For oil and gas, it is a leasing function. We have not incorporated that language as part of the lease so now we are proposing to implement a $4-per-acre diligence fee for any lease that is not being developed.

Mrs. LUMMIS. Okay. That helps. Thank you.

EQUAL ACCESS TO JUSTICE ACT

Next question is about EAJA, one of my favorite subjects. Have you begun keeping records on payments distributed under the Equal Access to Justice Act?

Mr. ABBEY. No, ma'am, we have not. We are not tracking the EAJA payments from the Bureau of Land Management.

Mrs. LUMMIS. And why is that?

Mr. ABBEY. Well, it is difficult first and foremost to track. Those fees are paid by our local offices, and we have constantly gone out to other land-management agencies to see what accounting system they have in place that would account for such fees. And Karen, correct me if I am wrong, but I am not sure that we found any of the other land-management agencies with such a tracking system that we could adopt.

Mrs. LUMMIS. And are those paid out of your budget?

Mr. ABBEY. They are paid out of our budget.

Mrs. LUMMIS. So it is taxpayer money that is going to pay these environmental groups that sue you. And is it typically for something—what is a typical environmental lawsuit against you? Does it have to do more with grazing or is it more oil and gas, or is there a pattern?

Mr. ABBEY. There is a pattern, and the pattern is that most of the lawsuits really focus on the NEPA analysis, and the trend is that a plaintiff will file a lawsuit alleging several deficiencies as part of that lawsuit, and unfortunately, all they have to do is find one that a court will sustain in order to win their case and then seek payments for their attorneys.

Mrs. LUMMIS. Do you pay on settlement agreements as well as attorney's fees?

Mr. ABBEY. Attorney fees are routinely negotiated as part of the settlement agreements, and if they are part of the settlement agreements, they are paid.

Mrs. LUMMIS. Okay. And why would you pay if it was a settlement agreement?

Mr. ABBEY. Again, during settlement agreements we assess the risk to the American taxpayer of what the cost would be if that lawsuit continued down the path of going through the courts and what the likely cost would be should we lose that lawsuit, and the reason and purposes for settlement agreements is to right a wrong, if there is a wrong that needs to be righted. It is also to move forward with the proposed action that people can agree to in a more

timely manner than wait two, three or four years for a court to make a determination.

Mrs. LUMMIS. Thank you. I am going to move to uranium, Mr. Chairman. Are we okay?

Mr. SIMPSON. I was just wondering if you would yield for just a second. I find it incredible that these fees come out of your budget and that it is too difficult to track them. This does not seem like rocket science. We can put a man on the moon but we cannot find out how much we are paying out in these fees? How can you budget for anything if you have no clue what you are paying out in these fees? It would seem that we could write our field offices and say hey, how much are we paying out in fees? This seems rather simple to me. Whether other agencies have a tracking program or not, I guarantee I can come down and put one together for you in short order, and there will be language within this appropriation bill as there was in last year's bill that never became law which directed the DOI to track these EAJA fees so that we would at least have some idea of what we are paying out in fees.

Mr. ABBEY. Well, again, we did not incorporate into our budget request litigation costs.

Mr. SIMPSON. But it is incorporated because it comes out of your budget.

Mr. ABBEY. We pay it.

Mr. SIMPSON. You pay it.

Mr. ABBEY. Yes.

Mr. SIMPSON. But you have no idea how much of it is being paid in attorney's fees rather than being spent on the ground in management?

Mr. ABBEY. Not right now.

Mr. SIMPSON. I find that just rather stunning.

Mrs. LUMMIS. Thank you, Mr. Chairman.

URANIUM PRODUCTION

It used to be prior to 2008 the BLM participated in the NEPA process with the Nuclear Regulatory Commission on a routine basis. You signed on as a cooperating agency so you had that status, and there was one NEPA process. Now I understand that arrangement has changed so now licensees are going through two NEPA processes, and of course, the expense is enormous and it takes a very long time. My question is, why is the BLM duplicating the EIS process with respect to uranium production?

Mr. ABBEY. Congresswoman, I am not sure of the reason. It does not make sense if that is the case. Let me follow up with a response back to you and let us look at the current process to see why we cannot consolidate that analysis and save everybody some time.

Mrs. LUMMIS. Thank you very much. A couple things on wild horses.

WILD HORSE AND BURRO MANAGEMENT

Mr. ABBEY. I am open to all thoughts.

Mrs. LUMMIS. I was approached by some folks, veterinarians that had developed fertility control for stallions, and I know you are concentrating on fertility control for mares.

Are you willing to try perhaps as a pilot project some fertility control for equine stallions?

Mr. ABBEY. The challenge that we have with fertility control on stallions is that you have to be sure that you gather every stallion versus mares. You do not necessarily have to gather all the mares in order to apply fertility control that would actually make a difference. But with stallions, if you miss one or you miss half a dozen, they can raise havoc.

Mrs. LUMMIS. Mr. Chairman, among the culture of wild horses is the tendency for the alpha stallion to run younger stallions off and to protect his harem of the mares.

Mr. ABBEY. Now, having said that, again, we are open to any suggestions or ideas or recommendations from any source, especially the source that you cited, as far as incorporating such actions into our strategy.

Mrs. LUMMIS. Thanks, Mr. Chairman.

I have one more question on wild horses. Does BLM intend to honor the consent decree with the State of Wyoming regarding wild horse AMLs?

Mr. ABBEY. To the best of our ability.

Mrs. LUMMIS. I note that you intend to reduce the amount of horses gathered and removed from the rangeland from 10,000 to 7,600, and I would alert you that we have a serious overgrazing problem in certain parts of our state that is directly attributable to wild horses, and the romance that the American people have with these magnificent animals is helping to destroy the range and leaving those animals in some cases shameful condition because they are starving. They do not have enough to eat in certain areas. So I know the American people have this love affair and the romance, and they are beautiful. I am not denying it. The Pryor Mountain unit is genetically unique and it is a tremendously regarded prized resource in the State of Wyoming. They are tremendous animals. But elevating them above all other species in the way that we regard them is in fact deleterious to the rangeland resource.

SODA ASH

And now I am switching to soda ash. May I, Mr. Chairman, just ask a question on soda ash?

Mr. SIMPSON. Very quickly.

Mrs. LUMMIS. Thank you.

What is the status of BLM's report to Congress on the current royalty rate for soda ash?

Mr. ABBEY. We have drafted a report that is undergoing review right now. We fully anticipate to be able to meet that October deadline that we have to provide that report to Members of Congress.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Obviously you are a big deal in my state. You are tremendously important, and I could go on and on but I will submit some other questions in writing and look forward to working with you, and thank for you for indulging my questions, Mr. Chairman.

Mr. ABBEY. The agency is a big deal. I am not sure I am a big deal.

Mrs. LUMMIS. Okay.

Mr. SIMPSON. Mr. Hinchey.

Mr. HINCHEY. Thank you, Mr. Chairman. Thanks very much.

And Director Abbey, thank you very much. Thanks very much for the complicated job that you have and the way that you are dealing with it in what seems to be very effective ways. It is certainly challenging, no question about it. We know that you have done a couple of—there have been a number of positive things that have been happening, particularly over the course of the last couple of years, for example, the Wild Lands policy which was announced just a few months ago, oil and gas reforms the department initiated last year. Those two things are very, very important and a lot of other things that you have been dealing with, they are also very significant.

OIL AND GAS DEVELOPMENT

The call for drilling on more public lands is also something that we are deeply interested in and we want to make sure as much as possible, and I am sure that you do too, that it takes place when it does in the most effective, safe and secure way. I understood that oil companies currently held 80 million acres under lease but you said now 40 million.

Mr. ABBEY. On public lands that are administered by the Bureau of Land Management, there are 41.2 million acres that the BLM has leased. That is not to say that BOEMRE has not leased other offshore acres.

Mr. HINCHEY. Other offshore acres, which is probably up to double that, maybe in the area of 80 million. That is interesting. And oil producing on 20 million of those acres, right?

Mr. ABBEY. Well, on public lands managed by BLM it is 12.2 million.

Mr. HINCHEY. Twelve point two million? Okay. Good. So the Bureau of Land Management last year, as we understand it, issued 4,090 permits to drill but operations began on only about 1,480 of those permits. Is that accurate?

Mr. ABBEY. That is true.

FEE ON NON-PRODUCING LEASES

Mr. HINCHEY. Okay. So you have got a deep interest in drilling on this public land and some of it is beginning to take place. Your budget proposes a $4-per-acre fee on non-producing oil and gas leases to incentivize current leaseholders to utilize existing permits. Is that going to take legislation here? Is this Congress going to have to do it before you can actively get engaged in it?

Mr. ABBEY. Yes, you would through authorizing legislation.

Mr. HINCHEY. So you are currently working on that, and I think this is something that we should be working on also. Thank you very much. I think that is a very important thing. I understand the $4-per-acre fee that you proposed would require that legislation. This is something that we have to do.

Mr. ABBEY. That is true.

HYDRAULIC FRACTURING

Mr. HINCHEY. So the hydraulic fracturing situation is also something that we are deeply concerned about. The topic of natural gas

drilling has gotten an awful lot of attention recently in a variety of ways. One of the most significant ways that it has gotten a lot of attention publicly is in the New York Times. The New York Times ran a series of articles, I think four articles, which were very interesting and in great detail on this issue, and it is very appropriate and helpful that that kind of thing is getting out there so more and more people can understand this situation. EPA is investigating, as I understand it, a groundwater contamination incident related to fracking in Pinedale, Wyoming, and we know that Wyoming is doing a lot of very positive things on this. So this fracking in Pinedale, Wyoming, where high levels of benzene, which of course is a known carcinogen, have been found in 88 separate samples in areas where natural gas operations are more concentrated. Federal air quality standards are being violated. We know that, and that is something that has to be overcome.

A House Energy and Commerce investigation recently revealed that drilling service companies had been using diesel fuel in fracking fluid despite the fact that a 2003 pledge not to do so had been put forward. That was a few years ago. Nevertheless, it is being done.

So I know that you are aware, and I saw the nod particularly. I know that you are aware of all the difficult situations that you have to contend with. I was wondering if in the context of this information and given this information basically, do you recognize that there are legitimate concerns about the risks that accessing this resource, specifically hydraulic fracturing, poses to public health and the environment?

Mr. ABBEY. Well, Congressman, again, I appreciate your leadership on this particular issue because it is a concern to this Nation as we look to natural gas more and more as part of a major component of our Nation's energy portfolio. As I mentioned earlier this week to another committee, you know, hydraulic fracturing is a technology that has been used for a number of years. Most of the wells that are being drilled on public lands today use a component of hydraulic fracturing technology as part of their development. That does not mean that we should not be cautious about that use. In fact, we need to again continue to be vigilant in all the approvals that we grant to the companies for drilling on public lands to make sure that the public health and safety is being protected. And in our efforts to date we have not seen evidence from any operations on public lands that have led us to believe that there is a human health issue at this point. Our efforts also have been targeted to ensure the integrity of the well casings to make sure that there is little chance of any leakage from any of the fluids that are being used as part of that hydraulic fracturing technology of leaking into the water table.

As we look across the Nation, though, with some of the new formations that are being drilled, we have to be very, very cautious because in many of these formations, they are right next to community water sources, and as part of that we need to ensure that every stipulation that is attached is a meaningful stipulation, there is appropriate monitoring and that we continue to work across all administrative boundaries, for example, with the studies that are being performed by the Environmental Protection Agency. If their

studies indicate to us that there is something that we need to be doing differently or taking into account as part of our permitting authorization process, then we would welcome that information.

Mr. HINCHEY. Well, thanks very much. I deeply appreciate that, and I know that this is a very challenging situation and something that has to be dealt with. We need more energy. The energy situation in this country, basically on this planet, is getting more complicated and deeply more expensive, so a lot of these things have to be done in the best possible way. I mean, the problem that you have now overseeing this is something that did not exist. There was good legislation passed in 1974 but that was repealed in 2005. That complicated the whole set of circumstances that you have to engage in. So we appreciate the way in which you are doing that.

Mr. ABBEY. Well, Congressman, if I could, the finding that companies are using diesel is certainly problematic to us.

Mr. HINCHEY. Absolutely. That is absolutely a problem, and that is something that has to be examined and made sure that it does not happen.

Earlier this year, Secretary Salazar stated that fracturing was—and this is a quote of his—"the Achilles heel that could essentially kill natural gas." That was his quote. He was referring to the public's concern about this process, especially the fact that many companies do not disclose what chemicals they are using and what we are just talking about. The Secretary indicated that the department was working on regulations that would require disclosure and we should see something with regard to this sometime in the next few months. I know as you work on this, I would recommend that we all look at what Wyoming's new disclosure requirements are as a model. In that state, they require pre-drilling and post-drilling disclosure along with specifics about the chemicals and their volumes. So our member here, I want to express my appreciation to your state for what they are doing in a leadership way on this particular important issue.

So let me ask you this. Will BLM look at Wyoming as a model for the rules your agency develops on disclosure of hydraulic fracturing fluid chemicals?

Mr. ABBEY. Congressman, we have looked very closely at the Wyoming system for possibly adopting it on public lands. We have also looked at other processes that other states have adopted, Arkansas being another example of recently passed legislation, and then there are other states too that have either passed legislation or entertaining legislation on this particular subject matter.

We are also scheduled to go out and host several public forums over the course of the next month or two to get input from the public relative to what concerns they may have, some ideas and recommendations that they would pass along to us relative to if we adopt new regulations requiring disclosure of fracking chemicals that we take all that into account so that we can have the best regulations as possible. In the meantime, the Secretary certainly has been very open and public in his encouragement to the industry to voluntarily disclose the chemicals that are used as part of their fracturing.

Mr. HINCHEY. I thank you very much. Thank you very much for everything you are doing and for everything that you have said here today.

Mr. ABBEY. Thank you.

Mrs. LUMMIS. Will the gentleman yield? May I add something?

Mr. HINCHEY. Please.

Mrs. LUMMIS. I do not know if you have in your permits to drill or leases a provision that would require the companies to do baseline tests on the water before they drill but I think that is also advisable, because if they drill, test the water and require that that data be submitted to you, you have got that in the record, and then if there is subsequent question, you have already got the baseline.

Mr. ABBEY. That is a great idea. Thank you for sharing.

Mrs. LUMMIS. Thank you.

WILD LANDS POLICY

Mr. SIMPSON. Well, let me ask about another subject that I am sure you have attended several hearings on, Secretarial Order 3310, Wild Lands.

Mr. ABBEY. I was hoping to get through one without having to address that.

Mr. SIMPSON. As you know, there was language in H.R. 1 which would have prevented use of funding to institute the Wild Lands policy. And you are talking to one of the Republicans who is probably most friendly to preserving wildlands and wilderness and other things. As you know, I have worked on several pieces of wilderness legislation over the years that I have been here. I actually think those lands are going to become more valuable as time goes on and the population grows and people are going to seek solitude in places that we have preserved for future generations that they can decide what they want to do with it.

Let me tell you the concern I have with the Wild Lands policy and where I think you should have gone. The reason we did this is because the authority expired for the BLM to do wilderness study areas in their management plans, right?

Mr. ABBEY. Under 603 of FLPMA.

Mr. SIMPSON. And it expired, and an agreement between Secretary Norton and the State of Utah said you would not do any wilderness study areas on BLM land. Why did you just not go for reauthorization of that section of FLPMA?

Mr. ABBEY. Well, again, as you know, Mr. Chairman, the Federal Land Policy and Management Act is a very complex and complicated piece of legislation, and I think it is one of the most fantastic pieces of legislation that was passed by Congress, but it also provides us a great deal of flexibility and I think we need that as far as managing 245 million acres of land for multiple uses. Under 603 of FLPMA, it provided a certain deadline for the Bureau of Land Management to conduct a national inventory of public lands to identify those lands with wilderness characteristics and to designate those lands as part of that inventory as wilderness study areas, and then within a certain time frame make recommendations to Congress on which of those wilderness study areas we believe as the managing agency are deserving of wilderness designa-

tion and which of those wilderness study areas should be released for other uses.

The reason why we did not pursue reauthorization is because there are other authorities within the Federal Land Policy Management Act including section 201, which directs the Bureau of Land Management to conduct routine inventories of all public lands including for purposes of identifying lands with wilderness characteristics. Section 202 and also sections 102, 103 and 302—I am getting to be an expert on this now—of the Federal Land Policy and Management Act also directs the Bureau of Land Management as part of our land-use planning process to use that inventory information that we routinely conduct as part of our land-use planning. So we did not see a need to have to go back and ask for reauthorization. We felt like we already had all the authorities necessary as part of the Federal Land Policy and Management Act to move forward and using a very public process if through an inventory effort, because it is a two-phase approach under the Secretarial Order, we would conduct inventories of public lands to determine which of those public lands we have found to possess mandatory wilderness characteristics, and that includes size, naturalness and outstanding opportunities for solitude and primitive recreation. Those are the three characteristics in the Wilderness Act of 1964. So when we find lands with wilderness characteristics, then the Secretarial Order directs the Bureau of Land Management to take that information and through a land-use planning process, which is a very public process, as many of you know, to make a determination on whether or not the decision that is reached in that land-use planning process would be to protect those wilderness characteristics but limiting certain uses or make a determination to allow uses that could impact those wilderness characteristics. But if we decide through that land-use planning process to protect those wilderness characteristics that we would do so through a Wild Land designation. So that is a long way to address your question but we just felt like we had sufficient flexibility and authorities under FLPMA to go forward with the approach that we are taking.

Mr. SIMPSON. And that I think points out one of the problems. I think you have just infinitely increased the number of lawsuits that you are going to have because once you go through and you decide that something has wilderness characteristics and you decide that we are going to allow for, even though it has wilderness characteristics, outdoor recreation, we are going to allow for oil and gas leasing or we are going to allow for wind turbines or whatever on that land, I will guarantee you there is a lawsuit. And once you have allowed that, you have taken away the wilderness characteristics so why have a Wild Land once you have allowed oil and gas leasing on there?

The other thing you have done, and this is what concerns me more than anything, is that you have made it infinitely more difficult to resolve wilderness debates that currently exist, and I will use a case I have been working on. Most wilderness debates come down to a compromise. You decide what area is going to be wilderness, what area you are going to release for multiple use, what you are going to release for wilderness study area. Once that compromise is made, you know, people come to the table for different

reasons. Some of them because of the area you have released. Some of them come because of the area you have designated as wilderness. Some of them come because of the other things you have done in the area as you try to reach this compromise, bringing groups with different visions together, and that is very, very difficult to do, as you well know. All of a sudden you pass a law or you pass a wilderness bill that releases 130,000 acres of wilderness study area for multiple use and now the BLM can go in and say well, that obviously has wilderness characteristics because it was a wilderness study area and we will designate it as a Wild Land. Guess what? I have just lost that group of people that came to the table because of the release of the 130,000 acres.

So I think you are going to make it more and more difficult to actually resolve some of the things I think Congress should be doing, and that is deciding what areas should be wilderness, what areas should be released. And those are some of the concerns I have that I do not think they have fully understood when they—I take the Secretary at his word. They were doing this with I think the best of intentions. But I think the outcome is going to be far different than what they intend, and consequently I think Congress is going to be very concerned about it as you well know they are because we have already held hearings in the Resources Committee and other committees and we have heard from many Westerners about the concerns on this, because, frankly, I do not see many Wild Lands being designated by the BLM east of the Mississippi. Most of them are going to be west.

Mr. ABBEY. That is true. And I was just teasing about not wanting to address this issue because I appreciate the opportunity to address it, because you have valid concerns as do others that have raised similar concerns. Let me do my best to address some of those concerns.

First and foremost, litigation was already being filed against the Bureau of Land Management prior to the Secretarial Order based upon us not fulfilling the obligations and responsibilities of the Federal Land Policy and Management Act. In fact, we have several court rulings that have directed the Bureau of Land Management to go back to do inventories and then to take that information into account in making those decisions.

Mr. SIMPSON. How many agencies or how many of your bureaus out there have completed their land management plans or nearing completion and now have to go back and do them again?

Mr. ABBEY. Well, we are not asking anyone to go back and do them again because what we are asking them to do is go back to their land-use plans that are in place today and to determine whether or not they are in full compliance with the Secretarial Order. That work is going on right now——

Mr. SIMPSON. But none of them will be, will they?

Mr. ABBEY. Well, I think we will see several of——

Mr. SIMPSON. Because they did not look at Wild Land characteristics when they did it originally. How could they be in compliance with the new Secretarial Order?

Mr. ABBEY. In many of the new resource management plans that have been done, especially in the 9th Circuit because of previous court rulings that directed us to do the inventories, some of those

inventories have been completed and that information was used in developing their land-use plans. So I think, Mr. Chairman, that you will see most of our more recent land-use plans being consistent with the Secretarial Order. That is not to say that all will be consistent, and based upon the review that is being conducted now by the field offices, they will report back to us by June or July or shortly thereafter what their findings are relative to if there are any inconsistencies within their land-use plans and the Secretarial Order.

Let me also say something about your concerns about the Congressional process and the authority. Only Congress can designate an area as wilderness. We respect that. We understand that and that is the way it ought to be and that is the way it will continue to be. We also respect that as you go through a very, very difficult time of collaborating with many, many different stakeholders and coming up with proposed legislation and ultimately debate that legislation through the Congressional process and make a determination of which lands should be designated and which lands that were considered and discussed through the collaborative process should not be designated and released for other purposes, the Bureau of Land Management will defer to the language in that legislation on how to treat those lands in the future.

I met with a group of stakeholders from Washington County in Utah just earlier this week, and they had similar concerns. They had passed the Washington County lands bill just two years ago, a very complicated process. Everybody came to the table. They reached a compromise. They designated certain areas as wilderness. They released the others. The concern is, will the Bureau of Land Management then go back and say these areas, just as you have, possess wilderness characteristics and therefore they are going to be designated as Wild Lands. The truth of the matter is, likely not because as we go forward, we will defer——

Mr. SIMPSON. Likely not?

Mr. ABBEY. Likely not, we will defer back to the Congressional actions that have taken place, recent Congressional actions.

Mr. SIMPSON. So would you support language in the wilderness bill that we are working on that said the land, the 132,000 acres released for multiple use, can never be considered for wilderness designation or Wild Lands designation?

Mr. ABBEY. I am not sure we would go that far, and I say that because——

Mr. SIMPSON. Hence the problem.

Mr. ABBEY. And I say that because circumstances can change over time, and an example of that is that we had wilderness legislation passed in Arizona back in 1986 or so. Well, that is 30 years ago. Over time some of those areas that were dropped from wilderness consideration are still in a natural state. There is public support for protecting those wilderness characteristics and therefore if we go back and through a land-use planning process and determine that those lands that have been previously considered by Congress 30 years ago and not designated as wilderness are deserving of Wild Land protection, then we would consider making a decision to protect those wilderness characteristics through a Wild Land designation. But that is legislation that took place 30 years ago.

Mr. SIMPSON. But the problem is, I am talking about getting people to collaborate and come together.

Mr. ABBEY. I know.

Mr. SIMPSON. And you know that there is a mistrust of the Federal government and that while the BLM today says well, we would not go back and essentially override Congress or consider those for Wild Lands if Congress had released them, we do not trust the next BLM director or the next Administration four years from now because we do not know who is going to get elected, and that changes dramatically over time, and what they want is some certainty, and when these people come to the table, what they want is some finality. That is why we are trying to decide what is wilderness and what is going to be released, to create some finality, and all we have done is created more uncertainty in that well, okay, we have released it for now, and that is——

Mr. ABBEY. No, I understand the difficult situation we all face, but getting back to your other question, we would be happy to sit down with you and your staff on any wilderness legislation that you are entertaining and try to resolve your concerns through release language.

Mr. SIMPSON. I appreciate it. Any other questions?

Mr. HINCHEY. Well, we have the next hearing at 11:00.

Mr. SIMPSON. Let's take a five-minute break.

Mr. Abbey, thank you. I know that you have a difficult job because, as I said in my opening statement, no matter what decision you make, you are going to get sued. That is just the reality. We would like to find a way that we could reduce lawsuits by both sides—I do not want to just blame environmental groups by both sides—and actually put that money into managing the public lands, and I know you, as I said, have a difficult job and do your best and we appreciate what you do and I appreciate what you do in Idaho and the other states that are public lands states and I look forward to working with you on this.

Mr. ABBEY. Thank you.

Mr. MORAN. Mr. Abbey, I was going to say this privately, but I should say it publicly. You do an excellent job on behalf of not only BLM but the Department of Interior. Thank you.

Mr. ABBEY. Thank you.

Mr. SIMPSON. And we will come back in five minutes.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, Bureau of Land Management
Hearing: Bureau of Land Management FY 12 Budget Oversight Hearing
Thursday March 10, 9:30am Rayburn B308

Questions for the Record from Chairman Simpson

Grazing Permits

On February 28, 17 grazing permits managed by the Jarbidge Field Office were closed indefinitely as the result of a court order by Judge Winmill. In a 2005 settlement with Western Watersheds, BLM had agreed to complete a Resource Management Plan and conduct a more robust EIS on the allotments by 2011, allowing the permits to be reissued under an interim grazing management plan. The sunset date of the interim plan coincided with BLM's own deadlines for completing this work, yet the deadlines have passed and there is no plan in place. As a result, ranchers on those grazing allotments have to move thousands of cattle off the range. It is now projected that there will be at least a three-year delay in completing the RMP, which is directly impacting management.

Simpson Q1: What is the time frame for completing the RMP and associated EIS?

ANSWER: The BLM anticipates releasing the Jarbidge RMP/EIS for public comment in FY 2012, and expects to issue a record of decision in early 2013.

Simpson Q2: What are you doing to ensure that field offices like Jarbidge have the resources they need to effectively manage the land in a complex and litigious environment?

ANSWER: Conserving, restoring, and sustaining the health of the land is the foundation for BLM's renewable resources management and is key to the agency's long-term strategic vision. Livestock grazing and other resource uses can be sustained over time only if the land is managed to restore and/or sustain a healthy condition. In the BLM's rangeland management program, maintaining or improving public land health through renewing 10-year grazing permits is the program's highest priority. The complexity of processing permits has increased due not only to litigation, but also to mitigation, changing NEPA requirements, severe weather patterns, drought, catastrophic fire, and other multiple-use public land challenges.

The BLM is taking several steps to more effectively manage the use of public rangeland resources in a manner that restores or maintains land health. These steps include:

- Using a watershed, rather than permit-by-permit, approach to analyze the effects of grazing, evaluate land health, and analyze grazing management alternatives in NEPA documents;
- Conducting eco-regional assessments to identify conservation, development, and restoration opportunities;

- Prioritizing the processing of grazing permit renewals based on resource conflicts or environmental sensitivities;
- Tiering to Resource Management Plans and larger-scale NEPA documents when processing permit renewals; and
- Working closely with stakeholders, local governments, and the public during allotment evaluations.

The legislative change on grazing permit transfers proposed in the President's FY 2012 Budget request would, if enacted, significantly streamline the work on approximately 15 to 20 percent of the BLM's annual permit workload. The provision specifies that a grazing preference can be re-issued, under the existing NEPA, for the remaining years left on the pre-transferred permit if there is no change in the mandatory terms and conditions required. The BLM faces formidable challenges, but this complement of tools will provide strong support to the agency's field managers.

Simpson Q3: The situation in the Jarbidge Field Office is a story I hear from ranchers and, quite frankly, BLM employees throughout Idaho.

What is the BLM doing to address the grazing backlog throughout the West?

ANSWER: The BLM is taking several steps to more effectively manage the use of public rangeland resources in a manner that restores or maintains land health. These steps include:

- Using a watershed, rather than permit-by-permit, approach to analyze the effects of grazing, evaluate land health, and analyze grazing management alternatives in NEPA documents;
- Conducting eco-regional assessments to identify conservation, development, and restoration opportunities;
- Prioritizing the processing of grazing permit renewals based on resource conflicts or environmental sensitivities;
- Tiering to Resource Management Plans and larger-scale NEPA documents when processing permit renewals; and
- Working closely with stakeholders, local governments, and the public during allotment evaluations.

The legislative change on grazing permit transfers proposed in the President's FY 2012 Budget request would, if enacted, significantly streamline the work on approximately 15 to 20 percent of the BLM's annual permit workload. The provision specifies that a grazing preference can be re-issued, under the existing NEPA, for the remaining years left on the pre-transferred permit if there is no change in the mandatory terms and conditions required. The BLM faces formidable challenges, but this complement of tools will provide strong support to the agency's field managers.

Simpson Q4: The BLM's grazing program has experienced increasing costs due to very significant increases in litigation. As a result of this litigation—and more robust environmental reviews being conducted by the Department—the BLM now has an extensive backlog in renewing grazing permits (the current backlog is 4,626).

If our subcommittee was to really begin tackling this issue, what would it take in terms of dollars and language to get the job done?

ANSWER: The needs of the program are articulated in the President's FY 2012 Budget Request. The renewal of livestock grazing permits and leases (permits) is the highest priority for the BLM's Rangeland Management program, and the agency is working diligently to process grazing permits as they expire and after a transfer of grazing preference. The BLM is continuing to improve permit renewal procedures by prioritizing allotments in environmentally sensitive areas. However, the BLM is facing several challenges that are impacting the agency's ability to reduce the number of unprocessed permits. The processing of permits for allotments with land health concerns or resource conflicts is time intensive and often requires land health evaluations, Endangered Species Act Section 7 consultations, and possible administrative appeals and litigation. Additionally, court decisions, such as those in Idaho, affect the time BLM allocates to process permits and complete other work.

The FY 2012 Budget Request proposes legislative language (Section 413) regarding extension of grazing permits. The provision specifies that permits issued as a result of a grazing preference transfer can be re-issued, under the existing NEPA, for the remaining years left on the pre-transferred permit if there is no change in the mandatory terms and conditions. This provision will enable the BLM to process permits more efficiently by significantly streamlining the work on approximately 15 to 20 percent of the BLM's annual permit renewals. As in previous years, the proposed legislative language also would allow grazing to continue until a permit renewal is fully processed, thereby enabling the BLM to focus its attention on allotments with land health concerns or resource use conflicts as well as provide greater certainty to the industry.

Simpson Q5: In FY10 the House Interior Subcommittee added $1 million to the Appropriations Act to address the grazing backlog, directing the agency to target that funding to areas where litigation is causing a serious delay.

Can you tell me how that money was allocated? Do you know how much of it was used in Idaho?

ANSWER: The FY 2010 Appropriations Act provided the BLM with a $700,000 increase to support livestock grazing permit renewal. The BLM redirected an additional $300,000 in base funding to support permit renewal. A total of $115,000 was directed to Idaho. The following table illustrates how these funds were allocated.

BLM State Office	FY 2010 Funding Increase	Redirected Funds
Alaska	$30,000	$0
Arizona	$65,000	$30,000
California	$65,000	$30,000
Colorado	$65,000	$30,000
Eastern States	$0	$0
Idaho	$85,000	$30,000
Montana	$60,000	$30,000
New Mexico	$65,000	$30,000
Nevada	$70,000	$30,000
Oregon	$60,000	$30,000
Utah	$65,000	$30,000
Wyoming	$70,000	$30,000
Total	$700,000	$300,000

Simpson Q6: Is grazing compatible with sage grouse recovery?

ANSWER: Yes. According to the determination by the U.S. Fish and Wildlife Service (FWS), livestock grazing is not one of the principal threats to sage-grouse. Proper livestock grazing management is compatible with sage-grouse habitat management.

The BLM, Natural Resources Conservation Service (NRCS), and ranchers are partnering to improve livestock grazing practices on private and public lands that provide sage-grouse habitat. For example, the BLM is initiating a bureau-wide national monitoring framework across public and private lands to report occurrence, condition, and trend of priority sage-grouse habitat and populations across the West. The Bureau also is directing a fence marking strategy that recent research shows can reduce fence collisions at least six-fold. The BLM is working in the field with NRCS to prioritize areas and allotments where improved grazing management practices can make a difference. All of these efforts are occurring in coordination with State Game and Fish agencies and the FWS so they can measure the results through bird population counts.

Office of Wildland Fire

I understand the Department of the Interior has an Office of Wildland fire that is now replacing the Office of Wildland Fire Coordination. I'm told this Departmental organization was created several years ago with just 3-4 employees in Washington, DC. It now has many times that number in both Washington, DC, and a recently opened office in Park Center in Boise.

Simpson Q7: Could you tell me exactly what this organization does?

ANSWER: The mission of the Office is to coordinate the Department's wildland fire programs with other Federal and non-Federal partners, to establish policies and budgets, and to provide strategic leadership and oversight, which result in safe, comprehensive, cohesive, efficient, and effective wildland fire programs for the nation.

Simpson Q8: How many employees does it have in Washington, DC and the new Boise office, and what are their pay grades.

ANSWER: There are eight employees in Washington, D.C, eight at the Lake Pointe office, four at the National Interagency Fire Center, and three elsewhere. There is one SES employee, four GS-15s, eleven GS-14s, six GS-13s and one GS-9.

Simpson Q9: What is this organization's budget?

ANSWER: The Office's 2011 budget includes $4.0 million for staff and expenses and $6.0 million for major interdepartmental information technology projects such as Fire Program Analysis, LANDFIRE, and others.

Simpson Q10: Why is this organization/office necessary?

ANSWER: The Office is necessary to ensure the coordination of Department-wide wildland fire management policies, budgets, and information technology enterprise systems and decision support tools. The Office ensures that common activities within the bureaus are implemented similarly, consistent with Congressional and Administration direction. The Office also leads the Department's participation in a collaborative framework for fire governance at multiple levels (local, regional, and national) that promotes stronger inter-governmental fire and non-fire emergency management planning, prevention, mitigation, and suppression efforts.

Wild Horse & Burro Program

The Department announced recently that the BLM intends to scale back wild horse gathers in the West over the next two years and expand the use of fertility controls. Your budget request increases base funding for the Wild Horse and Burro program by $11 million over the present fiscal year for a total of $75 million. The costs associated with this program continue to rise to the point that we're probably only a couple years away from this becoming a $100 million program.

Simpson Q11: The BLM has previously stated that it needs to remove 10,000 wild horses from the range. Now it says it'll only remove 7,600 and will instead rely on fertility control. With this policy change, how will BLM prevent overgrazing and protect western rangelands and the livestock and native wildlife that depend on them?

ANSWER: Congress has asked the BLM to find ways to manage these animals in a cost-effective, humane manner, and BLM is committed to doing that. Finding ways to place the program on a sustainable track is a priority. Ultimately, this will depend on the BLM's ability to identify safe, effective, and humane options for suppressing population growth without removing horses from the range, and boosting adoptions of horses that are removed from the range. Over time, better balancing of removal numbers with adoption demand should result in fewer unadopted animals held in short- or long-term holding and reduced costs.

To achieve these goals, the BLM on February 22, 2011, issued a proposed strategy for managing the Wild Horse and Burro program, and requested public review and comment. Under the strategy, the BLM intends to reduce the annual number of wild horses gathered and removed from the range from 10,000 to 7,600 horses; increase adoptions; continue to pursue public-private partnerships to hold excess horses gathered from Western public rangelands; increase significantly the number of mares treated with fertility control, from 500 in 2009 to a target of 2,000 in FY 2012; and improve the agency's care and handling procedures to enhance the humane treatment of the animals. Also, the results of an independent technical review of the Wild Horse and Burro program by the National Academy of Sciences will help the BLM ensure that its management is guided by the best available science.

Simpson Q12: How will the BLM prevent getting further behind in addressing the wild horse problem with this new policy?

ANSWER: Putting the BLM's Wild Horse and Burro program on a sustainable, cost-effective track while ensuring the humane treatment of these animals is a priority. Toward that end, the BLM is accelerating fundamental reforms to how it manages wild horses and burros on public lands after an extensive public review process. To achieve the goal of improving the health of the herds and America's public lands, the BLM plans to enlist the help of partners, improve transparency and responsiveness in the program, and reaffirm science as the foundation for management decisions. It will take time to implement these reforms, but as a first step the BLM intends to increase adoptions and broaden the use of fertility control from treating 500 mares in 2009 to treating a target of 2,000 mares in FY 2012. Additionally, the BLM plans to reduce the annual number of wild horses gathered and removed from the range from 10,000 to 7,600 horses while an independent technical review of the Wild Horse and Burro program is ongoing. The results of that review will help the BLM ensure that its management is guided by the best available science.

Simpson Q13: What is the increased cost to administering the fertility vaccine?

ANSWER: The unit cost of one dose of Porcine Zona Pellucida (PZP) vaccine is about $310. The cost to administer a dose to a mare in a wild horse herd is about $1,750 per mare, which includes gathering, treating, and returning the mare to the range. In gathers emphasizing fertility control treatment, the BLM tries to gather as many members of the herd as possible (usually about 80 percent of the herd) to maximize the number of mares treated. As the herd is gathered, the BLM separates and treats the appropriate mares, removes younger animals for adoption, and then returns the treated mares and stallions to the range.

Simpson Q14: How much does the vaccine cost per animal?

ANSWER: The BLM primarily uses the 22-month time-release Porcine Zona Pellucida (PZP) vaccine (PZP-22) as a fertility control treatment. The unit cost of one dose of the PZP-22 pellet is about $310. The cost to administer a dose to a mare in a wild horse herd is about $1,750 per mare, which includes gathering, treating, and returning the mare to the range.

Although a one-year PZP vaccine is available at a unit cost of $50 per dose, the BLM uses this vaccine infrequently due to its limited usefulness in treating animals on the range. It must be applied annually to be effective, and the dose must be delivered by intramuscular injection to a mare by hand or by a dart from a position in close proximity to the animal. The usefulness of the one-year PZP vaccine to reduce fertility among mares that remain out on the range is limited due to the frequency required and cost of applying the vaccine.

Simpson Q15: How many animals will be treated?

ANSWER: The BLM has set a goal of treating 2,000 mares in FY 2012.

Simpson Q16: How effective is fertility control in wild horses?

ANSWER: The one-year PZP vaccine is about 90 percent effective at preventing mares from foaling when applied annually. As to the 22-month time-release (pellet) vaccine (PZP-22), early research indicated it was 80 to 90 percent effective at preventing foaling if applied during November through February. Additional studies on the efficacy of the vaccine are ongoing. The BLM is pursuing the development of longer-lasting fertility control agents and has two ongoing research studies to determine if new formulations of the conventional PZP or a new PZP-based vaccine called SpayVac® will have better efficacy over a longer period of time.

Simpson Q17: What studies exist to show the efficacy of fertility control?

ANSWER: Numerous studies of the one-year PZP vaccine have been published by Dr. Jay Kirkpatrick based on work conducted on Assateague Island National Seashore and presented at Kirkpatrick and Turner, 2008, Wildlife Research, 35:513-519. The efficacy of the 22-month PZP vaccine is documented in Turner et al, 2007, Journal of Wildlife Management, 71:662-667. Ongoing studies being conducted by the Humane Society of the United States, the U.S. Geological Survey, and the University of Toledo-Health Science Campus will further determine the efficacy of PZP fertility control agents.

Simpson Q18: Who manufacturers the vaccine for fertility control?

ANSWER: The PZP vaccine is neither manufactured nor sold through regular commercial outlets. The PZP component of the vaccines is produced by Dr. Jay Kirkpatrick's laboratory at ZooMontana and by Dr. Irwin Liu in Davis, California. Dr. John Turner of the University of Toledo-Health Science Campus in Toledo, Ohio, assembles the vaccine components and provides the time-release PZP-22 pellets to the BLM.

Simpson Q19: Who does the BLM purchase the vaccine from at what cost?

ANSWER: Using an Assistance Agreement, the BLM acquires the assembled PZP-22 pellets from the University of Toledo-Health Science Campus in Toledo, Ohio. The unit cost of one dose of the PZP-22 pellet is about $310. The cost to administer a dose to a mare in a wild horse herd is about $1,750 per mare, which includes gathering, treating, and returning the mare to the range. A one-year PZP vaccine is available at a unit cost of $50 per dose.

Simpson Q20: How is the vaccine administered?

ANSWER: For the fertility control gathers, the BLM tries to gather as many members of a herd as possible (usually about 80 percent of the herd) to maximize the number of mares treated. As the herd is gathered, the BLM separates and treats the mares, removes younger animals for adoptions, and then returns the treated mares and stallions to the range.

The PZP vaccine is administered via intramuscular injection in a mare's hip muscle, either by hand or by a dart from a position of close proximity to the mare. The PZP-22 pellets are currently delivered by hand injection after the animals have been captured by gathering and then held temporarily in a containment chute.

Simpson Q21: Has the vaccine been approved by the FDA?

ANSWER: There are currently no FDA approved contraceptive agents for horses. The annual PZP vaccine and PZP-22 are used by BLM under an Investigational New Animal Drug exemption that was issued to the Humane Society of the United States by the Food and Drug Administration. Regulation of these vaccines has recently been shifted to the Environmental Protection Agency. The EPA has pending applications for the vaccines and those used under field conditions may require an experimental use permit in the future.

BLM Staffing

Simpson Q22: What is the BLM doing to ensure it has adequate seasonal employees?

ANSWER: In an effort to ensure that the BLM has adequate seasonal employees, the BLM has been engaging with local communities, partner organizations, and volunteers to effectively leverage our resources and expand our ability to meet our public land management goals.

Simpson Q23: Could the BLM partner with the Forest Service, state or other land management agencies to share employees and maximize taxpayer dollars?

ANSWER: At the Federal level since FY 2000, the BLM has utilized and significantly valued the Service First authority, which gives the BLM, FWS, Forest Service and NPS the ability to share employees, fleet, and warehouse and office space; transfer and reimburse funds; delegate authority; and conduct planning, permitting, leasing, contracting or other activities jointly or on behalf of one another where it benefits the public, the resources, or maximizes operational and management efficiencies. Service First authority expires on September 30, 2011. The Administration supports permanent authorization in the FY 2012 Budget.

Wild Lands Policy

Simpson Q24: What is the cost of implementing the new Wild Lands policy and how have you estimated the cost?

ANSWER: No cost estimate of implementing the new policy had been made. As you know, the FY 2011 Continuing Resolution prohibits the BLM from spending funds on implementing Secretarial Order 3310. The Department is complying with the Continuing Resolution.

Simpson Q25: Will this new policy take additional staff time?

ANSWER: As you know, the FY 2011 Continuing Resolution prohibits the BLM from spending funds on implementing Secretarial Order 3310. The Department is complying with the Continuing Resolution.

Merging Forestry & Range Programs

Simpson Q26: Why is the BLM considering merging the forestry and range programs and what are the expected 'efficiencies' or cost savings?

ANSWER: The BLM is in the initial stages of considering a consolidation of programs involving vegetation management. The agency is always seeking to improve its organizational efficiency and effectiveness. The BLM is considering consolidating all vegetative management programs, which presently comprise parts of three separate divisions into a single division to allow for improved coordination and a much more effective management of vegetative resources on a landscape scale. The goal for any proposed organizational adjustment is to allow resource programs to better complement and support each other in a cost-effective manner as they work on shared goals for healthy ecosystems and sustainable uses. The BLM will consult with the Subcommittee before finalizing any proposed organizational change.

Land Acquisition

Simpson Q27: How does acquiring land improve recreation?

ANSWER: Every acre acquired by the BLM using Land and Water Conservation Fund monies provides the public with additional lands to support many types of land and water-based outdoor recreation. Acquiring land typically consolidates ownership within a specific management unit, benefitting all types of recreational use and methods of access and simplifying management. Acquiring land can enable BLM to more fully implement land use plans, including developing and maintaining trail systems, road networks, and put-in/take-out facilities for water-based recreation.

Simpson Q28: The budget proposes $50 million for BLM land acquisition—what is the current maintenance backlog on BLM lands?

ANSWER: The accumulated deferred maintenance list for BLM is estimated at $438 million. This amount is the estimated dollar value of maintenance that was not performed when scheduled and that has been delayed to a future period. It is important to note that the number reflects the total amount of projects required to bring all assets up to excellent conditions, rather than to keep the condition of the most important components of key assets at a sustainable level. The affected assets consist of constructed infrastructure such as buildings, roads, trails, bridges,

major culverts, and dams on BLM land; they do not include land and natural resources on the land or heritage assets.

Travel Management Plans

Simpson Q29: What will the BLM do to avoid some of the problems the Forest Service had with Travel Management Plans?

ANSWER: As the BLM continues to develop new resource management plans, it will assess current and future access needs, evaluate existing trails, routes and roads, and determine an appropriate travel and transportation system. This is accomplished through an interdisciplinary process and a community-based land use planning process.

Simpson Q30: Will the BLM include communities and local elected officials in these efforts?

ANSWER: Yes, the BLM engages the public through a collaborative land use planning process. This process allows for coordination and cooperation with other Federal agencies and State and local governments.

Timber Sales

Simpson Q31: The Committee is aware of the strong interest of the Oregon delegation in maintaining and increasing timber sale volumes from the Oregon & California grant lands. In FY 2010, the BLM offered over 230 million board feet of timber in western Oregon.

What timber sale volume does the BLM intend to offer in FY 2012 if Congress approves the Administration's budget request for the agency?

ANSWER: As articulated in the President's FY 2012 Budget request, the BLM plans to offer 193 million board feet of timber for sale in western Oregon (2012 Budget Justification, Page VII-31).

Simpson Q32: What timber sale volume is anticipated in FY11 if the Congress provides appropriations levels equal to the FY10 level?

ANSWER: In FY 2011, the BLM plans to offer 190 million board feet for sale in western Oregon based on appropriated funding equal to FY 2010.

Simpson Q33: The Committee is aware of a Dec 15, 2010, memo from the BLM to the USFWS regarding a draft Spotted Owl recovery plan. The memo outlines possible reductions to the Northwest Forest Plan harvest levels of 50-percent in western Oregon and as much as 90-percent in SW Oregon.

What is the current nature of discussions between the BLM and FWS? The Committee would like to receive any other additional analysis the BLM has provided to the FWS outlining potential impacts to timber harvest levels from the recovery plan.

ANSWER: The BLM and FWS made progress toward addressing the BLM's December 15, 2010, comments on the Draft Revised Recovery Plan for the spotted owl. On April 21, 2011, the FWS opened a 30-day Public Comment Period on Spotted Owl Modeling Tool Information in the draft Revised Recovery Plan.

Northwest Forest Plan – Survey & Manage

Simpson Q34: What is the BLM doing to address the problems with survey and manage (Northwest Forest Plan)? Will the BLM revise survey and manage or is the BLM considering revising survey and manage?

ANSWER: The BLM is continuing to review survey and manage requirements and consider appropriate next steps.

Simpson Q35: Has the BLM begun considering how funding for the Payment in Lieu of Taxes (PILT) will be included in the budget request for FY 13?

ANSWER: The PILT program is managed in the Office of the Secretary, not in the Bureau of Land Management budget. The Department is at the very early stages of the 2013 budget formulation process, so no decisions have been made.

Simpson Q36: Regarding BLM land acquisition, for those counties that will lose tax base due to federal land acquisition, has the affected local government been contacted relative to the acquisition? We are particularly interested to hear about those counties which already have significant federal holdings and will not receive any offsetting or replacement PILT when the land leaves its tax rolls.

ANSWER: Local governments are well aware of planned land acquisitions. Local governments participate in the resource management planning process, during which issues of land disposal and acquisition are identified.

Simpson Q37: Does the BLM get the blessing of local counties before acquiring land?

ANSWER: Local governments are involved in the resource management planning process, during which issues of land disposal and acquisition are identified.

Rapid Ecoregional Assessments (REA)

Simpson Q38: BLM has undertaken Rapid Ecoregional Assessments (REA). What is the purpose of REA?

ANSWER: REAs are a synthesis and analysis of the best available data about natural resource conditions and trends within large, connected areas that have similar environmental characteristics and which react similarly to environmental stresses. REAs provide regional information that will inform and benefit local management efforts to face increasingly complex

and widespread environmental challenges, such as catastrophic wildfire, weeds, and insect outbreaks. Finally, REAs will map areas that have high energy development potential, and relatively low ecological value, which could be best-suited for siting future energy or other development.

Simpson Q39: Once the data is gathered, however, how will BLM use the information?

ANSWER: REAs will be used, with input from BLM staff, partner agencies, stakeholders, and Native American Tribes, to develop key management strategies for the public lands within an ecoregion. REAs will provide land managers with the resources they need to identify environmentally sound, landscape-level management strategies for BLM-managed lands which help to accomplish land health goals across multiple planning units and to manage public land uses in a way that preserves the health of the land for future generations. These landscape-level management strategies, called ecoregional directions, will then be applied to local planning efforts and will provide land managers with the resources they need to make environmentally sound decisions that are cognizant of environmental challenges, such as wildfire, weeds, and insect outbreaks, that transcend traditional management boundaries.

Simpson Q40: The general descriptions of the program appear on the BLM website under the Climate Change headings. Will there be any assessment of current management?

ANSWER: Current uses and management practices are included as a part of the REA if management question(s) of regional concern about the use or practice was put forward by an ecoregion's Assessment Management Team (AMT) and if use/management data are available at the appropriate scales for inclusion into the REAs. There are seven Assessment Management Teams, one for each ongoing assessment. Each AMT is comprised of BLM land managers, and may include agency staff from other Federal, State, and local agencies, and Native American Tribes.

Simpson Q41: Will there be any assessment of the effectiveness of past and current management programs undertaken on the land?

ANSWER: REAs are a baseline assessment of conditions. They will bring together this information into a geospatial database that will, in essence, be a snapshot in time to which future conditions can be compared. A key component of the BLM's proposed landscape approach is monitoring, and is integrated into the BLM's Assessment, Inventory, and Monitoring (AIM) Strategy that is standardizing data collection and retrieval so information is comparable over time, and can be readily accessed and shared. Unfortunately, because similar data have not been collected historically, REAs will not inherently allow assessment of the effectiveness of past and current management programs. Going forward, however, the information synthesized by REAs will help provide a baseline for assessing the effects of future land use and management decisions.

Simpson Q42: How are private lands being addressed and included/excluded from the assessment?

ANSWER: REAs synthesize available data from all lands within an ecoregion and can provide a foundation for formulating cooperation and coordinated approaches that are more responsive to environmental challenges that transcend land management boundaries than are approaches that consider only the resource concerns within a specific land management boundary. No new data are collected as a part of a REA; rather, existing data available from Federal, State, and local agencies, universities, commercial sources, and NGOs are being compiled for use in various analyses. Because of the regional nature of analyses, watershed areas, which average a little over 200 square miles in size, are the primary landscape units for displaying and reporting findings. For example, a particular species may occur within a watershed, and its presence in the watershed would be noted. Whether or not it occurs on public or private lands, or both, is not reported, just its presence in the watershed.

Simpson Q43: If climate change scenarios and models are applied, what will the agency do with predictions of resource compositions predicted for 2025 and 2060? To what extent will this program be used as a justification or trigger to expand reserves and preserves and further limit multiple uses?

ANSWER: REAs are a synthesis and analysis of the best available data in an area. They provide an assessment of current landscape conditions and possible future conditions based upon available information and a scientific approach to landscape analysis. They identify areas of high ecological value, identify potential areas that may undergo future environmental stress, and map areas that have high renewable and non-renewable energy development potential. REAs are not a justification or trigger to expand reserves and preserves and further limit multiple uses. BLM's resource management plans continue to govern land use. REAs do not specify how predictions from climate change scenarios are to be utilized, either by the BLM, other public land managers, or private land owners in an ecoregion. The use of climate change information, as with all information compiled and synthesized by an REA, will be based upon the judgment of land managers and land owners in the ecoregion.

Simpson Q44: It is our understanding that ARRA funding was used for the contracts. How much did each contract cost?

ANSWER: The BLM funded four REA contracts with ARRA funds. These contracts are:

REA	States in Ecoregion	Contractor	Award Date	Award ($)	Expected Completion
Central Basin and Range REA	Nevada, Utah, California, Idaho	NatureServe	25 Jun 2010	756,225	Feb. 2012
Colorado Plateau REA	Utah, Colorado, New Mexico, Arizona	Dynamac	29 Jun 2010	693,738	Feb. 2012
Mojave Basin and Range REA	Nevada, California, Arizona	NatureServe	25 Jun 2010	712,230	Feb. 2012
Sonoran Desert REA	Arizona, California	Dynamac	29 Jun 2010	699,348	Feb. 2012

Simpson Q45: How much has been expended – FY 10, FY 11 to date, FY 11 to end of year, and planned for FY 12?

ANSWER: The BLM's FY 2010 budget for the Cooperative Landscape Conservation initiative was $15.0 million.

The BLM's 2011 Operating Plan includes $17.5 million for the Cooperative Landscape Conservation initiative, the same level as requested in the 2011 President's Budget and a $2.5 million increase relative to the 2010 enacted level. In FY 2011 through April 3, 2011, the BLM had spent $2.37 million on Cooperative Landscape Conservation activities. This is below the spend rate specified in the short-term continuing resolutions that funded BLM through this date because additional obligations of funds to contracts or agreements were on hold until the final FY 2011 appropriation was approved and because some labor is concentrated during the field season. The recently approved 2011 Operating Plan assumes that BLM will obligate the full $17.5 million during the fiscal year, including $10.56 million in contracts and agreements for REAs, seed collection, restoration projects, and vulnerability assessments; and $6.94 million for labor to support REAs, Landscape Conservation Cooperatives, and other landscape partnerships.

In FY 2012 BLM expects to obligate the requested $17.5 million for the Cooperative Landscape Conservation initiative.

Work to be accomplished with the 2010, 2011, and 2012 Cooperative Landscape Conservation initiative is described in the response to Moran Q 52.

National Landscape Conservation System (NLCS)

Simpson Q46: Can you tell us how the BLM budget is divided between management of NLCS units and the balance of multiple use land?

ANSWER: Both lands within the NLCS and lands outside of the system are managed using multiple use principles. We consider the units within the NLCS to be an integral part of the BLM's multiple-use

mission. Many of the traditional multiple uses such as grazing, hunting, fishing, and motorized and non-motorized recreational uses occur on NLCS lands. Of the approximately $1.1 billion proposed for the BLM in the President's FY 2012 budget, $77.7 million is proposed for the NLCS, or approximately 7.7%. This amount represents recurring base funding only; it does not include additional one-time funds that may vary significantly from year-to-year.

Simpson Q47: If the Secretary's Order #3310 remains in effect, will land designated as Wild Land become part of the NLCS?

ANSWER: No, the Omnibus Public Land Management Act defined the components of the NLCS. Secretarial Order 3310 did not provide that lands designated as Wild Lands would become part of the NLCS. As you know, however, the FY 2011 Continuing Resolution prohibits the BLM from spending funds on implementing Secretarial Order 3310. The Department is complying with the Continuing Resolution.

Simpson Q48: What happens to land that is released from WSA status?--does it return to public land or remain in the NLCS?

ANSWER: When Congress legislatively releases a Wilderness Study Area (WSA) from WSA status it is returned to public land and does not retain NLCS status by virtue of its former WSA status.

Simpson Q49: In terms of public use and public demand for access, which lands are the most important to BLM? Which are most important to the public?

ANSWER: The BLM's multiple-use mission is all about balancing public land management, and balancing all of the myriad resource values of this Nation's great public lands. These multiple uses include such activities as access for outdoor recreation, livestock grazing, mineral development, conventional and renewable energy production, and conservation of natural, historical, cultural, and other resources. However, multiple-use does not mean every use on every acre. To balance multiple demands for public land resources, the Federal Land Policy Management Act (FLPMA) directs the BLM to work collaboratively with the public and local communities to determine how best to manage the public lands, taking into account all of their potential uses. Through this land use planning process, the public and the BLM determine appropriate uses of particular public lands. We believe all of our Nation's public lands are important.

Renewable Energy Developments on Public Lands

Simpson Q50: The West is experiencing a land rush for renewable energy developments on public lands, with large solar and wind projects proposed. The Committee had learned that, as part of mitigation, BLM, at the urging of the wildlife agencies, sometimes requires "compensation" in the form of private land acquired by project proponents which is then "donated" to BLM, becoming part of the federal estate.

Is this a correct assessment? If not, please explain.

ANSWER: Mitigation plans are addressed in the NEPA review and analysis for each renewable energy project and are incorporated into the decisions for each project. These mitigation plans include not only onsite mitigation but also mitigation to improve habitat in other areas. These offsite mitigation efforts may include the acquisition of important habitat areas or the funding of habitat improvement projects. These important habitat mitigation areas are being protected for long-term conservation management, but often remain in private ownership.

Simpson Q51: How are counties reimbursed for this loss to tax base? If the reimbursement is in the form of increased PILT, what happens when the county is capped and cannot receive additional PILT?

ANSWER: In a case where the county's PILT payment is already capped at the population ceiling, the county's PILT payment would not increase with additional PILT-eligible acreage. The effect of this loss of tax base may, however, be offset by the positive economic benefits generated by the construction and operation of new renewable energy projects in the county, such as the creation of new tax-paying jobs.

Oil & Gas

Simpson Q52: Why does the BLM expect Application for Permits to Drill (APDs) to decline in FY12?

ANSWER: In developing the 2012 President's Budget in the late spring/early summer of 2010, BLM lowered our projection of new APDs received for 2012 to better match the unexpected decline that occurred in 2009. We think the numbers of APDs we receive will increase as the economy improves – greater demand for oil will mean more drilling activity on public lands. For 2012, we are estimating that 5,000 APDs will be received.

Simpson Q53: The GAO has recently designated the Department's collection and management of Federal oil and gas resources as a government-wide high risk issue. In testimony before the Committee two weeks ago, the GAO and the Department's own Inspector General, Mary Kendall, said revenue collection has remained a top management challenge for over 10 years resulting in the loss of billions of dollars to the U.S. Treasury.

Why has this particular issue remained unaddressed for so long? What specifically is the BLM doing to address these concerns?

ANSWER: Revenue collection is done by the Office of Natural Resources Revenue (ONRR). The BLM is responsible for ensuring the proper measurement of oil and natural gas. On December 17, 2007, the Subcommittee on Royalty Management submitted the *Mineral Revenue Collection from Federal and Indian Lands and the Outer Continental Shelf* report to the Secretary of the Interior. This report contained recommendations for the Department to implement. The Department accepted the report and recommendations and they are being implemented.

The BLM is taking steps to improve production accountability. The BLM will continue to focus on the inspection and enforcement aspects of oil and gas production. The agency set up a new team in Denver, which works closely with ONRR and focuses on production accountability. During the last year, the BLM has embarked on an extensive program to strengthen training for existing field petroleum engineering technicians and professionals to assure they have the most current capabilities for inspection and enforcement of oil and gas production. We are taking the steps necessary to provide assurance that the public is receiving its fair share of oil and gas revenues. The agency will stay focused on collecting revenues and leasing Federal lands for oil and gas development in a timely and efficient fashion without sacrificing environmental and operational safety.

Simpson Q54: This year's budget request continues the trend of proposing fee increases on industry for both onshore and offshore energy production to pay for increased inspections. These fee increases are assumed in the budget request for the Department for next year. Your own Inspector General has listed revenue collections as a top management issue for over ten years.

If the Department did a better job of collecting and managing royalties, couldn't the government pay for increased inspections out of *these* revenues instead of imposing new fees and taxes on industry that will be ultimately passed on to consumers?

ANSWER: The Federal Government requires industry to pay royalties to compensate the American taxpayer for the value of the minerals that the oil and gas lessee extracts from the public lands and sells for profit. Royalty payments do not compensate BLM for the cost of providing industry access to these lands and administering its oil and gas inspection program. Royalty revenues are deposited in the Treasury; they are not retained by BLM. The 2012 budget proposes to shift a significant share of the cost of the inspections to industry, for a savings of $37.95 million in requested appropriations in FY 2012. The estimated collections generated from the proposed inspection fees would fully offset the proposed reduction in appropriated funding. The inspection fee is based on historical spending for inspections, and the number of wells and leases that must be inspected. The fee is designed to recoup the majority of the costs of performing inspections. The fee will be reevaluated each year to ensure funding is adequate to fulfill the agency's inspection and enforcement responsibilities and to meet the needs of the program. This mirrors a similar fee the Bureau of Ocean Energy Management instituted during FY2010 for outer-continental shelf facilities. The new inspection and enforcement fee is not for a new set of inspection and enforcement activities, but is a new funding mechanism for an existing program.

Simpson Q55: If the subcommittee and Congress are unwilling to increase fees on industry, is the Department prepared to make recommendations on specific cuts to pay for these inspections?

ANSWER: The Department believes that it is fair to charge industry for some of the costs of providing access to the Nation's mineral estate and administering the oil and gas program, activities that benefit the industry. We believe the proposed inspection fees are reasonable and will not be overly burdensome to industry.

Simpson Q56: BLM policies have resulted in roughly a 33% drop in revenue from oil and gas, from $4.2 billion to just $2.8 billion.

How does BLM explain the drop in revenue?—especially when other areas of the country with far less federal land, like Louisiana, Pennsylvania, and Texas, have all seen a boom in natural gas drilling despite operating under lower natural gas prices?

ANSWER: The drop in revenue is in large part a reflection of the drop in the price of natural gas and oil rather than a drop in production. From FY 2008 to FY 2010 the average price of oil and gas dropped each year. This accounts for the drop of revenue of 33% from FY 2008 to FY 2010. Oil production increased by 3% from FY 2008 to FY 2010. The almost 3 trillion cubic feet of natural gas produced made 2010 the second-most productive year of natural gas production on record for BLM-managed leases.

Simpson Q57: The Administration's FY2012 budget proposes levying a fee on the production of hardrock minerals on both public and private lands to restore abandoned mine lands (AML). While likened to the coal AML program in which the AML fee is based on tons of coal produced, the proposed fee "on production" of hardrock minerals would be charged "per volume of material displaced." As I'm sure you are aware, a great deal of waste rock is "displaced" during the mining of hardrock minerals.

What "materials" does DOI intend to include in this fee and how do you justify these materials?

ANSWER: This proposal is under development and will be submitted to Congress shortly. As described in the Budget, the Administration proposes to hold the hardrock mining industry responsible for abandoned hardrock mines just as the coal industry is held responsible for abandoned coal sites. The legislative proposal will require an AML fee on all hardrock mines on both public and private lands. The proposed fee will be charged per volume of material displaced after January 1, 2012.

Simpson Q58: The Administration's FY2012 budget also suggests a legislative proposal that would reform hardrock mineral production on federal lands by instituting a leasing process for minerals currently covered by the Mining Law and requiring annual rental payments and a royalty of not less than five percent gross proceeds.

How can the U.S. remain a competitive business entity in the mining industry given the increased permitting barriers that the domestic industry faces?

ANSWER: The Administration believes it is important to provide a fair return to the American taxpayers for minerals taken from their public lands. As such, the proposed legislation would prospectively shift some of the high value hardrock minerals from a locatable to a leaseable process and provide for a royalty rate of at least five percent of gross proceeds. Development under existing notices or plans of operations would be subject to an increased annual rental rate (maintenance fee) as currently required for locatable minerals.

Simpson Q59: Does the BLM/Administration consider that these and other policies hamper the U.S. from competing with other countries that are able to provide critical minerals and metals in a costly and timely manner?

ANSWER: The number of active mining claims for gold, copper, and uranium has risen dramatically. The BLM expects the number of mining claims to remain high.

Hardrock Mining Administrative Notices under NEPA

Simpson Q60: One problem to obtaining timely mine permits is the time it takes the Department of Interior to process certain administrative notices under the National Environmental Policy Act (NEPA) for mining operations. The "clearance process" for NEPA Federal Register notices laid out in BLM Instruction Memoranda (IM) 2010-043 (dated Dec. 23, 2009) adds months to the permit process as it requires multiple layers of Departmental approval of notices developed by state BLM offices. According to the IM, notices must undergo at least nine stages of review, none of which appear to be concurrent. The impacts of these delays can be significant – lost federal, state and local revenues, fewer jobs, and lost opportunities. One mining company indicated that for each month of delay the company loses over $1 million in net present value.

Why is such a review process necessary and how does this expanded process actually protect the environment?

ANSWER: The policy detailed in IM2010-043 is intended to improve the overall quality of the *Federal Register* notices, thereby shortening the overall review time in the Washington Office. IM 2010-043 provides the BLM State Office External Affairs Officers with specific guidance on how to prepare *Federal Register* notices so that they are complete, well-written, and accurate.

Simpson Q61: How often does this process result in changes to the underlying Federal Register documents?

ANSWER: Review processes for *Federal Register* notices provide for briefing and discussion of the Federal Register notice and other underlying documents. This review allows the Washington Office to identify trends in workload and emerging policy concerns, as well as provides uniformity and consistency when published.

Simpson Q62: In light of the reviews done by State BLM offices, why is this clearance process necessary?

ANSWER: The BLM Washington Office has reviewed notices since 2001 to ensure that they are consistent with Administration policy, are accurate, and comply with Federal law.

Simpson Q63: How does the Department plan to streamline this clearance process?

ANSWER: The BLM has no plans to further change its *Federal Register* process at this time. Because the guidance set out in IM2010-043 is less than two years old, the BLM will let the process work, and in time, we hope to benefit from efficiencies offered by a uniform process.

Simpson Q64: At a minimum shouldn't the Department exempt more NEPA notices from clearance review process, particularly those that are nonsubstantive and only announce availability of documents or initiation of scoping periods?

ANSWER: The BLM Washington Office has been reviewing all NEPA related State Offices' *Federal Register* notices since 2001. The BLM has no plans to change its *Federal Register* process at this time.

Simpson Q65: How many of these reviews (all reviews, not just those for mining) are pending in the Department (have heard reference to 150-200)? Does the Department plan to establish strict timeframes for clearance reviews? Why doesn't the Department allow and require concurrent review of NEPA notice by departmental office involved in the clearance process?

ANSWER: As of May 9, 2011, there are 84 State Office *Federal Register* notices in the Department for review. The BLM Washington Office began reviewing all NEPA related State Offices' *Federal Register* notices in 2001 and currently has no plans to change its *Federal Register* process at this time.

Questions for the Record from Ranking Member Moran

HR1-House Passed- The Worst Environmental Bill Ever

Moran Q1: Mr. Abbey, you have already had a chance to discuss your wild lands policy and some of the impacts of the House passed HR-1. HR-1, includes a dump truck load of anti-environmental riders and some hurtful budget cuts. Never before have so many bad provisions been discussed with so little time, literally in the wee-hours of the morning when sane people are sleeping.

Can you give me a feel for the impacts of the budget cuts proposed in the House passed HR-1?

ANSWER: HR 1, as passed by the House on February 19, 2011, would have reduced the BLM's Management of Lands and Resources appropriation by $32.0 million compared to the FY 2010 enacted level.

Moran Q2: Mr. Abbey, can you please talk a bit about the role the BLM plays in the hundreds of rural communities around the west?

ANSWER: The BLM strives to be a good neighbor and a vital part of communities across America. The BLM's multiple-use mission is what makes the agency unique among Federal land management agencies, and it is what makes us important members of every community in which we work and live. Public lands provide billions of dollars in local economic benefits and the BLM manages for multiple uses and many values, including energy production, grazing, timber production, recreation, and conservation. BLM management activities benefit recreational and traditional land users while contributing to the vitality of State and local economies. In 2012, public lands will generate an estimated $4.8 billion in revenues, mostly from energy development, and according to analysis prepared for the 2010 Department of the Interior Economic Impact Report, extractive and non-extractive uses of BLM-managed lands and minerals generated total economic output of slightly more than $127 billion nationwide in FY 2010. These activities supported approximately 500,000 full- and part-time jobs nationwide.

Moran Q3: Besides oil, gas, and grazing, don't you have tremendous visitation and recreational activities that are a mainstay of local economies?

ANSWER: Yes, recreation on public lands provides major economic benefits to local economies and communities. In 2010, more than 58 million recreational visits took place on BLM-managed lands and waters, contributing billions of dollars to the U.S. economy. The diverse recreational opportunities on BLM-managed lands draw crowds of backpackers, hunters, off-road vehicle enthusiasts, mountain bikers, anglers, and photographers. In an increasingly urbanized West, these recreational opportunities can be important to the quality of life enjoyed by residents of western states, as well as national and international visitors. It should be noted that many of these recreationists are seeking the primitive experience available in BLM's wilder places.

Moran Q4: Given the substantial operational funding cuts in HR – 1, will this affect the hundreds of gateway communities all over the country that depend on tourism, hunting and fishing on the public lands?

ANSWER: According to the 2009 report "The Economic Impact of Department of the Interior's Programs and Activities" Interior, including the Bureau of Land Management, has a significant impact on the economy of the Nation.

Interior supports over 1.4 million jobs for Americans and over $370 billion in economic activity. Our parks, refuges, and monuments generate nearly $25 billion in recreation and tourism. Conventional and renewable energy produced on our lands and waters results in $292 billion in impacts. The water we manage supports over $25 billion in agriculture.

Millions of Americans and foreign visitors enjoy the resources of the Department of the Interior. There were more than 414 million visits in 2008 to Interior-managed lands. Interior supports about 316,000 jobs in tourism and recreation across all 50 states. The most recreation-related jobs are in California (34,951 jobs), Arizona (25,806 jobs), Utah (18,164 jobs), North Carolina (11,912 jobs), and Colorado (13,768 jobs). The Department also supports about 726,000 jobs in energy and minerals. The most energy and mineral jobs are in Wyoming (96,983 jobs), New Mexico (80,731 jobs), Louisiana (58,361 jobs), Texas (37,831 jobs), Colorado (26,844 jobs) and Utah (19,956 jobs).

Visitors to Interior recreation sites support tens of thousands of jobs in rural areas, including Wyoming (16,800 jobs), Tennessee (12,200 jobs), and Colorado (10,900 jobs). In States that are 50 percent or more rural, Interior visitation supports about 200,000 jobs and $15.3 billion in output. State and local governments benefit from numerous grant and payment programs administered by Interior. These programs support a wide variety of essential government activities.

Moran Q5: Will there be impacts on rural jobs and on local jurisdiction's ability to collect revenue?

ANSWER: The Department of the Interior, including the Bureau of Land Management, supports jobs in a wide range of areas: both public-sector and private-sector, seasonal and full-time, and in both urban and rural communities. In terms of jobs, ecosystem restoration activities have the biggest pay-off: every $1 million invested creates an average of 30 jobs. Investments in recreation also have big pay-offs; every $1 million invested creates about 22 jobs, which are largely private-sector jobs.

Continuing Resolutions and Management difficulties

Moran Q6: The BLM is still operating under continuing resolutions. Can you please provide a brief description of some of the difficulties this creates, and include a summary, by major program area, of impacts on your ability to manage your responsibilities, engage in contracts, and hire summer temporaries?

ANSWER: Public Law 112-10 provided BLM with funding for FY 2011.

Wild Horses, changing management emphasis

Background: Mr. Abbey, we have had opportunities to talk about how difficult the wild horse issue is and I appreciate that you are trying to make changes. The modifications of the National Wild Horse and Burros Program announced by BLM represent first steps in a long-overdue overhaul of this program. With more than 40,000 horses in long-term holding facilities at a cost of $37 million a year and growing, we cannot afford to wait any longer to make fundamental changes.

The federal government's management of wild horses and burros should be based upon sound science, transparency, and the input of all stakeholders. We here in the Subcommittee want to work with you and the BLM to ensure our nation's wild horses are preserved for future generations.

Moran Q7: You recently announced that it will increase transparency and openness in its management of wild horses and burros. What specific steps will the BLM be undertaking to achieve increased transparency and openness in the program?

ANSWER: On February 22, 2011, the BLM issued a proposed strategy for managing the Wild Horse and Burro program, and requested public review and comment on the strategy. The proposed strategy would reduce the number of wild horses gathered and removed from the range from 10,000 to 7,600; increase adoptions; significantly expand the use of fertility control to maintain herd levels; and improve the BLM's care and handling procedures to enhance the humane treatment of the animals. Also, the results of an independent technical review of the Wild Horse and Burro program by the National Academy of Sciences will help the BLM ensure that its management is guided by the best available science.

The BLM's fundamental reform of the program also includes improving transparency in all facets of the wild horse and burro program. This includes increasing public viewing opportunities during gathers and at short-term corrals and long–term care facilities to the highest extent possible without compromising the safety of staff, members of the public, or the animals. The BLM is committed to the accurate, prompt, and public release of information related to the program.

Steps taken by the BLM to date include revising the agency's wild horse and burro website in order to provide ready public access to current data and information about all facets of the program.

Moran Q8: Will you ensure that the public can observe roundups from a reasonable distance (close enough to permit monitoring of BLM and contractor actions without impeding the actual operation) even if the traps are constructed on private lands?

ANSWER: The safety of the public, animals, and animal handlers during roundups is paramount. The BLM is working to balance the desire of observers to be as close as possible to

gather and holding operations—including those that may involve helicopters—with the agency's need to assure safe conditions for staff, visitors, and animals during capture and gather operations. When helicopters are used, the BLM must ensure compliance with FAA regulations.

Private lands are used for capture operations with permission of the land owners when, for example, their roads are necessary for access or because they offer a capture site closer to resident horses. The decision to allow public access to private lands rests with the individual land owner.

Moran Q9: Will the BLM consider making any agreement to construct and operate a trap on private land contingent on the landowner providing an area for public observation of the operation?

ANSWER: Capture trap locations are selected based on proximity to animals targeted for capture, road access for heavy equipment, and the topography/lay of the land that provides for the most successful, least stressful capture of the animals. The well-being of the animals being gathered and the distance and terrain through which they will be herded is considered when trap sites are selected. If sites on private land are the best locations, and there are no reasonable alternatives on public lands, the BLM will continue to use the sites on private lands, with the permission of the land owner. These private land owners may or may not permit access to the public for observation of the gather operations.

Moran Q10: While I understand that the BLM is making more information available about its wild horse and burro roundups available via the internet, what more can the BLM do to make the program more transparent?

ANSWER: The BLM continues to pursue innovative ways to provide the public with access to information about our program. For example, the BLM recently provided a live broadcast of the National Wild Horse and Burro Advisory Board meeting held in Phoenix, AZ, in March, 2011. The video of this broadcast is now posted on BLM's wild horse and burro website.

Moran Q11: How long will it take for you to implement the reforms?

ANSWER: Some items in the Proposed Strategy are being implemented while other reforms will take time to implement. The BLM's Wild Horse and Burro website has been and will continue to be improved. The first public tour of long term holding facilities is scheduled for June, 2011. In 2012 we will also dramatically increase the number of mares treated with fertility control and consider other population growth suppression methods. Also in 2012, the BLM will implement a Comprehensive Animal Welfare Program that includes animal handling training for employees and contractors and will incorporate internal and external reviews by credentialed animal welfare experts.

Moran Q12: What are your greatest needs at BLM for the wild horse program?

ANSWER: The needs of the BLM's Wild Horse and Burro program are articulated in the President's FY 2012 Budget Request. Finding ways to place the wild horse and burro program

on a sustainable track is a priority. Toward that end, the FY 2012 President's Budget Request places a greater emphasis on fertility control, adoptions, and animal welfare. The BLM intends to increase adoptions and broaden the use of fertility control. The BLM is reducing removals while an independent technical review of the Wild Horse and Burro program will assist the agency in ensuring that wild horse management is guided by the best available science. Additionally, the BLM is soliciting proposals for wild horse ecosanctuaries to provide a cost savings to American taxpayers and a natural and healthy habitat for the horses.

Moran Q13: Last year, when I was chairing this Subcommittee, our subcommittee approved bill included additional contracting authority to give the BLM the opportunity, if it so chose, to enter into 10-year agreements with non-profits and others to care for wild horses.

Do you think it would be useful to the BLM to have additional options for the care of horses that have had to be removed from the range?

ANSWER: In March of 2011, the BLM circulated two Requests for Agreements for Ecosanctuaries, one for private land agreements and another for public/private land agreements. Our goal is for this solicitation to result in agreements that provide less costly long term care for unadopted horses, additional animals trained and adopted, public access for viewing, and increased public education about the Wild Horse and Burro program.

Moran Q14: Do you see a future where there can be more options for the management and care of the horses in the wild?

ANSWER: Finding ways to put the Wild Horse and Burro program on a sustainable path will depend on the BLM's ability to identify safe, effective, and humane options for suppressing population growth without removing horses from the range, and boosting adoptions of horses that are removed from the range. To achieve these goals, the BLM has issued a Proposed Strategy for the Wild Horse and Burro program. The BLM intends to reduce the annual number of wild horses gathered and removed from 10,000 in 2011 to 7,600 horses; continue to pursue public-private partnerships to hold excess horses gathered from western public rangelands; and increase significantly the number of mares treated with fertility control, from 500 in 2009 to a target of 2,000 beginning in FY 2012. The BLM also plans to offer more trained horses for adoption and hold more adoption events to meet our goal to increase the number of wild horses adopted by members of the public by 33 percent, from 3,000 to 4,000 annually. BLM is also supporting an independent technical review of the Wild Horse and Burro program that will assist the agency in ensuring that wild horse management is guided by the best available science.

Oil, Gas and Coal Management

Background: Last week we heard from the GAO that the BLM has had real problems with its management of fossil energy programs. Last year, you announced a series of important reforms to the BLM's onshore oil and gas program, which were designed to create a better balance between development of oil and gas resources and better protection of sensitive environmental values on public lands.

Moran Q15: Can you describe the extent to which these reforms are leading to the balance you sought to restore?

ANSWER: The BLM issued policy on oil and gas leasing reforms designed to ensure environmental protections of natural resources while aiding the orderly leasing and development of oil and natural gas from the public lands. Under the reformed oil and gas leasing policy, the BLM is providing a detailed environmental review of each proposed lease sale along with a 30-day public comment period. As the BLM implements this key policy change, preliminary findings indicate resource issues and concerns are being resolved prior to the lease sale. Protests from environmental groups are anticipated to decline as a result.

The BLM has issued updated guidance on the use of categorical exclusions (CX) established by Section 390 of the Energy Policy Act of 2005. The BLM will not use these CXs in cases involving "extraordinary circumstances" such as those where there might be significant impacts to protected species, historic or cultural resources, or human health and safety.

Moran Q16: Are there additional reforms that we can expect to see implemented in the next year?

ANSWER: The BLM plans to issue proposed rules to update oil and gas regulations on production verification including the measurement of oil and natural gas. The BLM continues to evaluate its programs and develop new processes for improving their effectiveness and will develop additional reforms as appropriate.

Moran Q17: If so, what changes in the BLM's oil and gas program are of highest priority to you?

ANSWER: The BLM is working to update Onshore Oil and Gas Order 3 (Site Security), Onshore Oil and Gas Order 4 (Measurement of Oil), and Onshore Oil and Gas Order 5 (Measurement of Gas).

Moran Q18: The 2012 budget assumes that Interior will administratively implement oil and gas royalty rate reforms, including adjustments to the standard onshore royalty rate. During our hearing last week, the distinguished new member of the subcommittee from Wyoming pointed out that the State receives a higher royalty on its lands than the BLM charges, and that the State requires disclosure of fracking chemical composition even though the BLM does not.

Is there any reason the BLM can't raise its royalty rates to at least match those of the State?

ANSWER: The Administration believes that American taxpayers should get a fair return on the development of resources on their public lands. A 2008 Government Accountability Office report suggests that taxpayers could be getting a better return from Federal oil and gas resources, at least in some areas. The BLM has initiated a rulemaking process to authorize increased royalties for new competitive oil and gas leases on Federal land. The rule will amend regulation 43 CFR 3103.3-1.

Moran Q19: What would be the benefit to the American taxpayers, and to the States, since they get half of the royalties?

ANSWER: The budget assumes these reforms will increase Federal oil and gas revenues by $937 million over the next ten years. We estimate the States would receive approximately $468 million of these revenues over the next ten years.

Moran Q20: At our hearing last week the GAO noted that BLM has not met its statutory requirements for oil and gas production verification inspections. As the GAO repeatedly said, "We don't know what we don't know", so we can't really know how much revenue may be lost.

Can you please explain this situation some more and tell us if BLM will address this problem?

ANSWER: The BLM will continue to focus on the inspection and enforcement aspects of oil and gas production. The agency has set up a team to focus on production accountability; the team will work closely with the Office of Natural Resource Revenue (ONRR- part of the former MMS). During the last year, the BLM has embarked on an extensive program to strengthen training for its existing field petroleum engineering technicians and professionals to assure they have the most current capabilities for inspection and enforcement of oil and gas production. The BLM is taking the steps necessary to provide assurance that the public is receiving its fair share of oil and gas revenues. The agency will stay focused on production accountability and leasing Federal lands for oil and gas development in a timely and efficient fashion without sacrificing environmental and operational safety.

Moran Q21: In late November the Department announced that it was developing a policy to address disclosure of hydraulic fracturing fluids for leases on public lands. I know that Wyoming requires this, so I can't see why the BLM does not.

Can you speak to the status of the initiative, and when we can expect to see a proposal? Will this be a formal APA rulemaking exercise?

ANSWER: In April of 2011, the BLM held three public forums—in Little Rock, AR, Bismarck, ND, and Denver, CO—related to hydraulic fracturing on public lands. These regional forums build upon the Department's hydraulic fracturing forum held last November. The agency has not yet made a decision on whether to proceed with revising its current regulations for hydraulic fracturing. The BLM will carefully evaluate the public comments received during the public forums before determining any future policy changes for hydraulic fracturing. The forums were listening sessions and not part of a formal APA rulemaking process.

Moran Q22: We recently heard from the Acting Inspector General that the BLM's use of right of ways for various purposes, including energy development, is losing money for the American Taxpayer. Indeed the Inspector General testified that Native American tribes are charging up to 100 times more for a right of way on their land.

Why is Interior charging such low rates?

ANSWER: The BLM is required by the Federal Land Policy and Management Act (FLPMA) to collect fair market value for right-of-way authorizations on the public lands, including solar energy and wind energy right-of-way (ROW) authorizations. Rental rates are not permanently set in ROW authorizations for the life of the grant, but are subject to periodic review and adjustment as economic circumstances change.

The BLM updated rental schedules for linear ROWs on the public lands by regulation, with full public review and comment, in October 2008. These regulations established annual rental fees for linear ROWs based on county-by-county land values published periodically by the National Agricultural Statistics Service (NASS) and reflect the fair market value for linear ROW authorizations on the public lands. These rental fees are also adjusted on an annual basis by the Implicit Price Deflator - Gross Domestic Product (IPD-GDP) inflation index.

Solar energy ROW rental fees were established by BLM in June 2010 and reflect the fair market value of solar energy authorizations on the public lands. Solar energy rental fees include an annual base rent for the acreage of the solar energy ROW authorization using county-by-county land values published by NASS. In addition, an annual megawatt (MW) capacity fee is also collected for the MW size of the solar energy facility on the public land. This MW capacity fee varies by solar technology due to the different efficiencies of the different technologies. The total annual rental fee for a solar energy project includes both the base rent and the MW capacity fee.

Wind energy rental fees, initially established by BLM in October 2002, were updated in August 2006 and again in December 2008. The wind energy rental fee also includes a base rent and a MW capacity fee per MW per year. The current wind energy rental fee is being further updated to revise the base rent using county-by-county land values published by the NASS and to increase the MW capacity fee to be more comparable to solar energy rental fees.

Moran Q23: Are you looking into alternative means, such as leasing, or different rates for granting use of public lands, particularly as it relates to large development projects that will encumber the land for many years?

ANSWER: The BLM is required by the Federal Land Policy and Management Act (FLPMA) to collect fair market value for right-of-way authorizations on the public lands, including solar energy and wind energy right-of-way (ROW) authorizations.

The BLM updated rental schedules for linear ROWs on the public lands by regulation, with full public review and comment, in October 2008. These regulations established annual rental fees for linear ROWs based on county-by-county land values published periodically by the National Agricultural Statistics Service (NASS) and reflect the fair market value for linear ROW authorizations on the public lands. These rental fees are also adjusted on an annual basis by the Implicit Price Deflator - Gross Domestic Product (IPD-GDP) inflation index.

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Wind energy rental fees, initially established by BLM in October 2002, were updated in August 2006 and again in December 2008. The wind energy rental fee also includes a base rent and a MW capacity fee per MW per year. The current wind energy rental fee is being further updated to revise the base rent using county-by-county land values published by the NASS and to increase the MW capacity fee to be more comparable to solar energy rental fees.

The BLM is not considering a leasing process modeled on the mineral leasing process (which involves collecting royalties) at this time because the BLM manages the land, but does not have control of the sun or the wind. The BLM has sufficient existing authority in the Federal Land Policy and Management Act to assure that the taxpayers receive a fair return on the commercial use of their property.

Moran Q24: How many drilling permits were issued by the BLM in FY 2010?

ANSWER: The BLM approved 4,593 APDs in FY 2010.

Moran Q25: Can you also tell us how many new wells were spud on BLM lands in the last fiscal year?

ANSWER: There were 1,480 wells spud or started during FY 2010 on Federal lands.

Moran Q26: It appears that the BLM issued far more drilling permits – thousands, in fact – than were actually utilized by permittees. Can you tell us what accounts for the difference?

ANSWER: With the discovery of new, higher producing shale gas locations in other parts of the country and a lower market price for natural gas, operators are redirecting their limited resources to areas where higher volumes of gas can be produced from each well at a lower overall cost per thousand cubic feet of gas. As drilling priorities shift due to changes in technology or markets, an operator may apply for new drilling permits while allowing existing approved permits to expire. Operators will also apply for several drilling permits at once so they can drill several wells together. If the first well is dry, the operator may not want to drill the remaining approved permits. An operator typically has two years from the time the APD is approved to drill the well.

Moran Q27: Will you please supply for the record the data published earlier this year by the BLM on the status of various indicators regarding the onshore oil and gas program (ex., acreage under lease nationally and in each state; leases issued in each state; drilling permits issued and drilled producible leases, etc.)?

ANSWER: The requested data is provided in the tables on the following pages.
It is also available to the public at:
http://www.blm.gov/wo/st/en/info/newsroom/Energy_Facts_07/statistics.html.

Data for FY 1985 through FY 2010 (data last updated November 8, 2010)

Number of Producible and Service Completions on Federal Lands

Geographic State	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005[1]	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	5	6	6	7	8	8	12	37	37	37	37	43	43	42	21	24	22	23	27	27	27	28	29	29	29	30
Alaska	148	158	163	168	169	170	169	165	176	187	194	161	165	190	171	181	181	180	330	165	226	210	213	215	215	233
Arizona							1	1	1	1					2	2	1		1			1	1	2	2	
Arkansas	107	135	137	145	151	152	154	297	304	305	310	334	338	344	156	144	123	123	145	127	132	156	161	191	177	204
California	4,513	4,815	4,856	6,172	6,188	5,860	5,795	5,933	6,138	6,113	6,156	6,122	6,220	7,657	6,781	6,853	6,848	6,514	6,763	5,922	6,647	7,146	7,187	7,315	7,281	7,386
Colorado	2,411	3,047	2,997	3,045	3,303	2,847	3,641	3,691	3,803	3,934	4,078	3,331	3,358	3,696	3,234	3,308	3,374	3,446	3,998	3,653	4,166	4,673	5,030	5,710	5,543	6,268
Connecticut																										
Delaware																										
Florida		1	1	3	3	3	3	7	7	7	7	4	4	4	2	2	2	2	2	2						
Georgia																										
Hawaii																										
Idaho																										
Illinois				1	2	2	5	6	11	13	13	14	14	17	20	20	17	17	19	17		17	17	18	18	19
Indiana																								2	4	4
Iowa																										
Kansas	169	173	182	184	218	219	231	229	238	245	261	512	994	1,009	456	460	463	454	457	450		465	465	459	458	966
Kentucky	50				1	1	12	148	154	157	157	145	139	149	160	160	162	250	163	160	160	161	164	164	164	161
Louisiana	398	411	410	399	381	375	328	449	416	416	420	415	419	449	333	326	311	316	400	311	365	422	472	497	492	480
Maine																										
Maryland	9	9	9	10	9	9	9	9	9	9	9	10	71		9	9	9	9	9	9		9	9	9	9	25
Massachusetts																										
Michigan	63	62	63	67	57	56	54	52	50	50	64	75	753	768	79	80	80	73	76	81		83	93	94	94	781
Minnesota																										
Mississippi	228	229	226	225	223	224	392	217	208	214	216	210	212	217	172	164	157	134	142	113	120	133	137	134	134	128
Missouri	3									1	1															3
Montana	2,841	3,142	3,201	3,258	3,293	3,324	3,396	3,409	3,417	3,414	3,429	3,588	1,558	2,462	1,937	1,998	2,057	2,096	2,705	2,160	86	2,623	2,885	2,752	2,727	3,625
Nebraska	27	26	28	32	31	31	31	31	29	28	29	39	39	72	33	33	30	30	30	27	58	32	32	32	32	71
Nevada	52	55	54	57	66	75	78	84	89	95	95	98	100	125	125	126	121	117	138	103	122	128	128	120	121	112
New Hampshire																										
New Jersey																										
New Mexico	20,401	21,064	21,303	21,591	21,995	22,499	23,350	23,746	24,155	24,518	24,965	26,201	26,722	29,395	27,084	26,803	27,545	23,095	29,750	28,398	16,090	31,846	32,694	33,776	33,523	37,881
New York				2	1	1	3	3	3	3	3	2	2	2	4	4	4	4	6	5		5	4	5	4	5
North Carolina																										
North Dakota	709	717	696	700	667	668	689	653	631	614	605	743	669	807	708	714	731	682	1,180	774		995	1,024	1,107	1,088	1,228
Ohio	47	83	91	104	103	105	143	163	174	200	257	331	130	158	383	391	401	423	502	496		545	547	567	563	587
Oklahoma	271	277	282	291	296	298	290	302	307	310	314	289	1,608	1,708	347	356	368	357	364	340		367	370	391	391	3,308
Oregon																										
Pennsylvania	1	1	1	39	87	88	88	83	83	92	89	58	58	59	143	143	143	145	147	145		159	159	159	159	185
Rhode Island																										
South Carolina																										
South Dakota	168	173	174	176	179	181	185	186	183	184	186	195	78	75	72	72	71	68	72	68		71	72	78	76	77
Tennessee						13	13	12	12	12	12	11	11		10	12	9	9	9	9	9	9	9	9	9	10
Texas	57	57	76	86	91	107	132	158	175	194	226	223	408	433	288	299	315	318	335	334		398	410	423	414	570
Utah	1,930	1,976	2,005	2,048	2,973	2,035	2,084	2,135	2,303	2,349	2,417	2,063	1,984	3,126	2,950	3,120	3,429	3,581	4,760	3,759	1,106	4,750	4,750	5,902	6,644	7,657
Vermont																										
Virginia							8	20	23	24	24	32	33	33	16	16	17	17	18	17	17	17	17	20	19	20
Washington															1	1	1		1							
West Virginia	60	60	60	60	201	202	204	211	214	234	233	301	76	82	291	293	297	295	293	292		290	305	304	305	312
Wisconsin																										
Wyoming	13,446	13,577	13,910	14,208	13,896	13,958	13,974	13,883	13,731	13,664	13,816	15,037	14,864	16,924	15,935	16,918	18,162	23,602	21,459	19,631	22,858	26,949	28,517	31,188	30,542	32,167
TOTAL	48,108	50,266	50,931	53,076	54,592	53,511	55,454	58,320	57,082	57,624	58,623	60,567	61,068	70,003	61,923	63,032	65,451	66,490	74,301	67,593	52,179	82,688	85,701	92,673	91,237	104,505

Data from AFMSS

[1] Due to AFMSS shut down in FY 2005 data is incomplete as of 11/18/2005. Data will be updated as soon as system is fully updated for FY 2005.

Data for FY 1984 through FY 2010 (data last updated January 5, 2011)

Total Number of Leases in Effect

Geographic State	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	575	582	413	315	307	414	392	360	342	278	277	247	191	160	105	69	78	71	78	94	110	89	97	172	204	201	188
Alaska	1,228	7,318	6,577	7,455	6,774	5,713	4,066	3,418	2,781	790	410	368	293	45	39	132	171	170	229	231	340	338	336	378	371	352	280
Arizona	1,882	1,110	568	412	313	242	180	149	157	97	99	66	54	41	61	56	53	67	67	62	64	54	39	98	86	86	85
Arkansas	1,243	1,312	1,081	817	691	1,136	1,548	1,627	1,511	1,114	971	893	548	596	648	746	727	788	896	924	901	1,127	1,231	1,439	1,521	1,486	1,234
California	2,691	2,468	1,802	1,525	1,540	1,372	1,282	1,303	1,065	942	796	670	597	564	549	557	581	604	658	690	672	672	655	887	778	756	648
Colorado	8,894	9,394	8,924	8,360	7,950	8,259	7,904	8,179	7,426	5,693	4,922	4,672	4,483	4,422	4,538	4,448	4,568	5,036	5,482	5,558	4,378	4,134	5,065	5,397	6,179	5,910	5,627
Connecticut																											
Delaware																											
Florida	301	321	278	215	158	233	213	286	249	229	178	83	63	36	34	23	14	12	13	13	13	8	7	3	3	2	2
Georgia	58	70	16	3	3	3	3																				
Hawaii																											
Idaho	2,323	1,904	1,033	407	245	159	126	42	24	19	17	11	5	5	4	4	5	5	8	8	3	3	2	6	16	13	12
Illinois	1	2	6	6	6	9	9	13	13	13	29	16	15	13	14	15	11	11	11	11	11	11	11	11	11	11	11
Indiana	2	2	3				4		4	4	4	4	4												2	15	13
Iowa		1	7	3	92	1																					
Kansas	146	202	268	212	195	251	459	527	461	448	450	449	442	429	426	484	486	486	482	487	471	465	450	458	485	494	488
Kentucky	85	101	93	81	75	74	103	103	106	100	104	115	86	65	67	70	82	83	83	77	84	81	82	76	83	76	62
Louisiana	483	635	684	813	588	595	574	678	914	868	859	813	785	671	720	638	610	586	516	505	501	435	404	407	531	441	387
Maine																											
Maryland	12	11	6	6	10	9	9	7	7	7	6	6	6	5	4	4	4	3	3	3	4	4	3	3	4	4	4
Massachusetts												1	1	1	1												
Michigan	529	633	699	780	775	1,298	1,303	1,192	1,064	761	564	487	290	282	234	221	183	134	136	145	139	128	110	113	147	172	174
Minnesota			58	66	66	5	5	5	2	2	2	2	2	2	2	1											
Mississippi	1,274	1,532	1,753	1,508	1,348	1,402	1,342	1,357	1,336	1,262	1,151	1,099	985	1,002	1,189	1,142	1,063	1,030	1,157	1,160	1,158	1,035	931	1,092	1,154	916	788
Missouri	1	1	7	7	7	1	2		1																		
Montana	11,918	11,075	9,292	7,553	6,689	6,289	5,685	5,383	4,051	3,247	3,063	3,102	3,247	3,381	3,621	3,539	3,718	3,922	4,222	4,376	4,223	4,202	3,729	3,750	4,185	4,093	3,607
Nebraska	403	414	303	180	156	114	95	94	86	72	55	43	40	35	35	28	30	34	34	39	35	35	29	28	29	28	27
Nevada	6,839	6,351	4,452	2,870	2,726	2,972	3,237	2,973	2,903	2,777	2,657	2,043	1,568	1,383	1,132	939	851	1,007	1,138	1,029	1,180	1,444	1,947	2,126	2,176	2,157	1,964
New Hampshire																											
New Jersey																											
New Mexico	17,490	16,330	14,670	11,852	11,349	11,965	11,276	12,503	11,265	10,294	9,788	9,264	8,604	8,801	8,893	8,886	8,968	9,026	9,276	9,229	8,299	8,135	7,827	7,647	8,951	8,954	8,915
New York	9	8	9	9	7	8	8	8	4	5	5	5	5	5	5	4	4	4	4	5	5	5	5	5	5	5	5
North Carolina	138	150	44	31	6	5	5		1																		
North Dakota	2,042	1,945	1,862	1,665	1,518	1,470	1,426	1,425	1,227	1,245	1,180	1,237	1,239	1,589	1,692	1,503	1,554	1,571	1,653	1,595	1,494	1,669	1,638	1,510	1,565	1,772	1,779
Ohio	72	100	125	100	87	82	133	193	184	180	182	180	224	223	217	208	198	193	197	199	232	238	216	215	238	237	251
Oklahoma	1,655	1,635	1,668	1,518	1,433	1,492	1,475	1,698	1,358	1,213	1,121	1,087	1,176	1,172	1,168	1,202	1,205	1,216	1,235	1,261	1,159	1,134	1,186	1,193	1,268	1,298	1,291
Oregon	1,959	1,794	930	481	397	192	207	116	23	9	8	11	16	16	16	18	19	20	23	23	20	18	171	200	191	188	172
Pennsylvania	3	3	8	6	8	9	75	83	77	76	76	76	75	75	75	75	74	71	72	72	72	71	70	70	69	68	67
Rhode Island																											
South Carolina	11	11	11	11	11	11	11																				
South Dakota	1,016	894	699	615	557	453	432	400	292	213	178	193	254	328	315	227	266	250	250	243	149	158	150	155	167	181	160
Tennessee	173	123	38	33	27	25	33	29	25	25	25	25	20	20	20	20	20	20	3	3	3	3	3	3	2	2	2
Texas	530	518	513	427	388	444	490	531	577	550	540	469	491	467	462	535	513	566	664	690	661	646	643	656	656	731	724
Utah	14,472	12,199	8,809	6,962	6,163	6,171	6,088	6,284	5,417	4,574	4,285	3,915	3,550	3,393	3,493	3,464	3,416	3,494	3,711	3,719	3,383	3,607	3,679	3,818	4,300	4,271	4,192
Vermont																											
Virginia	389	355	325	200	125	155	141	138	127	126	98	77	49	35	33	33	37	25	27	26	26	25	24	22	46	42	40
Washington	828	839	634	564	514	366	107	59	21	11	7	9	7	17	26	33	67	84	94	213	334	354	429	446	416	342	260
West Virginia	124	196	256	225	209	197	395	384	340	330	323	303	270	257	257	256	271	267	269	273	281	274	268	268	283	273	267
Wisconsin		3	44	61	83	29	29	13	9	6	6	7	7	6	4	1	1										
Wyoming	33,488	34,445	34,117	29,414	26,976	28,295	28,737	30,097	25,712	20,956	20,653	20,083	18,754	18,585	19,690	19,579	20,188	21,014	21,525	21,472	15,432	14,877	16,984	16,479	18,961	17,854	16,798
Total	115,285	116,985	102,585	87,568	80,570	81,920	79,606	81,657	71,162	58,538	55,089	51,931	48,646	48,107	49,789	49,160	50,034	51,870	54,200	54,435	45,836	45,479	48,423	48,933	55,085	53,431	50,544

Data from Public Lands Statistics

Data for FY 1984 through FY 2010 (data last updated January 5, 2011)

Total Number of Acres Leased

Geographic State	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	502,207	508,864	231,549	154,011	156,093	214,287	197,064	169,853	162,236	136,970	128,004	94,127	73,048	60,965	41,709	27,740	32,574	31,625	33,671	40,518	45,514	33,315	40,812	122,078	148,893	137,723	119,311
Alaska	4,490,982	4,151,163	2,692,437	2,618,608	2,370,019	2,310,288	1,026,989	565,000	420,845	220,865	114,845	103,286	89,541	71,008	68,892	861,318	936,183	934,801	1,502,510	1,514,340	2,756,162	2,732,167	2,732,167	3,344,519	3,147,183	3,113,795	2,325,946
Arizona	3,950,048	2,468,631	1,968,426	1,013,998	805,846	553,031	334,293	242,132	250,892	141,945	153,353	97,923	79,777	69,388	111,740	99,503	94,710	114,090	113,704	105,019	106,243	96,498	71,372	384,846	358,673	358,319	357,660
Arkansas	1,513,184	1,395,333	987,049	609,456	493,188	917,080	1,073,294	1,002,075	884,143	626,320	555,342	433,972	348,460	338,395	384,986	533,561	523,106	567,680	715,526	778,273	845,485	973,902	1,040,189	1,157,654	1,202,479	1,135,809	858,575
California	3,537,780	2,931,443	1,396,577	1,034,715	1,049,268	972,882	912,181	803,386	543,141	431,603	250,674	221,949	199,922	184,881	195,575	211,684	240,393	251,530	271,863	324,286	308,473	310,327	363,592	380,987	439,490	422,750	277,827
Colorado	9,764,062	10,535,917	9,646,127	8,638,943	8,261,866	8,095,471	7,444,127	7,237,136	6,320,425	4,202,167	3,858,768	3,521,132	3,407,978	3,333,740	3,545,425	3,517,023	3,601,812	4,085,387	4,536,151	4,816,263	3,444,060	3,251,386	4,509,374	4,819,654	5,241,707	4,920,133	4,632,363
Connecticut																											
Delaware																											
Florida	596,747	613,187	504,341	373,181	255,437	312,790	281,373	266,407	189,410	169,660	122,639	83,237	51,358	24,251	24,051	15,181	13,739	12,225	13,864	14,952	14,952	9,423	8,464	3,486	3,486	1,720	1,720
Georgia	123,794	139,327	26,266	4,474	4,474	4,476	4,476																				
Hawaii																											
Idaho	5,543,318	4,469,282	2,277,081	978,339	909,499	381,345	305,384	114,277	51,404	44,044	42,479	23,184	8,374	6,374	5,854	5,654	5,694	5,694	11,492	10,262	2,465	2,465	1,794	9,149	26,660	22,154	22,114
Illinois	10	50	370	801	750	1,594	1,594	2,119	2,119	2,119	21,445	7,192	7,043	6,743	8,823	6,936	6,592	6,592	6,592	6,592	6,592	6,592	6,592	6,592	6,592	6,592	6,592
Indiana	358	358	373				415	415	415	415	415	415	415												68	21,937	18,554
Iowa		320	1,380	460	460	160																					
Kansas	106,287	107,446	105,190	78,060	52,261	64,901	111,153	140,220	116,932	113,134	109,387	110,327	109,847	107,981	106,057	119,526	121,137	120,215	121,193	125,722	121,117	120,199	112,803	113,441	126,828	133,642	132,779
Kentucky	59,828	67,813	64,810	52,808	52,657	53,938	50,946	47,362	54,541	51,914	53,439	53,430	43,252	38,921	40,126	40,976	41,192	42,153	44,063	35,370	42,014	39,121	42,444	38,834	42,049	37,117	36,090
Louisiana	210,293	300,303	304,168	215,570	207,880	216,796	210,927	225,260	376,852	369,801	361,192	342,708	347,519	313,090	320,694	263,042	244,885	232,918	204,335	200,886	198,899	170,456	157,422	160,587	221,119	166,637	150,035
Maine																											
Maryland	15,557	13,651	7,112	8,000	10,800	10,038	10,038	7,518	7,518	7,518	4,922	4,922	4,922	3,835	2,637	2,637	2,637	2,142	2,142	2,142	2,803	2,803	1,829	1,829	2,637	2,637	2,637
Massachusetts												241	241	241	241												
Michigan	355,498	405,095	420,848	466,758	450,358	640,578	666,727	490,007	394,784	280,728	192,250	173,597	92,326	92,791	112,565	121,285	108,436	71,280	74,944	77,093	75,379	67,438	63,376	60,899	80,061	101,785	101,690
Minnesota			14,747	18,766	17,146	1,979	1,679	1,679	280	280	280	280	280	280	280	40											
Mississippi	588,655	770,233	847,685	750,010	680,795	714,471	679,014	659,713	621,596	571,263	505,562	435,472	369,182	427,266	555,301	525,861	468,391	448,583	499,341	502,373	507,708	492,977	517,276	547,825	553,448	410,687	352,234
Missouri	1,329	1,329	1,793	1,793	1,713	1,325	2,047	1,311	1,211																		
Montana	15,532,778	13,912,905	10,672,869	8,153,619	7,192,165	6,405,556	5,657,823	4,887,205	3,730,178	2,897,197	2,766,403	2,817,966	2,910,672	3,061,423	3,303,337	3,322,359	3,545,178	4,008,357	4,297,245	4,414,309	4,353,092	4,348,334	4,019,639	4,020,480	4,318,778	3,975,577	3,904,310
Nebraska	270,128	274,596	177,971	81,128	65,676	43,488	35,896	35,338	37,484	27,504	19,675	17,325	16,439	10,999	11,035	7,071	7,413	14,620	14,620	16,500	16,180	16,180	15,720	15,400	11,047	9,767	9,606
Nevada	14,505,571	13,370,761	8,977,431	5,834,401	6,801,622	7,345,008	7,549,969	6,435,628	6,111,105	5,596,301	5,138,822	3,599,496	2,629,591	2,221,579	1,604,381	1,262,267	1,076,632	1,616,905	1,959,558	1,912,613	1,970,999	2,870,920	4,107,869	4,452,856	4,345,439	4,245,630	3,966,330
New Hampshire																											
New Jersey																											
New Mexico	15,797,138	14,466,170	12,325,500	9,614,958	9,047,359	9,118,484	7,606,786	7,089,114	6,810,365	5,823,131	5,596,360	5,371,817	5,209,214	5,287,697	5,297,774	5,222,671	5,223,145	5,178,780	5,352,822	5,441,387	4,825,779	4,740,549	4,822,574	4,759,364	5,432,045	5,468,058	5,325,882
New York	11,215	9,819	10,798	9,826	8,669	9,311	8,831	8,831	1,542	1,644	1,644	1,644	1,644	1,644	1,544	1,011	544	544	544	1,183	1,183	1,183	1,183	1,183	1,183	1,183	1,183
North Carolina	258,188	276,373	71,328	41,901	8,596	6,251	6,251	2,001	327																		
North Dakota	1,443,865	1,295,078	981,497	969,319	875,042	920,262	798,940	758,148	717,576	693,201	657,282	678,624	677,101	795,828	842,433	733,738	749,924	764,715	802,108	765,267	751,442	874,434	862,285	799,816	830,605	962,996	958,951
Ohio	22,301	27,528	31,922	27,545	23,732	23,306	35,624	34,445	41,350	42,022	41,474	40,446	51,964	51,308	48,298	42,184	41,392	40,910	41,242	41,386	47,567	45,306	43,757	43,768	47,323	47,721	55,902
Oklahoma	533,351	507,434	492,540	414,244	388,773	429,163	435,272	444,066	370,244	303,840	252,260	260,769	285,152	281,465	247,702	254,884	245,457	251,556	256,706	266,390	241,236	226,575	276,350	296,443	336,085	350,548	334,900
Oregon	4,248,952	3,978,396	1,769,363	774,190	872,248	401,663	440,949	257,918	54,443	5,571	5,491	12,281	28,190	39,131	37,888	43,883	55,131	40,189	43,483	43,281	37,890	37,730	276,911	303,021	289,093	278,693	269,645
Pennsylvania	705	705	2,172	1,546	3,279	3,157	9,937	11,473	10,565	10,245	10,245	10,326	10,164	8,077	8,107	7,751	7,742	7,056	7,699	7,699	7,699	6,938	6,944	6,944	6,474	4,827	4,727
Rhode Island																											
South Carolina	19,855	19,854	19,851	19,851	19,851	19,855	19,855	19,855																			
South Dakota	1,055,444	1,030,778	893,746	772,758	740,630	576,954	551,842	406,505	279,741	221,593	199,668	196,341	214,315	281,355	254,000	172,095	227,840	250,258	249,362	238,924	194,697	128,769	131,759	134,284	135,483	150,086	129,428
Tennessee	330,379	232,001	63,844	61,914	49,907	48,859	53,300	40,473	34,758	34,758	34,758	34,758	33,817	33,817	33,747	33,747	33,747	33,747	2,296	2,296	2,296	2,296	2,296	2,296	736	736	736
Texas	392,434	322,852	326,715	271,459	245,796	276,634	302,789	328,031	363,462	355,095	344,855	315,877	338,296	336,317	358,645	376,812	363,759	388,325	419,209	467,141	447,723	443,998	422,849	420,347	439,939	489,344	499,761
Utah	19,834,589	16,172,270	10,376,267	7,382,688	6,828,693	6,822,199	6,800,513	6,819,384	5,938,619	4,880,947	4,508,842	3,964,397	3,495,364	3,330,012	3,362,414	3,266,028	3,271,712	3,420,577	3,734,868	3,818,544	3,424,273	4,125,544	4,497,123	4,681,529	4,988,903	4,995,479	4,855,833
Vermont																											
Virginia	585,146	470,333	476,316	339,567	231,880	242,913	206,214	206,754	192,142	187,824	162,525	94,894	57,706	40,053	31,778	29,998	35,802	24,193	74,933	24,533	24,589	24,565	22,460	21,640	35,721	32,401	30,717
Washington	1,394,265	1,361,430	975,973	722,633	710,461	494,590	160,470	74,550	5,318	1,845	1,352	12,027	12,533	14,799	39,015	44,134	79,224	91,011	102,555	312,743	493,050	532,747	629,235	650,565	579,163	483,693	375,245
West Virginia	146,554	258,911	353,988	296,510	287,945	259,136	328,305	316,712	274,270	263,712	233,661	285,060	164,797	146,576	147,821	148,385	179,323	169,600	173,505	180,960	190,014	130,488	136,281	136,207	142,640	141,866	140,748
Wisconsin		12,382	43,684	68,898	95,573	85,384	86,907	36,291	17,941	8,652	8,652	8,692	8,692	8,524	7,968	40	521										
Wyoming	23,218,798	23,803,284	22,868,981	18,267,075	16,692,871	18,693,777	19,285,349	19,597,045	19,676,000	13,067,514	13,140,902	13,142,789	12,224,450	12,394,117	13,514,046	13,505,687	14,039,281	14,761,867	15,359,523	15,319,452	10,026,872	9,588,782	12,964,048	12,580,651	13,708,523	12,732,957	11,657,090
Total	131,064,594	120,686,611	92,750,783	71,203,757	66,780,663	67,598,165	63,705,323	59,885,533	51,866,163	41,799,343	39,399,067	36,551,135	33,601,286	33,475,065	34,674,769	34,816,512	35,625,348	37,900,113	40,993,429	41,529,009	35,446,444	36,452,327	42,808,789	44,479,478	47,242,495	45,364,991	41,186,158

Data from Public Lands Statistics

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Number of New Leases Issued During the Year

Geographic State	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	44	22	34	7	11	118	46	27	29	34	24	29		4	1		13	4	9	12	17	1	21	76	20	22	17
Alaska	753	720	219	18	3	147	5			1						132			59	1	123			81	1	6	
Arizona	78	1,136	96	45	38	29	1	27	22	13	28	4			37			24	1	3	2	20	3	59			
Arkansas	217	19	27	2	157	299	523	175	81	41	63	26	4	101	57	133	26	96	81	56	129	281	148	200	94	42	18
California	217	287	141	139	267	219	61		37	41	2	22		59	52	43	46	42	52	65	53	12	63	34	53	26	25
Colorado	901	1,126	646	1,093	1,049	901	420	425	203	278	285	323	255	277	330	229	329	613	427	260	234	272	363	464	320	83	148
Connecticut																											
Delaware																											
Florida	15	13	21	18	10	88	3	113	7		5						1			2							
Georgia	3	14	6																								
Hawaii																											
Idaho	129	162	53	14	45				2	1	3						1		3	1				4	10		
Illinois			5	1	1	3		4			19								1								
Indiana																										13	
Iowa			1																								
Kansas		10	8	139	26	44	5	5	8	18	13	7		1	6	9	5	3	4	12	8	1	1	9	4	15	9
Kentucky	4	15	26	14	2	1	3	16	7	1	5	15			3		13		2		7		3				
Louisiana	88	78	95	52	40	7	57	112	340	89	40	106	114	14	86	10	3	9	9	4	12	9	4	7	90	25	32
Maine																											
Maryland	2																										
Massachusetts																											
Michigan	87	78	144	123	80	522	110	14	69	51	2	9		35	1	31	6		4	13		2	2	12	18	42	3
Minnesota			49	12																							
Mississippi	89	190	122	94	158	136	85	199	91	120	68	168	95	115	149	40	65	32	133	54	58	74	92	215	13		26
Missouri						1	1																				
Montana	1,159	1,134	929	699	664	420	190	139	40	62	196	335	384	259	377	274	404	334	302	219	192	306	220	203	211	190	71
Nebraska		62	40	23	16	6	1		3		4		1		4	1	3	4		5			1				
Nevada	283	493	289	332	918	486	564	429	418	462	332	162	113	167	149	70	121	295	109	89	305	504	638	386	399	430	252
New Hampshire																											
New Jersey																											
New Mexico	826	1,161	1,096	460	923	866	629	616	482	399	322	291	305	491	349	256	286	241	245	231	225	278	214	207	159	212	190
New York				4						1							1										
North Carolina	55	28	4	1																							
North Dakota	119	140	177	290	101	80	46	21	102	233	85	153	85	451	152	64	55	89	79	13	154	229	135	143	53	243	37
Ohio	13	23	20	9		1	9	60	12	6	6	19	16	3	4	2	6	2	2		31	5		1		7	25
Oklahoma	145	204	151	58	81	77	68	67	32	29	32	65	173	84	57	36	22	27	22	39	29	35	94	113	63	57	23
Oregon	89	115	53	22	64	14	36	6				4	5	4	1	5	2	5	6	1			157	29	5	6	
Pennsylvania			1		1		2	9									1		2				1				
Rhode Island																											
South Carolina																											
South Dakota	62	121	167	97	55	22	33	50	25	14	3	56	83	79	11		44	53	2	2	14	28	20	25		20	
Tennessee	6	1		2			2	3																			
Texas	41	112	64	64	25	72	70	70	66	26	30	28	73	36	15	63	10	76	102	47	20	7	39	73	26	90	42
Utah	504	981	628	681	665	669	615	494	403	378	365	375	278	346	272	186	176	197	132	171	93	617	430	303	67	155	79
Vermont																											
Virginia	164	31	55	33	16	38	12	3	4			1				4	4						1		20		
Washington	87	78	28	36	38	9	3					4	1	14	2	18	33	20	10	119	134	28	80	21	2		2
West Virginia	9	43	52	26	5	3	8	1		6	6	1					20			5	9	8	10		5		
Wisconsin			34	23	6	7	2																				
Wyoming	1,402	2,892	3,526	2,596	3,759	3,047	2,944	2,380	1,507	1,740	2,221	2,325	1,389	1,662	1,990	1,469	1,204	1,123	586	598	842	797	1,244	834	783	388	309
Total	7,593	11,489	9,009	7,247	9,234	8,352	6,552	5,465	3,990	4,040	4,159	4,528	3,375	4,182	4,105	3,075	2,900	3,289	2,384	2,022	2,699	3,514	3,985	3,499	2,416	2,072	1,308

Data from Public Lands Statistics

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Number of Acres Leased During the Year

raphic State	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	27,350	21,408	21,310	1,271	10,522	68,233	31,877	6,847	12,324	16,997	9,135	6,319		684	80		7,855	4,486	4,185	8,990	5,077	80	11,970	80,629	22,796	6,599	2,096
Alaska	1,435,765	814,388	191,440	21,641	2,720	408,766	12,640			3,100					861,318				567,769	11,500	1,403,561			939,867	5,117	26,441	
Arizona	150,869	2,418,249	366,455	76,270	72,152	44,932	2,558	40,491	38,252	21,021	51,578	3,420			55,921			35,584	6,983	3,040	1,224	22,659	13,337	313,476			
Arkansas	269,832	4,175	16,099	480	216,692	191,956	238,660	82,909	22,367	16,766	22,610	9,784	928	39,602	48,011	74,442	21,573	178,785	71,247	95,792	182,156	172,858	121,563	99,484	49,381	9,907	1,666
California	282,468	359,031	146,234	172,926	213,191	116,351	32,508		13,699	27,809	301	10,338		27,120	39,638	38,430	34,811	25,290	29,079	60,520	34,343	5,629	74,468	24,475	61,980	13,996	21,201
Colorado	1,573,417	1,781,962	877,358	1,221,723	1,349,704	709,145	333,495	446,375	212,719	203,927	255,328	373,799	217,896	230,242	336,590	242,911	299,978	594,369	448,029	252,004	241,188	237,406	353,172	466,822	276,907	46,034	95,411
Connecticu																											
Delaware																											
Florida	27,640	33,355	31,894	37,346	19,772	92,548	2,525	58,139	2,819		3,851						2,018			3,368							
Georgia	3,928	20,489	9,026																								
Hawaii																											
Idaho	209,902	503,470	114,549	56,126	244,364				480	1,901	3,753						40		5,798	671				7,355	17,509		
Illinois			360	471	80	844		525			19,566								112								
Indiana																										21,869	
Iowa			120																								
Kansas		1,519	2,386	26,184	3,834	13,150	2,862	6,832	616	2,822	2,436	2,252		80	958	2,354	1,154	569	2,378	5,764	1,240	160	320	1,238	2,763	8,893	5,614
Kentucky	977	5,478	18,060	15,199	1,256	471	2,543	6,663	8,094	1,968	1,482	1,606			1,264		1,143		2,103		4,968		3,604				
Louisiana	16,873	43,736	31,134	25,095	24,617	2,750	27,533	38,744	180,240	41,378	5,709	50,399	42,900	5,887	25,442	12,333	322	806	3,033	511	1,366	1,985	1,767	2,773	40,406	10,973	5,217
Maine																											
Maryland	1,352														320												
Massachus																											
Michigan	43,043	23,726	86,359	89,311	27,969	222,853	67,969	6,258	13,325	13,356	360	967		20,810		18,650	2,337		3,939	4,050		480	160	3,925	17,640	34,249	2,402
Minnesota			12,956	3,331																							
Mississippi	40,332	161,491	80,354	71,352	118,350	56,276	34,024	77,731	23,572	37,810	20,985	55,049	24,945	71,009	78,586	8,524	25,920	19,826	54,755	15,741	41,205	51,600	47,450	89,135	922		3,288
Missouri						1,325	1,211																				
Montana	2,252,637	1,637,408	1,084,952	630,774	703,843	352,500	140,859	97,604	14,045	64,591	156,123	256,581	299,376	241,346	363,402	289,719	380,273	551,660	293,461	172,874	221,740	313,016	200,161	222,192	235,354	150,165	44,577
Nebraska		17,486	13,794	12,428	2,863	4,275	660		3,688		640		320		760	80	503	7,126		1,880			80				
Nevada	853,216	1,519,129	772,379	1,061,607	3,132,322	884,545	929,105	730,866	815,074	700,226	606,755	244,376	178,372	293,760	181,938	69,534	235,348	746,400	259,920	116,292	538,632	1,359,085	1,405,878	830,272	721,841	804,086	648,548
New Hamp																											
New Jerse																											
New Mexic	806,925	1,544,165	1,476,410	501,156	820,104	672,855	344,069	277,110	254,223	202,905	256,619	207,811	195,623	329,896	213,957	130,552	190,598	130,193	192,124	239,979	214,756	184,786	166,852	170,080	138,772	156,575	68,139
New York				1,922						102							172										
North Caro	122,984	30,862	14,993	5,738																							
North Dako	43,102	50,418	94,753	173,099	48,668	17,138	13,206	5,053	56,017	110,796	35,074	80,469	38,139	188,650	67,110	28,705	21,944	52,858	39,354	6,099	82,527	149,814	84,549	61,460	20,238	155,811	20,834
Ohio	3,913	5,325	3,316	1,297		38	1,121	6,608	13,684	425	1,092	5,693	8,324	285	337	193	1,870	268	121		5,676	418		85		567	9,013
Oklahoma	45,457	1,119,651	90,739	29,209	37,016	50,009	28,811	30,988	7,788	6,130	5,106	37,231	56,163	11,815	13,155	12,432	8,732	8,619	6,018	12,389	3,827	12,428	68,218	37,083	48,704	30,416	3,078
Oregon	189,665	329,470	269,293	49,933	289,125	50,119	105,070	26,414				8,553	14,318	14,100	837	11,948	12,805	4,272	5,006	160			255,619	24,944	14,358	7,734	
Pennsylvar			315		16		329	1,689									7		835								
Rhode Islar																											
South Caro																											
South Dako	52,016	232,710	310,180	110,387	92,782	12,436	23,294	54,936	34,590	33,795	2,921	61,091	60,059	74,693	8,200		62,235	91,880	2,760	548	10,862	33,533	24,775	29,590		21,756	
Tennessee	837	860		662			486	2,273																			
Texas	27,734	35,803	57,050	60,603	14,532	43,416	21,738	43,492	44,098	17,833	16,439	22,396	38,364	35,576	5,784	31,761	13,396	60,972	38,156	43,877	19,509	2,675	16,857	27,720	19,069	57,016	13,334
Utah	639,543	2,150,427	941,049	938,600	1,123,189	757,923	737,454	645,787	526,820	459,189	485,119	393,573	315,989	444,385	278,702	217,934	247,126	284,928	222,070	240,527	118,878	1,001,681	654,484	402,913	**94,569**	240,141	110,857
Vermont																											
Virginia	141,331	32,676	81,362	76,853	38,059	25,811	3,892	3,056	8,194			4				870	5,805						1,039		10,098		
Washingtor	184,834	129,569	13,905	35,275	85,715	3,338	2,280					11,218	1,243	11,485	663	32,899	33,891	16,297	11,544	210,188	192,979	45,423	106,464	23,511	3,904		3,044
West Virgir	3,558	77,845	82,101	30,733	14,263	4,710	11,300	47		6,756	4,657	2,528					34,358			9,830	8,974	12,307	18,539		5,185		
Wisconsin			33,977	24,202	12,329	38,480	9,825																				
Wyoming	1,057,433	2,865,332	2,590,820	1,863,499	3,515,524	2,961,262	2,344,069	1,739,779	877,455	1,192,310	1,837,810	2,030,090	1,029,579	1,425,795	1,880,476	1,516,941	1,004,479	1,182,253	541,827	547,695	722,431	706,234	1,069,680	775,707	807,846	110,344	294,344
Total	10,508,933	17,971,583	9,937,492	7,426,703	12,215,573	7,806,453	5,507,973	4,437,216	3,184,383	3,183,911	3,805,489	3,875,567	2,523,558	3,468,020	3,602,131	3,602,550	2,650,493	3,997,271	2,812,606	2,064,289	4,157,121	4,314,207	4,675,026	4,634,736	2,615,259	1,913,602	1,353,663

Data from Public Lands Statistics

Data for FY 1985 through FY 2010 (data last updated January 7, 2011)

Number of Producing Leases on Federal Lands

Geographic State	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	10	11	12	12	12	14	19	16	18	25	24	18	18	18	16	18	18	18	18	18	19	19	18	20	23	23
Alaska	35	34	34	34	34	34	34	34	35	35	35	38	38	38	38	38	38	38	38	38	38	35	37	41	28	17
Arizona																										
Arkansas	134	161	161	161	163	176	184	171	172	183	187	158	158	157	156	158	157	157	155	151	175	147	142	162	210	225
California	351	305	305	305	316	329	337	331	333	352	350	350	343	339	320	327	306	305	303	304	323	306	306	324	317	321
Colorado	4,397	3,861	3,809	3,721	3,609	3,967	1,973	1,979	2,030	1,989	2,005	2,122	2,122	2,114	2,017	2,367	2,002	2,005	2,023	2,039	2,093	2,075	2,108	2,266	2,266	2,159
Connecticut																										
Delaware																										
Florida		1	1	2	2	3	3	3	3	2	3	2	2	2	2	2	2	2	2	2	2					
Georgia																										
Hawaii																										
Idaho																										
Illinois	1			1	1	1	3	3	3	5	5	5	5	6	7	7	8	8	8	8	8	8	8	8	8	8
Indiana																								2	2	2
Iowa																										
Kansas	192	63	195	256	681	293	432	488	494	457	453	436	437	434	436	435	433	433	432	432	433	430	430	433	433	433
Kentucky	12	13		42	43	45	49	47	48	56	59	43	42	42	42	42	42	42	43	43	46	44	44	46	50	51
Louisiana	112	118	121	121	122	125	108	96	101	176	174	95	93	92	111	156	156	156	153	154	174	155	145	182	129	133
Maine																										
Maryland	2	2	2	3	3	4	5	4	4	2	2															
Massachusetts																										
Michigan	22	25	25	29	30	38	42	38	39	55	57	57	60	63	65	68	63	62	61	63	64	64	64	65	64	66
Minnesota																										
Mississippi	111	166	116	111	113	124	115	88	88	111	111	85	84	83	78	68	68	67	53	53	106	63	58	62	75	75
Missouri	1	1	1	1	1	1	1																			
Montana	1,139	1,518	1,544	1,331	1,294	1,282	1,270	1,274	1,284	1,307	1,321	1,307	1,315	1,324	1,299	1,370	1,327	1,338	1,350	1,360	1,374	1,407	1,413	1,436	1,426	1,422
Nebraska	18	19	21	21	21	21	19	18	18	24	25	20	21	22	21	19	19	18	18	18	19	18	18	19	18	18
Nevada	41	43	43	45	39	43	44	36	36	40	40	57	59	56	31	31	28	28	28	29	43	29	29	29	29	29
New Hampshire																										
New Jersey																										
New Mexico	5,229	5,280	5,280	5,282	5,300	5,333	6,140	5,944	6,078	5,933	5,944	6,122	6,123	6,117	6,085	6,448	6,485	6,529	6,559	6,598	7,330	6,784	6,447	6,554	6,554	6,546
New York							2	3	3	4	4	4	4	4	4	4	4	4	5	6	6	6	5	5	5	5
North Carolina																										
North Dakota	408	429	433	460	458	466	470	477	494	497	500	490	513	534	528	526	534	556	585	562	582	605	636	677	729	780
Ohio	21	30	33	46	51	59	65	70	70	116	133	125	141	149	155	161	172	179	183	202	215	210	212	216	218	227
Oklahoma	645	683	676	682	55	684	764	760	779	808	814	775	781	777	782	788	793	802	801	806	798	833	844	864	864	882
Oregon																										
Pennsylvania	4	5	6	70	70	70	71	70	71	60	80	67	66	66	66	11	67	67	67	67	68	67	67	67	68	68
Rhode Island																										
South Carolina																										
South Dakota	78	97	95	72	70	69	70	68	71	71	71	76	77	75	74	73	73	73	75	72	72	73	74	75	78	78
Tennessee						4	8	7	7	7	7	3	3	3	3		3	3	3	3	4	3	3	2	2	2
Texas	43	82	51	61	9	65	115	143	145	166	173	163	163	163	168	202	170	173	175	181	194	189	193	198	198	220
Utah	1,146	879	888	1,030	1,051	1,051	1,117	1,038	1,068	1,101	1,112	1,236	1,245	1,320	1,306	1,279	1,185	1,199	1,219	1,235	1,228	1,343	1,327	1,586	1,427	1,419
Vermont																										
Virginia	1	1	1	1	1	1	5	8	9	12	13	9	9	11	10		12	11	11	11	12	11	10	11	11	13
Washington																										
West Virginia	45	48	46	227	227	233	247	232	234	159	158	174	174	159	155	163	162	163	159	161	161	161	160	160	156	155
Wisconsin																										
Wyoming	4,663	4,808	4,941	5,307	5,375	5,410	5,529	5,590	5,642	5,801	5,837	6,049	6,010	6,521	6,530	6,965	7,204	7,093	7,212	7,263	7,924	7,774	6,884	7,783	7,211	7,299
TOTAL	18,849	18,623	18,650	19,434	19,151	19,945	19,241	19,036	19,377	19,554	19,677	20,088	20,106	20,689	20,505	21,726	21,531	21,529	21,729	21,989	23,511	22,859	21,680	23,293	22,599	22,676

Data from Public Lands Statistics

[1] Preliminary data not including Alaska. Final numbers may vary.

Data for FY 1985 through FY 2010 (data last updated January 7, 2011)

Number of Producing Acres on Federal Lands

Geographic State	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	504	1,422	1,781	1,781	1,781	1,901	4,708	3,652	4,418	13,973	13,942	6,222	6,222	6,222	8,024	6,473	6,474	6,474	6,474	6,474	6,829	7,115	6,821	8,518	7,983	8379
Alaska	62,923	62,763	62,763	62,763	62,763	62,763	62,763	61,965	113,095	61,618	61,818	67,350	67,350	67,350	67,350	67,350	67,350	67,350	67,350	67,350	67,350	63,070	64,532	88,867	23,450	31347
Arizona																										
Arkansas	78,293	88,259	86,259	88,259	88,944	82,464	90,381	85,391	85,031	87,823	91,823	73,353	74,149	71,883	71,842	74,152	74,632	74,496	74,292	71,588	83,124	86,926	84,508	95,271	120,997	127122
California	81,494	72,932	72,932	72,932	76,452	77,600	80,100	77,308	77,708	81,914	80,162	79,102	74,808	77,255	74,820	73,772	70,733	70,361	69,838	70,339	72,992	72,066	72,167	77,687	78,826	81035
Colorado	3,069,820	2,788,506	2,908,949	2,783,977	2,585,049	2,789,838	1,368,543	1,363,258	1,395,910	1,381,195	1,391,083	1,397,557	1,385,471	1,370,662	1,323,815	1,605,768	1,321,231	1,317,236	1,323,827	1,340,546	1,380,569	1,366,280	1,390,955	1,522,230	1,522,230	1460609
Connecticut																										
Delaware																										
Florida		2,188	2,188	4,497	4,497	5,778	5,778	5,778	5,778	3,468	3,476	3,468	3,468	3,468	3,468	3,468	3,468	3,468	3,468	3,468	3,468					
Georgia																										
Hawaii																										
Idaho																										
Illinois	10			350	350	350	753	753	753	1,184	964	964	964	1,259	1,371	1,371	1,581	1,581	1,581	1,581	1,581	1,581	1,581	1,581	1,581	1581
Indiana																								68	68	68
Iowa																										
Kansas	111,012	22,080	49,312	63,507	104,127	73,183	110,123	109,829	110,709	125,456	124,215	110,464	110,856	109,432	109,511	109,794	109,194	109,194	109,889	109,649	109,649	109,189	109,563	110,440	110,440	110080
Kentucky	17,373	17,484		20,080	20,114	20,452	24,225	24,288	24,673	30,368	32,970	24,132	24,063	24,063	24,063	24,062	24,063	24,071	26,039	26,039	26,853	26,421	26,421	30,885	29,262	30107
Louisiana	60,647	115,164	52,329	62,329	62,336	62,424	45,051	37,141	37,513	50,700	50,749	38,289	37,413	37,373	50,496	65,119	64,619	65,181	64,923	64,945	67,225	63,251	62,610	92,300	52,671	52933
Maine																										
Maryland	2,498	2,498	2,498	2,105	2,105	4,701	5,816	4,737	4,737	34,941	34,941															
Massachusetts																										
Michigan	8,363	14,092	13,092	17,467	18,210	23,327	25,911	23,481	23,958	77,981	78,249	29,900	31,191	31,546	31,705	34,821	30,665	30,585	30,425	31,490	31,681	29,943	29,943	29,983	29,943	30023
Minnesota																										
Mississippi	51,505	54,956	54,075	52,204	52,726	60,199	52,700	42,616	42,616	54,277	51,246	45,268	45,212	45,508	44,461	38,207	37,966	36,886	36,506	36,506	53,179	36,506	33,728	42,691	38,864	39125
Missouri	1,329	1,329	1,329	1,329	1,329	1,329	1,329																			
Montana	982,502	801,087	861,438	738,568	707,407	680,805	689,947	687,439	689,433	778,629	778,427	679,084	683,665	688,566	678,248	750,141	690,619	696,058	721,040	736,958	757,679	770,817	788,611	777,370	789,515	762060
Nebraska	6,526	7,643	7,860	6,347	6,347	6,307	6,279	5,638	5,638	36,958	37,767	6,507	7,147	7,187	6,418	6,278	6,278	6,069	6,069	6,069	6,877	8,615	8,615	8,678	8,616	8615
Nevada	16,597	12,962	12,682	13,446	15,380	19,854	16,244	15,687	15,687	24,084	24,884	44,300	48,198	47,895	17,644	20,954	15,338	15,337	15,338	15,498	23,954	14,735	14,735	14,998	14,998	19077
New Hampshire																										
New Jersey																										
New Mexico	4,768,843	4,791,756	4,800,230	4,802,072	4,809,786	4,839,228	3,555,632	3,440,285	3,513,459	3,429,886	3,434,748	3,512,145	3,498,436	3,494,926	3,478,670	3,701,918	3,717,982	3,723,583	3,740,785	3,769,487	4,093,422	3,859,173	3,642,454	4,347,437	4,347,437	3687469
New York							797	902	902	1,009	1,009	1,010	1,010	1,010	1,009	543	544	544	1,182	1,284	1,284	1,284	1,182	1,284	1,182	1182
North Carolina																										
North Dakota	363,597	377,700	380,124	396,582	394,160	402,941	342,988	345,899	352,204	335,947	325,564	307,774	320,023	327,332	320,425	305,633	300,122	306,143	300,090	299,487	311,565	323,996	338,850	357,253	377,152	403513
Ohio	6,651	7,318	7,440	9,470	10,040	10,685	10,087	8,892	8,692	14,952	19,945	19,162	21,263	22,712	29,606	31,181	32,891	33,605	34,109	36,542	38,048	37,102	36,841	38,277	40,240	41006
Oklahoma	104,443	106,043	106,994	107,425	34,232	107,535	120,438	120,020	124,909	125,526	125,107	121,376	121,828	120,200	118,043	117,537	118,598	119,318	119,178	120,582	112,136	123,544	125,358	130,715	130,715	131837
Oregon																										
Pennsylvania	2,243	2,693	2,934	6,677	6,677	6,677	9,020	9,018	9,066	26,728	26,728	6,967	4,878	4,908	4,817	10,555	4,857	4,939	4,884	4,884	4,701	4,694	4,694	4,694	4,828	4767
Rhode Island																										
South Carolina																										
South Dakota	84,254	68,548	63,028	53,478	55,622	49,482	49,918	39,059	40,419	39,246	37,575	48,921	47,167	37,015	34,537	33,897	33,897	33,897	34,497	33,377	33,377	34,378	34,647	34,727	42,591	42591
Tennessee						2,024	3,257	3,111	3,111	2,446	2,446	2,366	2,366	2,295	2,295		2,296	2,296	2,296	2,296	2,441	2,296	2,296	651	736	736
Texas	25,057	38,642	35,476	35,478	4,652	51,005	47,921	51,275	52,510	63,109	62,164	68,931	76,104	78,317	87,033	117,324	105,146	106,857	110,213	113,398	114,229	120,478	121,193	130,025	130,025	146715
Utah	1,119,855	891,020	702,327	778,442	783,361	778,891	829,794	771,191	795,033	814,833	822,845	914,203	912,044	954,984	956,768	983,996	881,319	895,482	904,467	918,106	950,355	1,007,603	1,014,474	1,493,683	1,092,640	1086431
Vermont																										
Virginia	2,165	2,165	2,208	2,185	2,185	2,165	3,974	4,671	5,122	6,140	10,976	5,126	5,126	10,074	9,961		10,755	10,555	10,555	10,555	10,755	10,555	9,962	14,760	10,464	13513
Washington																										
West Virginia	60,917	90,951	110,991	103,803	103,803	106,189	109,516	106,162	106,459	150,783	149,546	104,065	104,065	84,041	79,453	79,911	77,948	77,948	53,232	54,967	54,967	55,099	58,642	61,102	60,400	53785
Wisconsin																										
Wyoming	2,335,986	2,457,427	2,431,488	2,621,067	2,631,948	2,863,387	2,583,226	2,674,625	2,701,949	2,729,656	2,823,521	2,796,914	2,787,758	3,089,466	3,084,834	3,494,526	3,611,299	3,574,044	3,664,573	3,719,819	4,109,529	4,050,915	3,587,432	5,027,052	3,794,355	3829709
TOTAL	13,424,909	12,700,808	12,834,727	12,908,598	12,846,361	13,003,484	10,376,331	10,123,892	10,352,494	10,584,811	10,696,690	10,514,920	10,482,046	10,796,550	10,718,687	11,758,751	11,421,865	11,413,541	11,537,130	11,671,414	12,529,618	12,267,612	11,629,625	14,543,425	12,642,209	12,205,416

Data from Public Lands Statistics

(1) Preliminary data not including Alaska. Final numbers may vary.

Data for FY 1985 through FY 2010 (data last updated November 8, 2010)

Number of APDs approved by Year on Federal Lands

graphic State	FY 1985[1]	FY 1986[1]	FY 1987[1]	FY 1988[1]	FY 1989[1]	FY 1990[1]	FY 1991[1]	FY 1992[1]	FY 1993[1]	FY 1994[1]	FY 1995[1]	FY 1996[1]	FY 1997[1]	FY 1998[2]	FY 1999[2]	FY 2000[2]	FY 2001[2]	FY 2002[2]	FY 2003[2]	FY 2004[2]	FY 2005[2]	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama						9	19	1	2								2		8	6			1		1	
Alaska	2	4	1		2	2			1	1	3	5	1	3	6	11	12	12	8	14	9	9	7	12	8	
Arizona	1	2	3	1	1		1			1		1		1										1		
Arkansas						14	8	11	8					2	7	5		3	6	5	23	11	14	25	28	18
California	298	189	115	86	227	156	172	108	140	173	137	175	281	408	172	88	74	104	72	109	203	165	313	231	169	281
Colorado	196	88	63	119	140	203	151	127	175	184	51	79	94	47	107	155	201	175	252	378	488	650	765	684	473	593
Connecticut																										
Delaware																										
Florida						1	2																			
Georgia																										
Hawaii																										
Idaho	2		1																							
Illinois						7	1	4	2																	
Indiana																										
Iowa																										
Kansas						8	8	12	6					6	1	7	6	3	7	1		2	10		3	2
Kentucky							2	14	2								2			4			3			
Louisiana						11	1	6	5					19	2	8	4	2	16	27	62	26	65	45	2	1
Maine																										
Maryland																										
Massachusetts																										
Michigan						11	4	2	10					2		1	1			11		8	4	5		1
Minnesota																										
Mississippi						4	19	4	10					4	1	6	5	4	14	9	15	4	7	3	2	1
Missouri																										
Montana	246	118	85	97	90	101	80	52	30	71	88	95	186	76	95	106	114	120	206	134		119	150	141	57	86
Nebraska						1	2	1	4										1	1	1			2		
Nevada	39	23	17	19	32	38	25	30	33	25	29	23	34	7	1			4	3	10	9	8	14	7	7	3
New Hampshire																										
New Jersey																										
New Mexico	1,258	654	512	685	805	1,255	828	782	968	951	802	890	911	658	564	864	904	1,009	1,164	1,319	583	1,414	1,213	1,224	1,105	945
New York																		1						4		
North Carolina																										
North Dakota						40	27	28	28					22	2	15	41	46	50	66		109	72	88	65	147
Ohio						1	16	15	3						4	1	8		2	3					1	3
Oklahoma						7	9	15	9					4	8	10	4	4	9	10		18	16	18	4	10
Oregon	3																									
Pennsylvania						3																			6	
Rhode Island																										
South Carolina																										
South Dakota						9	6		2					6	2	1	2	4	1			1	4	4		1
Tennessee																										
Texas						9	12	25	31					3	6	14	16	15	26	29		44	13	23	24	78
Utah	209	124	124	145	59	84	158	276	162	127	220	173	254	236	123	248	378	317	323	517	66	458	896	943	557	402
Vermont																										
Virginia						8	5	4	4					2			1							2		
Washington															1											
West Virginia						8	1							4	1	2	2	1	1							
Wisconsin																										
Wyoming	1,001	612	534	559	458	627	410	430	587	536	478	472	767	661	538	1,524	1,862	1,548	1,635	3,399	3,120	3,692	3,557	3,155	1,975	1,538
Eastern Sta	63	73	31	61	37					44	62	46	52													
TOTAL	3,318	1,896	1,486	1,772	1,851	2,617	1,959	1,947	2,222	2,113	1,870	1,959	2,580	2,171	1,639	3,066	3,439	3,372	3,802	6,052	4,579	6,738	7,124	6,617	4,487	4,090

[1] Data from Public Lands Statistics in which APDs were portrayed by BLM administrative office (e.g., the Eastern States Office).

[2] Data from AFMSS as of January 31, 2005. Data is shown by geographic State (e.g., Alabama, Arkansas, etc.).

[3] Due to AFMSS shut down in FY 2005 data is incomplete as of 11/18/2005. Data will be updated as soon as system is fully updated for FY 2005.

Data for FY 1985 through FY 2010 (data last updated November 8, 2010)

Number Of Wells Started (Spud) During the Year on Federal Lands

Geographic State	FY 1985[1]	FY 1986[1]	FY 1987[1]	FY 1988[1]	FY 1989[1]	FY 1990[1]	FY 1991[1]	FY 1992[1]	FY 1993[1]	FY 1994[1]	FY 1995[1]	FY 1996[1]	FY 1997[1]	FY 1998[2]	FY 1999[2]	FY 2000[2]	FY 2001[2]	FY 2002[2]	FY 2003[2]	FY 2004[2]	FY 2005[2]	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama		1		3	5	10	10	2	1		1						1	1		6	0				1	
Alaska	3	7			2	2	4			1	2	1		1	6	12	13	13	7	7	6	6	7	9	7	
Arizona	2		3	1			1			1														1		
Arkansas	5	28	7	5	7	12	5	6	6	7	9	18	6	4	6	11	1	7	5	4	6	11	13	12	14	8
California	213	28	106	38	105	124	174	39	133	121	125	143	154	480	223	108	91	100	108	97	147	135	155	231	152	139
Colorado	83	194	27	162	98	149	124	83	146	164	87	49	26	58	67	121	158	156	206	195	207	386	400	527	340	175
Connecticut																										
Delaware																										
Florida			1	1	1	2	2																			
Georgia																										
Hawaii																										
Idaho	1	1		1																						
Illinois				1		2	2	2	5	1	2	1		1												
Indiana																										
Iowa																										
Kansas	7	4	2	7	7	5	10	10	6	14	8	22	21	7	1	5	8	3	6			5	5		2	1
Kentucky				5	6	3	11	5	9	5	1		2				2									
Louisiana	24	7	2		7	9	5		8	5	9	6	29	14	6	9	5	2	9	14	15	39	39	24	6	
Maine																										
Maryland																										
Massachusetts																										
Michigan	2		1	5	2	6	3	2	5	3	15	8	7	1		2	1	1	1	7		1	2		1	1
Minnesota																										
Mississippi		8	8	17	15	9	14	8	5	7	9	10	7	1	7	7	5	7	6	3	4	11	11	1	3	1
Missouri	6																									
Montana	165	78	76	66	77	88	76	46	16	30	62	19	81	63	91	108	117	109	124	98		107	131	120	51	33
Nebraska	2	3	3	9	2	1	1	1	4	1	2		2	1						1		1	1	1	1	
Nevada	27	20	13	16	23	23	22	24	20	26	23	21	13	9	1			3	4	4	5	8	8	4	2	
New Hampshire																										
New Jersey																										
New Mexico	369	534	353	482	441	778	862	402	505	646	624	588	663	792	609	920	1,000	821	1,077	726	218	968	1,088	1,000	706	308
New York						2		1							1				1						2	
North Carolina								1																		
North Dakota	43	42	14	28	8	25	26	25	18	17	18	21	10	36	2	19	35	54	65	48		96	114	66	66	66
Ohio	3	1	4	5		1	9	14	5	5			2	1	4	1	8	1	1	2		2	3	1		1
Oklahoma	5	10	4	53	13	4	10	21	9	3	9	28	32	7	7	13	11	6	7	5		13	13	18	6	3
Oregon	1																									
Pennsylvania				3										1				1				5	5		5	
Rhode Island																										
South Carolina																										
South Dakota	9	7	3	5	4	10	6	5	2	5	6	2	5	9	2	1	2		3			7	8	2	2	
Tennessee						12																				
Texas	14	10	12	11	7	14	10	8	23	29	31	32	19	6	3	13	21	10	10	15		17	18	14	13	19
Utah	103	85	81	107	55	59		200	173	95	126	123	159	249	100	252	363	233	275	226	37	181	582	736	429	172
Vermont																										
Virginia							96	2	3	1	1			2				1						2	2	
Washington				1	1										1											
West Virginia			1	1		5	9		4					4	2		4	4	1							
Wisconsin																										
Wyoming	381	487	302	493	347	472	291	307	435	443	282	320	498	605	480	1,259	1,602	1,338	1,041	1,244	1,097	2,709	2,740	2,275	1,446	553
TOTAL	1,468	1,553	1,023	1,526	1,231	1,827	1,783	1,214	1,541	1,630	1,452	1,410	1,736	2,352	1,619	2,861	3,448	2,871	2,957	2,702	1,742	4,706	5,343	5,044	3,267	1,480

[1] Data from Public Lands Statistics

[2] Data from AFMSS.

[3] Due to AFMSS shut down in FY 2005 data is incomplete as of 11/18/2005. Data will be updated as soon as system is fully updated for FY 2005.

Data for FY 1985 through FY 2010 (data last updated November 8, 2010)

Number of Producible and Service Holes on Federal Lands

Geographic State	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005[1]	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Alabama	4	5	5	6	7	7	9	37	37	37	37	40	40	39	19	22	20	21	26	27	27	28	29	29	29	30
Alaska	116	126	136	133	133	134	134	132	132	134	135	150	153	177	159	168	168	167	153	129	176	168	171	177	176	187
Arizona									1	1					2	2	1		1			1	1	2	2	
Arkansas	73	99	104	107	110	111	114	214	223	231	231	311	314	320	145	134	114	114	112	113	118	140	146	175	162	190
California	4,502	4,592	4,623	6,172	6,188	5,860	5,795	5,933	6,110	5,977	6,149	5,693	5,785	7,121	6,306	6,373	6,369	6,151	6,548	5,887	6,611	7,105	7,146	7,299	7,265	7,369
Colorado	2,436	3,043	2,990	2,438	3,303	2,815	3,603	3,641	3,726	3,863	3,950	3,098	3,123	3,438	3,006	3,076	3,137	3,205	3,595	3,573	4,078	4,571	4,928	5,610	5,444	6,167
Connecticut																										
Delaware																										
Florida		1	1	3	3	3	3	7	7	7	7	4	4	4	2	2	2	2	2	2						
Georgia																										
Hawaii																										
Idaho																										
Illinois				1	2	2	5	8	11	13	13	13	13	16	19	19	16	16	16	16		18	16	16	16	17
Indiana																								2	4	4
Iowa																										
Kansas	136	140	141	143	150	157	157	182	157	164	173	476	924	938	424	428	431	422	454	447		462	462	455	455	965
Kentucky	95				1	1	12	77	84	87	87	135	129	138	149	149	151	242	160	160	160	161	164	164	164	161
Louisiana	363	373	372	363	344	339	295	311	314	317	322	386	390	417	310	303	289	294	304	294	342	400	450	472	468	459
Maine																										
Maryland	9	9	9	9	9	9	9	9	9	9	9	9	56		8	8	8	8	9	9		9	9	9	9	25
Massachusetts																										
Michigan	63	12	63	67	57	56	54	52	50	50	64	70	700	714	73	74	74	69	73	81		83	90	91	91	777
Minnesota																										
Mississippi	230	227	224	224	220	225	222	146	137	141	142	195	197	202	160	153	146	125	121	110	118	129	134	131	131	125
Missouri	3									1	1															3
Montana	2,807	2,843	2,900	2,958	2,974	3,001	3,028	3,042	3,051	3,048	3,083	3,318	1,449	2,290	1,801	1,858	1,913	1,949	2,285	2,156	62	2,617	2,678	2,744	2,720	2,281
Nebraska	26	27	27	31	30	30	30	30	28	28	28	36	36	67	31	31	28	28	30	27	68	32	32	32	32	71
Nevada	52	55	54	57	66	75	78	84	89	91	95	91	93	116	116	117	117	109	126	102	121	127	127	117	118	109
New Hampshire																										
New Jersey																										
New Mexico	19,044	19,621	19,885	20,162	20,524	21,100	20,855	22,234	22,614	22,802	23,240	24,367	24,851	27,338	25,288	24,927	25,617	21,478	25,758	25,112	15,464	27,765	28,339	29,094	28,966	32,664
New York				2	1	1	3	3	3	3	3	2	2	2	4	4	4	4	5	5		5	4	5	4	5
North Carolina																										
North Dakota	706	710	689	692	659	663	662	646	624	607	597	691	622	751	658	664	680	634	773	746		961	989	1,088	1,049	1,173
Ohio	47	83	91	104	103	105	143	163	174	200	257	308	121	147	356	364	373	393	464	495		543	545	585	561	585
Oklahoma	246	252	255	266	276	280	271	284	298	291	314	269	1,494	1,588	323	331	342	332	352	335		359	362	383	383	3,228
Oregon																										
Pennsylvania	7	1	1	39	87	88	88	83	83	92	89	54	54	55	133	133	133	135	147	145		159	159	159	159	185
Rhode Island																										
South Carolina																										
South Dakota	165	172	173	173	174	179	181	182	179	180	182	181	73	70	67	67	66	63	68	65		70	71	76	74	76
Tennessee						12	12	12	12	12	12	10	10		9	11	8	8	9	9	9	9	9	9	9	10
Texas	52	62	71	80	84	93	111	128	140	157	174	207	379	403	268	278	293	296	332	332		395	407	421	411	565
Utah	1,930	1,978	2,005	2,048	2,959	2,035	2,064	2,135	2,315	2,349	2,417	1,919	1,845	2,907	2,744	2,902	3,189	3,330	3,935	3,745	1,095	4,702	4,702	6,852	6,593	7,606
Vermont																										
Virginia							8	19	22	23	24	30	31	31	15	15	16	16	15	15	15	15	15	18	17	18
Washington															1	1	1		1							
West Virginia	55	60	60	60	201	202	204	211	214	214	233	280	71	76	271	272	276	274	290	290		289	304	303	304	311
Wisconsin																										
Wyoming	12,049	12,249	12,488	12,743	12,807	12,979	13,023	12,943	12,813	12,771	12,972	13,984	13,824	15,739	14,820	15,734	16,891	21,950	19,217	18,943	21,830	25,936	27,483	30,164	29,514	31,104
TOTAL	45,226	46,738	47,367	49,081	51,472	50,562	51,193	52,926	53,647	53,900	55,020	56,327	56,793	65,104	57,687	58,620	60,873	61,835	65,389	63,370	50,292	77,257	79,972	86,642	85,330	96,470

Data from AFMSS

[1] Due to AFMSS shut down in FY 2005 data is incomplete as of 11/18/2005. Data will be updated as soon as system is fully updated for FY 2005.

Moran Q28: The GAO testimony last week indicated that the BLM is unable to require oil, gas, coal, and hardrock mine operations on Federal lands to post adequate bonds to ensure that the lands can be reclaimed after the disturbance of these operations.

Please explain why this situation exists and what levels of revenues are potentially being lost to the American taxpayer. Can you do something about this?

ANSWER: To manage potential liability on Federal land, the BLM has developed policies for reviewing bond adequacy and for managing idle wells (wells that have not produced for at least seven years) and orphan wells (wells that have no responsible or liable parties). The bond adequacy policy is intended to ensure that BLM Field Offices regularly review bonds and increase them as necessary so that they reflect the level of risk posed by the operator. The BLM's idle and orphan well policy is intended to ensure that nonproducing wells are either plugged or returned to production. This policy directs BLM Field Offices to develop an inventory of such wells and rank and prioritize them for reclamation based on potential environmental harm, among other things.

The BLM currently holds $1.9 billion in financial guarantees in conjunction with the States to ensure final reclamation of hardrock mines. The BLM's surface management regulations and financial assurance process are intended to prevent undue and unnecessary degradation and to ensure reclamation and closure of disturbed lands. With regard to coal and non-energy solid minerals, the BLM also requires financial guarantees to ensure final reclamation before coal and non-energy solid minerals mining occurs.

Moran Q29: The development of oil and natural gas resources on federal lands and offshore areas contributes to domestic energy production but also results in concerns over potential impacts such as on wildlife habitat. Public protests of lease sales are one way that federal resource management agencies, such as BLM, can be made aware of these potential impacts.

We have heard from energy industry that protests are preventing the BLM from doing its job.

Can you please reflect on the protests and the way in which the BLM tries to balance its energy production mission with its environmental stewardship mission?

ANSWER: On March 17, 2010, Secretary Salazar announced a series of oil and gas leasing reforms designed to ensure environmental protections of important natural resources while aiding the orderly leasing and development of oil and natural gas from the public lands. Under the reformed oil and gas leasing policy, the BLM is providing more comprehensive interdisciplinary reviews that take into account site-specific considerations for individual lease sales. The BLM's environmental analysis and leasing decisions address the national interest of environmentally responsible domestic energy production.

These oil and gas leasing reforms establish an orderly, open, consistent, and environmentally sound process for developing oil and gas resources on public lands. These reforms engage the public in plan development to fully consider important values prior to leasing and developing an

area. The BLM will be evaluating the effectiveness of the leasing reforms over the next few months.

Oil and Gas Inspection fees and Legislative proposals

New fee for onshore oil and gas inspections: The budget proposes to implement an inspection fee that will generate $38 million. This will increase production accountability, human safety, and environmental protection. A similar proposal was in the FY 2011 House Subcommittee approved bill that I put together, so I support this proposal. I understand that it is common for various industries, such as the nuclear energy industry, to pay fees that support the federal inspection of the industry.

Moran Q30: Mr. Abbey, can you please explain this fee and how you will use the receipts?

ANSWER: The 2012 budget proposes to shift a significant share of the cost of the inspections activity to the industry, for a savings of $37.95 million in requested appropriations in FY 2012. The estimated collections generated from the proposed inspection fees would fully offset the proposed reduction in appropriated funding. The inspection fee is based on historical spending for inspections, and the number of wells and leases that must be inspected. The fee is designed to recoup the majority of the costs of performing inspections. The fee will be reevaluated each year to ensure funding is adequate to fulfill the agency's inspection and enforcement responsibilities and to meet the needs of the program. This mirrors a similar fee the Bureau of Ocean Energy Management (BOEMRE - part of the former MMS) instituted during FY 2010 for outer-continental shelf facilities. The new inspection and enforcement fee is not for a new set of inspection and enforcement activities, but is a new funding mechanism for an existing program that has been funded through appropriated funds. The inspection fee would offset a $37.95 million reduction in discretionary appropriations.

Moran Q31: Regarding new fee for coal and other minerals inspections: BLM also will recover the cost of its inspecting coal and other minerals. This can be done administratively and will generate about $4 million.

Mr. Abbey, please explain this fee and how the extra oversight will help the BLM ensure better management of the coal resource.

ANSWER: The 2012 budget proposes a decrease of $2.4 million in appropriated funding for coal management inspections to be offset by a new inspection fee. This fee will be achieved through new cost recovery regulations that BLM plans to implement in early 2012. There are no plans for additional oversight or new inspections. Similarly, 2012 budget proposes a decrease of $2.0 million in appropriated funding for inspections of other mineral operations that will be offset by the implementation of new cost recovery regulations that BLM plans to implement by early 2012. The cost recovery regulations will create an inspection fee for other mineral operations that is anticipated to generate collections of $2.0 million.

Moran Q32: Regarding reform hardrock mining on Federal lands: I am very interested in the future proposal that would require new mines on Federal lands to pay annual rentals payments and a royalty of not less than 5%. The receipts would be shared with the States.

What kind of revenues could be generated and when can we expect to see a legislative package?

ANSWER: The President's Budget estimates a total of $100 million in receipts to the U.S. Treasury through 2021, however, the legislative proposal is currently under development.

Moran Q33: There have been a lot of attempts over the years to reform the Mining Law of 1872 and it is embarrassing that the Congress has not made progress.

What are you going to propose and do you think you will have better luck than in the past?

ANSWER: The Administration's FY2012 Budget assumes legislation to provide a fair return to the taxpayer from hardrock production on Federal Lands. The proposal would remove certain minerals from the operation of the Mining Law of 1872 and add them to the leasing provisions of the Mineral Leasing Act of 1920 (MLA). Minerals covered by this proposal are gold, silver, lead, zinc, copper, uranium, and molybdenum. Under the proposal, new mining on Federal lands for these minerals would be conducted under the MLA's leasing process. Existing mining claims for these minerals would not be affected. In accordance with the MLA's standard leasing process, these minerals would be subject to annual rental payments and to a royalty of not less than 5 percent.

The 2012 budget also assumes a new AML fee based on materials displaced by hardrock mining to address the environmental and physical safety hazards posed by the many thousands of abandoned mines across the country. The fee would be levied on all uranium and metallic mines on Federal and non-Federal lands, including State, public, private, and tribal lands. The fee would be collected by the Office of Surface Mining, Reclamation and Enforcement and made available for the reclamation of Federal and non-Federal abandoned hardrock mines. The BLM would distribute the receipts through a competitive grant program to reclaim the highest priority abandoned hardrock sites. This component is part of a larger proposal to comprehensively reform the reclamation of abandoned mine lands across the Nation, by terminating unrestricted payments to States and Tribes that have already cleaned up their abandoned coal mines, and transitioning funding for reclamation of coal AML sites to a competitive program, in order to address the highest priority sites. Altogether, this proposal will ensure that the Nation's highest priority hardrock and coal abandoned mine lands are reclaimed, funded by the industries that created them.

We believe both of these proposals reflect pressing needs and deserve full and fair consideration.

Moran Q34: I also note that you propose a $4.0 per acre fee on non-producing oil and gas leases onshore and offshore, which would be an incentive for lease holders to get active. I think this is a great idea. This fee is projected to generate $25 million in 2012 and $874 million over ten years.

Does this require legislation or can something be done administratively?

ANSWER: Implementing the $4.00 per acre non-producing lease fee, as proposed, would require legislation. The Department is also looking at other administrative options to encourage leaseholders to get their leases into production in a timely manner.

National Landscape Conservation System

Background: The BLM manages the National Landscape Conservation System, a collection of 27 million acres of American lands and waters. These are wonderful areas that many, many Americans are very proud of. The NLCS stands with the National Park System and the National Wildlife Refuge System as the cornerstones of American conservation.

I am concerned about recent threats to these lands. I see that the BLM budget request, as tight as it is, has found room to increase funding for the care and management of the NLCS. This is a very good thing, which will help our citizens use and enjoy these lands, and thereby help hundreds of rural communities that provide services.

Moran Q35: Please tell us specifically what funds are being requested in support of the NLCS and what you will accomplish with those funds and also discuss what will happen if you are not provided with adequate funding to manage these wonderful places.

ANSWER: Funding for the NLCS is budgeted in several subactivities. The 2012 request for the NLCS is $77.7 million, which represents the recurring base funding only; it does not include additional one-time funding that may vary significantly from year to year. The 2012 budget request for the National Monuments and National Conservation Areas subactivity in the Management of Lands and Resources account is $39.3 million, and the request for the NM/NCA subactivity in the O&C Grant Lands account is $749,000. These two subactivities fund recurring base operations in 16 national monuments and 16 national conservation areas. Without this funding, the Bureau of Land Management would no longer be able to manage these spectacular landscapes including Nevada's Red Rock Canyon National Conservation Area, the Grand Staircase-Escalante National Monument in Utah, and Carrizo Plain National Monument in California. The request of $39.3 million in the MLR account represents a program increase of $8.4 million over the 2011 Operating Plan that the BLM plans to use for the completion of resource management plans, expanding law enforcement capabilities, developing interpretive and educational materials, and enabling scientific research to enhance the Bureau's understanding of significant natural and cultural resources.

The Wilderness Management subactivity provides for the management of 221 Wilderness Areas and 545 Wilderness Study Areas (totaling over 21 million acres). This program's proposed budget for 2012 is $19.6 million. With these funds, the Wilderness program will monitor, manage, protect and restore Wilderness, and will also continue the implementation of the wilderness portion of the Omnibus Public Lands Management Act by managing 37 new Wilderness Areas totaling 900,000 acres. The funds will be used to perform such activities as locating, signing and securing wilderness boundaries, conducting protective field monitoring to maintain the wilderness resource and establish baseline conditions, preparing Congressionally-required maps and legal descriptions, completing boundary surveys, conducting public communication activities and establishing partnerships with affected stakeholders,

training employees regarding new wilderness stewardship responsibilities under the Wilderness Act, and preparing wilderness management plans.

The Wild and Scenic Rivers program manages 69 rivers in 7 states totaling 2,416 miles and approximately 1.2 million acres. The program receives funding in several budget subactivities. The 2012 request for the W&SR program is $9.3 million. This represents an increase of $2.0 million over the 2011 Operating Plan. In 2012 the program will continue monitoring of the outstandingly remarkable values, water quality, and free flowing conditions of the designated rivers, completing the updating of BLM's Wild and Scenic River policy, strengthening existing partnerships and establishing new partnerships, providing support for interagency efforts to implement a Wild and Scenic River training program, and conducting tamarisk and other non-native exotic species eradication efforts on select rivers. The 2012 funding increase would enable BLM to implement new comprehensive management plans in Idaho and Alaska, and support increased monitoring of outstandingly remarkable values, restoration of native plant species and riparian habitat, additional water quality monitoring and visitor use management, and law enforcement patrols pertaining to unauthorized uses.

The 2012 request for the National Scenic and Historic Trails program, which also receives funding in multiple budget subactivities, is $8.7 million, an increase of $2.0 million over the 2011 Operating Plan. Base funding for the program contributes to agency management of 16 trails crossing 6,000 miles in 14 States. It supports staffing in over 80 BLM offices, including Trail Administrators, State, District and Field Office Leads, and Trail Liaisons. Base funding supports limited project work, easements, interpretation, agreements, and visitor center operations. The proposed increase will support the implementation of BLM's trails policy, including inventory, monitoring, and updates to older land-use plans where trails have not been addressed to current standards. Numerous projects would also be completed with the increase, including the completion of the Arizona National Scenic Trail; inventory of the Old Spanish Trail by Arizona State University; planning, easements, centennial activities along the Iditarod; placement of youth trail interns and apprentices; and monitoring and mitigation of energy projects along trail corridors.

Moran Q36: Mr. Abbey, multiple units of the National Landscape Conservation System are managed by the BLM in your home state of Nevada.

Can you talk about the role that National Monuments and other conservation areas play in Nevada for local communities and the state as a whole?

ANSWER: Nevada's three National Conservation Areas (NCAs) play an important role in local communities surrounding each NCA, and the State as a whole, in terms of both contributions to local economies and quality of life to some residents and visitors. Outdoor recreation-based tourism is an important part of Nevada's economy and contributes to the health and well-being of its residents and visitors. Nevada's NCAs are special places where BLM showcases some of the State's unique historical, natural, scientific, and cultural treasures.

In Northern Nevada, the Black Rock Desert High Rock Canyon Emigrant Trails NCA is just outside of the gateway town of Gerlach and near Reno/Sparks, Fernley, and Winnemucca. Gerlach is economically challenged due to the recent closure of its major employer, a Gypsum plant; now, its major industry is tourism. Black Rock NCA attracts about 100,000 visitors each year, including visitors to the

annual Burning Man event, which brings over 50,000 participants to the Black Rock playa. The Reno/Sparks and Fernley areas receive significant economic benefits from this event. Thousands of people fly into Reno, rent cars and RVs, and buy all their gear and supplies for the week from local businesses before going to the desert. The Burning Man Event is also the largest Leave No Trace event in the world; its organizers pride themselves on leaving the area in better shape than they found it.

In Southern Nevada, Red Rock Canyon NCA is located just west of the City of Las Vegas, and Sloan Canyon NCA is located to the southeast, just outside the City of Henderson, which is a suburb of Las Vegas. These NCAs provide important outdoor recreation opportunities for residents and tourists who are seeking an escape from the urban setting of the Las Vegas metropolitan area. Red Rock NCA attracts over 1.4 million visitors per year, the most of any NLCS unit. Marketing for residential housing in the area includes mention of great views of the NCAs and proximity to their recreational trails. Higher home values are associated with open space, such as being near the two NCAs. A new multi-million dollar visitor center was recently constructed at Red Rock Canyon. This benefitted the local economy because the contractor purchased supplies from local businesses. Red Rock NCA is primarily funded by entrance fees, and Sloan Canyon NCA is funded solely by funds received from Southern Nevada Public Land Management Act transactions.

Additionally, Nevada has 45 Congressionally-designated Wilderness areas (totaling 2.05 million acres), 63 Wilderness Study Areas (totaling 2.5 million acres), and over 1,100 miles of National Historic trails, all of which provide benefits to local communities and the State as a whole.

New BLM Wild Lands policy (Secretarial Order #3310)

Moran Q37: You've been criticized from not consulting with western governors and other officials prior to promulgating the new BLM "Wild Lands policy" late last year.

Can you tell us if former Secretary Norton consulted with any elected officials besides the governor of Utah when she adopted the so-called "no more wilderness" policy in 2003?

ANSWER: I am not aware of any consultation that Secretary Norton may have carried out at that time.

Moran Q38: Have any "Wild Lands" been designated under the new policy?

ANSWER: No Wild Lands have been designated under this policy.

Moran Q39: Can you describe the process for designating "Wild Lands" under the new policy, especially the opportunities that local stakeholders, governors, and elected officials will have in the process?

ANSWER: Secretarial Order 3310 provided that designations would only be made through the resource management planning process under FLPMA, which provides an opportunity for public input. As you know, however, the FY 2011 Continuing Resolution prohibits the BLM from spending funds on implementing Secretarial Order 3310. The Department is complying with the Continuing Resolution.

Moran Q40: Some critics of the new policy have alleged that it elevates wild land protection over other multiple-uses of the public lands. Is this your view?

ANSWER: As you know, the FY 2011 Continuing Resolution prohibits the BLM from spending funds on implementing Secretarial Order 3310. The Department is complying with the Continuing Resolution.

Renewable Energy

Moran Q41: Requested funds for renewable energy development at DOI is maintained at FY 2011 levels: $73 million, or a $14 million increase from FY 2010 enacted levels.

Can you describe how the Department will be continuing its mandate of protecting lands in the next fiscal year while rapidly deploying and siting clean energy?

ANSWER: The BLM has recently identified 20 priority renewable energy projects for 2011 – 10 solar, 5 wind, and 5 geothermal – that will help achieve the Department's goal of permitting 10,000 megawatts of renewable energy capacity by the end of 2012. The BLM is giving these projects priority because they are mostly in low- to medium- resource conflict areas and have demonstrated the ability to complete full NEPA analysis, including public comment periods, within the year. Additionally, the BLM recently released the Draft Solar Programmatic Environmental Impact Statement (EIS), which identifies 24 Solar Energy Zones (SEZs) that, under the Draft PEIS' preferred alternative, would receive priority for processing by the BLM. The BLM designated these SEZs because they have relatively low resource conflicts. The Solar EIS has also specifically identified areas that would be excluded from solar energy development. These areas include Areas of Critical Environmental Concern (including Desert Wildlife Management Areas), critical habitat areas (designated and proposed) for listed species under the Endangered Species Act, Desert Tortoise translocation sites, big game migratory corridors, big game winter ranges, and other land use management prescription areas to protect sensitive species habitat.

Moran Q42: The budget justification states that DOI has set a Renewable Energy Goal—not just a target—of approving 10,000 megawatts of renewable energy resources on Interior-managed lands by the end of 2012. About 4,000 MW were permitted this last year.

How do you plan to more than double this past year's successes while ensuring full environmental review?

ANSWER: The BLM has recently identified 20 priority renewable energy projects for 2011 – 10 solar, 5 wind, and 5 geothermal – and is currently working to identify its 2012 projects, that will help achieve the Department's goal of permitting 10,000 megawatts of renewable energy by 2012. Funding of $7.0 million is also requested in the 2012 FWS budget for required consultations anticipated with an expanded renewable energy program.

Moran Q43: DOI approved 10 "fast-track" solar and wind projects last year, but hundreds more are in the queue. How will you prioritize which applications to permit in 2011?

ANSWER: The BLM is giving the 20 renewable energy projects priority because they are in low- to medium- resource conflict areas and have demonstrated the ability to complete full NEPA analysis, including public comment periods, within the year.

Moran Q44: What kinds of needs do you foresee in being able to approve, mitigate, manage and monitor authorized right of way permits given the considerable and new challenges that are associated with these nascent technologies?

ANSWER: To address these challenges, the Department of the Interior has established an interagency working group to ensure coordination across the bureaus within the Department and to facilitate the application of consistent policies. This interagency working group meets on a regular basis and coordinated on the development of the Priority Projects for 2011. The interagency working group was instrumental in organizing the Department Renewable Energy Workshop in February 2011 and collaborated in the release of several policies and guidance documents including the FWS Wind and Wildlife Siting Guidelines, FWS Eagle Conservation Plan Guidance, and BLM Pre-Application and Screening policy memorandum.

Moran Q45: I understand that there is a Draft Programmatic EIS for Solar Energy Development out for public comment. How do you intend the BLM to incorporate adaptation into this document? My understanding is that it is not addressed, as is required pursuant to your own Secretarial Order number 3289 and direction from CEQ?

ANSWER: The extended public comment period on the Draft Solar EIS ended on May 2, and we are currently reviewing the comments received on the document and the scope of the solar energy program on the public lands. As an element of the "BLM Proposed Solar Energy Program" (described more fully in Appendix A.2. of the Draft Solar EIS), the BLM would implement an adaptive management plan for solar energy development, developed in coordination with potentially affected natural resource management agencies. This adaptive management plan would ensure that new data and lessons learned about the impacts of solar energy projects would be reviewed and incorporated into the program through revised policies and design features. Appendix A (page A-25) specifically addresses the development and implementation of an adaptive management plan.

Moran Q46: You have been working with the Interior agencies to develop "landscape scale" analysis and tools. What are your goals for protecting landscapes while increasing the footprint of renewable energy? What standards are you identifying for your agencies working in these landscapes? Will these standards be consistent across your agencies?

ANSWER: Ecoregional assessments are being prepared to assist in identifying the landscape level environmental risks from renewable energy development and other activities and naturally occurring events on the public lands. These assessments will assist in developing goals for the protection of the most sensitive resources at a landscape scale. The California Desert Renewable Energy Conservation Plan (DRECP) is another example of a collaborative Federal and State agency landscape level planning effort that is currently underway to establish goals for protecting important resources in the California desert and providing opportunities for renewable energy development. These efforts and development of the Solar EIS will ensure that consistent

standards are developed and implemented across the agencies and within the Department of the Interior for facilitating renewable energy development.

Moran Q47: In the final FY 2010 Interior Appropriations bill, this subcommittee directed the development of a report in consultation with the Forest Service on the criteria to be used for siting renewable energy projects, including the extent to which key natural resource values would be protected, a detailed strategic plan on how coordination between the agencies would occur, what areas would be considered for development, and an analysis of the useful life of the energy sites and how infrastructure would be removed when its usefulness was exhausted. The deadline for that report was within 180 days of enactment. It is now nearly 18 months since the enactment of the FY 10 bill and to date no report has been provided.

Can you explain this delay and tell us when the report might be forthcoming?

ANSWER: The Department finalized the report and delivered it to Congress on May 6, 2011.

Moran Q48: Can you please explain what resources you will be devoting to ensure that this and other related work is undertaken?

ANSWER: The BLM and the U.S. Forest Service have worked together closely to produce the recently released May 2011 report "New Energy Frontier: Balancing Energy Development on Federal Lands -- A Joint Report to Congress on Siting Energy Development Projects on Federal Lands. This energy strategy encourages increased conventional energy production, but it has also opened a new frontier for renewable energy production on public lands and waters. Working with many partners and stakeholders among Federal, State, tribal, and local interests, the DOI and USDA/USFS are pursuing a new coordinated strategy for balanced and responsible development of conventional and renewable energy on Federal lands. This report specifically lays out the strategy for planning and interdepartmental coordination for renewable energy projects to ensure that renewable energy-related work is undertaken. The BLM is currently working closely with the Fish and Wildlife Service and project applicants in order to address resource conflict issues, including golden eagle populations. The FWS recently announced the Eagle Conservation Plan Guidance, and the BLM looks forward to continuing to work with the FWS and project proponents on implementing this guidance.

This new frontier holds vast potential for renewable energy production from wind, solar, geothermal, hydropower, and biomass that – together with conventional energy resources – can contribute to the Nation's energy security and to the clean energy economy of the future.

America's Great Outdoors

I am very interested in the President's America's Great Outdoors initiative. The initiative has a substantial increase for BLM land acquisition. Some of my good friends on the other side have said that we shouldn't buy more land when we can't afford to take care of what we have.

Moran Q49: Why is the BLM interested in purchasing additional lands?

ANSWER: Acquisition, through exchange, purchase, and donation, is an important component of the BLM's land management policy. The BLM acquires land and easements when it is in the public interest and consistent with publicly-approved land use plans. Acquisitions can fulfill landscape scale management goals as well as provide for important opportunities for recreational access and development of wildlife corridors.

Moran Q50: Are you proposing to purchase inholdings, which can increase management efficiency, while also protecting sensitive areas of high interest to the public?

ANSWER: The BLM's land acquisition program is designed to improve management of natural resources through consolidation of Federal, State, and private lands, increase recreational opportunities and open space, secure key property to protect endangered species and promote biological diversity, preserve archaeological and historical resources, and implement specific acquisitions authorized by acts of Congress.

Moran Q51: Can you please summarize some of the changes that you see in the field that are related to climate change?

ANSWER: Drought, catastrophic wildfire, insect outbreaks, and invasive species are transforming the landscape. These changes influence natural resources and land users in many ways. For example, as average temperature and precipitation patterns change, it is expected that drought frequency and intensity will increase; total snowpack may decrease and the rate of snowmelt and runoff may increase. Arctic permafrost is thawing. Wildfires have become larger, more intense, and more frequent. Noxious weeds and invasive species are crowding out native plants and wildlife. The BLM is funding rapid ecoregional assessments in a significant number of western regions to assess the magnitude and scope of many of these changes.

Moran Q52: What has the BLM done with its allocation of funds for climate change adaptation so far, and what will you do with the funds you are requesting for FY 2012?

ANSWER: The BLM's 2010 and 2011 Cooperative Landscape Conservation initiative funds have been or are being used to initiate Rapid Ecological Assessments (REA), to support Landscape Conservation Cooperatives (LCC) and other landscape scale partnerships, to stand-up the Great Basin LCC, to complete regional vulnerability assessments, develop management strategies for eco-regions with completed assessments, and to implement adaptation actions that protect key ecosystem features that promote resilience; replicate species, genotypes, and habitats to reduce extinction risk; identify refugia or important landscape connections or corridors that facilitate wildlife migration; and maintain representation or important species, communities, or physical environments. Examples of regional vulnerability assessments include surveys of Limber Pine and Whitebark Pine stands to evaluate the extent and impact of mountain pine beetle and white pine blister rust on stand structure; examinations of changes in plant communities over time, and assessments of the impacts of dust on the rate and timing of snow melt. Examples of adaptation actions include collection of native seed to help conserve species deemed vulnerable to land health stressors, and restoration of degraded ecosystems and landscape corridors.

Specifically, seven REAs were initiated in 2010: 1) Central Basin Range, 2) the Mojave Basin and Range, 3) the Sonoran Desert, 4) the Colorado Plateau, 5) the Middle Rockies, 6) the Seward Peninsula in Alaska, and 7) an REA combining the Northwestern Great Plains with the Northwestern Glaciated Plains. And in 2011, BLM initiated three more REA's: 1) Northern Basin and Rangeland Snake River Plain, 2) Wyoming Basin, and 3) the Kuskokwim Mountains Yukon River REA in Alaska. Other funds from 2010 and 2011 were used to support LCCs and other landscape scale partnerships, and to develop management strategies for the new eco-regions with completed assessments, and begin to implement the management strategies for the eco-regions with initial assessments that were completed in 2009.

The 2012 budget request maintains BLM funding levels for the Cooperative Landscape Conservation initiative at the 2011 Operating Plan level of $17.5 million. The 2012 funding will enahle BLM to complete the seven REAs initiated in 2010, continue work on the three REAs initiated in 2011, and start one new REA in the Madrean Archipelago. The BLM would build on the successful information base provided by these REAs to develop adaptation management strategies in the first seven eco-regions to focus conservation and restoration activities. The BLM would also fund key restoration projects and activities to reduce identified stressors on vulnerable landscapes. Additionally, the BLM recognizes that as climate change affects vegetation, habitats and water resources, the economies of Western communities are also affected. To that end, in FY2012, the BLM would expand its work to address the socioeconomic impacts of land health stressors such as climate change on Western communities.

Questions for the Record from Mr. Flake

National Landscape Conservation Service Spending

In describing spending related to the National Landscape Conservation Service, the Director's written testimony highlights the construction of a visitor center within the Las Cruces Museum of Nature and Science. He also notes that the NLCS receives a plus up of $15 million and among the "major priorities" for the increase is "developing interpretive and environmental education products and programs."

Flake Q1: In this time of record deficits and skyrocketing public debt, please detail how many taxpayer dollars your agency plans on spending on visitor centers, and interpretive products" next year.

ANSWER: The BLM plans to spend approximately $11.3 million on visitor center labor and operations, and $15.2 million on interpretation, outreach, and education.

Land Acquisition

In the Director's written testimony describes how the budget he propose supports the President's "America's Great Outdoors Program," which has a goal of expanding opportunities for recreational activities. He indicated that a $20.4 million increase in the Land and Water Conservation Fund land acquisition program, resulting in a total funding level of $50 million for next year, will lead to the acquisition projects that "will provide access to popular recreations areas."

Flake Q2: Can the Bureau provide any further detail about the lands that it intends to acquire using this additional funding and how they will provide access to already popular recreation areas in support of the President's program?

ANSWER: Two examples of projects in BLM's FY 2012 LWCF request that provide for important increased access to popular recreation areas are described below.

The BLM has requested $500,000 of land acquisition funding to acquire an 8-acre parcel within California's Trinity National Wild and Scenic River corridor. For many years, because of topography that severely limits access options, the boating and angling public has grown accustomed to accessing the Trinity River through this private property. Alternative put-in/take-out sites are many miles away. Though technically in trespass, the long-term owner of the property has historically ignored the public's casual use of his undeveloped property. The property is now being marketed for sale as a riverfront homesite. The anticipated outcome would include construction of a rural residence by the new owner of this property, who would close this route to the public to insure privacy and avoid liability. This popular river access is enjoyed by 50,000 visitors per year.

Also in California, the BLM has requested $600,000 of land acquisition funding to acquire two parcels (totaling 122 acres) within the Merced National Wild and Scenic River corridor. Located

within a narrow 15-mile long canyon (shared with California State Highway 140 which is the gateway to the west entrance to Yosemite National Park) acquisition of these properties would consolidate public ownership within the river canyon and permit BLM to secure ownership of an abandoned railroad grade and convert it into a highly-anticipated mountain bike (rail-to-trail) corridor. These acquisitions would complement two previous acquisitions. Within a very compact area, the river corridor supports three popular developed campgrounds, day use boating and hiking trails, and rafting put-in/take-out facilities. It is estimated 100,000 visitors annually enjoy the area's recreational amenities. The addition of a mountain bike trail within this scenic corridor is expected to significantly increase public recreational use.

THURSDAY, MARCH 10, 2011.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT 2012 BUDGET REQUEST

WITNESSES

JOSEPH PIZARCHIK, DIRECTOR, OFFICE OF SURFACE MINING
GLENDA H. OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING
RUTH E. STOKES, BUDGET OFFICER, OFFICE OF SURFACE MINING

OPENING STATEMENT CHAIRMAN SIMPSON

Mr. SIMPSON. Good morning, and welcome, Director Pizarchik—say it for me.

Mr. PIZARCHIK. Pizarchik.

Mr. SIMPSON. See I could—that just does not flow.

Mr. PIZARCHIK. Just say Joe P.

Mr. SIMPSON. Joe P, okay. Thank you for being here today to discuss the 2012 Budget Request for the Office of Surface Mining. In conjunction with the states, the Office of Surface Mining oversees and regulates existing coal mining practices and seeks to reclaim abandoned mine lands which are the legacy of 150 years of coal mining. These are two different but complementary roles for the OSM and the states.

For the fiscal year of 2012, the Office of Surface Mining is proposing a tighter discretionary budget of $145.9 million, a $17 million reduction below the 2010 enacted level. It was one year ago to the day that we were discussing your 2011 request. I see that a few 2011 proposals have carried forward into 2012, such as the reductions to state regulatory grants while encouraging state fee increases. And I see that you have offered some new proposals including increased federal oversight inspections and reductions to the abandoned mine reclamation program.

The budget also proposes new approaches to the mandatory spending that compromises the bulk of your budget. While those proposals may not fall into the jurisdiction of this committee and rather to the authorizers, we are certainly interested in the impacts as they would have substantive changes on how programs are managed.

We will explore many of these areas further during our questions. I would like to yield now to our ranking member from Virginia, Mr. Moran.

OPENING STATEMENT CONGRESSMAN MORAN

Mr. MORAN. Thank you very much, Mr. Chairman. And, Mr. Pizarchik, thank you very much for your leadership. You have tremendous experience in coal mining, and I know that Ms. Owens and Ms. Stokes are also very well qualified. So we have good lead-

ership at the top of the Office of Surface Mining. We appreciate that.

The hearing today gives us a chance to look at a particular couple of very important policy issues. The stream buffer rule and the proposal to enhance the abandoned mine land program by focusing on the areas that have the greatest need.

Some of our colleagues keep speaking of overage, and I do think it is an appropriate term to use when explaining how members of Congress have found it necessary to stop environmental regulations even before they are issued. A year ago, OSM published in the Federal Register a notice of intent to conduct an EIS for the stream protection rule, which will replace the 2008 stream buffer zone rule that was done in the waning hours of the Bush administration.

Even though there is still no final rule, that, of course, has not stopped members from blocking OSM from completing its environmental review. This past month, during the floor debate on H.R. 1, the House unfortunately voted to block OSM from developing, carrying out, implementing, or otherwise enforcing proposed regulations by the Office of Surface Mining Reclamation and Enforcement.

Mr. Chairman, I believe that some of the rhetoric from the coal industry has been deliberately misleading. So I am looking forward to the expert testimony of the Director of the OSM because he has such solid experience in surface coal mining.

I am also anxious to hear about the Administration's future proposal to alter the way that the abandoned mine land fund is used. I do think that AML needs to focus their substantial fee revenue on the places that have the greatest health and safety needs. There are thousands of sites, especially in Kentucky, West Virginia, and Pennsylvania and in Virginia, which show the scars of historic coal mining. They are substantial. They need to be addressed. Seems to me we should fix these areas rather than returning coal mining fees to states that no longer have abandoned mines.

The purpose of the fee was to clean up abandoned coal mines, but instead, and I am sorry that Mrs. Lummis is not here because I wanted to address this comment to her directly. But a state like Wyoming is getting over $1 billion a year from the Interior Department for royalties and not using the coal fees portion of the revenues that they get for the purpose for which those coal fees were intended.

Now, finally I do look forward to hearing about how OSM thinks the states will be able to take up more of the cost of running the coal mine regulatory programs. The states may have a different opinion about that funding issue, of course. But these are important issues. I am glad we have an opportunity to discuss them, and we appreciate the hearing, Mr. Chairman.

TESTIMONY OF DIRECTOR PIZARCHIK

Mr. SIMPSON. Thank you. Joe P., it is you.

Mr. PIZARCHIK. Thank you, Chairman Simpson and members of the subcommittee. I appreciate you inviting me here today to testify on behalf of the fiscal year 2012 Budget Request for the Office of Surface Mining Reclamation and Enforcement.

In 1977, Congress enacted the Surface Mining Control and Reclamation Act and also created the Office of Surface Mining for two basic purposes. First, was to assure that the Nation's coal mines were operated in a manner that protected the citizens and the environment during mining and that the land was restored to a productive use after mining. And second, to implement an abandoned mine lands program to address the hazards of environmental degradation that remain from the pre-Surface Mining Act days.

Then, as today, coal remains a large source and important fuel for our country and provides today about half of our Nation's electricity. When Congress enacted the Surface Mining Act, it recognized the need to strike a balance between the protection of the society, and protection of the environment, while also helping to ensure we had enough coal to meet America's energy needs. OSM was charged with striking that balance.

The 2012 budget is a focused budget. It is a budget that reflects some tough choices that we have had to make in these difficult economic times. The 2012 budget request for OSM totals $145.9 million in discretionary funding, which is a decrease of $16.9 million from the 2010 enacted and so far the 2011 continuing resolution level funding. For OSM, it supports the equivalent of 528 full-time employees nationwide.

Some of the discretionary budget highlights include the increased funding and staffing of about $3.9 million for 25 FTEs to continue to fulfill this Administration's emphasis and commitment to significantly reduce the adverse impacts of coal mining in Appalachia and across the country. But those are not 25 new employees. 18 of those are employees, or positions, that we will transfer from our AML emergency program, and the federal emergency program.

The budget proposal also provides for, as I mentioned, the elimination of funding to state and federal emergency projects. That is a reduction of $3.5 million, of which $2.3 million is associated with the related federal reclamation staff of about 18 FTEs transferring from the emergency program into the Title V Program. So there would be a net increase of actually seven people in the oversight portion under the Title V Program.

The reason for reduction and the elimination of the federal emergency program is due to the significant increases in the mandatory funding provided to the states over the recent years. In 2011, there was $395.6 million made available to the states for dealing with abandoned mine issues.

The Administration's proposal for OSM also provides for a reduction in the regulatory grants of $11 million to the states, and we have been encouraging the states to recover those costs from the regulated community.

The proposal also provides for elimination of funding of federal high priority projects. It is about $1 million, and it proposes to cover future funding under the mandatory funding provisions. There is also a proposal for eliminating funding of technical studies and funds that we have been using to preserve maps for old, abandoned underground mines. Again, these are part of our tough decisions looking to where we could make some cuts to maintain our core principles but still help address the deficit issue that this country is facing.

Also, there is a reduction of outcrop fire projects of $160,000, and we are not just proposing cuts to the states and others. We are also proposing cuts to OSM. We are proposing to reduce our budget and our expenditures for administrative costs by $573,000, and that would come through reductions in travel, information technology and strategic sourcing, that is acquisition of goods and services nationwide.

We are also proposing to eliminate a half million dollars that has been provided in the past for auditing resources associated with the coal export litigation. We no longer need it. Our fixed costs are fully funded as well.

Regarding the reference you made, Mr. Chairman, to some of the legislative changes, the budget proposal of the Administration is to overhaul the abandoned mine land program to reduce some of the unnecessary spending and to ensure that the most dangerous abandoned mine land issues are addressed.

Revisions fall into a number of major categories. The first, which is a repeat from previous proposals, is to eliminate funding to the certified states and tribes—those are the states and tribes that have certified that they have completed all the reclamation of their abandoned coal mines. And that would be a reduction of about $184.2 million for fiscal year 2012. The four states involved are Wyoming, Louisiana, Montana, and Texas. The three Tribes are the Navajo Nation, Hopi, and Crow. That substantive change in the statute was projected to save the treasury $1.2 billion over 10 years.

One of the other changes proposed is the allocation of the grants for AML reclamation. The existing process, where it is distributed based on a production formula, will change to a competitive process with an advisory council. And, in addition to those changes, there would be funds made available to address emergency projects in all states, to administer the state AML programs in all states and tribes, and to support the advisory council.

As a final change, the administration is proposing the creation of a similar program for abandoned hard rock mines. It would involve a new reclamation fee on the current hard rock production. That fee would be developed and established by the Bureau of Land Management, I believe, who testified earlier today. And BLM would be the agency with an advisory council to distribute those funds on a competitive basis to address the most dangerous sites first, the most dangerous environmental and safety hazards on abandoned hard rock sites.

Because of our experience over the past decades in collecting the AML reclamation fee for coal mining, OSM would provide that service to the BLM for the hard rock mining. This would avoid any duplication of efforts and achieve efficiencies using OSM's expertise to collect those funds from the hard rock mining companies.

The budget also proposes to continue with the payments to the United Mine Workers of America health benefit funds, estimated to be about $225.3 million in fiscal year 2012.

Thank you all for the opportunity to be here today to testify, and I do want to remind everybody that due to my past employment in Pennsylvania, there are some matters which I had participated in from which I have recused myself to avoid any appearance of im-

propriety or any conflict of interest. If any question of that nature comes up today, my deputy, Glenda Owens, will handle those questions. Thank you, and I am available for questions.

[The statement of Joseph Pizarchik follows:]

STATEMENT OF
JOSEPH G. PIZARCHIK, DIRECTOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
U.S. HOUSE OF REPRESENTATIVES

ON THE
FISCAL YEAR 2012 BUDGET REQUEST

MARCH 10, 2011

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify on the Fiscal Year 2012 budget request for the Office of Surface Mining Reclamation and Enforcement (OSM).

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) established the Office of Surface Mining Reclamation and Enforcement for two basic purposes: First, to assure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and restores the land to beneficial use following mining; and second, to implement an Abandoned Mine Lands (AML) program to address the hazards and environmental degradation remaining from two centuries of unregulated mining. These tasks are vital to public health and safety, and the environmental well-being of the United States.

The SMCRA recognized the need to ensure that the Nation strikes a balance between the protection of the environment and the Nation's need for energy. Nearly 34 years after the passage of SMCRA, coal remains an important fuel source for our country, providing about half of our Nation's electricity. In the continued drive to decrease our Nation's dependence on foreign oil, coal will continue to be part of our domestic supply of energy for the foreseeable future.

While new energy frontiers are being explored, including the development of clean coal, the coal supply (conventional coal production) is essential to the Nation's energy requirements. In order to ensure that coal is produced in an environmentally conscious way, OSM is committed to carrying out the requirements of SMCRA in cooperation with States and Tribes. Of the almost 2,400 employees involved in carrying out these two responsibilities on a daily basis, less than 25 percent are employed by OSM. The rest are State and Tribal employees who implement programs approved by the Secretary of the Interior with assistance from OSM. States permit and regulate 97 percent of the Nation's coal production. States and Tribes also abate well over 90 percent of the AML problems.

The major tasks for OSM are to ensure that States and Tribes successfully address coal mining activities by ensuring they have high-quality regulatory and AML frameworks and to oversee implementation of their programs. Importantly, OSM also provides technical assistance, funding, training, and technical tools to the States to support their regulatory and reclamation programs.

Currently, 24 States have approved regulatory programs in place pursuant to Title V of SMCRA. There are 25 States and three Tribes that administer approved AML programs pursuant to Title IV of SMCRA.

Since enactment of SMCRA in 1977, OSM has provided more than $3 billion in grants to States and Tribes to clean up mine sites abandoned before passage of SMCRA. In the course of addressing health, safety and environmental hazards, about 255,000 acres of Priority 1 and 2 abandoned coal mine sites have been reclaimed under OSM's AML Program, though many sites still remain.

The authority to collect and distribute the AML reclamation fee was revised by the Tax Relief and Health Care Act of 2006, which included the 2006 Amendments to SMCRA (Public Law 109-432). Among other things, these amendments extended the authority for fee collection on mined coal through September 30, 2021, and changed the way that State and Tribal reclamation grants are funded, beginning in FY 2008. State and Tribal grants are funded by permanent appropriations that are derived from current AML fee collections and the general fund of the U.S. Treasury.

The 2006 Amendments dramatically increased funding to States and Tribes, from $145.3 million in FY 2007 to the most recent distribution made available of $395.6 million for FY 2011. Because of the increased State and Tribal funding, OSM began phasing out Federal responsibility for addressing AML emergency projects. It is more efficient and cost effective to provide responsibility for AML related issues to a single manager, from a single source of funding. In FY 2012, States with AML programs will have fully assumed this responsibility, so the budget eliminates the remaining discretionary funding for State emergency grants and Federally-managed emergency projects.

The budget also includes a legislative proposal to reform the coal AML reclamation program to eliminate unnecessary spending and focus reclamation efforts on the Nation's most dangerous abandoned coal mines. First, the budget proposes to eliminate the unrestricted payments to States and Tribes that have completed their abandoned coal mine reclamation. Terminating these payments will save taxpayers $1.2 billion over the next decade. Second, the budget proposes to reform the allocation of grants for coal AML reclamation to a competitive process. The current production-based formula allocates funding to States that have the most coal production and not necessarily States with the most critical reclamation needs. A competitive process would ensure that funding addresses the highest priority AML coal sites across the Nation, regardless of which State they are located in and how much coal is currently produced. Third, the budget proposes to create a parallel hardrock AML program, with fees collected by OSM and distributed competitively by the Bureau of Land Management. The mandatory distribution to the United Mine Workers of America (UMWA) health benefit plans, estimated at $225.3 million in FY 2012, will not be affected by this proposal.

Fiscal Year 2012 Budget Request Overview

The FY 2012 budget request for OSM totals $145.9 million in discretionary spending and supports 528 equivalent full-time positions. Compared with the 2010 enacted level of $162.9 million, this represents a net decrease of $17.0 million. The budget request contains a programmatic increase of $3.9 million for expansion and enhancement of Federal oversight and stream protections. Reductions include $11.0 million in discretionary spending for State regulatory program grants to be offset with increased user fees for services provided to the coal industry; $6.8 million for State and Federal emergency grants and projects, Federal high-priority projects, and related Federal reclamation operations staff; $1.2 million for technical studies and mine mapping under the Applied Science Program; $500,000 for audit activities; and $160,000 for coal outcrop fire projects. The budget also includes a decrease of $1.3 million for

administrative savings and efficiencies.

OSM's budget also contains an estimated $539.1 million in permanent appropriations. This spending includes $313.8 million for reclamation grants to non-certified States and Tribes (those with remaining abandoned coal mine problems); and $225.3 million for the UMWA for specified health benefits plans. This spending is derived from both the AML and U.S. Treasury Funds. The estimates, as contained in the budget submission, are projections based on information current as of the end of the 2010 calendar year and subject to change since they are based on fee collections and requests from the UMWA.

Regulation and Technology Appropriation

The OSM's overall FY 2012 request includes $118.5 million for the Regulation and Technology appropriation, $8.8 million below the 2010 enacted level. This includes an increase in funding and staff to support the expansion and enhancement of Federal oversight of State programs and stream protections, and reductions for regulatory grants, technical studies, and other efficiency gains. The FY 2012 budget request will enable OSM to provide financial and technical support, and training to the 24 States with approved regulatory programs. It will also enable OSM to continue to administer Federal regulatory programs in States that do not operate their own programs and on Federal and Tribal lands.

The requested programmatic increase of $3.9 million and 25 FTE will support the Administration's commitment to significantly reduce the harmful environmental impacts of coal mining in Appalachia, formalized in a Memorandum of Understanding (MOU) with the Army Corps of Engineers and the Environmental Protection Agency. Increased resources and technical skills are needed to implement this new strategic direction i.e., enhanced oversight, stream protections to maintain the hydrologic balance of watersheds, coordinated permitting, and increased transparency as priorities for the coming years, while continuing to provide the technical support and training that States and Tribes need to maintain program effectiveness.

A large portion of the regulatory and technology funding appropriated to OSM is distributed to the States and Tribes in the form of regulatory grants. These grants account for 51 percent of this proposed appropriation. For FY 2012, the request includes $60.3 million for regulatory grants, $11.0 below the 2010 enacted level. States are encouraged to offset the decrease in Federal funding by increasing cost recovery fees for services to the coal industry. The decrease supports the Administration's commitment to reduce subsidies to fossil-fuel industries.

In addition, a decrease in technical studies of $834,000 is proposed. OSM will use its existing staff to provide direct technical assistance to the States and Tribes to address technical on-the-ground issues instead of funding nationwide or regional studies.

The remaining portion of the budget provides funding for OSM's regulatory operations on Federal and Indian lands, evaluation and oversight of State regulatory programs, technical training and other technical assistance to the States and Tribes as well as

administrative and executive activities.

Abandoned Mine Reclamation Fund Appropriation

The request includes $27.4 million for the AML appropriation, which is $8.1 million below the 2010 enacted level. The budget supports OSM's program evaluations and reclamation operations, watershed cooperative agreement projects, fee compliance and audits, technical training and other technical assistance to the States and Tribes as well as administrative and executive activities. Reductions are proposed for State and Federal emergency grants and projects, Federal high-priority projects, related Federal reclamation operations staff, the Applied Science Program (technical studies and preservation of mine maps), audits related to coal export litigation, and coal outcrop fire projects and monitoring.

As previously stated, because of the increased State and Tribal funding, OSM began phasing out Federal responsibility for addressing AML emergency projects. Therefore, the budget request eliminates discretionary funding for State emergency grants and Federally-managed emergency projects. States with AML reclamation programs will now address AML emergencies to improve efficiency and coordination.

The budget proposes to decrease funding for technical studies by $366,000 and $160,000 for coal outcrop fire projects. In addition, the proposal reduces funding for audit activities related to coal export issues because the funding is no longer needed. The balance of the reductions for this account is derived from efficiencies in travel and strategic sourcing.

Permanent Appropriations

The OSM will continue to distribute mandatory funding to States and Tribes under the AML program and make payments to the UMWA health benefit plans. The budget request includes a legislative proposal to eliminate payments to certified States and Tribes and restructure AML coal payments from a production-based formula to a competitive process, allocating $313.8 million in 2012 for reclamation of the highest priority coal AML sites in the Nation. This proposal will reduce Federal spending by an estimated $184.2 million in 2012 and $1.2 billion over the next decade. In addition, the proposal will also create a new parallel AML program for the reclamation of abandoned hardrock mines, funded by an AML fee on hardrock production.

Initiatives

The OSM's activities and related budget support the Presidential and Secretarial initiatives for responsible production of coal through the protection, preservation, and restoration of mined lands; restoration of lands left unreclaimed; and provision of opportunities for youth.

It is essential to have properly mined coal and to see that land is reclaimed in accordance with the permit and the law. State permitting actions and inspections of mine sites are among the most important ways to help ensure the law is being implemented and to protect society and the environment. Consistent with the intent of SMCRA that States take the lead in regulating coal mining, in FY 2010, States completed 49,799 partial and 29,095 complete inspections for a total of 78,894 inspections. The OSM conducted 2,067 oversight inspections in primacy States during that year, a 40 percent increase over the number conducted in FY 2009.

As part of the Secretarial initiative to increase youth employment in DOI programs, OSM set a goal in FY 2010 and FY 2011 to increase youth engagement by 35 percent over the FY 2009 baseline. In FY 2010, OSM engaged 218 youth. Accomplishments included engaging 198 youth through partnership efforts and 20 new students under other hiring authorities. In FY 2012, OSM will continue to support the program through ongoing activities and partnerships, with a cumulative goal of engaging 219 youth in its programs.

Conclusion

The FY 2012 budget is a fiscally responsible request that lowers the cost to the American taxpayer.

Thank you for the opportunity to appear before the Committee today and testify on OSM's FY 2012 budget request.

Please be advised that due to my previous position with the Commonwealth of Pennsylvania, I have recused myself from matters pertaining to Pennsylvania that would present a conflict or an appearance of impropriety. The Committee questions that fall within the scope of my recusal I will refer to my deputy, Glenda Owens, who is here today.

Joseph Pizarchik, Director
Office of Surface Mining Reclamation and Enforcement
U.S. Department of the Interior

Joseph Pizarchik is the 10th Director of the U.S. Department of the Interior's Office of Surface Mining Reclamation and Enforcement.

Prior to joining OSMRE, Mr. Pizarchik served more than 17 years with the Pennsylvania Department of Environmental Protection (PADEP), rising to Assistant Director in the Bureau of Regulatory Counsel before his appointment as Director of the Bureau of Mining and Reclamation. While at PADEP, he co-authored Pennsylvania's Environmental Good Samaritan Act, helped develop Pennsylvania's program for volunteers to clean up abandoned coal refuse sites and provided key legal support in the development of Pennsylvania's program for mine operators to establish trust funds to meet their financial obligation to perpetually treat the discharges caused by their mining. Mr. Pizarchik is also credited with helping clear the way for the sale of private mining property to the Families of Flight 93 to enable the construction of the memorial.

Mr. Pizarchik began his public service working as legal counsel with the Pennsylvania Department of Transportation, dealing with contracts, mass transit, aviation, contractor qualifications, and minority business enterprises. Mr. Pizarchik earned a B.A. from the Pennsylvania State University and a law degree from the University of Arkansas at Little Rock School of Law. In 2010 he was named a Penn State Alumni Fellow.

Glenda H. Owens, Deputy Director
Office of Surface Mining Reclamation and Enforcement,
US Department of the Interior

Glenda H. Owens is the Deputy Director of the Office of Surface Mining Reclamation and Enforcement (OSM). As Deputy Director, Ms. Owens works with the Director to provide executive leadership and direction for the implementation of the requirements of the Surface Mining Control and Reclamation Act of 1977.

Under the Surface Mining Act, OSM is responsible for working cooperatively with 24 coal-producing states to ensure coal mining and reclamation activities are conducted in an environmentally sound manner that protects citizens and the environment during mining, and to mitigate the effects of past mining through the reclamation of abandoned mines.

As Deputy Director of OSM, Ms. Owens oversees the bureau's operational activities, ensuring that it meets the requirements established for federal agencies by the Office of Management and Budget and the Office of Personnel Management, among other things. Ms. Owens also serves as OSM's Chief Financial Officer and is responsible for ensuring the bureau's compliance with the Chief Financial Officers' Act and other financial and business management requirements. Ms. Owens is a member of Interior's Deputies Operating Group, an executive-level body, which focuses on management efficiency and effectiveness of the Department. She also serves on the Interior Department's Human Capital Team.

Ms. Owens has served twice as the Acting Director for OSM - from January 2001 until February 2002, and again from January 2009 until November 2010.

Prior to joining OSM, Ms. Owens was an Assistant Solicitor in the Interior Department's Solicitor's Office, Division of Mineral Resources. As the Assistant Solicitor for the Division of Mineral Resources, she headed up a legal staff responsible for providing legal services to bureau and departmental officials. She also supervised defensive litigation under the Surface Mining Control and Reclamation Act of 1977.

Ms. Owens has a Bachelor of Arts degree from the University of Michigan and a Juris Doctorate from the Howard University School of Law. She is married and has a daughter.

Ruth E. Stokes
Office of Surface Mining Reclamation and Enforcement
US Department of the Interior

Ruth Stokes has been the Budget Officer and Chief, Office of Planning, Analysis and Budget for the Office of Surface Mining Reclamation and Enforcement (OSM) for the past eight years. Prior to that, she worked for OSM in Washington, D.C., providing support for the review of regulatory and reclamation policy and guidance, planning, and program evaluation specific to the Surface Mining Control and Reclamation Act. Ms. Stokes has a Bachelor of Arts degree in Business and Economics from Towson State University, and a Masters degree in Business, Economics and Public Policy from George Washington University.

COAL MINING PERMIT PROCESS

Mr. SIMPSON. So you are just going to shovel all the tough questions off to her? Is that right? I am just kidding. First, many of my colleagues from coal-producing states including the chairman of the full Appropriations Committee believe that the coal industry is paying a heavy price because of the demanding and often drawn-out permitting reviews now imposed by the EPA, the Corp of Engineers, and the Office of Surface Mining.

The enhanced coordination procedures agreed to in a 2009 memorandum of understanding were supposed to expedite the review of 79 mining permits that had been stuck in the queue. With only six permits granted since the 2009 MOU and 39 permits withdrawn, withdrawn likely because the companies did not want or could not afford to jump through the additional EPA requirements for a permit, we see that the enhanced coordination procedures have only been a front really to delay or discourage additional mining in Appalachia.

How would you characterize the permitting process that now governs coal mining in our country and more specifically in Appalachia?

Mr. PIZARCHIK. Generally speaking, the permitting process in this country as a whole is handled mostly by the state regulatory authorities in states that have primary responsibility for the regulation of coal mining, and OSM is not involved and does not make those permitting decisions. We do provide technical assistance to the states on a requested basis. On federal lands, typically permitting decisions are handled, again, by the state where the federal land is associated. On tribal lands, we do handle the permitting for the Hopi Tribe, Navajo Nation and Crow Tribe as appropriate. Over the years, we have been working with the Indian Tribes, in order to develop regulatory programs to achieve primacy. We are very supportive of that.

PERMIT COORDINATION IN TENNESSEE

In Appalachia, we recognize that there have been some issues, and OSM has been working with the Environmental Protection Agency and with the Army Corps of Engineers in Tennessee, where OSM is the primary regulatory authority. And in December, those efforts that we spent the last year working on culminated in the signing of a memorandum of understanding with those three agencies as well as with the Tennessee Department of Environment Compliance, TDEC, who handles the water aspects of permitting in Tennessee. OSM handles the coal mining permit.

That process was developed to improve how we do permit coordination within the federal family and with the state regulatory authorities. We also have identified a number of standard operating procedures. We recognized that there were opportunities to improve the timeliness and the efficiency of the permitting. If you need to do water monitoring for your surface coal mining permit, water monitoring for your 404 permit that you get from the Corps, or water monitoring for the NPDES permit that you would get from the state water authority, then it made a lot of sense for agencies to get together to agree on where those monitoring points were lo-

cated. This provides for a unified system of review that everyone could agree on, which would reduce the costs for the applicant as well as provide for more consistency and more timeliness.

Under those operating procedures, we made efforts to get everybody educated on what is required under the different statutory and regulatory permitting requirements for the various regulatory authorities, for them to cooperate.

We have not stopped there. We are exploring the use of the Tennessee model with some of the other states in Appalachia. OSM is not a permitting authority in those states but is working with the state regulatory authorities who do the permitting and also with the Corps and EPA to try to get similar improvements made to the process.

This is something that is not necessarily just a problem in Appalachia. There have been some experiences where the multi-permitting of the mine site does not run as smoothly as we think it could, so we are continuing to work to try to make some improvements on those areas.

We wanted to do it first where we are the permitting authority so that we could set the example of what could be accomplished. We are not telling the states that this is the way they have to do it. We are just laying it out as an example of what worked in Tennessee. We recognize that the state laws, and some of the processes, vary across the country. We are trying to facilitate with state regulatory authorities, the EPA and the Corps, a process where they can look at what we accomplished in Tennessee and maybe use that as a template, or a model, to make improvements to their permitting process and coordination.

We have some more work to do. There is progress being made. We know there is interest, I believe, in West Virginia, Alabama, Kentucky.

2010 MEMORANDUM OF UNDERSTANDING

Mr. SIMPSON. When was this MOU signed?

Mr. PIZARCHIK. December of 2010.

Mr. SIMPSON. Of 2010?

Mr. PIZARCHIK. Yes.

Mr. SIMPSON. So this is a different MOU than the one signed between the Army Corps and Office of Surface Mining and the EPA in 2009?

Mr. PIZARCHIK. Yes.

Mr. SIMPSON. It was meant to coordinate things?

Mr. PIZARCHIK. The 2009 MOU was a much broader overview. The 2010 MOU is much different. It is actually on the ground. The one that was signed in 2009 was signed by the leadership of the various agencies. The one that we executed in 2010, in December, is actually implemented at the field level, where the staff are making the permitting decisions, and doing the reviews; those are the people who are involved and committed to this new process.

In order to be effective on implementing improvements and permit coordination, it is our view that you cannot mandate it from on high. You have to have the buy-in of the people who are actually making the permitting decision in the field. That includes the

state, and the field folks for the Army Corps, and EPA, et cetera. And that is how we approached it in Tennessee.

Mr. SIMPSON. It seems to make sense, and I hope it is successful. We will be watching it closely. The more we can coordinate the requirements of all of the different agencies, state and federal, so that companies know what they have to do, it seems to make a lot of sense in streamlining, I guess, is the best word, the permitting process.

But we will be watching that to make sure because the 2009 agreement, when you look at, was kind of the general intent, but when you have—what was it—what did I say—six permits granted out of the 79 permits that were originally meant to—this was meant to address, that did not seem to do the trick very well. But I understand what you are doing.

CUMULATIVE HYDROLOGIC IMPACT ASSESSMENT

Mr. PIZARCHIK. If I may, there is one other aspect on which the Federal agencies are still working. Under the Surface Mining Act, before a permit is issued, the statute requires the regulatory authority to make a determination of the cumulative, hydrologic impact assessment of the proposed mining, and any likely future mining, on the streams in the particular area.

There is a similar type of cumulative impact assessment that is required by the Clean Water Act to be performed by the Army Corps of Engineers when they issue fill permits. The agencies are working together to see if we can develop some processes to improve how the assessment is completed because the Surface Mining Act looks at a different area than does the Clean Water Act. There is some overlap, but there are some distinct differences between the two. And so the agencies are working to see if we can develop some tools that will help streamline that process and provide more clarity, more consistency, and more predictability for all the parties involved because it is something that has not been done in the past.

MATERIAL DAMAGE OUTSIDE PERMIT AREA

And related to the cumulative hydrologic impact assessment that is required under the Surface Mining Act, the law specifically provides for the coal mines to be designed in a manner that they do not cause material damage outside of the permit area. That term has never been defined in the 33 years of this agency. That is one of the things that we intend to fix to provide some clarity and understanding and consistency to the regulated community, to the regulators, and to the environmentalists and citizens. So everybody knows what the standard is to judge a surface coal mining operation.

2008 STREAM BUFFER RULE

Mr. SIMPSON. Under the 2009 memorandum, OSM committed to take another look at the 2008 Stream Buffer Rule. That rule required that fill be placed at least 100 feet from streams if the disposal of such fill would negatively impact water quality or quantity. This was finalized. It took five years to complete and promul-

gated after considering 400,000 comments. What concerns did OSM and not the courts have with the rule it had just published leading to an administrative stay and reconsideration of the rule?

Mr. PIZARCHIK. Thank you, Chairman Simpson. There are a number of reasons why we are looking at making improvements to our regulations. One, there was an error that was made in the 2008 process, and the courts advised the Department of the Interior and OSM that instead of vacating it, that we would need to go through a new rule-making process. So that is what we are doing.

Plus, the existing 2008 rule focused mainly on the valley fills and mountaintop mining in the area, and there are a lot of other things that it did not address in the effort to do a better job of minimizing the adverse impacts on streams and protecting streams.

So we sought public input, and received over 32,000 comments and suggestions on how we could do a better job of protecting streams and improving our regulations. We took that information and we are looking at it. One of the things we realized is that we know a lot more scientifically about the adverse effects of mining today than we knew 30 years ago. A lot of that new information was not utilized in preparing the 2008 rule.

We also know that there are new technologies available that can help the operators, the state regulators, and OSM all do a better job. So we believe that it is appropriate to also update our rules to provide more clarity, more specificity to everybody involved, and to take advantage of all the things that we have learned over these past 30 years, or so, to do a better job of protecting streams.

STREAM PROTECTION RULE: ENVIRONMENTAL IMPACT STATEMENT (EIS)

Mr. SIMPSON. In Tuesday's hearing with Secretary Salazar, we had many questions about the genesis for the revisions to the stream buffer rule and the associated environmental impact statement. Last July, OSM requested and received the authority to reprogram $7 million from state regulatory grants in order to fund the EIS. What is the estimated cost of the EIS, and how much has OSM spent or paid to the contractor for work on the EIS, and how much remains?

Mr. PIZARCHIK. Well, first off, out of the $7 million, that was not all from the Title V or regulatory grants. Some of it came out of OSM's other funds that we had available. On the contract amount, we used a competitive process, and we awarded a contract that was a little bit under $5 million to the contractor. $3.5 million of that has been spent as of March 7, 2011. That goes up through the January 2011 billing, and that leaves about $2 million remaining for additional work, staff travel, and contract work.

EIS CONTRACT

Mr. SIMPSON. At Tuesday's hearing, Deputy Secretary David Hayes indicated that the OSM was unhappy with the work the contractor had conducted to date on the EIS and found the contractor's work to be inadequate. He also indicated that the department was looking at completely revamping that work. If OSM is unhappy with the work, does OSM anticipate the need to request additional

funds to complete the EIS? And will this push back the anticipated delivery scheduled for the EIS?

Mr. PIZARCHIK. It was correct that we were unhappy with the quality of the work. We had hired the contractor to prepare an environmental impact statement as required by the National Environmental Policy Act (NEPA) and the regulations implementing that Act. It was not just OSM that had concerns with the quality of the work. We had been sharing drafts of the work product with cooperating agencies. Many of the states have been involved in this effort. They too shared concerns with the quality of work as to whether it met the legal requirements of NEPA.

We issued a correction letter to the contractor in advance of the work product that was due on February 23, 2011. That work product has been received. We are taking our time to very thoroughly, closely and thoughtfully review those documents to make a determination as to whether they satisfy the contract requirements. Once we have that review completed, we will use that information to determine how we are going to proceed from that particular point.

If the product is contract compliant, we will be able to proceed. If it is not contract compliant, then we will have to evaluate and determine how we proceed. That would add some additional time to the timeframe necessary to complete the rule making.

Mr. SIMPSON. After Tuesday's hearing with the Secretary and Deputy Secretary Hayes, it was—I do not want to say said, but implied and then an article came out in the paper that they may be looking at cancelling the contract with this company that was doing the EIS. Are you currently considering cancelling the contract with that company?

Mr. PIZARCHIK. We had some very strong concerns about the quality of the work. We have very high expectations that the work would meet the quality required by the contract and the National Environmental Policy Act. We are assessing the work product that we received after we notified the contractor of all of our concerns, and all options are definitely on the table. If we have a quality product, or if we do not have a quality product, we will consider what is the best way to proceed forward for the government and the public.

STREAM PROTECTION RULE SCHEDULE

Mr. SIMPSON. Since the EIS will inform the stream buffer rule, the OSM needs the EIS before promulgating a rule. What is OSM's timeline for promulgating the final rule? And will this happen in 2012? And will the potential firing of this contractor and having to rehire another one, if that were to happen, would that delay this rule?

Mr. PIZARCHIK. Where we are right now is that we still have to complete our assessment of the preliminary EIS and make a determination. And if we are unable to proceed with the current contractor due to contract compliance issues, that could extend the time period on the rule. We do need the information in the EIS—you are correct—in order to be able to continue with the development and complete the preparation of our proposed rule. We cannot

proceed with the proposed rule or draft the EIS without having a quality preliminary draft EIS.

Mr. SIMPSON. Will you need additional resources to do that?

Mr. PIZARCHIK. At this point in time, it is too early to make a determination on additional resources.

Mr. SIMPSON. Thank you. Mr. Moran.

STREAM PROTECTION RULE: NEED

Mr. MORAN. Thanks, Mr. Chairman. As you are so well aware, one of the blessings of our natural world is the way that we get fresh, clean water. The skies open up. The water comes down, flows down mountains into mountain valleys, and the mountain streams flow into the river and so on, and thus we continue to provide adequate, fresh, healthy water and the process continues to regenerate itself.

The problem is when mining firms come in and top off mountains and level the land by filling the stream valleys, it not only reduces the quantity of water that is available for individuals and industry, but perhaps even more importantly, it adversely affects the quality of that water largely because of the toxins that are often occluded in these mountains where coal is ultimately contained. And that is the reason for the stream buffer rule because the mountain top mining became so pervasive, particularly in the Appalachia, that we were seeing a very substantial threat to the public health as well as a reduction of the water supply that was available.

But I wanted to clarify some things. This rule, this stream buffer rule that was negated during the debate on H.R. 1. I think there were four different amendments on mountaintop mining. They were all successful, and so basically you cannot even go forward with the introductory process of putting together this rule. But this initial rule did not come out during the Reagan administration and it is basically product of the Bush administration, 2008, is it not?

Mr. PIZARCHIK. The existing rule, the 2008 rule that came out under the previous administration, replaced a rule that had been enacted or adopted by the Reagan administration. That is correct. That was back in 1983.

STREAM PROTECTION RULE: IMPACT OF H.R. 1

Mr. MORAN. Yeah, so neither administration had at least the reputation for being environmental extremists. That would be a fair statement. Tell us how you are going to deal with what H.R. 1 does if it were to be passed.

Mr. PIZARCHIK. If H.R. 1 were to be enacted and passed, we obviously would have to comply with the law. We would follow the law and we would not be able, as I understand it, to expend any funds on the development or implementation of the stream protection rule making. So at that point, all efforts would stop. All the efforts to eliminate the pollution problems that you mentioned, as far as polluting the streams and causing pollution, would still continue. Those efforts would be impeded. There would not be opportunities to take advantage of the modern technologies that we know to do a better job of making sure the amount of excess spoil is minimized and the spoil is put back where it should have been.

The extra efforts and refinements that we have in the process of developing and trying to do more source management to prevent the pollutants from being released from mining and going into the streams would still continue. That raises the specter that the companies who are generating those discharges and those contaminants, whether they are going to at some point in the future, have to begin treating those discharges. One recently occurred in a court case in West Virginia where selenium levels were being discharged and the court ordered the mining company to build a selenium treatment plant, a very, very expensive process.

We will, in essence, be limited from taking proactive measures and refinements under our regulations to prevent discharges from happening. In some instances, for those operators who do not take proactive steps on their own and generate polluting discharges, those operators could be held liable. This could jeopardize their economic future as well, if discharges happen and they are not able to mine enough coal, to provide funds to pay for all those treatment costs in perpetuity.

We could experience what happened in the context of acid mine drainage a decade or so ago. A lot of these companies went out of business and the cost of treating those perpetual discharges fell to the public and the government. So we would have to look at what we have in existing rules and see what tools are available. But I think our ability to do an effective job of striking a balance between protecting the public and society from the adverse effects of mining, while also making sure we have a viable coal industry to meet our country's energy needs, would be hindered.

Mr. MORAN. Well, I want to fully understand this. The law remains in place, the Clean Water Act, and so on. You want to issue a regulation that would govern where the mountaintops can be placed and how to keep the water clean. This is kind of preemptive, I guess, of what otherwise would be policy that would be determined in the judicial system, that people ultimately would sue and the courts would make these decisions, some of them nationally oriented, but many of them ad hoc.

And the companies would pay to correct the problems if they that could. Many of them would find ways to go out of business, and then the public pays for the cleanup after the fact. So we are talking about an effort that was successful this month to take this proactive initiative out of the process and leave it to the courts to determine how to restore the quality of our water, drinking water. It is interesting, I think a bit ironic.

STREAM PROTECTION RULE: IMPACT ON JOBS AND PRODUCTION

Now, one of the arguments that was made, I recall, as we were in this debate, was that there were about 7,000 jobs that were going to be lost as a result of the stream buffer rule. But in looking at the ledger, even though that is what the coal mining companies say, it seems as though the production is not necessarily going down, and that it is possible that production can go up while jobs go down because of improved technology and so on, the mechanization of some of the processes.

Is it possible that the coal companies are using the loss of jobs to achieve their efforts to eliminate regulation, to deregulate the

process, but much of the loss of jobs is really due to the more modern processes of extraction?

Mr. PIZARCHIK. Your question really touches on the point of advances in production. If you look at the trends in the number of jobs in the coal mining industry over the last decade or two decades, the number of people employed in mining coal has significantly dropped. It has been, in large part, due to mechanization, and improved efficiencies. There have been some other factors involved.

For instance, out West in Wyoming, in the Powder River Basin the coal is much, much thicker. They do not have some of the hydrologic issues that we face in the eastern part of the country. And so it is a combination of improved mechanization and geologic advantages.

And the numbers that you referenced on job loss, those numbers cannot be relied on. Some of the concerns that we had with the quality of the work product had to do with a wide variety of issues and the quality of the work produced by the contractor. Those numbers are not the Department of the Interior's numbers. Those numbers are not the Office of Surface Mining's numbers. In fact, we know now that those numbers were derived using some placeholders. So they have no value. And we have been working with the contractor, expressing our concerns to them, in order to get a quality product across the board that meets all of the requirements of NEPA and the regulations, and complies with the contract.

Mr. MORAN. Even though the numbers have been used in debate as though they had been verifiable and they are not. You mentioned Wyoming for example, and that is—I will use that as a segue because I understand that North Dakota, Wyoming, Montana, at least those three states' production is going to climb by as much as 15 percent because of what you are talking about, the type of coal and where it is gathered.

Mr. PIZARCHIK. Actually I would not rely on those numbers either.

Mr. MORAN. Okay.

Mr. PIZARCHIK. That was the first working draft from the contractor. You know, there was a lot of work that needed to be done at those times. As part of our effort to be more open and transparent, we were sharing those working drafts with cooperating agencies, many states, to get the benefit of their expertise and insight. And it was very unfortunate that those drafts, first draft documents, were weak and leaked. I do not believe that you can rely on any of those numbers.

ABANDONED MINE LAND RECLAMATION: LEGISLATIVE PROPOSAL

Mr. MORAN. This is very helpful. Now, but I mentioned in the testimony that—and what I want to go back to is the difference is where coal mining is taking place and particularly in regard to the fee that is now collected to reclaim abandoned mines. The whole purpose of the fee was to restore these abandoned mines. It was unsafe. It was unhealthy. It left real scars on our environment, and much of that is along Appalachia. It is Virginia, Kentucky, West Virginia, et cetera.

That is where the money was supposed to be spent, but since much of the fee is now being collected gathered in states that do not have or have very few abandoned mines, the money is now going to western states such as those I just mentioned. And they just dump it into their general fund basically because they do not have the need for it. But the need for it is in these areas where we have conducted mining operations for over 100 years, and we have a situation that needs to be addressed. So you have a proposal within this budget to redirect those funds to achieve the intent of the abandoned mine land program, I gather. Could you elaborate a bit on that, Mr. Pizarchik?

Mr. PIZARCHIK. Yes, Congressman Moran. You touched on a very important point. When the Surface Mining Act was originally put together, the formula on how the abandoned mine land fees that were collected on coal production were going to be distributed was based, in part, on where the production was occurring. And at that particular time, most of the production was occurring in the East, in a number of the states that you mentioned.

Over the decades, as the easier-to-get coal was exhausted and no longer available, production started to drop somewhat in some of those eastern areas, not in all the states. But in addition to that, the resources that were available out in the Powder River Basin and places in the West became available. And to give an example, you have coal seams in the West that are 60 or 70 feet thick. Nothing of that magnitude here in the East, and so the production shifted out West, which led to an increase in fee collection and distribution. The unintended consequence, I think, is a lot of money going to the areas which had certified they completed the reclamation of all their abandoned coal mine lands.

And so the Administration's proposal is to refocus the funds to the abandoned coal problems and the original purpose of reclaiming them to deal with the highest priority, the most dangerous sites in the East and the West, wherever they are. It is just based on the history of the country and the history of mining. Most of those sites remain in a number of the eastern states that you had identified.

AML EMERGENCY FUNDING

Mr. MORAN. Thank you. You did cut that program by $8 million though for emergency grants and projects. I just wanted to—and then I will conclude my question, but I did want to wrap up this aspect of it. Why do you think you justified in reducing the money for emergency grants?

Mr. PIZARCHIK. Two aspects on that. First, we are proposing to reduce it as far as the discretionary appropriations. But the reason for that is due to the increase in a mandatory dispersements to the states.

For example, as recently as 2007, the states received $145.3 million of abandoned mine land fees. In 2011, there has been $395.6 million available for distribution. So the view is that the increase, in mandatory distributions is more than enough to cover the AML emergencies in the particular states. And so some of the states we have been working with over the years have taken on that responsibility. In 2010, the states with AML programs, where OSM had

been conducting the emergency program, were notified that they needed to take on the responsibility for addressing emergency projects themselves with their AML mandatory funds.

That process, that transition process, has been pretty much completed. OSM provides technical assistance to the states as it always has. And under the Administration's proposal, out of the mandatory distributions that would be available in 2012, $313.8 million, some of those funds would be available to use for the emergencies wherever they occur. And whether it is in a certified state, an uncertified state, a state that does not have an AML program, the money would be available to take care of these projects. And the belief is that there are sufficient funds to take care of those emergencies out of the mandatory appropriation from the AML fund without having to use general treasury funds.

Mr. MORAN. Good answer. I just wanted to get that on the record. Thank you. And the policy certainly makes sense. You would think you would be able to save money in that area. Thank you.

Mr. PIZARCHIK. Thank you.

Mr. MORAN. Thank you, Mr. Chairman.

Mr. SIMPSON. Mr. Hinchey.

EXPANSION AND ENHANCEMENT OF OVERSIGHT IN APPALACHIA

Mr. HINCHEY. Thank you very much, Mr. Chairman. And thank you very much for the work that you are doing. We know how important it is, and thank you for what you are talking about here today. I just wanted to ask you a simple question and follow up with what was just said by Mr. Moran.

I understand that there is a budget request which contains an increase of $3.9 million for expansion and enhancement of federal oversight stream protections, and mostly in this particular case, it is going to be focused on the Appalachian system. So I wonder if you can—first of all, I think that that may be not nearly what is needed. But nevertheless, I appreciate that you are trying to get some additional funding to focus attention on this particular issue, but probably there is a lot more that could be done and a lot more money could be used for that operation.

I wonder if you could tell us a little bit more about what the situation is in Appalachia, what are the kind of things that are you going to have to deal with there in overseeing this. We know how serious it is to some extent at least, and to whatever extent you are going to be focused on other areas outside of Appalachia that deal with this issue as well.

Mr. PIZARCHIK. Thank you, Congressman Hinchey. When I took this job and started in November of 2009, we were in the process in the Office of Surface Mining of launching improvements to our oversight and conducting additional oversight in Appalachia to address, and try to prevent and minimize, the adverse impacts of coal mining. But we were looking at oversight nationwide. One of the underlying principles that Congress put in the Surface Mining Act is that we were to develop a nationwide program. So we have been trying to do oversight nationwide and maintain that as far as to make sure we have the appropriate amount of oversight inspections across the country.

We recently developed and published final internal guidelines that sets forth the criteria to decide where we would do our oversight inspections and the percentages of oversight inspections, et cetera. And we had also increased our inspections by about 40 percent in that first year. In order to be able to increase since, we did not have any additional staff or resources, we refocused some of our efforts where we provided technical support and training to the states.

Many of the states, like OSM, have a workforce that is reaching retirement age, and they are going to need to have new people come on board. The newer staff obviously need to have some type of training, and OSM provides the programmatic training to states, staff in cooperation with the states. So we need additional staff to continue to provide the necessary training and technical support to the states. Without it we would have a problem where we can end up with maybe more violations, more complaints, and more environmental problems without properly trained staff.

The process of refocusing staff was not sustainable, so we are looking to increase our oversight folks so we can maintain the level of oversight that we conducted last year, as well as continue to provide the technical support and training to the states.

Some of the things that we found during oversight is that there was an increase in the number of 10-day notices. Now, a 10-day notice does not necessarily mean that there is a violation. It means that we have—if it came through a citizen complaint—that it appears to be the potential for a violation. Under the law, we provide a 10-day notice to the state regulatory authority, and they have 10 days to investigate and respond back to us—to give us all the facts, to let us know, since they have the primary responsibility, is there merit to the potential violation or not. And if there is a problem out there, then they have to address it.

Some of the other things, areas where we know of an issue, is in one of the states in Appalachia. As part of our oversight improvements, we looked at the adequacy of the bonds. We found that about 80 percent of the bonds and mine sites that were forfeited did not have enough money to complete the reclamation as was contained in the operator's reclamation plan.

So we are working with that state and developing a plan in order to make the improvements to the bonding program to meet the statutory requirements. Therefore, if there is a bond forfeiture, that the state has enough money to reclaim the land and put it back the way it was prior to mining.

OSM OVERSIGHT OF STATE PROGRAMS

Mr. HINCHEY. Well, the situation there in Appalachia is something that really has to be dealt with effectively, right? There are a lot of problems there.

Mr. PIZARCHIK. Well, yes, there are problems. There are places for improvement. Most operators want to do the right thing and do a good job. Same way with most state regulatory authorities. Having formerly worked for a state regulatory authority, I know sometimes there are circumstances and environments that may not enable the regulatory authority to be able to do as effective a job as they want to do. And that is part of where OSM is responsible. We

are required to do the oversight to make sure that the states who voluntarily took on the obligation to implement the law, that they do so and do so effectively. And sometimes there are parts where they will be doing an excellent job. Maybe economic circumstances change or there are other factors, and maybe there is a little slippage. And you have to make some improvements in specific areas.

And so that is the role that OSM has had to play, and it varies a little bit depending on the circumstances. There has been a lot of improvement that has been made in Appalachia and a number of states. With the technology we have today and the science that we have today, we know there is still room for improvement and more things that we can do a better job at.

YOUTH ENGAGEMENT AT OSM

Mr. HINCHEY. Well, thanks very much. One of the interesting things that you are doing, a number of interesting things, is youth engagement and the enhancement of youth in the operation that you are engaged in. Could you just tell us a little bit about that, what you are doing, what the objectives are there, and what are you expecting to see happening in this context?

Mr. PIZARCHIK. Sure, that is a very good point. A number of years ago, the Office of Surface Mining Reclamation Enforcement engaged in a partnership agreement with the Americorps and Volunteers in Service to America. We partnered with those folks to get youth involved who would make commitments and go into the communities that have been adversely affected by historic coal mining and work with citizens to help them understand the law, and some of the opportunities available for cleaning up their areas. This helps them deal with the abandoned mine issues or abandoned mine drainage and other things that have adverse social and economic impacts that the historic coal mining has left on their communities.

Under that program, we provide part of the money. Our partners provide the other part of the money, and we had a couple hundred young adults working. They typically do about a year's internship. What we hope to accomplish in that particular area is getting more of the youth in America involved in dealing with some of the problems we have, both environmental and social problems, with the historic coal mining that has occurred. And with the expectation of helping to improve the environmental and the social conditions in those areas, as well as hopefully getting those people to consider a career in either government service or other environmental areas.

In this past year, we had a former VISTA student that applied for and was hired as a Federal government employee. We also have added internships where we bring college students in during the summer to help in some areas where we do not have enough work to hire a full-time employee permanently. We also have students help with some of the mine mapping, and some of the IT work. Some of the youth are terrifically skilled in the information technology, the high tech area, and that has been very helpful.

And part of what we were trying to do again is to bring more young people into the government. We are also coordinating these resources with the states who were having some fiscal difficulties,

and where we could provide some services for the work that they needed to have completed.

Mr. HINCHEY. Thank you very much. I appreciate that. Thank you, Mr. Chairman.

Mr. SIMPSON. Ms. McCollum.

MINING WITHIN 100 YARDS

Ms. MCCOLLUM. Thank you, Mr. Chairman. I had more of a comment than I have a question. I was curious, having served on both an agriculture and a DNR committee that dealt with setbacks and everything, and we have mining and we have big ag and everything else, kind of like what—I did not want to just go from own memory, and looked at the guides that we have for shore mine management standards, and basically what I am seeing, whether it is the EPA or ag or whether it is the DNR on—whether it is mining, recreational, or development, it is about 100-yard setback minimum wherever I look through statute. And I know at one point in our state's history, there was none, and then it was 25, and then it was 100. And 100 is the minimum. In some areas where it is more fragile, it is higher. And that is about the length of this hall right here. That is all we are talking about, about the length of this hall out here for not piling things any closer to that where there is possible flood, water runoff, anything that is going to get into the water.

So I wish you luck. I think it is common sense. I wanted to make sure that the federal government was not out there doing something really radical, really extreme, but it appears, and I did a quick look at some other states while I was sitting here, and it seems like any time that there is kind of water involved, it is going to be common sense, kind of prudent, that you create at least a hallway length of buffer between where you are piling things up, where you are digging, where you are building, and the water.

So you are just kind of—are you looking at—is the contractor kind of looking at what is best practices, or supposed to be looking at was best practices?

Mr. PIZARCHIK. There are a lot of things that the contractor was hired to look at—what the potential environmental impact would have been, and the overall environmental impact assessment. In November of 2009, we laid out some potential concepts in areas of how we thought maybe the regs should be improved and sought public input on that. As well, we asked the public for other suggestions.

We took that information, and we prepared a number of alternatives. Under the National Environmental Policy Act, we have to look at what is our preferred alternative and some other reasonable alternatives and to have the contractor analyze those. Part of that is looking at other data and resources, information, and to figure out what else is available, what works, what does the science say, what does not work, et cetera. That information will be used to put together the environmental impact assessment to help me have the information to decide what OSM needs to put in the proposed rule that is being developed.

Some of the things that we have that are a bit different that what you cited is that under the Surface Mining Act, it does not

prohibit mining on streams. It anticipates that there will be some adverse impact on streams in the permit area. The practice for the past decades has been, in most states, to allow streams to be mined through, and then for reclamation to occur. The Surface Mining Act provides for mines to be designed to prevent material damage outside of the permit. When it comes to excess spoil in various steep slopes, what happens if you are in a very steep area, a mountainous area, when you break up all that rock, you cannot compact it and put it back as tightly as Mother Nature did. So you have more volume to deal with.

So the law specifically allows for placement of excess spoil in certain areas. What we are trying to do with this rule that we are developing is to do a better job in striking the balance in protecting the environment, to minimize the adverse impacts on the streams, as well as to make sure we have enough coal to meet our country's energy needs.

And one of the concepts we have that we are looking at leaves it up to the mine operator, let the company decide whether it wants to mine through that stream. But if it does so, the company would restore the stream's form and function. So that if you had a perennial stream with fish there before mining, complete the mining, then put a perennial stream with fish there after mining. That is something to look at, and it is a business decision. And if they think that they cannot do that and they choose to stay out of the stream, that is their prerogative.

Some of the other ideas we are looking at developing is that if you are going to stay away from the stream, stay at least 100 feet away, that is what was in the '83 rule. Keep the buffer forest. We know that the forest does a better job of controlling the storm water runoff and pollution. If you are going to mine through a stream and restore it, then put a larger buffer in place because it is going to take a little while for those trees to get mature.

So we are looking to try to craft an enhancement to provide more clarity, more certainty to the industry so it can do a better job of protecting streams. The approach is to let mining companies make a conscious business decision. Is it really worth risking this kind of environmental degradation or this kind of risk to my company for creating pollution?

We are looking at trying to do a better job of handling the toxic materials so that you can keep the pollutants from leaving the site. We do not have the luxury of just drawing a line and saying you have to stay X feet away from every stream. The statute does not give us the authority to do that. We are working within the constraints. We have to do a better job to try to provide for that protection of the streams in what means we have available.

EIS CONTRACT

Ms. McCOLLUM. Thank you. I have a question on the contractor. We have somebody who sounds like they did not do the job that they were asked to do. So are we paying this person? Are we having to pay this person to redo the work? I was—Mr. Chair, I was on ledge branch when I found out we were paying for change orders for stuff that people should not have done in the first place because they were missing a piece, and they went ahead and knew

that they had to redo the sprinklers, put the ceiling in, and then took the ceiling out to put the piece that they knew was missing in the sprinkler. So I mean and we paid for the change orders in most cases.

What is going on with this person that could be a woman too so I will not say gentleman in billable hours and everything for us?

Mr. PIZARCHIK. The contract that we have through the competitive selection process is a small business under the SBA guidelines. They have a number of subcontractors that work for them, and they have been producing a work product. We have a timeframe. As I indicated earlier, we had some concerns, as others did, with the quality of the work. So we provided them comments back and an opportunity to correct the problems.

With the cure letter that we had sent out and with the work product that was coming in on the 23rd, there were some other things that were scheduled to occur after that time period. For instance, under the National Environmental Policy Act, when you have the draft Environmental Impact Statement, that needs to be published for public comment. And you need to have hearings. We have asked the contractor to do no further work on scheduling those hearings because we wanted to make sure we actually had a draft document available that we could publish.

Ms. MCCOLLUM. Well, I understand that, but the contractor is going to have to go back and redo the work. Is that—and causing great inconvenience and, you know, a PR problem for you. Is this individual having—is this individual, you know, reclaiming, you know, hours or asking for more money, or is this person expected to do the job right the second time with the amount of money they were given the first time?

Mr. PIZARCHIK. When we provided the cure letter to them that outlined our concerns in the areas where we thought that the quality of the work did not meet the contract requirements, we did that with the expectation that they would provide us a contract compliant work product with the same funds that they had already received without additional funds.

Right now, we are still in the process of reviewing that work product, and I do not know what the future holds yet because we have not completed that review. When that review is completed, I will be sitting down with my staff to hear what they have found. And based on that information, we will decide what makes the most sense and the best way to proceed.

Ms. MCCOLLUM. So if you suspend a contract, let us say—I am not saying you are going to, but if you were to suspend the contract, does the contractor get paid in full because you have to go back, you have to reissue? This has been a PR disaster for you with everything that I am hearing floating around in Congress. I mean is this individual held responsible in any way, shape, or form?

Mr. PIZARCHIK. The contract we have is for a lump sum for the total product, and there was a time period for it to go on through, and I believe we were scheduled to, under the plan, have the final environmental impact statement in December 2011. I cannot remember the exact date on that, but we have a progress schedule where, as they were progressing, we were making scheduled payments.

And as I understand it from talking to our contract lawyers, if the situation leads to where there is a termination of the relationship, that the additional payments would not be due to the contractor. It can get pretty complicated. You can get into litigation. From our view, we hired a contractor to provide us with an environmental impact statement that complied with the contract, the National Environmental Policy Act, the regulations. And that is what we expect to get for the money that we paid.

Ms. MCCOLLUM. Thank you.

Mr. PIZARCHIK. You are welcome.

Mr. SIMPSON. It has been my experience that we have a tendency to agree with that science that supports our preconceived ideas and disagree as bad science as science which conflicts with our preexisting beliefs. The same is true of studies. There have been a number of people who have said that the reason this contractor is not complying or is said is not complying or has produced a bad work product is because you did not like the results of what they were doing. Not saying that is true or not, but there is that argument out there also.

I would be interested at some point in time in a probably more private setting to sit down and talk about what exactly it was in the work compliance that OSM and DOI disagreed with in what they were doing because there is that argument out there that it is just, you know, you did not like the results, so it was a bad work product. Not saying that is true at all. Not even suggesting it, but a couple of questions I need to ask.

STATE REGULATORY GRANTS

In 2010, the budget fully reflected the 50 percent federal match for the state regulatory programs for the first time. The administration is again proposing to fall short of the 50 percent commitment in 2012 and shift a greater share of the cost of the regulation onto industry via the state fees. The administration indicates that OSM would work with the states to raise their permitting fees to cover a greater share of their costs.

We noted at last year's hearing that additional fee increases was not likely to be a politically viable option for some states. How many states have enacted fee increases since the proposal was announced last year? And have you conducted a full analysis of the administrative rulemaking complexities inherent in such an undertaking?

And along those same lines, to what degree would states need to increase their fees in order to recoup the loss of the $11 million in grants that the 2012 budget proposes to cut from the 2010 level? And could you provide for the record a table of existing fees, fee levels by states, and the percentage of increase that each state would need to enact in order to recoup the loss of the federal grants to the states?

Mr. PIZARCHIK. Thank you, Chairman Simpson. There are a lot of questions in there. I may have to circle back to you on some of those that I do not answer. It is my recollection that there was one or two states that have enacted some type of a fee increase that we processed since last year on this. Most of them have not, and as far as getting together with the states, we have been working

with the Interstate Mining Compact Commission to gather data to get a better idea of what is the status, what type of fees are being charged or collected in each state.

It is my understanding that there is a great deal of variety out there and variation. And we do not have a handle on that yet. We did receive some input from the states on the development of the questionnaire, and we have the hopes that we will be able to get that out to the states and that they will respond to that to help provide the information that we would need in that particular area.

In regards to how much money the states get and the fees and how much they are collecting, our understanding, based on some prior information that we had gathered, that of the 24 states that receive grants, 20 states collect some type of permit fees. The percentage of the fee that they recover varies widely. Some of them as much as 50 percent of the cost of the program. Some of them as low as around 1 percent, and we also know that in some states, the regulatory authority cannot adjust a fee, that it must go through the state legislature.

And we know that those things can take time, and there can be a lot of other factors involved, particularly in these difficult budget times. In working with the states after our hearing last year on this, we sat down with the states and talked to them. And a lot of them expressed concerns about whether they would be able to get those type of fee increases and asked OSM to do it. And so we—part of our charge at OSM is to provide assistance to the states—are willing to explore and work with the States and if necessary, to promulgate a regulation or request legislation to collect the fee on their behalf.

We cannot do the job without them, and we need to work together. And if they have some type of impediment, maybe we can work together to address that. So we are exploring those possibilities as to how to get there.

Regarding how much money will be needed, whether that $11 million needs to be entirely made up. Some of that will depend on the states themselves, what type of income they have. If they do not need the amount of money that they have indicated in their preliminary grant requests, the $11 million may not actually be $11 million that they need. It might be something less than that. If we have carryover funds—we do not know that until we get to the end of the year—we have the two-year appropriation for those. And we will use the carryover funds from the previous Title V year grant to make it available to the states to help address those issues as well.

So we have some tools available to us. We do not know exactly how that will all end. Another aspect of it is under our existing regulations, it provides that should we not have enough money to give every state 50 percent of their cost of their program, that the amount of money that we do have would be prorated among the states. So that each of them would equally share a corresponding reduction and not any one state would suffer the burden of carrying a larger reduction in fees than the other ones.

Did I miss any?

Mr. SIMPSON. No, that pretty much covers it. There was one other question that I wanted to ask, and I am fairly certain I know where it is but maybe not. Mrs. Lummis, did you have some?

Mrs. LUMMIS. Thank you, Mr. Chairman. I will stall for a minute while you look.

Mr. SIMPSON. Okay, thank you.

AML FUNDS

Mrs. LUMMIS. Actually I do not have a question. I do have an observation. It is about AML. I understand that subject has come up in my absence while I was at other hearings. Under SMCRA, the state of Wyoming and any other state that has coal production, is entitled to its share under the law of that money. And that money belongs to my state. It does not belong to the federal government, and so that is—it is just clear. It is in the law.

Now there are some laws that people do not like. Apparently the president does not like the Defense of Marriage Act law, and he is not going to enforce it. But that does not mean it is not the law. That is that way with AML, you know. So now I would strongly encourage you to also visit with Congressman Rahall of West Virginia because my predecessors, between Wyoming and West Virginia delegations, negotiated an arrangement which allowed the interest income off those monies to be used to resolve the problem of the United Mine Workers Combined Benefits Fund and to ensure that those orphaned miners whose mines went out of business and could no longer pay, to make sure they had benefits to which they were entitled. It provided that source of funds.

And as a successor to that agreement that was made by my successor with Congressman Rahall and others from West Virginia, I am going to honor that agreement, and to his great credit, so is Congressman Rahall. So I encourage you to look at the history here and as discussions about AML occur, I think there is a history that is worth revisiting. Thanks, Mr. Chairman.

Mr. PIZARCHIK. If I may. Thank you, Congresswoman Lummis. As far as the president and this office following the law, we have done that. We will continue to do so. We made a proposal last year, as I am sure you are aware, to reduce or eliminate funding to your state or any other state who certified they completed reclamation. That was not enacted by Congress, and earlier this year, for the 2011 budget, the mandatory distribution funds were made available. We are implementing the law.

I understand there is a history there. There is also history that we discussed earlier when you were not here that the original purpose was to try to get the worst of the abandoned mine lands cleaned up, and the original formula was based upon where coal production was occurring at that time. Things have changed which lead to some of the statutory changes. The most recent were the 2006 amendments. I appreciate your view that it was your money. Just like you, I was not here for those discussions. And for whatever reason, all that money was not appropriated at that time, and that led to the 2006 amendments and the compromises that were struck at that point in time.

We are in some very difficult budget times right now, and, you know, the money that would be going to Wyoming is coming out

of the general treasury fund. And, you know, that is one of the reasons why we are looking at proposing it is to reduce the amount of the deficit we have, recognizing that there was a lot of history behind the issue.

But again, we are trying to deal with the situation that we have today, and we do know that it requires statutory changes. We are working on putting that information together for consideration later this year.

Mrs. LUMMIS. Thanks, Mr. Chairman. Thank you for that discussion, and did I stall long enough?

Mr. SIMPSON. Yes, I found it.

Mrs. LUMMIS. Thank you.

FEDERAL PERMIT FEES

Mr. SIMPSON. Thank you. Last question. The budget proposes to permanently allow OSM to retain and use up to $40,000 in coal mine permit applications and renewal fees which are currently collected and deposited in the general fund. These offsetting collections would reduce the appropriated amount by the amounts collected as collections roll in. How much was collected in 2009 and 2010?

Mr. PIZARCHIK. I do not have those numbers at my fingertip. My budget officer tells me that they have been averaging about $40,000 a year.

Mr. SIMPSON. Total?

Mr. PIZARCHIK. Yes, and to give you an idea of cost recovery, it is about a couple of percent of our actual cost, and earlier we had mentioned that we were encouraging the states to recover more of the costs. We are looking at the same for ourselves. We started this past year by putting the infrastructure together, the coding together, information to be able to track our actual costs. Our intention is to do the same thing for the Federal programs that we are asking the states to do, to recover more of those costs for the services that are provided to the industry.

Mr. SIMPSON. Thank you for being here today and participating in this hearing. We look forward to working with you as we put together your 2012 budget.

Mr. PIZARCHIK. You are welcome, and you had mentioned about wanting to get together. I am available to get together to meet individually with any member who would like more information. I would be happy to do so.

Mr. SIMPSON. We will do that.

Mr. PIZARCHIK. Thank you very much.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, Office of Surface Mining Hearing: Office of Surface Mining FY 12 Budget Oversight Hearing Thursday March 10, 11:00am Rayburn B308

Questions for the Record from Chairman Simpson

Regulatory Grants

Simpson Q1: The 2010 budget fully funded the 50 percent Federal match for the state regulatory programs for the first time. The Administration is again proposing to fall short of the 50 percent commitment in 2012, and shift a greater share of the cost of regulation onto industry via increased State fees. The Administration indicates that OSM would work with States to raise their permitting fees to cover a greater share of their costs. We noted at last year's hearing that additional fee increases was not likely to be a politically viable option for many States.

How many States have enacted fee increases since the proposal was announced last year?

ANSWER: Two States took action to change their fees in the past year. Texas proposed, and we approved on December 27, 2010, revisions to its annual permit fees. Alabama proposed revisions to its fees and they are in the final stages of the review and approval process. These fees will be used to offset the State Regulatory Program costs.

Simpson Q2: Has OSM conducted a full analysis of the administrative and rulemaking complexities inherent in such an undertaking?

ANSWER: The OSM is cognizant that increasing permit processing fees may be difficult for some States to implement. Some States have requested OSM's help, as authorized by the Surface Mining Control and Reclamation Act. The OSM is working with the Interstate Mining Compact Commission to gather data to obtain a better idea of the status of cost recovery of fees for services to the coal industry.

Simpson Q3: How will OSM ensure that States have the resources they need to run an appropriate regulatory program if States are unable to enact fee increases?

ANSWER: The 2012 budget request includes $60.3 million for State and tribal regulatory grants. The proposed budget does not provide funds for OSM to run, in whole or part, a Federal coal mining program in any program currently run by the State. We intend to work closely with States to implement the budget and ensure that regulatory programs remain effective.

Simpson Q4: Would the OSM and the Federal government have to step in and run the coal mining regulatory program?

ANSWER: The OSM's preference is for States to continue to fully implement their approved programs. The Secretary has the authority to either substitute Federal enforcement of all or part of the State program, or withdraw approval of the State program. Action could be taken if OSM determines that a State is failing to implement, maintain, or enforce its approved program effectively. The OSM would take this action only as a last resort and only after following the procedures set forth in 30 CFR Part 733.

Simpson Q5: To what degree would States need to increase their fees in order to recoup the loss of the $11 million in grants that the 2012 budget proposes to cut from the 2010 level?

ANSWER: The proposed reduction of $11 million is 15 percent of the 2010 enacted level for these grants; therefore, on average, states would need to increase their fees by 15 percent to offset the decrease in Federal funding. However, if States do not need the amount of funding requested in their preliminary grant estimates for 2012, a smaller increase in fees would be needed.

Simpson Q6: Could you provide, for the record, a table of the existing fee levels by state, and the percentage increase that each state would need to enact in order to recoup the loss of Federal grants in that State?

ANSWER: The OSM is currently working with the Interstate Mining Compact Commission (IMCC) to gather data on each State's current user fees. The OSM will respond for the record after receiving and analyzing the information. The States were requested on March 17, 2011, to provide this information.

Simpson Q7: Under the 2009 memorandum of understanding OSM signed with EPA and the Corps, OSM committed to reevaluate and determine how it will more effectively conduct oversight of State permitting, State enforcement, and regulatory activities. The 2012 budget proposes to increase Federal oversight of State regulatory programs by conducting spot inspections, in some instances, with less than 24 hours of advance notice. The budget includes a $3.9 million and 25 FTE increase in order to conduct these inspections.

Is this proposal an outgrowth from the 2009 MOU?

ANSWER: The proposal is, in part, an outgrowth from the MOU. Over the years, OSM's oversight inspections had decreased, diminishing the effectiveness of the oversight, and potentially reducing the quality of regulatory programs. The additional oversight inspections will enable OSM to more accurately confirm or refute assertions that States were not properly implementing their programs.

Simpson Q8: How do you justify an increase in money for federal oversight while decreasing money for state oversight grants?

ANSWER: The Federal government currently provides funding to States and Tribes to regulate the coal industry. The budget encourages States to increase their cost recovery fees for regulation of coal mining. With additional funding from fees, the States will need less Federal

grant funding, so the budget reduces grant funding accordingly. Because the decreased Federal funding should be offset by user fees for services to the industry, there should be no reduction in regulatory performance. The OSM is consulting with States to determine the best way to recover the fees for services from industry.

Simpson Q9: What is the ultimate goal, or what do you hope to achieve through these unannounced, spot inspections?

ANSWER: Improving Federal oversight of State regulatory programs helps to ensure that coal production is occurring in compliance with SMCRA and its implementing regulations. The majority of oversight inspections will continue to be joint inspections, in which the State has advance notice to accompany OSM on the inspection. However, OSM will also conduct independent inspections (unannounced, spot inspections). The OSM finds value in conducting both types of inspections. The independent inspections will be conducted to validate and enhance the credibility of both State programs and OSM's oversight. The inspections will provide more accurate data for evaluating the degree of operator compliance with the State program and State enforcement of that program. Generally, independent inspections will be conducted on 10 percent of the mine sites selected for oversight inspections. However, the Field Office Director may adjust this number as necessary.

Simpson Q10: Will this not simply lead to duplication of effort, second-guessing of state decision-making, or undermine a State's primacy authority?

ANSWER: No. Oversight inspections are an integral part of the oversight mandate required of OSM by the Surface Mining Control and Reclamation Act (SMCRA). Section 201(c) (1) requires that the Secretary, acting through OSM, "make those investigations and inspections necessary to insure compliance with this Act...." This is further addressed in Section 517(a) which requires the Secretary to "cause to be made such inspections of any surface coal mining and reclamation operations as necessary to evaluate the administration of approved state programs..." The OSM's oversight inspections do not duplicate State inspections. States have primary enforcement responsibility and generally conduct a minimum of 12 inspections per year on each mine site. In the 2010 Evaluation Year (July 1, 2009 – June 30, 2010), States conducted 78,894 inspections. During that same time period, OSM conducted 1,931 oversight inspections in the 24 states with approved regulatory programs.

Simpson Q11: Your budget indicates that this funding is for increased inspections and stream protection. What portion of this $3.9 million increase would be used for inspections associated with a revised stream buffer rule? And what if the stream buffer rule is not completed for 2012 based on the issues with the EIS?

ANSWER: This increase is not dependent upon the publication of the stream buffer zone rule under development. The majority of the positions (over 80 percent) will be strictly for our enhanced oversight, regardless of whether or not the stream protection rule is in place. There are variations in how current stream protections are being interpreted and implemented. Oversight is key for stable regulation to assure compliance with the performance standard. The remaining

proposed positions will require skills more unique to stream protections (aquatic biologist, geochemist and ecologist) and are needed to implement existing and future regulations.

AML Emergency Program

The 2006 amendments to the Surface Mining Control and Reclamation Act (SMCRA) significantly changed how we budget for, and distribute funding for the cleanup of abandoned mine lands. Your budget again proposes to eliminate the Federal portion of funding for emergency abandoned mine land cleanups. As a result States would need to fund emergency cleanups out of their base cleanup program. We've heard from States that one large emergency could consume their annual cleanup budget. Therefore it's logical to anticipate that fewer mine lands will be cleaned up if base program resources have to be redirected to emergencies.

Simpson Q12: Please explain how the policy outlined in your budget would maintain the same level of cleanup with fewer resources?

ANSWER: The requested discretionary funds and mandatory proposal together will dramatically improve funding for AML reclamation. It is inefficient for States to manage their AML issues while OSM addressed AML emergencies, as has been the policy in the past. The budget eliminates discretionary funding for AML emergencies so that States can incorporate these issues into their overall AML management strategy. Simultaneously, through the proposed competitive grant program, States would have access to more funding to address these coal AML issues, and a new source of funding to address hardrock AML issues. The increase in new funding and expansion of the program will create more jobs, eliminate more hazards, and improve the Nation's environment.

Simpson Q13: How does this policy provide a stronger cleanup framework for our State partners?

ANSWER: As stated in the response to question 12 above, the new framework allows for more funding and expansion of the AML program to include reclamation of abandoned hardrock mines. It will build on the existing framework to prioritize the use of the funds for the most dangerous sites.

Authority To Retain And Use Permit Fee Collections

Simpson Q14: The budget proposes to permanently allow OSM to retain and use up to $40,000 in coal mine permit application and renewal fees which are currently collected and deposited in the General Fund. These offsetting collections would reduce the appropriated amount by the amount collected as collections roll in.

How much was collected in 2009 and 2010?

ANSWER: In FY 2009, OSM collected $55,916 and in FY 2010, OSM collected $26,826 in permit fees.

Simpson Q15: Why was this fee originally designed to be deposited in the General Fund? Please provide the legislative history of this fee.

ANSWER: The fee is authorized by SMCRA section 507(a), (30 U.S.C. 1257) and states: "Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this chapter shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit."

The SMCRA does not address the disposition of the fees that can be charged under a State or Federal program. In the absence of specific statutory authority to retain the fees, Executive Branch agencies are required to deposit the funds into the Treasury as miscellaneous receipts based on the Miscellaneous Receipt Statute (31 U.S.C. 3302), the Independent Office Appropriations Act (also known as the User Charge Statute) (31 U.S.C. 9701) and associated implementation guidance contained in OMB Circular A-25. The requirement to deposit such funds into the General Fund of the U.S. Treasury has been well documented through Comptroller Decisions (72 Comp. Gen. 164 and cases sited). OMB Circular A-25 provides guidance on proposals to credit fees to an agency's appropriations and is the basis for OSM's request to do so.

Legislative Proposal: Elimination of Payments to Certified States

Simpson Q16: Your budget again proposes to eliminate mandatory payments to four States that have cleaned up all of their abandoned mine lands – Louisiana, Montana, Texas and Wyoming. These payments are based on fees collected on coal production in those states, and because those states have cleaned up all of their sites, those States now have the flexibility to spend those funds as they see fit. The rationale for your proposal rests on the basis that these funds are no longer being used for the original purpose of the program.

While this is a proposal for the authorizers to consider, it seems to me that this policy penalizes States for cleaning up all of their abandoned mine land sites, and creates a disincentive for other states to certify that they have cleaned up all their sites. Instead, why not propose to eliminate the fees associated with the coal production in those states that have certified? This provides yet an additional incentive to cleanup all abandoned mine lands rather than preventing fee receipts from being rightfully returned to those states.

ANSWER: The AML fee was created to hold the entire coal industry responsible for cleaning up abandoned coal mines, regardless of which States have abandoned mines and where coal is currently produced. Continuing to pay States and Tribes that have already completed their reclamation diverts funding from the Treasury without contributing to the intended purpose of this program.

Furthermore, eliminating reclamation fees on coal production in States that have certified completion of their AML reclamation would create a competitive advantage for mine operators

in those States, distorting interstate commerce and reducing funding available to reclaim abandoned mine lands. The Administration's proposal will accomplish the original purpose of SMCRA without creating a competitive disadvantage for States with remaining AML issues. This proposal ensures that the Nation's highest priority AML hazards are addressed, funded by the industries that created them.

Legislative Proposal: Competitive Selection Process for Abandoned Mine Land Reclamation Funds

Simpson Q17: The OSM's newest abandoned mine land reclamation proposal -- to eliminate payments to certified states and tribes and to utilize a competitive bidding process for the allocation of remaining AML reclamation funds for non-certified states -- is the third time that the agency has put forth potential legislative adjustments to the 2006 amendments to SMCRA in its proposed budgets. To date, a legislative proposal has not been drafted that we are aware, much less shared with the states, tribes or Congress.

When can we expect to see a draft of this most recent legislative proposal?

ANSWER: We asked for input from the States and Tribes and are working as quickly as possible to develop the legislative language. The draft legislative language will be shared with Congress in the near future.

Simpson Q18: What implications would the new proposal have on program management and administration of the current abandoned mine land program?

ANSWER: This proposal is still under development; however, we expect the new approach to utilize the best aspects of the existing program to address the most dangerous and environmentally hazardous sites in a more efficient manner.

Simpson Q19: Do you intend to seek input from the states and tribes as you draft the proposal?

ANSWER: We have sought input from the States and Tribes. We have also requested formal consultation with the three affected Tribes - the Navajo Nation and Hopi and Crow Tribes. We expect these consultations to occur in the near future.

Simpson Q20: What role will states and tribes will play in the ranking of reclamation projects?

ANSWER: This proposal is still under development; however, we expect that the advisory council will include States and Tribes, in order to capitalize on their experience with AML issues. Also, because States and Tribes will be able to apply for funding for AML sites located in their borders, they will have the opportunity to rank their highest priority sites.

Simpson Q21: What role will states and tribes will play in the bidding/selection process?

ANSWER: This proposal is still under development; however, we expect that the advisory council will include States and Tribes, in order to capitalize on their experience with AML issues.

Questions for the Record from Ranking Member Moran

HR1-House Passed-Coal Mining and Stream Buffer Rule

Mr. Pizarchik, before we talk about your important legislative proposals and the budget, I would like you to reflect on House passed HR-1, which includes a dump truck load of anti-environmental riders. In particular, I would like you to reflect on the legislative matter in HR-1 dealing with coal mining and the stream buffer rule. We talked about this issue with Secretary Salazar on Tuesday.

Even though there is still no final rule, that has not stopped Members from going to battle for the coal industry. During H.R. 1, the House voted to block OSM from developing, carrying out, implementing, or otherwise enforcing proposed regulations.

Mr. Pizarchik, I am confused by some of the rhetoric from the coal industry, so I hope you will clarify a few items.

Moran Q1: You are looking to overturn a 2008 rule done by the Bush Administration in its waning days, correct?

ANSWER: Yes, that is correct. The current rule was published on December 12, 2008. The OSM is developing refinements to its existing regulations to better protect streams from the adverse effects of coal mining.

Moran Q2: The rule that Bush overturned was a Reagan era rule, was it not?

ANSWER: Yes, that is correct.

Moran Q3: How did the Bush rule differ from the Reagan era rule?

ANSWER: The 1983 Regan era rule, on its face, prohibited mining within 100 feet of perennial and intermittent streams unless the State finds that the mining will not adversely affect the water quality and quantity or the environmental resources of the stream. In practice, most States continued to allow operators to mine through streams and bury streams with excess spoil, rocks and soil. Presumably, States determined that mining or burying a stream would not adversely affect the fish, water quality or water quantity.

The 2008 rule specifically allows streams to be mined and to be buried provided the mine operator shows avoiding the stream is not reasonably possible and takes steps to minimize the adverse affects on fish and wildlife and to minimize leachate and runoff downstream.

Moran Q4: How do your draft regulations compare to both Bush and Reagan rules?

ANSWER: We have not yet published a draft regulation. However, as outlined in the advanced notice of public rulemaking, we are considering refining several existing regulations in order to

provide for more complete information, more clarity and more certainty. Items being considered include:

- Defining Material Damage. The Surface Mining Control and Reclamation Act requires mines to be designed to prevent material damage to streams outside the permit boundary and to minimize impacts to streams located within the permit boundaries. The Office of Surface Mining Reclamation and Enforcement has never defined material damage, which makes it difficult to determine whether a stream has been damaged. We are considering defining "material damage" in order to provide more clarity and certainty.
- Requiring Complete Stream Data. We are considering refining existing regulations to provide that complete stream data is collected prior to mining so that everyone will know what it is that is being protected. Without complete data on streams, it is very difficult to determine whether a stream has been affected by mining. Because the statute allows streams within a permit to be impacted, this information will establish the base line against which to measure the mine's impacts.
- Restoring Streams. We are also considering requiring that if a mining company chooses to mine a stream, it will be necessary to restore the stream's form and function. A bond will be required for the cost of this reclamation just like is required for all other reclamation.
- Placement of Excess Spoil. We are considering requiring excess spoil from mountain top mining be transported by heavy equipment down to a fill disposal area and placed in a controlled manner to maintain stability and prevent water pollution as has always been required by SMCRA. It would end the current practice, which is to dump or push the excess spoil over the side of the mountain and allow it to cascade into the stream valley below. Some in the mining industry refer to this as "shoot and shove" because they shoot the rock with explosives to break it and then shove it over the side of the mountain. Government regulators call these types of excess spoil fills "durable rock fills" presumably, because of the belief that durable rock will roll farther and faster down into the stream valley than non-durable rock to form an "under drain" for underground passage of stream flow beneath the valley fill.

Moran Q5: The AP reported, based on leaked documents, that OSM estimates that the protections under a new stream protection rule would trim coal production to the point that an estimated 7,000 of the nation's 80,600 coal mining jobs would be lost. Production would decrease or stay flat in 22 states, but climb 15 percent in North Dakota, Wyoming and Montana.

Those figures were based on a draft report, correct?

ANSWER: Yes, that was the first working draft from the contractor. The figures you referenced are not final or official, and were derived using placeholders without a factual basis.

Moran Q6: Can you explain why Interior is so concerned about the work product in this draft report? When will a revised report be available?

ANSWER: The purpose of the draft environmental impact statement (EIS) is to inform decision-makers about the potential impacts of various alternatives so that they can use that

information to make an informed decision when developing a proposed rule. Consequently, the accuracy of the data and analyses in the draft EIS are of great importance. In addition, the EIS must meet the National Environmental Policy Act requirements and be sufficiently comprehensive to withstand legal challenges. The figures you referenced are not final or official, and were derived using placeholders. The first draft document needed significant work to meet NEPA standards. We anticipate that a draft EIS may be completed by the end of 2011.

Moran Q7: In general terms, can you explain how jobs can be lost but production climb?

ANSWER: Over the past decades, the number of people employed mining coal has significantly dropped as technology improves in this industry. According to the Energy Information Administration, since 1985, the number of people employed mining coal has dropped from 169,281 to 87,592. This has been in large part due to the mechanization, automation, larger equipment, and improved efficiencies in coal industry operations. There are some other factors as well, such as the move of production from smaller mines in the East to larger mines in the West, where the coal seams are much thicker. In addition, larger equipment enables mine operators to move more overburden with fewer workers to get to the coal, such as in mountain top removal. Accordingly, the result of fewer jobs and more production is a combination of improved mechanization and geologic advantages.

Moran Q8: Can you please explain the role of the OSM in helping States to regulate surface coal mining and your role in protecting streams and watersheds from unnecessary harm?

ANSWER: The OSM establishes the standards for a nationwide program. States that have opted to regulate coal production in their borders must meet these national minimum standards, but can be more stringent. The OSM provides training and technical support to States to improve their proficiency and to help new employees acquire necessary skills to implement SMCRA. We also help States through oversight to ensure effective implementation and a level playing field. Financial support in the form of regulatory grants is also provided. The OSM appropriation includes funding for Technology Development and Transfer which supports scientists and engineers who provide technical training, technical assistance, and promote technology transfer of applied science related to coal mining. We work closely with State partners to identify the technical priorities based on the emerging issues and specific needs facing State programs. This ensures that best science plays a role in fulfilling the regulatory performance requirements of SMCRA at mining and reclamation operations. The OSM-led Acid Drainage Technology Initiative was formed because of the serious issue of polluting mine drainage problems occurring in the United States and the need to develop and promote the best technologies to prevent pollution and effectively deal with pollution when unanticipated discharges occur despite best efforts to prevent them.

The OSM's activities help the States do a better job regulating coal mining and protecting streams from unnecessary harm. The OSM's activities have also had the collateral effect of preserving jobs by preventing mining companies form incurring costly, perpetual treatment liabilities.

One of the pillars of SMCRA is ensuring protection of the hydrologic balance and preventing material damage to streams and watersheds outside of coal mining permit areas. The OSM's initiatives and oversight have focused on this important aspect of the SMCRA regulatory program to improve permit reviews, better predict hydrologic consequences, and minimize the individual and cumulative effects of mining and reclamation operations on streams and watersheds. As new science emerges, OSM works with States on how best to incorporate the science into the regulatory framework. In 2009, OSM issued guidance to its own staff and State regulatory authorities on how the specific sections of the existing SMCRA rules work to protect streams. The OSM is also working with the EPA, Corps, and Fish and Wildlife Service on improving cumulative assessment methods and sharing data and analyses when making Federal and State permitting decisions related to hydrology of streams and watersheds.

The OSM also conducts programmatic evaluations to determine how well State programs are being implemented and enforced. The program evaluations also identify areas where States can make improvements.

Moran Q9: During our GAO and IG hearing last week, we heard a lot about energy management problems at the BLM, but I don't recall hearing about problems at the OSM. Are you getting clean opinions from the GAO and the IG?

ANSWER: The OSM does not have any outstanding reports from GAO. The OSM is included as part of the Department's consolidated audit, which is conducted by KPMG and overseen by the IG. Therefore, OSM does not receive an independent opinion. Audit issues that impact all bureaus would be issued at the Department level. The OSM had one Notice of Finding and Recommendation issued last year and there is a corrective action plan in plaee to address it.

Future Legislative Proposal to Focus Reclamation

Your budget says you will submit a proposal to reform abandoned mine reclamation, which would discontinue the payments to States that no longer have abandoned mines. You would use the funds for reclamation where there is the greatest need, and still save the treasury.

Moran Q10: Can you please explain this a bit? What kind of money is involved and what kind of land reclamations would be able to be accomplished?

ANSWER: The certified States and Tribes mandatory AML appropriation is from U.S. Treasury funds. Eliminating unrestricted payments to certified States and Tribes (i.e., those States and Tribes who have certified completion of their abandoned coal problems), reduces the Federal deficit by $1.2 billion over ten years. The Administration's proposal to reform how the abandoned mine land fees are distributed will target the available resources to the highest priority coal AML sites in the nation, such as dangerous highwalls, impoundments, piles and embankments. The coal funds would not be used for non-coal projects as currently occurs. Based on the existing inventory cost estimates, this proposal would ensure that the highest priority hazards will be reclaimed before the coal fee expires in 2021.

Moran Q11: I understand that you first propose to eliminate the unrestricted payments to States and Tribes that have completed their abandoned mine reclamation.

What are the States and Tribes using the funding for now? Don't some of these entities also get substantial mineral receipts from coal mining that goes on in their State that comes from Federal land owned by all Americans?

ANSWER: States and Tribes are currently using their AML funding for a variety of purposes, including: abandoned hardrock mine reclamation, public facility projects, education grants and scholarships, and university research. In addition, funds are being spent for the administration of AML coal and other projects, and some coal projects found after certification.

Yes, some certified States receive substantial receipts from coal mining as identified in Appendix R, "Mineral Revenue Payments to States" of the "Fiscal Year 2012, Interior Budget in Brief, February 2011." For example, it is estimated that Wyoming will receive over $1 billion in 2012.

Moran Q12: Second, you propose to change the current production-based formula that allocates funds to States that currently are mining a lot but do not necessarily have abandoned mine lands that are threats to life, property and the environment.

What is the backlog of critical reclamation needs and why is this change a good idea?

ANSWER: As of May 11, 2011, the nationwide AML Inventory System of high priority problem areas would cost approximately $6.5 billion to fully reclaim, and approximately $4 billion of payments to both certified and noncertified states are currently authorized. These hazards include: dangerous highwalls, impoundments, slides, piles and embankments; clogged stream lands, portals, subsidence; and vertical openings. Before the AML fee expires in 2021, it is critical to use the available funding to address the highest priority AML sites across the nation. Under current law, funding to address AML sites is distributed using a production-based formula, so that funds are sent to the States with the most production, not the worst AML sites. States can use their AML funding for a variety of purposes, and are not required to focus on priority 1 and 2 AML sites to eliminate this backlog. The proposed change would focus the available AML funds on the highest priority coal sites to ensure that the Nation's most dangerous AML hazards and most serious environmental problems would be addressed before the fee expires.

Moran Q13: Third, I understand that you propose to create a similar hardrock mine reclamation program. It would begin to clean-up the thousands of abandoned mine sites that scar extensive areas of the country, especially western, publically owned lands.

How would this hardrock program work?

ANSWER: The budget proposes to build off the success of the coal AML program to create a parallel program for hardrock AML reclamation. Similar to the coal industry, hardrock producers left a legacy of abandoned mine sites that pose environmental, and health and safety hazards. There is no similar hardrock reclamation fee, leaving States, Tribes, and Federal land managers

to address these sites within their budgets, or use the coal reclamation funds when possible. To hold each industry responsible for the actions of its predecessors, the budget proposes a new reclamation fee on hardrock production. The OSM would be responsible for collecting this hardrock AML fee, building off of its expertise in collecting the coal AML fee. The BLM would be responsible for allocating and distributing the receipts, using a competitive allocation program to again ensure that the nation's most dangerous hardrock AML sites are addressed each year. The hardrock AML funds would create jobs by reclaiming the abandoned hardrock mines on State, private, and Federal lands.

State Regulatory Program Reduction

Your budget request includes an $11 million decrease in discretionary spending for the State regulatory program grants. Now I understand that the States are always clamoring for more help with this program, and that for years their Federal allocation was not keeping up with rising costs.

Moran Q14: Do you really think the States will be able to make up this funding reduction?

ANSWER: We recognize it will not be easy for the States to increase fees to make up the funding reduction, but it is a reasonable goal. The FY 2011 budget contained the same proposal so by the beginning of FY 2012, the States will have had over 18 months to take action.

Moran Q15: If a State does not come up with the funding to run its regulatory program, isn't it possible that the OSM and the federal taxpayer will have to pick up the tab and run the State's program? I suspect that this is a real possibility for some states, even my State of Virginia.

ANSWER: The OSM prefers that States retain primary responsibility for regulating coal mining; however, it is OSM's mission to ensure that coal mining occurs in a responsible manner. It is possible that a State may fail to maintain a strong regulatory program or choose to return primacy to OSM. In that case, OSM would administer a regulatory program in that State, using cost recovery mechanisms. We do not anticipate that this situation will arise. However, the Secretary has the authority to either substitute Federal enforcement of all or part of the State program or withdraw approval of the State program if OSM determines that the State is failing to effectively administer, implement, maintain, or enforce its approved program. We would take this action only as a last resort and only after following the procedures set forth in 30 CFR Part 733.

Moran Q16: The OSM gave conditional approval to Ohio's (state) permanent regulatory program in 1982. The OSM required Ohio to demonstrate that its alternate bonding system (ABS) would ensure timely reclamation at the sites of all operations for which performance security has been forfeited. In 2005 the state of Ohio was notified by the OSM Director that he was taking action pursuant to 30 CFR Part 733 and would recommend that the Secretary of Interior withdraw approval of Ohio's bonding program unless Ohio submitted a program amendment to address the deficiencies with the bonding program.

Since 2005, no further action has been taken by the OSM. Why? When does the OSM plan to resolve this problem and act on its 733 filing?

ANSWER: In May 2005, OSM initiated the 30 CFR Part 733 process to compel Ohio to resolve a funding deficiency with its Alternative Bonding System (ABS) that was preventing prompt reclamation of forfeited mine sites, the remaining condition of the initial program approval in 1982. In response, in December 2006, the Ohio General Assembly passed legislation making significant changes to Ohio's bonding program. In March 2007, as required by OSM's 733 notice, the Ohio Department of Natural Resources (ODNR) submitted the legislative changes to OSM as Program Amendment (PA) #82 intended to address the identified program deficiencies.

In July 2007, OSM notified ODNR of a number of issues with PA #82 that required additional clarification or needed rulemaking before OSM could act on the amendment. Following extensive negotiations and discussions, ODNR responded and submitted a revised PA in July 2009, including three legislative actions, changes to 39 rules, an actuarial report, and a legal opinion. Since then, ODNR has submitted additional rule changes and has continued to negotiate resolution of the few remaining legislative issues with the Ohio Coal Association. ODNR is currently in the final stages of these negotiations. ODNR has also focused attention on the ground and has completed the reclamation of all coal bond forfeiture sites in Ohio. ODNR submitted a revised PA #82 to OSM on April 1, 2011. This submission constitutes one consolidated and integrated proposal, which includes all of the legislative and rule changes that have occurred since March 2007. The OSM will formally process those changes, including publishing the revised amendment in the Federal Register for public comment. The OSM's final decision regarding the adequacy of the Ohio program submission will determine if further Part 733 action is required.

Moran Q17: Based on the OSM's review of Ohio's civil penalty assessments (CPA) for FY 2008, Ohio waived 75 percent of their civil penalty assessments. Ohio's action to wave penalties goes against the objectives of SMCRA's civil penalty provisions.

What action is the OSM planning to take on this problem?

ANSWER: An OSM 2008 Oversight Study was conducted to determine if the Ohio Department of Natural Resources (ODNR) was adhering to the civil penalty assessment requirements of its approved program and to determine if decisions and actions were adequately documented. Study findings identified ODNR as meeting the time requirements for its civil penalty assessment process and properly following procedures outlined in its guidelines. In addition to the study findings, a number of observations were documented to highlight areas for program improvement. One of those observations documented was the high percentage (75 percent) of cases where the penalty assessment was waived. These cases all involved assessments with calculated penalties of less than $500, providing the ODNR, Bureau of Mineral Resource Management Chief with the discretion to waive the penalty. The report clearly states that the cases reviewed were in compliance with all civil penalty assessment requirements. However, the program may not be providing the requisite level of deterrent. This item was brought to the attention of the ODNR in order to encourage a closer review of its civil penalty procedures and its exercise of discretion in providing a strong programmatic deterrent for coal operators

regarding future violations. The ODNR acknowledged this and other suggestions and responded that it "would be useful as we move forward with our efforts to improve our processes and develop more consistency within our coal regulatory program." The OSM continues to monitor and discuss this and other program improvement recommendations as part of its routine oversight activity and regularly scheduled program meetings with ODNR.

Moran Q18: In the OSM's outreach efforts, it is my understanding that there were many citizens concerns regarding the adequacy of Cumulative Hydrologic Impact Assessments (CHIAs). Why are permits being approved by some states even though they lack the quantifiable data that evaluates the cumulative impacts of all mining in the watersheds? What is the OSM doing about the inconsistent information being provided in already impaired watersheds?

ANSWER: The emerging science appears to indicate that mining releases substances that were not previously known to cause adverse impacts. It was previously assumed that Clean Water Act permit effluent limits would protect streams. It now appears those assumptions may not have always been correct. To my knowledge, OSM has no documented instances where CHIAs are unsupported by qualitative and quantitative data or provided inconsistent information in impaired watersheds. Permits may be issued in some States due to the lack of clarity and specificity in the Federal regulations, which OSM intends to address in future rulemaking. We recognize the need for improvement in the CHIA process in some States and are actively working toward that end. For example, OSM is assisting Kentucky, West Virginia, and Ohio to improve their CHIA processes through the use of Geographic Information Systems, which contain past mining locations, compiled water quality and quantity data, and better cumulative assessment modeling techniques. In West Virginia, Kentucky and the Tennessee Federal Program, trend stations were established to help assess cumulative impacts and monitor changes to the stream conditions. The OSM is also working with the EPA, Corps, and Fish and Wildlife Service on improving cumulative assessment methods and sharing data and analyses to improve Federal and State permitting decisions related to hydrology of streams and watersheds.

The OSM is considering improving its existing data collection and analysis regulations as part of the stream protection rulemaking that is under development. Also under consideration is the establishment of a definition of "material damage" in order to provide clarity and certainty to the regulated community.

Moran Q19: Is there a process in place to evaluate the fees the states are collecting in comparison to their regulatory program costs? This would be especially important since most states are unable to provide matching funds for federal grants.

ANSWER: No, OSM does not evaluate the fees States are collecting in comparison to their regulatory program costs. Any fee rate changes requiring regulation are published as State program amendments and follow the Administrative Procedure Act process. The OSM is working with the Interstate Mining Compact Commission to gather data on provisions in each State on fee collection. We do know that the permit fees collected by the States vary significantly and range from as low as one percent of the cost of the State program, to funding the total State share.

Regulation and Technology Program Increase for Environmental Improvements

I see that you are requesting a $3.9 million increase to reduce harmful environmental impacts of coal mining in Appalachia.

Moran Q20: Can you please explain some of the needs you see for this program, the kinds of staff and projects you are planning, and why this is a good investment?

ANSWER: The proposed increases in funding and staff will continue to fulfill the Administration's commitment to reduce the harmful environmental impacts of coal mining in Appalachia and nationwide. This new strategic direction will enhance and expand oversight of State programs, strengthen stream protections to maintain the hydrologic balance of watersheds, coordinate permitting among Federal agencies as well as State regulatory authorities, and increase transparency. Of the 25 positions proposed, over 80 percent will focus on oversight; the remainder will focus on stream protection. Furthermore, the funding will provide additional resources so that technical staff now working on priority regulatory work will again be available to provide on-the-ground technical assistance and training to States. Therefore, this investment would ensure regulatory stability and transparency for the coal mining program. If we do not invest in these additional staff, OSM will not be able to sustain the necessary level of oversight and the training and technical support needed by the States. Many States have an aging workforce and as retirements occur, it is necessary to train the new employees. If employees are not well trained, they will not have the skills to implement the law effectively, which would lead to more environmental harm, more adverse impacts to the public, and more complaints.

Abandoned Mine Land Reclamation Fund

I see that your request also reduces the AML funding by $8 million by reducing the State and Federal emergency grants and projects. You indicated that since the Surface Mining Act amendments in 2006, the States received such large funding increases that they should be able to cover these emergency costs.

Moran Q21: Can you please explain this some more and explain which States have been most involved in the emergency program?

ANSWER: There are 13 States with emergency programs (Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Missouri, Montana, North Dakota, Ohio, Oklahoma, Virginia and West Virginia) and five States with AML programs where OSM federally managed the emergencies (Kentucky, Pennsylvania, Maryland, Colorado and Tennessee). As of FY 2011, the States have taken responsibility for addressing these emergencies and OSM continues to provide technical assistance.

In FY 2006, the 18 States listed above received $40.3 million in total AML discretionary funding. In FY 2011, those same States have available $236.1 million in AML mandatory funding, or $195.8 million more in funding. By incorporating AML emergency issues into their AML management programs, States can more efficiently and effectively address these issues.

Coal mine emergency obligations for FY 2010 totaled $21.5 million for both State and federally managed emergencies. Obligations for emergencies were close to $1 million or more in nine States - Kentucky, Pennsylvania, Illinois, Indiana, Kansas, Ohio, Oklahoma, Virginia and West Virginia. The other 9 States' obligations for FY 2010 ranged from $7,000 to $400,000.

Moran Q22: Is it correct that the OSM lacks the funding to do proper oversight of the state AML programs?

ANSWER: No, OSM continues to conduct oversight activities on AML programs. An evaluation of the State's maintenance of the Abandoned Mine Land Inventory System (AMLIS) is conducted each year. In addition, there are typically one or two AML topics that are selected for review in each State annually, such as project maintenance, post construction evaluation, unit price contracting, and inventory evaluation. These reviews generally find that States are implementing their AML programs well. The OSM plans to continue the level of AML oversight with its current staff.

Moran Q23: Inadequate bonds to fulfill approved reclamation plans have been a long standing issue due to insufficient financial assurance meehanism in the case of coal operators that go out of business and go into forfeiture.

How is the OSM planning to avoid creation of new AML sites and will OSM be responsible for such sites having approved the permits for mining and reclamation? If OSM is responsible what impact will this have on the OSM budget?

ANSWER: The OSM is enhancing its oversight activities to include a more robust review of States' implementation of SMCRA requirements, such as adequate bond amounts to ensure that mined lands can be returned to the use identified in their reclamation plans under a bond forfeiture situation. As noted, bonds are required to be posted prior to mining. In cases where bonds are insufficient to reclaim a site forfeited after the passage of SMCRA, it is the responsibility of the regulatory authority to determine the best way to address those sites with available funds. Therefore, OSM will be reviewing the process to calculate bond amounts as part of its oversight process. Only sites abandoned prior to the passage of SMCRA are eligible for funding by AML funds.

Permit Fee

Moran Q24: How long has it been since permit fees have been raised? Is it true that the rates and type of fees are based on costs from twenty five years ago?

ANSWER: The OSM's current fee structure for Federal Program States and Indian Lands are identical and promulgated at 30 CFR 736.25 and 30 CFR 750.25 respectively. These regulations were published as final rules in July of 1990 (55 FR 29536) and have not been changed since they were published at that time. The basis for the rate of the existing fees was an analysis of cost data accumulated during fiscal years 1986 and 1987. The types of fees contained in OSM's current regulations only apply to new permit applications or significant permit revision

applications that seek to increase the acreage under an existing permit. The fees collected do not apply to other permit revisions or renewals. Furthermore, even though SMCRA authorizes collection of a fee to cover the full cost of administering and enforcing permits, fees are not charged for those services provided to the mine operator. Prior to the 1990 rule, OSM proposed a broader fee structure to address all the permitting related activities authorized under SMCRA for which a fee could be charged, including permit administration and enforcement activities. However, this effort was curtailed by House Joint Resolution 465 and language contained in the 1986 conference report and Appropriations bill.

Moran Q25: Have there been any studies to evaluate the permit fee structure? If so, when were they completed and what were their recommendations?

ANSWER: As a follow-up to the 1990 rulemaking, OSM performed an internal "Permit Fee Study" in 1992, which examined OSM costs for the review and approval of other permitting activities, including permit revisions by type, permit renewals, permit transfers, assignments and sales, as well as new permits and significant revisions. Based on a review of the documentation currently available, the study determined costs for these activities under differing costing methodologies but did not make specific recommendations that were ultimately acted upon via the regulatory process. The OSM is currently reviewing its fee structure on Federal and Indian lands.

The Office of Surface Mining has not conducted any studies or conducted any program cost analyses to evaluate individual State permit fee structures. However, several State evaluations have occurred, but OSM does not have copies of the studies from which to provide specific recommendations. The OSM has subsequently processed and approved or is currently processing State program amendments to effectuate the fee changes. These increased fees will help States recover costs associated with running their approved programs. For instance, OSM's Mid-Continent Region has processed seven State program amendments related to fees since 2003 (five from Texas and two from Alabama). Texas has modified its annual permit fee based on mined acreage five times in the past eight years and added mining permit and bond acreage fees. In 2010, Alabama modified their fee rules related to mining licenses, annual license updates, and blaster certification.

Kentucky found that it could not meet permit processing time frames and during the 2010 Kentucky Legislative Session amended permitting fees to allow for the hiring additional staff. Fees have been increased as follows: $2,500 for an initial application (previously $375); $1,750 for an amendment or major revision (previously $375); and $750 for a minor revision, renewal or transfer (previously $375). Two-thirds of these funds were for the exclusive use of the SMCRA regulatory permitting program, with the balance for the county government in which the permitted operation is located. The OSM's Appalachian Region is expecting to receive this change as a program amendment in the near future. In Pennsylvania, the State completed a workload analysis in the summer of 2010 regarding staffing resource costs associated with permit review. As a result of that analysis, PADEP plans to request an increase in permit fees, but it must obtain approval to proceed from the Governor.

SMCRA

Moran Q26: Does OSM have enough staff to effectively implement SMCRA? What areas remain insufficiently funded in terms of staff and funding for each program area?

ANSWER: The OSM's FY 2012 budget request includes an increase of $3.9 million and 25 FTE mostly for regulatory program oversight activities.

Moran Q27: The OSM has a recommended staffing level for WV. What is that level and how far below is the staffing level now? How does that affect the quality of the permitting process?

ANSWER: After OSM conducted a review of West Virginia's staffing needs in 2000, we recommended a staffing level of 286 full-time equivalent (FTE) positions for the West Virginia Department of Environmental Protection (WVDEP). As a result of supplemental funding provided by Congress in June 2000, West Virginia hired additional personnel to meet and even exceed that goal. By 2005, West Virginia's staffing level started to trend down again. In 2005 and 2007, OSM once again conducted evaluations of the State's regulatory program staff. In both instances, our studies showed that State staffing at the lower levels appeared to be adequate, but we continued to be concerned about proposed State staffing reductions and existing vacancies. The OSM is in the midst of conducting another review for 2011.

West Virginia's existing regulatory program staff totals 266 FTE positions, but it had 33 vacancies as of December 2010. We understand that WVDEP has eliminated some of those vacant positions, and it currently has 26 vacant positions within its regulatory program. Of those vacant positions, 18 of them have been posted and are in the process of being advertised by the State. The WVDEP's existing permitting staff totals 79.4 FTE positions. The permit review staff comprises 65 percent of the total permitting staff, or 51.5 FTE positions. WVDEP had 13 vacant permitting positions at the end of 2010. At this time, we do not know if the State's permit staffing level is affecting the quality of the permitting process. For the past 5 years, West Virginia has issued an average of 53 permits per year. The number of permits issued by the State has been declining since 2007. During the past 15 months, WVDEP issued 61 permits, of which 41 percent were for surface mines, 41 percent were for underground mines, and the remaining 18 percent were for other facilities.

Moran Q28: The OSM is required to submit annual reports to Congress. Why has this not been submitted in the last two years and when will this be rectified?

ANSWER: The OSM's FY 2009 Annual Report is undergoing final edits prior to printing. We expect to issue that report in June of 2011. Likewise, OSM is preparing its FY 2010 report and anticipates being able to distribute that report by the end of the year.

Moran Q29: The OSM has not had a chief inspector for more than a decade. When will OSM refill this position?

ANSWER: That position no longer exists and OSM has no plans to reestablish such a position. The Chief Inspector was a position established early in the program until States gained primacy.

Moran Q30: Surface coal mining fires and underground fires with surface effects are highly hazardous. Please provide information about how many such fires currently exist, how long they have been burning, their locations, and magnitudes.

ANSWER: Coal fires can be separated into the following three general categories:

1. Spoil and coal seam fires on active permits - these fires are the responsibility of current mine operators, as overseen by regulatory authorities.

2. Coal fires on abandoned mine lands --These numbers are based on the current information available to OSM in the Abandoned Mine Land Inventory System (AMLIS), which was recently redesigned. Portions of the database are still undergoing testing and therefore OSM cannot provide the number of fires that are funded or completed at this time. AMLIS does not maintain data pertaining to the time when a mine fire was discovered.

Unfunded High Priority Mine Fires by State September 30, 2010		
State	Total Number of Unfunded Mine Fires	Total Unfunded Cost Estimates
Alaska	2	$6,750,000
Alabama	6	$445,125
Colorado	9	$10,755,000
Illinois	1	$71,000
Kansas	1	$10,000
Kentucky	49	$13,387,801
Maryland	2	$3,993,606
New Mexico	2	$950,000
Ohio	1	$364,495
Pennsylvania	38	$595,641,898
Tennessee	1	$300,000
Utah	8	$3,200,006
Virginia	4	$6,375,278
West Virginia	44	$227,067,731
Wyoming	20	$2,896,626
Total	**188**	**$872,208,566**
*The source of the data in this table is the Abandoned Mine Land Inventory System (AMLIS). AMLIS documents unfunded high priority coal reclamation projects; records when funding is made available for each problem area; and documents all completed projects.		

3. Coal outcrop fires—these are non-mine related coal outcrop fires started by grassland/forest fires, lightning strikes, fireworks, or campfires. In the past, some of these fires have been partially addressed with funds provided to OSM and authorized under the Energy Policy Act of

1992 to control or extinguish outcrop or underground fires. These limited funds ($160,000) are proposed for elimination in FY 2012 since States and responsible Federal land management agencies are available to address these situations.

Moran Q31: Inspectors, both state and federal, are fundamental to assuring the fulfillment of SMCRA. How many inspectors are there currently, and what has the number been, during the past five years? What analysis is done to assure there are adequate numbers of state and federal inspectors?

The status of coal mining operations throughout the country is tracked through the maintenance of Inspectable Units Lists (IULs) by OSM. What are the current IULs and why are those not available online? "Online availability of this information is of critical importance to citizens and consistent with SMCRA requirements to provide relevant and timely information to citizens."

ANSWER:

	2006	2007	2008	2009	2010
State Inspectors*	476	460	479	469	445
OSM Inspectors**	54	52	55	56	63

*Includes inspection and enforcement personnel as reported in State Annual Evaluation Reports; inspectors are a subset. Data based on State Evaluation Years (such as July 1, 2009 – June 30, 2010 for 2010). Totals rounded to full FTE.
**Includes staff that does oversight, Federal/Indian Lands, and Federal Program inspections. Data based on Federal Fiscal Year.

The OSM's oversight activities include reviewing the number of inspections conducted in accordance with the law, and other aspects of how performance standards are being met. Inspections are key to implementation of SMCRA and staffing levels would be reviewed as part of the annual State evaluations.

There were 7,813 inspectable units nationwide in 2009. As part of OSM's increased transparency efforts on oversight information, each State's and Tribe's inspectable unit lists are planned to be posted on OSM's website by July 2011.

Moran Q32: The federal inspection database was recently upgraded. How is its accuracy being assured? Why is that information not online as it is for MSHA and other agencies?

ANSWER: The new I&E system has built-in data checks programmed into the structure, i.e., an inspection report cannot be completed and filed unless the data in each field conforms to the anticipated range of proper responses. In addition, the OSM inspector is sent an e-mail by the system if there are certain uncompleted critical data fields. This aspect reminds the inspector that outstanding uncompleted inspection reports need attention before they are recorded. The system also automatically derives certain permittee information from the Applicant Violator System to ensure consistency. Finally, each inspection record requires supervisory review before the inspection record is complete. To modify a locked, completed record, the system users must receive permission to access that record and the checks and balances previously mentioned

applies. The current system is a web application, accessible by only OSM employees. However, OSM plans to evaluate the feasibility of a read-only, public-facing version of the I&E system in the near future. This will require an assessment of the necessary steps to meet Federal IT security requirements as well as ensure confidentiality for those who have requested their identity be protected.

Moran Q33: There have been numerous failures by coal mining companies to complete reclamation, both in the interim and permanent regulatory programs.

On what sites have permittees failed to complete reclamation and what is the current status of each of those sites?

ANSWER: Operators are required to post a reclamation bond prior to surface disturbance. If an operator fails to reclaim a mine the reclamation bond may be forfeited to the Regulatory Authority. The OSM tracks this information in its regulatory database and reports the information annually. During Evaluation Year 2010, 36 reclamation bonds were collected and 58 sites were reclaimed. As of June 30, 2010, there were 508 sites (involving 36,295 acres) that were unreclaimed and had bonds forfeited and collected. The Regulatory Authorities continue to take actions to reclaim these sites.

Moran Q34: What are the OSM activities outside of the U.S. in the past five years and what future work is expected overseas?

ANSWER: The OSM has employees who have specialized expertise that is requested from time to time by other agencies and foreign countries, usually on a cost-reimbursable basis. In the last five years, OSM has participated in conferences, workshops, and meetings outside the country on 14 occasions as described below.

- Technical presentations were made at conferences in India and Indonesia and travel was sponsored by DOI's International Technical Assistance Program (ITAP) (five travel instances).
- The OSM has provided the services of staff on short term assignment to the Department of State for the Asia Pacific Partnership for Clean Development and Climate/Coal Mining Task Force requiring travel to China and British Columbia (three travel instances).
- The OSM staff provided technical assistance in workshops in Guatemala under the Central America Free Trade Agreement (CAFTA-DR) (three travel instances).
- The OSM provided coal mining expertise to the U.S. Ambassador and USAID Mission Director in Kosovo and the Welsh Assembly Government in Cardiff, Wales (two travel instances).
- An OSM employee presented a paper at a technical meeting for exchanging information on acid drainage with experts from around the world in Sweden (one travel instance).

In addition to future ITAP requests for overseas assistance for CAFTA-DR countries, OSM expects to be called upon to provide short-term assistance to Chile and Colombia.

Moran Q35: How many OSM trainings and conferences have been held outside of the U.S. in the last five years?

ANSWER: In the travel instances identified above, while OSM did not sponsor the training, we did send more than one person to the following countries to conduct training/workshops as part of a larger program:

- Workshop on Mine Rehabilitation, Closure and Completion, and Slope Stability in Kolkata and Ranchi, India, April 15 -30, 2008. Three OSM staff provided technical assistance.

- Training on the Principles of Mine Permitting under the CAFTA-DR Free Trade Agreement in the Mining Sector in Guatemala City, Guatemala, April 9 – 19, 2009. Four OSM staff conducted the training.

Questions for the Record from Appropriations Committee Chairman Hal Rogers

AML Emergency Program

The President's FY11 and FY12 budgets propose to eliminate funding for the AML emergency program. The OSM has told the states that OSM is no longer conducting emergency AML reclamation projects and that OSM will begin to close its state emergency offices.

Rogers Q1: Given that OSM's emergency program is currently funded under the continuing resolution and that the budget proposals for FY11 and FY12 have not been approved, how do you justify OSM's abandonment of the emergency program prior to congressional elimination of the appropriation?

ANSWER: The OSM is not abandoning the emergency program. In FY 2010, OSM's Deputy Director notified Congressional members and State Governors of our intent to transfer the responsibility to address emergency projects to the States with AML Programs. This was due to the significant increase in mandatory funding that those States were receiving under the 2006 Amendments to the Surface Mining Control and Reclamation Act. The FY 2011 Budget provided only a small portion ($3.5 million of $20 million) of funding needed to continue to provide financial support to those programs. Therefore, it was necessary to continue with plans to transfer the responsibility to those States with approved AML programs. The transfer to those States has been completed.

Rogers Q2: How will OSM use this $3.5 million if it does not use it for emergency reclamation?

ANSWER: The funding will be used to address Federal high-priority projects and technology development and transfer activities, such as digitizing of mine maps and acid mine drainage related technical projects.

Rogers Q3: The Abandoned Mine Land (AML) Fund is financed by fees levied per ton of coal, and a portion of that fee is used to fund the emergency program.

If OSM eliminates the emergency program and states must fund emergency reclamation through existing grants, how will OSM use the portion of the fee that would have gone to emergency reclamation?

ANSWER: Under current authority, 20 percent of the fee is set aside for the Secretary. That funding must be appropriated before it can be used for emergency programs or other authorized uses, such as reclamation in Federal Program States and administrative expenses. The funds will be used for the purposes authorized in the statute.

Rogers Q4: Section 410 of SMCRA levies responsibility for the emergency program on the Secretary of the Interior, and this has been interpreted by some to indicate that responsibility cannot be forcibly delegated to the states.

How do you interpret this section of SMCRA, which reads, "The Secretary is authorized to expend moneys from the fund for the emergency restoration of adverse effects of coal mining practices, on eligible lands... The Secretary shall have the right to enter upon any land where the emergency exists to restore the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare."

ANSWER: Section 410 of SCMRA authorizes the Secretary to expend funds and to enter onto lands affected by abandoned coal mine emergencies under certain circumstances. This authorization is discretionary with the Secretary and not mandatory.

Ten Day Notice of SMCRA Permits

The OSM has instituted a new policy of issuing "ten day notices" (TDN) to State regulators in cases where OSM disagrees with permitting decisions by the States. Under the Surface Mining Control and Reclamation Act (SMCRA), States with approved regulatory programs are entitled to exclusive regulatory jurisdiction, called State primacy, within their borders. Once a State achieves primacy, OSM's role is limited to programmatic oversight, and the agency may not second-guess State decisions on individual permits. This interpretation has been consistently confirmed by several federal appeals courts.

Rogers Q5: Was this policy a result of a directive from the Secretary of the Interior?

ANSWER: No. This policy resulted from a 2009 MOU that OSM signed with the EPA and the Army Corps of Engineers. It is not a new policy. Rather, it is the restoration of a policy that had been in place for many years to implement OSM's statutory duties. The policy is consistent with various Federal Court holdings. The statute provides and courts have held that OSM's oversight authority extends to the entire program. Programmatic oversight extends to the entire program.

Rogers Q6: What is OSM's justification for this new policy?

ANSWER: The policy is not new. Instead, OSM is returning to the policy that was in force throughout most of its existence. This policy is consistent with the SMCRA requirement that OSM issue a ten-day notice whenever it has reason to believe that any person is in violation of any requirement of the Act, not just the performance standards of the Act.

Questions for the Record from Mr. Flake

Legislative Proposal - Competitive Grant Approach

In the Director's written testimony, he describes two legislative proposals. He indicates that the current formula-based approach to providing abandoned mine lands reclamation grants will be replaced by a competitive grant approach.

Flake Q1: Moving from a formula-based to a competitive approach is likely to be controversial and provide more discretion to the Administration. On what basis will the grants be evaluated?

ANSWER: This proposal is still under development, but will be transmitted to Congress shortly. An Advisory Council will help create a priority ranking system to evaluate each AML grant proposal. We expect the Advisory Council to be composed of knowledgeable representatives from States, Tribes, and non-governmental groups.

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