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INTERIOR DEPARTMENT BUDGET REQUESTS FOR FY '98

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

BUDGET REQUEST FOR DEPARTMENT OF THE INTERIOR AGENCIES AND PROGRAMS WITHIN THE SUBCOMMITTEE'S JURISDICTION FOR FISCAL YEAR 1998

MARCH 4, 1997—WASHINGTON, DC

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BUDGET REQUESTS FOR INTERIOR DEPARTMENT AGENCIES FOR FISCAL YEAR 1998

TUESDAY, MARCH 4, 1997

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:35 p.m., in room 1334, Longworth House Office Building, Hon. Barbara Cubin (Chair of the Subcommittee) presiding.

STATEMENT OF HON. BARBARA CUBIN, A U.S. REPRESENTATIVE FROM WYOMING; AND CHAIRMAN, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mrs. CUBIN. The Subcommittee on Energy and Mineral Resources will please come to order. The Subcommittee is meeting today to hear testimony on the Administration's fiscal year 1998 budget request for the four Interior Department agencies within our jurisdiction. These are the United States Geological Survey, except the Water Resources Division, the Minerals Management Service, the Bureau of Land Management's energy and minerals programs, and the Office of Surface Mining.

Under rule 4(g) of the committee rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help members keep to their schedules. Therefore, if other Members have statements, they can be included in the hearing record under unanimous consent.

The bureaus before us today serve primarily in a regulatory role, with the exception of the USGS' role to collect scientific data. The Office of Surface Mining, or OSM, administers the Surface Mining Control and Reclamation Act of 1977, as amended, governing the manner in which coal deposits are mined in this country from the standpoint of surface impacts of strip mining or underground mining.

The Minerals Management Service, or MMS, administers leases for energy and mineral resources of the outer continental shelf of the United States and collects mineral royalty payments for onshore Federal leases as well as for the offshore.

The Bureau of Land Management, or BLM, among other jobs administers the laws governing disposition of energy and mineral resources from our public domain lands and reserved Federal mineral estates. The mission of the USGS is to conduct research and provide geologic, topographic and hydrologic information for the well-being of this nation.

Under the terms of the fiscal year 97 Omnibus Appropriations Act the National Biological Service became the Biological Resources Division of the USGS, thereby broadening the bureau's mandate to include research in the biological sciences.

These are big jobs which these agencies are called upon to do. Access to, and development of, a large part of our country's mineral endowment is regulated by MMS and/or BLM in their roles as the lessor for federally owned mineral estates, while OSM supervises coal mining on private as well as public lands.

The Subcommittee's charge is to provide oversight of the mission of each bureau and ask the question: "Are the hard-earned tax dollars of our citizens well spent by the agencies charged with pursuing these programs, or should we in Congress direct improvements be made toward achieving these goals?"

Mrs. CUBIN. The Chairman now recognizes the Ranking Minority Member for any statement he might have.

STATEMENT OF HON. CARLOS ROMERO-BARCELÓ, RESIDENT COMMISSIONER FROM THE COMMONWEALTH OF PUERTO RICO

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. I am pleased to join you in welcoming our four witnesses from the Department of the Interior as to the funding for the Bureau of Land Management and Energy and Mineral programs, and the Minerals Management Service of the Office of Surface Mining, and the U.S. Geological Survey.

The programs that come under our jurisdiction of the Subcommittee are important to all Americans because these programs are responsible for the wide development of the oil, gas, and coal resources of public lands. The outer continental shelf alone produces 25 percent of domestic oil production and 15 percent of natural gas production.

In addition, the Minerals Management Service reports this program raises an average of $3 billion a year. These programs must therefore be managed wisely and fairly. And the budget reports before us today include some of the controversial measures of recent years such as the reductions-in-force.

Nevertheless, I am concerned that these programs before us today proposing essentially a flat budget request while also proposing significant increases in program activity. Each program is absorbing the uncontrollable cost like rent increases without seeing a correlating addition in funding.

For example, the need to conduct the Escalante wilderness study is apparent, yet what effect does the corresponding reduction in the Bureau of Land Management's oil, gas, and coal programs to pay for this study, how will BLM's ability to manage the minerals program.

Clearly, we must all seek ways to reduce the national deficit, yet we must be careful to avoid cutting programs that can otherwise help reduce the deficit for raising revenues. The wide development of energy resources also depends on sound science and the importance of the work done by the U.S. Geological Survey is self-evident.

As greater demands are placed on our natural resources, more drinking water, more home heating oil, more gasoline for our cars, the work done by the USGS becomes more critical. The Office of Surface Mining is not facing another major reduction as it did in fiscal year 1997, but still how effective will the Bureau be with 182 fewer people managing the regulatory management of our nation's coal resources.

Will OSM personnel accomplish prevention of pollution from coal mining. I do not pretend to know the answers to these questions but I look forward to disclosing my concerns with the officials appearing before us today and in the days and months to come. Thank you very much.

Mrs. CUBIN. Since there are so few members of the Subcommittee here, I would be willing to waive the rule to allow other members to have opening statements if they wish to. Mr. Rahall.

STATEMENT OF HON. NICK J. RAHALL, A U.S. REPRESENTATIVE FROM WEST VIRGINIA

Mr. RAHALL. Thank you, Madam Chair. Madam Chair, I would simply like to take this opportunity to commend the Administration for finally moving forward to address the pressing need to devise meaningful mining and reclamation standards governing hardrock mining operations on Federal lands.

I have long maintained that the Administration does not need an act of Congress to impose meaningful bonding and reclamation requirements on these operations of the type that I along with our ranking minority member on the full committee, George Miller, have been advancing for several years as part of our efforts to provide comprehensive reforms of the Mining Law of 1872.

The Interior Department already has the authority to devise and enforce these types of standards, but to date, has lacked the will to move forward with initiative of this nature, so I am pleased to see that sentiments are changing over at the Department on this particular matter.

I also would like to commend the Administration, Madam Chair, for its budget submission as it relates to the hardrock mining royalty proposal, with the proceeds to be used for the reclamation of abandoned hardrock mined lands. This, too, has been an element of the reform legislation that we have been pursuing for the past few years.

And, finally, with respect to the Office of Surface Mining, I do want to take note of the fact that at the end of this fiscal year, it is estimated that the unappropriated balance in the Abandoned Mine Reclamation Fund will exceed $1.2 billion.

That level of unappropriated reclamation funds is simply unacceptable in light of the large inventory of high-priority AML sites which remain unfunded almost 20 years after the enactment of SMCRA. I do want to commend the Acting Director from whom we are going to hear today, Kathrine Henry, for her taking on the leadership reins during this transition period. Nothing has told me in her comments to me that she would like to give up her day job but I do salute her for the work that she is doing.

The Administration's AML budget request does nothing to drawdown that unappropriated balance that exists, and I simply want

it noted that I will join with other like-minded colleagues to continue to press the Appropriations Committee to do this program more justice. Thank you, Madam Chair.

Mrs. CUBIN. Certainly. Now I will introduce our witnesses, Dr. Gordon Eaton, Director of the U.S. Geological Survey; Ms. Kathrine Henry, Acting Director of the Office of Surface Mining Reclamation and Enforcement; Ms. Carolita Kallaur—is that the way to say that?

Ms. KALLAUR. Yes.

Mrs. CUBIN. Well, I am surprised. Deputy Director of the Minerals Management Service; and Dr. W. Hord Tipton, Assistant Director, Minerals, Lands and Resources Protection, Bureau of Land Management. Welcome to all of you. I thank you for coming over and look forward to a productive hearing.

Now before you begin your testimony I would like all the witnesses to stand to be sworn in and please raise your right hand.

Mr. ROMERO-BARCELÓ. Madam Chair, this is just a point of order. Make sure that the witnesses have been advised of the consequences of their being sworn in.

Mrs. CUBIN. Well, the consequences mean only that if you did not tell the truth that you could be subject to perjury.

Mr. ROMERO-BARCELÓ. And they are being given copies of the rules.

Mrs. CUBIN. Yes, I believe in the letter that was sent out to them it was included in there.

Mr. ROMERO-BARCELÓ. All right, thank you very much, Madam Chair.

Mr. RAHALL. Madam Chair, a point of order.

Mrs. CUBIN. Mr. Rahall, sure.

Mr. RAHALL. May I just ask if the witnesses were notified prior to this swearing in ceremony of their big event today.

Mrs. CUBIN. Mr. Rahall, in the letter that we sent asking them to—to Secretary Babbitt we indicated that the witnesses might be sworn in, that the possibility existed.

Mr. DOOLEY. Madam Chair, I just have a question. Does this same standard of being subject to perjury apply to members too? I mean we have not taken an oath. I am serious.

Mrs. CUBIN. Well, if we all would like to take the oath, we could too.

Mr. DOOLEY. Well, I just wonder if we are not setting a double standard here with our witnesses versus those of us who are sitting on the committee.

Mrs. CUBIN. Well, certainly that is not my intention and I am not singling out any group of witnesses. Every single person who testifies in front of this Subcommittee will be sworn in and it certainly is not any——

Mr. DOOLEY. Then what is its intent?

Mrs. CUBIN. It is just a new process that I have adopted. It certainly does not mean that I think someone is not going to tell the truth. It is just something that I think should be done.

Mr. DOOLEY. The fact that you are not asking members of the panel to take the same oath, does that mean that you think we are more inclined to tell the truth than the witnesses?

Mrs. CUBIN. No, Mr. Pallone, it does not.

Mr. DOOLEY. Mr. Dooley.

Mrs. CUBIN. Dooley, yes. Excuse me, Mr. Dooley. Raise your right hand, please. Do you solemnly swear or affirm under the penalty of perjury that the responses given and the statements made will be the truth, the whole truth, and nothing but the truth? Thank you.

Let me remind the witnesses that under our committee rules the testimony will be limited to five minutes but your entire testimony will be entered into the record. The traffic lights down there will help you know where you are as far as time is concerned. So Dr. Eaton, would you care to begin the testimony?

STATEMENT OF GORDON P. EATON, DIRECTOR, U.S. GEOLOGICAL SURVEY

Mr. EATON. I would be happy to. Good afternoon, Madam Chair, and members of the Subcommittee. It is a pleasure to be here to discuss the programs of the U.S. Geological Survey with you and our continued work on behalf of the American people. And being asked to be sworn in, I am reminded of Mark Twain's famous comment that if you do not lie you do not have to remember what you said, and so I do not personally have any trouble with the fact that we were asked to be sworn in.

Let me begin my remarks by thanking the Congress as well as the Administration and all of the predecessors of both of these groups for 118 years of generous support for the U.S. Geological Survey. We celebrated our 118th birthday just yesterday. Our nation faces many challenges concerning the world we live in and the resources that we use every day and addressing these challenges demands new approaches and new partnerships.

The opportunity to incorporate minerals information specialists from the former United States Bureau of Mines and the biological expertise of the former National Biological Service helps form a new U.S. Geological Survey this past year that enhances our ability to provide the sound science needed to attack some of these very challenging and vexing national issues.

Our nearly 2,000 cooperating partners in the States and in the Federal Government help us to focus on the issues of greatest importance and concern. With your permission I would like to describe to you a few examples of some of our recent accomplishments. Natural hazards are taking an increasing toll on the lives and property of our citizens and I do not need to remind any of you in this room of the floods that are underway here in the northeast even as we speak.

To reduce this burden, the Geological Survey maintains a number of high hazard monitoring programs for the nation. In March of 1996, the USGS, using real time data, was able to reassure 1,000 people living near Akutan volcano in the central Aleutians that they would not have to evacuate, despite the fact that there was increased seismic activity beneath the volcano.

The local fishing industry headquartered there and valued at $120 million annually, was able to continue working safely. USGS' studies of mineral and energy deposits, land use, and wealth of plants and animals provide a central source of information to in-

dustry, to managers, to regulators, and the public for sound decisions on our resource heritage.

USGS scientists are working to provide the information needed to sustain a healthy environment for our citizens. We are working with Federal land management agencies to remediate contamination associated with abandoned mines, focusing on the sites with the greatest effect on water quality and on ecosystem health in specific watersheds across the country.

At the California Gulch Superfund Site in Leadville, Colorado, mineral maps produced by the USGS have cut costs and accelerated cleanup of mine wastes over a very large area. And the central part of our mission is making sure that the results of our scientific studies are widely available and in a form that is usable and useful.

Through the USGS home page on the World Wide Web, we are providing more than 100,000 pages of information. During 1996 the monthly tally of visitors to our Web site doubled to more than 160,000 people a month.

Turning now to fiscal year 1998, I want to address three new program initiatives built largely out of the research and data gathering programs supported by the Congress in previous years that I think will allow us to serve the American people even better. For fiscal year 1998 the U.S. Geological Survey's budget request is $745.4 million.

Our new program initiatives are $3 million, an increase to expand and upgrade the global seismographic network to service the technical requirements of this nation's nuclear test ban treaty, a $7.5 million increase to expand biological research on Federal lands, and $9 million as an increase to join with the Environmental Protection Agency and NOAA to expand the available information on water quality for the 75 largest metropolitan areas in the country.

Further details about our 1998 budget are provided in the testimony that I have submitted for the record so let me just say in conclusion, Madam Chair, we are enormously proud of our 118-year history of serving every citizen in this country every day in every State.

The new USGS is continuing its proud tradition of providing science for a changing world. Again, we thank you for your continuing support, and I would be pleased to answer any questions that any member of the committee might have.

[Statement of Mr. Eaton may be found at end of hearing.]

Mrs. CUBIN. Thank you, Dr. Eaton. The next person we would ask to testify is Ms. Kathrine Henry, the Acting Director of the Office of Surface Mining.

STATEMENT OF KATHRINE HENRY, ACTING DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Ms. HENRY. Madam Chairman and members of the committee, I appreciate this opportunity to appear before the House Energy and Mineral Resources Subcommittee to discuss the Administration's requested fiscal year 1998 funding level for the Interior Depart-

ment's Office of Surface Mining Reclamation and Enforcement, known as OSM.

I also appreciate this opportunity to review OSM's work with the States and Indian tribes to protect the coal field environment during mining and to assure reclamation of the land from which coal has been mined. With your approval, I would like to submit my formal statement for the record and then summarize my opening remarks and respond to any questions the members of the Subcommittee may have about OSM's plans and activities.

OSM's budget request for fiscal year 1998 is $271 million. This is essentially level with the current fiscal year but it is down slightly, $700,000, from the level that was enacted for fiscal year 1997. The request includes $93.7 for regulation and technology plus $177.4 million for abandoned mine land activities.

Those amounts will support OSM programs at a stable level taking into account recent restructuring, downsizing, reinvention of program oversight, and the shift of resources in the direction of technical assistance focused on the prevention of environmental problems in the coal fields.

To make it easier to understand, the budget is organized according to five OSM business lines. Those business lines are environmental protection, environmental restoration, technology development and transfer, financial management, and executive direction and administration.

Previously, OSM's budget featured separate accounts reflecting various duties under the surface mining law. But it was not functionally or organizationally related to how OSM carries those duties out, so there may be a bit of an adjustment for those that are accustomed to operating under the previous budget system that OSM submitted.

Most of OSM's funding passes through to the States and tribes which implement their own regulatory and reclamation programs in accordance with OSM standards. Direct grants, emergency reclamation projects, and high priority reclamation account for about 75 percent of OSM's appropriation each year. That pattern is maintained in the request for fiscal year 1998.

State regulatory program grants are budgeted at $50.2 million in the 1998 request, just slightly below 1997. State and tribal reclamation grants are budgeted at $142.3 million which is a slight increase. The States and the tribes carry out most of the work under the Surface Mining Control and Reclamation Act receiving technical support, financial support, and program oversight from OSM.

In terms of human resources the coal States employ the equivalent of about 2,400 full-time staff positions in their surface mining programs contrasted with OSM's total work force of 674 which is down from 989 just two years ago. 1997 is the 20th anniversary year of the Surface Mining Control and Reclamation Act. Everyone involved in the implementation of the Surface Mining Act—Congress, the States, the tribes, and OSM—can be proud of the efforts of the past 20 years to see that the coal field people and their environment are protected during mining operations and that mine lands are restored for productive uses.

With the advent of fiscal year 1998, we will begin OSM's next 20 years which can be just as successful as the first 20 if we continue

to work effectively together at the State, Federal and tribal levels, if we continue to be responsive to coal field citizens, if we continue to work positively with responsible coal mine operators who comply with the law, and if we continue to stand up for fair, consistent, even-handed enforcement of the law.

Those are the things we intend to do in fiscal year 1998. They are supported by the budget request that the Administration has submitted for OSM. At this time or later I would be glad to respond to your questions about the budget as well as any other aspects of OSM's plans and activities that you would like to cover. Thank you.

[Statement of Ms. Henry may be found at end of hearing.]

Mrs. CUBIN. Thank you, Ms. Henry. The next person we will ask to testify is Ms. Carolita Kallaur, Associate Director of the Minerals Management Service.

STATEMENT OF CAROLITA KALLAUR, ASSOCIATE DIRECTOR, MINERALS MANAGEMENT SERVICE

Ms. KALLAUR. Thank you very much. Madam Chairman, and members of the Subcommittee, I appreciate very much the opportunity to appear before you this afternoon to discuss the Mineral Management Service fiscal year 1998 budget request and to discuss the two important programs we administer, the Royalty Management Program and the Offshore Minerals Program.

Our budget request is for $205 million for fiscal year '98. This is approximately $600,000 above what we received for fiscal year '97. I would like to stress at the outset that MMS recognizes the need to make government smaller and more efficient. We are committed to meeting those goals and have made significant strides already.

At the same time we are faced with an unprecedented increase in workload in our Gulf of Mexico OCS program which will translate into significant energy and economic benefits for the American people. In 1996 alone, industry acquired an additional 1,500 leases and tomorrow we will be holding another record-breaking sale where it is likely industry will acquire close to another 1,000 leases.

On the royalty front, we are working diligently to insure that we are getting what is due us while dealing with the implementation of a major new piece of legislation, the Royalty Simplification and Fairness Act. Our budget represents a balancing of priorities. In our best judgment it is the best way to allocate funds in these tight budgetary times.

Let me first touch upon what value is derived from the programs we manage. In fiscal year '98, MMS, through its royalty program will account for and distribute an estimated $6.7 billion, $5.5 billion from OCS receipts and $1.2 billion in onshore receipts. From an energy standpoint, the OCS currently contributes about 15 percent of our domestic oil production and 25 percent of the nation's domestic natural gas production.

These percentages are expected to increase in the years ahead. Between now and the year 2002, oil production in the Gulf of Mexico is expected to increase 70 percent to at least 1.7 million barrels a day, an increase that will rival what occurred in the North Sea in the 1980's. As I mentioned at the outset, there has been a dra-

matic turnaround in the Gulf. What was once referred to as the "Dead Sea" is now viewed as a world class production province.

To put what is happening in deep water in perspective, the average flow rate for a Gulf of Mexico well is 275 barrels per day. Contrast that rate with the initial flow rates from one of Shell Oil's recent deepwater discoveries which is averaging 10,500 barrels per day. We are talking about Persian Gulf flow rates for the first time ever in the United States.

What does all this mean for MMS as a regulator? It means a dramatic increase in workload associated with all phases of our operation—from lease adjudication; to approving exploration and development plans; to overseeing operations from an environmental and safety perspective; and to insuring that we receive fair market value for the resources we lease.

If we are unable to process industry applications on a timely basis, we cost the private sector money. We also want to make sure that the excellent environmental and safety record of the OCS is maintained. We also have significant ongoing responsibilities associated with OCS lease operations in the Pacific and offshore Alaska that we must continue to devote our attention to.

While we are moving forward on these fronts, we are also trying to reduce costs and improve the way we do business. These measures have allowed us to reduce personnel in the offshore program by 16 percent since 1992 and our headquarters staff by 27 percent.

Let me turn now to our Royalty Management Program. A major activity for the Royalty Management Program is implementation of the Royalty Fairness and Simplification Act. There are 18 major provisions in this legislation that require action and more than a dozen provisions that will require a rulemaking. Shortly after the President signed this bill into law, we began a series of consultation meetings that will continue throughout implementation.

We are committed to meeting all the timeframes in the Act. For example, we will begin paying interest on overpayments made in February according to a timing schedule established in the Act. In addition, we hope to publish a proposed rule on the section 205 State delegation provision by the end of this month.

In conjunction with the implementation of RSFA the royalty program has initiated a comprehensive process re-engineering project. This effort will involve all aspects of the Royalty Program including changes indicated by RSFA as well as making sure that all our processes are carried out in the most systematic and efficient way possible.

As you know, the RMP budget request represents a decrease of $3.7 million from the fiscal year '97 enacted amount. The proposed reduction to be achieved through buy-out, reduction in the workload, and staffing assigned to our accounting support services contract and savings in infrastructure which we are able to fund this year.

We are able to make significant cuts because over the past few years through a series of process innovations the royalty program has constantly strived to increase the efficiency by which it carries out many of its functions. These are further highlighted in my written testimony.

In closing, I hope you will agree that we have a lot of important work before us. We recognize the need to make government smaller and more efficient. Our budget reflects the balancing of priorities and our best judgment on how to allocate funds in these tight budgetary times. We are committed to further improving efficiencies of the programs we manage and look forward to working with this committee. I will be happy to answer any questions you may have.

[Statement of Ms. Kallaur may be found at end of hearing.]

Mrs. CUBIN. Thank you very much. The last witness on this panel is Mr. Hord Tipton, Director of the Minerals, Lands and Resources, BLM.

STATEMENT OF W. HORD TIPTON, ASSISTANT DIRECTOR, MINERALS, LANDS AND RESOURCES PROTECTION, BUREAU OF LAND MANAGEMENT

Mr. TIPTON. Thank you, Madam Chair. That is assistant director. I appreciate the promotion.

Mrs. CUBIN. Well, you see with just this one I missed the first part.

Mr. TIPTON. I too appreciate the opportunity to appear here today to discuss the fiscal year 1998 budget request for the energy and minerals programs administered by the Bureau of Land Management, better known as BLM. The President's 1998 budget proposes $1.2 billion for the BLM including funds for the operation of the Bureau, shared revenues, Payment in Lieu of Taxes, and our firefighting activities.

Of the $740 million requested for BLM operations, the request for energy and minerals activities is $68.3 million. This is an increase of $770,000 or 1.1 percent above the level enacted for 1997, and includes the following changes from 1997. We want an increase of $414,000 or eight-tenths of 1 percent for oil and gas management, which provides for the competitive and non-competitive leasing of oil and gas resources and for inspection and enforcement of active leases.

We would like an increase of $164,000 or 2.4 percent for leasing and management of coal leases, and an increase of $192,000 or 2.2 percent for other minerals management activities, which include leasing and management of potash, phosphate, sodium, geothermal and other mineral resources, including mineral materials.

In addition, the President's budget request includes $32.6 million for administration of the mining claims under the Mining Law of 1872. These costs are fully financed by mining claim fees.

Historically, the energy and mineral resources of the public lands have contributed enormously to the nation's economic and social development. Today, BLM manages the resources on about 264 million acres of public land, an additional 300 million acres of federally-owned subsurface mineral estate, and tribal lands. The scope and importance of BLM's management of energy and mineral resources is reflected in these statistics.

At the end of fiscal year 1996, there were over 46,000 oil and gas leases in effect on 33 million acres, including 19,000 leases in producing status, and there were another 3,900 producing leases managed by the BLM on Tribal lands.

In 1997 and 1998, BLM expects to issue about 2,000 competitive oil and gas leases covering about 1.2 million acres, and 1,300 noncompetitive leases on about 1.7 million acres. At the end of 1996, there were 142 producing coal leases, producing about 317 million tons.

At the end of 1996, there were a total of 469 leases of other mineral resources, such as potash, phosphate, sodium and trona. From these activities, the States received shared revenues totaling $457 million in 1996. These shared revenues from activities on Federal lands are projected to increase in both 1997 and 1998. Federal royalties from these mineral activities total approximately $1 billion.

I might further add that it is estimated that $10.5 billion of this is product value and creates about 188,000 jobs, most of which are supplied by the minerals programs. There are several areas of the energy and minerals program that I would like to highlight briefly.

These include the initiation of a planning and environmental process which may lead to oil and gas leasing in the National Petroleum Reserve in Alaska which was recently announced by the Administration. We will continue oversight of the Trans-Alaska Pipeline System, and continue efforts to reduce the environmental effects of past mining practices, with emphasis on reducing stormwater pollution from abandoned mine lands.

Our cooperative efforts with States and other Federal agencies are now demonstrating that we can successfully reduce the pollution from many sites, and this should lead to significant improvements in downstream land and habitat conditions.

On Friday, February 28, we published in the **Federal Register** a final rule on the requirements for bonding on hardrock mining operations. Further, the Secretary has formed a task force to evaluate and propose new reclamation standards for hardrock mining operations. Completion of this effort is expected to take from 18–22 months.

There is continued heavy workload in the preparation of the environmental impact statements regarding gold mining in Nevada, where 60 percent of the nation's gold production is occurring. And continuation of efforts to reduce and simplify the Federal regulations, with heavy emphasis currently on the oil and gas regulations at 43 CFR 3100, and continuation of discussions with States and tribes concerning the Reinventing Government proposal to transfer inspection and enforcement responsibilities from Federal authority.

The BLM has been working diligently with the Interstate Oil and Gas Compact Commission to implement the proposal. The BLM is also changing its rules to increase funding for Cooperative Inspection Agreements entered into with tribes from 50 percent to 100 percent.

In smaller ways too, BLM is also working with other agencies and with industry and the interested public. For example, we will co-host, along with the U.S. Geological Survey and the Wyoming Geological Survey, the First International Soda Ash Conference in June. This concludes my statement. I will be pleased to answer questions.

Mrs. CUBIN. I thank all of you for your testimony. I think I will begin the questioning. I would like to hear briefly from each one of you about your agency's commitment to the Government Per-

formance and Results Act of 1993. Specifically, I understand the Act passed by a Democrat Congress, I will point out, to require several things of the agencies in preparation of strategic plans, not the least of which is consultation with Congress.

Now I know that you go before the Appropriations Committee and request your appropriations and that I guess you answer questions and explain things and I guess that could be considered sort of consultation with Congress. But we are the authorizing committee for all of your agencies and we need to be fully consulted when you draw up these plans.

I think that is what the law meant that you are to consult with Congress in drawing up the plans, not drop a ready-made plan on somebody's desk and say this is a done deal. And in this committee, I will not be allowing that anymore because I think it is so important that we work together. We will save time, money, and many misunderstandings.

And I believe there is just a mood of distrust throughout this whole city and we can overcome that but we cannot do it if we do not communicate, so that is something that I want to say to you. And I would like to hear about your agency's commitment to fulfill that. What have you done other than what I have observed which is the appropriations process, requesting appropriations?

Mr. EATON. If I may lead off, I am happy to say that the U.S. Geological Survey is fully committed to complying with this mandate from the Congress. We have prepared a draft strategic plan which we would be happy to share with members of this committee. We have submitted it to the Department for their review so it is a work in progress.

It lays out, in some considerable detail, outcomes that we expect to occur as a result of our work. But let me take this opportunity to share with you one concern that I as someone trained in science has, and that is that the payoff from scientific inquiries sometimes is not very immediate. I think we have a concern, as I am sure the National Science Foundation and NASA know, and others are concerned that if, on an annual basis, appropriations are tied to immediate outcomes, none of us in science are going to be able to demonstrate that on a regular basis that is annual in nature.

It takes sometimes several years to gather the data, to analyze the data, to prepare interpretations, and then to offer that. Nevertheless, we have listed in this plan which, again, I would be happy to share with members of this Subcommittee, many dozens of accomplishments by which you can judge both our intention and our performance.

Mrs. CUBIN. Could I just respond to that, and I will do it as each one of you answer the question. I do not sense that this is something that we are here to cast judgment on, the strategic plan that you drew up. The way I sense this is that we should be a party to it. I am a chemist by training. I am a scientist as well. I understand scientific modeling. I understand that science takes a long time to pay off in some cases.

And I think that other Members of Congress can have that explained to them and they can know it too, so I just hope that you will be more forthcoming in the future and at least talk to all the members of the committee, not just me or my side, all the members

of the committee and truly consult with Congress when you are doing your strategic planning.

Mr. EATON. We would be very pleased to do that and I would be happy to meet on a one on one basis or with the Subcommittee as a whole.

Mrs. CUBIN. I would appreciate seeing the draft that you have. Thank you.

Mr. EATON. All right, fine. Thank you.

Mrs. CUBIN. Ms. Henry, would you like to answer the same question?

Ms. HENRY. Yes. OSM is also very committed to complying with the Government Performance and Results Act. We have been working very, very hard on our draft strategic plan and we are really very proud of the progress that we have made.

I would like to say that I think that at least in the view of the department OSM and perhaps one or two of the other bureaus are really a little further ahead on this than some of the other bureaus. So we are really very proud of the progress that we have made. It is still a work in progress.

As Dr. Eaton mentioned about USGS, we have met with the Appropriations Committee and shared our progress so far with them. We fully intended to come and discuss this also with the authorizing committee and would be happy to do so in the next couple of weeks and share with you what we have come up with so far. I certainly am in full agreement that this should be a cooperative effort.

One of the things that I think we seem to be struggling with is really how to come up with good measures for this. We would certainly welcome any ideas that your committee could share with us in coming up with that.

Mrs. CUBIN. Thank you. Ms. Kallaur.

Ms. KALLAUR. Yes, the Minerals Management Service developed a strategic plan over a year ago and we did it in cooperation with all of our employees and we have been using that as the basis for developing I guess what is called a "GPRA" plan. One of the GPRA areas is "performance measurements" and our RMP program actually serves as a pilot to see if we could identify some good measures, and these measures have been reflected in our budget.

We set up a team about a year ago when the Offshore Program developed the measures that we thought truly would reflect our performance and we have put these in our draft performance—GPRA plan. It is my understanding that meetings have been set up both with the Appropriations staff and with the authorizing committee. It was clearly our intent to meet with both sides because we recognize that you both have views.

We are struggling somewhat in trying to come up with truly good performance measures, and while we have something that we can use as a discussion point, we are clearly looking for ideas from others as to how best to carry out this function. We are very much committed to working with everybody who has an interest in this area.

Mrs. CUBIN. Well, I thank you for that. Another reason it seems so important to me is that you are located here in Washington and you see the people that can come to Washington and tell you their story and we come from out there, we come from home, where peo-

ple that you will never see have feelings and attitudes and quite intelligent opinions.

And that is why I think it is so important that you do consult as we go along so thank you. Hord, Mr. Tipton.

Mr. TIPTON. We too have a fairly well-advanced draft of the strategic plan. I share a lot of the concern that Dr. Eaton articulated but actually I guess ours is probably easier than VSGS' plan but it is very difficult to do this. This is hard work.

We have been working on ours for about three years. I know OSM has as well because I worked on it when I was over there too. That was at least three years ago. So it is not that we waited until the last minute to try to figure this out. It is just that we are having a difficult time in going from a system of counting things to one of producing outcomes and trying to measure results.

Most of us tend to look at things as accountants and miles of fence that we put up or permits that we issue, APDs that we approved, and that type of thing. So it has been very difficult to come to grips with internally. We produced at least three drafts. Our folks internally have been pooling their time to figure out to do this.

But I think we finally reached the turning point last week when we provided our latest draft to our State directors who were all in town for a meeting. And at this time we have enough detail in our plan that we got their attention and all of a sudden they started to see what this really meant and how things were going to be measured by it, budgets would be prepared by it, and people would actually be evaluated by it.

And at that point a lot of comment came back from our field that we want to respond to that. We noted that since the submission time for us at least internally is June 1 we do not have a lot of time to bring this to closure so we have drafted out an outreach plan for this and I think there has been some staff conversations, at least with Congress.

Our draft communications plan does include a congressional strategy to sit down now that we finally have something that is meaningful and I think you can help us visualize where we can make some progress. It is not just Congress that we want full involvement, we want full public participation from the ground level up.

This is the type of thing that seems to develop from the top down and at some point in the process we have to bring the grass roots reality check back to it and that is basically where we are now.

Mrs. CUBIN. Well, I think that is the whole problem that you consider it a top down process and now you finally have something meaningful. How do I know if I think it is meaningful? How does anybody know? You have spent three years without consulting the authorizing committee and maybe you know there are folks outside the BLM who have a very important part to play in your agency that could have helped all along the way.

I understand the management style of the current Secretary is a hands-on, a top down type person, and that is his management style. I am not making a judgment on that. But I do know that the Act requires that you consult with Congress. I have made my point too many times.

Let me—I am going to at this time defer to the ranking minority member.

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. Madam Chair, I would ask for the gentleman from West Virginia, Mr. Rahall, whether he could ask the one question that he wants to and he has to leave. I am just going to postpone my turn until after him and after you have somebody else on your side. Will it be all right with you, Madam Chair?

Mrs. CUBIN. Yes, certainly, without objection.

Mr. RAHALL. Thank you, Madam Chair. I thank the distinguished ranking minority member for yielding to me to ask a quick question so I might get to a previous commitment. I would like to ask this of Ms. Henry. I am looking at your OSM mining reclamation and enforcement submission, table 5.

I am looking at the column entitled State inspections and at the total number of State inspections and what I am reading from is 119,000. This is for the period now October 1, 1995 to September 30, 1996, Federal inspection programs. Total nationwide State inspections is 119,573. Now that is almost 120,000 State inspections.

The number of OSM inspections, the number of OSM inspections is only 2,198, and further number of notice of violations issued by OSM is only 46 and the number of cessation orders issued is 24. Let me note first with a total nationwide State inspections of close to 120,000, and yet Federal OSM inspections only barely over 2,000, to me that is hardly the view of a huge Federal bureaucracy coming in and stampeding over our States doing the job.

I would ask you the question if the fact that there are only 46 notice of violations and 24 cessation orders, is this number so low due to the fact that the States have been doing a better job of their inspections or is it a matter of budget cuts have not allowed you to do the proper number of inspections or perhaps the combination of both?

Ms. HENRY. Congressman Rahall, we have certainly been looking at our own inspection and enforcement results over the last couple of years to evaluate how the program is going. We believe in the normal maturing of this program over the last 20 years that the States certainly have been doing a far better job than at the beginning of the Act in 1977.

And we think that the inspection and enforcement figures that you have cited are consistent with how the program should be maturing, that certainly the majority of inspections should be done by the States with more limited oversight inspections done by OSM.

And by the same token, the number of enforcement actions that are taken by the States should far outweigh the Federal enforcement actions as the program matures and as the States become better at enforcing their programs. We think that most States are doing a very good job now at carrying out the mission of the Surface Mining Act.

It is true that over the last couple of years we have experienced substantial budget cuts and substantial reductions in the number of Federal personnel that we have. We feel that we are still able to do an adequate job with oversight inspections and with our enforcement even though our Federal presence has lessened somewhat over the last couple of years.

Part of this is due I think to our revised oversight policy which we put into effect about a year ago. We have now had about a year's experience with that. We are going to be taking a very, very careful look at how that oversight policy is working. What it has enabled us to do is to take our reduced personnel and resources and focus those on the real problems that exist in each State now.

All the problems are not the same from State to State and this policy allows us to focus our resources on the real problems that are out there and really to get some good on the ground results rather than the previous process-oriented oversight policy that we had.

Mr. RAHALL. I appreciate that response. If I might ask just one more quick question because this gets to an issue of States' rights as well. It is my understanding that a recent court decision affecting the AVA, Applicant Violator System, may end up or has the potential to end up costing certain States several millions of dollars. Could you elaborate further on that court decision and what might be the next step?

Ms. HENRY. Yes, I would be happy to. On about January 31, I believe, the D.C. Circuit Court of Appeals here ruled that the ownership and control regulations on which the Applicant Violator System is based are invalid. We are discussing with the Justice Department and are seeking a rehearing of that. In fact we have recommended to the Justice Department that the D.C. Circuit review its decision and overturn that decision, so we do not yet know how that will come out ultimately.

It is true that while the ownership and control regulations have been in effect since 1988 a number of States entered into global settlement negotiations with companies with regard to their ownership and control situations. And our review of some of those settlement agreements reveals that there were clauses in several of them that provided that if the ownership and control regulations were found to be invalid, because at that time they were being challenged in the lower courts, that the States would then pay back settlement amounts plus interest.

And I believe that is of real concern to several States that would be——

Mr. RAHALL. Including my own which would be quite costly.

Ms. HENRY. Yes, I believe that is correct. We have yet to see the final outcome of this case.

Mr. RAHALL. Thank you. Thank you, Madam Chair. Thank you, Carlos.

Mrs. CUBIN. OK, Mr. Cannon.

Mr. CANNON. Thank you, Madam Chair. I have another Subcommittee that I need to get to so if you would not mind, I would appreciate asking a couple questions. In deference to our colleague, Mr. Dooley, I have been sitting here thinking when the last time Mr. Tipton and I were together and I think, and I only think, this is not an averment, that we were on the other side of this table talking to Congress and it is nice to have you back and it is sure nice to be on this side.

If I could ask just a couple questions. Were you involved, Mr. Tipton, directly in the budget process, setting the budget for Pay-

ment in Lieu of Taxes. You referred to that in your testimony. Were you actually involved in that?

Mr. TIPTON. No, sir.

Mr. CANNON. OK. And I suppose you were not involved in the decisions as to the monument in southern Utah?

Mr. TIPTON. No, sir, I was not.

Mr. CANNON. Thank you. I just wanted to clarify for members in the audience what BLM's Energy and Minerals Management Act budget projects the increases. You speak in your testimony for uncontrollable unrelated charges, usually pay raises. The actual program changes are reductions totaling $500,000, as I understand it.

The budget request shows an accumulative $150,000 increase to the three subactivities within the Energy and Minerals Management activity to work on the Escalante National Monument development plan. I am concerned that this plan will only prove to follow the trend of the Administration as shown as specifically disallowing mineral development within the monument as part of the overall monument plan.

How would the work performed by BLM employees on the plan be coded, in other words, will those charges be taken from the net receipt sharing portion due to the State of Utah?

Mr. TIPTON. To the best of my knowledge, it very well could work that way. The cost of the land use, planning is an integral part of a mineral development program, regardless of location or the circumstances. To assist in the land use planning, we will use $150,000 total from the energy minerals portion of the BLM budget request.

Mr. CANNON. I think that would be unfortunate. My view of the budget for the monument is that it basically comes out of the Payment In Lieu of Taxes so the counties in southern Utah are taking a financial hit with the services they have to provide and then take a hit again by losing some of their PILT money and it would be unfortunate to take a third hit of this nature.

Mr. TIPTON. Well, we had an unfortunate misstatement in our budget package which as explained to me was making a connection to the reduction in payment in lieu of taxes to the funding of the monument. And I think there has been detailed explanation as to how that is supposed to work and that the two are not connected.

Mr. CANNON. I understand that there was a connection that was made by the Secretary actually and then subsequently corrected but in fact whether they are related or not is to have two burdens that come back to these counties as well as other counties that have public lands within them. Thank you, Madam Chairman.

Mrs. CUBIN. Ms. Green, do you have questions for the panel?

Ms. CHRISTIAN-GREEN. Thank you, Madam Chairman. Yes, I have two questions for Dr. Eaton. I notice that there is a $1.5 million reduction in the budget for studies of geological hazards, resources and processes. How does that impact on the work that you might have to do?

I notice that the Virgin Islands and the other territories are not included on the map in the exhibit, and have studies been done there and does this prevent us from having them done?

Mr. EATON. I think the reduction that you are referring to relates specifically to the program of geological mapping which is a func-

tion that we engage in in conjunction with the partners in each of the States to prepare basic geologic data for the purposes of making interpretations with respect to the occurrence of resources or to the occurrence of hazards.

That amounts to about an 8 percent reduction in this program. We are very supportive of the program itself. In fact, we are in the process of supporting the reauthorization of the program and it is my hope that this is a very temporary matter of arresting the growth in the program and at the beginning of next year it will continue to grow.

Our budget increase as handed to us by the Administration amounted to about $6.5 million. But those three new tasks that are referred to in my oral remarks add up to a good bit more than that, and so throughout our budget you will see reductions, very small ones of the sort that you just referred to, where we gathered the funds to support some of these new initiatives.

Now as to our activity in your part of the world, the Virgin Islands, and so forth, I have to confess that I have no specific information that I can share with you this afternoon but I would be happy to look into that and provide you with what it is we have done there in the past or may even be doing there now.

Ms. CHRISTIAN-GREEN. Thank you. And the other question is on the incorporation of the National Biological Services into the USGS.

Mr. EATON. Yes.

Ms. CHRISTIAN-GREEN. Last weekend in the Subcommittee on Parks and Public Lands, there was testimony to the fact that science is not informing management policies of the Park Service, that it is decreasing the amount of dollars being spent on research because of pressing needs elsewhere, and that there was a lack of objectivity on what types of research was done and other concerns were voiced. How does the incorporation of NBS into USGS help to address some of these concerns?

Mr. EATON. First of all, let me say in response to your initial remarks that I do not agree with the views that were expressed. This is an organization that was put together a little more than three years ago by bringing research scientists with biological backgrounds together from a variety of interior bureaus. The intention, at that time, was to separate scientific research and investigation from management, regulatory enforcement, and listing issues which the Geological Survey nor NBS before they became part of us did not engage in.

And my sense is that it was a correct concept. It kept political pressure from coming to bear on the scientific outcomes. Now what happened was that this agency existed in that form for about two-and-a-half years, and then the 104th Congress made a determination that NBS would become part of the Geological Survey. That happened on October 1. They became a new division.

But the fact of the matter is that almost all of the scientists involved here, now over a period of four years, had worked for three different Federal bureaus, have constantly been changing hats and chairs, and at the same time took an 18 percent budget reduction.

Now a hit that large in the budget is obviously going to reduce what anybody, even a stable scientific organization, can deliver; but

to couple that with this organizational chaos that went on, or the result of being assigned first here, then there, and still a third place, I think you might expect that, in fact, the services that they might provide to the Park Service were somehow going to be impacted.

My own opinion is that it is going to really not be very meaningful to comment on what this new division of the Geological Survey can deliver for a period of another two to three years. They are just now getting into a stable mode. We have asked for an increase in their budget.

The whole aim here is to better serve the management bureau. I would hope that in a period of two to three years time that you nor I would be hearing criticisms of this kind. I can understand them and I have no doubt that in fact perhaps the service has in some way been reduced, but when a budget is reduced by almost one-fifth, that is a consequence that is going to occur.

Ms. CHRISTIAN-GREEN. Thank you, and happy birthday.

Mr. EATON. Thank you.

Mrs. CUBIN. Yes, happy birthday. I am going to recognize the ranking minority member now before our second round of questioning.

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. Dr. Eaton, to follow up a little bit on what Ms. Green was asking about the merger. There has been a considerable concern among some Members regarding the merger between the Biological Service and the USGS since last October.

Now could you describe how the merger is going along and how you feel the U.S. Geological Survey office has been helped or hindered by the merger?

Mr. EATON. I would be happy to do that, Congressman. Let me preface my remarks with a personal view from two years back when the Congress decided to consider this merger and then in December of '95 the conference language that came out of the Appropriations Committee said that it was to happen on October 1 of this past year.

I was somewhat skeptical from the position that I occupy as to how well and how readily this might work. I was concerned because there were political red flags flying from the mast of the Biological Service that I felt could in turn perhaps create difficulties with the Geological Survey and I am happy to report to you this afternoon that I have a reformed view of the value of this and the ease with which we did it.

And part of that change in heart on my part stems from the fact that no matter what the field of science, the value of scientists and their outlook on things are very much the same. This has been a very comfortable merger from the standpoint of the old Geological Survey. My sense is that it has been a fairly comfortable merger given what all they have been through on the part of the biologists.

We are working together. One of the things that surprised me as I began to visit their major centers, research centers, around the country, was to find, in fact, that many of their research partners came from other divisions of the Geological Survey before they were a part of USGS.

So, all in all, I would characterize this as about as smooth and effective and happy an outcome as one might have anticipated at the outset so I am very enthusiastic about it.

Mr. ROMERO-BARCELÓ. I would sure like to hear about that if that is the case. Ms. Henry, there was a cutback in inspectors, a considerable cutback last year. I think it was about one-third of your inspectors were laid off. How has that affected the work of your office?

Ms. HENRY. I think that the actual percentage is slightly less than that. When we experienced our budget cuts and we knew that we would have to reduce our work force, we really took a lot of effort to look at every OSM office that then existed to make a really good evaluation of what resources were needed around the country to carry out our mission under the Surface Mining Act.

So we really strove to preserve the inspection resources where they were most needed in the States that still have the most active surface coal mining operations. Surface coal mining operations have declined in some places around the country and there simply is not as much need for OSM inspection resources in those places.

So we took a good hard look to where the resources were most needed. There is no question that we have had some cutbacks in our inspection staff. We feel that we are still doing an adequate oversight inspection job and that we are certainly doing a good job in our Federal program inspections where we are the primary regulatory authority.

Not every State has chosen to assume its own regulatory program. And, again, I would like to repeat that with our revised oversight policy we feel that we have been able to focus our reduced human resources inspectors and our other technical people on the real problems that still exist around the country in States that have surface coal mining operations rather than having to expend those scarcer resources on problems that simply do not exist anymore.

We feel that we have been able to streamline our operations and to take care of this reduction in our personnel.

Mr. ROMERO-BARCELÓ. Thank you. And so you feel you are satisfied that you have enough inspectors right now to do the job that you need to do at this point in time?

Ms. HENRY. Yes, that is correct. We are currently satisfied. We feel that the new oversight policy is working fairly well with the States as our partners in this. We are, as I said, going to take a very close look now that the new oversight policy has been in effect for a year. We are going to have each of our regions take a look at the results from this first year's operation and make sure that the policy is working the way we intended it to.

Mr. ROMERO-BARCELÓ. Thank you. Ms. Kallaur.

Ms. KALLAUR. Yes.

Mr. ROMERO-BARCELÓ. The MMS is seeking an additional $1.3 million for the management of the outer continental shelf in the Gulf of Mexico. Now the budget request States that the environmental studies program will get an increase focused on the risk issues associated with deep water operations. How much will this increase be used for this and how will it be spent?

Ms. KALLAUR. I believe that the number that we are requesting for the outer continental shelf program is larger than the one that you cited and that the amount that we are requesting for increased environmental studies is slightly in excess of $1 million. And all of that money would be dedicated to doing some additional work in the Gulf of Mexico deep water area so that we have a better understanding of the environment there.

We also have moneys that we are requesting in our regulatory program as well as in our geological program so that we can acquire some additional geologic information. I believe our overall increase is around $6 million for the OCS program, a portion of which would be used to conduct these environmental studies.

Mr. ROMERO-BARCELÓ. And you are satisfied that funding will be enough for you to meet your concerns?

Ms. KALLAUR. Yes. I am sure if it were ten years ago and people were not concerned about the deficit, we would come here and ask for more money, but we also recognize the tight budgetary times and we think that the proposal we have on the table is a realistic one and will allow us to do our work properly.

Mr. ROMERO-BARCELÓ. OK, thank you. My time is up.

Mrs. CUBIN. I think I will begin my second round of questioning with Ms. Henry and I just wish that Mr. Rahall did not have to leave because he and I have a good time up here. Let me begin by noting that your statement highlights the cooperative arrangement between the—in the SMCRA legislation, and that is the primacy role that the States for the most part has been achieved.

And I really appreciate that OSM is moving in that direction under your leadership and the leadership of Mr. Yuram. Despite the absolute trashing of my bill by Secretary Babbitt and maybe the President and unnamed people who left the room just now that used to be sitting up here who is a friend of mine, so I do appreciate that very much. I really think that is the way government is supposed to work.

I think that the proposed directive to your field offices on TDNs is a very good idea and a good start. When do you expect that you will finish digesting the comments and finalize those ideas?

Ms. HENRY. The comment period that we allow people for response to the latest draft ten-day notice that we filed—we came out with a ten-day notice directive, expired just last Friday on February 28. I was told by my staff that we received approximately 25 comments to that latest draft and some of these comments were quite extensive.

So we anticipate that it is going to take us at least another couple of months to digest all of those comments and to see whether there are additional changes that might need to be made to the last draft before we finalize it. We certainly hope that we will be able to have a final revised ten-day notice directive within the next six months.

Mrs. CUBIN. Well, keep up the good work. With respect to OSM's recently published rule that you referred to earlier, valid existing rights under SMCRA, just let me say that it contradicts common sense to me that good faith and all permit standards that was sought to be imposed will withstand the challenge of the appeal in the Federal courts.

One thing that makes me think this is the largest settlement of its kind ever was in my own State of Wyoming, Sheridan, Wyoming. It was Whitney Benefits, I think it was $140 million, and Peter Kiewit and Sons was also a plaintiff in that, over a dispute to a coal mine and I realize that the factual situation is different.

But I do not understand that someone who lawfully owns coal rights on a tract of land on August 2, 1977, but had no desire to develop it then could lose those rights without just compensation. I have this house, it belongs to me. Someone cannot come in there and take it because I did not sleep in it seven nights out of 20 or something.

I mean it seems like an arbitrary judgment way down the road and you just cannot say once someone has a right you cannot take that away. Go ahead and give me the other side.

Ms. HENRY. I would be happy to. I wanted to certainly emphasize that the proposed rule that we published recently on valid existing rights is exactly that, as well as the companion proposal that concerns subsidence from underground mining. These are both proposals. We have given people until early June to file comments on those proposals.

We certainly are open to having hearings on both of these proposals if they are requested. So I certainly want to emphasize that on both of those, we feel that we had good reasons for both proposals or we would not have proposed them, we remain open-minded to comments and the final rule for those proposals may turn out to be different.

We may end up with a different definition of valid existing rights from what we currently propose. So in my answer I do not want to be so forceful that anyone would think that we had already made a decision on this and had closed our mind to any comments that we might receive.

OSM has attempted to define valid existing rights almost ever since the inception of the Surface Mining Act, unsuccessfully. Almost every attempt that has been made has been struck down by the courts either on substantive grounds or procedural grounds.

The first attempt that was made was called the all permits test which would have actually required an operator to have actually obtained all of the permits that were needed at the time of the passage of the Surface Mining Act as opposed to the current proposal which is just that a good faith effort had been made to obtain the permits. That was struck down on substantive grounds.

The District Court here in the District of Columbia found that that was too strict a standard but did indicate that a good faith all permits standard might be legally sufficient. So we have sort of harkened back to that. There have been other attempts to define this that would have given perhaps a more permissive interpretation to the term valid existing rights including the taking standard.

Those attempts have been struck down usually on procedural grounds. We hope we have learned some lessons about how to conduct rulemakings in accordance with the Administrative Procedures Act. But we do feel that the current definition that we have proposed is the one that is the most consistent with Congress' purpose in enacting this portion of the Act.

There were certain very fragile important lands that are listed in Section 522 which range from portions of the National Park System and the Wild and Scenic River System, all the way down to people's homes and cemeteries and public buildings. Those are the kinds of things to which the prohibitions apply subject to valid existing rights.

We are not purporting in this proposed rule to make a determination on taking issues. It may very well be that if a coal mine operator cannot satisfy the standard for a valid existing right and is not permitted to mine, he or she may choose to go to court and to file a takings claim. That claim would be decided by the court so this rulemaking does not really purport to address the takings issue.

Mrs. CUBIN. But I do not honestly see how it can avoid having an impact on takings if it is enacted.

Ms. HENRY. We feel that there probably will be some taking claims that will be filed as a result of this. But as I said we feel that that is a matter for the court of Federal claims to decide in accordance with the current taking standards.

However, the mere fact that takings claims may be filed we do not feel it is a sufficient reason to define valid existing rights at this point. Again I want to emphasize that we are open-minded on this and we certainly are going to be considering all the comments that are filed. But under the current proposal we do not feel that the fact that a takings claim may be filed is sufficient to avoid the very strong protection that we felt Congress meant in enacting this section of SMCRA.

Mrs. CUBIN. That valid existing right just sounds way too familiar to the patenting process, doesn't it?

Ms. HENRY. Yes, the term valid existing right is contained in a number of statutes. In some statutes it is better defined than in SMCRA where there is really no definition at all. It has been left totally up to the agency.

Mrs. CUBIN. Could you please supply to the Subcommittee the solicitor's opinion on that appeal?

Ms. HENRY. This is on the subsidence portion of the rulemaking. That is——

Mrs. CUBIN. The valid and existing rights.

Ms. HENRY. I do not believe we have a solicitor's opinion on that portion of the proposed rule. We have a solicitor's opinion that was issued on the other portion of the proposed rule which is that subsidence from underground mining is not subject to the prohibition in Section 522(e). Our proposed rule on that part of the section would incorporate that solicitor's opinion which was issued in 1991. We would be happy to supply that too.

Mrs. CUBIN. OK, thank you. My time is up.

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. Ms. Kallaur, how do you respond to the criticism that the Minerals and Management Service is inadequately considering the long-term effects of the 70 to 100 percent increase in the oil production in the Gulf of Mexico?

Ms. KALLAUR. I am sorry, sir. You said the long-term effects of——

Mr. ROMERO-BARCELÓ. Of the exploration in—the increase of 70 to 100 percent in the exploration of oil in the Gulf of Mexico, the production.

Ms. KALLAUR. I think one of the reasons why we came forward with this initiative is that we wanted to make sure that we had adequate funds to be able to manage this increase in activity, and we divided our funds between our regulatory program and our environmental program and our resource evaluation program so that we would be able to meet all of our responsibilities.

We consider this both a challenge and an opportunity that has been placed before us because we think if this activity is carried out correctly it can really reap a lot of benefits for our country. At the same time, we need to make sure that we get fair market value and that it is done in an environmentally safe and sound way. That was why we came forward with this initiative in FY 1998.

We think we are on top of things at this point, but we think in the years ahead because the number of leases that are now in industries and it has increased so much that we really do need more resources to be able to manage the OCS properly.

Mr. ROMERO-BARCELÓ. And with these resources you will have enough to do what you——

Ms. KALLAUR. Yes, we do, sir, because one of the things we have been doing over time too is looking at the way in which we carry out our responsibilities so that we can maximize the use of the dollars. We have already done some streamlining in the Gulf of Mexico and the way we do our EIS is we look to have like an 80 percent reduction in the amount of resources to prepare the EISs over a five-year period and still maintaining a high level of quality.

So we continue to look at the way we do our work. At the same time we have recognized with this dramatic increase in workload that we needed more resources in FY 1998.

Mr. ROMERO-BARCELÓ. There has been renewed interest obviously in the exploration of oil and gas resources in the deep water. Does that mean you feel that this has been a result of the act that was passed in Congress, the Deep Water Royalty Relief law, or do you think that it is due to other reasons in the supply of the amount of oil in the market?

Ms. KALLAUR. I think it is really due to a combination of factors. Clearly, oil prices have been relatively steady the last couple of years. In fact it has been increasing. There has also been dramatic increases in technology, and U.S. companies have become leaders in deep water technology so they have been able to lower the cost.

The Deep Water Royalty Relief Act clearly has been another reason we have had such a tremendous response at our recent lease sales and it also provides us the opportunity to present the premature abandonment of some deep water leases that might not be able to be developed without this type of economic incentive.

We just think there are a number of factors that have converged that have really changed the picture in the Gulf of Mexico, something we could never have forecasted years ago.

Mr. ROMERO-BARCELÓ. Has the Administration sought funding for the marine mining technology program which will extend funding for studies that are currently underway in Alaska and Hawaii

and the Gulf of Mexico and the research is focused on the finding, economical and environmental, a safe way to mining of the oceans.

What type of studies or similar work is being done in the Caribbean, if any, and if they were to be done in the Caribbean would this be helpful, would this supply additional data or different data or can that data be obtained in the places where they are being conducted now?

Ms. KALLAUR. Well, at this point I believe you are referring to the Marine Mineral Technology Centers that were transferred over to the Minerals Management Service last year. The problem with that transfer is that there were no moneys transferred over to us to carry out these programs and we are really in a transition stage at this time.

We do have a program in place that has been looking at environmentally safe ways of extracting sand and gravel from our coastal areas. We have a number of cooperative agreements with coastal States and whether or not we could also conduct some of the work we have done in the Caribbean is something that we would clearly be interested in looking at.

The one thing we try to do is to make sure that we do not have to duplicate experiments from one part of the country to another but try to make sure that when we do this work that is something that can benefit the entire coastline because we realize that there is a limited amount of money to dedicate to this growing program.

Mr. ROMERO-BARCELÓ. Thank you. Mr. Tipton, the President's budget includes a proposal to start collecting royalty on hardrock minerals such as gold and silver. What minerals other than hardrock minerals does the Federal Government not receive a royalty on or collect a fee for the development and production today, and how do you explain the fact that these minerals are not under some sort of royalty or fee system?

Mr. TIPTON. To the best of my knowledge, essentially all of the minerals that we either lease or sell are subject to fair market value standards of one way or the other. Only in construction materials such as sand and gravel which are free to local governments for urban development such as has been experienced in Phoenix and in Las Vegas are those type of materials that are free.

As to why there is not a royalty or a reclamation fee as it is being called now on hardrock minerals that is because of the 1872 Mining Law and our lack of authority in that area to collect a royalty. And various attempts have been made in past Congresses to try to bridge that gap and to work out a reasonable value for that.

Mr. ROMERO-BARCELÓ. Those are the only minerals right now that are not being—royalties are not being collected from the mining?

Mr. TIPTON. To the best of my knowledge, that is correct, sir. It is gold, copper, silver, platinum.

Mr. ROMERO-BARCELÓ. Thank you very much.

Mrs. CUBIN. Ms. Kallaur, would you describe the funding and manpower resources MMS has shifted to the Biological Resources Division over the past couple of years?

Ms. KALLAUR. I believe that the initial amount that was transferred to the, at that point it was the National Biological Service,

was approximately $4.9 million. I would hope that I could review these figures for the record.

Mrs. CUBIN. Certainly.

Ms. KALLAUR. Subsequent to that transfer, because of the cutbacks in the budget for the National Biological Service, our funding was cut approximately 40 percent from that original transfer. And then it was reduced by 40 percent, and the lower number is the number that the Biological Research Division is dealing with right now.

Mrs. CUBIN. OK. You said 40 or 14?

Ms. KALLAUR. We had a 40 percent decrease.

Mrs. CUBIN. 40, OK.

Ms. KALLAUR. [continuing]—from the $4.9 million that we had originally transferred.

Mrs. CUBIN. OK. What cuts have been made in those funds and how are those cuts impacting MMS studies and research?

Ms. KALLAUR. Well, these moneys are used to fund biological research as part of our Environmental Studies Program. And what we have had to do was to set some new priorities for studies and to delay some studies. I would need to provide for the record the specific studies that have been delayed as a result of this reduced funding.

Mrs. CUBIN. And that is only for biological projects?

Ms. KALLAUR. That is correct, because the agreement that we have with the National Biological Service is that they would do our biological research. We also have a studies program within the MMS budget that funds other types of research.

Mrs. CUBIN. What do you think the long-term development impacts of this situation are?

Ms. KALLAUR. Well, I mean clearly we would like to have that money restored but I think it is something that we are going to be able to live with. I think, if we do find that there are needs that cannot be met, I would believe in future budget years that we would work together with the Geological Survey and reflect those needs and the budget submitted by the Administration.

Mrs. CUBIN. Well, I think what I am sort of getting at is when we produce more minerals there is more money in the Federal treasury and then more money in the State treasuries from the royalties. And I just wonder if you have any estimate of how much money will be held back that might otherwise—projects that might otherwise have been developed. Do you have any sense of that at all?

Ms. KALLAUR. I think in terms of the funding for the biological research that there would not necessarily be a delay in activity. I think where you would see more of delay in activity if we were not able to receive the funding that we requested for the Gulf of Mexico office, a lot of our work in the environmental area is longer term so now that we know what our budget is we can try to plan over the long-term so that we can meet all of our needs.

And hopefully like with deep water because that is a new activity that is before us, if we can get the funding that we requested for the environmental studies I think that we will not be in a position where we would be delaying approval of any deep water plans because we did not have an adequate environmental base.

One thing we have been fortunate is that Congress over the years has appropriated over a half a billion dollars to fund our Environmental Studies Program and particularly because of these tight budgetary times over the last few years we have done a lot of creative work working with other institutions so we can leverage funds.

I think we are getting much better at the way we spend the money that we get from Congress. We can get the maximum benefit.

Mrs. CUBIN. I think that is great and everybody across the country has had to do that and so I am glad that you had to. I think that you said when you were answering another question that there was another lease sale going to come up in the Gulf of Mexico. Do you have any idea what MMS' expectations are for the bonus bids on that?

Ms. KALLAUR. I believe that the estimate that we were carrying in the budget was in the vicinity of $315 million.

Mrs. CUBIN. How much was the last one, it was considerably more than that, wasn't it?

Ms. KALLAUR. Yes, that is correct. It was—let me check, if I may.

Mrs. CUBIN. About a half billion or something? Big bucks. That is OK.

Ms. KALLAUR. It was big bucks but it was approximately $600 million and we should know by the end of the day tomorrow as to what tomorrow's sale will bring but we think we may again be low in our budget estimate.

Mrs. CUBIN. And that is tomorrow?

Ms. KALLAUR. That is correct.

Mrs. CUBIN. Good.

Ms. KALLAUR. I am sorry. Yes, it is Wednesday, yes.

Mrs. CUBIN. Tomorrow.

Ms. KALLAUR. That is tomorrow. It has been a very busy week.

Mrs. CUBIN. Listen, I understand. Would you tell me the status of implementing the Federal Oil and Gas Royalty Simplification and Fairness Act?

Ms. KALLAUR. Yes. And clearly that is a very important activity in our Royalty Management Program. We initially recognized that we could not do it on our own and we put together a significant outreach plan and have come up with a schedule that is probably going to extend over three years.

But one of the things we did was to look at the timeframes that were dictated by that Act and to make sure that we were able to meet those timeframes. And I know one of the first things we had to make sure we could do was to be able to pay interest by this month on overpayments, and we are meeting that target.

Another very important activity, I note to the people back in Wyoming too, is the section 205 State delegation provision. We are charged by the Act to have regulations out by a year from its passage which would be this coming August, and we are scheduled to come out with a proposed rule on the State delegation by the end of this month.

That will be followed by also some guidelines and standards that would need to be met by the States who would have these responsibilities delegated to them. The one thing we have tried to do is

to work with the States from day-one so that there would be no surprises and we also—for those provisions that affect industry, we have involved them in all of our discussions to try to see if we could come up with some sort of meeting of the minds of how best to meet the true intent of the Act.

Mrs. CUBIN. Does it look—are things moving along so that it looks as though that will be completed by the end of the month?

Ms. KALLAUR. In terms of the delegation rule?

Mrs. CUBIN. Right.

Ms. KALLAUR. You never know with rulemaking but at least when I was advised by our people it looks as though we will be able to publish the proposed rule by the end of the month. We have met all of our internal hurdles within the Department and we expect we will be able to do that.

Mrs. CUBIN. I met with the governor from my State and he is very hopeful as well that you will be able to do that. I am just trying to learn how to read these green books. As I discussed with Ms. Henry earlier, it is pretty confusing. It does not mention specifically any savings attributable to the royalty fairness. Could you show me where that is in here?

Ms. KALLAUR. I do not think at this point that we would be able to really identify savings because we are just in the process of implementing the different provisions and sometimes what happens in a program like this you might even have some initial increase in some of your costs because you have to make system changes but then when those systems are in place then you will be able to reap the savings.

And we are very sensitive to this issue as to how much a particular onshore oil and gas program costs because the fact that these costs are shared by the mineral-producing States so everything we are doing is to try to minimize cost.

One of the things I mentioned in my opening remarks too is a project we have underway dealing with compliance re-engineering. And the whole focus of that project is to try to find ways to do things more efficiently that would have lower cost. And I cannot point to savings today but our goal is to be able to clearly point to savings in the future and we are trying to involve all our constituents so that we can achieve that.

Mrs. CUBIN. What about cost? I thought it addressed cost, that you did project cost but no savings. Am I wrong on that because I admit I do not know how to read these books very well.

Ms. KALLAUR. I do not believe that we have projected any cost.

Mrs. CUBIN. Either one, cost or savings?

Ms. KALLAUR. Cost or savings but I think what our belief is that within the budget that we have proposed we will be able to meet the system changes and be able to move forward on royalty simplification as well as all the other things we are doing in the royalty area. We did propose an actual reduction in our Royalty Program.

Mrs. CUBIN. OK, thank you very much. Since I do not have anybody else, I will just keep on talking because we do have a lot of things that we need to know before we take the budget in front of the Full Committee for markup for that matter.

Ms. Henry, the new business plan we talked about earlier in my office is intended to clarify how OSM spends its funds and I just barely learned what the old book was like when this came along and I mentioned to you earlier that there were things that I could not find in there and I won't go through the whole list but I will pick one out.

I could not find a Small Operator's Assistance Program, for example. I understand from your staff that it is there but can you point it out to me where it is in there?

Ms. HENRY. Yes, we included——

Mrs. CUBIN. Just kind of remember you were talking about the diagram. If you could just go over that one step with me that would be great.

Ms. HENRY. OK. We used to have the SOAP program as a separate line item in our budget. The SOAP funds actually come out of the AML money. But the purpose of the SOAP funds is to assist small operators with their permitting process because sometimes they do not quite have the knowledge that some of the larger operators have. That is really what the fund is for.

For that reason we determined that the best place to put that was under the technology development and transfer business line as opposed to the environmental restoration business line which contains most of the AML moneys. We have provided—since this is the first year that we have submitted a budget in the new business lines structure, we have provided I believe a crosswalk that compares the items in the '97 structure with the business lines for '98.

Mrs. CUBIN. Where is that?

Ms. HENRY. I am not sure. Mine does not have page numbers on it. There is a—it should be entitled up at the top, "regulation and technology," up at the very top of the page. There is the old structure and then there is business lines. This is not in the green book. It is a separate handout that I believe was provided. I am sorry.

Mrs. CUBIN. OK.

Ms. HENRY. This is just an assistance sheet.

Mrs. CUBIN. Yes, OK.

Ms. HENRY. It shows where it would have been under the old structure and where it is under the new structure.

Mrs. CUBIN. One of my concerns about this new method of bookkeeping is that it really does not tell the authorizers, particularly the authorizers, but also the appropriators really exactly where the money is going and we are accountable for that. You are not, we are.

And I think of it like, well, Hord, I will just pick on you, the BLM regulations that are being—that are out there right now where they are trying to change things from legal ease into plain English. Now I can say it is illegal to rock hunt on this acre on my land, illegal to rock hunt.

Well, you know, fossils are rocks and if you say it is illegal to hunt fossils then everybody knows what you mean but if you say it is illegal to hunt rocks doesn't that truly expand what you, the bureaucrat, the authority that you have, and diminish the knowledge that everybody else has? And that is what I do not like about this bookkeeping system and, you know, I am going to keep press-

ing on this because we need specifics. We are accountable for every dollar and I am going to keep pressing on this for next year that we get the specifics.

In fact, I will just check with staff and see how we can actually get those specifics so that I can compare apples with apples. I am new and I am going to tell you that the other people on the committee know less about it than I do so we deserve to be able to understand what it is we are talking about.

Ms. HENRY. The reason, quite frankly, that we went to the business lines approach was dual. The first reason was that we had received a lot of complaints in the past that people could not understand the old structure and that they did not think that listing what we do by function was really a true reflection of how OSM does business and how OSM reflects the cost of doing its business. So our intent here was certainly not to hide things.

Mrs. CUBIN. Right. I know that.

Ms. HENRY. It was really to make it clearer and actually, believe it or not, some people have told us that they do understand it better now than they used to. So we are getting different reviews on this and certainly your views are very helpful for us in future years. Our intent was to make things clearer and we will certainly be glad to sit down and, as I said, walk through and explain where a couple of these items might be missing.

But I think we have tried to be fairly specific here. There may be one or two items like SOAP that do not jump out as clearly as they did under the old structure. But on the other hand I think there are some things that are more detailed now than they used to be.

Mrs. CUBIN. I think anyone can understand it but what anyone cannot do is know exactly what the money is going for and I wonder if the people who complained about the old system were the people who were responsible who had to answer for the way the money was spent. I would guess no because——

Ms. HENRY. I think actually it was some members of the Appropriations Committee that had said that now that they have gone over it with us, and it certainly is an adjustment from the old system, that several of those people told us that they liked it better and found our budget more understandable.

Mrs. CUBIN. Well, I think what will happen is that your agency is just going to have to do a lot more work because we are going to have to call for the information that we need and the appropriators really have a jump ahead of the rest of the Congress because they do understand that budget in detail, and we do not.

And we are the authorizing committee and it is time that the authorizing committees, and this has nothing to do with you, this is just internal within the Congress and the business of the Congress, the authorizing committees have a very important role which has not been honored, if you will, in previous years. So anyway it will be harder——

Ms. HENRY. If I could just mention that the second reason why we went to the business lines was also to enable us to comply with the Government Performance and Results Act. I think there are some other agencies who already have kind of a business lines approach to their budget. It is much easier, I think it will be for us,

to come up with performance measures with this budget than it would have been under the old structure. It would have been very, very difficult to find performance measures that would have corresponded to the old functions that we had.

So the second purpose for us going to the business lines approach was really to get us in gear for complying with the Government Performance and Results Act.

Mrs. CUBIN. And that certainly is important too. This is the last question that I have for you. I have a list of things here that I would have the staff get a list of things for you for information that we would like to have, things like full-time equivalent employees that OSM has assigned to your headquarters and the regional offices and various field offices and what accounts these folks code their time to. So I will just have the staff get that to you in writing. If you would please furnish that to the Subcommittee.

Ms. HENRY. I would be happy to provide it for you.

Mrs. CUBIN. Good, thank you. OK, well, now I am getting to the guys. I talked to them last because I have a lot to talk to them about. If you need a break, say so. BLM, last fall this committee under the leadership of Chairman Calvert and ranking minority member Abercrombie held two oversight hearings on the progress of the transfer of oil and gas inspection and enforcement functions from the BLM to the States.

And then as a follow-up to the second hearing, Chairman Calvert and Mr. Abercrombie wrote to the BLM asking them for a time line for their accomplishments. And then three weeks later they received a reply that said that, quote—no, this is not a quote yet. A response was received which listed how that time line for implementing agreements, and this is a quote, "served no purpose" and so no time line was given to the committee.

And we are soon approaching the second year anniversary of the Administration's Reinventing Government II which was set forth on March 27, 1995, and I am curious to know what sort of time line the BLM envisions for implementing this idea.

Mr. TIPTON. Well, again, the concept is optional to the States. The meetings were held, as we discussed, and we had a national meeting in December involving all the States in which our assistant secretary participated. And at that time the States basically told us that they did not think that basically a transfer of the inspection and enforcement aspect of the BLM program was in and of itself enough to make their process simpler to save any money and to be basically compatible with operating systems.

They wanted to talk in greater detail about other aspects of the program, primarily the down hole operating part. The assistant secretary agreed that we could broaden our discussions to talk about those things and in following up on that we had a meeting around the first of February with all of the States again sitting down and looking at the common objectives of both of our programs.

Mrs. CUBIN. Could I just interrupt one second? What States were they that said they were not interested in taking over or they were not interested in——

Mr. TIPTON. In just the inspection and enforcement portion.

Mrs. CUBIN. Right.

Mr. TIPTON. It was practically unanimous. They did not absolutely turn down or say that they did not want to continue talking. They did not want to enter into any type of agreement with us absent talking about the other aspects of the program, their point being that the real duplication and the real savings in the programs would not occur on the inspection and enforcement portion of that.

States want to be more involved in the preparation analysis and even approval of the applications to drill, for example. So in agreeing to discuss that further, the States suggested that we start from scratch and know more about each other's program and work more towards the objectives as opposed to arguing with each other over whose standard to use, whether it is the Federal inspection standard, Federal operating standard rules, as opposed to using the States.

We could never reach agreement upon a common standard absent that. So we held a two-day meeting with the Oil and Gas Commissioners. And as it turns out a collection of industry associates were also meeting in the same town so we had two interfaces with them to let them know what we were doing.

We had two very good days. We developed a number of objectives and found that in terms of actually operating a program we are in very close agreement. It is scientific operation and scientists really do not disagree all that often nor do engineers.

But we did recognize that we disagreed in the management aspect of the program. And then after discovering what our real problem was, we met again with the trade associations. They made a very strong point that they did not want to be on the receiving end of State and Federal Government coming up with any type of a plan that affected them without their involvement.

They did not even want us to put it in writing and to run it up the pole, if you will. So as a result of that we agreed to conduct a series of outreach meetings to discuss our objectives, how we would go about managing that program, get more information from the public and I am not talking about just industry.

We have a series of meetings going on across the country at this point to collect and gather more information. Once we have done that, we will refine our objectives. We will know more about the development of our oil and gas operating regulations and at that point hopefully come up with some meaningful arrangements of some type, whether they be cooperative agreements with States to share work or whether they be actual delegations.

So, again, I am afraid that does not answer much of what you are looking for in terms of a time line other than we have set the times for the meetings. We have set times at the States' request again to come together at another meeting and to put this all down into a final paper.

And I might add that Mr. Jim Carter of Utah has been very, very cooperative, very instrumental in trying to work out all of this with the States and thus I think we are cooperating to the maximum extent possible. We simply have not gotten to the end result.

Mrs. CUBIN. Speaking of the States and your statement about scientists and engineers rarely disagreeing and some things are common sense to me, it seems like, and maybe to other people it

would not seem the same, but it has come to my attention that a draft transfer proposal by the State of Colorado and the Colorado BLM has been circulated or is being circulated and this draft estimates a cost of savings of over $1 million a year once the transfer is in place.

So extrapolating those figures nationwide it looks like we could have a far greater savings than the $500 million cut in the oil and gas management subactivity—excuse me, $100,000. Excuse me. We are all, I know I am and you are as well, very interested in this type of cost savings and I am ready to endorse this proposal when it is finalized. What is the status of BLM's review of the Colorado proposal?

Mr. TIPTON. We talked about that and that proposal was discussed at our two-day meeting last month.

Mrs. CUBIN. Last month, OK.

Mr. TIPTON. The proposal is an innovative step forward. It was a no holds barred attempt at producing a plan involving participants from the State and from our Colorado office. They basically turned their staffs loose to put something on paper for the purposes of getting unrestricted ideas on how a transfer might work.

It is my understanding after their review of the draft document, both sides now question the savings figures. They also question whether or not they have covered the interests of both sides. They have asked us, before passing judgment or doing anything further with it, that we let them come to an agreement inside the boundaries of Colorado, and that basically is where it is.

We have not drawn any conclusions about the legality of it at this time. They have asked that we give them a bit more time to review their own study.

Mrs. CUBIN. So you do not know—that was going to be my next question. Are you aware of any legal impediments to proceeding and so you are not so will you be asking for solicitor's opinion on that?

Mr. TIPTON. It depends on what the final product looks like. Just a rough reading of the document, it has some things in it that we know we will have to talk to the solicitors about and that they will have some problems with but until they are in agreement as a management team from both the State and from the Federal side it is premature to even involve the attorneys.

Mrs. CUBIN. Would Colorado, assuming they came to agreement, be allowed to proceed on a pilot project basis, do you think?

Mr. TIPTON. Actually I talked to the director of the Colorado program if in the event if he would be interested in something like that and the reaction I got was that there might be.

Mrs. CUBIN. You know, I am conservative in almost every way and so many times in my life somebody will bring up something new and I will go, oh, no, no, you know, we did that 15 years and we tried it and it did not work and so sometimes I think when we have been in an agency or in a position for a certain amount of time that we tend to not think outside of our boundaries or, maybe we need to establish a different view or, just not have the confines, I guess.

Do you encourage especially on this issue, do you encourage BLM State directors to try to work out innovative ways to solve these

problems? Because, you know, we talked about this a little earlier. I understand the Secretary's management style but those folks out there are not morons and, you know, I have heard ideas from them that some of them are afraid to even talk about, they are afraid to even say anything about it. Is there any type of encouragement for thinking outside the normal boundaries, if you will?

Mr. TIPTON. Oh, absolutely. If you will recall, once we completed an educating process about a year ago of what each other's interests were in managing land and oil and gas operations, we left it to State directors to go back to their counterparts within the States and to see what State interests were and what they could work out.

Things will be different in practically every State. There is no one plan or one size that will fit all. In that regard, the Colorado proposal is quite innovative. It was a no holds barred approach that did not consider such things as what administrative policy might be or what other type interests would be or legal interests, for that matter.

And I agree with you, we need that type of creativity to stimulate thinking. You need that to see where you could go and what it would really be worth to you. If you want to clear the hurdles you often have to wrestle with attorneys to actually effect change in policies and regulations. So in that regard it was a very creative study.

Mrs. CUBIN. Where I live, Natrona County, Wyoming, we have a big gas reserve there and I think your testimony said earlier that—was this it, that you had 2,000—made 2,000 competitive and 1,300 noncompetitive leases last year, is that what you said?

Mr. TIPTON. I believe that was our target for 1998.

Mrs. CUBIN. Oh, OK, target for '98. Well, I certainly hope that Cape Gulch in Natrona County, Wyoming, is on that target. It is my understanding that the BLM, and I do not want this to be a lecture but I really need to make a point to you, it is my understanding that BLM is proposing regulations requiring cost recovery for work that is done to prepare an area for leasing.

And I was under the impression that these costs were traditionally covered by lease rentals and bonuses. But I also have information that indicates that industry already pays for most of the cost associated with the environmental impact statements. In fact, not only does industry pay these costs but they pay costs outside of that realm as well.

For example, in the Cape Gulch area industry was paying on the environmental impact statement for an amendment to the Resource Recovery Management Plan or the Resource Management Plan, excuse me, that the BLM wanted. And let me just give you an example of how the money is spent that these folks are paying for—it is their money, they are paying for it.

In Cape Gulch, Chevron needed a 2,800-foot right-of-way. Everything was ready to go. It went right by a county road, right along side a county road, 2,800 feet. They applied for this right-of-way July 11, 1996. They contacted the BLM local office and then on July 12, 15 and 16, they contacted the same person several more times. July 17 they submitted an ROW application under protest. July 23, '96, they submitted a plan of development. July through September, '96, they continued dialog to try to resolve sundry prob-

lems with their ROW application and tried to find out when it would be granted.

September 26, they wrote, and I am leaving the people's names out, the employees, September 26, '96, they wrote, this is the company wrote, asking for help in resolving this issue to a superior of the regional officer. October 10, 1996, called to check on the progress, called the guy back again. Now this has been two weeks and, you know, calling the supervisor.

Just let me read the dates. October 15, '96, October 17 through 24, '96, October 25, '96, October 29, October 30, October 31, November 5, November 11, November 12, November 15, and as of November 25 it was still not resolved. As of December 10 when I was involved it was not resolved. This is for a simple doggone right-of-way of 2,800 feet.

They had a window of opportunity because there are raptors in the area. They had a window of opportunity in which they could drill because they would be nesting which was also controversial whether it was true or not. But anyway so the BLM through this kind of action forced those companies right up to the day and they did not know until the day before that window of whether or not they would be able to put that pipeline in because they could not go in there. They did not know if they would be able to proceed.

And I swear, Hord, I could give you more examples than you want to hear. So could you explain the rationale to me for what will not—no, can you explain the rationale for me about what the future fees that will be charged to the industry to defray the cost of leasing activities and all of that stuff, what they will be used for when they are already paying even more than for the statements themselves, and why should the industry be charged double because of encountering ridiculous bureaucratic delays like this.

I do not know if you are aware of that Cape Gulch situation but it has been going on a long, long, long time. It took the BLM I think it was nine months to permit the Express pipeline. A foreign company coming through the United States across seven rivers, they were permitted in nine months and this project has been going on for years. Why should they pay you more money?

Mr. TIPTON. I think you have asked a lot of questions. And actually I thought Cave Gulch was on better grounds than that. I will have to check into the specifics. That is particular surprising too, because I know of the commitment of our oil and gas staff, or what is left of them, in Wyoming. To some extent we need to shore them up. That is one of the things that we are looking at now.

[The following was submitted:]

DRILLING IN CAVE GULCH-BULLFROG-WALTMAN AREA

As you know, Barrett Resources and Chevron each proposed drilling a number of wells in the Cave Gulch-Bullfrog-Waltman area. The area includes nests for bald eagles and ferruginous hawks. Five raptor species also occupy the project area.

In response to the proposals from Barrett and Chevron, BLM initiated Environmental Assessments (EA's). However, the proposed actions evolved during 1996 as estimates of the size of the reservoir were revised upward.

BLM, in compliance with the National Environmental Policy Act (NEPA) and the Migratory Bird Treaty Act, determined that EA's would be insufficient and that an Environmental Impact Statement (EIS) was required. More time is required to do an EIS than an EA. The BLM has issued a Draft EIS and plans to issue its Record of Decision in August 1997. Meanwhile, the BLM has approved 14 new wells for de-

velopment, meaning over 40 wells could be drilled and completed before the EIS is completed. The BLM also approved 4 new wells during the interim for Cooper Reservoir, an area within Cave Gulch area of cumulative impact analysis.

Although this process may appear to be inordinately lengthy, the Draft EIS was completed and sent out for public review in a singularly short time. The Wyoming State Director identified the Cave Gulch EIS as a state priority and has made resources available to complete this EIS in time to issue the Record of Decision in August.

Mr. TIPTON. We have lost a lot of people to the buy-out. We have had hiring freezes and what have you. Only in the last couple of weeks have we kind of had a green light to look internally at where some of our people needs are. Right-of-ways, although it might not be connected directly to this, is an area that we would have to focus a lot more attention on because we have some unhappy customers, not necessarily all in Wyoming, but in several of our States.

We have 3,000 right-of-ways, for example, in our case log so we know we have to put some people on those. I think it is a matter of getting skills in the right places. But it certainly is not the intent for BLM people not to be responsive. We will just have to check out this particular case for you in more detail.

As far as the cost recovery goes, there are initiatives to do full cost recovery where appropriate, but it is very difficult to set those costs. It is difficult to determine what costs you need to seek and at what level. I think there has been some confusion in Wyoming on the part of some industry that we are trying to get the pre-leasing cost from them up front.

Mrs. CUBIN. That has not been part of the delay problem.

Mr. TIPTON. I am sure it is not part of the delay but may be a concern regarding cost recovery. I was in the field a couple weeks ago. An industry official did mention that he thought at least that BLM was demanding help on payment for cumulative impact statements, before they would do leasing in his area and that is not the case.

We do have a solicitor's opinion that lays out in a fair amount of detail what our obligations are with respect to recovering our costs and we would hope to propose some rulemaking later in the spring once we resolve some internal differences on just exactly what we should be collecting for on both the minerals area and in the lands area.

Mrs. CUBIN. I think with all due respect you have got it just backwards, that you should not be looking to them to give you more money. You should be looking inside your own agency and force them to be productive and force them to do a good job. In two different districts in the same State, I am not talking about my own State right now, you have two land managers that give people different answers to the same question and so there is the constituent.

I think it just goes back to this whole concept of the guy at the top knows the best and you guys get in line. I do not think you have any business asking for more money until you clean up your house a little bit. Like I said, I could tell you more and these folks sitting out in this—some of them, I do not know who all are with agencies and who all are not, but you just could not listen long

enough to hear the problems that the BLM has across the whole country.

One last thing, you were talking about earlier—well, it is the last thing. Are you glad?

Mr. TIPTON. Madam Chair, I would like to say that we would be perfectly happy at your convenience to sit down and to go into whatever level of detail that you might have interests to help us improve our program.

Mrs. CUBIN. You know, it goes back to what I talked about. I do not think that my program is the issue here. I think it is a symptom of a sick bureaucracy that is trying with the best intentions and the best motives to do a good job but there is no coordination and people are afraid to speak up within the agency. They are afraid to lift their head that it might get shot at. And I do not mean literally, I mean from the agency.

But it is not that one instance. It is endemic throughout the BLM. Now you talked earlier about the good working relationship with the Colorado BLM and the State of Colorado and that it is working out and that you want to get back to more agreements like that.

Well, I really want to get to a lot of agreements like that as well. I think that that is a win/win situation when two parties can work things out without having interference from someone that really does not even understand the situation. And I know that you have no personal responsibility in this but I am curious about the Green River Basin advisory committee, the RAC, a Resource Advisory Committee.

You know, I was so skeptical of that whole process when the Secretary established that advisory committee out there but I thought, well, do not be such a winch, give it a chance. And I thought all along it is not going to work because if the government does not get the government's way then they take their ball and go home. And you know what, that is exactly what happened.

And you are familiar, everyone is familiar with the situation that is in now and that is between those two men and does not have anything to do with you or me. I think both of them probably could use a little maturity on that particular issue. But do you know what is going to happen now, will the committee be disbanded?

Mr. TIPTON. I really do not. I do not have information on that.

Mrs. CUBIN. Are they going to continue to be used in other parts of the country?

Mr. TIPTON. Let me clarify. Are we talking about the Green River advisory council, oil and gas, or the Resource Advisory Council?

Mrs. CUBIN. I am talking about the Resource Advisory Council.

Mr. TIPTON. That I do not know.

Mrs. CUBIN. OK. Do you know what the approximate amount of money the State of Wyoming contributes to the net receipts sharing costs?

Mr. TIPTON. Substantially. They are the major——

Mrs. CUBIN. Yes, I know they are. I am glad they are and you will never tell, will you? Yes, they are because Wyoming gets more than any other State but considerable is not enough. My State's oil and gas supervisor, Don Basco, has reported to me that he has requested many, many times a detailed accounting by function and

activity on what you spend in the State of Wyoming but he has not been provided with that information. Could you provide that to me, please, and I will put it in writing what it is we want.

Mr. TIPTON. I thought that we had given him everything he needed.

Mrs. CUBIN. We just spoke with him and he said that he tried for a long time and has not gotten any response. OK, take a breath, I am done. And really I do not want to be adversarial. I just really do want things to work better. There is no reason for any of us to be here if we cannot be of service and that is really where I am trying to get.

OK, Director Eaton, you were speaking very forcefully and I agree with your statements of the USGS' expertise to provide sound objective science for the nation. So now that the former NBS is under your wing, I think that you will be challenged to keep it so I know that you and your predecessor have had a few independent mines to deal with.

And this goes back to what I was saying to Mr. Tipton. And what comes to my mind is a gentleman, a biologist, that risked his neck to speak out on Yellowstone Park policy. He disagreed, a policy that he sees to be at odds with his biological opinion. It is his scientific opinion.

In the Bush Administration, Director Peck agreed to pay for a hostile witness from the U.S. Geological Survey to come to a hearing on geothermal issues but it is my understanding that you refused to let this gentleman come to testify in front of this committee so we subpoenaed him and then we paid his expenses so that he could do that.

Now I cannot understand how you can square an action like that, how this equation balances that you say you want good science but you will only allow people who agree with you to talk about it.

Mr. EATON. Let me respond to that and let me turn to my staff to make sure the response was correct. To the best of my knowledge, that decision was not made in the Geological Survey. I believe it was made in the Department of the Interior. I am told that is correct.

Mrs. CUBIN. Who made that decision?

Mr. EATON. The Secretary's office.

Mrs. CUBIN. Well, what do you know? Why are we not surprised? I knew scientifically that is not what you would do. As the Subcommittee Chair, I agree with my Chairman Don Young on the need for sound objective science.

We just simply have to have it. And we read reports recently that the USGS is conducting yet another assessment of the resource potential of ANWR. Where in your budget are these costs identified? I have trouble with the book again.

Mr. EATON. OK. If it is any comfort to you, I have trouble with the book as well. Excuse me just a minute, Madam Chair.

Mrs. CUBIN. Do you want to just provide that for the record and you will not have to go through that?

Mr. EATON. All right, I will do that.

Mrs. CUBIN. OK.

Mr. EATON. Do you have in your possession the book of illustrations and the text that goes with those?

Mrs. CUBIN. Yes, I do.

Mr. EATON. Because, in part, this is addressed on the page facing map number 9, illustration number 9.

Mrs. CUBIN. What subheading is that under?

Mr. EATON. That would be under resources and the title of the text is Alaska North Slope Oil Resources and Federal Lands. If you look down in the lower right-hand corner of the text, there you will see the budget line items that address this issue. It is more than one.

Then in the back of the budget book on green pages, I hope they are in your copy.

Mrs. CUBIN. In the back of——

Mr. EATON. Of our green book.

Mrs. CUBIN. Green book, OK.

Mr. EATON. There is an index that should allow you then to go immediately to those pages. Now Dr. McGregor is showing me that if you will turn to page 136 in the green book, you will find this particular topic addressed. And it is—we are continuing an investigation that was begun more than a year and a half ago in that area.

When we released a new five-year assessment of oil and gas resources for the country two years ago on the basis of data that were then newly available, we downplayed the oil resources and raised our best estimate of gas resources.

But this is an area that I think none of us, including industry, really has all that good a grasp of, since every time a new hole is drilled, we learn something that has implications with respect to those resources. So I would guess that this is going to be a continuing process of change as new information is gained.

Mrs. CUBIN. That just leaves me a little room for concern, and I may be wrong on this so I am sure you will correct me if I am. Five miles apart the MMS projected a certain amount of oil and then USGS predicted a certain amount and then there was a huge change in those projections the following year. What was the reason for that?

Mr. EATON. Ours was based on the fact that we had new data which had not been available to us in the earlier estimate, but it spoke to the issue of the timing of when the structure was developed and when the maturation of the oil took place, so we tried to take into account in our newer estimate, the significance of this information.

Mrs. CUBIN. You underestimated it by a lot?

Mr. EATON. We had overestimated the North Slope oil reserves and we reduced that and, in a sense, replaced it with a new enlarged estimate of the gas resources.

Mrs. CUBIN. That first study, how long did that take when you came up with those results?

Mr. EATON. I would be happy to answer that for the record. I was not part of the Geological Survey at that time so I do not know off the top of my head what the answer is.

Mrs. CUBIN. Just describe the new information for me. It is different formations than you thought were there or, you know, for someone who does not know about this exact science.

Mr. EATON. Let me take a shot at answering your question.

Mrs. CUBIN. OK. This would be the new information that has caused the changes?

Mr. EATON. Yes. In the creation of an oil field you need a source rock and then you need a trapping structure of some kind. If the structure develops before the oil matures, then there is hope of it accumulating in the structure, and so the timing of the maturation and the timing of the development of the structure are very important in terms of understanding or estimating whether oil might be present or not.

And in our earlier estimates based on the data that were available to us at that time we made one determination. Then a new hole was drilled and when that information was made available to us we saw that the assumptions that we had made earlier were incorrect.

Mrs. CUBIN. So maybe that was a hurried up job. Now here goes old cynical me but I cannot help but think that the new oil and gas resource estimates for ANWR which were announced two years ago were hurried up to help the Administration's position on drilling there. Now I may very well be wrong but it just seems—I cannot come up with another answer.

Mr. EATON. There are two issues here. I think we need to clarify the difference between them. The oil and gas assessment for the hole of the North Slope that was released two years ago was based on five years of study and was not hurried. I think what you are referring to is a track within ANWR for which there was some interest on the part of industry in developing an exploratory hole and we were then asked by the Department to provide our best estimate of what the resources in that tract might be and, yes, that was done fairly quickly but the work on that continues even to this day.

And we provided an answer in a timely way but we continued to work to refine that answer. I have personally been briefed by the petroleum geologist who was expert in that area and was convinced that even though the estimate was a disappointing one that it was based on sound judgments and interpretations on his part.

At the same time, I think it is important that the record shows that the value we placed on that was not so insignificant that there would not have been commercial interest in it and indeed I believe there was.

Mrs. CUBIN. I guess the most important thing at this point is what is the timing for completion of the assessment and when will the Administration make an announcement?

Mr. EATON. If I may, I need to turn to one of my staff.

Mrs. CUBIN. Sure, I understand that.

Mr. EATON. We are going to have to provide that for the record, Madam Chair. We will get that to you. We do not have that at our fingers.

Mrs. CUBIN. OK, I would appreciate that. Politicizing science is bad. I have math and chemistry as my background and I love it because two and two is always four and I love it because when you mix certain chemicals you always get the same reaction. It is so dependable. And when people politicize science or when people use science for political means that is very disturbing.

And I just really hope that the political pressures that are brought to bear on people who have the say do not submit to a political agenda. I am just asking you to not do that in case you ever should experience anything like that. I do not think I have anything else.

But, yes, I do want to know one thing. This is the last thing. Why is the agency charged with outer continental shelf resource estimates seemingly at odds with onshore estimates? Is that because of the drilling that you talked about earlier?

Mr. EATON. It is not clear to me what that question means.

Mrs. CUBIN. ANWR, offshore——

Mr. EATON. In ANWR?

Mrs. CUBIN. And immediately onshore.

Mr. EATON. Again, I am going to have to provide something for the record.

Mrs. CUBIN. OK. Well, I do not have anything else. I bet I do but we are all tired so enough is enough. I sincerely thank you all for being here. And I thank you for your patience. I have not been through this before and thank you for helping me learn and please stay in touch because we need to do that.

Mr. EATON. Thank you, Madam Chair.

Mrs. CUBIN. If there is no further business then the Subcommittee is adjourned.

[Whereupon, at 4:05 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

TESTIMONY OF GORDON P. EATON

It is a pleasure to join you today to discuss the programs of the U.S. Geological Survey (USGS) and our FY 1998 budget request.

Our Nation faces challenging questions concerning the world we live in and the resources we use each day.

•How can we prevent or mitigate the effects of natural hazards—earthquakes, floods, volcanoes, landslides, wildfires, coastal erosion, outbreaks of disease among our wildlife?

•How can we ensure an adequate supply of critical resources—land, water, energy, minerals—for our children and grandchildren?

•How is our natural environment altered when we extract and use these resources, and how can we minimize or repair any negative effects of these alterations?

•How can we make accessible the ever-increasing amounts of data and information about the Earth's natural resources, environment, and natural hazards?

For more than a century, the mission of the U. S. Geological Survey (USGS) has been to provide the sound, credible, impartial scientific information to help answer questions like these.

The issues facing our society have become increasingly complex, demanding new approaches and new partnerships. In the past few years, the USGS has changed dramatically to meet the changing needs of the Nation. The New USGS incorporates minerals information specialists from the former U.S. Bureau of Mines and the biological expertise of the former National Biological Service, complementing our traditional strengths in geology, mapping, and water.

The Earth's physical, chemical, and biological systems depend on and are influenced by each other. The integration of physical and biological research at the USGS enhances our ability to provide the sound science needed to attack some of the vexing issues facing our Nation. We are building strong multidisciplinary teams of scientists focused on research and research outcomes that people can use.

While we continue to address critical national issues and conduct high-priority research we also work with nearly 2,000 cooperating agencies and organizations to

focus on the resource development and management issues of greatest concern. To that end, we have staff, facilities, and instrumentation at work in every State, helping to serve millions of local, regional, and national customers.

Coping With Natural Hazards

Natural hazards are taking an increasing toll on the lives and property of our Nation. To help reduce this burden of suffering and economic loss, the USGS maintains a number of research and monitoring programs across the United States. In 1996, the USGS responded to threats posed by landslides, volcanoes, hurricanes, floods, and a major outbreak of avian botulism.

•Landslide experts worked in the Pacific Northwest, Virginia, and California to document ground failures and work with other Federal agencies, including the Federal Emergency Management Agency and the National Park Service, to develop mitigation strategies for the future. In Colorado, our scientists gave advance warning to county officials that the Aspen Country Day School was at risk from possible debris flows. Classes were moved, and when the flows hit the school a few days later no one was hurt.

•Three volcano observatories assess the dangers from active volcanoes in Alaska, Hawaii, and the Cascade Range in Washington, Oregon, and northern California. In cooperation with the aviation industry, the USGS continuously monitors volcanoes in the Aleutian Island chain to reduce the risk to airplanes from clouds of volcanic ash. A year ago, in March 1996, Akutan volcano in the central Aleutians was shaken by intense seismic swarms. Telemetered real-time data and work by our scientists on the island enabled us to reassure the 1,000 people on Akutan that an eruption was unlikely and they did not have to evacuate. The local fishing industry, valued at $120 million annually, was able to continue. The United States, with 65 active volcanoes, ranks third in the world in the number of active volcanoes within its borders.

•In California, USGS investigators studying the deaths of unprecedented numbers of pelicans at the Salton Sea determined that a simultaneous fish die-off posed a possible hazard to human health. Our staff guided the disease control efforts of the U.S. Fish and Wildlife Service and worked to develop consensus views among representatives of agriculture, wildlife conservation, water resources agencies, and other parties that depend on the Sea for their activities. USGS scientists are also studying emerging diseases such as cryptosporidiosis, Valley fever (coccidioidomycosis), and bubonic plague to understand wildlife diseases and effects on human health.

•National seismic hazard maps, which we completed and released in 1996, show the severity of expected shaking of the ground in response to earthquakes all across the United States. These maps are being put to immediate use by the Building Seismic Safety Council as it publishes its recommended seismic regulations for building codes throughout the Nation.

•The National Earthquake Information Center works with partners at State and regional levels and around the world to monitor earthquake activity. In addition, earthquake studies and geologic mapping are needed to outline the areas that are most vulnerable to damage from earthquakes. Through cooperative efforts with engineers and urban planners, the USGS is working to reduce the human and economic losses from potential earthquakes in Alaska, the West Coast, and the lesser known hazardous areas of the Central United States and South Carolina.

•A network of 7,000 stream-gaging stations, many of them funded in partnership with local, State, and Federal agencies, provides continuous information on floods and droughts. More than 2,500 of those stations are linked by satellite communications to the World Wide Web, where the public, emergency management agencies, utilities, private industry, and others can access real-time streamflow data updated as often as four times an hour during floods. Major flooding in California, Nevada, and the Pacific Northwest in January 1997 set all-time records for peak flows at nearly 40 stream-gaging stations in five States, caused record-setting inflows to San Francisco Bay, and damaged or destroyed about 150 of our stream-gaging stations, along with other serious damage to homes and businesses. At the request of the California Department of Transportation, our scientists assessed the stability of a bridge just downstream from one that had collapsed during the flooding and determined that the downstream bridge was not likely to fail.

Understanding Our Natural Resources

Much of our strength as a Nation comes from our abundant—yet finite—heritage of natural resources. USGS studies of water supplies, mineral and energy deposits, land use, and our wealth of plants and animals provide essential information to in-

dustry, managers, regulators, and the public for sound decisions on our unique resource heritage.

•Our information on the domestic and world soda ash industry were used by Congress, the Bureau of Land Management, the State of Wyoming, and industry to negotiate the new royalties for soda ash mined in Wyoming. The revenues generated by the proposed increase will be split between the Federal Government and the State of Wyoming. Scientists at the USGS monitor trends and statistics for more than 600 mineral commodities, from agricultural minerals to zirconium, and study where and how mineral deposits are created and modified. National, regional, and local assessments delineate the amounts and quality of our mineral and energy resources.

•A new analysis of the dramatic changes in land use in the Baltimore-Washington area over the past 200 years, and a similar analysis for the San Francisco area, are helping city and county planners, regulators, developers, and the general public better understand the overall patterns of urban growth.

•In Tennessee, information from the Gap Analysis Program (GAP), a cooperative effort to map natural land cover, vertebrate species, and the lands that are managed in ways that maintain biological diversity, is being used by the Tennessee Wildlife Resources Agency for locating and managing particular habitat types. In California, GAP information is used by developers to help make real estate investment decisions and by area governments to guide decisions on open space planning.

•USGS scientists, in cooperation with States, universities, and local groups, are monitoring the health of America's biological resources, from polar bears in Alaska to manatees in Florida. In the Great Lakes, the populations of major commercial and sport fish are being monitored in a cooperative effort to provide a scientific basis by which fisheries managers and researchers can evaluate potential management plans for the region's important commercial and recreational fisheries.

•On average, each U.S. citizen uses 78 gallons of water at home per day, and the demand for good-quality water for drinking, recreation, farming, and industry continues to rise. Through the National Water Quality Assessment Program, USGS scientists are tracking the quality of our surface- and ground-water resources in 60 large areas across the country that account for two thirds of the Nation's water use.

Addressing Environmental Issues

The safety and health of our Nation's citizens depend on the environment in which we live. USGS scientists are working to provide the information needed to help sustain a healthy environment and to recognize and mitigate adverse effects on it.

•Through a cooperative effort to provide "Science in the Parks", our scientists are working with the National Park Service in more than 250 parks, monuments, national rivers, and recreation areas. Investigations in Nevada are looking at possible links between disruptions in fish endocrine systems and pesticides and organic chemicals in the Lake Mead National Recreation Area. And Visitors Centers at Lake Mead, Grand Canyon National Park, and elsewhere are being redesigned in partnership with USGS geologists to emphasize the geologic history of the parks.

•USGS studies at the Marine Corps Air Station in Beautort (BEWfort), South Carolina, are saving the Marine Corps hundreds of thousands of dollars in cleanup costs. A leaky storage tank had released about 10,000 gallons of jet fuel into the soil and ground water in 1990, and conventional cleanup of the spill would have cost about $600,000. Our scientists showed that natural attenuation, the natural ability of bacteria living in the soil and water to remove contaminants, was effectively confining the contaminated ground water and thus no risk was posed to the environment.

•More than 500,000 abandoned mines dot the landscape of the United States. USGS geologists, biologists, hydrologists, cartographers, and others are working with Federal land management agencies to remediate contamination associated with abandoned mines, focusing on the sites that have the greatest effect on water quality and ecosystem health in specific watersheds. The work requires coordinated efforts by experts in digital data collection and management, ecology, geochemistry, geology, water quality studies, hydrology, and mapping. At the California Gulch Superfund Site in Leadville, Colo., mineral maps produced by the USGS using imaging spectroscopy, the latest in remote sensing technology, have cut costs and accelerated cleanup of mine wastes over a large area.

•Invasive exotic plants and animals are a major threat throughout the Nation, costing billions of dollars in economic losses and causing untold damage to the environment. Non-native species damage agricultural crops and rangelands, contribute

to the decline of commercially important fishes, spread diseases that affect domestic animals and people, and disrupt vital ecosystem functions. USGS biologists are studying such invaders as zebra mussels, leafy spurge, and brown tree snakes to determine the best ways of controlling their spread.

•More and more people live and work near a coast, yet increasing populations put enormous stresses on these fragile environments. USGS studies in coastal estuaries like San Francisco Bay and Chesapeake Bay are helping to explain how the Nation's coastal environments respond to natural sources of change, such as floods and hurricanes, as well as human influences.

Managing Data and Information

An essential part of the USGS mission is making sure that the results of our scientific studies are available in a wide variety of formats, both traditional and electronic, to those who need the information. The USGS maintains a wide range of databases and other sources of information that are consulted millions of times each year.

•The USGS home page on the World Wide Web provides access to more than 100,000 pages of information, from how to order any of more than 80,000 U.S. maps and other publications to what is the latest volcano activity in Alaska. During 1996, the monthly tally of visitors to our Web site doubled to more than 160,000 people a month.

•At our EROS Data Center in South Dakota, nearly 15 million aerial photographs and satellite images are archived and available for purchase. These images, spanning three decades, provide valuable information about our planet's landforms, vegetation, and resources.

•USGS topographic maps have provided an accurate foundation for planning and decisionmaking for the past 100 years. Today, digital geospatial information in geographic information systems is helping resource managers, planners, emergency personnel, and others make decisions quickly and with confidence. Last summer we signed a cooperative research and development agreement (CRADA) with 3M of St. Paul, Minn., through which we will develop on-demand alternatives to hard copy maps and 3M will develop a series of commercial instant map-printing systems. The new print-on-demand capability will provide an alternative to the traditional USGS printed map products, enabling a customer to print a specific topographic map in a matter of minutes.

•The USGS Library, established in 1882, is one of the largest earth science libraries in the world. More than 1 million books and 500,000 maps in the library system cover all aspects of the earth sciences. The 12 libraries of the former National Biological Service and the library of the former Bureau of Mines have been added to the USGS library system, greatly expanding its holdings and coverage. In 1996, a new electronic library catalog became available at the main library in Reston, Va., and the branch libraries in Denver, Colo., and Menlo Park, Calif.

Reaching to the Future

For FY 1998, the USGS budget request is $745.4 million, a net increase of $6.5 million above the FY 97 enacted level (including the budget for the National Biological Service, now the Survey's Biological Resources Division). This total includes $19.5 million in program increases that are partially offset by redirecting about $13 million in program efforts.

Changes in our FY 98 budget include:

•A $7. 5 million increase to expand biological research on Federal lands, increase technical assistance to land managers in Interior Department agencies, and increase the Cooperative Research Units program to assist in fulfilling partnership commitments to states. New research will focus on Pacific salmon and coastal habitats, invasive and exotic species, potential threats from endocrine disrupters, migratory birds, and Great Lakes fisheries and habitats.

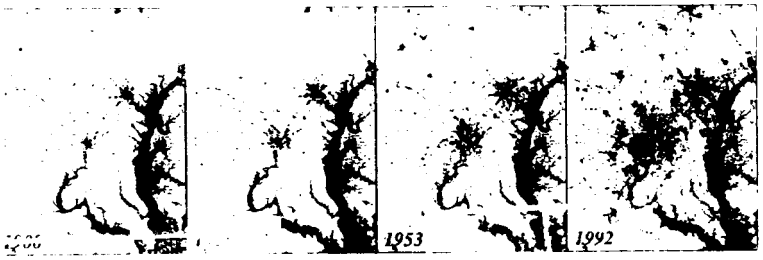
•An increase of $3.0 million to expand and upgrade the global seismographic network to service the technical requirements of the nuclear test ban treaty. The data and network will also be used for scientific and disaster-assistance purposes.

•An increase of $9.0 million to join with the Environmental Protection Agency and the National Oceanic and Atmospheric Administration to expand the available information on water quality for the 75 largest metropolitan areas in the country.

Redeployment of funds to these higher priority activities will be achieved by accelerating our streamlining efforts (a savings of $6.8 million) and reducing some programmatic activities (a savings of $6.2 million). Some programs will be eliminated, with key components being incorporated into other existing programs, such as parts

of Acid Rain into NAWQA. Other programs will be deferred such as 10 planned cooperative investigations dealing with water management issues.

We are also refocusing $1.2 million of geographic research and applications funds to support investigations of urban growth patterns in New York Chicago, Philadelphia, and Portland. This effort builds on prototype studies conducted in San Francisco-Sacramento and Baltimore-Washington urban corridors which is shown below.



With our rich scientific heritage and our unique mix of expertise, we at the USGS are poised to reach a new understanding of our Earth. America's abundant water, land, energy, mineral, and biological resources provide the foundation for much of our Nation's wealth and the well-being of its citizens. The New USGS is uniquely able to provide the knowledge and understanding needed for the careful stewardship of these resources and helping to ensure the health, prosperity and quality of life enjoyed by current and future generations of Americans.

STATEMENT OF KATHRINE L. HENRY, ACTING DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Overview

•The fiscal year (FY) 1998 budget request for the Office of Surface Mining Reclamation and Enforcement (OSM) discretionary appropriation is $271 million, a slight decrease ($700,000) from the FY 1997 enacted level. In addition, OSM requests a permanent indefinite appropriation of $56 million, which is generated from the abandoned mine land fund investment earnings. This is transferred to the United Mine Workers of America Combined Benefits Fund in accordance with the Energy Policy Act of 1992.

OSM's FY 1998 request reflects the need for budget stability to evaluate the impact of recent programmatic changes. Over the past few years, OSM has undergone a myriad of changes including a reorganization based on a regional structure, significant downsizing and a reduction-in-force, reinvention of its oversight program, and a shift of resources to technical assistance programs focused on preventing problems from occurring in the coalfields. The FY 1997 budget, together with improved efficiencies, enabled OSM to resume delivery of services and programs to meet customer needs more effectively. The FY 1998 budget request maintains this level of service and allows OSM and its stakeholders to review the outcome/progress of the non-budgetary changes in organization, oversight, and enforcement.

OSM's 1998 budget request includes: $93,709,000 for the Regulation & Technology account ($963,000 less than the FY 1997 enacted level), plus $177,348,000 for the Abandoned Mine Reclamation Fund ($263,000 more than the FY 1997 enacted level).

Most of OSM's funding is passed on to States and Tribes in the form of grants. On an annual basis, grants and emergencies and high priority projects comprise about three-fourths of OSM's appropriation. Regulatory program grants to States are budgeted at $50.2 million in the FY 1998 request, slightly below the FY 1997 level. State and Tribal AML reclamation grants are budgeted at $142.3 million in the FY 1998 request, a slight increase above the FY 1997 level. In terms of human resources, individual States have about 2,400 FTE's compared to OSM's total workforce of 674. Of the 674, 69 FTE's are used primarily on regulatory program oversight-related components. Of these 69, only 43 are inspectors.

FY1998 Budget Request Highlights

This year, America celebrates the 20th anniversary of the enactment of the Surface Mining Control and Reclamation Act (SMCRA). OSM, the coal States, and the coal resource Tribes can be proud of the efforts over the past 20 years to ensure that coalfield citizens and the environment are protected during coal mining operations and that mined lands are reclaimed. Permitted acreage has increased fourfold, production levels have doubled, and public demands for environmental compliance have increased, resulting in a continuing workload for OSM, the States and the Tribes.

This year's budget is the first submitted in our new business line structure. The new structure, submitted to, and coordinated with, the Department of the Interior, the Office of Management and Budget, and Congressional committees, better reflects the way OSM carries out its mission and goals. This business line structure will help OSM to fulfill the intent of the Government Performance and Results Act of 1993 (GPRA). OSM is working to meet the GPRA requirements through a business line-based accounting system to better determine the cost of each program activity, provide a mechanism for linking costs to performance outputs, and enhance OSM's management decision-making process.

Environmental Restoration

The Environmental Restoration business line involves all functions that contribute to reclaiming lands affected by past coal mining practices. It provides for the use of Abandoned Mine Land (AML) reclamation funds to protect public health, safety, and general welfare from extreme danger and adverse effects of past coal mining practices. It also restores land and water resources and the environment previously degraded by these practices. In addition, OSM provides funding for the Appalachian Clean Streams Initiative within this business line.

Funding in this business line totals $166.2 million, an increase of $0.6 million over the FY 1997 enacted level. In addition to uncontrollable cost increases, an additional $1 million is provided for the popular Appalachian Clean Streams Initiative. Currently, there are over 75 State, Federal, and local organizations who have joined together in reversing the detrimental impacts of acid mine drainage on local communities. The Appalachian Clean Streams Initiative increase is offset by a modest decrease in regular reclamation grants which will still continue to fully fund ongoing reclamation projects as well as new projects.

Under the Clean Streams initiative, OSM provides seed monies which can be leveraged by contributions from other partners. For example, $140,000 of OSM monies in Tennessee are being leveraged by an additional $226,O00 coming from five other partners in addition to other "in-kind" assistance. Additionally, in Indiana, $325,000 in Clean Streams funding recently was allocated to the Patoka River Project. The State and the Patoka South Fork Watershed Steering Committee already have obtained over $35,000 from the Environmental Protection Agency, Pike County and local businesses. Additional funding proposals are pending.

On our twentieth anniversary, the results of our efforts are clearly visible; yet much remains to be done. Of the $3.6 billion in high priority reclamation costs currently identified, only one-third have been completed leaving an outstanding $2.3 billion in direct reclamation needs still to be addressed. Moreover, there are $1.7 billion of known lower priority problems which remain unreclaimed.

Environmental Protection

This business line involves the oversight of State programs and the operation of Federal and Indian programs. As with the Environmental Restoration business line, the principal means of delivering environmental protection within the framework of the SMCRA are through providing regulatory grants to the States to operate State regulatory programs. Other important programs and activities supported by this business line include State program oversight through the inspection and evaluation processes and the operation of the Applicant/Violator System.

In cooperation with State regulatory authorities, in 1996 OSM implemented a new, innovative results based oversight strategy. Under the re-engineered oversight policy, OSM's oversight activities primarily focus on end results and the on-the-ground success of States in meeting SMCRA's environmental protection and public participation goals.

Funding in this business line totals $72.3 million, a decrease of $0.3 million from the FY 1997 enacted level. The request provides for uncontrollable cost increases and a small decrease of $500,000 (less than 1%) in State regulatory grants made possible by anticipated cost savings as States adopt the new inspection frequency guidelines.

The request also includes a $0.3 million decrease made possible by efficiencies in the issuance and assessment of civil penalty violations and the operations of the Applicant/Violator System. The regulations underlying the Applicant/Violator System

have recently come under scrutiny in the U. S. Court of Appeals for the District of Columbia Circuit.

OSM is shoring up remaining issues concerning its Ten-Day Notice (TDN) procedures. OSM's Ten-Day Notice Directive supplements the Federal Ten-Day Notice regulations by providing OSM field units with additional guidance on the use of TDN's. After considerable outreach to our customers, including the States, OSM developed a new draft directive to address situations related to programmatic issues and to clarify the standard of review used to assess State responses. The draft was available for public comment through February 28, 1997. We are now reviewing the comments.

To provide regulatory clarity and to respond to Congressional interest, OSM recently published in the Federal Register a proposed rule defining valid existing rights (VER) to coal where surface mining is otherwise prohibited. The proposed definition, the most stringent OSM believes the courts will support, is a good faith/all permits standard. The proposed rule, when adopted, will establish a clear Federal standard.

OSM also released a related proposal clarifying the effect of subsidence from underground coal mining in specially protected areas. This related proposal responds to a court directive regarding OSM's previous effort to incorporate into regulations the Department of Interior's legal opinion that subsidence is not a "surface coal mining operation", as defined in SMCRA, subject to certain statutory prohibitions that apply to surface coal mining operations.

In coordination with other Departmental bureaus, OSM performs various regulatory duties on Tribal lands. To enable Tribes to assume primacy under SMCRA, OSM will continue to work with the Tribes to develop necessary legislation, provide the technical assistance needed to develop Tribal regulations, and provide technical expertise.

Technology Development & Transfer

This business line provides the resources necessary to operate the Technical Information Processing System (TIPS), technology transfer, the technical training program, and supports COALEX, a computer-assisted library search service. TIPS provides OSM and State users various scientific and technical data to assist in mine review and permitting, reclamation design efforts, and hydrologic and environmental assessments.

The budget request of $11.2 million is a net decrease of less than $0.1 million from FY 1997. The budget provides for uncontrollable cost increases and savings associated with the completion of one-time equipment replacement costs.

OSM's technical training program is a successful example of State-Federal cooperation. States and OSM cooperatively identify needs and prepare courses; both provide instructors for the various course offerings. In FY 1997 and 1998, OSM plans to hold fifty sessions of twenty-five course offerings that will reach about 1,000 students yearly. About seventy percent of the course attendees are State and Tribal employees.

In 1996, OSM also provided States with technical assistance by conducting forums on bond releases in the arid and semi-arid regions of the West, and entering into MOUs with Montana, Utah, and Wyoming to exchange and share environmental data used in permitting, regulating mining and facilitating reclamation bond releases. Future forums planned to aid OSM and the States include prime farmland reclamation and electronic permitting.

Financial Management

This business line includes the costs of collecting, managing, disbursing and investing abandoned mine land reclamation fees. It also includes the full range of audit, billing and collection processes. It also finances the costs of collecting receivables including civil penalties from operators, as well as other administrative collections.

During the past year, FY 1996, OSM collected over $256 million in AML receipts and managed the earning of $69 million in investment interest for the AML fund. It is estimated that approximately $340 million will be collected and earned in FY 1998.

The budget request of $6.1 million, a net decrease of $0.4 million, includes an increase for uncontrollable costs and decreases made possible by the continued outsourcing of delinquent debt collection functions ($150,000) and prudent management of all available funds, including use of no-year funds which have been carried over from prior years allowing current year appropriations to be decreased ($400,000).

Since enactment of the Chief Financial Officers Act of 1990 all financial management activities have been audited as prescribed. OSM has received clean audit opinions from the Office of the Inspector General for the past six years.

Executive Direction & Administration

Funding in this business line totals $15.2 million for the executive direction, administrative support and general services for all of OSM. This funding level represents a net decrease of $0.6 million from the FY 1997 level. The budget request includes program decreases ($541,000) and uncontrollable cost decreases ($13,000). The program decreases reflect the continued impact of the recent downsizing, as space is finally relinquished per General Services Administration guidelines and other support costs continue to level out.

Summary

Over the twenty year period since SMCRA was enacted, OSM's appropriated funding and FTE levels have fluctuated in ways reflective of program maturity, and in response to specific program challenges and events. For example, as recently as 1995, OSM had 989 FTE's compared with its current level of 674 FTE's. Our current request will allow OSM to ensure that the objectives of SMCRA continue to be achieved.

STATEMENT OF CAROLITA KALLAUR, ASSOCIATE DIRECTOR FOR OFFSHORE MINERALS MANAGEMENT, MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Madam Chairman and Members of the Subcommittee, the Minerals Management Service (MMS) appreciates the opportunity to testify today on its Fiscal Year (FY) 1998 budget request. This request reflects our best assessment of monies needed to carry out critical MMS programs during the upcoming year.

In general, MMS is requesting $205.040 million, which is approximately $.6 million more than that appropriated in FY 1997. In formulating its request, MMS looked closely at its ongoing operations and recently increased responsibilities. The MMS budget request for FY 1998 reflects the need for additional funding balanced against savings gained from past and ongoing efforts to streamline operations and find more efficient ways of doing business. The remainder of this testimony will focus on some of our more recent efforts to streamline and improve our operations; challenges and opportunities confronting the agency; and an overview of funding requested to meet those challenges.

Background

Prior to discussing MMS's budget request in some detail, it is important to put that request into perspective by providing a brief overview of the agency and its programs as well as the benefits derived from those programs. MMS is responsible for two major programs within the Department of the Interior—the Royalty Management Program (RMP) and the Offshore Minerals Management Program (OMM). As such, all mineral revenue collection and distribution functions on both Federal (onshore and offshore) and Indian lands are centralized within the bureau. Further, the leasing and oversight of minerals operations on the Nation's Outer Continental Shelf (OCS) also are centralized in MMS. Together, these programs contribute significantly to the Nation's economic well-being and energy security.

From an energy standpoint, MMS currently manages more than 27 million acres of offshore Federal lands. Production from those lands account for approximately 25 and 15 percent, respectively, of our domestic natural gas and oil production.

From an economic standpoint, in FY 1998, MMS will account for an estimated $6.7 billion in Federal receipts, including $5.5 billion from OCS receipts and $1.2 billion in onshore receipts. From a taxpayer's perspective, that converts to:

*$4.3 billion deposited to the General Fund of the Treasury to pay for Federal programs and reduce the deficit;

*$581 million in mineral revenue payments made to onshore States;

*$119 million in shared natural gas and oil receipts with coastal States;

*$74 million to Indian tribes and allottees;

*$900 million transferred to the Land and Water Conservation Fund;

*$458 million credited to the Reclamation Fund; and

*$150 million transferred to the Historic Preservation Fund.

Finding Better and More Efficient Ways of Doing Business

Although MMS is only 15 years old, a hallmark of the agency has been its ability to evolve in response to a changing business and governmental climate. In response

to those changes, and due to a desire to continually improve on the way it does business, MMS has devoted a significant amount of attention to developing a long-range vision for the agency in light of its missions and responsibilities. Further, we have looked and are continuing to look for better ways to carry out our programs more effectively. The goals of these efforts are several: to make the agency more efficient, thereby better utilizing limited resources; to be more responsive to our customers; and to better position ourselves to anticipate and meet new challenges that inevitably arise.

With regard to long-term planning, MMS developed and issued its first strategic plan—MMS 2000. As a direct result of that planning process, the agency recently implemented a reorganization plan that reduces management layers and realigns several functions to better coordinate program activities. In addition, MMS is in the process of finalizing its plan under the "Government Performance and Results Act," which will include quantifiable performance goals and measures that will be incorporated into all levels of management. Taken together, these two major initiatives provide the basic framework to guide our efforts towards achieving the goals listed above.

As part of this strategic planning, MMS has been aggressive in analyzing its processes and procedures to make them more efficient and to be more responsive to our customers. Examples of some more recent efforts and accomplishments are listed below.

Royalty Management Program

For several years, MMS has dedicated itself to improving the various RMP functions it performs to collect, verify, and distribute mineral revenues received from Federal lands. This effort has paid off, not only for MMS but also for its various constituencies, particularly onshore States, which receive roughly 50 percent of the revenues derived from Federal onshore mineral leases located within their State boundaries.

For example, in FY 1991—the first year a portion of the Federal Government's administrative costs associated with onshore mineral leasing and collection activities were deducted from payments to States—overall administrative costs were approximately $135.8 million, and about 41 percent of those costs were associated with MMS royalty management functions ($56.2 million). However, by FY 1997, overall administrative costs have decreased roughly 16 percent—to $113.8 million—and about 31 percent of those costs are now associated with RMP functions ($34.5 million). During this interval, MMS has reduced its share of administrative costs by over 37 percent.

Other efforts include—

•Simplifying various RMP processes and procedures. For example, MMS has—

*Removed a substantial reporting burden on industry by eliminating most allowance-form filing requirements. The associated costs savings are estimated at about $500,000 per year. In 1996, MMS published a final rule streamlining filing requirements and changing associated penalties.

*Refined its policy with regard to recouping royalty overpayment for Federal offshore mineral leases. This policy, which raises the de minimis reporting requirement and allows companies to recover overpayments below the de minimis from future royalty payments, will cut paperwork on this issue by over 50 percent. The associated cost savings are estimated at about $230,000 per year.

*Offered a variety of electronic reporting and payment options to customers. The ultimate goal of this effort is to receive 100 percent of incoming reports electronically, with an expected savings of over $1 million when fully implemented.

•Working closely with our various constituencies. For example, MMS has—

*Completed a 2-year project to expand the RMP dedicated wide-area network to the 17 State and tribal sites that have audit agreements with MMS. This effort provides State and tribal auditors with the means to retrieve royalty revenue data faster and allows for a more complete information exchange with RMP personnel.

*Installed a client-server computer application system which is a powerful, easy-to-use tool that greatly enhances access to RMP data. MMS personnel, State and Indian customers can now access up to 6 years of mineral revenue data and all lease information residing on the RMP databases.

*Coordinated, in conjunction with BLM and BIA, a "one-stop shopping" approach to Indian mineral services in a 2-year pilot program in the Farmington, New Mexico, office (which is one of three MMS offices dedicated to servicing the Indian minerals community).

*Instituted an Indian Royalty Internship program, which is designed to provide tribes the opportunity to learn all facets of the RMP, thereby enabling them to make

informed decisions concerning the assumption of functions currently performed for them by the Federal Government.

*Worked closely with the Royalty Policy Committee on a variety of royalty policy and operational issues. This advisory Committee to provide input from affected parties on important policy questions. The Committee includes representatives of States, tribes, Indian allottees, industry, Federal agencies, and the public.

Offshore Minerals Management Program (OMM)

Over the past several years, the offshore program has moved to a more focused leasing program (Gulf of Mexico and certain areas offshore Alaska), with a concentrated emphasis on the safe and environmentally sound development of about 6,500 existing leases (primarily in the Gulf of Mexico, but also certain areas of Alaska and a very small area offshore California). This focus has allowed MMS to reduce its offshore workforce by over 28 percent and to redirect critical resources to the Gulf of Mexico, where the vast majority of exploration and development is occurring.

In line with this shift of focus, the agency is instituting changes aimed at making the program more efficient and effective while maintaining its excellent environmental and safety record. Several of the more recent efforts and accomplishments are listed below.

•Simplifying various OMM processes and procedures. For example, MMS has—

*Re-engineered the regulatory program to be more performance-based and less prescriptive. Also, MMS has instituted a voluntary Safety and Environmental Management Program (SEMP).Through this program, MMS is collaborating with industry to develop company-specific plans that will better facilitate innovations while still ensuring safety and environmental protection.

*Streamlined the EIS process so that documents will be shorter (by about 25 percent) and more readable while still containing all the information needed for making informed decisions. This new procedure will be used for all EIS's beginning in 1997. In the Gulf of Mexico, EIS work for the period 1997-2002 will be reduced by 80 percent due to these streamlining measures.

*Revised existing regulations related to offshore bidding systems for new leases that will give the Secretary more discretion to set royalty terms which adjust automatically to changing market conditions.

*Eliminated redundant oil spill reporting requirements so that operators will no longer be required to report to both MMS and the Coast Guard spills of less than one barrel. Instead, MMS has arranged to have the Coast Guard forward such reports and only require operators to report spills of more than one barrel. This change will reduce this reporting burden to both MMS and industry by 95 percent.

•Working closely with our various constituencies. For example, MMS has—

*Finalized the first OCS 5-Year Oil and Natural Gas Program (1997-2002) that is consensus-based. This effort will allow industry access to OCS resources to help meet the Nation's energy needs while minimizing future conflicts concerning appropriate areas to lease.

*Worked to resolve conflicts, and created and maintained a stable regulatory regime which has contributed to the positive business environment which has allowed natural gas and oil production to double (up to more than 185,000 barrels per day in 1996) from existing Pacific region leases since 1985 through cooperative efforts with local governments, State government, and industry, including the creation of a Tri-County Forum to address and resolve various issues related to the development of existing leases.

*Devised a multi-constituent effort to address issues associated with implementing the financial responsibility provisions of the Oil Pollution Act (OPA).This effort resulted in amendments to OPA in 1996 which reflected the recommendations made by the special group.

*Established an Alaska OCS Region Offshore Advisory Committee, which will provide the forum for planning for each of the Alaska lease sales proposed in the 1997-2002 OCS 5-Year Program.

*Completed an atlas series (in conjunction with the Department of Energy, the Gas Research Institute, and the University of Texas Bureau of Economic Geology) on Gulf of Mexico offshore natural gas and oil fields. The database includes a wide variety of geologic and other information on more than 1,100 fields and 22,000 reservoirs.

Future Challenges and Opportunities Facing MMS

Based on past strides that MMS has made to become a more efficient, yet responsive agency, as well as its willingness to continually look for ways to become even more efficient, it is in an excellent position to favorably respond to new challenges.

Listed below is a brief overview of some of those challenges. However, it is important to note that while these issues will demand the agency's full attention, MMS also views these as opportunities to more fully advance its mission and to further enhance our vision of becoming the best minerals manager.

Royalty Management Program

As you can see from some of the examples listed above, MMS, and in particular the Royalty Management Program, has been aggressive in scrutinizing its processes in order to streamline and improve them. While this effort has already paid dividends, there are several ongoing efforts which will help the program achieve even more dramatic efficiencies. For example—

•Implementation of the "Federal Oil and Gas Royalty Simplification and Fairness Act" (RSFA)

The RSFA was enacted in August 1996 and will significantly impact the way MMS conducts its management of mineral revenues as well as how it interacts with its State and industry customers. In general, the Act provides:

—the framework for additional delegations of certain royalty functions to States, subject to Secretarial discretion.

—a 7-year statute of limitations for all royalty collections and limitations on industry liability, and a 33-month limit on all administrative appeals.

—the payment of interest on overpayments.

—assurance of cost-effective audit and collection activities.

—repeal of offshore refund requirements and streamlined adjustment procedures.

MMS is committed to fulfilling the mandates of the Act and has developed a plan for implementing RSFA changes within the time frames required by law. We estimate that full implementation of this legislation will take approximately 3 years from the date of enactment of the law (8/96) and will require extensive efforts during that time. However, after that time we expect that the various provisions of the law, combined with some of the efforts listed below, will help result in further program efficiencies.

•Royalty Management Program (RMP) Reengineering Project

MMS recently began a major project, which will continue in 1997, to intensively evaluate strategies to ensure that mineral lease revenues are paid on time and accurately. This comprehensive effort will involve several aspects: 1) implementation of systems and operational changes related to the RSFA; 2) evaluation of royalty management processes and automated systems to meet future requirements; 3) development of the best and most cost-effective operational strategies and organizational structures for the future; and 4) implementation of short and long-term systems and process changes.

•Recommendations of the Royalty Policy Committee

The Committee was formed in FY 1995 as part of the Minerals Management Advisory Board and acts as a sounding board for new procedures and policies. The Committee subsequently designated eight subcommittees to look at wide range of issues associated with the royalty collection process—royalty reporting; audit; appeals and alternative dispute resolution; disbursements and Net Receipt Sharing; valuation; and phosphate, trona and leasable solid minerals. All eight subcommittees have presented either final or interim reports. These reports contain recommendations addressing major policy issues or ways to improve existing RMP operational procedures. MMS is committed to implementing as many of these recommendations as is feasible and is also considering these in the context of implementing RSFA requirements.

•State Benchmarking Study

MMS recently completed a benchmarking study which describes and analyzes the functions performed and costs incurred by four selected States to manage royalties generated from leases on State-owned lands. The primary objective of this study is to identify State "best practices" for potential adoption by MMS as part of its RMP Reengineering Project.

•Oil and Natural Gas Valuation Regulations

MMS is in the process is revising the way in which it calculates the value of these two products and has worked extensively with a broad array of our customers to incorporate their ideas and concerns into our rulemakings. The purpose of both rulemakings is to simplify royalty payments; make valuation methods responsive to modern market conditions; offer the industry more flexibility; reduce administrative costs; and maintain revenue neutrality.

Taken in concert, the initiatives listed above will help MMS become even more cost efficient and will allow us to redirect our budgetary resources during FY 1998 to areas where we are seeing a dramatic increase in responsibilities.

Offshore Minerals Management Program

One of the most significant events to occur in the history of the OCS program is the dramatic rise in interest in the Gulf of Mexico by the natural gas and oil industry that has been occurring during the last several years. Further, this interest is expected to increase further due to a variety of factors—favorable economics; new discoveries in the deep water areas of the Gulf; renewed interest in some of the more shallow waters due to discoveries in "sub-salt" areas; and the use of new technology to extend the life of current fields and accurately find new ones. While this is a very positive occurrence in terms of the Nation's economic and energy well-being, it also presents MMS with many challenges.

•Increased Responsibilities in the Gulf of Mexico

Currently, there are over 6,500 active leases in the Gulf of Mexico. Bidding on leases increased by more than 155 percent from 1993 to 1996. During the same period, production rates have risen by more than 16 percent (to about 1.1 million barrels per day). In the next few years, this rate is expected to increase even more dramatically, due in part to passage in 1995 of the "Deep Water Royalty Relief Act." In 1996 (the first year the provisions of the Act applied to new leases), a record number of tracts were leased in the Central and Western Gulf of Mexico sales—approximately 1,500—with bonus bids of about $1 billion going to the Federal Treasury.

MMS estimates that by the year 2002, oil production will increase roughly 70 percent—to about 1.7 million barrels per day. During that time, natural gas production is expected to remain steady (about 13 billion cubic feet per day) or increase slightly, and by the year 2007, production could rise to as high as 17.2 billion cubic feet per day.

With this dramatic upsurge in interest comes the responsibility to continue to properly manage industry activities and to ensure that the environment is protected. MMS will face increased leasing-related responsibilities ranging from assuring that the Federal Government receives fair market value for tracts leased to review of industry exploration and development plans and increased lease monitoring responsibilities, such as scheduled and unscheduled inspections of operations. To gain some perspective on this increased workload, a table showing the increasing Gulf of Mexico workload from FY 1992–FY 1998 is depicted below:

GULF OF MEXICO OCS ACTIVITIES FY 1992 - FY 1998

Gulf of Mexico OCS Activities FY 1992 - FY 1998

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997*	FY 1998*
Industry Activity							
Total Active Leases				5,000	5,196	6,500	8,300
Exploratory Wells Drilled	210	318	387	361	446	460	480
Plans of Exploration/Development	407	572	719	711	768	800	850
Deepwater Operations Plans	-	-	-	-	13	40	50
MMS Gulf of Mexico OCS Region Activity							
Environmental Assessments	203	231	198	145	236	245	260
Categorical Exclusion Reviews	733	927	1,143	1,138	1,196	1,350	1,500
Air Quality Reviews	355	602	1,148	1,255	998	1,400	1,600
Archaeological Reviews	488	406	648	664	740	900	1,000
Oil Spill Plan Reviews	589	851	752	879	604	1,100	1,200
Inspections	7,500	9,100	9,900	10,500	10,600	11,600	12,700
G&G Permits Processed	126	126	135	96	126	140	

* projected

•Ongoing Responsibilities Offshore Alaska and the Pacific

Even though the bulk of OCS leasing, exploration and development has occurred, and will continue to occur, in the Gulf of Mexico, MMS is responsible for conducting important leasing activities offshore certain areas of Alaska and for overseeing the development of resources from existing leases offshore California. During the timeframe 1997-2002, there are five lease sales scheduled for areas offshore Alaska. Furthermore, due to past exploration efforts, there is a good chance that the first Federal OCS production offshore Alaska could occur by 1999.

In addition to managing Alaska OCS leasing and operations, MMS must continue to devote an appropriate level of resources to addressing and overseeing various issues associated with ongoing and potential future OCS operations offshore California. Because of a past dedication to these issues and a willingness to work in collaboration with the State of California, local governments, and industry, MMS has helped facilitate a significant increase in oil production coming from existing leases. However, there are currently 40 existing, but still undeveloped, leases offshore California. MMS is committed to continuing its collaborative efforts with its stakeholders in an effort to determine if those leases can be developed in an acceptable manner.

Overview of MMS's FY 1998 Budget Request

In recognition of the Administration's commitment to balance the budget, the business pressures and opportunities for which MMS has stewardship, and the need to continue to improve the operations of the organization, MMS has crafted a budget request primarily refocusing some of our resources to the Gulf of Mexico in support of increased leasing, exploration and developmental activities.

Industry enthusiasm is projected to remain high and be reflected in future lease sales. Because of the lag time between the issuance of new leases and the MMS workload associated with a lease, the Offshore program is now beginning to encounter increased work associated with its 1995 and 1996 highly successful lease sales. By 1998, the enormous increase in the number of active leases in the Gulf of Mexico will require a redirection of resources to ensure MMS's capacity for managing the Offshore program in a safe and environmentally sound manner and for assuring the public a fair return on the sale of oil and gas leases.

The record-breaking results of recent lease sales in the GOM, particularly in deeper waters, have placed a heavy demand on our efforts to ensure the safe and environmentally sound development of the OCS, to service the needs of our stakeholders in a timely manner, and to assure the public a fair return on the leasing of OCS minerals. Deep water operations are vastly different from conventional operations in shallower waters of the shelf. Deepwater operations also are much farther from shore, encounter different environmental conditions, are technologically more sophisticated, produce at much higher rates, and are subject to different economic determinants. These differences will significantly impact the MMS's workload and present many technical and regulatory challenges.

Therefore, MMS's Leasing and Environmental Program is requesting additional funding to the Environmental Studies Program (+$1,526,000) and additional personnel to process the administrative reporting and permitting requirements (+$375,000 and +6 FTE). These increases are partially offset by a decrease of $375,000 (and -6 FTE) which is possible because of successful efforts to streamline and make the Offshore program more efficient. For example, we are focusing leasing activities only on those areas currently experiencing OCS activities or areas with the near term potential for OCS activities.

Industry geological and geophysical (G&G) permit requests have increased to their highest level ever. MMS will need to acquire new geologic and geophysical data (+$1,100,000) and correct and computerize historical well log data (+$1,200,000). An additional increase (+$300,000 and +4 FTE) is necessary for geologic and geophysical evaluations for new leases under the Deep Water Royalty Relief Act. This increase will give us the means to more accurately evaluate bids and royalty relief applications to ensure that the public receives fair market value on offshore leases and to continue to responsibly respond to surety requirements, safety precautions and conservation practices. Because the 1997–2002 Five Year Plan lease sale program contains no Atlantic lease sales, and through efficiencies through the establishment of a centralized data and information collection unit in the Gulf of Mexico, MMS is able to propose a reduction of $300,000 (and -3 FTE).

MMS also needs to expand the inspector team and support increased helicopter use to maintain inspection rates over more offshore facilities and drilling operations, many of which are located great distances from land. MMS is receiving more exploration, development and deep water operating plans and pipeline applications for review and action that requires us to do more environmental assessments, categor-

ical exclusions and platform structural analysis. In order to continue to respond on a timely basis, the increased workload associated with document and application reviews and permitting required in the post-lease process must be addressed. In total, the Regulatory Program will require an additional $1,890,000 (+18 FTE) to accomplish these tasks. However, this funding increase will be partially offset by savings of $746,000 (-3 FTE) derived from a combination of buyouts and streamlining initiatives, as well as non-recurring FY 1997 costs associated with the acquisition of local area/wide area network hardware and software.

As I mentioned earlier in my testimony, MMS has been diligent in identifying more efficient and effective methods of doing business. Those efficiencies make it possible for us to shift our limited resources to those areas where we will see a marked upswing in work.

For example, efficiencies gained in the RMP have reduced resource requirements in that program area. The funding decrease, reflecting downsizing efforts, will be achieved through implementation of scheduled buyouts and a reduction in contractual support for mission operations. RMP has aggressively pursued streamlining, reducing management levels, and reducing staff support positions at divisional levels. The results of these efforts are fewer divisions, one less Deputy Associate Director, and fewer staff support levels. Through successful implementation of buyouts targeted to higher grades, these efforts have reduced requirements for FY 1998. MMS hopes to maintain the current high level of performance achieved though streamlining and improved efficiency of operations. We will continue to work to identify further efficiencies and to reengineer processes to help ensure high performance levels in the future.

Additionally, RMP has evaluated the cost efficiency of performing functions under contractual services versus in-house staff. By now performing some functions inhouse that were originally contracted out, RMP anticipates a significant reduction in these costs and significant savings overall (-$3,713,000 and -36 FTE).

Through comparable methods and techniques, the Executive Direction (-$87,000), Policy and Management Improvement (-$252,000) and Administrative Operations (-$571,000 and -3 FTE) reductions have been achievable.

General Support Services, which provides office space, telephones, mail, communication services etc., we estimate a net reduction in requirements of $724,000.

Summary

In summary, the MMS budget proposal:

•provides the necessary environmental studies, geologic and geophysical data, and historical well-log data to help MMS ensure that the Federal Government receives a fair return on the public's offshore mineral resources and possesses adequate information needed to protect the environment as it pertains to exploration, development and production of natural gas and oil on the Gulf of Mexico OCS;

•provides the resources necessary to ensure that increased operations in the Gulf of Mexico are adequately monitored, given the reality of a dramatic increase in the number of leases as well as in exploration and development activities;

•provides the opportunity for the Nation to increase production in the Gulf of Mexico while protecting the environment, with the resultant royalty income significantly contributing to the Administration's efforts to balance the budget;

•provides continued organization strides towards efficiency to support the public's desire for less government; and

•provides a government that manages its responsibilities through inclusive rather than exclusive involvement with the constituency it serves.

Madam Chairman, this concludes my testimony on the FY 1998 budget request for MMS. However, I will be pleased to answer any questions you or Members may have regarding any aspect of this request.

Page 62, Line 1310

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

July 10, 1991

M-36971

OSM.SM.V101

Memorandum

To: Assistant Secretary, Land and Minerals Management

Director, Office of Surface Mining Reclamation and Enforcement

From: Solicitor

Subject: Applicability of Section 522(e) of the Surface Mining Control and Reclamation Act to Subsidence

By memorandum dated January 4, 1991, you have requested our evaluation of the applicability of section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1272(e) (hereinafter "SMCRA" or "the Act"), to subsidence from underground coal mining. You stated that you are considering a notice of inquiry to request comments on the need for further rulemaking to address the surface effects of underground mining under section 516, and that you are also considering clarifying that section 522(e) does not apply to subsidence from underground mining.[1]

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[1] In 1985, the Office of Surface Mining Reclamation and Enforcement (hereinafter "OSM") advised the court in re Permanent Surface Mining Regulation Litigation (II), 620 F. Supp. 1519 (D.D.C. 1985), that it intended to undertake a rulemaking on this subject. The decision was announced in response to citizen plaintiffs' supplemental brief concerning OSM's interpretation of its section 522(e) buffer zone regulations at 30 C.F.R. § 761.11. See In re Permanent Surface Mining Regulation Litigation (II), 620 F. Supp. 1519, 1553 (D.D.C. 1985). Citizen plaintiffs' brief stated that their concern related to information from OSM officials that the rule did not bar all surface impacts, including all subsidence impacts, within the section 522(e) buffer zones. The decision was published in a Federal Register notice which recognized that there might be some lack of clarity as to what is a surface impact of underground mining subject to

(continued...)

Based on our evaluation of SMCRA, its legislative history, past regulatory actions on this issue, and relevant case authority, we conclude that subsidence from underground mining is properly regulated solely under SMCRA section 516 and not under section 522(e). For subsidence, section 516 gives all of the protection intended by Congress for the same environmental values served by section 522(e).

SUMMARY OF ANALYSIS

In any question of statutory interpretation, such as the one you have posed, the threshold question is always

> whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for . . . the agency must give effect to the unambiguously expressed intent of Congress. If, however, . . . the statute is silent or ambiguous with respect to the specific issue, the question . . . is whether the agency's answer is based on a permissible construction of the statute.

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-43 (1984) (hereinafter "Chevron, U.S.A.").

With respect to the applicability of section 522(e) to subsidence from underground mining, we conclude that Congress has spoken to the question at issue. Section 522(e) prohibits only "surface coal mining operations" within areas designated by Congress as needing special protection, subject to certain exceptions. Neither section 522(e) nor the definition of "surface coal mining operations" in section 701(28) mentions subsidence, nor does the legislative history of either provision. As is explained at length below, section 701(28) defines "surface coal mining operations" to include "activities conducted on the surface of lands . . . in connection with . . . surface operations and surface impacts incident to an underground mine." 30 U.S.C.

1/(...continued)
the prohibitions of section 522(e)(4) and (5). 50 Fed. Reg. 13250 (April 3, 1985).

OSM subsequently proposed a rule on this subject. 53 Fed. Reg. 52374 (December 27, 1988). The comments received on that proposed rule, and OSM's analysis of the issues, indicated to OSM that this was fundamentally a legal issue. OSM therefore decided to seek a formal Solicitor's Opinion on this matter. In light of the conclusion we have reached in this Opinion, no changes will be necessary in the regulations on this issue, at 30 CFR Part 761.

§ 1291(28)(A). Subsidence from underground mining results only from activities that take place below the surface of lands, not from activities conducted on the surface of lands. Therefore, logically subsidence from underground mining is not included in the definition of "surface coal mining operations."

Consistent with the exclusion of subsidence from the definition of "surface coal mining operations," Congress specifically addressed the regulation of subsidence in section 516. Section 516 authorizes the Secretary to promulgate regulations "directed toward the surface effects of underground coal mining operations." Section 516 is not directed solely toward "surface coal mining operations," but specifically includes subsidence. 30 U.S.C. § 1266.

Section 522(e), on the other hand, protects certain Federal, public, and private lands by prohibiting activities which are "surface coal mining operations." Since subsidence is not included in the definition of "surface coal mining operations," and is specifically regulated under section 516 without regard to that definition, the authority to address this important concern is expressly and exclusively contained in section 516.

Moreover, as discussed below, even if the above conclusions were not required by the terms of the statute and the legislative history, OSM would have ample authority to adopt the interpretation you are contemplating. That is, even if SMCRA were regarded as silent or ambiguous on this issue, OSM clearly could interpret SMCRA as regulating subsidence under section 516 and not under section 522(e). Chevron, U.S.A., supra.

BACKGROUND

The Surface Mining Control and Reclamation Act is a complex and delicately balanced piece of legislation that was developed over a number of years. Its development involved negotiation of compromises to address a series of highly controversial and difficult issues. Some of the hard-fought issues were resolved in relatively general terms, with the specific details left to the implementing agency, the Office of Surface Mining Reclamation and Enforcement.

Title V of the Act is the portion that sets forth the basic regulatory requirements for coal mining operations for which permits are required under the Act. Title V includes provisions which establish regulatory schemes for surface coal mining, underground coal mining, and protection of lands unsuitable for surface coal mining operations. This opinion discusses one of the ways in which these regulatory schemes interrelate.

Analysis of the structure of Title V and the Act as a whole confirms that Congress set out related but separate regulatory

schemes for surface and underground mining. The legislative history emphasizes that the differences in the nature and consequences of the two types of mining require significant differences in regulatory approach.[2] Congress had received ample testimony prior to the passage of the Act regarding the differences in both the nature and consequences of the two types of coal mining.[3]

For instance, Congress was aware that the types of environmental risks associated with underground mining are, for the most part, significantly different from those associated with surface mining. Environmental impacts associated with (pre-SMCRA) unregulated or unreclaimed underground mines included subsidence and hydrological problems that were hidden deep underground and not observable at the surface for an unpredictably long time. Such surface consequences could be severe and long-lasting. The problems in some cases remained fundamentally inaccessible or unchangeable because of adverse technological, geological and hydrological conditions.

By contrast, most of the impacts of unregulated pre-SMCRA surface mining resulted from surface activities that were more immediate and more readily observable, and the resulting conditions were relatively accessible for reclamation.[4]

Congress crafted regulatory programs in SMCRA at sections 515 and 516 to deal with the characteristic problems associated with each type of coal mining. Section 515 establishes the regulatory

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[2] See SMCRA section 516(a):

> The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations . . . : Provided, however, That in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground coal mining.

30 U.S.C. § 1266(a). See also SMCRA sections 516(b)(10) and (d), 30 U.S.C. §§ 1266(b)(10) and (d).

[3] See, e.g., H.R. Rep. No. 218, 95th Cong., 1st Sess. 59 (1977); S. Rep. No. 128, 95th Cong., 2nd Sess. 50 (1977); H.R. Rep. No. 1445, 94th Cong., 2nd Sess. 19 (1976); S. Rep. No. 402, 93rd Cong., 2nd Sess. 83 (1973); H.R. Rep. No. 1072, 93rd Cong. 2nd Sess. 57, 108 (1974); H.R. Rep. No. 1462, 92nd Cong., 2d Sess. 32 (1972); 123 Cong. Rec. 8083, 8154 (1977); 123 Cong. Rec. 7996 (1977); 123 Cong. Rec. 3726 (1977).

[4] See H.R. Rep. No. 1445, 94th Cong., 2d Sess. 20-22 (1976).

requirements for surface mining.[5] This section is implemented in large part at 30 C.F.R. Part 816.

Section 516 establishes the regulatory requirements for underground coal mining, including provisions for the control of subsidence from underground coal mining.[6] This section of SMCRA

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[5] Section 515 of the Act sets out the environmental protection performance standards for surface coal mining, including standards for backfilling and grading to approximate original contour; revegetation; reconstruction of prime farmlands; impoundments; augering; protecting the hydrologic balance; protecting fish and wildlife values; disposal of excess spoil, mine waste, and acid-forming and toxic materials; use of explosives; and construction of roads.

[6] SMCRA section 516 provides in relevant part:

> (a) The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under section 501 of this Act: Provided, however, That in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground coal mining . . . .
>
> (b) Each permit issued under any approved State or Federal program pursuant to this Act and relating to underground coal mining shall require the operator to--
>
> (1) adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: Provided, That nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining;
>
> . . . .
>
> (c) In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(continued...)

is implemented in large part at 30 C.F.R. Part 817, which sets forth the performance standards for underground coal mining.[7] The provisions concerning subsidence control in Part 817 include performance standards which require the prevention of material damage and maintaining the value and reasonably foreseeable use of surface lands, or using mine technology for planned subsidence in a predictable and controlled manner; compliance with the subsidence control plan; repair of material damage; and a detailed plan of underground workings.[8]

In addition to the regulation of surface and underground coal mining under sections 515 and 516, under section 522(e) SMCRA imposes certain prohibitions on surface coal mining operations on lands designated by Congress as unsuitable for those operations.[9] Congress determined that the nature and purpose of

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[6](...continued)

(d) The provisions of title V of this Act relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining . . . .

30 U.S.C. § 1266.

[7] The performance standards in 30 C.F.R. Part 817 include protection of the hydrologic balance, use of explosives, disposal of excess spoil and coal mine waste, backfilling and grading, revegetation, and subsidence control.

[8] 30 C.F.R. § 817.121 (1990).

[9] Section 522(e) provides, in relevant part, as follows:

After the enactment of this Act and subject to valid existing rights <u>no surface coal mining operations</u> except those which exist on the date of enactment of this Act shall be permitted--

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(continued...)

certain areas and land uses were incompatible with surface coal mining operations.[10] Therefore, SMCRA section 522(e) states

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[9](...continued)

(2) on any Federal lands within the boundaries of any national forest: Provided, however, That surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and--

(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1969, the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this Act: And provided further, that no surface coal mining operations may be permitted within the boundaries of the Custer National Forest;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

30 U.S.C. § 1272(e) (emphasis added).

[10] S. Rep. No. 128, 95th Cong. 1st Sess. 55 (1977).

that, with certain exceptions, surface coal mining operations are prohibited on or within specified distances of those lands and uses. The process for implementing section 522(e) requires a determination, as a prerequisite for permit issuance under section 515 or 516, whether a requester has the right to conduct a surface coal mining operation on such lands. See 30 C.F.R. § 761.12 (1990).

Under section 522(e), if a person who proposes to conduct a surface coal mining operation on lands protected by section 522(e) does not qualify for one of the statutory exceptions, then the person cannot conduct the intended operation on such lands. See 30 C.F.R. § 773.15(c)(3)(ii) (1990). The person is therefore ineligible to obtain a permit for the operation. On the other hand, if the person is entitled to an exception from the section 522(e) prohibitions for the intended surface coal mining operation, then the person is eligible to receive a permit under the appropriate section of SMCRA. Section 522(e) does not specifically mention subsidence as an activity subject to its prohibitions.

Section 522(e) is implemented primarily at 30 C.F.R. Part 761. That part provides definitions of key terms concerning SMCRA section 522(e) and describes the procedures to be followed in implementing the prohibitions of section 522(e).[11]

In section 701(28) of SMCRA, Congress defined the term "surface coal mining operations" as used in section 522(e) to mean, in pertinent part,

> activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, . . . and . . . the areas upon which such activities occur or where such activities disturb the natural land surface.

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[11] Part 761 was first adopted in 1979, as part of the Permanent Program rules. The definition of "valid existing rights" in that rulemaking has been subject to repeated rulemaking actions and court challenges concerning issues not directly relevant to the subject of this opinion. In re Permanent Surface Mining Regulation Litigation I, No. 79-1144 (D.D.C. Feb. 26, 1980), 14 ERC 1083, 1091; In re Permanent Surface Mining Regulation Litigation II, Round III--VER, No. 79-1144 (D.D.C. Mar. 22, 1985), 22 ERC 1557, 1564. OSM is currently contemplating further rulemaking to implement section 522(e), including a new definition of "valid existing rights."

30 U.S.C. § 1291(28).[12] Section 701(28) also does not specifically mention subsidence as included within its terms.

The issue we address in this opinion is whether the provisions of section 522(e), which expressly apply to "surface coal mining operations," should be construed as applying to subsidence from underground mining, which is not referenced in the definition of that term. Analysis of this issue requires an understanding of how a prohibition of subsidence under section 522(e) would affect the underground mining of coal in the United States.

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[12] Section 701(28) provides in full as follows:

"surface coal mining operations" means--

(A) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: Provided, however, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 512 of this Act; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

30 U.S.C. § 1291(28).

If section 522(e) were to apply to subsidence from underground mining, the operator would be required to plan the operation to preclude mining in all portions of the underground workings where mining would cause subsidence affecting a protected surface feature. The surface area affected by subsidence is usually considerably larger than the area actually mined underground. Because subsidence typically occurs in a funnel shape radiating upward and outward from the underground mine cave-in, any cracks or depressions on the surface may extend well beyond the area directly above the mine. Thus, to ensure that subsidence would not take place within a surface area specified in section 522(e), underground mine operations would be required to leave coal in place around each protected feature for a horizontal distance much larger than the protected area.

Traditional room and pillar mining can be conducted to avoid subsidence under protected features and areas, by leaving portions of the coal in place.[13] Because of the size and mobility of the mining equipment used, room and pillar mining can move from place to place in the underground workings.

Longwall mining is conducted with several large pieces of capital-intensive equipment.[14] This equipment is used to mine a contiguous series of straight panels of coal from an area that must be relatively large in order to be economically feasible. One longwall unit costs many millions of dollars. Longwall mining typically does not allow the operator to mine part of a particular panel, stop mining, move further down the panel, and

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[13] Room and pillar mining is a system of mining in which as much as 50 percent or more of the mineral is recovered in the first working as mining advances. The mineral is mined in rooms separated by narrow pillars. The coal in the pillars may be removed by subsequent working, in which the roof is allowed to cave in successive blocks. The first working in rooms is an advancing, and the removing of the pillar a retreating method. A Dictionary of Mining, Mineral, and Related Terms, U.S. Department of Interior 941 (1968).

[14] Longwall mining is a system of mining in which the mineral seam is removed in one operation from a long working face or wall that may be up to seven hundred feet in width. The panel from which the coal is removed may be 10,000 or more feet in length. The space from which the coal has been removed is allowed to collapse or is filled with stone or debris. Id. at 657; Merritt, As Time Changes, So Do Longwalls, Coal, February, 1991, at 40. Longwall mining operations using precursors to modern technology are reported as having existed in the United States as early as 1874. Culp v. Consol Pennsylvania Coal Co., No. 87-1688, Mem. Op. at 17 (W.D. Pa., May 4, 1989).

recommence mining. Each panel must be wide and long enough to yield enough coal removed in one straight line, to justify the time and expense involved in setting up to longwall mine that panel.[15] If there are numerous protected features on the surface, and if section 522(e) exceptions are unavailable for most features, a significant portion of the coal would be unavailable for recovery by the less flexible longwall method if section 522(e) applied to subsidence. As a result, application of section 522(e) to subsidence might severely impair or effectively prohibit longwall mining, particularly in the midwestern and eastern United States.[16]

In the past, OSM has not taken a definitive position on the issue of the applicability of section 522(e) to subsidence. In some documents, OSM has apparently taken the position that section 522(e) does apply to subsidence from underground mining.[17]

15/ See Stefanko, R., Coal Mining Technology 96-170 (1983); Thomas, L. J., An Introduction to Mining 237-291 (1973); Cummins, A. and Given, I., Mining Engineering Handbook Vol. I, Ch. 12 (1973); Olson, J. and Tandanand, S., Mechanized Longwall Mining: A Review Emphasizing Foreign Technology IC 8740 (1977); Katell, S., et al., Basic Estimated Capital Investment and Operating Costs for Underground Bituminous Coal Mines IC 8689.

16/ As of February 1991, there were 96 longwall mining operations reported operable in the United States. Merritt, As Time Changes, So Do Longwalls, Coal, February, 1991, at 40.

17/ In the 1979 rulemaking which first established permanent program rules under SMCRA, OSM dealt with this issue in two provisions. Concerning the definitions at 30 C.F.R. § 761.5, OSM rejected a comment that "surface operations and impacts incident to an underground mine" should be limited to subsidence. 44 Fed. Reg. 14990 (March 13, 1979). Such operations and impacts are permitted in some circumstances in National Forests under an exception to section 522(e)(2). The negative implication would appear to be that such operations and impacts (including subsidence) are otherwise prohibited by section 522(e).

In the preamble discussion of section 761.11(d), which concerned the prohibition on mining within 100 feet of the right-of-way of a public road, OSM accepted a comment that the 100 feet should be measured horizontally "so that underground mining below a public road is not prohibited." OSM stated its belief that mining under a road should not be prohibited "where it would be safe to do so." The negative implication from this last clause would appear to be that mining under a public road should be prohibited where it would be unsafe to do so, but the preamble does not discuss whether such prohibition would come from section 516 or from an

(continued...)

However, in its approvals of State regulatory programs, OSM has not required States to apply the lands unsuitable prohibitions to subsidence. In fact, OSM has accepted both the policy of some States not to apply the prohibitions to subsidence, and the policy of other states to apply the prohibitions only to subsidence causing material damage.[18] Because OSM arguably has taken conflicting or unclear positions in the past, you have proposed to develop a definitive position on this issue, and have asked us to give you clear legal direction as to whether OSM's preferred position is consistent with the Act.

DISCUSSION

The issue addressed by this opinion may be briefly summarized as follows: Is subsidence from underground mining properly regulated solely under the regulatory scheme of SMCRA section 516, or do the prohibitions in SMCRA section 522(e) also apply? This question involves the proper interpretation of three main SMCRA provisions. Specifically, the issue is the proper interpretation of the phrase "surface coal mining operations" as used in section 522(e) and defined in section 701(28). If this term includes subsidence, then section 522(e) prohibits activities that would cause subsidence from underground mining

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[17](...continued)
interpretation that section 522(e) prohibits subsidence that causes material damage.

See also letter of Patrick Boggs, Office of Surface Mining, to Ralph Albright, Jr., regarding Otter Creek Coal Co. v. United States, January 19, 1981; and Determination of Valid Existing Rights Within the Otter Creek Wilderness Area of Monongahela National Forest: Notice, 49 Fed. Reg. 31228, 31231, 31233 (August 3, 1984), characterizing subsidence as a prohibited surface impact under section 522(e); and Federal Defendant's Supplemental Memorandum on the Relationship Between Section 522(e) and the Surface Impacts of Underground Coal Mining at 8, In re Permanent Surface Mining Regulation Litigation II, No. 79-1144 (D.D.C. 1985).

[18] Statement of Interstate Mining Compact Commission Re Oversight Hearing on Subsidence Issues, Before the Mining and Natural Resources Subcommittee, Committee on Interior and Insular Affairs, U.S. House of Representatives, June 28, 1990; Proposed Revision to the Permanent Program Regulations Implementing Section 522(e) of the Surface Mining Control and Reclamation Act of 1977, Draft Environmental Impact Statement: OSM-EIS-29 (December 1990), prepared by U.S. Office of Surface Mining Reclamation and Enforcement, Table II-1 at II-4. Examination of these two documents indicates there is some confusion as to how States implement section 522(e) concerning subsidence.

within the protected areas. If the term does not include subsidence, then subsidence is regulated solely under section 516. Thus, to determine the proper interpretation of the phrase, we must look to and interpret section 701(28), as well as sections 516 and 522(e).

Based on our review of those sections, we conclude that the best reading of the law is that subsidence from underground mining is properly regulated under section 516, and not under section 522(e). This is consistent with the provisions of SMCRA and with the legislative history of the Act. Further, to the extent that there is uncertainty because of the unclear language of the Act, this interpretation is within OSM's reasonable discretion, under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984), as discussed below. This reading will promote the general statutory scheme of SMCRA and fully protect the public interest. With respect to subsidence, OSM has the authority under section 516 to protect the health, safety, and environmental values that underlie section 522(e).

While the definition of "surface coal mining operations" in SMCRA section 701(28) is not a clearly drafted provision, we believe that paragraph (A) of the definition includes only surface activities which are connected with a surface coal mine, and surface activities connected with those surface operations and surface impacts that are incident to an underground mine and that are subject to section 516.[19]

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[19] We have reviewed the argument that the "subject to" language of section 701(28)(A) means that the section 522(e) prohibitions are subservient to the provisions of section 516, so that section 522(e) cannot result in stricter prohibitions than section 516 imposes. This argument would effectively render section 522(e) a nullity with regard to surface activities of underground mining operations that are regulated and permitted under section 516. For example, under this argument, face-up or mine portal areas would be allowed within areas covered by section 522(e). We do not believe that this result was intended by Congress.

An alternative theory is that the "subject to" language is merely a cross-reference indicating which activities conducted on the surface in connection with an underground coal mine are surface coal mining operations, namely, those that are subject to regulation under section 516 of SMCRA. We believe that this theory, which comports with the plain meaning of the statutory provision, is the sounder theory. This conclusion is supported by H.R. Rep. No. 493, 95th Cong., 1st Sess. 113 (1977), which indicates that the phrase "subject to section 516" was added as a minor technical amendment in conference. The report makes no reference to any special significance for the phrase.

This interpretation is consistent with the description of the effect of section 701(28) in the Senate Report on the version of the definition that was adopted:

> "Surface [coal] mining operations" . . . includes all areas upon which occur surface mining activities and surface activities incident to underground mining. It also includes all roads, facilities, structures, property, and materials on the surface resulting from or incident to such activities . . . .

S. Rep. No. 128, 95th Cong. 1st Sess. 98 (1977) (emphasis added).

Under this construction, subsidence would not be included within the term "surface coal mining operations" because it is not an activity conducted on the surface of lands. Surface activities associated with surface operations incident to underground mining, and surface activities associated with surface impacts incident to underground mining would be included in the definition. This reading of subsection 701(28), however, would not mean that subsidence would be exempt from regulation under the Act, since Congress specifically provided for regulation of subsidence under section 516 of SMCRA.

Paragraph (B) of section 701(28) supports this interpretation. Paragraph (A) refers to "activities conducted on the surface of lands in connection with a surface coal mine or . . . surface operations and surface impacts incident to an underground coal mine . . . ." Paragraph (B) refers to "the areas upon which such activities occur or where such activities disturb the natural land surface" and to holes or depressions "resulting from or incident to such activities . . ." (emphases added). The only "activities" to which paragraph (B) could refer are those described in paragraph (A), namely those conducted on the surface of lands in connection with a surface coal mine or in connection with the surface operations and impacts incident to an underground coal mine.[20]

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[20] We recognize that at least one other parsing of the language of section 701(28)(A) is possible. Under that alternative reading, section 701(28)(A) would be read to apply to two categories of surface phenomena:

> [1] Activities conducted on the surface of lands in connection with a surface coal mine or [2] subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine . . . .

This parsing would require that the phrase "surface impacts incident to an underground coal mine" (in the second category) be

(continued...)

This interpretation that subsidence from underground mining is not a surface coal mining operation is consistent with the overall scheme of the Act. To begin with, Congress clearly intended that section 516 set forth comprehensive regulatory requirements for the surface impacts of underground mining, including subsidence.[21]

As noted previously, section 516(b) sets the foundation for a regulatory scheme intended to control subsidence to the extent technologically and economically feasible in order to protect the

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[20] (...continued)
read as independent of the words in the first category concerning "activities conducted on the surface of lands."

There are at least three problems with this parsing of section 701(28)(A). First, it would render the phrase "on the surface of lands" superfluous, since all "[a]ctivities conducted . . . in connection with a surface coal mine" necessarily occur on the surface of lands. The phrase only has meaning if it modifies "[a]ctivities conducted . . . in connection with . . . an underground coal mine . . . ."

Second, the remainder of paragraph (A) and all of paragraph (B) of this definition would not apply to underground coal mines, since those provisions refer back to the surface activities covered in the first sentence of paragraph (A). We do not believe Congress could have intended such a result.

Third, this construction would require the reader to conclude that the phrase "in connection with" was not intended to apply to surface operations and surface impacts incident to an underground coal mine. This result would conflict with OSM's position since the inception of the program that the term "surface coal mining operations" includes surface facilities operated in connection with an underground coal mine. The latter is a position which we regard as consistent with the Act and with legislative intent. This position was recently reaffirmed in a rulemaking concerning surface facilities in connection with an underground coal mine. 53 Fed. Reg. 47384 (November 22, 1988).

Consequently, we believe this alternative parsing is not a sound interpretation of the definition.

[21] See, e.g., H.R. Rep. No. 218, 95th Cong., 1st Sess. 93, 126 (1977).

value and use of surface lands.[22] Section 516(c) authorizes suspension of underground mining under urban areas and water bodies, when there is imminent danger to inhabitants. Section 516(c) applies in those situations in which an underground mine has been permitted because all applicable permitting standards, including standards for prevention of material damage, have been met, but actual underground mining poses a serious subsidence danger to inhabitants of urban areas and water bodies.

We believe, based on our reading of the language of section 516 and of the legislative history, that Congress intended section 516(c), in combination with other regulatory provisions under section 516, to offer sufficient prohibition, prevention, or repair of subsidence damage to those features that Congress considered vulnerable to significant impairment from subsidence. The existence of this comprehensive regulatory scheme in section 516 makes it unlikely that Congress also intended to prohibit subsidence under section 522(e).

The legislative history of section 516 contains ample references to Congress' focus on control rather than prohibition. The following is pertinent House Report language:

> Surface subsidence has a different effect on different land uses. Generally, no appreciable impact is realized on agricultural land and similar types of land and productivity is not affected. On the other hand when subsidence occurs under developed land such as that in an urbanized area,

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[22] 30 U.S.C. § 1266(b)(1). Implementing regulations concerning subsidence control are set forth primarily at 30 C.F.R. § 784.20 concerning subsidence control plan requirements, and 30 C.F.R. § 817.121 concerning subsidence control performance standards. Section 516(b)(1) contains language exempting planned, predictable, and controlled subsidence, such as that resulting from longwall mining. We conclude that this exemption language constitutes an exemption only from the requirement of section 516(b)(1) to prevent subsidence. Longwall mining is not exempt from the requirements to maximize mine stability and maintain the value and foreseeable use of surface lands. This reading of the Act's requirements is supported by the fact that a subsidence control plan is required for a longwall mining operation. This reading is also supported by the opinion of the U.S. Court of Appeals for the District of Columbia Circuit upholding OSM's regulations requiring repair of damage to land from subsidence. Those regulations, which are based in part on SMCRA section 516(b)(1), do not exempt longwall mining. See National Wildlife Fed'n v. Hodel, 839 F.2d 694, 739 (D.C. Cir. 1988). You have advised that OSM is currently contemplating a rulemaking that could address the issue of whether an operator has an obligation to prevent material damage from planned subsidence.

> substantial damage results to surface improvements be they private homes, commercial buildings or public roads and schools. One characteristic of subsidence which disrupts surface land uses is its unpredictable occurrence in terms of both time and location. Subsidence occurs, seemingly on a random basis, at least up to 60 years after mining and even in those areas it is still occurring. It is the intent of this section to provide the Secretary with the authority to require the design and conduct of underground mining methods to control subsidence to the extent technologically and economically feasible in order to protect the value and use of surface lands.

H.R. Rep. No. 218, 95th Cong., 1st Sess. 126 (1977) (emphasis added).[23]

In those extreme cases in which Congress felt that prohibition could be necessary, it provided broad authority under section 516(c):

> In order to prevent the creation of additional subsidence hazards from underground mining in developing areas, subsection (c) provides permissive authority to the regulatory agency to prohibit underground coal mining in urbanized areas, cities, towns and communities, and under or adjacent to industrial buildings, major impoundments or permanent streams.

S. Rep. No. 128 at 84-85. It is reasonable to conclude that Congress addressed specifically, in section 516(c), the limited types of surface features that might be so significantly affected by subsidence from underground mining that a subsidence prohibition could be appropriate.[24] This conclusion that

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[23] See also H.R. Rep. No. 1445, 94th Cong., 2d Sess. 71-72 (1976); H.R. Rep. No. 896, 94th Cong., 2d Sess. 73-74 (1976); H.R. Rep. No. 45, 94th Cong. 1st Sess. 115-116 (1975); H.R. Rep. No. 1072, 93rd Cong., 2d Sess. 108-109 (1974).

[24] We note that this interpretation is consistent with the fact that there is a relative dearth of legislative history discussing the types of harms or consequences which Congress intended to preclude in areas protected under section 522(e), and no reference to subsidence as an impact which was to be precluded in section 522(e) areas. In contrast, as noted above, there is abundant testimony and discussion in the legislative history as to both the need to control subsidence and Congress' intent to control subsidence under section 516. If all subsidence were prohibited by section 522(e), then that section would become as significant to SMCRA's regulatory scheme for subsidence as

(continued...)

prohibition was to be imposed solely under 516(c) is buttressed by the discussion in the House report quoted above, that subsidence has no appreciable impact on agricultural land and similar types of land. It is not necessary to impose the prohibitions of section 522(e) on subsidence because the surface features that might need such protection are covered by section 516(c).

This conclusion is also supported by the discussion in the 1977 Senate report on section 522(e) which notes that "surface coal mining" is prohibited within the specified distances of public roads, occupied buildings, and active underground mines, "for reasons of public health and safety." S. Rep. No. 128 at 55. If one of Congress' purposes in section 522(e)(4)-(5) was to protect public health and safety, prohibition of subsidence in all section 522(e) areas would be unnecessary. Irrespective of section 522(e), an underground mine must meet the requirements of section 516 to prevent material damage and to maintain the value and use of lands, and those requirements should prevent risks to public health and safety. Moreover, if an unforeseen subsidence danger were to arise, section 516(c) sets forth procedures to prohibit underground mining as necessary, providing a second level of authority allowing protection for public health and safety. Therefore, Congress had already addressed in section 516 those subsidence control measures necessary to address public health and safety.

Our interpretation is also consistent with Congress' intent to encourage underground mining and full coal resource recovery. The statute and legislative history express Congress' intent to "encourage the full utilization of coal resources through the development and application of underground extraction technologies." SMCRA section 102(k), 30 U.S.C. § 1202(k). Similarly, Congress found that

> it is . . . essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry.

SMCRA section 101(b), 30 U.S.C § 1201(b). In fact, there is evidence that Congress wished to encourage longwall mining in particular:

> Underground mining is to be conducted in such a way as to assure appropriate permanent support to prevent surface subsidence of land and the value and use of surface lands,

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[26] (...continued)
section 516. In fact, it would render section 516(c) largely superfluous. Yet the term "subsidence" does not even appear in section 522(e) or in its legislative history.

> except in those instances where the mining technology approved by the regulatory authority at the outset results in planned subsidence. Thus, operators may use underground mining techniques, such as long-wall mining, which completely extract the coal and which result in predictable and controllable subsidence.

S. Rep. No. 128, 95th Cong., 1st Sess. 84 (1977). See also S. Rep. No. 28, 94th Cong., 1st Sess. 215 (1975).[25]

Clearly, if subsidence is likely to occur from room and pillar underground mining and is a virtually inevitable consequence of longwall mining, then prohibiting all subsidence below homes, roads, and other features specified in section 522(e) would make it substantially less feasible to mine and would substantially reduce the level of coal recovery in areas where such features are common on the surface. Applying the section 522(e) prohibitions to subsidence would therefore frustrate congressional intent to promote underground mining.

To summarize the discussion thus far, a close reading of section 701(28), an analysis of the language and legislative history of section 516, and a consideration of the congressional intent in sections 101(b) and 102(k) all lead to the same conclusion--that the best reading of the law is that section 522(e) does not apply to mining activities conducted under the surface of lands, even if such activities lead to subsidence.

In December 1988, OSM proposed two alternative policies on the applicability of section 522(e) to subsidence. One proposal was that all subsidence would be subject to the prohibitions of section 522(e). The other proposal was that subsidence causing material damage would be subject to section 522(e). 53 Fed. Reg. 52374 (December 27, 1988). Because these theories have recently been given serious consideration by OSM, we evaluate them briefly in this opinion.

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[25] Congressman Udall, the bill's principal sponsor, commented on this issue as follows:

> The House Bill contemplates rules to "Prevent subsidence to the extent technologically and economically feasible." The word prevent led to fears expressed by the Secretary of the Interior Morton, that the effect would be to allow longwall mining, with its obvious subsidence. . . . In fact the bill's sponsors consider longwall mining ecologically preferable and it and other methods of controlled subsidence are explicitly endorsed.

120 Cong. Rec. 22731 (1974).

The first alternative proposal was based on the argument that subsidence is a surface impact of underground mining, that surface impacts of underground mining are surface coal mining operations under section 701(28), and thus that all subsidence is a surface coal mining operation prohibited under section 522(e). One problem with this interpretation is that subsidence may or may not cause surface damage. Congress did not intend to prevent subsidence that causes no surface damage. All of the congressional concern about subsidence from underground mining is expressed in discussions of the damage caused by subsidence, and Congress repeatedly recognized that there was little concern about subsidence that caused no significant damage to surface features or uses or to human life or safety.[20] Indeed, there is little reason to regulate or prohibit subsidence that does not impair surface features and uses and does not endanger human life or safety.

Application of the section 522(e) prohibition to all subsidence would be unnecessarily restrictive, in light of Congress' recognition that subsidence would cause no significant damage to agriculture and similar uses. Many of the types of features listed in section 522(e) are low-intensity uses that are similar to agricultural land uses in that they have low vulnerability to significant damage from subsidence.

This alternative was also based in part on the argument that, given the serious congressional concern about subsidence, it would be illogical to conclude that Congress did not intend to include subsidence within the definition of "surface coal mining operations" or that Congress would have allowed subsidence within the areas protected by section 522(e). We do not find this argument persuasive.

To begin with, under SMCRA, certain impacts of coal mining are subject to regulation even if they are not included in the definition of a surface coal mining operation and are therefore not subject to the prohibitions of section 522(e). For example, offsite water supply diminution and air and water pollution attendant to erosion are also specifically regulated under SMCRA, even though they are not surface coal mining operations per se. SMCRA §§ 515(b)(4) and 717, 30 U.S.C. §§ 1265(b)(4) and 1307. Therefore, it is not necessary to include subsidence within the definition of a surface coal mining operation in order to regulate subsidence under section 516.

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[20] H.R. Rep. No. 218, 95th Cong., 1st Sess. 126 (1977); H.R. Rep. No. 1445, 94th Cong., 2d Sess. 71-72 (1976); H.R. Rep. No. 896, 94th Cong., 2d Sess. 73-74 (1976); H.R. Rep. No. 45, 94th Cong. 1st Sess. 115-116 (1975); H.R. Rep. No. 1072, 93rd Cong., 2d Sess. 108-109 (1974).

Second, as noted above, there are no significant lapses in regulatory coverage under our reading of SMCRA, since subsidence is fully and specifically regulated under section 516. The requirements of the existing regulatory scheme for subsidence apply equally in areas covered by section 522(e) and in areas not so covered.

The second proposed alternative interpretation was that subsidence causing material damage is a surface coal mining operation subject to section 522(e). Proponents of this alternative contend that Congress intended that only subsidence that causes material damage be precluded. Prohibition of material damage would not preclude underground mining of all section 522(e)(4) and (e)(5) areas, because an operator could either negotiate a waiver of the prohibition or purchase the protected features.

We do not find the arguments for a material damage standard persuasive for several reasons. First, a material damage standard does not comport with the parsing of the definition at SMCRA section 701(28)(A), as outlined above, which we believe best gives meaning to all of the words of the statutory provision and therefore is the best and most defensible interpretation of the language of section 701(28).

Second, as outlined above, we conclude that Congress intended to regulate subsidence under section 516, rather than under section 522(e), as indicated by both the provisions of the Act and the legislative history. Application of a material damage test might cause significant costs and impairment of underground mining.[27] This is because section 516(b)(1) requires prevention of material damage only "to the extent technologically and economically feasible," while this interpretation of section 522(e) would require prevention of all material damage.

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[27] We have seen no firm or final conclusions as to the extent to which costs and impairment would occur. Review of a preliminary draft Environmental Impact Statement indicates OSM has initially determined that there would be no significant decrease in coal production from application of a material damage standard. Proposed Revision to the Permanent Program Regulations Implementing Section 522(e) of the Surface Mining Control and Reclamation Act of 1977, Draft Environmental Impact Statement: OSM-EIS-29 (December 1990), prepared by U.S. Office of Surface Mining Reclamation and Enforcement, at IV-51 - IV-54. To the extent that is true, interpreting section 522(e) as prohibiting subsidence causing material damage would add nothing to the protections already afforded by section 516(b)(1).

If subsidence causing material damage were prohibited, an operator would be precluded from causing subsidence except to the extent the operator could demonstrate that (1) although subsidence might occur under the protected features, no material damage would occur from the subsidence; (2) the operation would avoid mining within the area from which subsidence could damage the protected features; or (3) under the exceptions in section 522(e), the operator had, for example, obtained waivers from homeowners or permission from the regulatory authority concerning subsidence under public roads. To the extent that these requirements would significantly increase the costs of mining, or significantly decrease the amount of coal available for mining, the material damage standard also would frustrate the congressional intent to encourage full utilization of coal, to ensure an expanding underground mining industry, and to encourage longwall mining.[28]

Finally, to the extent there is confusion as to the meaning of the term "surface coal mining operations," an agency's interpretation of a statute it administers is entitled to great deference. OSM has indicated that it interprets section 516 to be the statutory basis for regulating subsidence from underground mining, and that it interprets section 522(e) as not applying to subsidence. This interpretation is a choice within the bounds of OSM's discretion because it is consistent with the Act and the legislative history, and it is therefore entitled to deference.

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[28] We note that either of the two alternative arguments discussed above could be accompanied by an independent argument that section 522(e) is not redundant of or in conflict with section 516(c), and that the two sections are complementary components of the SMCRA regulatory scheme. This argument asserts that section 516(c) covers subsidence that is actually taking place and creating a hazard to life or safety, while section 522(e) determines whether mining is permissible, to start with, in the specified areas. If mining is allowed in the specified areas under section 522(e) (e.g., because the operator establishes VER), and if the mining that then occurs creates a hazard to life or safety, then section 516(c) is applicable.

We do not find this line of analysis persuasive. It is true that section 522(e) and section 516(c) would not be coextensive in their coverage, assuming section 522(e) applied to subsidence. Nevertheless, there would be a substantial overlap between the two provisions. Moreover, as discussed above, we have concluded that subsidence was not intended to be addressed in section 522(e), and to apply the prohibitions of section 522(e) to subsidence would frustrate congressional aims in a way that is not mandated by the terms of the Act or its legislative history.

Since Congress has not made a clear determination, the agency has discretion to adopt a reasonable option for determining the applicability of section 522(e) to subsidence.

> [I]f the statute is silent or ambiguous with respect to the specific issue, the question . . . is whether the agency's answer is based on a permissible construction of the statute.

Chevron, U.S.A., 467 U.S. at 843. A reviewing court need not conclude that the agency's interpretation of the statute is the only permissible one, only that it is reasonable and not arbitrary, capricious, or contrary to law.[29]

Under section 516, OSM has ample authority to regulate surface effects of underground mining under existing regulations or under any additional regulations that OSM might reasonably conclude are necessary to implement the Act. There would be no regulatory hiatus if section 522(e) does not apply to subsidence. However, if OSM were to identify any environmental values or public interests that warrant additional protection, OSM has full authority under section 516 and other SMCRA provisions, to develop standards to protect such values or interests, without the disruption in the underground mining industry that would result from applying section 522(e) prohibitions to subsidence.

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[29] See National Wildlife Fed'n v. Hodel, 839 F.2d 694, 741, 748 (D.C. Cir. 1988):

> We . . . conclude . . . that, at best, the legislative history of [SMCRA] creates some ambiguity--perhaps enough to support [plaintiff's] position had it been adopted by the Secretary. But it is far from sufficient to constitute a specific legislative intent contradicting the Secretary's interpretation. Congress has evidently delegated to the Secretary the authority to flesh out the meaning of [this term], . . . and the Secretary has done so in an entirely reasonable fashion . . . .

Accord, National Wildlife Fed'n v. Lujan, No. 90-5114, slip op. at 10 (D.C. Cir. March 22, 1991):

> Because the SMCRA does not evince a clear congressional intent on the issue . . . , the question becomes whether the Secretary's regulation is based on a permissible interpretation of the Act and is not an arbitrary or capricious change in policy.

CONCLUSION

Based on the above analysis of the statute, the legislative history, OSM's regulatory actions implementing these provisions, and pertinent case authority, we conclude that OSM may properly regulate subsidence solely under section 516 of SMCRA and not under section 522(e) of SMCRA. Our conclusion that subsidence is properly regulated only under section 516 recognizes that regulation under section 516 may not have precisely the same effect as regulation under section 522(e). We believe that this result was intended by Congress, which sought to control rather than proscribe subsidence, and to encourage longwall mining. We believe that regulation under section 516 will achieve full protection of the environmental values which Congress sought to protect from subsidence under the Act.

Tom Sansonetti

Thomas L. Sansonetti

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April 9, 1997

The Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Babbitt:

I am writing to follow-up on issues discussed during the Subcommittee on Energy and Mineral Resources' Budget Oversight hearing held March 4, 1997. Attached please find additional questions for Dr. Gordon Eaton of U.S. Geological Survey; Ms. Katherine Henry of the Office of Surface Mining Reclamation and Enforcement; and Mr. W. Hord Tipton, Bureau of Land Management who testified at this hearing.

Thank you for your attention to these matters. If you or your staff need additional information, please contact the Subcommittee staff at 225-9297.

Sincerely,

Barbara Cubin

Barbara Cubin
Chairman, Subcommittee on
Energy and Mineral Resources

Attachment

Follow-up Questions for USGS

1. When and why did the Department of the Interior request an assessment of resource potential within the Arctic National Wildlife Refuge (ANWR) separate from the North Slope assessment released in 1995?

2. How much time and money was spent preparing that original ANWR assessment?

3. What type of assessment work is being conducted to verify this study, and when will this refined study be released? Will there be outside peer review of USGS methodology and conclusions before the estimates are published and announced?

4. Are there examples of other short-term assessments similar to the one done for ANWR? If so, please provide the area names, timing of those requests, and if longer term follow-up studies were performed.

5. Please compare and contrast the types of studies, methodologies, and assumptions used by the USGS to estimate undiscovered oil and gas resource potential on the Sec. 1002 lands of ANWR versus those employed by the Minerals Management Service for OCS lands adjacent to Alaska State waters immediately offshore of ANWR.

Follow-up Questions for OSMRE

1. Please provide an accounting of the agency's full-time equivalent employee staffing levels by office location and general duties, i.e., whether said staff are primarily employed in SMCRA Title IV work, Title V oversight or direct enforcement, or general administration. Please include any employees who are currently "on loan" to other agencies, state government or foreign governments and describe the source of any funding under which OSMRE is being compensated for their salary and overhead costs.

2. What is the current status of the *National Mining Association* v. *U.S. Dep't of the Interior* lawsuit concerning OSMRE's regulation on "ownership and control" for purposes of blocking permits under Title V of SMCRA? When will the agency revise its rules to conform to the appeals court decision if a writ of certiorari is not sought or is denied?

Follow-up Questions for BLM

1. Please provide the Subcommittee the status of any draft policy BLM may be considering to require "cost recovery" for agency work done preparatory to mineral leasing. These costs have traditionally been covered by requested appropriations (which may be thought of as monies derived from lease bonus bids, rentals and royalties), and often under current practice industry pays for third-party prepared environmental impact statements. Please explain the need or rationale for any further fees BLM may seek to charge to industry to defray the costs of leasing activities.

2. Does BLM view the process used by the Green River Basin Advisory Committee as "precedent setting" and will it be used in other areas of the country where balancing development and environmental initiatives are a concern?

3. What is the approximate amount of money the State of Wyoming contributes in the net receipts sharing costs? Please provide a detailed accounting by function and activity on what the BLM spends in the State of Wyoming.

○