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LAND-USE ISSUES ASSOCIATED WITH ONSHORE OIL AND GAS LEASING AND DEVELOPMENT

JOINT OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

JOINT WITH THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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OVERSIGHT HEARING ON "LAND-USE ISSUES ASSOCIATED WITH ONSHORE OIL AND GAS LEASING AND DEVELOPMENT"

Thursday, April 26, 2007
U.S. House of Representatives
Subcommittee on National Parks, Forests & Public Lands,
joint with the Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.

The Subcommittees met, pursuant to call, at 10:08 a.m. in Room 1334, Longworth House Office Building. Hon. Raúl M. Grijalva [Chairman of the Subcommittee] presiding.

Present: Representatives Grijalva, Costa, Pearce, Holt, Lamborn, Shuler, and Udall.

STATEMENT OF THE HONORABLE RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Let me call to order the joint hearing of the Subcommittee on National Parks, Forests and Public Lands, and the Subcommittee on Energy and Mineral Resources on land uses associated with onshore oil and gas leasing and development.

Our colleagues, the Ranking Members, will be here shortly. One is testifying and one is on the Floor, but we will begin with our opening statements and by the time we are done I think they will be arriving.

I am pleased today to join Chairman Costa in welcoming our witnesses and audience to this joint oversight hearing. Today's hearing will examine how the accelerated pace of oil and gas development on public lands in recent years is affecting other public uses and resources.

Today, we will hear from witnesses who have come a long way to tell us about what the oil and gas boom has meant to the ranchers, their homes, their health, and their livelihoods. Most have never testified before Congress. One is a living descendent of Chief Seattle, and another has never traveled east of the Mississippi. At least two of our witnesses have had to sell their homes because of oil and gas development that drove them off the land that they loved. Other witnesses will tell us of leasing operations that have been permitted to undermine Federal and state investments, and clean water, endangered species protection, and invasive species control.

It is not surprising that regular citizens can't get satisfaction out of BLM when they complain about the harm that their cattle,

property, and water is suffering. The BLM sometimes can't even be bothered to address concerns of the National Park Service, its sister agency in the Interior Department. I have here copies of numerous letters sent to BLM from park superintendents in Utah, Colorado, and New Mexico who wrote to express worries and possibly unacceptable damage to park resources.

The letters talk about threats to the park's pristine air and sparkling waters, to views of starlit night skies and majestic western panoramas, to the backcountry solitude, and the quiet that visitors treasure when they visit these sights, to the archeological jewels and to the wild creatures that call the parks their home. In most cases, the superintendents did not request that the parcels be withdrawn, merely that the leases be delayed until stipulations could be put in place to protect those park values.

In some cases, BLM made changes reflecting the parks' concerns. In others, BLM ignored the superintendents' pleas, belittled their concerns, or simply did not respond.

I would like to enter these letters into the record.

[NOTE: The letters submitted for the record have been retained in the Committee's official files.]

Mr. GRIJALVA. We also will hear today from a representative of the Western Governors' Association, which has called for the repeal of a provision in the Energy Policy Act of 2005, that exempted more than a thousand new permits to drill annually from any environmental review and public comment.

Industry supporters are always asking those who worry about the impact of oil and gas development if we drive gas-powered cars or heat our houses with natural gas. They imply that if we use oil and gas, we have no right to complain about how these products are produced. That is a false choice. Our irreplaceable natural resources and critical wildlife populations are paying the price not for our energy needs but for the lack of vigilance and oversight.

There are right places and right ways to develop our energy resources, and there are wrong places and wrong ways to undertake that development. Balancing energy production with the care of our parks, our wildlife, and the livelihoods of our Western citizens is possible. We simply need the resolve to meet that standard.

At this point let me turn to my colleague, Mr. Costa, for any opening remarks he may have.

[The prepared statement of Mr. Grijalva follows:]

Statement of The Honorable Raúl Grijalva, Chairman, Subcommittee on National Parks, Forests and Public Lands

I'm pleased to join Chairman Costa in welcoming our witnesses and audience to this joint oversight hearing of the National Parks, Forests and Public Lands Subcommittee and the Energy and Mineral Resources Subcommittee.

Today's hearing will examine how the accelerated pace of oil and gas development on public lands in recent years is affecting other public uses and resources.

Today, we will hear from witnesses who have come a long way to tell us about what the oil and gas boom has meant to their ranches, their homes, their health and their livelihoods. Most have never testified before Congress. One is a lineal descendent of Chief Seattle and another has never before traveled east of the Mississippi.

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But that is a false choice. Our irreplaceable natural resources and critical wildlife populations are paying the price not for our energy needs, but for lack of vigilance.

There are right places and right ways to develop our energy resources, and there are wrong places and wrong ways to undertake that development. Balancing energy production with the care of our parks, our wildlife and the livelihoods of our western citizens is possible. We simply need to resolve to meet that standard.

STATEMENT OF JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COSTA. Thank you very much, Mr. Chairman. It is indeed my honor to hold this joint hearing between the two Subcommittees, the Subcommittee on National Parks, Forests and Public Lands. I know what passion and energy you and your staff and your committee members bring to your efforts in the 110th Congress, to focusing on prioritizing the needs of our national parks, our forests, and public lands.

Our Subcommittee on Energy and Mineral Resources, as it relates to our efforts on public lands, complements the efforts that you work on, and so it is fitting and appropriate that this morning the two Subcommittees meet together in a joint hearing to examine how we can better be stewards, responsible stewards in producing the necessary energy for our country, for our citizens to maintain our ability to provide a quality of life, and to continue economic opportunities for all. But, as we know, therein lies the challenge of the balance between providing the sustenance for our economy and at the same time protecting that quality of life that all of our citizens, I think, feel very serious about, and concerned.

So as we look about producing energy from a variety of resources, as we talk about the overlapping jurisdictions between these two Subcommittees, we need to look at how we do so in a responsible way that allows for sustainability. So we will have witnesses testifying this morning in three panels that we are all looking forward to hearing from, including our first witness, a colleague of ours, Congressman Peterson, that talks about this balance, that talks

about the sustainability, that talks about how we do so in a responsible fashion.

Certainly we know that the effect of oil and gas development impacts our quality of life. It impacts our lands, our water, communities—especially in the West where it is predominant. So this morning will give us a chance to better understand and collaborate how we deal with the effects, for example, of coalbed methane production that are associated with "split-a-state" concerns.

We will have a chance to look at the impacts of the 2004 1.5 trillion cubic feet of coalbed methane that was produced in five Rocky Mountain states that provides an important source of energy. Six percent of the total U.S. natural gas supply, of course, by the Western Governors' Association account, is derived from there. We know that oil and gas currently provides 63 percent of the U.S. consumption needs.

We held a hearing with our Subcommittee on March 14. Testimony was added from the acting Bureau of Land Management Director Jim Hughes that 44 million acres of onshore bedroll lands nationwide are currently under lease out of 270-million-plus acres of Federal lands. You can do the math and understand clearly what percentage 44 million acres is of 270 million acres.

In five Rocky Mountain states, 85 percent of all the oil resources and 88 percent of all the natural gas resources on Federal lands are currently available for leasing. There is always the argument we are not doing enough. Well, I would submit for the record that 85 percent of Federal lands that currently are available is quite a bit.

Finally, let us talk about where we go from here, and I think that is something that we are looking forward to in the testimony this morning, because this hearing is about balance, it is about sustainability, and it is about being good stewards of our environment.

So, Mr. Chairman, I am pleased that we could hold the two Subcommittees in a joint hearing for the purpose of doing good public policy, and I look forward to hearing the testimony from the witnesses. Thank you.

Mr. GRIJALVA. Thank you very much, Mr. Chairman, and let me by way of an announcement, when Ranking Member Pearce and Ranking Member Bishop arrive from the commitments that they have outside this hearing, wherever we are in the process, I will suspend that and allow the gentlemen to give their opening statements.

With that, let me turn to our first witness today, our colleague from Pennsylvania, Representative John Peterson. Representative Peterson, thank you so much for being here, and we look forward to your comments.

STATEMENT OF JOHN E. PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. PETERSON. Thank you very much. It is a delight to be back at my committee, or what I have been a part of for 10 years. I fought to stay here, but got bumped off. I want to thank Chairman Grijalva, Chairman Costa, and Ranking Members Bishop and

Pearce for allowing me to come back to my old committee and testify today.

I spent 10 years here, and represent the most rural district east of the Mississippi, a district that looks an awful lot like the West. My district is home to Pennsylvania's only national forest, abundant supply of coal, natural gas, some oil, and I live five minutes from Drake Well, the first oil well ever produced in the world, and I want to just talk about that a minute.

Oil Creek Valley that culminated from Drake Well is a valley between Titusville and Oil City, Pennsylvania, and the City of Oil City was where Quaker State, Pennzoil and Kendall, and all the major refineries, Standard Oil, they all started there. That valley was decimated. Back then they didn't know how to produce oil. They punched holes in the ground and oil sprayed everywhere. I have pictures of that valley and the hillsides surrounding it where there was not a blade of grass, not a tree alive; just dead snags and nothing alive.

Today, that is a state park. It is a mature hardwood forest. The springs are clear. Three are brook trout streams which is a pretty good symbol that water quality is back, and Oil Creek itself, which was called Oil Creek before they produced oil there because oil pressure pushed oil up out of the ground, and so there was always a scum of oil on Oil Creek historically because of the oil sand being close to the surface. It was only 68 feet deep there when they discovered oil. That is why they discovered it there.

That valley today, that stream today, trout and small-mouth bass both propagate there naturally. That is not very common. It is one our best fisheries in eastern Pennsylvania. It shows you what nature does when allowed to recuperate.

My district is the shining example of how we can both produce energy responsibly while preserving the natural beauty of our land. I know this is the purpose of the hearing today, to help us strike this balance.

However, I fear the committee may be moving beyond mitigation of energy production on our public lands toward decreased access, which I hope will not be the case. It will cause serious economic security, energy security, and national security issues, and I will try to explain that more clearly.

So that is why I am here, to hopefully remind us all that energy production on our public lands can be done responsibly while supporting our economy, enhancing our security, and maintaining wildlife habitat and recreation right along side of it.

Today, our energy consumption in this country is 86 percent fossil fuel. I know that is what distresses us all, 86 percent. We have 8 percent nuclear. That leaves us a small percentage of renewables, which I will talk about in a minute. About 90 percent of America's energy is on public land, and as it is under our prevail. Thus, we must have access to our public lands in order to have affordable domestic energy to heat and cool our homes and businesses, and to employ workers, and produce goods in America.

Much of this public land is already locked up for energy production, and the numbers were just given, and locking up more I think would be bad public policy. It needs to be produced right, by the laws, by the rules. It can be done correctly. The resources in the

West do not belong to the West. They belong to all Americans. My constituents need access to those resources as the rest of America does.

I am a strong supporter of renewables. I have worked with my staff all year on how we can increase renewables, and the farther I dig into it the more concerned I get. There is no silver bullet when it comes to renewables. I wish there were, and we have the chart here of today's consumption, and when you get down the renewables the number is scarcely small: 86 percent fossil fuels, 8 percent nuclear, 6 percent renewables, and 5 percent of that is hydroelectric or biomass. One percent makes up all the ones we are trying to build our future on—wind, solar, biofuels and hydrogen, and I haven't found one of them that can double in the next 10 years in volume, though we are increasing our use of energy 3 percent a year.

I think we need to be careful how we target big oil also. I am not a fan of big oil, but some may criticize so-called big oil and say they don't need increased access to oil and gas. Policies aimed at hurting big oil, whether they are tax increases by Ways and Means, or decreased access to public lands by this committee, don't reach their intended targets because independent oil and natural gas producers drill 90 percent of the nation's oil and gas wells.

These small business operators are responsible for supplying 68 percent of American's oil and 82 percent of overall American natural gas. At the same time increased taxes and decreased access here at home simply serve to push production overseas. When we produce energy at home, lots of Americans make money, lots of people make livings, it is a part of our economy. When we buy energy from overseas, there are no American jobs, there is no American economy. We just send our money to foreign countries.

So let us be careful when we use big oil as an excuse to block production because in reality it is the small producers who we are hurting most.

The negative impacts from decreased access to domestic energy are felt across our country. I believe the biggest threat to America's economic future is not terrorism. It will be available, affordable energy. The world's energy supplies are very tight. We have never faced this before. We have never had China and India that are soon going to be larger consumers of energy than us, and we are going to fight—and probably the word is fight—to have energy for this country, affordable energy for this country.

American businesses are already being driven offshore by rising prices and specifically natural gas. Polymers, plastic, chemicals, fertilizer, glass, steel, aluminum are struggling to compete in America because they pay the highest natural gas prices in the world. When oil is $70 a barrel, the whole world pays. But we have had the highest natural gas prices in America now for six years, and it is causing our major companies to decide whether they are going to remain here or whether they can remain here, and be competitive when other countries have natural gas at a fraction of the cost that they pay here.

They are crying for Congress to make it easier to harness energy here at home, not harder. I can also point to the trade deficit as an example of inadequate domestic energy supply hurting our

economy. A third of our trade deficit comes from buying foreign energy from unstable governments, countries who don't support us, countries who could very quickly be our enemy.

I don't know about you, but I don't feel very comfortable with that.

There is a world shortage of energy. We must conserve. We waste a lot of energy, and we must do everything we can to use energy more wisely. What has concerned me—I have been in Congress, this is my eleventh year—is that we have increased dependence on foreign oil by 2 percent a year from unstable foreign countries who don't like us and whose governments are not even friends of ours.

I am not advocating that industry have carte blanche with our public lands. We can have access to plentiful domestic energy while also improving our environment and public lands thanks to improved technology.

Yes, we should mitigate environmental impact on public lands from oil and gas production, but we should do so in a reasonable manner that doesn't have the end result of shutting down production, moving jobs overseas, increasing our reliance on foreign energy, and decreasing our security.

It is my view that if we don't find a way to have more affordable energy and prevent the next spikes of energy costs in this country, we will be saying to the working men and women of America you won't have a job here. We won't make bricks here. We won't make glass here. We won't bend steel here. We won't bend aluminum here. We will not make petrochemicals because 55 percent of their cost is natural gas. Seventy percent of the cost of some kinds of fertilizer is natural gas.

Affordable natural gas is the mother's milk of the future of America, and we have to somehow figure out how to produce natural gas for this country, both onshore and offshore. In my view, those who think buying LNG from unstable foreign countries is the answer should look in another direction. I don't think we should because we have ample supplies of natural gas.

We must look at these issues like a three-legged American stool made up of energy, environment, and economy. If one leg collapses, we all fall. The chair cannot stand.

I thank you for the chance to speak with you and will be glad to take any of your questions.

Mr. GRIJALVA. Let me see if there are any questions? Mr. Pearce, Gentlemen?

Thank you very much, sir.

Mr. PETERSON. Thank you.

Mr. GRIJALVA. At this point let me turn to Ranking Member Peace for any opening comments he may have.

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

Mr. PEARCE. Thank you, Mr. Chairman. I apologize for being late, testifying in another committee actually, so appreciate the opportunity to visit, appreciate Mr. Peterson's comments also. He has been dedicated to the idea of affordable energy for the entire career that I have seen him here.

Before I start, Mr. Chairman, I would like to submit a letter for the record. You know, we that get into this business we know that there are going to be scraps and scrapes, but we have a lot of public servants out there who work year after year after year, and sometimes we thoughtlessly pull them in. We play our games with them, and one of our witnesses today, Mr. Bisson, from the BLM had an allegation made a year ago that he was somehow breaking the law by meeting with state and local officials, and coordinating with them.

After a year-long investigation, the IG put a report out that completely exonerates him, and said he was doing a job. He wasn't meeting with state and local officials. He was coordinating Federal government affairs. So I would request unanimous consent to submit this for the record so that his good name has been cleared in an official way in this committee.

Mr. GRIJALVA. Without objection.

[The DOI letter submitted for the record follows:]

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

APR - 4 2007

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

In January 2007, we received a telephone call from your staff requesting the status of our investigation of allegations that senior Bureau of Land Management (BLM) officials appeared to have engaged in improper dealings with county officials regarding Resource Management Plans (RMPs) that are being developed for the State of Utah. We opened this investigation after receiving a letter from Congressman Maurice Hinchey expressing his concerns about an e-mail written by lobbyist Robert K. Weidner, who represents several Utah counties, regarding statements made by BLM officials at a meeting held in Vernal, UT, on July 18, 2006. The Office of Inspector General (OIG) has now closed this investigation.

Congressman Hinchey stated that Mr. Weidner's e-mail indicated that BLM officials had made commitments to "fix" several of these RMPs "in such a way as to 'promote economic growth and reduce restrictions on access to the public lands.'" He further stated that Mr. Weidner's e-mail indicated that the county officials were pursuing "back-door fixes" of their right-of-way accesses across public lands without formally adjudicating these issues. In response to Congressman Hinchey's letter, we conducted interviews in Washington, D.C., and Richfield, UT. We also reviewed a number of documents relating to land use planning within the state of Utah.

We found no evidence to substantiate that BLM officials engaged in any behavior that could be characterized as improper dealings for the purpose of promoting local economic interests at the expense of wilderness protections currently in place. Additionally, we found no evidence demonstrating that BLM officials had either formally or informally permitted right-of-way accesses across public lands without formally adjudicating these issues according to established land-use requirements.

During the course of our investigation, we interviewed the BLM officials who attended the July 18 meeting in question. Both of these officials provided sworn statements denying that they had made any commitments to county officials other than to correct errors they discovered in the proposed RMPs and to publish those plans according to schedule. We also interviewed Mr. Weidner, who told investigators that he used the word "fix" solely in reference to BLM's commitment to correct errors in the proposed plans. Mr. Weidner also told our investigators that his comment about promoting economic growth and reducing restrictions on access to the

public lands related to his personal belief that correctly produced RMPs would in themselves lead to economic growth and reduced restrictions on BLM land.

We interviewed other attendees of the July 18 meeting, including county officials and a BLM Richfield Field Office (RFO) employee. The county officials, who are actively involved in Utah land use planning issues, denied that BLM officials had engaged in any type of improper dealings on land use issues with county officials at any time. We also interviewed the RFO Associate Field Office Manager, who told us that BLM officials never made any statements during the meeting where anyone could have inferred that there covert dealings with county officials. This person confirmed that the only commitments made by BLM officials were that county representatives would be active participants in the RMP process and that BLM would listen to their views. We also discovered that handouts prepared by BLM officials, which were distributed to the July 18 meeting attendees, had been published on the BLM Web site for public viewing shortly after this meeting occurred.

We also interviewed two RFO employees who are involved in land use planning in Utah. Both of these employees expressed concerns over the "deference" that BLM has shown toward oil and gas exploration and development at, what they perceived to be, the expense of other use and protection of the land. One employee noted that there had been a "long-standing bias" toward oil and gas planning priorities, which began in 2001. However, neither employee could point out any instances of wrongdoing by BLM officials; to the contrary, both acknowledged that BLM officials have some discretion in the development of RMPs, as long as the various alternatives available for land use have been disclosed and considered.

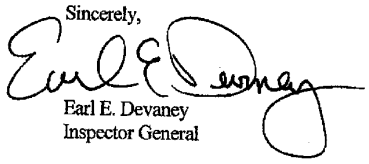
We also reviewed pertinent regulations and other documents relating to land use planning within the State of Utah, specifically the Federal Land Policy and Management Act (FLPMA). We reviewed a sampling of Federal Register Notices and confirmed that BLM provided notification to the public of its intent to develop RMPs, including soliciting public comments relating to those plans as required under FLPMA regulations. Additionally, we found a number of Federal Register Notices where BLM advertised the details of land use planning advisory council meetings, which are also required under FLPMA regulations.

In August 2006, the U.S. District Court for the District of Utah ruled that BLM must consider wilderness characteristics when developing RMPs, which it had not previously done to the Court's satisfaction. Consequently, we understand that BLM is revising its proposed RMPs to include the proper analyses in consideration of this ruling.

A January 2006 decision by the United States Court of Appeals for the Tenth Circuit stated that only Utah state courts can issue a final ruling on a R.S. 2477 claim based on state law. As a result, we understand that BLM can only confirm a right to use under the court decision; consequently, Utah state officials have coordinated efforts with BLM to request non-binding determinations on specific R.S. 2477 issues in question. BLM will continue to enforce existing regulations and issue violation notices based upon the non-binding determinations until the state court decides whether or not to grant an R.S. 2477 determination on the right-of-way at issue.

We believe no further investigation needs to be conducted at this time. We appreciate you communicating your concerns to us. If you have any questions, please do not hesitate to contact me or Katie Balestra, OIG Congressional Liaison, at (202) 208-5745.

Sincerely,



Earl E. Devaney
Inspector General

Mr. PEARCE. Thank you.

We have had a series of hearing today, and as we have the different panels come up I would like to note that we had a hearing called "The Evolving West" where we described maybe the produc-

tion should not be oil and gas production, mining those activities maybe should not be a part of the West; that there were people calling on the new West, the evolving West.

We also had a hearing called "Access Denied", and then the third title was a little curious, "Implementation of Title 3, Oil and Gas of the Energy Policy Act," but the letters that went out inviting asked if you would like to testify about anything you would like to repeal instead of implementing that Act, and today we are having the hearing called "Land-use Issues Associated with Onshore Oil and Gas Leasing and Development."

Now, my caution is that I would like for you to think about to an earlier time in our history when we began to talk about the timber industry as if it we exploiting, as if it were doing an illegal and an immoral thing, and we used the words of fine people who came into these rooms and testified to create an illusion that an industry needed to be gone, and today it is. Over 20,000 jobs just in the timber mills, we had 22 timber mills in New Mexico. We are down to two, and they can't get enough boards to actually do their business, and that decision was made on words that were casually and innocently spoken in these hearing rooms, and then used to justify.

So contemplate very deeply where we as policymakers might be wanting to move. I will tell you that as I look and listen to Mr. Peterson I remember the testimony from last week or the week before that said that we were giving away over 3 million manufacturing jobs. We have outsourced them because of the high cost of energy.

Now, if we continue to that, we have to realize our standard of living is going to change, that we won't have the time for the leisure activities or the money. So as we describe the oil and gas industry, I appreciate your objectivity, but also remember, if I could get my staff to hold up a chart, we are not producing nearly—I mean, when we look at the amount of public lands, the large piece of that pie is what is not produced. The small piece is what we actually have a footprint on, what we actually lease.

So when people are telling me that we are using all of our public lands and destroying them with oil and gas and mining, I will tell you it is simply not true. The facts speak otherwise. The American people deserve more because right now we are in a tremendous race with China and India. They would like our jobs, and we have people, frankly, in this country that are willing to them our jobs to them. They have given our timber jobs to Canada, to other nations. Now they would like to give our oil and gas jobs away, and you contemplate if you want to pay three or four times as much for your energy.

For instance, if you are a mountain bike firm, how do your people get there? Your customers come because they fly. Your customers come and stay in hotels that are heated with natural gas. If the price of gasoline, the price of oil goes up to three and four times, how many of your people are going to come visit?

So let us be working for the balance here. Let us talk about the truth, and while we are trying to turn this country away from oil and gas and coal, remember that the Chinese are building 10 plants in the next year, one plant per week, 544 coal plants already being built. So they are willing to have cheap energy while we are trying to move toward expensive energy. It is a contemplation that

all should spend a lot of time on, and that we should be very thoughtful about.

Mr. Chairman, I appreciate the opportunity to make a couple of statement, and I yield back.

Mr. GRIJALVA. Thank you, sir, and let me at this point call our first panel forward, please.

Mr. Ferguson, Mr. Bisson, let me welcome you. Thank you very much for being here today, and I would like to also advise you that your full statements will be made part of the record, and we would like to ask you to limit your oral statement to five minutes, and let me begin with Mr. Ferguson. Sir.

STATEMENT OF TONY L. FERGUSON, DIRECTOR, MINERALS AND GEOLOGY MANAGEMENT, UNITED STATES FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. FERGUSON. Thank you for the opportunity to discuss this important topic and the role of the Forest Service in natural and oil and gas leasing and development. I am very pleased to be with you today.

The Forest Service manages 193 million acres in the natural forest system. More than 7,200 authorized oil and gas leases covering over 6.1 million acres are located on natural forest and grass lands. The Forest Service works in partnership with the Bureau of Land Management to manage oil and gas resource development on the Forest Service lands. The BLM, through the authority of the Secretary of the Interior, has management responsibilities for the Federal mineral estate, which includes leasing Federal minerals that underlie national forest system lands. The Forest Service is responsible for the management of the surface resources on oil and gas projects proposed and operating on Forest Service.

Before the BLM may lease oil and gas resources underlying national forest system lands, the Forest Service completes broad-scale leasing analyses to determine which land are appropriate for development. When Forest Service lands are nominated by industry for leasing, the leased parcel may be offered for sale subject to Forest Service validation and verification of consistency with planned requirement, Forest Service planned requirements in compliance with the National Environmental Policy Act and other environmental laws. BLM cannot issue a lease on Forest Service lands over the objection of the Forest Service.

After the lease has been issued, the lessee must submit an application for permit to drill, and you will commonly hear this called an APD, to the BLM prior to the surface disturbing activity. The application consists of two parts or plans. The first part is a surface use plan of operation, and that is commonly called the SUPO, S-U-P-O. The second part is the drilling plan.

When the application for drilling on Forest Service land is received by the Bureau of Land Management, they send us, the Forest Service, the surface use plan of operation for processing. The Forest Service establishes the terms and conditions of approval for both the surface use plan and any necessary associated authorizations.

Concurrently, the BLM processes the drilling plan. After we have notified the BLM that the surface plan has been approved, the

BLM can approve the application for drilling. When the well is drilled and operating, agencies share inspection and enforcement responsibilities.

Today, I would like to focus on a couple of sections in the Energy Policy Act of 2005 that also relate to oil and gas operations on national forest system lands. There is some additional information in my submitted statement.

Tasks described in Section 362 of the Energy Policy Act resulted in the update and re-issuance of the Gold Book, which is sometimes called—it is the Surface Operating Standards and Guidelines for oil and gas exploration and development. This book specifically addresses best management practices for oil and gas operations, and this was a joint effort by the BLM and Forest Service.

Section 366 resulted in the update and recent re-issuance of the Onshore Oil and Gas Order No. 1, which is a set of rules for conducting operations on Federal oil and gas leases. The Forest Service worked closely with the BLM to revise the onshore order and the Gold Book as joint authors. We are also coordinating with the BLM to develop a training module for oil and gas operators which will explain changes in the onshore oil and gas order.

Section 390 of the Energy Policy Act directed the Secretaries of Interior and Agriculture to use five new categorical exclusions for approving oil and gas activities conducted pursuant to the Mineral Leasing Act. The Section 390 categorical exclusions are limited to oil and gas activities in existing areas of development, previously analyzed through a National Environmental Policy Act process with full public notice and comment.

New activities must be within land use plans approved within the previous five years or with surface disturbance limited to five acres and a previous NEPA project decision. To date, the Forest Service has used the Section 390 categorical exclusion to approve about 300 projects.

In addition to the categorical exclusions in Section 390, the Forest Service has also promulgated a new administrative categorical exclusion for limited oil and gas exploration and development activities in newly identified fields. The Council of Environmental Quality, upon review of this exclusion, found that it was in conformance with NEPA and its implementing regulations.

Since approval of this new categorical exclusion in February of this year, February 15th of this year, the category has only been used two times. For the 2007 program, the Forest Service will continue to process and coordinate energy mineral projects on national forest system lands in accordance with the Energy Policy Act, the agency's strategic plan, and the Department of Agriculture's priorities. We will also continue to process new lease applications and surface use plans within the established time frames, and finally, the Forest Service will continue to coordinate closely with the BLM to meet the mandates of the Energy Policy Act.

I want to thank you for this opportunity to briefly discuss the Forest Service oil and gas program, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Ferguson follows:]

Statement of Tony L. Ferguson, Director of Minerals & Geology Management, National Forest System, U.S. Forest Service, U.S. Department of Agriculture

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to discuss land use issues related to the Forest Service's role in the federal oil and gas leasing and development program. I am pleased to be here with you today.

Forest Service Oil and Gas Resources

The Forest Service manages 193 million acres in the National Forest System (NFS). More than 7,200 authorized oil and gas leases which cover over 6.1 million acres are located on national forests and grasslands.

Forest Service Oil and Gas Program Authorities

The Forest Service works in partnership with the Bureau of Land Management (BLM) to manage oil and gas resource development on NFS lands. The BLM through the Secretary of the Interior has management responsibilities for the federal mineral estate including federal minerals that underlie NFS lands. The Forest Service is responsible for management of surface resources on oil and gas projects proposed and operating on NFS lands.

Before the BLM may lease oil and gas resources underlying NFS lands, the Forest Service completes broad scale leasing analysis to determine lands that are appropriate for development and made administratively available. This leasing analysis process is conducted with public involvement and in compliance with the NEPA. When analysis is completed, the Forest Service informs the BLM of the available lands and under what surface resource protection stipulations they may be leased. When NFS lands are nominated by industry for leasing, the lease parcel may be offered for sale, subject to validation and verification of consistency with forest plan requirements and adequacy of NEPA and other environmental law compliance completed by the Forest Service. BLM cannot issue a lease on NFS lands over the objection of the Forest Service.

When the lease has been sold—and prior to development and surface disturbing activities such as drilling, the lessee must submit an application for permit to drill, commonly called an APD, to the BLM. The APD includes a surface use plan of operations (SUPO) and a drilling plan. The BLM sends the SUPO portion of the APD to the Forest Service for processing with appropriate environmental analysis and public involvement. At the same time BLM continues to process the drilling plan. The Forest Service establishes the terms and conditions of approval for both the SUPO and any associated special use authorizations. After the Forest Service notifies the BLM that the SUPO is approved, the BLM can approve the APD. When the well is drilled and operating, agencies share inspection and enforcement responsibilities.

National Energy Policy and the Energy Policy Act

In May of 2001, the President's National Energy Policy included goals to diversify and increase energy supplies, encourage conservation, and ensure adequate energy distribution. The National Energy Policy goals include increasing energy supplies while protecting the environment. Increasing energy supply means to ensure that, where appropriate, lands are made available for energy mineral development and production, as well as for the necessary infrastructure such as energy facility corridors for pipelines. Development of domestic energy supplies will be an essential component to meet future national energy demands. This goal to increase energy supplies while protecting the environment is consistent with the mission of the Forest Service to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations.

Today I will focus on the portions of the Energy Policy Act of 2005 related to oil and gas operations on National Forest System lands. The Act tasks Federal agencies to help facilitate energy development and encourage the efficient use of resources within the U.S. borders, consistent with economic growth and environmental responsibility, and to work to improve energy use and efficiency from both traditional sources, such as oil and gas, and from new resources such as wind and solar power. The Act directs agencies to emphasize efficiencies to facilitate the timely processing of energy leasing and permit applications.

As previously described, the Forest Service, as a surface management agency, works closely with the BLM to implement those portions of the Energy Policy Act affecting National Forest System lands. The Secretaries of the Interior and Agriculture signed the Memorandum of Understanding required under Section 363 to coordinate timely processing of lease applications and permits to eliminate duplication and coordinate stipulations to protect the natural resources. We are making signifi-

cant progress in developing the joint data tracking and retrieval system and GIS mapping system for tracking lease parcel requests and permit applications. The joint GIS mapping system will provide a critical spatial component that will help to more easily analyze the relationship and management of surface resources across land ownership boundaries.

Section 366 of the Energy Policy Act sets timeframes and other provisions for processing permit applications. Section 362 provides for development of Best Management Practices for improved enforcement and inspection of oil and gas activities and terms and conditions of permits to drill. These two sections combined resulted in the update and re-issuance of the Onshore Order #1 and the Gold Book—Surface Operating Guidelines. The Forest Service worked with the BLM to revise the Order and Gold Book. We are working with the BLM to develop a training module that will be delivered via satellite to oil and gas operators explaining changes and the update to the Onshore Order Number 1.

To implement Section 365, the Forest Service, Department of the Interior and other federal agencies entered into an interagency Memorandum of Understanding that has improved energy permit coordination on Federal lands and included assignment of personnel to pilot project offices. The Forest Service participates in four pilot project offices located in areas with a high volume of development and project proposals. Six Forest Service personnel are located in the Farmington, New Mexico, Buffalo, Wyoming, Vernal, Utah and Glenwood Springs, Colorado Pilot Offices.

The Forest Service through the Program Assessment Rating Tool process developed a definition of "backlogged" lease applications and surface use plans as those pending approval at the end of FY 2003. By the end of FY 2007, we anticipate eliminating all of these older "backlogged" lease applications and SUPOs. Beginning in FY 2008, the Forest Service will continue to measure program success by evaluating processing efficiency measured against timeframes established in Section 366 of the Energy Policy Act and incorporated into the revised Onshore Order Number 1.

Section 390 of the Energy Policy Act directs the Secretaries of the Interior and Agriculture to use five new categorical exclusions (CEs) for approving oil and gas activities conducted pursuant to the Mineral Leasing Act. The Section 390 CEs are limited to oil and gas activities in existing areas of development with previously approved development, analyzed through a NEPA process. The new activities must be within existing areas with land use plans approved within the previous five years, or with surface disturbance limited to 5 acres and a previous project with a NEPA process decision. To date, the Forest Service has used the Section 390 CEs to approve about 300 projects.

CEs are part of full compliance with the National Environmental Policy Act (NEPA). The Council on Environmental Quality regulations (40 CFR 1500 et seq.) for implementing the NEPA allows agencies to include categorical exclusions in agency NEPA procedures. Agencies are to reduce excessive paperwork and delay by using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement. (§ 1500.4(p)) and (§ 1500.5(k)).

In addition to the CEs provided under Section 390, the Forest Service has promulgated a new CE for limited oil and gas exploration and development activities in newly identified fields. This CE does not, and is not intended to, overlap or duplicate the activities contained in the Section 390 CEs. It is complementary to Section 390 and taken in concert, this CE and the five statutory CEs provide the authorities to analyze and approve a full range of small projects with non-significant environmental effects in existing and new fields or corridors. In approving this new CE, the Forest Service followed a public notice and comment process. The Forest Service reviewed the effects of small oil and gas exploration and development projects which occurred over a five year period. Based on general program experience and the results of this review, the Forest Service determined those activities with limited road-building and utility-laying do not have significant effects and therefore would not require documentation in an environmental assessment or environmental impact statement. The Council of Environmental Quality, upon review of this CE, found that the CE conformed with NEPA and it's implementing regulations. This CE is to approve a surface use plan of operations for oil and gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following: one mile of new road construction; one mile of road reconstruction; three miles of individual or co-located pipelines and/or utilities disturbance; and four drill sites. Since approval of this new CE on February 15, 2007, the category has been used two times.

FY 2007 Program

The Forest Service will continue to expedite and facilitate energy mineral projects on National Forest System lands in accordance with the Energy Policy Act, the agency strategic plan, and Department of Agriculture priorities. The Forest Service will continue to process new lease applications and the Surface Use Plan of Operations portion of an APD within the established timeframes. The Forest Service will continue to coordinate closely with the BLM to meet the mandates of the Energy Policy Act and direction in the National Energy Plan.

Conclusion

Thank you for this opportunity to discuss the Forest Service oil and gas program. I am happy to answer any questions that you may have.

Response to questions submitted for the record by Tony L. Ferguson

Question from Congressman Raúl Grijalva:

1. How many acres of National Forest System lands has the Forest Service determined to be unsuitable and therefore not available for oil and gas leasing?

Prior to identifying lands administratively available for oil and gas leasing to the BLM the Forest Service must conduct a broad scale area or forest-wide leasing analysis. At the conclusion of this analysis the authorized forest officer shall identify on maps those lands:

1. Open for development subject to the terms and conditions of the standard oil and gas lease form.
2. Open to development but subject to constraints that will require the use of lease stipulations such as those prohibiting surface use.
3. Closed to leasing, distinguishing between those areas that are being closed through exercise of management direction and those closed by law and regulation.

All forests are required to conduct such an analysis. There are several factors that may influence the distribution of acres into each category such as oil and gas potential, resource concerns and special area designations. The specific information requested is not readily available. BLM maintains a database for all federal minerals of lands currently under lease and areas with pending lease applications.

See the leasing information below for the Bridger-Teton National Forest as one example of acres determined to be unavailable for oil and gas leasing.

Questions from Congressman Mark Udall:

1. How does the Forest Service feel about using the EPAct Section 390 Categorical Exclusions and the WGA Resolution?

The Forest Service views the Energy Policy Act Section 390 Categorical Exclusions as a useful tool in processing the surface use plan of operation when applicable. The Section 390 CEs are limited to oil and gas activities in existing areas of development with previously approved development analyzed through a NEPA process. The new activity must be within existing areas with land use plans approved within the last five years, or with surface disturbance limited to five acres and a previous project with a NEPA process decision. When it is appropriate to use one of the CEs the Forest must still ensure that the proposed project is in compliance with all other laws and regulations such as, the Endangered Species Act and the National Historic Preservation Act. To date the Forest Service has used the Section 390 CEs to approve about 300 projects. This tool has added to our ability to meet processing timelines established in Section 366 of the Energy Policy Act while still limiting resource disturbance.

The Forest Service is aware of the concerns expressed by the Western Governors Association in their resolution. We are committed to working with the states and their resource agencies to ensure that resources are being protected in accordance with laws and regulations.

2. What is the status of oil and gas leasing on the Wyoming Range of the Bridger-Teton National Forest? How much production of oil and gas is occurring?

Here is a summary of the status of oil and gas leasing on the Bridger-Teton National Forest, including the Wyoming Range.

Forest Land Management Plan (LMP) Approved March 1990

Total National Forest Acreage - 3,465,000 acres

Wilderness Acreage - 1,300,000 acres
Unavailable for leasing in LMP - 223,000 acres (non-wilderness)
Available for Leasing—1,900,000 acres

Supplemental Information Review completed re: leasing decision adequacy—spring of 2004

Determined that 1990 leasing decision adequate and still current.

Acres currently under lease - 186,770 acres (including 95,675 suspended).
5.4% of the National Forest acres
5.7% of the National Forest acres if August sale acres included
27,301 acres within producing leases (primarily Riley Ridge field) (0.7% of the National Forest)

Acres approved for lease, sent to BLM but later withdrawn - 164,553 acres
(4.7% of the National Forest)
(Withdrawn at Governor's request)

Resubmitted to BLM for sale after additional review in 2005 - 44,720 acres
(1.3% of the National Forest)

Results of lease sales of 44,720 acres:

December 2005 Sale	1 lease	1,280.00 acres
April 2006 Sale	11 leases	19,628.75 acres
June 2006 Sale	13 parcels	12,494.02 acres
August 2006 Sale	10 parcels	11,262.74 acres

Note: The parcels for the December and April sales have been issued and therefore listed as leases; the parcels for the June and August sale are under lease sale protest and therefore have been sold but not yet been issued by BLM.

2006 lease sale results:
Bonus Bid on April lease sale = $114.12/acre. ($2.246 million)
Bonus Bid on June lease sale = $104.55/acre. ($1.306 million)

The IBLA issued stays on leases on September 21, 2006. Stays have been issued by IBLA for the December and April Sales of 12 leases for 20,908.75 acres. As noted above, the lease sale protests for the June and August sales have not been resolved yet and therefore no IBLA appeal rights exist until the protests are resolved. Once the protests are resolved by the BLM, their decision could then be appealed to the IBLA for consideration.

The production and value data below was provided by the Minerals Management Service for 2001, the most recent data received. We would expect the numbers for 2005 and 2006 would be higher than 2001 based on additional wells being drilled with increased production and increases in the market values for the commodities.

FOREST	COMMODITY	PRODUCTION	UNIT	VALUE	ROYALTY (Federal share)
BRIDGER-TETON	OIL	8,360.34	BBLS	$ 232,611.40	$ 27,324.51
	GAS	20,043,328.60	MCF	$ 94,196,501.38	$ 5,644,080.88
	CO2	13,551,731.86	MCF	$ 4,117,648.36	$ 6,413.40
	HELIUM	275,385	MCF	$ 29,029,000.00	$ 2,467,465.00
	GAS PLANT	51,738.68	GAL	$ 27,562.42	$ 348.77
	SULPHUR	190,117.02	LTS	$ 2,348,019.76	$ 1,122.43
	MINIMUM ROYALTY				$ 79,878.76
TOTALS				$129,951,343.32	$ 8,226,633.75

The Bridger-Teton National Forest was scheduled to complete their forest plan revision in September, 2008 under the new 2005 Planning Rule. However, a recent court order has stayed implementation of the 2005 Planning Rule. At this time it is unknown exactly what effect the litigation will have on the schedule and revision activities for the Bridger-Teton. Litigation activities are on-going to clarify and resolve the court order. The Bridger-Teton is not conducting oil and gas leasing analysis as part of their revision process.

Mr. GRIJALVA. Thank you very much, sir.

Mr. Bisson.

STATEMENT OF HENRI BISSON, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. BISSON. Chairman Grijalva and members of the Subcommittees, thank you for inviting me to testify at this hearing.

My name is Henri Bisson, and I am the BLM's deputy director for operations.

Lands managed by the Department of the Interior produce one-third of all domestic coal, oil and natural gas. Demand for natural gas is expected to increase 50 percent over the next 20 years, and oil consumption 30 percent. Much of the oil and gas that American consumers and businesses depend upon comes from foreign sources. This is a huge drain on the nation's economy. For this and many other reasons the Nation is looking more and more at domestic resources from public lands. Consider a few of these facts:

Since 1970, the size of the average house increased 55 percent while the size of the American family decreased 13 percent. Many of us use natural gas to heat our homes and power our modern conveniences. Use of natural gas for power generation has nearly doubled over the last 10 years. Ninety percent of all planned electrical plants intend to use natural gas in some capacity. Almost all natural gas is produced domestically or imported from Canada.

The Phase II study conducted under EPCA, as amended by the Energy Policy Act of 2005, found that Federal lands in the 11-basin study contained 187 trillion cubic feet of natural gas, enough to meet the current residential consumption in this country for 39 years.

The BLM manages this vast pool of energy under a multiple-use mandate that we take seriously. Of the 700 million-acre Federal mineral estate we manage, only 42 million acres or 6 percent are leased. Of that, 12.3 million acres, less than 2 percent of the Federal mineral estate are in producing status. Nine major laws regulate BLM leases and development permits for oil and gas. Less than 1 percent of the 258 million surface acres managed by the BLM experience a surface impact from disturbance from oil and gas activity.

Land that is leased does not always see development. Companies explore leases and usually end up excluding more lands from being developed than are included, but leasing is still essential to exploring for new domestic development and for in-filling existing fields.

Interest in leasing is reflected in the amount of land nominated for lease sales over the past few years. What was typically nominated in a year-long period several years ago is now nominated for a single quarterly lease sale in many western states. Recently sales have been much larger than they were prior to this boom cycle, but the amount of land under lease is actually much lower than historic highs during the eighties.

As of 2006, the BLM had just over 48,000 leases, totaling approximately 42 million acres. In 1984, the BLM managed over 115,000 leases, totaling about 131 million acres. In simple terms, there were almost two and a half times as many leases in effect in the mid-eighties and three times as many acres under lease.

Leasing decisions are not arbitrary, but are based upon land use plans where decisions are made on availability of areas for leasing, and consider new information, new circumstances before any decision is made to offer these lands. Where other important uses of resources exists, BLM may protect the resources and lease the land using a variety of tools and stipulations, or BLM may decide not to lease the land.

Leasing is only the first step in this process. We require additional permitting, further environmental analysis if a company wants to explore or develop, and in these reviews we determine site-specific needs for mitigation measures. These measures may include re-vegetation, strategic placement of structures and machinery, colors that blend in the landscape, buffer zones to protect wildlife, and burying of utilities under or adjacent to access roads to protect wildlife and minimize visual impacts. These are some of what I referred to as best management practices in my written statement.

With new technology and innovative management tools, recreation, wildlife, energy, and a variety of other uses can co-exist. Development has become drastically lighter on the land than in the past.

This concludes my opening remarks, and I will be happy to answer any questions, Mr. Chairman.

[The prepared statement of Mr. Bisson follows:]

Statement of Henri Bisson, Deputy Director,
Bureau of Land Management, U.S. Department of the Interior

Messrs. Chairmen and Members of the Subcommittees, thank you for the opportunity to appear here today to discuss Oil and Gas Impacts on the Public Lands.

Background

The Bureau of Land Management (BLM) is the steward of 258 million surface acres of public lands and 700 million acres of subsurface mineral estate and manages them in accordance with the 1976 Federal Land Policy and Management Act. These public lands contain a myriad of important resources and provide for a variety of our Nation's needs and interests, such as outdoor recreation, domestic energy, wildlife habitat, livestock grazing, timber, and the enjoyment and protection of other natural, cultural, and historical resources. With the rapid population growth in the west—from nearly 20 million people in 1950 to more than 60 million today—the pressures to meet complex, and sometimes competing, demands for public land resources also has grown exponentially.

As one of the Nation's oldest land management agencies, the BLM also delivers value on a daily basis to the American public. Each dollar spent by the taxpayer on BLM activities is an investment, not only in the land, but also in an ongoing revenue stream. The BLM is an important source of revenue to the Treasury. Royalties collected from energy leasing, and fees collected from other public land uses, all serve to benefit the taxpayer. In 2008, public lands will generate an estimated $4.5 billion in revenues, mostly from energy development. Approximately 44 percent of these receipts are provided directly to States and counties to support roads, schools, and other community needs. These activities also contribute to a more secure and reliable energy future for our country, providing a mix of both renewable and conventional energy supplies from the public lands.

At the same time, BLM-managed public lands are being used for recreation by the American public in increasing numbers. We also have important responsibilities in managing for critical wildlife habitat, cultural resources, our National Monuments, and wilderness values, to name a few.

The BLM is dedicated to ensuring that all Americans benefit from the agency's multiple-use mandate. This means ensuring that environmental and other recreational interests are considered when making decisions about renewable and conventional energy development on our public lands. We appreciate the opportunity

to discuss our efforts toward this end. Our top priorities in the upcoming fiscal year are to:

- Maintain or restore the health of the land and enhance vital habitat;
- Provide the Nation with dependable, affordable energy developed in an environmentally-sound manner; and
- Improve the efficiency of the BLM's operational and administrative functions.

Healthy Lands Initiative

A high priority of Secretary Kempthorne is the Healthy Lands Initiative, which was included in the President's FY 2008 budget request. As activities on public land increase, we are seeing growing conflicts among recreation users, energy developers, hunters, ranchers, and others all competing to protect, access, and use these public lands. Through the Healthy Lands Initiative, the BLM will join with the U.S. Geological Survey and the U.S. Fish and Wildlife Service to identify, restore, and mitigate the potential impacts of increased energy production in wildlife-energy interface areas and increase available habitat for specific species, including sage grouse.

The Initiative represents a new concept for meeting emerging challenges in managing natural resources with flexible, landscape-level approaches for continued multiple-use. Landscapes are land areas composed of diverse habitat types that include winter range and migration corridors.

Land health is being affected by pressures such as community expansion, wildfires, unprecedented demands for energy resources, ever-expanding recreation uses, and weed invasion. These pressures often interact among themselves to affect large landscapes and ecosystems, particularly those in the growing wildlife-energy interface.

A different management approach is urgently needed to meet these challenges. Taking aggressive steps now will help avoid the need for future restrictions on uses of public land that would directly affect the Nation's economy and quality of life.

The goals of the Initiative are to:

- Continue to provide access to energy resources, thereby enhancing energy security;
- Manage landscapes to ensure sustainable habitat for wide-ranging species, such as the sage grouse, and prevent future ESA listings; and
- Sustain public lands and wildlife habitat, and traditional activities on public lands.

The BLM will begin aggressive, landscape-scale habitat enhancement projects in six geographic areas: southwest Wyoming; northwest and southeast New Mexico; south-central Idaho; southwestern Colorado; Utah; and the three-corner area of Idaho, Oregon, and Nevada.

The BLM will concentrate a large number of treatments in each emphasis area, resulting in significant improvements to habitat in an entire watershed or landscape-wide area within one to three years. The BLM will also utilize existing budget authority, as well as leverage funding with other Federal agencies and our partners at the state and local levels.

The Green River Basin in Wyoming

One of the six priority areas of the Healthy Lands Initiative is the Green River Basin in Wyoming. It is representative of areas in the West where landscapes and habitats are undergoing changes in response to pressure from multiple-use. Southwest Wyoming possesses some of the most diverse wildlife habitats in the Intermountain West, which attracts hunters, fishermen, and other outdoor enthusiasts each year. While these interests represent important sources of income for surrounding rural communities, this region, principally the Green River Basin (Basin), is also under pressure from natural gas development. The 15 million-acre Basin, characterized by sagebrush (sage grouse habitat), mountain shrub, aspen, and riparian communities, also has an estimated 83 trillion cubic feet of recoverable natural gas.

The BLM together with the U.S. Fish and Wildlife Service and U.S. Geological Survey, are teaming up to protect these important habitats while natural gas production takes place in the Basin through the Wyoming Landscape Conservation Initiative (WLCI). Rather than conducting separate and uncoordinated impact studies and mitigation efforts, these partners will:

- Conduct efficient, science-based species monitoring and habitat enhancement;
- Facilitate best reclamation and mitigation practices for areas affected by current natural gas development;
- Integrate existing data with new knowledge and technologies to forecast future development of energy resources and assist in habitat conservation planning; and

- Conduct habitat enhancement in all habitat types with a special focus on sagebrush, mountain shrub, aspen, and riparian communities.

The partnership, which also includes efforts underway by the National Park Service, Bureau of Reclamation, Forest Service, and Wyoming Game and Fish, will also provide a broader understanding of the valuable Green River Basin ecosystem.

By using this landscape-level approach and using the WLCI partnership, the BLM expects to be able to leverage funding for key projects that will mitigate the pressures these habitats face from a combination of energy, industrial, and residential development in both the short- and long-terms. In Wyoming, partners have already identified funding priorities including vegetation treatments (sagebrush, aspen trees), water projects such as building or restoring water sources for wildlife, and improving riparian areas. Funding for the WLCI will be long-term and include leveraging funding with other Federal agencies and our partners at the state and local levels.

Land Use Planning

The BLM's land use planning process seeks to ensure that domestic oil and gas development on public lands is done in a way that protects the environment. Some of the recently developed land use plans have been among the most restrictive ever developed for oil and gas leasing on Federal lands.

For example, the BLM recently issued an innovative Resource Management Plan (RMP) for limited, environmentally-sensitive oil and gas development on public lands in Otero and Sierra Counties in New Mexico. The plan will allow carefully monitored activity, leading to a maximum surface disturbance of only 1,589 acres from well pads, roads and pipelines—less than one-tenth of one percent of the total surface area of 2 million acres. At most, there will be 141 exploratory wells drilled, resulting in up to 84 producing wells. Almost 36,000 acres of grasslands with the highest potential as habitat for the endangered Aplomado falcon will be closed to leasing and permanently protected. In addition to these measures and overall limits on development, leasing will not be allowed in six existing and eight proposed Areas of Critical Environmental Concern and four Wilderness Study Areas—bringing the total number of protected acres to 124,000. This new plan amends a 1986 RMP that would have allowed leasing with few restrictions on oil and gas activities, would have used standard lease terms and conditions for leasing, and would not have provided the protections for grasslands and other sensitive areas developed in the BLM's current plan amendment.

The BLM continually seeks new ways to minimize, mitigate, or compensate for any adverse impacts from development activities. Innovation of the type envisioned in Energy Policy Act of 2005 (EPAct) is already underway at the BLM. For example, the BLM is:

- Initiating a pilot block survey in the Carlsbad Pilot Office to identify cultural resource properties in the area; and
- Evaluating an experimental drilling technique proposed by the operator in the Jonah Field in Wyoming using temporary wooden pallets for roads and well pads to determine if this technology reduces impacts to surface vegetation and soil.

Best Management Practices and Performance-Based Standards

The BLM is employing Best Management Practices (BMPs) to enhance its ability to protect the environment and reduce long-term impacts on the land from oil and gas activity. The focus of BMPs is smart upfront planning and solid implementation of best practices to reduce environmental impacts on public and private lands and resources. The new policy guidelines require BLM project managers to consider incorporating BMPs into all Applications for Permits to Drill (APDs) and associated rights-of-way. Additionally, the policy encourages oil and gas, geothermal, and helium operators to meet with BLM field office staff during project planning to incorporate BMPs at the earliest possible stage of the permit application process.

Typical Best Management Practices include:

- Reducing the "footprint" of roads and well heads by choosing the smallest safe standard and best location for facilities, and by employing interim reclamation.
- Selecting appropriate color, shape, size and/or location for facilities to reduce visual contrast.
- Discouraging raptor predation on sensitive species by installing perch-avoidance structures or burying power lines on the lease area.
- Reducing wildlife disturbance by centralizing or automating production facilities to reduce frequency of travel to each well head.
- Using common utility corridors or burying flowlines in a roadway or an adjacent right-of-way.

- Drilling multiple wells from a single location; centralizing production facilities or relocating them offsite.

For example, in the Pinedale area of Wyoming, concerns about impacts to wildlife have resulted in reduced surface disturbance compared to past development by implementing such measures as the consolidation of infrastructure, such as roads, pipelines, and production facilities. As a consequence, the BLM has achieved an overall reduction in the footprint of development involved in winter drilling projects in the Pinedale Anticline relative to what would otherwise have resulted.

Final reclamation of all disturbed areas, including access roads, to either their original contours or a contour that blends with the surrounding topography is a BMP that planners should consider in nearly all circumstances.

The BLM has included BMPs in the 2005 update of the Gold Book of "Surface Operating Standards and Guidelines for O&G Exploration and Development" (posted at www.blm.gov/bmp). Through three separate Instructional Memorandum, the BLM also has:

- Established offsite compensatory mitigation guidelines for oil and gas authorizations to provide additional opportunities to address impacts of proposed projects;
- Established oil and gas process improvement teams in BLM Field Offices; and
- Provided guidance on the review of bonding requirements for oil and gas operations.

To encourage widespread adoption of BMPs and to recognize good environmental stewardship through their use, BLM has established an annual "Best Management Practices" awards program. Annual awards recognize industry and BLM offices that best incorporate BMPs into their oil and gas activities. Recipients are to be selected by a panel including representatives from government, industry, and environmental and wildlife conservation groups.

The BLM is also using performance-based standards to challenge industry to reduce emissions, minimize surface disturbance, and develop quick and effective reclamation techniques to improve restoration of disturbed areas. If on-site mitigation measures do not achieve the desired conditions, companies have the option of undertaking off-site mitigation measures. For example, in March 2006, the BLM announced that EnCana is contributing up to $24.5 million over ten years toward an office dedicated to funding offsite mitigation and monitoring in the Jonah Field. The BLM believes that offsite mitigation can potentially become an increasingly useful tool for improving habitats adjacent to certain natural gas development areas.

Inspection and Enforcement and Monitoring

The FY 2008 President's budget request includes an increase of $3.1 million to support increased oil and gas inspections and monitoring to better ensure that oil and gas operations are conducted in an environmentally-sensitive manner and that leasing permit terms are enforced. The BLM's oversight capabilities are being increased in response to the pace of industry's on-the-ground operations. BLM has increased inspection and enforcement by more than 30 percent since 2001. In FY 2001, the BLM completed just over fourteen thousand inspections, and in FY2006, the BLM completed just under twenty thousand inspections.

This year, the Buffalo and Rawlins Pilot Office in Wyoming received funding to hire 15 additional surface environmental compliance and reclamation inspectors. These inspectors will allow Buffalo to exceed its target of approximately 3,600 inspections and will allow Rawlins to increase its inspections by 8 percent to 700 inspections.

The BLM also is improving inspection and enforcement efforts through cooperative arrangements with the State of Wyoming. For example, a cooperative assistant agreement with the Wyoming Fish & Game Commission would establish two wildlife biologist positions in each Pilot Office; these individuals would monitor the effectiveness of BLM lease stipulations and permit conditions of approval as well as make adaptive management recommendations to ensure that fish and wildlife resources are protected. Another cooperative assistant agreement, in the process of being developed with the Wyoming State Historical Preservation Officer, would establish a position to support the electronic data capture of the large volume of cultural survey reports and site information. The BLM also is collaborating with the Governor of Wyoming's Energy Permit Strengthening and Streamlining Initiative. The working groups have addressed such issues as split estate, coordinated reclamation bonding, watershed-based permitting and impacts to local communities, supporting interagency electronic permitting information technology. We look forward to continuing these cooperative efforts, and hope to expand these efforts in other states.

Onshore Order #1

The BLM's Onshore Order #1 will be updated effective May 7, 2007. The Order is a set of rules that direct the conduct of operations, applications to drill on a lease, subsequent well operations, other miscellaneous lease operations, environmental and safety obligations, and abandonment on all Federal and Indian onshore oil and gas leases nationwide (except for those on lands of the Osage Tribe). The previous Order was over 20 years old, and conditions, regulations, policies, procedures and requirements have changed a great deal since that time.

The Final Rule clarifies regulations and procedures to be used when operating in split estate situations. Under the revised final order, operators are required to make good faith efforts to reach surface access agreements with private surface owners. Private surface owners are also being provided with opportunities to participate in onsite inspection meetings between the BLM and the operator. The Final Rule also states that on split estate lands, the BLM will comply with cultural and endangered species regulations in essentially the same way it does when the surface is Federally-owned.

Conclusion

The BLM manages 13 percent of the total land surface of the United States. These lands contain a wide variety of incredible resources, and the public has a wide range of interests in those resources. Our testimony today has outlined the ways in which the BLM is working to provide the Nation with dependable, affordable energy that is developed in an environmentally-sound manner. The BLM will continue its efforts to ensure that all Americans benefit from the agency's multiple-use management of our public lands.

Mr. Chairman, thank you for the opportunity to testify today. I will be pleased to answer any questions you may have.

Response to questions submitted for the record by Henri Bisson

1. In response to a question from Mr. Pearce, you stated that out of more than 19,000 wells, only 20 were "bonded on." To clarify, is that 20 wells, or 20 surface owners? If 20 surface owners, how many wells? What time period does that figure cover? (For example, last year, or since enactment of EP Act, or other?) Please list the location of those cases.

At your request, the BLM completed a detailed review to further clarify and quantify bonding statistics:

- To date, the BLM holds a total of 42 surface loss and damage bonds, covering 19 surface owners. The nature of a surface loss and damage bond is that it is a tool to ensure compensation of loss and surface damages in the absence of a surface use agreement.
- During calendar year 2006, the BLM accepted 25 surface owner loss and damage bonds from operators/lessees. Each bond is linked to a specific well. A total of 15 surface owners are covered by these bonds for loss and damages (some surface owners have more than one bond allocated to them.) The bonds accepted in calendar year 2006 are held in the following States: CA—17 bonds, MT—6 bonds, UT—1 bond, and WY—1 bond.
- After an APD is approved, operators typically continue their negotiation efforts with surface owners to reach a surface use agreement. Once an agreement has been reached, the bonds are released. This explains the small amount of surface bonds the BLM holds today. A summary of the location of the 42 existing bonds is as follows: CA—17 bonds, MT—12 bonds, NM—1 bond, UT—1 bond, WY—11 bonds.

2. In your oral remarks, you stated that many more acres were under lease in 1984 (131 million acres) than currently (42 million acres). Isn't that because oil and gas companies have a much better idea now of where they want to explore, and do not nominate, or bid on, lands that they don't consider to be good prospects?

That is not the primary reason for the significant reduction in leased acres. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Act of 1987) changed the way the BLM offered onshore oil and gas leases to the public, and this reduced the speculative demand for leases. Prior to the Act of 1987 it was the BLM's policy to offer for lease as much acreage as was available for leasing. Much of this acreage was offered in a lottery format. The BLM would send out a list of parcels to be leased and for $75 dollars members of the public could have their name put into a pool of potential lessees. The BLM would then randomly select one to be the les-

see. The Act of 1987 was passed to change the leasing program. Now only parcels that are nominated by the public are considered for lease and if offered, it is done through an oral auction. Areas of interest continue to change for oil and gas companies as technology and new discoveries of oil and gas occur.

3. Where has BLM NOT required Best Management Practices—and why—in the past three years.

The BLM did not require the use of Best Management Practices (BMPs) until June 2004, when BLM issued a directive to All Field Offices, directing them to use BMPs after an appropriate environmental analysis for not only oil and gas resources but for energy development related lands and realty actions, i.e. power lines or pipelines to an oil and gas well (see attached policy). Since that time the BLM has increasingly incorporated appropriate BMPs into new Applications for Permit to Drill, energy related rights-of-way, and other related permits.

BLM has always required Lease Stipulations and Conditions of Approval on drilling permits to mitigate potential impacts to surface disturbing activities on the ground. However, older oil and gas fields have the least application of best management practices. Examples would include older fields in the Uintah Basin of Utah and the Permian Basin of New Mexico. Many oil and gas operators have voluntarily adopted Best Management Practices and have included them in their permit applications.

4. You noted in your oral remarks that the footprint of oil and gas development is quite small, because not all lands that are leased are developed. In terms of gauging the footprint, to what degree is the BLM using landscape fragmentation metrics that take into account roads and other infrastructure to gauge the footprint of development?

There are multiple ways of gauging the "footprint" of development, and all provide useful information. It is the BLM's intent to reduce the footprint of energy development and thereby reduce environmental impacts including loss of vegetation, soils, visual quality, air quality, habitat, or others. When measuring an environmental impact, such as vegetation loss, it is appropriate to measure the direct footprint of vegetation disturbance. When measuring habitat loss, it may be important to measure not only direct vegetation loss, but also the indirect effect of noise, dust, and traffic on a wider area. In either case, the BLM has identified environmental Best Management Practices (www.blm.gov/bmp) that are effective in reducing the direct and indirect footprints of energy development.

5. Abandoned and Inactive Sites/Wells

How many sites have been abandoned each year in the past 10 years? For each, what is the location, the operator, the type and amount of financial assurance, the number of wells, and the projected reclamation cost?

The BLM defines an abandoned well as one in which the well has been properly plugged to the surface but the reclamation has not yet been inspected and accepted as final.

The total numbers of Federal wells plugged (abandoned) for the last 10 years are:

Fiscal Year	Wells Plugged on Federal Leases
1997	865
1998	660
1999	449
2000	698
2001	802
2002	962
2003	870
2004	526
2005	82
2006	471

The detailed listing of each well and operator is provided in a table contained in Appendix A. BLM does not track the projected reclamation cost for abandoned wells. The operators, not the BLM, are responsible for their reclamation.

6. What was the total number of abandoned and inactive wells in each of the past 10 years? For each year, what is the number of new abandoned and inactive wells, the number of abandoned and inactive wells reclaimed, the number of abandoned and inactive wells brought back into production, the production from each of those wells, and the total projected reclamation cost from those wells?

This question, as well as questions 7 and 9, requests comprehensive data which is not accessible through our standard records systems. We will acquire the data through a physical review of records located at multiple BLM field offices in several States. A request to our field offices to initiate this data collection was sent out during the week of June 4, 2007. We expect to be able to respond to questions 6, 7, and 9 in October.

7. What expenses were incurred in each of the past 10 years due to inadequate financial assurance amounts? For each, what is the location, the operator, the number of wells, and the type and amount of financial assurance?

Please see answer to question 6, above.

8. How many sites achieved final reclamation, final inspection, and final bond release each year in the past 10 years? For each, what is the location, the operator, and the number of wells?

Summary:

Fiscal Year	Wells Plugged and Abandoned (Final Reclamation approved)
1997	131
1998	392
1999	511
2000	267
2001	208
2002	299
2003	335
2004	301
2005	151
2006	248

The detailed listing of each well and operator is provided in a table contained in Appendix B.

9. For how many operators, projects and wells has BLM increased financial assurance amounts in each of the past 10 years? For each, what is the location the operator, the number of wells, the type and amount of financial assurance (both before and after the increase), and the projected reclamation cost?

Please see answer to question 6, above.

Cultural Resources

10. In response to a question about Nine Mile Canyon in Utah, you stated an expectation that the management plan area would address cultural resources concerns. However, the problem may be that oil and gas leasing simply isn't compatible with the historic and sacred resources in that canyon. Many of the leases which Bill Barrett Corporation now seeks to develop in Nine Mile Canyon and on the plateau above were issued or renewed in the late-1980s and early 1990s. Now, with respect to the proposed 750-plus well development, BLM seems to believe that it has limited alternatives available to prevent the proposed development or to minimize the impacts because it issued the leases many years ago. Does the agency believe that it cannot revisit the terms of old leases when renewing them, and if so, why? In the past five years, has BLM identified areas that, for cultural or habitat reasons, should not be open to leasing at all? If so, please specify. How can BLM prevent the future occurrence of a situation like that of Nine Mile Canyon?

The BLM has several options available for mitigating oil and gas development-related impacts to cultural and habitat resources. Mitigation developed through the consultation and environmental review processes could result in the relocation of development or the mandatory application of site-specific mitigation and best management practices to individual drilling permits. Regardless of the age of oil and gas leases, the BLM must comply with applicable statutes, such as the consultation requirements of Section 106 of the National Historic Preservation Act. The BLM must also comply with the National Environmental Policy Act, Endangered Species Act, Migratory Bird Treaty Act, the Clean Water Act, Clean Air Act, and many other Federal statutes. Lease operations are also subject to regulations, such as the oil and gas "Environmental obligations" regulatory provisions found in 43 CFR 3162.5-1. In addition, the Price Field Office is currently revising their Resource Management Plan and will address leasing and other land use planning considerations related to cultural and habitat resources in Nine Mile Canyon and the West Tavaputs Plateau areas.

Specific to Nine Mile Canyon, very little oil and gas development is being permitted in the canyon where the most important cultural resources are found. The BLM is restricting drilling locations in the canyon and the majority of the oil and gas resources within the canyon will be developed by directional drilling from centralized locations. Currently, there are four wells and one large compressor station in the bottom of Nine Mile Canyon. Three of these wells are located on private surface (two of the private surface wells have private mineral ownership and one has minerals owned by the State), and one well is located on Federal surface (BLM). That well was approved and drilled in July 1962. All of the other wells associated with oil and gas production in the area are located outside of Nine Mile Canyon proper and most are located on the benches to the south. The one large compressor station is located on private land.

The following chart contains examples of lands that have been deferred or closed to leasing in land use plans during the past five years primarily to protect cultural or habitat resources. More commonly, in practice, the BLM makes land with habitat and cultural resource values available for leasing, but may include major or moderate resource protection lease stipulations in the oil and gas lease. When an actual request for a drilling permit is received, the BLM conducts an environmental review and may move the well and road location to protect cultural and habitat values and will typically attach additional resource protection constraints to the approved permit.

Chart: Examples of BLM-managed lands that have been deferred or closed to leasing in land use plans during the past five years primarily to protect cultural or habitat resources. The figures are approximate.

State	Acres Deferred From Leasing (Last 5 Years)		Acres Closed in Preferred Alternative of Draft Land Use Plan (Last 5 Years)		Acres Closed in Final Land Use Plan (Last 5 Years)	
	Habitat	Cultural	Habitat	Cultural	Habitat	Cultural
AK	440,000		551,327			
			1,834			
AZ						
CA						
CO	36,000		83,000	Unknown		
Eastern States						
MT, ND	637,000	13,000				2,100
NV						1,338
						12,500
NM, OK, KS	300,000		200,000			
			35,000			
OR, WA		120				16,406
UT			22,000			
			34,000			
WY, SD	122,700	538,000				

11. How often-in what percent of APDs-does the BLM attach a cultural resource stipulation to leases? Can the stipulation resolve potential conflicts between oil and gas development and the protection of significant cultural and historic resources? How often does BLM later deny an APD or activities within a lease due to a cultural resource stipulation and eventual finding that there is a threat to cultural resources?

Section 6 of the standard oil and gas lease form includes requirements for the protection of cultural resources. Regardless of the lease terms and conditions, the BLM is required under Section 106 of the National Historic Preservation Act to complete consultation with the State Historic Preservation Officer (SHPO) for all subsequent permitting actions that affect cultural resources eligible or potentially eligible for the National Register of Historic Places. As a result of the consultation process, the proposed activity may be relocated or mitigation requirements may be attached to the permit. This process has been very effective in mitigating conflicts between oil and gas development and protection of important cultural resources. It is extremely rare that impacts cannot be mitigated or the site avoided altogether. In consultation, the BLM works with the oil and gas operator and the State Historic Preservation Officer to develop an alternative that allows some form of the action to proceed (even if it must be relocated) with little or no impact to cultural resources. Subsequent to consultation, denial of an APD is rare.

Follow up commitments

During the hearing, Mr. Bisson stated for the record that BLM would supply information on the following:

Issue 1: Where BLM is using Section 390 categorical exclusions, and where that information is made readily available to the public.

The following information reflects BLM Field Offices that have used categorical exclusions (CXs) during Fiscal Year 2006 (10/1/05 to 9/30/06).

Field Offices using Section 390 CXs; information available on WEBSITES	
Field Office	State
Anchorage	Alaska
Glenwood Springs	Colorado
Grand Junction	"
Little Snake	Colorado
Dickinson	Montana
Great Falls	"
Buffalo	Wyoming
Casper	"
Rock Springs	"
Cody	"
Kemmerer	"
Lander	"
Rawlins	"
Pinedale	"
Newcastle	"

Field Offices using Section 390 CXs; information available on paper at PUBLIC ROOMS LOCATED IN BLM OFFICES.	
Field Office	State
Bakersfield	California
Canon City	Colorado
Craig/Kremmling	"
Durango	"
Meeker	"
Uncompahgre	"
Jackson	Eastern States
Reno	Nevada
Carlsbad	New Mexico
Farmington	"
Price	Utah
Vernal	"
Salt Lake City	"

Issue 2: Where the agency is considering the cumulative impacts of the use of CXs on wide-ranging species and wildlife corridors?

The Section 390 CXs essentially tier to existing NEPA analysis which includes a cumulative impact analysis.

The BLM analyzes the cumulative impacts of oil and gas exploration, development, production, and abandonment on resources, including wildlife and its habitat, either at: (a) the land use planning stage through the Environmental Impact Statements (EIS) associated with BLM's Resource Management Plans; or (b) the development stage through geographic area NEPA analysis that looks at all or a portion of an oil and gas field.

a. Cumulative Impact Analysis at the Land Use Planning Stage:

At the land use planning stage, the BLM determines where and under what conditions oil and gas exploration, and development activities will be permitted. Before these determinations are made, the impacts associated with these determinations must be analyzed in the EIS prepared with the RMP. To support the cumulative impact analysis associated with the RMP, a reasonable foreseeable development scenario (RFDS) for oil and gas development is generated. The RFDS projects management activities and actions likely to occur in the planning area over the life of the RMP (typically 15 to 20 years).

Information within an RFDS includes:

- Number of wells expected to be drilled over the life of the RMP;
- typical surface and subsurface activities that are likely to take place if these wells are drilled;
- average amount of acres typically disturbed to drill, complete, and produce a well (includes well pads, access roads, and pipelines);
- waste disposal needs - produced water, H2S, CO_2 venting, and flaring; and
- sequence, timing and duration requirements needed for exploration, drilling, and production phases.

An interdisciplinary team uses the RFDS as a guide to analyze what the cumulative impacts of oil and gas development would be to other resources (i.e., ecological, aesthetic, historic, cultural, economic, social, and/or health) so as to develop mitigation measures to avoid or reduce adverse impacts.

b. Cumulative Impact Analysis at the Development Stage:

The subsequent method for analyzing cumulative effects is through a geographic area NEPA analysis, which is an activity-level analysis of an entire oil and gas field or a logical portion of a field where proposed multiple wells, access routes, production facilities, utilities, etc. have been identified. These types of analyses take a broad scale, yet site-specific look at a defined area and known or likely development proposal. The primary advantage is the ability to look at a broad area in a site-specific manner and analyze the cumulative effects of oil and gas development in relation to other resource uses in one public process rather than individual development proposals.

Issue 3: Examples of areas where BLM is ensuring that mitigation occurs on the site of former oil and gas facilities (versus habitat enhancement elsewhere).

Jonah Field of Pinedale, Wyoming: New discoveries have been made in different formations and at greater depths of an existing field. New mitigation the operators have applied to the existing older field include:

- Reducing the physical footprint of well pads by centralizing operations. Centralization eliminates the need to disturb a large amount of surface area at each well pad location to support equipment.
- After wells are drilled and completed, all facilities associated with the production of these wells are strategically placed at centralized locations to reduce vehicle traffic and needed roads.
- Producing wells are monitored electronically through remote telemetry, which eliminates the need for field visits to well site locations on a continuous basis. This decreases vehicle traffic and associated wildlife disturbance.
- Operators are experimenting and developing improved reclamation techniques that would ensure not only the reclamation, but the restoration of disturbed areas. These practices are also being implemented at the production phase of operations through interim reclamation of disturbed areas not needed for the production phase of a well.
- Furthermore, operators within the Jonah Field have contributed funds to a centralized organization (Jonah Interagency Mitigation and Reclamation Office) that provides overall management of field monitoring and on-and off-site miti-

gation of oil and gas development. For further information please refer to the following website: http://www.wy.blm.gov/jonah__office/index.htm.

Carlsbad, New Mexico: The BLM has identified areas (well pads and access roads) within old oil and gas fields where past reclamation efforts were unsuccessful due to obsolete practices or lack of stringent environmental standards that didn't exist at the time. These abandoned locations are being reclaimed and reseeded with native vegetation to stabilize severely eroded soils and reduce the amount of habitat fragmentation that has already occurred. These efforts are part of a statewide effort by the New Mexico BLM to restore its lands at a landscape level. For further information associated with this project please refer to the following website: http://www.nm.blm.gov/restore__nm.

Issue 4: Examples of successful adaptive management efforts.

Pecos District Office, New Mexico: The BLM is in the process of amending the current Carlsbad and Roswell Resource Management Plans (RMP) in response to changing resource conditions and new issues in the context of habitat management for the lesser prairie-chicken and sand dune lizard while at the same time providing for energy production. New monitoring information from the local BLM Field Offices and cooperating agencies revealed that these two species are on the brink of being listed as threatened or endangered under the Endangered Species Act (ESA). This plan amendment was designed to establish new conditions and prescriptions that would protect and enhance lesser prairie-chicken and sand dune lizard habitats while allowing other uses to continue.

Anticline of Pinedale, Wyoming: The BLM Field Office is revising its current land use plan in response to concerns of declining wildlife populations. The revised plan calls for additional mitigation including:

- reducing the number of pads through multi-well pad development;
- requiring directional drilling and simultaneous completion operations;
- requiring operators to develop the oil and gas field in a "phased approach" by dividing it into core areas where the location and intensity of drilling activities could occur at only one core area at any given time;
- reducing residual wildlife impacts and air quality impacts by:
  - use of liquids gathering systems, centralized facilities, and centralized production tanks where feasible to reduce truck traffic;
  - increased use of remote telemetry further reducing trips and traffic during production;
  - management of traffic through busing and scheduling during seasonal stipulation periods; and
- reducing rig moves on and off pads.

These efforts are anticipated to reduce impacts to wildlife populations by decreasing the expected period for development in core areas under seasonal restrictions.

Issue 5: The number of leases the NPS has requested that BLM withdraw, and the number which were subsequently withdrawn.

The BLM does not lease National Park Service lands for oil and gas development. Occasionally the National Park Service will request that the BLM not lease a parcel near Park lands. On other occasions, the BLM will proactively notify the National Park Service that parcel nominations have been received for parcels near Park lands. The BLM typically discusses impacts, mitigation, and seeks the opinion of the National Park Service prior to leasing the lands.

State	Number of Leases The NPS Has Requested BLM Withdraw Prior To Sale	Number of Leases BLM Has Withdrawn At NPS Request Prior To Sale
AK	0	
AZ	3 (parcels)	3 (parcels)
CA	0	
CO	2 (requests)	0
Eastern States	0	
MT, ND	0	
NV	0	
NM, OK, KS	3 (parcels)	3 (parcels)
OR, WA	0	
UT	60 (parcels)	39 (parcels)
WY, SD	0	

A. In previous hearings, there has been criticism that oil and gas production in Wyoming is threatening to sportsmen's activities. Has BLM performed any analysis to determine to big game trends in that area? Have the numbers been increasing or decreasing and by how much? Have the hunter numbers been increasing or decreasing? Has the hunter success rate been increasing or decreasing?

Major oil and gas development activity began in the Jonah/Anticline fields in Sublette County, Wyoming in calendar year 2000. We have reviewed Wyoming Game and Fish Department (WG&F) trend data from 1996 to 2005 to determine if impacts may be occurring in Sublette County in addition to those occurring on a statewide basis. The following data from WG&F shows that overall big game populations and hunting opportunities in Sublette County generally mimic statewide results.

Population Estimates – 1996 to 2005*

Area	Deer	Antelope
Statewide	6% increase	25% increase
Sublette	.5% increase	27% increase
Comparison Area	27% decrease (Wyoming Range)	N/A

*Over the past ten years, the difference between population estimates and population objectives for deer has ranged statewide from 23% below to 3% below objective and for antelope has ranged from 15% below objective to 10% above objective.

Hunter Numbers – 1996 to 2005

Area	Deer	Antelope
Statewide (numbers of hunters)	5% increase	31% increase
Sublette Area (number of active licenses)	12% increase	36% increase

Hunter Success – 1996 to 2005

Area	Deer	Antelope
Statewide	7% increase from 1996 to 2005	14% decrease from 1996 to 2005
Sublette Area	2% increase from 1996 to 2005	8% decrease from 1996 to 2005

B. In previous hearings, there has been criticism that the Department has a "lease at all costs" approach to managing Federal lands. Is this true or false? And can you explain why?

We disagree with this assertion. The BLM is a multiple-use agency, and domestic energy production is only one of the many uses for which we manage the Federal lands under the multiple-use mandate. However, the numbers show that leasing is not the predominant use of the lands under BLM management. The BLM manages a subsurface mineral estate of 700 million acres. Approximately 42 million acres of that total, or 6 percent, are under lease for oil and gas. Of the leased acreage, approximately 12.3 million acres are in producing status. This represents approximately 1.8 percent of the 700 million acres of Federal mineral estate.

Furthermore, approximately 25 million acres of the 258 million surface acres the BLM manages are effectively closed to leasing because of special designations such as National Monuments, Wilderness and Wilderness Study Areas. In comparison, only 12.3 million acres, or less than half the protected number, are under lease and in producing status; and of the lease acreage that is in producing status, only about 240,000 surface acres have direct surface disturbance from activity associated with energy production.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

June 22, 2004

In Reply Refer To:
3100 (310) P
2800 (350)

EMS TRANSMISSION 06/22/2004
Instruction Memorandum No. 2004-194
Expires: 09/30/2005

To: All Field Officials

From: Director

Subject: Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of-Way

Program Areas: Oil & Gas Operations; Geothermal Operations; Helium Operations; Lands & Realty.

Purpose: The purpose for issuing this Instruction Memorandum (IM) is to establish a policy that Field Offices consider Best Management Practices (BMPs) in Na-

tional Environmental Policy Act (NEPA) documents to mitigate anticipated impacts to surface and subsurface resources, and also to encourage operators to actively consider BMPs during the application process.

Background: BMPs are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis to reduce, prevent, or avoid adverse environmental or social impacts. BMPs are applied to management actions to aid in achieving desired outcomes for safe, environmentally sound resource development, by preventing, minimizing, or mitigating adverse impacts and reducing conflicts. The early incorporation of BMPs into Application for Permit to Drill (APDs) by the oil and gas operator helps to ensure an efficient and timely APD process.

Policy/Action: All Field Offices shall incorporate appropriate BMPs into proposed APDs and associated on and off-lease rights-of-way approvals after appropriate NEPA evaluation.

BMPs to be considered in nearly all circumstances include the following:

- Interim reclamation of well locations and access roads soon after the well is put into production;
- Painting of all new facilities a color which best allows the facility to blend with the background, typically a vegetated background;
- Design and construction of all new roads to a safe and appropriate standard, "no higher than necessary" to accommodate their intended use; and
- Final reclamation recontouring of all disturbed areas, including access roads, to the original contour or a contour which blends with the surrounding topography.

Other BMPs are more suitable for Field Office consideration on a case-by-case basis depending on their effectiveness, the balancing of increased operating costs vs. the benefit to the public and resource values, the availability of less restrictive mitigation alternatives, and other site specific factors. Examples of typical case-by-case BMPs include, but are not limited to the following:

- Installation of raptor perch avoidance;
- Burying of distribution power lines and/or flow lines in or adjacent to access roads;
- Centralizing production facilities;
- Submersible pumps;
- Belowground wellheads;
- Drilling multiple wells from a single pad;
- Noise reduction techniques and designs;
- Wildlife monitoring;
- Seasonal restriction of public vehicular access;
- Avoiding placement of production facilities on hilltops and ridgelines;
- Screening facilities from view;
- Bioremediation of oil field wastes and spills; and
- Use of common utility or right-of-way corridors.

A menu of typical BMPs can be found on the BLM Washington Office Fluid Minerals website. The website is updated frequently and submission of new BMPs and photos is encouraged. http://www.blm.gov/bmp

BMPs have been developed and utilized by numerous oil and gas operators throughout the nation. When implementing new BMPs, Field Offices are encouraged to work with affected operators early, to explain how BMPs may fit into their development proposals and how BMPs can be implemented with the least economic impact. Discuss potential resource impacts with the operators and seek their recommended solutions while encouraging operators to incorporate necessary and effective BMPs into their proposals. BMPs not incorporated into the permit application by the operator may be considered and evaluated through the NEPA process and incorporated into the permit as APD Conditions of Approval or right-of-way stipulations.

Field Offices must be cautious to avoid the "one size fits all" approach to the application of BMPs. BMPs, by their very nature, are dynamic innovations and must be flexible enough to respond to new data, field research, technological advances, and market conditions. Following implementation, Field Offices should monitor, evaluate, and modify BMPs as necessary for use in future permit approvals.

The overall goal of the Bureau is to promote the best examples of responsible oil and gas development. Public lands should be showcases of good stewardship while providing for responsible, sustainable, and efficient development of the nation's oil and gas resources. BLM will use the Quality Assurance Team (QAT) and General Management Evaluation (GME) processes in order to review our progress. To recognize good environmental stewardship work through the use of BMPs, BLM is establishing an annual "Best Management Practice" awards program with annual awards for industry and BLM offices, the details of which will be available subsequently.

Timeframe: Immediately.
Budget Impacts: Minimal.
Manual and Handbook Sections Affected: None.
Coordination: AD-200.
Contact: Please direct policy questions to Tom Lonnie, Assistant Director, Minerals, Realty, and Resource Protection (AD-300) at (202) 208-4201; or by E-mail at thomas—lonnie@blm.gov; and technical questions to Jim Perry, Washington Office Fluid Minerals Group (WO-310), at (202) 452-5063; or by E-mail at jim—perry@blm.gov; or to Tom Hare, Washington Office Fluid Minerals Group (WO310), at (202) 452-5182, or by E-mail at tom—hare@blm.gov.

Signed by:

Francis R. Cherry, Jr., Acting Director

Authenticated by:

Barbara J. Brown, Policy & Records Group, WO-560

Mr. GRIJALVA. Thank you very much. I want to thank the witnesses, and if I may, Mr. Bisson, request that the statement that you presented to us orally, if you could submit that also for the record because it is somewhat different than the statement that we have.

Mr. BISSON. I will do that, sir.

Mr. GRIJALVA. Thank you. Or a lot different. Let me begin with some questions. Mr. Bisson, and it was mentioned as part of Mr. Ferguson's testimony, let me begin with that area. You know, Section 390 of the Energy Policy Act allows BLM to categorically exclude certain wells and other sites from the project level environmental analysis. My questions is, is your agency tracking and mapping where the Section 390 categorical exclusions are being used? And the second part of that question is, is that information readily available to the public?

Mr. BISSON. I don't have that information with me today. We can certainly supply it, but we know exactly where those decisions are being made using categorical exclusions. We can provide that information, sir.

Mr. GRIJALVA. And the second part of the question is, is that readily available to the—the information that you are going to provide this committee on the mapping and tracking, that is readily available to the public is the other part of the question.

Mr. BISSON. I can't answer that question. I think each state probably handles it a little bit differently, but I believe that the notices, you know, the activity that is going to occur, that an APD is going to be approved are published and are a matter of record. But I do not believe that there is a public involvement process on the actual CXes because the CXes are intended to simplify the process where we have already done extensive NEPA analysis in former documents that looked at the very same area.

Mr. GRIJALVA. OK. And your agency, Mr. Bisson, are you incorporating the recommendations of your wildlife biologists in the decisions as to whether to use or not use categorical exclusion?

Mr. BISSON. I believe that we are.

Mr. GRIJALVA. And in that process of the cumulative effects of those exclusions, especially in the wide-ranging issue of species and wildlife quarters, is that being collected in a cumulative way as well in the agency?

Mr. BISSON. We can provide that information.

Mr. Chair, if I might.

Mr. GRIJALVA. Please.

Mr. BISSON. The use of these categorical exclusions does not exclude the application of other environmental laws or regulations, environmental best management practices, endangered species consultation or mitigation, protection of sensitive wildlife species such as sage grouse, all of these protection measures are still utilized and supplement the decisions that we make when we use the CX, and we provide a specific guidance to the field that requires our managers to consult with the game and fish agencies, as appropriate.

Mr. GRIJALVA. Let me follow that. So how much mitigation is done on a site of former oil and gas facilities in the form of enhancement of habitat elsewhere? What is your agency doing to assure that this mitigation has taken place? What are the requirements or the stipulations in place to assure that enhancement takes place?

Mr. BISSON. First of all, when facilities are removed, and these are the permits of development that we are approving now, we will require reclamation of the areas that were disturbed. In many cases, we are requiring interim reclamation where disturbance has occurred even before a field is taken down. But there are so many new fields that we are years away from actually carrying out those activities. We are monitoring the activities that are happening on the ground, and fully intend to require the companies to restore their lands when they leave.

Mr. GRIJALVA. For additional submittal to the committee, I, and I think the members of the committee would be curious if you could provide information to the examples of successful adaptive management efforts that have gone on.

Mr. BISSON. Yes, sir.

Mr. GRIJALVA. OK. One more and then turn it over to my colleague. How many leases has the National Park Service requested that BLM withdraw?

Mr. BISSON. I can't answer that question. I don't have that information with me, but I can tell you that as an example last year when I was acting state director in Utah, a Utah-specific case. We had a lease sale in August. We had requests from the Park Service to not consider leasing nine lease tracts adjacent to Arches National Park, and we consulted with the Park Service. We set a standard of four miles distance that might impact the park, and we removed lease tracts within that four-mile distance from the lease sale.

Mr. GRIJALVA. And my time is up, but also if you could submit to the committee how many have been requested, and you gave an example of nine by the Park Service, and how many of these—of the requests, how many of them were subsequently withdrawn.

Mr. BISSON. We will provide that information for you, sir.

Mr. GRIJALVA. Thank you. With that, let me turn to Ranking Member Pearce for any questions he might have.

Mr. PEARCE. Thank you, Mr. Chairman. Thank you, Mr. Bisson, again appreciate your service, and I would apologize in public for the one of our members who submitted that request that took you

through a year-long investigation for doing your job. That was uncalled for. Thank you.

We have heard characterizations of the Bush Administration is just an oil friendly leasing, they are going to lease every ounce of land up, and that they are out there destroying the environment, and you as an agency are not checking them up. Give me a progression, if I can, for the last five or six years of the number of inspections, number of inspections for remediation, number of inspections for compliance.

Mr. BISSON. Yes, sir. In 1988, the BLM completed 11,500 inspections of oil and gas.

Mr. PEARCE. That was how many?

Mr. BISSON. Eleven thousand four hundred and eight-six to be exact.

Mr. PEARCE. OK.

Mr. BISSON. In 2006, we completed 16,967 inspections. That is a 47 percent increase. In addition——

Mr. PEARCE. Yes. So what you are saying that under the Bush Administration we are up almost 5,000, which is almost a 50 percent increase over the Clinton Administration. I am not pointing fingers at the Clinton Administration, but if anybody was guilty of not checking, it would be actually the administration before this one because my understanding you have gone up by almost 6,000, 5,500 inspections.

Mr. BISSON. It will actually be more this year as well. We are going up to 21,000.

Mr. PEARCE. So we are even going to have another 3,000 increase.

We have also heard testimony that the Bush Administration is a "lease at all cost", lease everything you can get, lease it, lease it, lease it, lease it. We hear that testimony in front of this committee. Can you give me any impression of what is happening under leases because I know, I am from the oil and gas business, I am from that section of the country, I know the problems that we are having leasing, so can you tell me what has happened to leases since the eighties to the present?

Mr. BISSON. Well, in my testimony a few minutes ago, I talked about the fact that in the eighties we actually had three times as many acres leased as we do now.

Mr. PEARCE. So you are actually decreasing leasing?

Mr. BISSON. We have much fewer acres leased now than we did back then.

Mr. PEARCE. But what were the numbers?

Mr. BISSON. It was 131 million acres were leased in 1984, and we are down to about 42 million acres right now.

Mr. PEARCE. So from 131 down to 42. If our income had decreased from 131 to 42, we would think our income had dramatically fallen, yet I continue to hear testimony in here that says the Bush Administration is trying to lease up the whole world, and sometimes the facts get in the way, I know that, but appreciate that information.

Mr. Ferguson, you had—again we are hearing the categorical exclusions are the problem. The categorical exclusions actually were worked out in this committee, the Resources Committee down in

the other room that we meet in. It was actually Mr. Peterson who testified, and myself, who were sitting, he was on the upper dais, I was here, Mr. Miller, Mr. Abercrombie, and we got into a discussion late in the day, it was about a seven-hour markup when we were amending the bill, and we actually worked that section out word by word, the five categorical exclusions, because we saw that the language was actually being used as a tool to bludgeon companies.

So what we did, and these gentlemen on the minority at that time, the majority now, they came to the conclusion that no, we think the bill—that the Environmental Protection Act had been used to reach too far. The Endangered Species Act was being used as a tool, and so they were trying to reach some business compromise.

Can you tell me how it is actually working out because we are going to hear testimony today, and we have previously heard it, that you need to get rid of those evil categorical exclusions?

Mr. FERGUSON. Well, as I mentioned in the testimony, Mr. Pearce, we have records that indicate that we have used that Section 390 categorical exclusion on about 300 projects, but I think Mr. Bisson made a very good point. Those are not just what sometimes is called a rubber stamp. When a project comes in, we have requirements to make sure they are in compliance with all other environmental laws, and we actually have situations where we add additional conditions of approval for operations to occur when we use that categorical exclusion.

So we have had some pretty good success with it, and we feel like we are taking the right approach to how we are processing those. We are not just—it is not a factory output type thing, it is a case-by-case situation.

Mr. PEARCE. Sure.

Mr. FERGUSON. On the ground.

Mr. PEARCE. We are trying to do the best we can.

Mr. Chairman, my time has lapsed, but I have questions for a second round if you get them.

Mr. GRIJALVA. Thank you. Mr. Udall.

Mr. UDALL. Thank you, Mr. Chairman. I would like to welcome the panel. Thank you for taking your time to come up to the Hill. Mr. Bisson, if I could start with you, and direct some questions your way, and particularly focused on Colorado, of course my home state.

There have been some instances when the BLM has leased lands in the areas the communities depend on for their water supplies, and my understanding is that some of those communities have asked the BLM not to lease in those areas, but those requests have been denied. My question is a two-part question. Is that true, and if so, why? And I think you probably are aware of at least the situation in Palisade and Grand Junction.

Mr. BISSON. I am aware of it. I have not been briefed on it, sir, but I am aware that a decision was made in Colorado to proceed with leasing those several tracts that you are speaking about.

Mr. UDALL. Could you tell me why you would ever deny such a request when water is so crucial, particularly in the West where we have limited supplies?

Mr. BISSON. I can speculate. I would speculate that the state director decided that the mitigation measures they put in place should be sufficient, and that at the time that any drilling or development would occur, that they could add additional requirements that would protect the water.

Mr. UDALL. I can understand the approach to be taken. I would just for the record point out that there was a broad swatch of communities, of groups within those communities who said, please give us a little bit more time. This is so important to us.

Can you provide a complete answer for the record?

Mr. BISSON. Yes, sir, I will.

Mr. UDALL. Appreciate that. If I could, let me move to "split estate" situations. How much advanced notice does the BLM give to surface owners before offering minerals under those lands for leasing?

Mr. BISSON. I can't answer that question, but if I could take a second, what I would like to do is explain that last year as a result of the Energy Policy Act BLM was required to do a split estate analysis, and we went through a five-month-long process where we held nine listening meetings across the West. We accepted more than 3,000 public comments about this issue, and one of those issues was that public notice that lessees are provided, and we have instructed our field offices to take every step possible to make sure there is advance notice to landowners about pending lease sales.

Mr. UDALL. Are there any specific requirements for consultations with the surface owners?

Mr. BISSON. Prior to the lease sale?

Mr. UDALL. Prior and after, yes, sir.

Mr. BISSON. Yes. I can't answer that. I do know that the first place where decisions are made about leasing is in the land use plans, and we have instructed our field offices again to pay for ads in the papers, to do whatever they have to do to get the word out about the land use plans that are underway, and the decisions that are going to be made about where leasing may or may not occur.

Mr. UDALL. At least one conclusion I could draw is because you don't have any specifics, you don't have any requirements, but I would certainly like you to respond fully for the record, if you would.

Mr. BISSON. I absolutely will, sir.

Mr. UDALL. If I could direct a question at you, Mr. Bisson, and also Mr. Ferguson. Another witness, Mr. Emmerich, will testify on behalf of the WGA, the Western Governors' Association. Have you had a chance to review his testimony?

Mr. BISSON. Yes, I have.

Mr. UDALL. Mr. Ferguson?

Mr. FERGUSON. I have not.

Mr. UDALL. If so, what do you think about the Governors' proposal to amend the categorical exclusion provision of the 2005 energy act?

Mr. BISSON. We feel that the use of the categorical exclusion is a very important tool for us in terms of completing our permitting activities. We use it judiciously. We have instructed our field offices to consult with the game and fish departments. We require inter-

disciplinary review. We don't shortcut the process. What we are doing is taking advantage of existing NEPA work that has been, and that is where the savings in time comes from. We think we need the tool.

Mr. UDALL. Mr. Ferguson, if you would like to reply for the record later, that would be great, once you have had a chance to look at the testimony.

Mr. FERGUSON. I can do that. Thank you.

Mr. UDALL. Is the BLM giving special consideration as to whether or not to use a CE where BLM-sensitive species and/or candidates for ESA listings are present, specifically sage grouse?

Mr. BISSON. Absolutely.

Mr. UDALL. So you are considering it?

Mr. BISSON. We absolutely consider all the resource values on a site where a CX is proposed to be used, and in some cases we determine that a CX is not appropriate.

Mr. UDALL. Actually, I maybe have—you are not considering using a CE for these situations with sage grouse?

Mr. BISSON. Again, I don't want to emphatically say yes or no because I don't know, but if we had a BLM-sensitive species that could be affected by a project, that would likely elevate the NEPA requirement.

Mr. UDALL. Thank you again. Thanks, Mr. Chairman.

Mr. GRIJALVA. Thank you, Mr. Udall.

We are going to do one more round of questions. Mr. Ferguson, if I understand your testimony, the Forest Service conducts broad-scale leasing analysis to determine which lands are suitable for leasing, and then informs the BLM about those lands that are available. So can the committee infer that the agency, your agency has the authority of determining some lands to be unsuitable for development? Would that be a correct inference?

Mr. FERGUSON. I think that could be an inference that could be made. We go through—our planning process at the Forest Service is a little different from the process that is followed at the Bureau of Land Management. The leasing analysis is specifically targeted toward the oil and gas resources when I referenced the leasing analysis. So it is identifying lands that our specialist and through the public process have identified as being available or suitable, and that is again at a very broad level. Once that parcel, if there is an interest expressed on a Forest Service parcel, then we have another opportunity to look at that parcel and make sure it is in compliance with our plans, and conditions haven't changed.

Mr. GRIJALVA. Thank you. Let me just follow up on that point. So can you answer now or submit for the record for the committee how many acres based on that analysis have been withheld from leasing because the Forest Service determined that that oil and gas development would be inappropriate? How many acres, and if you can give us an example of where?

Mr. FERGUSON. I will have to submit that for the record. I am not sure that we have that available right now. We will have to do some research with our regional offices and get that information for you.

Mr. GRIJALVA. Thank you very much.

One last question, Mr. Bisson. In the Nine Mile Canyon, BLM seem to take the position that the agency was very limited in its ability to say no to proposed development because the leases had been issued even though the development will substantially affect the historical, cultural, archeological resources, the valuable rock art panels and the landscape within the canyon will be affected.

What can you suggest to this committee that BLM can do to prevent a recurrence of a situation similar to the Nine Mile Canyon?

Mr. BISSON. Mr. Chairman, we are doing all we can to prevent unnecessary impacts on archeological resources and other sensitive resources in Nine Mile Canyon and elsewhere. The BLM right now is going through a revision of its land use plan in both the Vernal and the Price field offices. There will be measures included in the final outcome of that process, I believe, that will provide additional protection for those areas.

Mr. GRIJALVA. I have no other questions. Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. I would like to follow up a couple of the questions that have been asked.

Mr. Bisson, you know, we get the question of split estate, and the next panel really goes into that, or the panel after really goes into that in great detail, and it is referred to my good friend from Colorado. If you consider all the well that have been drilled on the lands that are subject to the split estate, how many problem wells do you actually have? How many contentious situations? How many failed to get an application?

Mr. BISSON. Mr. Pearce, right now we have about 19,500 wells on split estate, Federal minerals private surface. Of that amount I have been told that it is less than 20 wells that have been—you know, where there has not been a surface use agreement able to be negotiated, and where companies chose to bond up instead of going through the surface use agreement process. That is a pretty small number.

Mr. PEARCE. You have 19,000 something wells.

Mr. BISSON. Twenty.

Mr. PEARCE. And you have 20, so if I put 20, divide that by 19,000, I get a couple of zeros, a decimal and a couple of zeros, and one-tenth of 1 percent.

Mr. BISSON. That sounds about right, sir.

Mr. PEARCE. And yet the testimony that we are going to hear today leads us to believe that it is catastrophic out there. Do you see the catastrophic nature of the split estate occurring?

Mr. BISSON. We feel that the great majority of operators want to be good neighbors. They need to live in those communities. They need to work. They want to work with the private surface owners to reach satisfactory conclusions to the process, and we think that is the attitude that most of the operators take into their discussions.

Mr. PEARCE. You are saying most of the operators. Occasionally there are operators like anybody who are bad neighbors. Do you have tools to——

Mr. BISSON. I would have to believe that there are, sir.

Mr. PEARCE. You what?

Mr. BISSON. I have to believe that there are people like that, but we——

Mr. PEARCE. Do you have tools to deal with them is my question.

Mr. BISSON. Yes, we do. Yes, we do.

Mr. PEARCE. So you can make them be reasonable even if they don't want to be reasonable?

Mr. BISSON. We work hard to get the parties to try to work things out.

Mr. PEARCE. Are there ever any people on the other side of the equation, the people with the lands that get unreasonable?

Mr. BISSON. Having not been personally involved in it——

Mr. PEARCE. Let me tell you about a situation I was personally involved in. My company, we did oil wells, but we did work down the hole. So we were called down to around Taos, New Mexico. We were out on this lease, and we were on the pad. Then one of the trucks, not ours, but one of the other trucks on location, you always have a lot of equipment moving in, so maybe five or six big 18-wheelers dropping equipment off to do the work down hole. One wheel got off on the grass, and the rancher was sitting there, and he cocked his gun, had his rifle, and he said, "Everything shuts down here, my friends." Our trucks were trapped out there for hours.

These kind of things do need balance. I am very familiar.

You had a question earlier about habitat. You did not know specifics, but I do because again I have worked in the industry. I have watched while the big companies—Texaco, Chevron—the big companies began to build quail habitat because quail can't exist without water, and they need a little watering troughs around a lot of the locations, little watering troughs, automatic things, just pump water out there. So we have seen actually quite a lot of interest in this.

Now, I grew up in this area of New Mexico, and we hunted arrowheads all the time just growing up, so we were always wandering around through the sand hills. Not once, not one time earlier than my twenties did I ever see a deer. Now, I am not saying that the oil and gas exploration has caused the deer, but I can tell you that the biggest deer that are being killed right now are about five or six, seven, ten miles from my house, and we never used to see them. So what I am saying is that oil and gas production is not exclusive. It does not force the game away.

Also, on the habitat restoration, the highest land point in Lea County, the highest point in my home county is actually where they are cleaning up something because my dad was from a different generation. I used to go with him when I was eight-nine years old. We would go to the oil fields and they were different. The people my age are saying we are not going to mess up the environment. We are going to get the oil and gas, but we are not going to mess it up, and the highest point in Lea County is from an excavation, one of those sites from the twenties, and they are actually doing the right thing, and that is the thing I see.

Mr. Bisson, do you ever see that kind of thing play out?

Mr. BISSON. In fact, much of the clean up that we are doing right now are wells that are a remnant of that time period. We don't see hardly any—in fact, I am not aware of any operators who have walked away from leases right now without carrying out the reclamation responsibilities.

Mr. PEARCE. The walk-awayers were a different generation.

Mr. BISSON. It was a different time.

Mr. PEARCE. And it was not excusable then.

Mr. BISSON. And we won't let them.

Mr. PEARCE. All right. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. You got me there, Mr. Pearce. My daddy never took me to the oil fields to have fun.

[Laughter.]

Mr. PEARCE. That was bonding that was occurring.

Mr. UDALL. Thank you, Mr. Chairman.

I wondered if the gentleman from New Mexico is now in favor of some greater form of gun control given the way his ranchers are behaving.

[Laughter.]

Mr. UDALL. To turn more whimsical here. Mr. Bisson, what is the status of the leasing in the Wyoming Range? I am sorry. Mr. Ferguson. I don't want to just pick on Mr. Bisson today, my Forest Service friend. What is the status of the leasing in the Wyoming Range or the Bridger-Teton? And a couple of question that follow on there. How many acres are currently in production or under lease, and how many more acres are slated, being considered for leasing, and what is the status of planning on those lease sales?

Mr. FERGUSON. Let me get to my information here. The current status, as I understand it right now, is that we are in a holding pattern and there is work being processed—the plan is being evaluated and an EIS is being conducted.

In terms of some of the information, there have been several lease sales over the last couple of years, and there are about 20,000 acres that are currently involved in a stay by the Interior Land Board of Appeals, and those are just in a stay position, and there is another 23,000 plus that have been appealed, and there is no action being taken on those right now pending this action with the environmental impact statement, and making sure that the planning document is up to date, and accurate.

That is the basic information that I have right now in terms of those parcels. I can provide you some more detailed information if you would like, but I do know that there is a very concerted effort going on right now with getting that plan up to date, and the plan revision is scheduled for completion in September of 2008.

Mr. UDALL. And you will submit additional information for the record?

Mr. FERGUSON. I can do that. Sure can.

Mr. UDALL. Thank you. Mr. Bisson, if I could turn to another Wyoming question.

Mr. BISSON. Sure.

Mr. UDALL. When do you anticipate completion of the final EIS on the year-round expanded drilling situation in the Pinedale Anticline?

Mr. BISSON. The Pinedale Anticline.

Mr. UDALL. And particularly what provisions have been proposed to protect the migration corridor for the prong horn and other animals?

Mr. BISSON. Well, we have just concluded the public comment process on the draft EIS, and we are in the process right now of

moving toward a final. We got more than 40,000 comments which we are analyzing. We have made no final decisions as to which alternative we would propose or exactly what measures would be involved.

We have 14 different cooperating agencies that we are working with before we make those decisions. We will be sitting down with them and discussing it, but we are looking at strategies that involve companies agreeing to defer their development on the flanks of the Anticline. We have stage development that is being proposed where parts of the Anticline would not be developed, and be available for migration corridors while other parts are developed. We are looking at directional drilling. We are looking at lots of different strategies to try to do it in the most sensitive way that we can.

Mr. UDALL. If I could editorialize for 30 seconds perhaps on that particular area, I have great respect for my colleagues from New Mexico, Mr. Pearce. He and I have worked together on some legislative initiatives, and I do take him at his word, particularly in the drier area of New Mexico that some of the larger wildlife are not as present as they are in other areas, but certainly this area is remarkable in its wildlife abundance, and many of us, all of us, I think, want to get this right, whether it is on the industry side, the BLM side, the Congress, and I just urge you to everything possible here and to go slow.

As a follow on, at last week's hearing a witness, Mr. Simpson, who testified for the NWF, National Wildlife Federation, said that while the BLM has the best management practices requirement, those requirements are seldom implemented—or if it is included in permit stipulations, if the measures cost too much, the companies will demand that the stipulation be scrapped. Would you respond to that statement?

Mr. BISSON. Yes, sir. Best management practices are a tool that we instruct our field managers to utilize at the time that they are making decision to approve permits to drill, and we require them to look at them and made decisions about which ones ought to included as conditions of approval. Simply because a company doesn't want to do something is not a reason not to require them to take protective steps that we feel are necessary.

Mr. UDALL. Good.

Mr. BISSON. Thank you.

Mr. UDALL. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you, and let me thank both our agency witnesses, appreciate it very much. If the committee has further questions, we will be submitting those to you, and the information that you indicated you would submit for the record, we would like to request that that be within the next two weeks insofar as the full committee will be drafting an energy bill in May, and as soon as we can have that information and incorporate it into the deliberations.

Mr. BISSON. Yes, sir, Mr. Chairman.

Mr. GRIJALVA. Thank you so much.

Mr. BISSON. Thank you.

Mr. GRIJALVA. Let me call the next panel up, please, if I may.

Thank you very much, gentlemen, and as I indicated to the previous panel, your full statements will be made part of the record, and if at all possible to limit the oral remarks to five minutes, and let me begin with Mr. Emmerich. Sir.

STATEMENT OF JOHN EMMERICH, DEPUTY DIRECTOR, WYOMING GAME AND FISH DEPARTMENT

Mr. EMMERICH. Chairman Grijalva, I am John Emmerich. I am the Deputy Director with the Wyoming Game and Fish Department, and I thank you for the opportunity to address the Subcommittees regarding Section 390, subpart [b][3] of the Energy Policy Act of 2005 on behalf of the Western Governors' Association and the Association of Fish and Wildlife Agencies.

The West, including Wyoming, is a national focus for energy development. The current scale and the intensity of energy development is unprecedented in many western states and experts predict this development will continue for several decades. The Western Governors are strong advocates for environmental responsible energy development as demonstrated by the development and implementation of the Western Governors' Association Clean and Diversified Energy Initiative.

Much of the West also has world-class wildlife resources and a wildlife-oriented culture that the state and the Nation value very highly. From the current projected levels of energy development in Wyoming, it is estimated that roughly 25 percent of the state will experience direct surface disturbance or the effects of indirect wildlife disturbance caused by increased human, vehicular, and development activities associated with this level of development. Specific wildlife impacts are documented and are contained in the written statement.

Energy development and fish and wildlife conservation are mutually achievable goals if development decisions are based on sound information and early continual engagement between the Federal land management agencies, state fish and wildlife agencies, and the energy development industry. The level of analysis, disclosure and recommended mitigation as appropriate for sensitive wildlife corridors and crucial habitat is not provided in programmatic land use plans such as RMPs or forest plans. This can only be achieved to the more in depth analysis provided by an EA or in most cases an EIS developed with full state participation.

Subpart [b][3] of the Section 309 of the 2005 Energy Policy Act is worded in such a manner that oil and gas wells could be drilled under a categorical exclusion with no additional analysis if, and I quote, "in an approved land use plan...prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity..." That could include an RMP.

Of the 10 BLM field offices in Wyoming as an example, five are currently revising their resource management plans, and four of these are scheduled for completion by the end of 2007. The geographic area managed by these field offices contain very significant oil and gas resources, including the Continental Creston-Divide area that covers by itself over 1 million acres.

The Governors believe that the categorical exclusions authorized broadly under paragraph [b] of the Energy Policy Act may often be

appropriate. However, with specific regard to subpart [b][3], the Governors did not want their ability to require adequate mitigation in areas that the states have identified as sensitive wildlife corridors and crucial habitats to be diminished or eliminated.

The Department of the Interior has worked fairly and inclusively with the states to date. However, the categorical exclusion provision in subpart [b][3] of the 2005 Energy Act appears to provide a legal option to deny state fish and wildlife agencies the opportunity to protect and adequately manage fish and wildlife resources on BLM lands by authorizing oil and gas development without adequate analysis, disclosure and state agency involvement.

In February 2007, the Western Governors' Association adopted Policy Resolution 0701, protecting wildlife migration corridors and crucial wildlife habitat in the West. The resolution urges Congress to amend Section 390, subpart [b][3] of the Act to remove the categorical exclusion for NEPA review for expiration or development of oil and gas in wildlife corridors and crucial wildlife habitat on Federal lands.

By removing the categorical exclusion, appropriate environmental site analysis will be completed as necessary to protect these crucial habitats. The Wyoming Governors or the Western Governors' Association and the Association of Fish and Wildlife Agencies would be happy to work with the committee staff on these proposed amendments.

A second possible solution, especially as an interim step, would be to have the BLM develop a memorandum of understanding or policy document requiring a companion process with subpart [b][3] that would provide the opportunity for state fish and wildlife agencies to review those permits that could be excluded from a formal NEPA analysis in these sensitive wildlife corridors and crucial habitats. It will also provide BLM with an informal assessment of impacts and mitigation responses.

Mr. Chairman, the Western Governors' Association and Association of Fish and Wildlife Agencies believe that more informed decisions that provide for both conservation of a fish, wildlife, and their habitats and efficient delivery of energy, and this can be achieved through early and meaningful coordination and information sharing among all involved.

A second part of their resolution deals with the efforts to try to collect more information on migration coordinators, crucial habitats to facilitate the analysis and decision-making process.

In conclusion, Governors and state fish and wildlife directors are solution-oriented. These landscape level activities are complex and cut across several governmental jurisdictions and private interests. However, we believe that solutions are available if all parties rely on the best available information, coordinate often at the earliest stage and throughout the process, and develop relationships of trust, integrity, and mutual commitment to meeting both fish and wildlife conservation objectives and the delivery of energy for our citizens.

Thank you for this opportunity to share our perspectives, and I am glad to take any questions.

[The prepared statement of Mr. Emmerich follows:]

Statement of John Emmerich, Deputy Director, Wyoming Game & Fish Department, on Behalf of The Western Governors' Association & The Association of Fish & Wildlife Agencies

Chairman Grijalva, Chairman Costa, and members of the Subcommittees, my name is John Emmerich, I am the Deputy Director of the Wyoming Game and Fish Department. Thank you for the opportunity to address the Subcommittees regarding Section 390 subpart B(3) of the Energy Policy Act of 2005, on behalf of the Western Governors' Association (WGA) and Association of Fish and Wildlife Agencies (AFWA). The Western Governors' Association is an independent, nonprofit organization representing the governors of 19 Western States, American Samoa, Guam and the Northern Mariana Islands. Through their Association, the Western governors identify and address key policy and governance issues in natural resources, the environment, human services, economic development, international relations and public management. AFWA represents all 50 State Fish and Wildlife Agencies.

The West, including Wyoming, is a national focus for energy development. Several western states contain large domestic reserves of coal and uranium, world-class natural gas and wind resources, as well as significant oil production. There is also potential for oil shale development. These base energy sources are being tapped, and plans are underway for power plants, synfuel plants, pipelines and power grids to process and ship that energy across the west. The current scale and intensity of energy development is unprecedented in many Western states, and experts predict this development will continue for several decades. The Western Governors are strong advocates for environmentally responsible energy development, as demonstrated by the development and implementation of the WGA Clean and Diversified Energy Initiative.

While many Western states truly have a world-class energy resource, much of the West also has a world-class wildlife resource and a wildlife-oriented culture that the state and the nation value very highly. For example, about half of Wyoming's residents hunt and/or fish, 75% enjoy non-consumptive wildlife watching activities, and many thousands of nonresidents also spend time in Wyoming each year specifically to take part in those activities. This participation in wildlife-associated activities is far higher than most other states. According to the U.S. Fish & Wildlife Service, $21 billion was spent in 2001 on renewable hunting, fishing and wildlife watching activities in the 19 Western States. At this point in time, energy development is Wyoming's chief economic resource, but wildlife-associated activities have long been and will continue to be a very significant part of the State's second leading economic source, tourism and recreation. Economic support from tourism and recreation will need to be maintained to provide economic diversity and continue as a stable and vital part of the State's economy when development of energy sources inevitably slows.

The Western Governors' Association and the Association of Fish and Wildlife Agencies recognize the national energy need and the West's contribution towards fulfilling that need. They also recognize the statutory obligations of our State Fish and Wildlife Agencies to conserve and manage the fish and wildlife resources, which are so important to the economy, culture and heritage of our citizens. A key aspect of this obligation is ensuring the sustainability of the habitats on which these species depend.

Habitat impacts in many Western States have recently occurred as a result of the unprecedented energy development. In seven major oil and gas fields in Wyoming, there have been approximately 44,000 wells developed over several decades with the majority in the last ten years, and 55,000 additional wells are planned over the next 20 years. From this activity, it is estimated that roughly 25% of Wyoming will experience direct surface disturbance or the effects of indirect wildlife disturbance caused by increased human, vehicular and development impacts associated with energy development.

Many species associated with the sagebrush/grassland steppe, including mule deer, pronghorn, sage-grouse, green-tailed towhee, and Brewers sparrow to mention a few, have experienced long term declines in productivity and numbers over the last thirty years, despite periodic, short term increases. Causative factors are many but change in habitat conditions is certainly one of the major factors. The unprecedented level and pace of energy development in the West is an additional impact on already struggling wildlife.

In Wyoming sage grouse numbers have declined by approximately 60% and their numbers have declined even more so across their entire range over the last thirty years. Recent research and monitoring information on sage grouse and mule deer in the Pinedale anticline area of southwest Wyoming and the Powder River Basin of northeast Wyoming have clearly documented some of the impacts associated with

intensive oil and gas development. Mule deer use on the crucial mesa winter range south of Pinedale has experienced a 27% decline since development started. Wyoming has seen a statewide increase of 68% in sage grouse numbers across Wyoming from 2004 to 2006, and a 44% increase in undeveloped areas adjacent to the Pinedale Anticline in this same timeframe. However, within the gas field there was no increase in grouse numbers associated with 37 leks and at least four of the leks were abandoned.

Energy development and fish and wildlife conservation are mutually achievable goals if development decisions are based on sound information and early, continual engagement between the Federal land management agencies, State Fish and Wildlife Agencies and the energy development industry. With the current pace, scale and intensity of energy development in many Western States, it is vital that State Fish and Wildlife agencies have opportunity to be engaged throughout the NEPA process to ensure accurate information on the location of crucial wildlife habitat and key migration corridors is identified and recognized and there is adequate analysis, disclosure and mitigation provided to minimize impacts and offset unavoidable impacts. It is our expectation that the BLM, particularly given its multiple use mandate, would likewise routinely address these issues in RMPs and again at the leasing and permitting stages.

The level of analysis, disclosure and recommended mitigation that is appropriate for sensitive wildlife corridors and crucial habitat is not provided in programmatic land use plans such as RMPs or Forest Plans. This can only be achieved through the more in depth analysis provided by an EA or in most cases an EIS developed with full state participation.

Subpart (b)(3) of section 309 of the 2005 Energy Policy Act is worded in such a manner that oil or gas wells could be drilled under a categorical exclusion, with no additional analysis, if "an approved land use plan...prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity...." We are concerned that completion of an RMP after the five-year period that an EA or EIS covers a reasonably foreseeable development scenario, or before an EIS is completed for a developing field, would allow authorization of drilling under a categorical exclusion (Cat Ex), including in sensitive wildlife corridors and crucial habitat, with general provisions provided only by the RMP.

Of the ten BLM Field Offices in Wyoming, five are currently revising their RMPs, and four of these are scheduled for completion by the end of 2007. The geographic area managed by these Field Offices contain very significant oil and gas fields, including Moxa Arch, South Piney, Jonah, Pinedale Anticline, Atlantic Rim, and the huge Continental Divide-Creston area that alone covers over 1 million acres.

The Governors believe that the Categorical Exclusions authorized broadly under paragraph (b) of the Energy Policy Act may often be appropriate. However, with specific regard to subpart (b)(3), the Governors do not want their ability to require adequate mitigation in areas the States have identified as sensitive wildlife corridors and crucial habitat to be diminished or eliminated. Development of these sensitive areas obviously needs detailed disclosure and analysis of impacts to other resources, and the permits need to include avoidance and mitigation measures to protect those resources.

Although the Department of the Interior has worked fairly and inclusively with the states to date, the categorical exclusion provision in subpart (b)(3) of the 2005 Energy Act appears to provide a legal option to deny state fish and wildlife agencies the opportunity to protect and adequately manage fish and wildlife resources on BLM lands by authorizing oil and gas development without adequate analysis, disclosure and state agency involvement. Unless the problematic language in Subpart (b)(3) is amended or removed, or an additional administrative process implemented to allow state fish and wildlife agencies an opportunity to recommend appropriate protection and conservation conditions to accompany permits to drill in sensitive wildlife corridors and crucial habitat, significant wildlife impacts could occur.

In February 2007, the Western Governors' Association adopted Policy Resolution 07-01, "Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West" (attached). The resolution urges Congress "to amend Section 390. Subpart (b)(3) of the Energy Policy Act of 2005 to remove the categorical exclusion for NEPA reviews for exploration or development of oil and gas in wildlife corridors and crucial wildlife habitat on federal lands. By removing the categorical exclusion, appropriate environmental site analysis will be completed as necessary to protect crucial wildlife habitat and significant migration corridors located in the field of development."

The WGA and AFWA would be happy to work with Committee Staff on this proposed amendment.

A second possible solution, which would not involve legislation, would be to have the BLM develop a memorandum of understanding or policy document requiring a companion process with Subpart (b)(3) that would provide the opportunity for state fish and wildlife agencies to review those permits that could be excluded from a formal NEPA analysis in these sensitive wildlife corridors and crucial habitat, and still provide BLM with an informal assessment of impacts and mitigation responses. These would then result in conditions of approval that BLM could attach to drilling permits. If this option is pursued, WGA and AFWA would be happy to work with the federal land management agencies to that end.

In some manner, whether by these proposed solutions or others, we strongly recommend that the unintended result of Subpart (b)(3) in potentially excluding States from discharging their mandated resource management responsibilities on BLM land be addressed.

Mr. Chairman, WGA and AFWA believe that more informed decisions that provide for both conservation of fish, wildlife and their habitats and efficient delivery of energy to our citizens can be achieved through early and meaningful coordination and information sharing among all involved. In addition to ensuring language in the 2005 Energy Act facilitates this sharing it is important to also facilitate the identification of sensitive wildlife migration corridors and crucial habitats and make that information readily available to ensure that significant landscape altering activities, including energy development, can be done while meeting the State's obligation to sustain healthy fish and wildlife populations.

The WGA resolution calls for the gathering, assimilation and mapping of this important fish and wildlife information on an ambitious schedule. Much of this information already exists in State Fish and Wildlife Agencies, State Natural Heritage Inventories and other places. It is the intent of the WGA to first compile the location of existing information and facilitate its availability across state and agency lines while initiating inventory and monitoring work to address current gaps in information. This information, beginning with Federal lands, will then be used to enable informed decision making regarding energy development, and other associated development including transmission corridors, transportation corridors, etc. The interagency, interdisciplinary Wyoming Landscape Conservation Initiative is using a very similar process to determine the best places to assess and enhance wildlife habitats on a landscape scale in southwest Wyoming in a manner compatible with the unprecedented development occurring on the same landscape.

Governors and State Fish and Wildlife Directors are solution oriented. These landscape level activities are complex and cut across several governmental jurisdictions and private interests. However, we believe solutions are available if all parties rely on the best available information, coordinate often at the earliest stage and throughout, and develop relationships of trust, integrity and mutual commitment to meeting both fish and wildlife conservation objectives and the delivery of energy for our citizens.

Thank you for the opportunity to share our perspectives. I would be glad to answer any questions.

Mr. GRIJALVA. Thank you, sir.

Mr. James.

STATEMENT OF JEWELL JAMES, MEMBER, LUMMI NATION

Mr. JAMES. Thank you, Mr. Chairman. We appreciate the opportunity to appear here to testify at this oversight hearing. I am Jewell James of the Lummi Indian Nation, representing the Office of the Chairwoman.

The Lummi Nation is just one of 525 or more Indian Nations throughout the United States. The Energy Policy Act of 2005 provided under Sections 501 to 502 Indian participation in the development of oil, gas, and alternative energies. Under 503, we see that there are new laws added where there would be an Indian Energy Development and Self-Determination Office, and we know that the intent is to provide tribes the opportunity to participate through loans and grants, but also under 504, we witness that there is an opportunity for tribal governments to come forward and be consulted on some of those applications that will have direct

impacts either on the reservations or within their traditional territories.

The Lummi Tribe is one of the original self-governing Indian Nations under the Title III amendments to the Indians Self-Determination and Education Assistance Acts of 1975 that came out in the 1980s. Since then it has been amended to include Title IV, and now we are going into Title V.

The idea is that tribes not only are self-determining, but are self-governing. This required us to begin to develop the infrastructure, the professional staff that would help us co-manage not only our government but our own natural resources. This is one of the questions that is being presented to the Congress on what we call the Section 139 tribes and the appropriations process where tribes want to have the authority to govern their own natural resources.

We know that with regards to government-to-government consultation the House Concurrent Resolution 331 of 1988 actually defined it, that it is based on the United States Constitution where it is stated that Article 1, Section 2, Clause 3 of the U.S. Constitution provided the words "excluding Indians not taxed."

We are tribal Indians, not counted amongst the "We the people of the United States." Article 1, Section 8, Clause 3 provided Congress the power to regulate commerce with Indian Nations. Article 1, Section 10, Clause 1 limited states' powers and/or treaties, and Article 2, Section 2, Clause 2 authorized the President and the Senate to enter treaty relationships with Indian Nations.

Article 3, Section 2, Clause 1 authorized the Supreme Court to address treaty questions, and Article 3, Clause 2 made treaties one of the supreme laws of the land.

Now, just like constitutions, treaties also have reserved rights doctrines that apply to them. Treaties are usually interpreted as the Indians would have understood as one of the doctrines of the Court for interpreting treaty relationships.

Our understanding as Indian Nations and what we believe as a part of our retained inherent sovereignty is that we have the right to protect sacred sites and places that may be impacted within our traditional territories. However, in order to do that, this would require a better definition under subsection 2602[a] where the Secretary is authorized to give grants to help develop databases. If that grant goes to an inter-tribal organization, the Lummi Nation recognizes that the National Tribal Environmental Council would probably be the best entity for those funds to go to. However, there is not a specific amount that is earmarked for it. We are hoping though, because of the inter-tribal organizations, and because of the various specialties that we witness amongst the inter-tribal organizations, that the National Tribal Environmental Council would be the best fit for organizing the inter-tribal participation as well as gathering input from all tribes.

The 2005 Act is a national policy and we need to have the assistance of the Congress and the Subcommittees to develop a national position of Indian Tribes based on not only pro-development oil, gas, and energy, but also on organizing our concerns as pertains to the sacred sites and places. This is something that we don't have funding for within tribal governments.

We know that most people believe that Indian tribes are very wealthy as a result of gaming, but most of that gaming revenue goes to a few tribes that are located next to major metropolitan areas. The Lummi Tribe, for example, is one tribe that is gaming and all of our revenues go back into health and education because of funding shortfalls on the Federal appropriations side.

So we see those funds re-invested back into the community, and we know that most of the tribes are really isolated, don't have the technology, and cannot access the professional staff and legal expertise that they would need in order to analyze the impacts, the applications for energy development, we will have a part in them with regards to the environment as well as the sacred sites and places.

We believe that if the tribes are authorized to work with the National Tribal Environmental Council and the National Tribal Environmental Council secures funding through the Secretary's office a mandate, that we would be able to help develop our recommendations for management regimes that would incorporate our concerns associated with sacred sites and places.

Thank you.

[The prepared statement of Mr. James follows:]

Statement of Jewell James, Policy Analyst,
Lummi Indian Nation

The Lummi Indian Nation is located in the Pacific Northwest part of the United States, northwest Washington State. Lummi is anthropologically, geographically, and linguistically identified as belonging to the Coast Salish Culture by academicians. Lummi is a federally recognized Indian Nation. We have a government-to-government relationship established by the 1855 "Peace Treaty" (12 Stat. 927) with the United States. The treaty was ratified by the Senate & proclaimed by President in 1859. Lummi is one of the original "Self-governing Compact" Indian Nations, as authorized by Congress per amendments to the Self-Determination Act of 1975, under Title III. We have never disbanded or terminated our tribal relationships. We, as a native community, maintain our tribal status the same as was recognized in the Supreme Court decision of Elk v. Wilkins (112 U.S. 94 (1884)). We lead and represent our nation based on the idea that popular sovereignty is an inherent trait of our domestic relations. We are a tribal constitutional government (non-IRA) that provides and protects the essential governmental functions and services needed by our populace. In this light, we appear before the Congress to testify on behalf of our people. While we do not have the authority to testify on behalf of other Indian Nations, we do recognize and realize that our nation shares common concerns over the protection of sacred sites and places and the prevention of the destruction or contamination of such places by modern development; which include the impacts of oil & gas drilling, mining development, and other fuel industry or energy industry activity & operations.

Historical Politics of American Religious Wars Against the Natives:

The Lummi People would be classified as practicing a variant of the "Mother Earth Religion" that can be found practiced by indigenous peoples (of all four races) located all around the world. This religious classification would be placed on the opposite end of a religious continuum in reference to the "Father/Son God" Religions—otherwise known as Catholicism, Christianity, Judaism, and Islam/Muslim. Such native practices and observances would be considered by the latter religions as "pagan, heathen and uncivilized practices of the infidels." This historical ethno-religious prejudice has normally dominated their relationships and opinions about and with the respective indigenous communities they encounter—in our case, the Native Americans.

However, the Catholic Church came to dominate the Lummi Indian Reservation at and about the same time as the treaty negotiations between the Lummi and the United States. This religious denomination has had a predominant claim upon the Lummi Populace ever since. When President U.S. Grant authorized the Christian Churches to assume control and management over the Indian Reservations, due to

BIA corruptions & fraud in the 1870's, the Catholic Church kept control of the Lummi Reserve. At one time, the Lummi were supervised by a federally appointed "Agent-in-charge" or "Farmer-in-charge" and after 1872 it became the "Priest-in-charge," until that changed to the "Teacher-in-charge." These "Priests-in-charge" came to dominate the Indian reservations and tribal societies all across the continent, as well as help color the views & opinions of neighboring societies about the need to "civilize" the unlearned Indians.

The story of Christian influences upon the traditional & ceremonial practices of the Indian Peoples is as dated as "Discovery" by Christopher Columbus (1492). In the beginning, Columbus described the Natives as "Una gente in dios" or "One People in God." This was reworded to become "indios" people rather than the reference "in dios" or "in god." Although he characterized the natives as Christian by any other name, this did not theologically or legally allow for the anticipated "Conquest." (See: Privileges and Prerogatives Granted to Columbus, April 30, 1492) needed to recover the costs of the venture. Thus, the natives were turned into "heathens, atheists, agnostics, pagans, savages, infidels, and other convenient classifications that made them legally and religiously conquerable as a non-Christian people. In fact, the first classifications, shortly after discovery, proclaimed the natives to not even be human but monstrosities. At this time, the Vatican issued Papal Bulls (e.g., Papal Bull Inter Cartera of May 4, 1493) that further rationalized the conquering of the native nations and the pillaging of their territories, societies, and the destruction of their "heathen" ways and archives of knowledge. The Vatican, per Papal Bulls, authorized the discovery and conquest of heathen lands by Christian Kingdoms. It became a "first come then first served" campaign. This, eventually, became enshrined in U.S. Federal Law as the "Discovery Doctrine" of Johnson v. McIntosh (21 U.S. (8 Wheat) 543, 5 L.Ed. 681, (U.S. Sup.Ct. 1823)).

While Father La Casas (who arrived on the third sailing of Columbus to the New World as a Conquistador and then converted) argued before the Spanish Crown (from 1530 to 1566) that the rights of the Indians should be respected and written into the Laws of the Indies for their protection not conquest and enslavement. It was Francisco de Victoria (the father of International law) arguing the rights of Indian possession of their lands & territories that had the major influence on the development of what latter became U.S. Federal Indian law (as noted in Felix Cohen's Handbook on Federal Indian Law, at 55-100). This influence of Spanish jurisprudence held that Indian lands could only be acquired via treaties that Indians held some form of transferable title to the land, and that acquisition could only be made by the government. However, before this jurisprudence could become established in international law, the conquest bloodied the relationships with the native nations and people throughout the western hemisphere.

In time, the United States, after the 1776 Revolution and the ratification of the 1787 Constitution, laid claim to inheriting the rights of "Discovery" in lieu of the repelled King of England (and all other foreign monarchy claims). Basically, Supreme Court Chief Justice Marshall said that the claims to the continent were based on a lie but to acknowledge it as a lie would require the nation to give the land back, and this it could not do, so it had to act as if the lie was true. This, then, became the foundation cornerstone to the U.S. claims to "Discovery" of the Indian lands & territories.

This legal fiction, then, was eventually followed by the institutionalization of "Manifest Destiny." The idea being that the non-Indians was destined to own the whole continent from the Atlantic to the Pacific Ocean. This, then, required the taking of Indian lands & territory by discovery, conquest, or via peace treaties. Congress would authorize appropriations for the President & the Senate to negotiate and ratify Indian Treaties (per Article II, Sec. 2, Cl. 2 U.S. Const.). Over 700 treaties were negotiated (between 1787 and 1871). These negotiations were in accordance to the proclaimed congressional regulation for the establishment of new territories (and eventually the admission of new states, per Article IV, U.S. Const.) under the N.W. Ordinance (1 Stat. 51, July 13, 1787). A little over half of the negotiated treaties (370) were ratified by the Senate and proclaimed by the President; but, while half of the negotiated treaties were not ratified, the U.S. acted upon all the treaties as if each and everyone was ratified—in that it used the treaty concessions to completely lay claim to more than 3.8 million square miles of Indian lands and natural resources across the continent.

Generally, "treaties are to be interpreted as the Indians would have understood them, and not in the way of learned lawyers" (Winans, 198 U.S. at 380, 25 S.Ct. 664). This has been a basic guiding light for Supreme Court decisions on treaty rights questions. While the President/Senate had constitutional powers to enter treaties with the Indians, the Supreme Court has jurisdiction over legal questions of interpretations and obligations of the treaties (Article III, Sec. 2, Cl.1). These

treaties, then, would become a part of the "supreme law of the land," along with the constitution and national legislation (Art. VI, Cl. 2). It was more convenient for the United States to enter peace treaties with the numerous Indian Nations than to enter a state of constant war with the multitude of Indian Nations existing west of the Mississippi & Missouri Rivers. Conquest by War was not logical or economical. Still, treaty negotiations had to be authorized first by the congress and then respective appropriations instituted to implement the negotiations and commitments made in exchange for the vast territorial concessions of the tribes.

However, the House of Representatives had control over the introduction of appropriations/revenue measures (Article I, Sec. 7) and abused this power in 1871 by attaching an "Appropriation Rider" (now, 25 U.S.C. 71, Act of March 3, 1871) that (by the power of political psychology and not proper constitutional amendment) limited the President's/Senate's treaty-making powers under Article II. While the whole Congress had constitutional authority to "Regulate Commerce...with the Indian Tribes" (Article I, Sec. 8, Cl.3), this Appropriation Rider began a near-complete congressional take over of Indian Affairs by statutory authority rather than constitutional delegation & treaties-made. But, the limitation did not have complete immediate effect, since the various presidents following then instituted a series of "Executive Agreements" with the Indian Nations or composed various "Executive Orders" that created additional Indian reserves, with associated federal obligations and expenses.

Being as it may, treaties and the constitutions (states and the national) have a commonality in that there exists the "Reserved Rights" doctrine (which was enshrined in the U.S. Constitution by the Tenth Amendment, in response to state attempts to limit federal encroachments upon state jurisdiction). A part of the "peace treaties" then is the reserved rights of the Indians Nations. If a right or ownership is not given by specific treaty to the United States then the language should be interpreted to hold that such right or ownership is reserved to the Indian Nation. As Indian Nations, we would argue that there were residue or reserved rights associated with the treaty land concessions. However, in the case of Tee-Hit-Ton Indians (348 U.S. 272 (1955)), during the Terminationist Era (See: HJR 108 of 1953, effective from 1948 to 1975) the Supreme Court turned the Peace Treaties into "Conquest" by the United States. The Supreme Court retroactively conquered every Indian Nation in North America by a simple decision dealing with a small band of federally unrecognized Indians in Alaska. For the Peace Treaty Nations, this retroactive conquest did not abrogate the U.S. treaty obligations or nullify their reserved rights. The Terminationist-minded court simply rewrote the history of US/Indian relations into a new fiction.

In addition, keep in mind that when a lesser nation enters a treaty relationship with a greater nation there exists a legal relationship by which the "Greater Nation" has a duty and responsibility to the lesser nation; i.e., a "sacred trust of civilization" is created. This concept means that the greater nation must assure that the lesser nation has the same opportunity to move forward and progress socially, economically, politically, and legally as the greater nation and its populace does. Nor does the lesser nation divest itself of its inherent rights to self-determination and self-government (See: Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832)). But, working with "church dogma" and institutionalized racism over time, the Indian nations have become classified as "dependent domestic nations" (Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) at 17 (1831)) under U.S. law and policy. The congress, by ending treating making, has assumed "plenary power" over the dependent Indian communities/nations via acts of legislature, without constitutional foundation or in reference to specific treaty agreement. The "Greater Nation" (the US) in fact has taken advantage of the changed conditions of the Indian Nations and has instead marginalized their tribal societies, and deprived their membership of human dignity.

In 1872, President U.S. Grant did turn Indian Affairs over to the established Christian Churches, under the belief they had a higher morality and strong values that would induce them to treaty the Indians humanely and not rob them of their wealth, resources, and dignity. But, the Church leadership, over the next ten years, in compliance with racist opinions of the Indians, then had the Department of the Interior institute the Indian Religious Crimes Code (DOI Circular #1665) in 1883 (See: Comm'r Ind. Aff. Ann. Rep., H.R. Exec. Doc. No.1, 49th Cong., 1st Sess. 21.23 (1885)), and latter enlarged it to incorporate more fines and imprisonment in 1921 (See: K. PHILIP, JOHN COLLIER'S CRUSADE FOR INDIAN REFORM 1920-1954, at 56-57 (Tucson: University of Arizona Press, 1977)). In 1924, the general Indian Citizenship (per congressional authority under Article I, Sec.8, Cl. 4) was authorized for all tribal Indians that were not otherwise U.S. Citizens (See: 43 Stat. 253). Even though this "blanket naturalization" was contrary to the intent of the 14th Amend-

ment (Sec. 1 and Sec. 2) per the 39th & 40th Congresses (See: Reconstruction Debates), the enactment claimed to have not deprived the said Indians of their rights or property as tribal Indians.

Even though the original movement to secure First Amendment Religious Freedom, via making Indian U.S. Citizens with constitutional rights, as proposed by Ida May Adams (a Southern California Women's Suffrage Rights Lawyer), was attained, this citizenship did not provide Native Americans with First Amendment religious freedom. As a consequence, the American Indian Religious Freedom Act (August 11, 1978) was enacted by Congress and signed by President Carter. In Section 2, the President directed the "various Federal departments, and agencies, and other instrumentalities whose duties impact Native American religious practices to evaluate their policies and procedures in consultation with Native religious leaders in order to determine and implement changes which may be necessary to protect and preserve Native American religious cultural rights and practices" (92 St. 469 (1978)).

Ten years later, the Supreme Court, in review of the G.O. Road Case from northern California, gutted the AIRFA and concluded that "the Constitution simply does not provide a principle that could justify upholding respondent" (Indians, et al.) legal claims in that the First Amendment's Free Exercise Clause had been written "in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government" (Lyng, 485 U.S. 439, 451 (1988)). In a separate legal attack via Oregon v. Smith, the Supreme Court would deprive the Native American Church of its sacrament—Peyote, in 1990 (See: Smith II as 494 U.S. 872). This sacrament was in use for more than 10,000 years according to radioactive carbon dating of associated artifacts—a spiritual practice that predated "Jesus" by 8,000 years.

In response to the Supreme Court anti-Indian religious freedom decisions, the American Indian Religious Freedom Coalition (AIRFC) formed and sought to amend the weak AIRFA. Senator Inouye introduced (S.2269) on July 1, 1994, a bill entitled the "Native American Cultural Protection and Free Exercise of Religions Act, to over come the damages done by Lyng and Smith. While this bill failed to pass, H.R. 4230, which focused solely on Peyote, was enacted into law on October 6, 1994 (108 St. 3125).

In 1993, broad legislation to reconstruct the "compelling interests" test (called the Religious Freedom Reformation Act of 1993 (107 St. 1488) was enacted on November 16th, 1993. Concurrent to this period, debates were held as to why there was need for different or greater protection for Native American religious practices, Senator Wellstone stated:

> "Throughout the series of hearings held around the country on NAFERA [Native American Free Exercise Religions Act] one theme repeated itself over and over again: our traditional understanding of how to protect religious freedom, based on a European understanding of religion, is insufficient to protect the rights of the first Americans...The question is not, should we protect Indian religious freedoms? Instead, we must ask, how can we best live up to our obligations to protect that freedom? This is an important question, because one might legitimately want to ask why we need a bill to address specifically the religious freedom of Native Americans, instead of a bill that addresses all religions at one time. There is, of course, such a bill, the Religious Freedom Restoration Act (RFRA), which has recently been introduced by my colleagues from Massachusetts, Senator Kennedy, and which I am an original co-sponsor. I believe that there is a strong argument to be made that both of these bills ought to be made into law. RFRA is designed to respond in a very general way to judicial decisions that have been made in recent years restricting the right to free practice of religion...But leaving the definition of such standards up to the judiciary has not proven very effective for Native American religions. In NAFERA, on the other hand, we provide language that makes clear the particulars of Native religious practices we intend to address." (U.S. Congressional Record (May 25, 1993), 56456).

The Congress was not able to pass a complete reform of Native American Religions Freedom but has worked to authorize the return of the Peyote Sacrament to the Native American Church, restored the rights of native prisoners to access rituals, and restored native rights to the use of eagle feathers and other animal parts. In addition, the Native American Graves Protection and Repatriation Act of 1990 (104 St. 3048) was enacted to return the unearthed bodies of Native American ancestors, stored in government facilities/institutions or universities, to their respective tribal peoples for reburial. The fact is, though, the original Indian Citizenship of 1924 did not provide Native Americans with First Amendment Religious Freedom. The original 1978 AIRFA, according to it's author Morris Udall (D., Arizona),

said that the bill conferred no "special religious rights on Indians; changes no existing state or federal law, and has no teeth in it." (U.S. Congressional Record (1978), 2144). And, in consequence, the Supreme Court rendered their anti-Indian religious freedom decisions (e.g., Lyng, Smith) and prompted years of political battles to secure Indian religious freedom via piece-meal congressional enactments.

In all of this history, it has generally been forgotten that the United States, as a role model to over 160 Nation/States member to the United Nations, has been living the "sacred vision" of the Iroquois Confederacy. The Prophet of the Iroquois, between five hundred to one thousand years before the 1787 Constitution, proclaimed that the "Great Tree of Peace" shall spread its sacred four roots (colored red, black, white, and yellow) in the sacred four directions. The U.S. experience of this actually began when the new arrivals colonialized the east coast of the North American Continent (original 13 colonies), and lived side by side with the First Americans (i.e., the Natives). Over time, this social encounter led the colonists to became "Americanized" (See: Exemplars of Liberty, by B. Johannson, and Indian Givers by Jack Weatherford). The vision of the confederacy (Iroquois and that of the Choctaw) became the ideal vision of a united, democratic republic founded upon the sovereignty of the People (SCR #76 of 1987 and HCR #331 of 1988). This "Union" (of "We the People of the United States...") became the immediate role model for the revolutionary constitutional liberation of France. The idea of this "vision" spread further in the form of the proposed League of Nations of President Woodrow Wilson (after WWI), who acknowledged that the idea of the League began with the Indians. While this Wilsonian Proposal failed, the idea became the originating model for the United Nations (after WWII). It is with this model in mind that we believe the U.S. Congress should not disregard the "Gift of Indian Religious Freedom" and its importance to humanity.

The battle for individual rights and freedoms, politically and religiously, has caused millions upon millions of deaths throughout the "Old World" over the millenniums. The new world exemplified the individual freedoms and the concept that government is to be held accountable to the people, that men and women were equal participants in government. Included in this the individual Indian had a right to the spiritual experience and belief. This was foundational to what could be referenced as making up a main part of individual sovereignty. In this idea, each person adds to the collective sovereign powers of the others. People then compacted to live together and to govern over each other. This compact becomes the foundation to what is known as popular sovereignty today. This understanding has been exemplified by the famous May Flower Compact (Nov. 11, 1620) in the history books of modern America. Such ideas found greater support and value as the colonists began to experience the First Americans beliefs—living a form of freedom that could not readily be understood by a people living under a monarchy. This is a part of the Indian gifts shared with the vision of popular sovereignty & union (Iroquois Vision). Each individual had a right to access the spiritual, just as Jesus did by entering the wilderness and resisting the temptations according to biblical folklore. It was not a fluke that the revolutionary colonists chose to model themselves as "Mohawks" at the Boston Tea Party. They (as the Sons of Liberty) simply demanded the freedoms of belief that the natives already enjoyed.

In 1987, the leadership from nine Christian denominations in the Pacific Northwest, released an "Apology" to the Native Americans for having either helped institutionalized racism against native religious freedom or having passively sat back and allowed it to happen. This statement was released to 1800 northwest congregations. Over time, even the National Catholic Churches issued a similar statement, as did the Anglican Church of Canada per the plight of the aboriginals. While such apologies can be "google searched" over the "www," debates have been held as to whether or not the "Apologies" are real and intended to truly help unravel the web of institutionalized racism against Native American Religious Freedom. Even the International Council of Churches on Religion and the Environment had become sensitized to the religious/spiritual rights and interests of the native communities before Earth Summit (1992). It has become apparent, today, that many religious denominations are willing to come forward and to work with their national organizations to help move for changes in the laws of the land that shall improve the status of Indian religions amongst a "Nation" that considers itself to be predominantly Christian (See: President Bush's statements justifying the early actions of war in the middle east).

While modern day corporate and state interests continue to be at odds with the rights and interests of the Indian Nations and Peoples, it is the question of Indian rights of access to sacred sites and places within the natural environment that shall be tested over and over again as the local economic drive for more profit and development places the interests of the private person or state/private corporations

against that of the native communities' interests in sacred sites and places that have cultural, ceremonial, biodiverse, and environmental integrity in tact. Neither the corporate profit mentality or that of Euro-American religious dogma allows for the free exercise of religion by Native Americans—if it is at odds with private property rights and interests of their constituents or congregational membership. The Native American Indians, however, believe that they have a reserved right of access to such sites located inside and outside the established Indian reservations. They believe that the U.S. has a mandated "sacred trust of civilization" duty to assure this access. And, that they have an inherent sovereign right to help co-manage such sites beyond initial consultation between governments and private interests. However, such sites must have their environmental, biodiverse integrity in tact in order to have real values so relevant to Native American traditional culture teachings and ceremonial/spiritual practices. This testimony seeks to help clarify such concerns of Indian Country in association with prevention of impacts to the environment and sacred sites & places that have significance in native spiritual & cultural practices & beliefs.

Native American Religious Practices and Cultural Continuity:

It has been a stereotypical dilemma for the Non-Indians to classify, on a continuous basis, the multitude of Indian (treaty) Nations, and peoples, that exist all across the United States, under a definition that constantly works over time. Words or names that we attach to the "other" usually carry connotations that are negative and impacting upon the psychic comfort of the targeted other. The world vibrates with sounds and the movement of energy. These sounds are recognized by different societies as having a vibrational pattern. In time, the parts of the vibrations are given an alphabetical name for that sound bit. These parts are joined to form words. The words are formed to make sentences. The sentences are formed to make paragraphs. The process continues until the collective can communicate, objectively and subjectively, their experiences of the perceived reality of the surrounding social & natural environment. The use of language is highly subjective and bias to the culture that lives it. The idea of the sacred is expressed by those collective experiences and descriptions. Those expressions are limited in time and place, and continue to exist due to the value the collective places upon it for their socio-religious survival. Native Americans, all to often, state that it is difficult to translate their concepts of the sacred into the American-English language that has come to dominate their societies. The individual sounds of the foreign language(s) do not translate into the same understandings that their native languages had associated with their immediate socio-religious natural environment, pre-contact. Likewise, we have names that identify the sacred for us, in time, in space, in place, and in our comprehension of reality. Stereotypical names do not identify the sacred aspects of our living with the natural world, and depreciate or devalue the meaning of our existence.

There are over 525 Indian Nations that exist throughout the "territory" of the United States. Most live on federally-established reservations. A few live on state-established reservations. Many live, as individuals or as individual families, in urbanite America—due to the massive attempts to relocate tribal Indians into the cities in order to disconnect them from their lands, territories, natural resources, and the tribal collective that taught them to be "tribal people." The many fluctuating federal Indian policies, over time, have failed to destroy or completely disseminate the Native Americans. They have failed to disconnect them from their ancestral territories, from their multi-generational teachings of the combined collective knowledge of the sacred. Tribalism is alive and well in the continental United States.

Over time, over the millenniums, the tribal peoples have continued to recognize that song, dance, ceremony, sacred knowledge, and the collective is absolutely important to each individual member of the tribal community, and to the constant re-establishment of the sacred contract they have with nature, creation, and the Great Spirit. The power of the spiritual is located in sacred places, at sacred times, and must be accessed during each generation to maintain the relationship with creation, and this happens via the transmittal of sacred knowledge to the lone or the multiple initiates taking part in the ceremonial reenactment of original teachings given to the collective by a sacred force or being.

The modern world of the traditionalist is plagued by the damages caused by assimilationist mentalities. The modern Indian leaders are convinced that economic development is essential to the preservation of the social/tribal community. The traditionalist, however, place their faith in the ancestral teachings that taught each generation to not over-harvest, to not over-use or abuse the abundance or limitations of nature. The Hopi Traditionalists hold that the Black Mesa is essential to their spiritual practices, while modern tribal leadership meet at the negotiation ta-

bles of Peabody Coal. The San Francisco Peaks are the originating homes of the Kachinas, and yet the area is under the control of Coconino National Forest.

The National Navajo is confronted with competing interests in their four sacred mountain regions (Mt. Taylor, Blanca Peak, Hesperus Peak, and Huerfano Mountain lands. Their ancestors arose there. Their mountain chant came from there. The Navajo had traditionally divided all of creation up into 27 chapters of sacred creation in specific timing or order, each chapter governing over certain aspects of creation, each chapter corresponding to healing of the human mind, body, and soul. Each chapter has an influence over the governance of Navajo socio-religious life ways. Each chapter had its complex of sacred chants that must be preserved in perfect order so as to preserve the sacredness of creation and life. A medicine person or chanter may only train one apprentice in his life time and two if he is truly phenomenal. Impacts to Navajo topography, geology, territory, society, and practices of the sacred has driven some of the "chants" (or chapters of creation knowledge) into extinction.

Today, the Hopi and the Navajo are living under the mutational influences of uranium mining. The pilings of discarded uranium trailings are the playgrounds of the goats and sheep, and even native children. The flocks become contaminated and the meat and milk is consumed by the families. The radio-active contaminated wools are woven into their clothes. Cancers plague the living and babies are born with deformities. The Hopi and Navajo are a mirror of the ill-health of the American Society. They are classified as living in the "National Sacrifice Zone" for the enrichment of corporations and the creation of cheap energy for the rest of society, in addition to the power to bomb those that do not believe as "we" do.

While the Forest Service proposed to construct parking near the sacred Medicine Wheel near Powell, Wyoming, which is sacred to tribes of Montana, the Dakotas, and Wyoming, the Badger Two Medicine area of Montana (sacred to the Blackfeet) has been the subject of oil drilling and exploitation. Accessing the Black Hills, for energy development, has caused constant renewal of the historical trauma suffered by the Sioux Nations by the illegal confiscation of their sacred Black Hills.

The Cochiti Pueblo need access and control over 24,000 acres in the Bandelier National Monument, in order to continue their sacred practices. The San Juan Pueblo have been trying to get lands back for their religious purposes. As have the Santa Clara Pueblo, before the Claims Commission, as regards 30,000 acres of sacred lands and sites under the control of the National Forest Service and the Atomic Energy Commission.

These example tribes and communities can pinpoint their places of sacred emergence. Their songs, their dances, their regalia, their sacred instruments, their preparatory herbs & medicines, their rituals, their communal gatherings of celebration and renewal of the bonds with creation, as well as the sacrifices of the individuals in questing, all bind them to their traditional territories that have been confiscated under the doctrines of discovery and the fallacy of Indian incompetency as non-Christian peoples. Their sacred words and chants reawaken their commitment to the natural world that surrounds them. Their identification with the "sounds" of the chants, the songs, or the words derive from the time, the place, the energy (spirit) of the place of origin. Displacing them completely and divorcing them from the "sacred creation place" forces their knowledge and practices into the realm of folklore rather than sacred cosmology.

Symbols are directly attached to and associated with the reality of the ritualistic aspects of native life. The mountains, the rivers, the rain, the elements, the animals, the plants, the birds, the mineral, the aspects of the celestial (sun, moon, stars, constellations), the concepts of time and space are all tied to the ceremonial observances and ritualistic reenactments. All parts of creation vibrate with energy, with sounds of the earth. These sounds help form the basic parts of the songs of creation. All parts of creation, sooner or latter, is depicted in the traditional practices of tribal peoples of all four races. These images are carved in many shrines and churches worldwide, in celebration and remembrance of the Garden of Eden and the time that their "God" talked with humanity. This is not a foreign concept that is too difficult for the non-Native to comprehend. However, for the former (the Native Americans) the symbology is alive and contributive to maintenance of the sacred. We hear and experience their songs, their vibrates as a part of the collective whole. To the latter (the non-Natives), the stone and concrete carving symbology is more within the realm of the folktale of Genesis.

To the Native American, the symbol binds them back to the time of the original contract with the Great Spirit, or the spiritual emissaries, to keep creation sacred, to keep alive our acknowledge that the material world is manifest with the spiritual, and this is a force that binds the tribal individual to the tribal collective. The symbol brings them back to the sacred place where sacred knowledge emerged and

emerges. To understand it in terms of physics, then light is composed of the smallest quantum—the particle or the photon. This makes light an individual (I). But, it is not alone. It is multiple and forms waves (we). It is both an individual and a wave in theory. Light does not "not exist." It exists in different places, and exposes the colors as if they were a part of the material itself, when it fact matter only has density not color. And, this is an example of the sacred transmittal of knowledge, it exists some time, some place, and in the right moment we become aware. It is permanent, continuous, and waiting to be reflected upon. The particle/wave example same holds for mankind. We are individuals and a society. Together we create the energetic forces of sacred belief and practices. But, under the law, the "individual" Indian person has a right to (ritualistic) religious freedom under the First Amendment, but the collective does not due to its direct ceremonial attachment to large tracks of land or territory.

The Kachinas of the Pueblo are alive. They live and exist with creation, as an extension of it. The Buffaloo Head dress of the Sioux is alive with the spiritual forces and teachings that reinforce it from generation to generation. The Bear or Wolf or Thunderbird or Eagle masks of the Tribal Nations living along the Pacific Coast of the North American Continent give meaning to those that participate, that practice, that live the life-way required to wear such masks in ceremonial observances. As examples, those that participate in such rituals and ceremonials must live a life that is model to those that dependent upon them for keeping the sacred alive. They must access sacred sites, sacred places, in proper times and under proper elemental conditions to assure that they are living and reenacting the teachings that make the sacred a real aspect of daily lives of their community membership. What they symbolize and how they live becomes the role-models to the young observers that seek, in their own time, to be chosen to express these aspects of the sacred for future generations.

The Grandmother that brought Peyote to the People was guided to the sacred mountain, to the sacred plant, by a deer guide. White Buffaloo Calf Woman brought the Prayer Pipe and the other essential rituals to the Plains Indians. Salmon Woman brought the salmon children to the tribes of the Pacific Northwest. The Hummingbird brought power to the Navajo. The Butterfly Dance of the Hopi Elders brings forth the potential harmonic balance that is sought by the community. The Warriors suffering at the Sun Dance bring hope of peace and balance to the world by their suffering, no less than was intended by the suffering of Jesus on the Cross. These few role models that have been mentioned here are of high importance to the tribal communities that believe in them. Those that believe in the power of the Kachinas do so with as much faith, belief, and commitment as does the Christian in light of Jesus the Role-model ("Christos").

The Native Americans turn their faith inward, in search of the sacred that exists inside them. The non-Native, as Christians, turn their faith outward. They search to find that which is not within them. The Native Americans accesses the sacred by means of millennium proven methods of transmittal of knowledge and sacred practices that awaken the desire, if not the demand, for a balanced life-way. The teachings that go hand in hand with the ritualistic preparation is no less important than the teachings contained in the Bible, the Judaic Old Testament, the Koran, the Toran, the teachings of Buddha. The former may see the Sun, the Moon, and the Earth. The latter may say the Father, the Mother, the Son. Or, they may all recognize mind, body, and soul as the governing, symbolic triad. The Christian Cross is the sacred four directions of the Native Americans. The teachings, when translated and transmitted in the forms of symbols, are readily acknowledged as having validity in the minds and spiritual practices of the Natives.

As Carl Jung put it, there is a "collective unconsciousness" that all societies tap into at one time or another. This collective knowledge is universally accessed by those that seek it. Jung may say that the individual can access the sacred knowledge via their anima or animus. To the Native, we access knowledge in ritualistic prayer to the Grandmother or the Grandfather of Creation. In dreams and visions, the symbols of the collective unconsciousness speaks to us. These force us inward on to the path to self-discovery, to enlightenment, to seeking the constant path to balance all conflicting forces inside and outside of us. Guided by the knowledge of the tribal collective, the individual can ritualistically and mentally access these sacred inner paths that shall structure their journey in life outward as well. Access to sacred sites and places stimulates the reality of the teachings, helping manifest the experience of the sacred. It is this experience that allows the individual to incorporate what was learned into their relationships with all others. They are a part of and no longer separate from society or creation or the sacred. In fact, they have assumed a duty to protect the sacred aspects of life, society, and creation.

Essentialness of Qualified Practices in Natural Environments:

Human disturbance and destructiveness is the same by many names. We can call it progress, or development or construction. We can call it profit. We can call it the conquering of the wilderness. We can call it a greater benefit to humanity or society. What it is not is the power of God, or the Great Spirit. It is the power of mankind working and rationalizing his dominance over nature and others. The Northwest Coast Salish traditionalists have stated that there must exist a quadrant of essentials for the sacred place to have meaning during access. There must be continuity. There must be purity. There must be privacy. There must be isolation. The presence of these four help assure the initiate, the questing community member that there is integrity tied to the location. The general understanding is that locations that are natural have their own undisturbed vibrational patterns, sounds, songs, or energy that originated with its moment of creation.

Continuity means that it was created that way. It had always existed that way. That mankind did not disturb the original patterns. Purity means that it is not contaminated by negative forces, power, or meaning, or actions of mankind. Privacy assures that the initiate can focus upon the ritualistic aspects of the sacrifice, the vision quest, the meditation undisturbed by casual or purposeful disturbance by others—i.e., humans. Isolation is an essential characteristic of sacred sites and places that have meaning to the initiate and the undisturbed journey inward to locate the sacred that shall bind them with creative power. It is a site that is surrounded by the biodiverse, geologically intact topography undisturbed by modern development, sounds, and contaminants.

The initiates that seek access to such sites are guided by sacred knowledge associated with preparation for the experience. Such a person must begin their journey to understand the laws of balance (harmonic living). They begin to seek knowledge and teachings tied with Physical Balance. They clean their bodies inside (fasting) and outside (bathing at in natural, sacred pools). They do not contaminate it with poisons (drugs, alcohol, unnatural foods). They had to begin this journey by seeking Mental Balance. They are taught to think good of themselves, of others, and creation. They learn to control their emotions and let love dominate over fear. They have to practice Social Balance. In this practice, they have "love their neighbor as them love themselves." They have to not hurt or threaten others in society and undo any damages or hurt feelings them may have caused. They are not to be individualistic. They must learn to share with all others, especially those that are more needy then themselves. They have to practice Spiritual Balance. On this path to balance, they must believe in the power of prayer, meditation, and the spiritual powers that give life meaning. They begin to understand, study, or appreciate the value of Environmental Balance. That means that they appreciate keeping creation as it was created, to not contaminate their habitat, to not over harvest the natural environment. To not be selfish, greedy or materialistic. Time Balance is another aspect of their teachings. They is a time for play and a time for work. There is a time for the sacred as well. They must dedicate the right amount of time to each endeavor. Sacred practices require a dedication of the time to accomplish the complete ceremonial observance. Time is infinite as should be their belief. Space Balance is another law. We all occupy our space, our location wherever we are. There are sacred places and spaces that have not been disturbed and in need of protection for future traditionalists. Space is infinite. But, humanity is quickly destroying the sacred that was once attached to specific places or spaces. We are a dot in the massive universe or even omniverse. And, yet, our protection of our place (as sacred places are a part of the comprehensive whole) is essential to ourselves and future generations. All places are created by the power that generated life itself. It is not our privilege to destroy. We are only temporary keepers or protectors.

John Dourley (The Illness That We Are, p. 58, 1984) stated, "The final goal, then, for both the individual and for mankind, would be patterns of incredibly wealthy harmonies. And the basis of this, the unitive powers of the Self, Jung locates not beyond but within the individual psyche." The teachings of the laws of balance (or harmonies) is a life quest that has been sought after by mankind worldwide. It is not uniquely Native American. But, it is alive in Native American practices. For Jung, the West places God (Creative Spirit by different cultural names) outside of themselves, they are alienated from their creative power. For Native Americans the spirit is located inside and is a part of them, and always was accessible. This awareness, then, forces them to deal with what they are ultimately responsible for or ultimately contribute to the strife or balance of society.

The power attached to sacred sites and places that are known have been made visible or understandable to the knowledge keepers (usually elders) by intergenerational transmittal of knowledge. The powers of such sites help to transform the individual practitioner in a whole (unified in mind, body, and spirit), rath-

er than fractionated (as in neurosis). Once discovered then the sacredness of the site demands the greatest protection of those that the knowledge or power of the site/place has been exposed for or to. In this light, the elders teach the initiates the requirements of holding themselves accountable to a code of Respect that is passed to the initiates. They are to learn to respect all aspects of life, creation, and society. Respect starts with themselves and is extended to all those outside of the self (human and non-human). They have to be humble in their accomplishments, actions, and conversations. They have to have humble pride in doing things right as positive examples to the young and old alike. They have to learn to be unselfish, non-materialistic. They have to not take more than is needed to survive. This is what Buddha would call the "Middle way." They have to be considerate of the feelings and rights of others, and the sensitivity of the balance of nature. They have to be dedicated to practicing and living the life-way that keeps them on a permanent path of enlightenment and self-discovery. They have to be tribally social. This means that they have to understand and appreciate that they are a part of the tribal collective which only loaned the knowledge to them. They are, now, only the temporary keepers of knowledge and obligated to share it with the next generation. They have to be honest. Their breath is the source of all words. Their breath is sacred. So, they must use their words to speak the truth. Native American traditionalists teach as individuals and as tribal collectives and require that the initiate keep alive these valued traits and practicing of sacred knowledge. The means by which they do this, in accordance to the ancestral teachings, then distinguishes the individual as having matured into a wise elder, rather than simply growing older and constantly making the same mistakes in life.

The practitioner becomes a part of the naturalness of the environment. Their knowledge, their life ways, their preparations, their ceremonial observances, their songs, their dances, their thoughts, their emotions, their prayers, their conduct adds to or takes away from the qualify of the environment. They either enter the sacred placed prepared, observant, and dedicated or they take away from the sacredness of the place. The initiate can disturb the sacredness of a site. The site is that sensitive. Thus, the development of such sites for modern demands (oil, gas, mineral extraction, etc) is, then, massive in destructive impacts. It is not something that can readily be described in native languages. The indigenous knowledge of human destructive forces acting upon the environment goes back into ancestral time of the natives. Many native myths are handed down over the generations about the relationships with nature and the repercussions when humans are destructive. We know that once we too were destructive. But, our teachings hold that we learned in the ancient past and have dedicated our life-ways or social constructs so as to spiritually institutionalize the prevention of such destruction. We learned to live with Mother Earth and limit our impacts as much as possible.

John Dourley (The Illness That We Are, p. 58-61, 1984) addressed Jung's appreciation of the Catholic Marian doctrinal declaration (Assumption of Mary into Heaven, 1950). It was Jung's view that this placed the Catholic Church far ahead of the other dominant religions, in that it was a movement to recognize the feminine principle—which was missing from the Christian Trinity. The feminine has been a threat, throughout the history of the male-dominated church, and church hostility motivated the barbarism and brutality of the witch-hunters and inquisitors. Native Americans practice "Mother Earth Spirituality" and recognition of the validity of their religious experiences and beliefs would run counter to church dogma. Any that may lend support could be considered heretics. Even in light of the debates of Vatican II (mid-1960's), the Church has not repelled repressive declarations that forbid liberalism (See: Syllabus of Errors, and the encyclical Humani Generis, 1950).

Consultation with the Indian Nations on Energy Development Impacts:

In 1987 (via SCR #76), the U.S. Senate recognized that the Native American Confederacies (Iroquois and Choctaws) were contributors to the form of constitutional democracy existing in the United States. This same statement was enacted by the House of Representatives in 1988 (HCR #331). This was at the 200th Birthday celebration of the United States. Over the terms of the recent Presidents, since President Johnson's statement of the "Forgotten Americans," Indian Country has witnessed and benefited from the enactment of the 1975 Indian Self-determination and Education Assistance Act (as since amended to incorporate Indian Self-government, see: Titles III, IV, and V). Over time, the Presidents have continued to use their chief executive powers to require or encourage the "Cabinet" members, and their various departments, to issue Indian Policy Statements in alignment with the promises for "Consultation" with the tribes.

Consultation requirements with the Indian tribes usually are not written to be obligatory but discretionary within the departmental reviews. With the refinement

of Indian lobbying efforts, and improved national coordination, tribes have been slowly securing improvements on "consultation." As tribes become self-determining and self-governing there is an escalation of tribal demands for access to the programs and services provided by the respective federal departments and agencies. While tribal efforts to secure legislative language that guarantees their access and rights to participate in various projects and programs, the gray area is in light of "consultation on traditional culture impacts." Modern tribal leadership is encouraged to look at development as a positive thing for tribal communities and membership. But, the more traditional sector sees rapid development as insensitive and in disregard to the cultural influences and concerns. Thus, traditionalists are put against the power of the tribal government. It almost appears that the tribal governments become the buffer zone between the traditionalists and the federally authorized and encouraged developments.

By preference, traditionalists would rather stop development and construction of projects that destroy the natural environmental quality and integrity so integral to their traditional practices. Their primary concern is associated with cultural practices and ceremonials associated with a known environment that is threatened. These cultural practices could be exercised in the way of hunting, fishing, gathering, or vision questing at sacred sites and places (in caves, on mountains, on plateaus, in streams, etc.). Consultation, in those circumstances that it is required, is readily recognized as going to the negotiation table—which translates as compromising by the parties involved. The historically traumatized traditional communities quickly recognize that consultation will result in more lost of a limited natural environment. It is the natural environment, not impacted by human activity, that is becoming more and more rare in modern America. These are the places Native Americans seek the sacred in general, no less valuable than when "Jesus went into the wilderness." The sacred sites that have already been identified, and acknowledged via ancestral teachings, are even more valuable due to their transgenerational recognition of their legitimate sacredness and place of power.

Both state and federal government agencies have moved toward undefined "consultation." The problem is the scope of consultation and the amount of knowledge that the traditionalists must transmit to be considered as having legitimate interests. Tribal governments have began to structure and control the choice of traditionalists that are allowed to represent the tribal collective during these "government-to-government" consultations. This is a necessity since it is the collective that is the storehouse of the cumulative traditional knowledge. Federal and state entities must recognize that there are multitudes of urbanized, individual Indians that are practitioners of traditional ceremonials; but, they are not representative of the tribal collectives living on the reservations. In fact, most were relocated into urban American, by government action and policy, in order to destroy their tribal knowledge and relationships. Tribal governments must allowed to choose who represents them at the consultation tables, with the premise that they realistically choose representatives that truly are concerned about traditional practices and not chosen because they support economic development first.

What is to be consulted about? We have attached, herewith, a proposal by the Lummi Nation that seeks to develop an intertribal protocol on the protection of Native Children's rights to secure and learn their traditional culture. But, such guarantees are useless when the natural environments, the sacred sites and places, essential to exercising such practices are rapidly being destroyed—outside the reservation or even inside the reservation. The "Protocol" is an outline of what needs to be protected in order for traditional practices to continue into time. For those native communities that have retained a lot of traditional culture then it is a statement of the minimal that needs protection; but, for those that have lost a lot, then it becomes an outline for the minimal that needs to be recovered for manifestation of the traditional, cultural, tribal collective.

In consultation, the non-native parties demand more and more information in order to justify or rationalize their willingness to even consider the native concerns. If the law does not mandate that the Indian views be considered, if it is completely discretionary, then the information is "filed away." Thus, the natives believe their voices are not given much credibility. And, the non-native demands more intimate information about cultural practices, meanings, intent, locations, and timings but is not willing to prevent disclosure of the information under the freedom of information obligations. Thus, traditionalists are hesitant to disclose details because of the history of their sacred information becoming the main themes of new publications.

Native Americans, in various regional intertribal organizations, have considered forming intertribal commissions to address the best means and processes for structuring "consultation" on traditional culture with non-Indian society (corporations) and government (local, state, federal). But there has never been the financial means

to bring the parties together, to conduct the necessary dialogues, to conduct the necessary interviews, to document the concerns, opinions, and advice. The number of opportunities to be consulted with, with state and federal agencies, are numerous but the governmental agencies limit participation to tribes that are being impacted in their traditional, ancestral territories. The state and federal governments have access to revenues to cover the costs and expenses of participating in consultation; but, for the tribes the limited revenues require that funds are taken for the more needy parts of the tribal community (e.g., women, children, elders) to cover on-going consultation dialogues. A part of the financial burdens for consultation with the tribes will have to be picked by the departments or agencies that are required to consult with the tribes. Failure to finance those costs makes consultation a farce, as regards meaningful tribal participation.

It would benefit both the state and federal governments, as a service to their departments and agencies that are required to conduct consultation, to jointly finance the formation of intertribal cultural consultation teams. Any activities that will impact the natural environment will impact the Indian traditional communities. Much of the work can be cooperatively worked out in advance and detailed beyond the idea of the Protocols, to help streamline the consultation processes. On-reservation the tribes would need federal grants to help develop this capacity. And, their success would improve their ability to work with the off-reservation projects that are outside their jurisdiction but within their traditional territories. Under self-determination and self-government management of their natural resource bases, Indian tribes (e.g., NWIFC tribes, CERT Tribes, NTEC Tribes) have become experts on environment questions and the science of management of natural resources and the environment; this same idea could apply in regards to the collaboration of how to improve their traditionalists participation in the consultation process and translate those into recommended cultural management regimes. This would reflect and be composed of what Dr. Gregory Cajete called "Native Science."

As tribes move into control of Indian Self-determination and Self-governance they begin to assume more and more control over the delivery of essential government functions and services to the tribal community and membership. It is well known that Native Americans are constantly under-funded in congressional appropriations for health and education, laws enforcement and court services, and all of the other programs that they qualify for. Most of the available funding goes to administrative structure with few dollars for providing direct services to the community. Economic development (as in the success of gaming for half of the federally recognized tribes) provides tribal governments with an opportunity to supplement the financial shortfalls in federal funding. But, very few dollars are available to invest in the time and staff needed to participate in extensive and time consuming consultation on impacts to traditional culture. Marginalized tribal communities live day to day, plagued with challenges to make daily survival. Tribal leadership is torn apart trying to balance the demands—save culture or save a life today!

There is a tremendous need to secure congressional authorization and funds to develop the intertribal cultural consultation teams. These would work with or could work with the National Congress of American Indians, the National Tribal Environmental Council, and the Council of Energy Resource Tribes, as well as the other regionalized intertribal organizations (e.g., Affiliated Tribes of N.W. Indians, United South and East Tribes, N.W. Indian Fish Commission, Great Lakes Indian Fish & Wildlife Commission). In addition, there is the Native American Indian Graves Protection and Repatriation Act that is being implemented nationally as pertains to sacred sites and places associated with ancestral burial sites and cemeteries. Their involvement would add to the library of knowledge as well. Core funding is needed to coordinate, plan, structure, and professionalize the discussions and negotiations to assure that the traditional native voices are heard in a constructive way. This is a necessity if the traditional values and culture is to ever have influence over the natural resource harvest management regimes or those that address oil, gas, ore, or mineral extractions.

Regardless of which federal department, agency, or commission is required to consult with the Indian tribes, before impacts or after the fact, the truth is that unless the tribes have a right to sue and the burden of proof is carried by the industrial sector or the department or agency, then there will be constant efforts to disregard the native consultation rights (or privilege when it has not legal strength) and recommendations. Several years ago a gas pipeline had leaked 277,000 gallons of fuel into Whatcom Creek (Bellingham, Washington). Not only did it destroy the creek habitat extensively but it incinerated three youth that were present in the creek (Liam Wood, 18; Wade King and Stephen Tsiorva, both 10 years old). It has caused not only extreme grief but millions of dollars in restoration efforts. Today, the pipeline companies refuse to disclose information about their lines and crossings of

streams/rivers under the pretense of potential threats if the information is known. The public has a right to expect the government to require safety. But, instead, public interests have to sue to attempt to get the information released. The companies should be required to bear the burden of proof after a lapse of time, and failure to make honest efforts to disclose should result in triple damages, fines, and penalties. Currently, a test case reveals that the gas companies can continuously stall off public inquiries almost indefinitely. One of the boys was an adopted out Alaskan Native Indian, with extended-family located on the Lummi Reservation. We are concerned for human life and habitat protection, especially for those streams/creeks that have ceremonial bathing sites located within them. The idea though is that without penalties and the threat of lawsuits, the energy companies can afford lawyers to stall the proceedings longer than the volunteer public interest groups impacted can afford.

The Exxon Valdez oil spill is still the focus of major lawsuits by the impacted public interests and the company lawyers that have specialized in stalling the case and judgments/awards are well paid. In the meanwhile, 1300 miles of shoreline remains destroyed. That same year the Exxon Philadelphia drifted, without any control due to mechanical failure, along the Washington coast with 23 million gallons posing a risk to the environment. A similar threat transpired with the Cloudsdale, carrying 28 million gallons of oil. The late Senator Magnuson worked diligently to get double hauled tankers authorized as the only ones allowed to pass through Washington waters, just in case hauls were breached. This type of championship is still needed in order to prevent a Valdez crisis in Washington. The N.W. Indian Fish Commission and member tribes are very concerned. Not only do the tribes have a subsistence dependency upon the fish and shell fish that populate these waters, but there are sacred sites in the waters as well. Chief Seattle received his Thunderbird Powers from the waters of Puget Sound. The late Lummi Medicine Man Isadore Tom received his healing powers from the waters of Bellingham Bay. Tribes have a right to be consulted on what passes in and through their ancestral, territorial waters ("Usual and Accustomed Fishing Grounds and Stations" of U.S. v. Washington, 1974).

The Gwichan have been demanding, constantly, the right to be consulted before there are any congressional authorizations associated with the development, construction, and maintenance of the pipe lines through their Alaskan territories. Their dependence upon the salmon, the sea life, and the Porcupine Caribou Heads have been well stated and voiced time and again within the Houses of Congress. While pipelines are being constructed, there is on going oil/gas exploration, drilling, and with phenomenal rates of water contamination throughout Alaska and the North Slope. The polar ice capes are melting due to global warming and still the voices of the native peoples are being ignored. Tribal peoples want meaningful consultation, meaningful mediation, meaningful negotiation over how to avoid damages to the environment in general and sacred sites and places in specific. As mentioned above, without authorization to hold a cause of action against the developing party, the tribes are powerless. The 1978 American Indian Religious Freedom Act lacked legal teeth for the tribes; there was no power to sue and power to hold the corporations accountable.

In the 2005 Energy Policy Act, under section 504 "Consultation with Indian Tribes" is provided. Consultation, however, should not only address activity that impacts on reservation energy development projects, as regards renewable or non-renewable resources; but off-reservation activities should be subjected to the consultation requirement as well, if it is within traditional tribal territories and could impact tribes rights and sacred sites and places especially.

George Waters, working with Indian Tribes, stated that "The Interior energy program section is encouraging not only because it requires the Secretary to provide grants to tribes for a number of different purposes, but also because it envisions the creation of a database of environmental best practices under subsection 2602(a)(2)(D). Theoretically, tribes and federal agencies could use the best management practices as references to encourage environmentally sound resource development and coordinate efforts across federal, state, and tribal lines.

Technological and Scientific Divide Hinders Progress in Consultation:

The age of the computer has greatly enhanced instant communication between points in the world, and especially the more developed countries such as the United States. However, even with the rapid economic development of those tribes participating in the gaming industry and located next to major urban centers, most of the tribal communities are still struggling to connect to the new communication infrastructure that has become standard daily operations for all levels of government (local, state, federal, international), society, and industry. Most of the drilling for oil,

gas, or mineral exploration is not taking place inside of urban centers or next door to major metropolitan areas. Impacts are felt though by the rurally isolated communities that have to address potential developments, construction of developments, or in the aftermath of developments in the energy industry.

Indian Country has continued to develop their various intertribal organizations that have become "special focus" entities. We have intertribal organizations that address health (National Indian Health Board), education (National Indian Education Association of the American Indian Higher Education Consortium), housing, tribal courts, and general concerns (as in the National Congress of American Indians). We have regional organizations that address intertribal regional concerns (Affiliated Tribes of N.W. Indians, United South and Eastern Tribes). We have intertribal organizations that specialize in areas (N.W. Indian Fish Commission, Great Lakes Indian Fish & Wildlife Commission, Council of Energy Resource Tribes, Intertribal Timber Council). One of the more recent entities to come into existence is the National Tribal Environmental Council (NTEC), which began with 8 tribes and has expanded to nearly two hundred member tribes.

It is more difficult for a tribe that is rurally isolated to participate in consultation associated with impacts to the natural environment and culture when they are not able to get the expert advice that may be addressed in association with their traditionalists concerns about management regime development. NTEC could be the conduit that can be geared up to provide the professional staff and research to advice the "traditionalists" and tribal governments when they lack the same within their tribal systems. It could work with tribes to organize an intertribal traditionalists advisory team to help structure the process of consultation associated with impacts to sacred sites and places. But, NTEC would need additional staff, additional research funds, access to providing technological assistance and computer equipment and hardware &software to isolated tribes confronted with these issues. It would need the funds to help organize, coordinate, and implement regional planning processes to streamline the consultation network. Without this then the individual tribes have to re-invent the wheel each and every time.

In recognition of the national concerns on energy development, it would be a good decision to use the oversight hearing process to rationalize, justify increased authorizations and appropriations for a specific entity (such as NTEC) to coordinate and organize a national assistance center for tribes confronted with energy development. The Lummi Nation would recommend that NTEC be authorized and charged with the task. Funding would be needed annually for the first ten years and then expanded as needed. It should rationalized as an extension of tribal self-determination and self-governance rights. Impacted tribes would join NTEC in order to access the services and benefits. NTEC would network with the individual tribes and the various intertribal organizations to assure that the whole system is transparent and accountable to tribal economic interests as well as tribal traditional concerns. Tribes that are directly involved in potential or current impacts by energy development projects would be priority for technological updates and coordination assistance. The original funding should start at one million for each of the first three years, and then increased to two million for the fourth and fifth years, then report to congress on the progress and participation success, with options to expand the project indefinitely—provided there are benefits to all sides of the equation.

While tribes that are impacted directly, on and off-reservation, by energy development projects, may want to directly access the funding from the respective "Secretary's" office, this funding advocated for NTEC would require their membership in NTEC—to assess the assistance. The overall goal is professional coordination services by NTEC to tribes willing to partake of their services. NTEC, then, would be in the position to assess the specific member tribe's capacity to respond to the consultation process and determine where NTEC can provide professional services. In the experience of Lummi, the N.W. Indian Fish Commission has become almost indispensable to coordination of the intertribal projects and voice of concerns—legally, politically, technically, scientifically, managerially, as well as in the realm of positive public relations. This is the same opportunity advocated for the development of such a division within NTEC.

Mr. GRIJALVA. Thank you, Mr. James.

Mr. Jurrius, we will hear your testimony, and then we are going to recess because I think votes are going to or have been called already, or are they going to be called? They will be called shortly, so Mr. Jurrius.

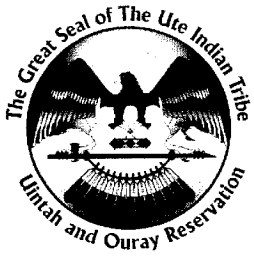
STATEMENT OF JOHN JURRIUS, FINANCIAL ADVISOR TO THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION

Mr. JURRIUS. Yes, thank you, Mr. Chairman.

Before I start, I have a letter from the Tribal Chairman, Maxine Natchees, I would like to submit.

Mr. GRIJALVA. Without objection.

[The Natchees letter submitted for the record follows:]



UTE INDIAN TRIBE
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Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

April 26, 2006

Dear Chairman Grijalva, Chairman Costa,
Ranking Members Bishop and Pearce, and distinguished members of the Subcommittees:

I am writing to express my sincere apologies for being unable to travel to Washington D.C. to testify on behalf of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

The Ute Indian Tribe is pleased to have the opportunity to testify before you on the accomplishments we have made over the last few years.

Therefore, in my place I believe that John P. Jurrius, Financial Advisor to the Business Committee will do an excellent job representing the Ute Tribe. Our goal will be to introduce Congress to an energy resource Tribe that is working to achieve true self determination while at the same time working to meet the energy needs of the Nation.

While Tribes are faced with many challenges they can represent a true resource to the nation if interests are aligned and governmental agencies can cooperatively work together to help meet our nation's energy demand.

If I can be of assistance to you please feel free to contact me at (435) 722-5141.

Sincerely,

Maxine Natchees, Chairman
Business Committee – Ute Indian Tribe
Uintah & Ouray Reservation,Utah

Mr. JURRIUS. Good morning. My name is John Jurrius. I am appearing before you today at the request of Maxine Natchees, the Chairman of the Ute Indian Tribe and the Business Committee, the Ute Indian Tribe of the Uintah and Ouray Reservation.

I thank the Subcommittee for the opportunity to appear before you this morning to talk about the experience that the Ute Tribe and the interdependence between the tribe's land base, associated natural resources, tribal membership, and the tribe's goals of self-determination, and financial independence.

The tribe's reservation is located in northeastern Utah. Exterior boundaries of the reservation represent approximately 4.5 million acres. That represents approximately 8 percent of the surface of Utah, making the Ute Tribe, the second largest land-based tribe in the country.

The reservation consists of a matrix of tribal and allottee surface and mineral estate, intermixed with Federal, state and private surface and mineral ownership, making the Ute reservation one of the more complex jurisdictional tribal land bases in the country.

Even though the reservation overlays four counties in Utah and falls within the jurisdiction of the BLM Vernal and Price offices. There are approximately 3,200 members of the tribe with over 85 percent of the members living on the reservation. As mentored by the Federal government, the tribe, like most tribes, has built a central government, but unlike the Federal and state governments the tribe does not have a tax base and therefore must rely on resource development to provide for the organization and tribal membership.

The tribe's annual governmental budget is approximately 62 million, with approximately 85 percent of that budget being provided directly from energy resource development on the reservation. In 2000, the tribe decided that in order to provide a long-term economic stability to its membership they could no longer afford to play a passive role in resource development, nor could it depend on the Federal government to provide vision, leadership, or strategic decision-making, let alone wherewithal for the well being of its citizenry.

To better serve its members, the tribe decided it must become proactive in dealing with resource development and the maximization of its financial resources. The tribe therefore developed a comprehensive plan to manage all aspects of its operations of sovereign from providing the basic government services to engage in revenue-generation activities. The tribe's leaders knew that it needed a comprehensive structure necessary to effect these changes would require buy-in from the members, so the financial plan was subject to tribal referendum. The membership approved this financial plan by a factor of ten to one.

The financial plan called for the aggressive deployment of the tribe's energy resource estate and financial resources. Similarly, the plan authorized aggressively using the tribe's financial assets beyond their historic role of simply subsidizing tribal government operations to that of building sufficient financial corpus to provide long-term economic stability, thus enabling the tribe to provide core government services in perpetuity while providing greater well being for tribal members.

Since adopting the plan, the tribe has leased over 400,000 acres that had never before been leased acreage, partnering with companies like Bill Barrett Corporation, Quest, Arberry Petroleum, Newfield Exploration, Anadarko, Dominion, EOG, to name a few. The tribe has also participated in administering the assets, gas-gathering plants, and is currently involved in a refining project.

The tribe's natural evolution was enhanced by Title V of the Energy Policy Act, which included in Title V the Indian Tribal Energy Development and Self-Determination Act. In addition to that, the evolution seems to be moving forward under Title V, authorizing Indian tribes and Secretary of the Interior to negotiate and execute tribal energy resource agreements. An Indian tribe may enter into leases agreements right away and other business deals for energy development in accord on its own land without having the Secretary of the Interior review and approve them.

However, we have our challenges. We have challenges that were mentioned here earlier today, split estate issues. We have EPA issues. We have refining issues. I will say that the tribe has over 300,000 split estate acres. With the exception of about 75,000 of those acres, the tribe has worked very diligently with industry and has resolved all split estate issues in regards to its deployed assets.

The only remaining split estate issue has to deal with an exchange with the School and Institutional Trust Lands Administration of Utah, and by doing this exchange the tribe will set aside over 150,000 acres of lands in Desolation Canyon.

We also have environmental challenges such as the tribe currently doesn't have a minor source permitting program with the EPA, and therefore must rely on more onerous permitting than adjacent lands regulated by the state and other agencies.

Mr. GRIJALVA. Mr. Jurrius, I apologize, but I am going to have to ask you to wrap up so that we can go vote.

Mr. JURRIUS. Yes, sir.

Mr. GRIJALVA. And then we will come back to this panel for questions.

Mr. JURRIUS. Yes, sir. Thank you.

The point and conclusion as this committee and other committees look at issues surrounding the nation's energy policy, those decisions have a great impact to Indian country and their ability to become self-determined by using their resource base.

Thank you.

[The prepared statement of Mr. Jurrius follows:]

Statement of John Jurrius, Financial Advisor to the Ute Tribe of the Uintah and Ouray Reservation

INTRODUCTION

Good morning Chairman Grijalva, Chairman Costa, Ranking Members Bishop and Pearce, and distinguished members of the Subcommittees. My name is John Jurrius and I appear before you today at the request of The Honorable Maxine Natchees, the Chairwoman of the Ute Indian Tribe of the Uintah and Ouray Reservation. Mr. Chairman, I am the financial advisor to the Ute Tribe and I am accompanied today by Cameron Cuch, a tribal member and an energy analyst with Ute Energy LLC, an integrated energy company formed and owned by the Ute Tribe.

I thank the Subcommittees for the opportunity to appear before you this morning to talk about the experience of the Ute Tribe and how we believe other Indian Tribes can take advantage of the resources they are blessed with and new opportu-

nities under the recently enacted energy law to develop and implement their own paths to economic development.

THE PROMISE AND POTENTIAL OF INDIAN TRIBAL ENERGY

In early 2001, the U.S. Department of Interior estimated that Indian Tribes own an enormous reserve of non-renewable energy resources such as natural gas, oil and oil shale, tar sands, and coal, as well as enormous potential to harness renewable energy resources such as solar, wind, and hydropower. Using then-prevailing market prices, the department estimated that the development of these resources would result in some $895 billion in revenues to their tribal owners.

As we all know, the tragic events of "9-11" and the ongoing war in the Middle East have caused the prices of oil, gas, and other energy commodities to skyrocket. For example, in 2001 the department valued Indian-owned oil at $35 per barrel. Light sweet crude oil is now priced at $65 dollars on the New York Mercantile Exchange. That's a $30 per barrel difference and suffice it to say that if the department revised its earlier analysis, the value of tribal resources would be in the trillions.

Because of their geographical remoteness, most Indian reservations were once seen as undeveloped—indeed incapable of development. Today the Ute Tribe is one of dozens, perhaps hundreds, of Indian Tribes with both a natural abundance of energy resources and the determination to maximize those resources for the benefit of their members.

Combined with the sheer volume of energy resources, there are regulatory and policy reasons to be excited about the prospects of tribal energy development. In August 2005 President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109-58) which included as Title V the Indian Tribal Energy Development and Self Determination Act. Title V is designed to assist Indian Tribes promote the development of their energy resources in ways that encourage tribal planning and decision-making, protect the physical environment, and result in increased employment and revenues to Indian Tribes, their members, and surrounding communities.

Title V authorizes Indian Tribes and the Secretary of the Interior to negotiate and execute "Tribal Energy Resource Agreements" (TERAs). With an approved TERA in hand, an Indian Tribe may enter into leases, agreements, rights-of-way and other business deals for energy development on its accord and on its own land without having the Secretary of the Interior review and approve them.

The TERA mechanism reinforces the policy of Indian self determination and acknowledges in the law what we already know out in Indian country: armed with accurate information, tribal leaders make better and timely decisions than the Federal government when it comes to energy matters.

The Department of Interior's Office of Indian Energy and Economic Development (OIEED) is taking seriously its responsibilities under the new energy law and is preparing to publish the final regulation to implement the TERA provisions. Final publication is due to occur in June, 2007.

PROFILE OF THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION

The Uintah & Ouray Reservation (U & O Reservation) is located in northeastern Utah in the middle of the Uintah oil and gas basin. The U & O Reservation comprises some 8% of the entire State of Utah and ranges 120 miles north and south, east and west, and 150 miles diagonally. The Ute Tribe has become an aggressive energy producer and has leased tribal land for oil and gas resources for many years. In fact the Ute Tribe recently opened up an additional 400,000 acres of tribal land that had never before been developed.

Simply put Mr. Chairman, energy resource development is the backbone of the Ute Tribe's economy. Thanks to the vision and leadership of Chairwoman Maxine Natchees and the Tribe's Council, the Ute Tribe has taken steps from being a passive royalty collector to vigorously participating in the development of its natural bounty. So instead of simply leasing its lands to outside companies, the Tribe has begun to partner with the private sector to take an active position in the exploration and development of its resources.

THE TRIBE'S GOAL: FINANCIAL SELF DETERMINATION

Before I discuss the Tribe's specific energy projects and plans, it is important that I share with you the fundamental decision made by the Tribe's leaders and members several years ago. In 2001, the Tribe decided that it could no longer afford to play a passive role in resource development nor could it depend on the Federal government to provide vision, leadership or strategic decision—making, let alone wherewithal, for the well-being of its citizenry. To better serve its members, the

Tribe decided it must become pro-active in dealing with resource development and the maximization of its financial assets.

The Tribe therefore developed a comprehensive plan to manage all aspects of its operations as a sovereign from providing basic government services to engaging in revenue generating activities. The Tribe's leaders knew that accomplishing the kind of restructuring necessary to effect these changes would require "buy-in" from the members, and so the financial plan was subjected to a tribal referendum. The membership approved the financial plan by a factor of 10 to 1, giving it the highest status under the Tribe's constitutional authority.

The financial plan called for an aggressive deployment of the Tribe's energy resource estate. Similarly, the plan authorized aggressively using the Tribe's financial assets beyond their historic role of simply subsidizing tribal government operations.

The financial plan's success required a sophisticated land data system that would enable the Tribe to identify (1) what it owned, whether surface or mineral estate; 2) whether those lands or minerals were leased or un-leased; and (3) whether the underlying agreements were complied with by the Tribe's private sector partners. In essence, the Tribe built a tool to allow us to manage our energy resource estate in real time.

The new land system helped the Tribe to determine that it had not received the market rate for most of its transactions; that nearly 50% of the rights-of-way holders were in trespass; and that a large number of exploration agreements were not in compliance.

The new system now enables the Tribe to show all tribal surface and mineral ownership, as well as other ownerships, e.g. Forest Service, Bureau of Land Management, State of Utah, and Fee Lands. The Tribe can also discern production by producer, by simply "clicking on" a well on an electronic map and reviewing the relevant agreement and resolution.

The Tribe can now drill down into any particular production field or well and determine when each well was drilled, determine what formations were completed, and calculate annual production.

Additionally, the new land system has helped the Tribe demonstrate to governmental officials and potential business partners that the Ute Tribe is a sophisticated operator with business savvy that cannot and will not be exploited.

CURRENT CHALLENGES TO TRIBAL ENERGY DEVELOPMENT

One challenge common in the west and one which Indian Tribes often face are the so-called "split estate" issues involving different ownership of surface and mineral estates. In these cases access to the subsurface minerals is an issue that must be resolved.

Mineral ownership is dominant under "Onshore Order Number One" which benefits the mineral owner. However, the Ute Tribe has identified situations where access to non-tribal minerals underlying tribal surface lands presents a major problem as it may involve access to sacred sites and areas of cultural and environmental importance to the tribe that the Tribe may seek to protect from development. As some on the Subcommittees know, the Ute Tribe is proposing a land exchange with the School and Institutional Trust Lands Administration (SITLA) of Utah to rectify a class split-estate problem. The proposal is currently pending before the Bureau of Land Management.

The SITLA holds some 20,000 acres of mineral lands in the southernmost portion of the Hill Creek Extension of the U & O Reservation. The Ute Tribe holds the surface rights to these lands. These SITLA mineral lands lie in an area of great cultural significance to the Tribe. In addition, the Ute Tribe maintains these lands as a wildlife conservation area. Thus, it would be difficult for SITLA to lease these lands for mineral development. The proposed relinquishment would protect sacred tribal lands, consolidate tribal ownership, and reduce potential use of these sensitive lands by third parties. It would also assure a revenue stream to the SITLA by developing mineral resources which are not currently being developed.

If the proposed land exchange is not approved, the split estate problem will prevent the development of mineral resources, wilderness and culturally significant areas will not receive the certain protection they would under the terms of the agreement.

LACK OF REFINING CAPACITY HINDERS ENERGY DEVELOPMENT

Another current challenge to developing tribal resources is inadequate refining capacity to process production from tribal oil assets. A large volume of the crude oil produced on the reservation is what is called "black wax" crude oil. Black wax crude is a unique form of crude and is desirable for its low sulfur content and potential for the creation of high value wax and lube products. Current black wax crude pro-

duction and drilling activities within the Uintah basin have been curtailed due to reductions in what Salt Lake City refiners are willing to accept for processing. These refiners have instead turned to imported Canadian crude oil which is fast displacing production from the Uintah basin and deprives regional refineries of any economic incentive to make capital investment necessary to process greater portions of local basin black wax crude.

The importation of Canadian oil, along with the fact that black wax crude congeals quickly and therefore cannot be transported long distances by way of pipeline, means that in large part local black wax crude is "stranded" with no refinery to process it.

The intersection of these factors could result in a shut down of production for the Tribe at a time when the nation needs a boost in domestic oil production. The only way to prevent stranding this major energy source is to build new refining capacity in the Uintah basin that is capable of processing black wax crude oil. As it has done with other mattes, the Ute Tribe is taking the initiative to build a new refinery in the Uintah basin.

Last month, the Tribe signed a Memorandum of Understanding (MOU) with Calumet Specialty Products to explore potential refining solutions for the Tribe's black wax crude production. As many Members know, Calumet is a leading independent producer of high-quality, specialty hydrocarbon products in North America and the Tribe is excited about the potential for this new collaboration.

On a related note, the Tribe is keenly aware that there is great interest in the potential of oil shale and tar sands to reduce our national dependence on foreign oil. There are significant reserves of oil shale and tar sands on the Ute Tribe's reservation and in the Uintah basin in general. The Tribe is perplexed as to how we as a nation can move forward with unconventional hydrocarbon resources such as these when it does not have the refining capacity to refine its own domestic energy resources existing resources and continues to depend on foreign resources.

Nonetheless, the Tribe's refinery blueprint takes the long view and includes plans to construct oil shale and tar sand processing and refining facilities at a later date.

ENERGY DEVELOPMENT AND ENVIRONMENTAL PROTECTION

The Ute Tribe and all of its activities are inherently tied to its land. In a very real sense, the Tribe cannot be distinguished from its land. These lands are the sole resource for the Tribe, and the sole source of its economic future. The Tribe protects and cherishes its land and has set aside a portion of its reservation as a pristine, untouchable area, preserved for its members alone.

As part of its energy plan, the Ute Tribe is engaged in ongoing discussions with the U.S. Environmental Protection Agency (EPA) on a number of issues affecting the Tribe. Because the Tribe is entirely dependent on revenues from oil and gas operations on Tribal lands to fund its government, a decrease in those revenues would prevent the Tribe from providing fundamental governmental services—health care, education, housing, and law enforcement—to its members.

EPA has requested that the Bureau of Indian Affairs prepare an environmental impact statement (EIS) addressing additional oil and gas development on the U & Ouray Reservation. The Tribe is taking an active role in that process and is designing an approach that assures development can continue while the review process is underway.

The Tribe is also working to resolve air emissions issues affecting the U & O Reservation. EPA has been slow to promulgate a minor source rule governing air emissions for Indian country and, as a result, operators on tribal lands must comply with overly complex and onerous air permitting requirements.

As the Members would guess, these operators can avoid the harsh and untenable air regulations simply by relocating their operations across the border of the reservation to state-regulated lands. The Ute Tribe does not want to see the double standards in air standards drive energy development from its reservation. The Tribe has been actively engaged with EPA, operators, and other regulators to address this anomaly. To its credit the EPA has thus far been open to assisting the Tribe in developing creative approaches to resolving this issue.

Along these lines, the Tribe has reviewed the recently proposed "Indian Country Minor Source Rule" and has provided comments on it. The Proposed Rule is flawed because it fails to recognize the comparative disadvantage Indian Tribes are burdened with when it comes to air emissions. Nonetheless, the Tribe remains hopeful that EPA will promulgate an equitable and meaningful rule that results in a minor air source permit for Indian country.

CONCLUSION

In conclusion I want to thank you for the opportunity to appear before you and discuss the great things that the Ute Tribe is doing in northeastern Utah.

At this point, I would be happy to answer any questions you might have.

May 16, 2007

Dear Chairman Costa and Chairman Grijalva:

In response to the question from Minority Members:

"Would the commercial potential for oil shale development on the Reservation be improved by encouraging commercial leasing of oil shale on the considerable public lands where oil shale formations are found out in the West?"

Yes, leasing for projects on public lands would drive the potential for development on Indian Reservations. The leasing of public lands would help Indian Tribes to 1. Learn more about oil shale development, and 2. To understand the technologies involved as well as determine which one is best is best suited for Indian country.

The leasing of public lands would also help the Ute Tribe learn more about the potential of oil shale located in Utah and learn about the two technologies namely the In-Situ Process and Surface Process or Mining.

The Ute Tribe is interested in the In-Situ process and feels that the leasing of public land here in Utah is important in finding out the result of this technology. Concerns about damaging the earth make it important that the right technology is perfected otherwise the Tribe will not be interested in developing its resource. Therefore the pilot projects help the Tribe quantify the prospective ness of the Tribe's resource and helps identify the right technology.

Finally, as the federal government continues to cut back on federal funding to Indian Tribes. Western Tribes in particular, are dependent on natural resource development to fund core tribal government and to ultimately reach tribal self-determination.

The Uintah and Ouray Indian Reservation, Utah

The Uintah and Ouray Indian Reservation, located in northeastern Utah, lies within the Uintah Basin, a structural and depositional basin of Tertiary age. During Eocene time a thick sequence of kerogen-rich sediments accumulated along he trough of a lake that occupied the basin area. Those endurated sediments comprise the oil-shale zones of the Green River Formation and much of the reservation is underlain by one or more of the zones. The richest of the oil "shale zones, the Mahogany zone, is deeply buried where it best developed within the reservation (northern part) and crops out where the oil shale grade is much lower, in the southern part of the reservation. Total oil-shale resources of the Mahogany zone within the reservation cannot be accurately determined due to the scarcity of core hole data, however, assay data from core holes adjacent to the eastern part of the reservation allow an estimate of the inferred resources of the Mahogany zone in a part of the Mahogany zone that yields 25 gallons of oil per ton, is a least 25 ft (7.6) thick, and is overlain by less than 3,000 ft (914) of overburden.

The 1970's and 1980's were characterized by exceedingly high petroleum prices similar to what is experienced today. At that time, several efforts began to make both tar sands and oil shale into commercial ventures that would have contributed to the nation's crude oil supply. Despite those historic efforts, ventures failed as world oil prices declined and Federal policies failed to support continued research and development of the resources. In Utah, the use of the resources reverted back to satisfying historical objectives. Tar sands were used once again for paving roads in the Uintah Basin and oil shale reverted to be the object of grand research projects and to fuel the plans of future developers. Not surprisingly, the optimism and dreams of today are every bit as directed and intense as those wishes and attitudes of yesteryear. Even though oil shale has been historically referred to as "the resource of the future that always will be", we feel that there is more future at this time for both of these key resources than there ever has been. Prices for competing fuels and the availability of those fuels are reaching critical stages in international markets, as are the unsettled geo-political situations in countries where conventional fuels are obtained.

Oil Shale and Tar Sands Resource Quantities:

The following tables depict current estimates for national reserve quantities of oil shale and tar sands.

US In-Place Oil Shale Resources in the Green River Formation – (Billion Barrels)[1]

State	Amount
Colorado	1000
Wyoming	300
Utah	321
Total	1621

Tar Sands Speculative and Measured Resources in the US – (Billion Barrels)[2]

State	Speculative	Measured	Total
Utah	21.3	11.0	32.3
Alaska	19.0	------	19.0
Alabama	1.5	4.9	6.4
Texas	4.4	1.0	5.4
California	1.4	3.9	5.3
Kentucky	1.6	1.8	3.4
Missouri	2.1	------	2.1
Other	2.2	------	2.2

Utah Resources

Utah contains about 321 billion barrels of kerogen in its oil shale, kerogen being an immature form of crude oil that requires treatment prior to refining. This amount is a small part of the total resource in the Western U.S. (UT, CO, and WY), which totals about 1.5 trillion barrels of kerogen. The vast majority of the oil shale resource is part of the Federal expanse of land referred to as Public Domain. There are significant parts of the oil shale resource, about 20% on an acreage basis, which are held in fee (privately owned) and owned by the School and Institutional Trust Lands Administration (SITLA). The latter category of resource is held in trust for the Institutions and school children of the State. SITLA owns about 186,000 Acres and has about 100,000 Acres leased at this time.

As noted, tar sands in Utah contain 11 billion measured barrels of oil, about 1/5th of the US's 58 billion barrels of tar sands oil. Many recovery estimates vary as well. In the same way as oil shale, ownership is a mixed bag among Federal, State, and private interests with approximate splits being 80%, 10%, and 10%, respectively. Overburden, or the non-ore material covering the ore, is generally shallower than in oil shale deposits.

Federal Leasing:

The Bureau of Land Management (BLM) plans to lease and encourage development of the Federal portion of Utah's oil shale and plans are now under way to achieve this goal. Maximum lease size under the new oil shale leasing program to any one individual or company would be 5,120 acres. A per-lessee prototype 5,120 Acre leases which would be mined by underground methods (in Utah) and have the ore retorted (baked) to extract about 1/2 of the kerogen from a 48 foot seam would yield about 250 million barrels of kerogen over 14 years at about 50,000 barrels per day (bpd). As a comparison to today's conventional oil production, the Utah Division

of Oil, Gas, and Mining (UDOGM) statistics indicate that Utah's crude oil production for 2005 was about 46,600 bpd.

Prior to offering the prototype leases, BLM is planning on leasing Resource Development and Demonstration (RD&D) Leases to "jump-start" the oil shale development process.[1] Utah has one RD&D lease in its future. It is a 160-acre lease on the same tracts leased in the 1970's as prototypes for oil shale development in Uintah County. An environmental assessment (EA) has been prepared for issuance of this lease to Oil Shale Exploration Company (OSEC). Comments on the EA are now being considered by BLM. The release for the Utah lease is

A Programmatic Environmental Impact Statement (PEIS) is being prepared by BLM on the long term leasing program. As a program to address large scale future leasing, it is planned to take more time in preparation and a draft is scheduled to be available by summer 2007. Since Utah is a cooperating agency, we expect a maximum amount of input to the process. The PEIS will evaluate the environmental effects of BLM's plan for the commercial leasing of oil shale.

Refinery capacity

Capacity to refine crude oil in the State is currently about 160,000 barrels per day. This limit is currently stretched because of Canadian syncrude coming into the State by way of the Express Pipeline and by the need to refine heavier black wax crude oil from the Uintah Basin. In fact, there is a substantial amount of produced oil, which is not being produced because of this capacity limit. The Ute Indian Tribe has established an initiative to build a new refinery in the Uintah Basin to handle Heavy crude namely "Black wax" with plans to establish a foot print for expansion into tar sand and oil shale refinement when technology to develop oil shale and tar sand becomes economic.

In conclusion, I hope that I have provided some insight into your question. Once again, thank you for inviting me on behalf of the Ute Indian Tribe to testify at your joint hearings.

Sincerely,

John P. Jurrius
Financial Advisor/Energy Expert for the Ute Indian Tribe

Mr. GRIJALVA. I thank the panel, and we are going to recess for 45 minutes to an hour, and then we will return to this panel for questions, and the panel that follows. Thank you very much.

[Recess.]

Mr. GRIJALVA. Thank you very much and again let me thank the witnesses, and I want to begin with some questions to Mr. Emmerich, and when I am done with my allotted time, Mr. Pearce will have some questions.

You mentioned the Western Governors' Association compiling a multi-state inventory of information on sensitive wildlife, migration corridors, critical habitat. That would be tremendous information. When do you estimate that that inventory will be if not completed, at least usable by a state or Federal agencies?

Mr. EMMERICH. Mr. Chairman, that portion of the resolution as you stated is encouraging gathering that information on an accelerated pace. I don't have a real good time line, but just based on our own experience in Wyoming where we have collected a lot of that information, I suspect within a year it will take to compile that information. A lot of places migration corridor, crucial ranges are already identified in various state databases or other types of databases. It is a matter of just pulling that together, but there are other areas where we have to do more, the baseline information, the marking animals or whatever it takes to really define those migration routes.

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[1] Lease for the RD&D projects in Colorado were released on 12-15-06.

But I think some initial information we could probably pull together within at least six months, a year max, but in these areas where we don't have specific information it is going to take several years because you have to mark animals, follow them, and delineate those areas.

Mr. GRIJALVA. Thank you. One follow up, if I may. The U.S. Fish and Wildlife Service and the states have spent a tremendous amount of time and money crafting a plan intended to help the sage grouse and preventing formal ESA listing for that particular bird.

My question, is BLM undermining those efforts by not doing enough to protect the habitat, and are we at this point, if that isn't protected, heading for a listing?

Mr. EMMERICH. Mr. Chairman, there has been a lot of energy and resources dedicated to completing the conservation strategy for the western greater sage grouse, and I think all agencies, and the BLM is certainly a player within that conservation strategy and working to achieve those results. Currently, one of the huge challenges is funding. They have identified, I am not sure of the exact total, but it is like—it is a lot of millions of dollars to actually implement this strategy.

I believe the BLM recognizes the importance of making sure we engage in all practices possible to improve conditions for sage grouse because if we don't and trends continue to decline, the long-term trends are negative. We actually have seen, at least in Wyoming, the last three or four years we have seen some increases in sage grouse number, at least outside of the intensive development areas, but long term you have fluctuations, but long term the trends have been negative. And if we continue to see that, I am sure there will be continued interest in listing the species.

Mr. GRIJALVA. Thank you very much.

Let me turn to Mr. Jurrius. The land system that you described in your testimony, was it developed by the tribe or the Department of Interior? That is the first part of the question.

What you described seems like something that could benefit other nations, other tribes, and are other tribes using a similar system?

Mr. JURRIUS. Mr. Chairman, thank you for the question. No, their financial plans, so to speak, was generated by a business consultants. Actually, the Southern Ute Indian Tribe, the Northern Ute sister tribe started this process back in the early 1990s, and as the three Ute tribes get together, the Ute Mountain Tribe, Ute Tribe, and the Southern Ute, they share that discipline, and that expertise. It is not something that the BIA or is not a canned project, but it certainly has received a lot of notice by other western tribes.

Mr. GRIJALVA. Thank you very much.

Mr. James, and thank you for being here, Indian tribes have raised similar concerns regarding the siting of cell phone towers, their effect on sacred sites that have been raised as well regarding energy development. To address the concerns raised, tribes have entered into negotiated programmatic agreement with the FCC and private industry that requires cell phone companies to notify and

work with Indian tribes before cell phone towers may be built in areas that may have sacred sites.

Have the Indian tribes used or considering using a similar programmatic agreement dealing with energy development areas that may have sacred sites?

Mr. JAMES. I can't really answer conclusively for all tribes, but I know that it is something that we try to encourage—to develop a system that would be available to those tribes that are concerned for sacred sites. Even though tribes are different in regards to time and location and membership, and the ceremonial practices, a lot of the core values that they have associated with sacred sites is fairly common in their traditional culture.

So if we can develop a system that become a role model compact, if you may, for dealing with the industries that come either within the reservation or is developing within traditional territories of the Indian tribes, then that would help those tribes that are least developed, move further along more rapidly, but it has to be developed as a prototype.

Mr. GRIJALVA. Thank you, and the last question, Mr. James. In your testimony you made the point that tribes often cannot afford to participate in the consultation procedures and decisions that may affect their culture, sacred sites, and you mention that in your testimony but I want to get specific in that. Do you think that additional funding for the National Tribal Environmental Council, a committed revenue stream will alleviate that problem that we are talking about being there for there for the consultation and having the expertise necessary?

Mr. JAMES. We witnessed in our experience where tribes come together within the inter-tribal organizations where they begin to share information and database and technology, that they move rapidly forward. That is why I was saying that. In the beginning, NTEC, with only eight tribes, now it is about 190 tribes, and so they are dealing with both the science of environmental management, but they would need to not only be able to be considered for the grant or the funds available for providing the gathering of environmental database and making available to Indian tribes, but also to help coordinate those tribes' contributions to a database associated with cultural practices and sacred sites protection.

Mr. GRIJALVA. Thank you very much.

Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

Thanks, Mr. James, for your testimony. We have a couple of tribes in our district that struggle for economic development the same way, and so I am very familiar with what you are experiencing.

Mr. Emmerich, on page 2, you have testimony about the declining numbers of wildlife and things. Would you have this panel to conclude that the wildlife and the production of energy on the lands that you have jurisdiction over they are mutually compatible or incompatible?

Mr. EMMERICH. Mr. Pearce, Mr. Chairman, I think energy development and managing wildlife resources are compatible, as I stated in the testimony, if we work with the best information and early

on in the development of these resources, we share that information, and identify the impacts that are occurring.

Intensive development, especially in crucial habitats or these sensitive migration corridors, do have a negative impact on wildlife.

Mr. PEARCE. So you mentioned the decline of the deer herd, for instance. Do you think that that is due to oil and gas or to intense development? Let us use that phrase.

Mr. EMMERICH. Mr. Chairman, there is several factors that cause declines in wildlife. We are doing a specific research that, by the way, is funded by industry in the Anticline area south of Pinedale. We have been monitoring closely the mule deer population that winters there on what we call the Mesa winter range where the Anticline development is occurring. We also have a control area just east of there. During the winter of 2002, which was about the third year of development, there was about a 49 percent decline in deer numbers throughout that basin because of weather.

Mr. PEARCE. Because of what?

Mr. EMMERICH. On the Mesa itself, there was a 49 percent decline. In the rest of the herd unit, there was about a 23 percent decline or 22 percent.

Mr. PEARCE. And you said because what, what did you speculate was the reason?

Mr. EMMERICH. That was weather, but as I pointed out, if you look at the control area compared to the Mesa area, there was a 27 percent additional decline in the Mesa area where the intensive development is occurring.

Mr. PEARCE. What was the——

Mr. EMMERICH. The only thing that we can attribute that to——

Mr. PEARCE. If you don't mind, what was happening to the elk population at that time?

Mr. EMMERICH. Elk populations don't winter in this area. The elk populations are stable.

Mr. PEARCE. What was happening to the antelope population?

Mr. EMMERICH. The antelope populations have been fairly stable in the same area. They migrate through this area, and do winter in a portion of what we call the Jonah Field.

Mr. PEARCE. So you have a decline in deer but you don't have a decline in antelope?

Mr. EMMERICH. That is correct.

Mr. PEARCE. You are in the agency that would decrease the number of hunting permits during that decline. Did you all decrease the number of hunting permits?

Mr. EMMERICH. If you look at the trends over the last few years——

Mr. PEARCE. I am running out of time. Just a yes or no.

Mr. EMMERICH. Yes.

Mr. PEARCE. Yes, OK. How much, just roughly? We are just talking in general terms.

Mr. EMMERICH. From 2002, there was—I don't have that information specifically. I think it is in the range of 20 percent.

Mr. PEARCE. So you had a reduction in 20 percent in the hunting permits, the actual takes?

Mr. EMMERICH. In that particular area. I can provide specific information.

Mr. PEARCE. Mr. Jurrius, do you all do hunting? Most of our tribes have hunting is the reason I am asking. Do you all do hunting, give hunting tours, and elk permits and all that?

Mr. JURRIUS. Yes, sir.

Mr. PEARCE. Have you noticed—you all are pretty aggressive—by the way, your tribe has gone from pretty low income levels to pretty high income levels, and so I commend you for that because a lot of tribes are trying to figure out the—so you do oil and gas exploration as well as hunting. Have you noticed your animal population is decreasing the way that Wyoming has?

Mr. JURRIUS. First of all, I might say that those energy revenues that go into the governmental budget, about a third of it, $62 million budget, is for environmental and mitigation type projects.

Mr. PEARCE. Can you pull the microphone just a little bit closer?

Mr. JURRIUS. Sorry.

Mr. JURRIUS. About a third of that governmental budget that I mentioned earlier, $62 million that is funded by way of energy revenues would fall into a category of environmental expense for the government, mitigation of habitat, and so we have very strong—whether it is bison herds, elk herds, rams in the Bouk Lifts, sage grouse or mule deer, very strong——

Mr. PEARCE. My question is are you seeing declines in population as you go up on oil and gas, decline over here?

Mr. JURRIUS. No, sir.

Mr. PEARCE. You don't see the correlation that they are finding there in Wyoming?

Mr. JURRIUS. No, sir, not at all.

Mr. PEARCE. You all have expressed some openness to—I see my time—I will just wait until the second round, Mr. Chairman, if you don't mind.

Mr. GRIJALVA. I don't have any further questions, so if you want to——

Mr. PEARCE. Sure, I only have a couple more so we will just ease through it.

You have expressed as a tribe some interest in developing a refinery, which is even one layer, more level of complexity in the development phase of oil and gas. Are you thinking that that is going to detract from your leased hunting revenues, the revenues you get from leasing your property to the hunters?

Mr. JURRIUS. No, sir. The tribe has done a great job of partitioning off lands that it considered to have cultural value or historic value for habitat versus those lands that it intends to develop.

Mr. PEARCE. So do you use the categorical exclusions that are available to the Federal government in the Energy Policy Act? Do you use those same types of things?

Mr. JURRIUS. Everything on the tribe, of course, is subject to NEPA and those same processes.

Mr. PEARCE. Do you use those categorical exclusions?

Mr. JURRIUS. No, sir.

Mr. PEARCE. OK. Mr. Emmerich, you had mentioned that you feel uncomfortable. You stopped short of saying it is a bad deal, but you were worried about categorical exclusion. Did you bring language to us?

Mr. EMMERICH. Mr. Chairman, yes, there is language in the testimony in terms of the type of changes that the Western Governors' Association would like to see. It pertains specifically——

Mr. PEARCE. If you could just provide that in writing, that is the question. If you have it, then we will take it and wring it through the mill there.

Mr. EMMERICH. You have it in writing.

Mr. PEARCE. If you will provide it to our staffs, I am sure both sides would appreciate having that.

Mr. Jurrius, on the split estate question, do you all run into that question?

Mr. JURRIUS. We run into split estate issues with over 300,000 acres of split estate where the tribe has the surface and, of course, as you know, other than Onshore Oil and Gas No. 1, tribes not subject to condemnation via imminent domain, and has seen massive development on its lands, but working with industry we have been able to—for all deployed lands and all deployed assets—resolve all split estate issues.

Mr. PEARCE. How much of your 300,000 acres is in the split estate category?

Mr. JURRIUS. No. Actually, 1.5 million acre surface estate, 300,000 is in the split estate category.

Mr. PEARCE. And you have been able to work some sort of a compromise on every single thing?

Mr. JURRIUS. Yes, sir. It has been a five-year process.

Mr. PEARCE. Which would match with our testimony from the BLM that they have 20,000 wells and only 20 have fallen into a category where they couldn't come to some agreement.

Well, that pretty well does it for me, Mr. Chairman. I appreciate this panel here. They have done a great job.

Mr. EMMERICH. Mr. Chairman, if I may, I do have those figures on another sheet. The sublette herd, which is the one directly affected by impacts on the winter range, in 2000, which is about the time the development started, we were issuing about 8,300 licenses, and in 2005, we dropped to 5,415, which is approximately a 36 percent decline.

But if you compare that to the same time period in other populations where we don't have energy development, there was also roughly a 10 percent decline in hunter numbers and licenses issued, so there was some decline elsewhere, but not as large as in the sublette herd.

Mr. PEARCE. OK. Thank you very much.

Mr. GRIJALVA. Thank you very much, and I appreciate all of the testimony. I want to note Mr. Jurrius's comment that the Nation that you represent is spending a third of its revenue from those leased lands on habitat, wildlife protection, and one can wonder if a third was being dedicated by BLM to those same endeavors, maybe some of the decline that we are debating about wildlife would be moot, but that is for another time.

Thank you very much, and I will call the next panel. Thank you very much and welcome, ladies and gentlemen. This is our last panel, and as you heard, your full statements will be made part of the record, and we ask you for your oral testimony, if you could

limit that to five minutes and we will proceed alphabetically. Let me begin with Mr. Adami. Did I say that correctly?

Mr. ADAMI. Adami, Mr. Chairman.

Mr. GRIJALVA. Thank you, sir.

STATEMENT OF STEVEN M. ADAMI, POWDER RIVER BASIN RESOURCE COUNCIL

Mr. ADAMI. Mr. Chairman and Subcommittee Members, on behalf of myself and the Powder river Basin Resource Council, I would like to thank you for the opportunity to speak to you today.

My name is Steve Adami. I am a rancher and CPA in Buffalo, Wyoming. I am a life-long resident of Wyoming, and I am here to address the problems with development of oil and gas minerals when a split estate exists.

The Stock Raising Homestead Act of 1916 governs the consideration for the surface.

Mr. GRIJALVA. If I may, let me interrupt you for just a second. Could you pull the microphone closer?

Mr. ADAMI. Is that better, Mr. Chairman.

Mr. GRIJALVA. Is it on?

Mr. ADAMI. I think I can hear it. Is that better if I speak here? OK.

The Stock Raising Homestead Act of 1916 governs the consideration for the surface which is growing crops and tangible improvements. This law is 91 years old. Surface uses and values have changed since 1916. Wyoming's Split Estate Act in 2005, that Act has proven to be inadequate primarily due to ineffective default provisions on the bonding requirements. Furthermore, the BLM has refused to recognize Wyoming's Split Estate Act where the split estate exists over Federal minerals.

Our ranch was bonded onto where we had fee surface over Federal minerals, and earlier today Mr. Bisson made a statement that I hadn't heard before, which is that in the United States there are only 20 wells where the surface owner and the Federal government can come to an agreement, and on our ranch we have 12 of those wells. So I represent to you here today 60 percent of the bonded on split estate Federal minerals in America.

While we were waiting to have our appeal heard, we appealed that process to the Interior Land Board of Appeals. While we were waiting, the developer completely drilled and developed every mineral at issue. There was no additional bond requirement during that period or any other protection for our land during that process.

This is not about stopping or slowing oil and gas development. It is about being fair and responsible with regard to the treatment of the surface estate.

We have sold our ranch, and left many of our oil and gas problems behind. However, I have decided to remain involved in this process so that other landowners don't have to go through what we did.

The problems are easy to identify. The solutions are generally much harder. However, I do believe there are a number of things that can be done to help that will mitigate the impacts of develop-

ment of the mineral estate while preserving the viability of the oil and gas industry.

I urge you to pass Congressman Udall's H.R. 1180 that would require surface owner notification and input, reasonable use of the site, accommodation of the surface owner, reclamation to support the same use as before the development, and compensation for damages. Personally I would like you to consider including something in that bill that would put a stay on development during an Interior Land Board of Appeal or increasing the bond amount so that would not be preferred alternative, and would help keep the mineral company at the negotiating table.

In summary, the oil and gas industry should not be allowed to off-load their cost, primarily reclamation, onto the surface owner through their dominant negotiating position. The coal mining industry not only survived but it has thrived since legislation require them to act responsibly was enacted. I believe oil and gas can also. I urge you to pass legislation to bring our antiquated laws up to date with the realities of our modern society.

Thank you very much.

[The prepared statement of Mr. Adami follows:]

Statement of Steven M. Adami, Rancher,
Powder River Basin Resource Council, Sheridan, Wyoming

Chairman Costa, Chairman Grijalva and members of the subcommittees, on behalf of myself and the Powder River Basin Resource Council I would like to thank you for the opportunity to speak to you today. My name is Steve Adami. I am a rancher and CPA in Buffalo, Wyoming, and a lifelong resident of Wyoming. I am here to address problems with the development of oil and gas minerals when a split estate exists between what has been the dominant mineral estate and the subservient surface estate.

The idea that the mineral estate is dominant over the surface or land is the cause of many conflicts. An example of this attitude of dominance over the land and the landowner was testified to in a recent court case in our area when the landowner, Mary Brannaman, testified that an oil and gas company representative told her, "Mary, it's just like you and I are married. I can do whatever I want, whenever I want, and however I want."

For me, the split estate relationship felt more like that between a slave and a slave owner, but the result was the same: the developer felt free to do whatever he wanted, whenever and however he wanted to do it. This situation, which surface owners are encountering more and more throughout the Rocky Mountain West, is leading to the passage of split estate laws in Wyoming, New Mexico and possibly this year, in Colorado.

Because of the oil and gas industry's political influence in Wyoming, the split estate law that was passed did not provide adequate protection for the surface estate. Our ranch in Johnson County was the first test of Wyoming's Split Estate Law. Since our ranch's initial test, the CBM industry has found Wyoming's Split Estate Law a safe haven for inexpensive access to their mineral estate and continued domination over the surface owner. Furthermore, the BLM refuses to recognize Wyoming's law, despite its weaknesses and shortcomings (see attachment.)

State and federal split estate law are based around "good faith negotiations", but in our experience, no good faith negotiations were required, regardless of state and federal law. The company that leased the federal minerals beneath our ranch did not want to negotiate and found the BLM an accommodating and cooperative partner in their effort to "bond on." BLM's message to landowners in our area is this: "You'd better take whatever the operator is offering, because if they "bond on" you will get nothing." This is not good faith negotiating.

In our case, what the operator offered was a one size fits all, non-negotiable surface use agreement. When we asked for some changes in the language ensuring proper reclamation, restrictions on water disposal, and $1.37 per day more money than was offered for the use and damage of our land, what we received was nothing. The initial offer was withdrawn and the operator "bonded on".

The BLM and CBM operator sat down and made decisions on how my land was to be developed. Although I was invited to the meetings between the operator and the BLM, my attendance was simply symbolic. As the owner of the surface, my input was given only a token consideration—and it was completely ignored if it conflicted with the operator's wishes. The ultimate Plan of Development that was approved did not minimize damages, did not compensate me for those damages, and did not ensure there would be enough money set aside to reclaim my land when the developer is finished.

The "bond" BLM required for industry to come onto my ranch was $2,176. This money was not and will not be paid to me or any other landowner who is forced into this position. The landowner must sue the BLM for damages and the legal fees would be several multiples of the bond. Two thousand dollars is not adequate compensation for my losses or cover the damages caused by drilling 11 wells, bulldozing miles of roads, installing miles of "utility corridors", and constructing five off-channel water disposal pits of approximately 3 acres each. An engineer I retained estimated reclamation costs to be in excess of 3 to 4 million dollars, particularly given the overall lack of development control built into the Plan of Development (POD) approved by the BLM's Buffalo Field Office. The BLM's response to my protests that they allowed industry to post a $2,176 bond against a reasonable reclamation estimate of three million dollars or more, was that they were only required to collect a bond for loss of grazing value.

The developer had D6 Caterpillars working on our ranch within 48 hours after the approval of their POD and drilling permits by the Buffalo Field Office. I appealed the BLM approval of the POD and drilling permits to the Interior Board of Land Appeals. There are no protections afforded to the surface estate or any additional bond required of the mineral developer during the time of appeal.

I tried every step of the way to get protection for our land and water. I lost that battle, and our ranch looks nothing like it did under our stewardship. What was once open pristine ranch land is covered with roads, pits, pads, and constant traffic. Our ranch became an industrial park for the production of CBM gas. Our private deeded ranch land was sacrificed by BLM for the development of federal minerals.

We no longer own the ranch I've been talking about today. For a variety of reasons, we were bought out by one of the CBM companies in the area. The decision to sell was a very difficult one for our family to make, but in the end was the only logical solution for us. We were able to leave most of these troubles behind, but the fight took a tremendous toll emotionally, physically, and financially for my family and me. The abuses continue today for my friends and neighbors, because nothing has changed in the way industry and the Bureau of Land Management conduct business. You cannot mandate "good faith negotiations". What is needed is a leveling of the playing field between the dominant mineral estate and the subservient surface estate.

Problems are easy to identify. The hard part is to find solutions, particularly when the solutions may require an industry with enormous political and economic influence to make concessions in the way it does business. However, there are solutions to many of the problems that will not unduly slow down or add unreasonable costs to development. This is not about slowing development or making it more expensive, it is about fairness to landowners and making sure that development is done in a manner that protects the surface resource.

The Stock Raising Homestead Act of 1916 declares that the surface estate is entitled to reimbursement for damages to crops (not including native grassland) and tangible improvements. That 91-year-old law still rules what protections compensation surface owners receive today when oil and gas is leased (though surface owners were given greater protections when coal and hard rock minerals are being developed, thanks to laws passed in 1977 and 1993.) It is time to revisit the true value of the surface estate and to provide protections for those who own the surface over federal oil and gas. The so-called dominant estate lends itself too easily to the actions of a slave owner or an abusive spouse, and the federal government should not be a party to it.

A new federal Split Estate Law would clearly have jurisdiction over federal minerals and provide protection for the landowner where the local and state governments are unable to provide such protection.

Mr. Chairmen, I urge you to pass Representative Udall's H.R. 1180 that would require:

- Notification to the surface owner and opportunities to comment and participate at key points in the leasing, permitting, development and reclamation processes.
- Reasonable use of the site.
- Accommodation of the surface owner.

- Reclamation of the site so that the land is capable of supporting the same uses it was capable of supporting prior to development.
- Compensation for damages.

And I urge you to go further:

- A federal law should require adequate compensation for the use of the land and the mineral development impacts. Requiring a fixed production percentage, which would be non-severable, to the surface estate would entitle the surface owner to some reasonable compensation for the use of their estate.
- A stay on development during an appeal to the ILBA would both provide protection against improper development and discourage companies from using the "bonding on" method of gaining access to their mineral estate except in a case of last resort.
- The best way to defuse the controversies surrounding this industry are to reconnect the minerals with the surface estate, perhaps by requiring that minerals not leased or produced over a number of years, 15 for example, revert back to the surface owner.

It is time to pass legislation to rein in the "dominant" position of the mineral estate which has cultivated the arrogance of the operators who are running roughshod over surface owners and address the inequity that exists between the land and the oil and gas beneath it. We addressed this issue during the boom in coal mining in the 1970s and it is time to require it of the oil and gas industry. In the 30 years since the passage of our federal coal law, the Surface Mining Control and Reclamation Act, which requires surface owner consent before federal coal is leased, the coal industry has evolved into a prosperous and relatively non-controversial industry. We believe the oil and gas industry can succeed and thrive from a similar approach.

Thank you.

Steven M. Adami
P.O. Drawer G
820 North Main Street
Buffalo, Wyoming 82834
307-684-5557

May 5, 2007

Representative Raúl Grijalva
Subcommittee on National Parks, Forests and Public Lands
House Natural Resources Committee
1626 Longworth House Office Building
Washington, DC 20515

RE: Additional Statements for The Record for the April 26, 2007 Hearing on "Land-use Issues Associated with Onshore Oil and Gas Leasing Development"

Delivered VIA email to Holly.Wagenet@mail.house.gov and Fax 202-225-5225

Dear Chairman Grijalva:

My understanding is that we are able to make additional statements or clarification for the record. Additionally, the Committee had a specific question.

A point of clarification to my written testimony is with regard to the issue of reattaching the mineral ownership to the surface ownership after an extended period of inactivity. This statement was only intended to be for fee minerals and not federal minerals.

Additionally, I wanted to address the statements by Mr. Bisson (Deputy Director of BLM) with regard to there only being 20 wells (or perhaps 20 landowners) in the nation where an agreement was not reached with mineral developers. I cannot verify whether this statistic is accurate or not. Instead, I would like to explain why this statistic should not be used to rationalize that the current system is working for landowners. What this statistic is really saying (or shouting) is that the playing field is so lopsided that there are virtually no challenges. This is a case where the surface owner has so few rights that any offer is considered better than the alternative, which is essentially nothing.

A statistic that would be very helpful, but not available, is the percent of landowners that have had federal minerals developed under their property who were happy or satisfied with the agreement they signed. Among the people that I have had contact with, that percent is not very large. Operators are currently using the leverage they have under the Stock Raising Homestead Act to coerce landowners

into agreements that do not adequately protect, or compensate for the use of, the surface.

BLM's Onshore Order No. 1 requires that an operator makes a "good faith" effort to reach an agreement with the surface owner, but in any negotiations where one side has absolutely no leverage, it is virtually impossible for "good faith" negotiations to exist. Regardless, exactly what are "good faith" negotiations? BLM does not define the term. Leaving that determination up to a civil action does a great disservice to the surface owner.

In my case, the mineral developer's initial offer was withdrawn when I did not initially accept it and it was never offered again despite my efforts to restart negotiations. There was no pressure by the BLM to continue negotiations beyond a few patronizing statements to the effect, "we would like to see you guys work something out". If the BLM believes they have the tools and procedures in place that encourage continued negotiations, as Mr. Bisson stated, those procedures were not apparent in my case.

A specific question from the Energy and Minerals Subcommittee, House Natural Resource Committee that I received as an email is as follows:

> *You have suggested the adoption of a federal law to govern split estate relationships in regards to oil and gas production. As you know the needs and requests of a ranch in Wyoming, Texas and any other state are not the same. How is a uniform approach to split estate likely to succeed in answering the specific needs of ranchers when they each have their own scenario?*

My answer to the above question is:

Every ranch is different, regardless of where it is located. My neighbors directly across the fence have entirely different management issues than our ranch. Each ranch has to adapt to the "cards they are dealt" which are size, terrain, water, soil, climate, and many other variables associated with any particular ranch.

That is one the reasons one ranch may be more receptive to mineral development than another ranch. Some ranches may be in a greater need of some of the development that accompanies mineral development.

The adoption of federal split estate legislation that recognizes that the surface and its uses are unique (accommodation) will not create a "uniform approach" but will facilitate an environment where the unique attributes of each ranch will have an opportunity to be recognized. Federal legislation that mandates broader considerations be given to the surface, over the current "growing crops and tangible improvements" to which they are currently entitled, is critical and necessary.

Federal split estate legislation would create a more level playing field on which real negotiations between landowners and mineral developers are possible, by establishing a procedure for negotiation, and by offering greater protections for landowners than merely requiring compensation for growing crops or other tangible improvements.

Until federal legislation is passed, the vast majority of split estate landowners will continue to be forced to take whatever mineral developers are willing to offer. Surface use agreements that fail to adequately protect surface owners' interests, including reclamation, may ultimately become a taxpayer liability. Please draft and pass meaningful and responsible legislation to protect the surface owner in split estate situations.

Sincerely yours,
Steve Adami

Mr. GRIJALVA. Thank you, sir.

The next witness, Ms. Korenblat.

Ms. KORENBLAT. Korenblat.

Mr. GRIJALVA. Korenblat, did I get it?

Ms. KORENBLAT. Yes.

Mr. GRIJALVA. Oh, good.

STATEMENT OF ASHLEY KORENBLAT, OWNER, WESTER SPIRIT CYCLING

Ms. KORENBLAT. My name is Ashley Korenblat. Thank you for having me. I live in Moab, Utah, with my husband and two-year-old son. I grew up in Arkansas, went to school at Dartmouth, got an MBA at the tech school, worked on Wall Street. Then I made

the entrepreneurial leap and ran a bicycle factory that used aerospace materials to make bikes.

I am not an outfitter on the public lands. I operate guided bicycle tours in 17 states. I am a former president of the International Mountain Bicycling Association, IMBA. I am currently serving my second term on the Utah BLM Resource Advisory Council, and I am also on a task force for the Governor of Utah that is exploring outdoor recreation economic systems—not a good acronym.

I have spent the last 10 years traveling through the public lands developing bike trips. My company, Western Spirit Cycling, holds permits from the BLM, the Forest Service and the Park Service. Our guests join us for week-long trips throughout the backcountry, and on those trips they need not just a bike and a helmet, but they need a tent and a sleeping bag and a good raincoat, making us one of the links in the $730 billion outdoor industry.

Some of our trips are truly challenging, five days above 10,000 feet on the Colorado Trail, and some are very mellow like the Grand Staircase, which my mother-in-law did for her seventieth birthday.

What if every American had the opportunity to spend a week a year traveling through our public lands under their own steam, sleeping under the stars? I think that would go a long way toward solving a lot of problems.

Our public lands are an incredible resource that belong to all of us, and there are 10,000 companies like mine who take people into the public lands, and our businesses all depend on access to land in its natural form.

The restorative powers of a trip to the backcountry are well known. Companies such as the National Outdoor Leadership School and Outward Bound run trips in the backcountry 18-day, 21-day trips. Everyone in this room would be a better person if they did those trips. The outdoors really has the power to heal and make us stronger people. Being outside in the vast landscape of our public lands is integral to the human condition.

Now, many of these lands, of course, were set aside originally for resource extraction, and the idea of managing them for recreation is a relatively new idea. In many places recreation and resource extraction can co-exist, but increasingly we are being forced to choose. You think what we could do is just a simple cost/benefit analysis. Well, the challenge is that by definition an oil well has a projected life span, but land in its pristine form can provide revenues to the outdoor industry forever.

So the question is what do we do to make sure that the two things can co-exist? And you as leaders of our society, one of the questions I am wondering about is, is it absolutely necessary to find every last drop of oil on our public lands when we know that oil is by definition an non-renewable resource? It is finite. And if this is the curve, aren't we on the downward slope? Aren't we past the peak?

I don't think my grandchildren are going to be burning oil to travel, and I also think there is as much money to be made on alternative sources of fuel as there was in the oil industry.

Ultimately, it is a long-term versus a short-term question. Our public lands are the backbone of the $730 billion outdoor industry

which created 6.5 million jobs and brought 88 billion in tax revenues, and it is going nothing but up. In the last 25 years, we have seen nothing but growth. There are two factors contributing to the growth: population increase and the fact that more people want to be outside. But as demands continues to increase, supply is dwindling, and so at some point we are going to be in the situation where only the wealthiest Americans are going to be able to travel to our pristine landscapes on our public lands.

So despite my plea here today you might look at the map and say, well, there are millions of acres out there, and an oil well only takes up a quarter acre. But it is not just the footprint, it is the roads, it is the gases, it is what it does to the views. I have a trip where we ride by a giant sign that says "Beware of poisonous gases" as we ride by the oil well, and I tell my guests if you get a flat tire here, just keep peddling.

So my real worry is that I am going to have a group call me from the Kokopelli Trail and say, you know, we are at camp on night three of the Kokopelli Trail and there is a bunch of trucks here and they are digging a big hole. So then all of a sudden I am losing a camp which I may not be able to replace, so I may lose that whole trip from my product line.

And while I am focusing mostly on permit holders, we represent only 40 percent of the recreation that is taking place, and Americans of all types recreate on the public lands, and while not every land manager has exact data on who is recreating, they definitely know what the patterns are. So, I am urging you to include language in the bill that requires the BLM and the Forest Service to consider the recreation economy before issuing leases.

[The prepared statement of Ms. Korenblat follows:]

Statement of Ashley Korenblat, President Western Spirit Cycling, Outdoor Industry Association

Background

Thank you for inviting me. My name is Ashley Korenblat and I live in Moab, Utah with my husband and two year old son. I am originally from Arkansas, went to college at Dartmouth and received an MBA from the Tuck School there. After a stint on Wall Street I was hired to run a bicycle factory in Massachusetts called Merlin Metalworks. We used aerospace materials to produce what at that time many felt was the best bicycle in the world. We sold that company and now I am an outfitter on the public lands. I own a bicycle touring company which operates in 17 states. I am a former President of the International Mountain Bicycling Association (IMBA) and am currently serving on the Utah BLM Resource Advisory Council and on a task force formed by the Governor of Utah to study Outdoor Recreation Economic Ecosystems.

I have spent the last 10 years traveling through our public lands developing bike trips. My company, Western Spirit Cycling, holds permits on all types of public lands: BLM, Forest Service, and both State and National Parks.

We operate under special use permits, incidental business permits, and commercial use permits from:

The USDA Forest Service in the following National Forests:
Boise, Coronado, Dixie, Grand Mesa, Gunnison, Kaibab, Manti La Sal, San Juan, Sawtooth, Sierra Vista, Uncompahgre, Challis, Clearwater, Beaverhead-Deerlodge, Caribou-Targhee, Black Hills, Mount Hood, Umpqua, Nantahala, White Mountain, Monongahela, and Pisgah National Forests and the Dakota Prairie Grasslands.

The Bureau of Land Management in the following resource areas:
San Juan Resource Area; Henry Mountain Field Station; Moab, Arizona Strip and Grand Junction Field Offices; Grand Staircase National Monument

The National Park Service in the following National Parks:
Bryce, Zion, Capitol Reef, Grand Canyon, Crater Lake and Blue Ridge Parkway National Parks. Western Spirit is a concessionaire in Canyonlands National Park.

Our guests join us for weeklong trips into the backcountry by bicycle. And on these trips, they need rain coats and pants. They need tents and sleeping bags. They need bicycles and helmets. Our guests stay in nearby hotels and eat in local restaurants before and after their trips, making us just one of the links in the value chain that makes up the $730 billion outdoor industry.

Some of our trips are for the truly hearty and involve five days above 10,000 feet on the Colorado Trail, while others are quite gentle. In fact, my mother-in-law did our trip in the Grand Staircase Escalante National Monument for her 70th birthday. She had not been on a bike in years. We got her a good rain coat and a warm sleeping bag and she had a wonderful time.

The Power of the Backcountry

What if every person in our country had the opportunity to spend one week a year traveling under his or her own steam through our public lands camping under the stars? I believe such a development would lead to progress on some serious problems from rising health care costs to global warming. Our public lands are an incredible resource that belong to all of us.

There are over 10,000 companies, like mine, who provide recreational opportunities on our public lands. From Barb and Harlan Opdahl at Triple O Outfitters who take people elk hunting on the Lewis and Clark trail to large river companies, like OARS, who run white water river trips on many of the major rivers throughout the US. What do all of these outfitters have in common, besides the fact that we all make people buy raincoats and pants? Our businesses, and the companies that make the rain gear, depend on land in its natural form.

The restorative powers of a trip to the backcountry are well known. As Theodore Roosevelt once said,

> "It is an incalculable added pleasure to anyone's sum of happiness if he or she grows to know, even slightly and imperfectly, how to read and enjoy the wonder-book of nature."

Companies such as the National Outdoor Leadership School and Outward Bound continue to grow and thrive because the trips these organizations provide make you a better person. There you are, a three day walk from a paved road. The wind is howling and the storm is bearing down upon you. You are nervous and unsure, because you are out here for 18 more days. But you put on your raincoat and your rain pants and you keep moving. You dig into your suitcase of courage and you make it over the pass to camp. There, you set up your tent and make a cup of tea, and then the storm blows away and you are left with a beautiful sunset.

I have seen it myself many times, people arrive for their bike trips, clean, a little pale, and nervous. There is a bit of panic associated with leaving the grid. Their cell phones will not work out there, and that worries them. Then they come back after having lived through the storm, having climbed over the pass, having swooped down the other side, having really seen the stars—and they actually look different. They are dirty, but they are no longer nervous. They have reconnected with themselves and the earth and they have a kind of glow. More than 65% of our customers come back every year.

The proliferation of wilderness therapy programs for at-risk youth is further testimony to the power of the backcountry. The out-of-doors has the power to heal and make us stronger. Being outside in the vast landscape of our public lands is integral to the human experience.

Making a Living on our Public Lands

Many of these lands were originally set aside for resource extraction, and the idea of managing them for recreational purposes is relatively new. There are many places where resource extraction and recreation co-exist. Yet in more and more cases a choice must be made and a simple cost benefit analysis is difficult to perform. Most resource extraction has a lifespan, defined by the productive life of the mine or well, while revenues from recreation can continue and increase in perpetuity.

In addition, many long-time Westerners deeply resent the federal lands in their states. How can they make a living if 87% of their county is public land? Well, one way is to open the lands to oil and gas exploration. The county government will receive a portion of the revenues, and in some areas, where the locals have the necessary skills, they will be employed. In my direct experience, it is more likely that you will begin to see trucks with out-of-state license plates and all the hotels will

be full just for those few months that the wells are being tapped. And if the boom continues, some of the local high school kids will become oil drilling experts and about the time you think your son is going to settle down, he gets a call to head to Alaska or maybe the Middle East to make some serious money, and the bust has begun.

Meanwhile, Grand County, Utah where I live, is 94% public land and that is exactly why I can make a living there. If my son chooses both he and his children could also make a living there. Our company started with bicycle trips on nearby BLM lands and in Canyonlands National Park. I have been in many meetings with county commissioners who express great interest in how our company works. Many of them have begun to see the business opportunities which recreation on our public lands can provide. The bottom line here is that land in its pristine form has long term economic value.

The Maah Daah Hey Trail in North Dakota

In 1999 a 96 mile multi-use trail was built to link both districts of Theodore Roosevelt National Park through the Little Missouri National Grasslands which are managed by the U.S. Forest Service. The Forest Service issued a competitive prospectus for permits on the trail, and my company, Western Spirit Cycling, was awarded a permit. The state of North Dakota began a marketing campaign to promote the trail. Advertisements showing the trail snaking through the grass in and out of the badlands geology appeared in all the outdoor magazines. The International Mountain Bicycling Association gave the trail the coveted "Epic" designation. Everything was on track to put North Dakota on the map as a world class mountain bike destination.

There was only one problem, this area of the National Grasslands is an oil field with more than 250 active wells. The trail was put in around these wells, and while there are many pristine vistas, there are not many places to camp that are not in sight of the wells. In fact, there is one section of trail that goes right along a fence next to a well which bears a giant sign that says beware of poisonous gases. So my guides tell my guests that if they get a flat tire in this area, or have any other problems, do keep moving—and perhaps hold your breath until you get safely away from the area.

On top of these challenges, the current federal energy policy has resulted in a five-fold increase in applications to drill in the region. And since none of the land management agencies have any obligation to inform recreational permit holders about changes in resource extraction, we could roll into camp next week with a group of paying guests and find big trucks, big lights and a big hole in the ground. It is beginning to look like North Dakota made a bad investment. What steps need to be taken to insure that recreation and resource extraction can coexist?

The Outdoor Industry and Resource Extraction

To answer this question, we must first ask ourselves as a society, and you must ask yourselves as leaders of our society, is it absolutely necessary to recover every last drop of oil in the US? We know that oil is a finite resource. So since we must begin to transition to alternative fuels, shouldn't you, the long term stewards of our nation initiate that transition? One way to do that would be to require that outdoor recreation be considered before oil leases are awarded.

Ultimately, this is a long term versus short term question. Our public lands are the backbone of the $730 billion dollar outdoor industry, which contributes 6.5 million jobs and more than $88 billion in annual state and federal tax revenues. This includes bicycling, camping, fishing, hunting, paddling, snowsports, wildlife viewing, and trail running, hiking, and climbing. And there is nowhere to go but up, the outdoor industry has seen consistent growth over the past 25 years.

There are two factors contributing to this growth: increased population and increased awareness that outdoor exercise greatly contributes to both health and happiness So, while demand is increasing, supply is dwindling. A microcosm of what the future might hold can be seen in the Grand Canyon. Demand for permits to float the Colorado River through the Grand Canyon has skyrocketed. Land managers rightly control access to the canyon to avoid damage to the fragile environment. Commercial outfitters often book all their trips for the year in a single day. Private parties have been known to wait over 10 years to receive a permit. Recently a lottery has been instituted to provide better access, but the reality is that right now, only wealthy people with flexible schedules get to float the Grand Canyon.

If we insist on extracting every drop of oil from our public lands there will be fewer and fewer places that are truly in their natural state. And the law of supply and demand will result in a situation where only the wealthiest Americans will be able to visit those spots.

Opportunities for Outdoor Recreation for all Americans

Despite my plea here today, you may look at the maps and the millions and millions of acres managed by our federal agencies and think how can a oil well, which often occupies less than a quarter acre be such a big problem. The consequences of digging the well spread well beyond its mere footprint. There are the roads that must be put in to reach it and there is the noise and there is its particular location. It is getting harder and harder to find contiguous sections of the backcountry to run an 18 day trip, or in some cases, even a 5 day trip. When people are traveling under their own steam, you can't simply change the route or just keep going to get away from the well. On an introductory bike trip, we really don't want to ride much further than 20 to 30 miles in a day. So, if a well pops up in one of our camps, we will have to change the entire route of the trip, which often is not possible. And suddenly one of the trips in my product line is gone.

USDA Forest Service

While we have long standing relationships with many of the rangers with whom we work, they have no official obligation to contact us should a lease be sold on one of our trip routes.

Bureau of Land Management

The BLM is legally required to consider wildlife, paleontology, and archaeology in both the planning and development stages of oil and gas leasing, but there is no such requirement regarding recreation.

National Park Service

While the Parks themselves are protected from actual drilling, to provide a true backcountry experience we must protect the viewshed from the park and avoid the noise.

While my testimony here has focused on permit holders on our public lands, we probably represent less than 40% of the recreation that is taking place. Americans of all types recreate on our public lands in thousands of ways. While not every land manager has perfect data regarding visitation, they are all aware of use and visitation patterns that would be interrupted by drilling.

If we continue to pursue aggressive resource extraction on the public lands without regard to increased recreational demands we will sacrifice the long term for the short term. By definition an oil well is a short term economic engine, whereas land in its pristine form can provide a living for guides and outfitters and those that make tents, and raincoats and bicycles and boats forever. So I urge you to add language to your bill requiring all land management agencies to consider long term recreational patterns, visitation, economic benefits, and social impacts before leases are awarded.

Response to questions submitted for the record by Ashley Korenblat

1. Our federal lands are precious resources to be utilized to the benefit of all Americans. At the same time, these resources are needed to provide fuel for the American public. Do you believe there is a balance in which we can maintain the federal lands, but also provide fuel for the economy and sustainability of the American public?

Yes, and one step towards maintaining that balance would be to add language to the Energy Bill which would require land managers to consider the recreation economy before lands are leased for oil and gas activities. Since oil and gas are nonrenewable resources, an oil or gas well is a short term economic engine, whereas land in its pristine form can fuel the outdoor industry indefinitely. In most cases, recreation considerations would result in reducing leased acreage by less than 3%.

Some members of the committee may feel that sacrificing even as little as 3% is not possible given the intense and growing demand for energy worldwide. Yet we all agree that oil and gas are finite resources. Prices will go up as supply dwindles. As a business person, I ask you to have more faith in the scientists and entrepreneurs of our country. Necessity will lead to invention and the necessity is upon us. We will find a cheaper cleaner source of energy and clinging hopelessly to the oil and gas establishment is only delaying that transition.

The small percentage which the Outdoor Industry requires will not solve the energy crisis or delay the need to begin the transition. I have been warned that you may see the consideration of recreational needs as micromanagement within the Energy Bill, but if those lands are all leased, you will do permanent damage to the $730 billion outdoor industry.

You speak of sustaining the American public, how can we sustain them if we do not sustain the earth? In my business, I have already noticed distinct changes in

weather patterns all over the US. Global warming and its dramatic effect on weather patterns will ultimately do more damage to the U.S. economy than the very predictable rise in fuel prices. Businesses can plan for increased fuel prices, they cannot plan for unpredictable natural disasters.

As leaders of our nation, you have the opportunity to make one of the most important decisions in the history of mankind. Initiate the transition away from oil and gas dependency before we have done irreversible damage to the earth and its ability to sustain the American public. Including language to protect the recreation economy in the Energy Bill is a step you can take in the right direction.

Mr. GRIJALVA. Thank you very much.

Ms. Moseley.

STATEMENT OF CLAIRE M. MOSELEY, EXECUTIVE DIRECTOR, PUBLIC LANDS ADVOCACY

Ms. MOSELEY. Thank you, Mr. Chairman and Mr. Pearce for inviting me to testify here today.

I am Claire Moseley. I am Executive Director of Public Lands Advocacy in Denver, Colorado. At the risk of divulging my age, I have been working on public lands issues for 29 years, since 1978. Since that time I have seen oil and gas come under increasing criticism for turning to the last frontier left in the United States, public lands for domestic energy supplies, and it has become a partisan issue, which is unfortunate.

Yes, energy is a large, even huge, industry, but it wouldn't exist if there weren't a huge demand for the goods and services it provides. We currently import 60 percent of our oil. We import 15 percent of our natural gas, but we shouldn't have to import gas. We have adequate natural gas resources in the U.S. to avoid the same problem we have with oil.

A fact that appears to be consistently ignored is that consumer demands are not diminishing. They are increasing at a rate where demand is projected to outstrip supply by 2025 unless something is done to avoid it.

According to the USGS, an estimated 69 percent of oil and 51 percent of natural gas lie beneath public lands. However, we are locked out of most of these areas since 51 percent of the oil and 27 percent of the gas is entirely withdrawn from leasing. The lands not withdrawn are subjected to high-level lease stipulations, restrictions, and conditions of approval to the point where in many areas we are subject to no surface occupancy.

This could hardly be construed as leasing being the dominant use of the public lands. In fact, as you hear earlier this morning, the operations on public lands, my figure is less than 1 percent, BLM said less than 2 percent. Regardless of what it is, it is still very minimal. There is grumbling that industry doesn't deal fairly with surface landowners who bought land underlain by Federal minerals. Yet industry follows the law and the regulations, and makes a good faith effort to reach agreements with the landowners for surface damages. BLM found in recent studies that were discussed this morning under EPCA that of the thousands of wells drilled on split estate lands fewer than 20 cases exist where they have had to bond off, so to speak, onto those properties.

It must also be noted that BLM determines the amount of the bonds. It is not a function of the industry. Nevertheless, industry

has taken many steps, as you all know in my written testimony, to try to improve the relationships with the landowners. States have also passed legislation that have addressed at a local level issues that address their specific needs. There is no need for a one-size-fits-all approach to this issue.

Recently, the statutory categorical exclusions for oil and gas activities have come under fire. There are concerns that the CXes will bypass the NEPA process, but that is not the case. Categorical exclusions are actually part of the NEPA process. They are only available for use in cases where adequate NEPA analysis has already been done and no good reason exists to go through a new costly analysis.

I would also like to point out that just because an action is excluded from additional review that the lease stipulations, the permit conditions of approval and site-specific inspections to determine resource conflicts are still required, including evaluation of wildlife concerns. Elimination of these categorical exclusions will slow down critically needed development of new resources for no good reason.

Produced water from the Powder River Basin has also come under fire. Companies who produce coalbed natural gas are allowed by state and Federal law to discharge excess water into the Tongue River and its tributaries because it meets the water quality standards that have been set by the Federal government and by the state departments of environmental quality. No impairment has been found as a result of the several studies. Nevertheless, it has been found that certain vegetation, irrigation and farming practices may need to be changed because of the naturally occurring sodium content of the river water.

In conclusion, PLA urges the members of these Subcommittees to recognize that the issues I have discussed this morning do not require Federal action, except for one. We need to allow the processes established in the Energy Policy Act to remain in force. It took many years to determine what would work best to ensure the U.S. can meet its energy needs in the future by improving its domestic supplies and while protecting the environment. We need to make sure we avoid an embargo-like situation such as we had in the seventies.

I appreciate this opportunity, and welcome any questions.

[The prepared statement of Ms. Moseley follows:]

Statement of Claire Moseley, Executive Director, Public Lands Advocacy

Mr. Chairman Grijalva and Mr. Chairman Costa and members of the Subcommittees, my name is Claire Moseley, Executive Director of Public Lands Advocacy (PLA) based in Denver, Colorado. PLA is a nonprofit trade association whose members include independent and major oil and gas producers as well as nonprofit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands. I would like to thank the Subcommittee on Parks, Forests and Public Lands and the Subcommittee on Energy and Mineral Resources for the opportunity to testify at this Oversight Hearing on "Land-Use Issues Associated with Onshore Oil and Gas Leasing and Development."

Natural gas is extremely important to the nation, not just to the petroleum industry or the states where the resources are produced. According to Energy Information Administration (EIA), the highest demand states for natural gas are: Texas, California, Louisiana, New York, Illinois, Michigan, Ohio, Florida, Pennsylvania, and New Jersey. Conversely, the Rocky Mountain States (or Public Land States) produce much of the natural gas required to keep the standard of living and economies of

the rest of the nation at the levels they expect. Meeting American consumer demands for energy, which is expected to increase 23 percent by 2025, requires a tremendous investment by both industry and the Federal government to find and produce oil and gas, refine and distribute them and market the wide variety of products derived from them.

It should be noted that the energy we consume today is possible only through investments made years ago, which includes energy research and development, acquisition of 3D geophysical surveys, and development of new drilling, completion and production technologies; all of which have has resulted in a smaller, less obtrusive footprint and improved environmental and reclamation practices. Our industry continues to pioneer the development of alternative energy and to expand the use of existing sources of energy. According to the American Petroleum Institute, from 2000 to 2005, the U.S. oil and natural gas industry invested an estimated $98 billion in emerging energy technologies, including renewables, frontier hydrocarbons such as oil shale, tar sands, and gas-to-liquids. This represents almost 75 percent of the total $135 billion spent on emerging technologies by all U.S. companies and the federal government. Industry is also actively investing in second generation biofuels research and research to find better ways to reduce greenhouse gases.

According to the United States Geological Survey (USGS) an estimated 69 percent of the nation's undiscovered oil and 51 percent of its natural gas resources lie beneath Federal public lands. However, for much of the last century, most of the oil and gas was produced from state and private lands. As these resources have become depleted, industry has been forced to seek out new sources on public lands to meet growing demand for energy supplies. It is important to our discussion today to put industry's activities on the public lands into proper context. Industry does not seek out new resources from withdrawn lands such as Wilderness Areas, National Parks, National Monuments, Wilderness Study Areas, Wild and Scenic Rivers or National Wildlife Refuges, which comprise nearly 50 percent of Federal land, but rather on those lands found compatible with oil and gas leasing and development through the federal land use planning process.

BLM is responsible for carrying out a variety of programs for the management and conservation of resources on 261.8 million surface acres, as well as 700 million acres of subsurface mineral estate, These public lands make up about 13 percent of the total land surface of the United States and more than 40 percent of all land managed by the Federal government. In FY 2005, the Federal Treasury collected over $2.3 billion from mineral royalties, rents and bonuses, half of which went back to the States.

Onshore public lands, particularly those in the Rocky Mountain West, are vitally important to the energy future of the United States. According to the EIA, the Rocky Mountain region is on the verge of surpassing the Gulf Coast as the largest supplier of natural gas to the nation. The National Petroleum Council in its 2003 study, Balancing Natural Gas Policy—Fueling the Demands of a Growing Economy, found that "abundant natural gas resources exist in North America" and identified the Rockies region as the most prospective area for development of new natural gas supplies. The study cautions, however, that "the recent tightening of the natural gas supply/demand balance places greater urgency on addressing the future of this important energy source and resolving conflicting policies that favor natural gas usage, but hinder its supply" and points out that new and continued development of this vital resource can occur only if the importance of allowing reasonable access to natural gas reserves is recognized.

The Nation is in desperate need of reasonable energy policies that provide access to conventional energy supplies, encourage energy efficiency, and promote continued development of new energy technologies and to expand the use of existing sources of energy. Clearly, there is a great need for reasonable access to public lands and minerals.

OIL AND GAS LEASING

The Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended, give the Bureau of Land Management (BLM) responsibility for oil and gas leasing on public lands administered by BLM, National Forest, and other Federal lands, as well as private lands where mineral rights are retained by the Federal Government. Public lands are available for oil and gas leasing only after they have been evaluated through the BLM's multiple-use planning process. That is not, however, the only analysis that is conducted before a lease is issued and drilling activities are permitted.

- Before a lease can actually be issued, BLM conducts a Determination of NEPA Adequacy (DNA) to ensure resource conditions have not changed since the Re-

source Management Plan (RMP) was completed and that leasing is still an appropriate use of the area.

- After a lease has been issued and a company seeks to access its lease for exploration or development, a project level Environmental Assessment (EA) or Environmental Impact Statement (EIS) is prepared which analyzes and discloses the impacts of the proposed undertaking.
- When a specific well location is identified by an oil and gas operator, a subsequent site-specific NEPA analysis and onsite inspection is conducted before the drilling permit is approved.

As can be seen, before surface disturbance activities for oil and gas related activities can occur several levels of NEPA analysis have taken place, all of which are subject to public involvement. It must also be noted that during each level of analysis, new mitigation requirements to protect sensitive resource values are often identified and imposed by the land management agency.

Recently, disingenuous claims have been raised that BLM's predominant focus is on leasing for oil and gas. The oil and gas program is one of many priorities for BLM, ranging from cultural resources to water and wildlife, so it is simply untrue that oil and gas dominates over other programs despite the revenue it generates for the Federal Treasury. Moreover the BLM works with states with respect to air and water quality issues. According to BLM figures, of the $3.2 billion collected in revenue from BLM programs in FY 04, $2.4 billion were received in mineral royalties, lease rentals and bonus bids. The remaining revenue of $778,411,189 was received from grazing, recreation, timber, rights-of-way and other BLM programs.

Despite the huge revenue generated from oil and gas activities, producing oil and gas leases cover less than 1/2 of 1 percent of the 261.8 million acres of public lands and the additional 700 million acres of federal mineral estate. Oil and gas operations on these leases are subject to varying levels of restrictions imposed through the land use planning process to protect other resources associated with these leased lands. In addition, proposed activities are required to conform to with BLM supervised environmental analyses, either through an EA or an EIS, both of which are driven by public involvement.

In late 2006, the Departments of Interior, Agriculture and Energy, through their respective agencies, completed a study required by Congress through the Energy Policy Act of 2005, which expanded upon on an earlier report published in 2003 pursuant to the Energy Policy and Conservation Act of 2000, or EPCA. In the 2003 report, the agencies were only required to analyze actual stipulations placed on leases. However, the agencies were directed by the Energy Policy Act of 2005 to also consider conditions of approval on specific projects or permits that are not included as lease stipulations. The eleven areas inventoried in the 2006 study included six new oil and gas basins in Alaska, the Rocky Mountain West and the East, in addition to the five basins studied in 2003. The newly inventoried area is estimated to contain 187 trillion cubic feet of natural gas and 21 billion barrels of oil, which represents 76 percent of onshore Federal oil and gas resources.

Within the 99 million acres inventoried, the 2006 study found that just 3 percent of onshore Federal oil and 13 percent of onshore Federal gas are accessible under standard lease terms, while 46 percent of onshore Federal oil and 60 percent of onshore Federal gas are subject to additional restrictions, including timing limitations for wildlife concerns, controlled surface use for cultural or other sensitive resources, as well as no surface occupancy which often renders the lease essentially useless. The study found that in the inventory areas, 51 percent of the oil and 27 percent of the natural gas reserves on federal lands are presently closed to leasing. These figures clearly demonstrate that while the oil and gas program is, indeed, a priority program for the agencies, the program is administered with overriding protection of other values.

Conclusion: PLA urges that a balance between oil and gas exploration and development and the protection of the environment and other uses be maintained. Despite certain claims, in reality this has not yet occurred because only 3 percent of onshore Federal oil and 13 percent of onshore Federal gas are accessible under standard lease terms, while 46 percent of onshore Federal oil and 60 percent of onshore Federal gas are subject to additional restrictions, including timing limitations for wildlife concerns, controlled surface use for cultural or other sensitive resources, as well as no surface occupancy. Of greatest concern and according to BLM's own figures, 51 percent of the estimated oil and 27 percent of the gas on Federal lands are presently closed to leasing.

We acknowledge that the Federal government is following its multiple-use mandate from the Federal Land Policy and Management Act (FLPMA) by allowing oil and gas activities to occur. We strongly urge, however, that production of new oil

and gas supplies, along with protection of the environment and the interests of private landowners be better balanced for the sake of the country's future.

SPLIT ESTATE

Surface owners and mineral owners are neighbors. Like many neighbors, they don't always agree. However, it must be recognized that multiple state and federal agencies regulate the oil and gas industry. As such, laws and rules are in place to protect land, water, air, humans and wildlife. Suggestions that federal minerals are developed without this oversight are patently false. Implications that problems exist between all surface and mineral owners are equally false. Where conflicts do exist, they constitute a very small percentage of the overall activity. Legislators and regulators should analyze the true magnitude of a perceived problem before reacting.

Existing federal mineral / private surface reclamation bonding requirements:

- 43 CFR 3104—"Prior to commencement of surface disturbing activities...an operator shall submit a surety or personal bond...to ensure compliance with the act, including complete and timely plugging of the well(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s)..."
- 43 CFR 3104.2—"A lease bond may be posted...in the amount of not less than $10,000 for each lease conditioned with all of the terms of the lease..."
- 43 CFR 3104.3(a)—"In lieu of lease bonds...operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State."
- 43 CFR 3104.3(b)—"In lieu of lease bonds or statewide bonds...operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide..."

In addition to posting a reclamation bond, the oil and gas industry is also required by regulation to make good faith efforts to gain consent from all surface owners who obtained their property in accordance with the Stock Raising Homestead Act before BLM will approve an APD. If permission cannot be obtained, operators must comply with certain bonding requirements before it can proceed with development, as required by 43 CFR 3814.

The Department of Interior recently revised its Onshore Order No. 1 (OO#1) which clarifies the policy, procedures, and conditions for approving oil and gas operations on split estate lands.

OO#1 directs that BLM will not consider an APD (Application for Permit to Drill) or SN (Sundry Notice) administratively or technically complete until the federal lessee or its operator certifies that an agreement with the surface owner exists, or until the lessee or its operator complies with bonding requirements under the Order. Compliance with the Order requires the Federal mineral lessee or its operator to enter into good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas, or payment in lieu thereof, to compensate the surface owner for loss of crops and damages to tangible improvements, if any.

Under the Stock Raising Homestead Act, there is a bonding requirement that has a $1,000 minimum at the discretion of the BLM officer to cover surface damages to tangible improvements or crops above and beyond the reclamation bond that is already in place. [43 CFR 3814] With this bonding mechanism and policy guidance in place, the process encourages landowners to negotiate with operators for acceptable surface damage payments verses the minimum bond.

Oil and gas operators are required to work through an exhaustive process that includes surface owners and multi-agency consultations or approvals before development may occur. Additionally, the federal permitting process provides the private landowner with the opportunity to participate in an on site inspection of the well location in order to accommodate the landowner's needs in conjunction with the federal decision to approve the well permit.

BLM has a statutory obligation to maximize the recovery of federal minerals, avoid waste and prevent drainage from occurring while providing protection for other resources.

Wyoming Split Estate Initiative

The Wyoming Split Estate Initiative was established in the summer of 2002 with the purpose of developing protocols that both oil and gas operators and surface owners could use to minimize or alleviate conflicts, while fostering cooperation between the parties. The Initiative recognizes that Surface Use Agreements are a private contract between the landowner and the operator.

The partners involved in the initial organization of the Wyoming Split Estate Initiative include: Petroleum Association of Wyoming, Wyoming Wool Growers Associa-

tion, Wyoming Stock Growers Association, and the Wyoming Farm Bureau Federation. The United States Department of Agriculture Natural Resources Conservation Service (NRCS), Wyoming Association of Conservation Districts (WACD), and the Wyoming Oil and Gas Conservation Commission (WOGCC) instrumental in developing this Protocol. The Wyoming Department of Agriculture Natural Resource and Mediation Board also participated. The overriding goals of this effort include:

- Minimizing or preventing conflict between landowners and operators while maximizing cooperation where oil and gas development occurs in areas of split ownership;
- Enhancing and encouraging responsible development of minerals and continued agricultural productivity while maintaining and promoting land, water, air, and wildlife resources;
- Providing a forum for conflict resolution.

The Wyoming Split Estate Initiative is quite comprehensive and provides for public education and information regarding split estates where oil and gas development occurs; an advisory (technical review), mediation (if necessary), and binding/nonbinding arbitration process (if necessary); suggestions for improved communication between the landowner and operator; and options/alternatives to be considered by both parties during the Surface Use Agreement negotiations.

The final Wyoming Split Estate Initiative and implementation of educational programs and presentations were set in place July 7, 2003. The Initiative has been very successful in assisting parties to reach a successful negotiation. The Wyoming Department of Agriculture and Natural Resources Mediation Program, which was the basis of the Wyoming Split Estate Initiative, was also included in the Wyoming Surface Owners Accommodation law that was recently passed. The legislature saw that program as being very beneficial to the parties to resolve conflict and has had an 80 percent success ratio.

New Mexico "Good Neighbor" Initiatives

The New Mexico Oil and Gas Association and its members, working with the Petroleum Recovery Research Center at New Mexico Tech, established the Good Neighbor Initiatives which demonstrates their dedication to responsible development of New Mexico's oil and gas resources. The Initiative acknowledges that responsible development includes good relationships with their neighbors and a commitment to environmental and human protection. NMOGA and member companies have pledged to be a "Good Neighbor" in the areas where they operate.

This policy describes specific areas where industry actions as "good neighbors" are especially important, i.e., companies will listen to the landowner, lessee permittee, and/or resident concerns and respond appropriately; personnel (company employees and contractors) must respect rights-of-way; protect livestock/wildlife; drive safely; report damages to public/private property to the appropriate parties; assure mechanical integrity of production systems; and ensure that personnel know and understand the rules and regulations applicable to our operations.

In order to achieve industry's goals, a host of measures have been adopted:

- Companies will strive to increase communication with the landowner, lessee, permittee and/or residents
- Companies and company contractors will respect the property and the rights of others
- Companies will promote public safety
- Companies will promote the responsible maintenance and use of roads
- Companies will protect the environment
- Companies will emphasize education by educating our personnel about being a good neighbor
- Companies will communicate with appropriate government officials, including city and county officials
- The oil and gas industry will be proactive in building relationships with city, county, state and federal officials

Adoption of these principles has significantly improved the working relationship between New Mexico oil and gas operators, land owners, and State and Federal government officials.

It is important to note that other industry trade groups are working to adopt similar initiatives in their states as well as at the national level. Clearly, industry has taken the issue of working closely with its neighbors, landowners, and government officials very seriously, thereby advancing good relationships. To that end, industry is committed to ensuring private landowners are treated with respect and given opportunities to work with oil and gas operators in a meaningful way in order to eliminate possible conflicts.

Conclusion: BLM has done a good job of soliciting feedback from landowners and industry alike in order to determine how best to address the split estate issue. Split-Estate Open Houses were held throughout the country in order to comply with directives contained in the Energy Policy Act of 2005 that required studies to be conducted on Split Estate Rights and Responsibilities under Existing Mineral and Land Laws and Surface Owner Consent Provisions under SMCRA. Through the open houses and comments received BLM found that very few actual conflicts existed and that the current process has proven to work reasonably well. This is supported by the fact that out of the thousands of wells drilled on split-estate lands, there are fewer than 25 cases, according to BLM, where surface use agreements could not be reached and operators were required to post a bond in accordance with the provisions of the Stock Raising Homestead Act.

As you can see, the energy industry has implemented several new programs whereby codes of conduct have been established to ensure improved relationships with private landowners. To date, these have proven successful. Moreover, some western states have passed (Wyoming and New Mexico) or are considering legislation to address perceived problems between surface owners and mineral operators. Therefore, PLA recommends that Congress let this issue be handled at the state level in accordance with the specific needs identified locally.

CATEGORICAL EXCLUSIONS

Categorical Exclusions represent one of three possible avenues for fulfilling the requirements of the National Environmental Policy Act, the other two being Environmental Assessments (EAs) and Environmental Impact Statements (EISs). Categorical Exclusions (CX) have been in use for many years and are defined at 40 CFR § 1508.4:

> *"'Categorical exclusion' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required....Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." [Emphasis Added]*

Congress decided in the Energy Policy Act of 2005 to establish three statutory CXs associated with drilling of wells. Following is a discussion of these CXs and why they are appropriate.

1. *Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.*

Before a lease can be issued, a land use plan specifying what stipulations are required to protect sensitive resource values will have been completed. The drilling permit would have to conform to these requirements and abide by any other conditions imposed by the agency to protect additional resource values. This provision would expedite minor drilling and permitting in areas outside an existing field. If a well is within an existing field, it would have to conform to the field development analysis.

2. *Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.*

A site-specific analysis of a well location/site will have already been completed and approved and conditions already implemented. Therefore, it is wasteful and duplicative to conduct another analysis simply because the operator wants to drill another well from same pad, reenter the well bore or move the bore a few feet on the same pad. Even if additional wells would require a minor expansion (less than an acre) of the original pad, it will still result in much less disturbance than a brand new well pad.

3. *Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.*

A cumulative impacts analysis in association with a field development NEPA document would have already been completed and as long as the well(s) is in conformance with the development analysis and the operating requirements prescribed therein there is no need for further analysis.

The Western Governors' Association (WGA) passed a resolution urging Congress to amend Section 390 of the Act to "remove [the 3rd] categorical exclusion for NEPA reviews for exploration or development of oil and gas in wildlife corridors and crucial wildlife habitat on federal lands. By removing the categorical exclusion, appro-

priate environmental site analysis will be completed as necessary to protect crucial wildlife habitat and significant migration corridors in the field of development."

In addition, the WGA has asked the "Secretaries of Interior and Agriculture to consider placing a moratorium on such categorical exclusions in crucial habitat or migration corridors and to work collaboratively with the states to ensure that states' concerns in preserving wildlife migration corridors and crucial wildlife habitats are met."

The criticism that this statutory CX bypasses adequate NEPA analyses in favor of oil and gas exploration and development at the expense of other resources is unfounded. Depending upon the CX that is applicable for a specific action, there must have been a NEPA analysis that addressed such an action as part of its reasonably foreseeable development scenario or full field development analysis. Moreover, multiple wells could be developed from a location that had already been approved through a NEPA review.

Conclusion: PLA believes the concern of the WGA may be eased by an understanding of the process used by BLM to grant CXs. It is not, by any stretch, a tool that can be used to elevate oil and gas uses over and above other uses or a policy that well permits will be approved without proper consideration of surface resource values. No CX can be approved unless the action meets the test of NEPA adequacy. It must also be recognized that all lease stipulations, conditions of approval, and operating standards are still in force. Furthermore, most of the CXs that have been approved were based upon project level environmental documentation rather than resource management plans. Nevertheless, even in situations where the RMPs are the basis for granting an exclusion, careful, site-specific consideration of all resources, including wildlife, is given before the exclusion is granted.

MONTANA/WYOMING WATER ISSUES

My testimony this morning will focus on CBNG produced water in the Powder River Basin of Wyoming and Montana. Please do not infer my comments as being applicable to all oil and gas, especially CBNG produced water. CBNG produced water quality varies greatly throughout the producing basins in the United States.

The quality of groundwater produced by coalbed natural gas operations has become a hotly debated issue among the public, State and Federal agencies, special interest groups and industry. As background, methane natural gas can be recovered from wells when groundwater contained in coal seams is pumped to the surface to reduce pressure allowing the gas to be recovered. Coalbed natural gas (CBNG) water is naturally-occurring groundwater; no chemicals or sodium are added to the water by drilling or production activities.

According to studies conducted by independent researcher Schafer Limited LLC, using data supplied by the United States Geological Survey (USGS) and other agencies, the quality of Powder River Basin CBNG water is suitable for drinking, livestock, wildlife and crop irrigation uses. For example, water from coal seams is often used as drinking water because it is often of higher quality than other available water sources and meets primary Federal Safe Drinking Water Act and Montana Water Quality Act standards. Primary standards have been established for chemicals that may be harmful to public health. These standards consider the health effects of the chemicals as well as the feasibility of removing the harmful chemicals through treatment. There are other standards that apply to the esthetic value of water, i.e., taste, which does not mean the water isn't suitable for domestic uses; one just may not enjoy drinking it.

CBNG water, because of its low to moderate level of salinity, is either the same or better than many local water sources used for livestock operations. According to studies conducted by the National Academy of Sciences (NAS), CBNG water is appropriate for livestock use. In fact, in parts of southeast Montana, many surface waters contain such high concentrations of salt, that CBNG water is placed in storage ponds to provide a source of stock water for use by livestock operations.

The quality of irrigation water presents a more complex situation because water suitability rests with the types of crops being grown, the soil type and irrigation methods. Crops differ in their ability to tolerate salinity levels and soils differ in their ability to tolerate sodicity levels. Most of the forage crops (alfalfa) grown in the Powder River Basin are tolerant to the salinity (±1500ppm TDS) of CBNG produced water The main factor when using CBNG produced water for irrigation is the permeability of the soil to be irrigated. Permeability must be high enough so the soil can be revitalized by using flood or sprinkler irrigation methods. Due to the sodicity of CBNG water, there is a high permeability hazard which limits its use on many soils. However, several managed irrigation sites using soils amendments such as gypsum (a form of calcium) are demonstrating that CBNG-produced water can be used for irrigation while protecting soil quality.

With respect to protection of aquatic life, management opportunities exist where CBNG water is discharged into surface water. It must be noted that any such discharge must meet the requirements of the Federal Clean Water Act and the standards implemented by the Wyoming and Montana Departments of Environmental Quality, which require non-degradation of water in order to preserve it at its current levels. As such, concentrations of metals in produced water discharged into other waters are typically kept at levels that are lower than for personal drinking water. It is acknowledged that concern was raised by some researchers regarding the potential toxicity of bicarbonate ions in CBNG water that may be discharged into rivers. However, toxicity testing over time using CBNG water showed a much lower toxicity than was predicted by research models, indicating that discharge of CBNG water into Montana and Wyoming Rivers appears not to be harmful aquatic organisms.

Tongue River

There have been recent claims that CBNG discharge into the Tongue River has had a detrimental impact on the river's water quality. This charge is unfounded. The USGS has been collecting daily streamflow data and periodic water quality samples at 12 monitoring sites, ranging from Monarch, WY (just north of Sheridan, WY) all the way up to Miles City, MT along the Tongue River since the early 1970s. These monitoring stations cover 7 mainstem sampling sites and 5 tributary sampling sites. The State of Montana and EPA have also conducted a major investigation of the Tongue, Powder and Rosebud Creek watershed as part of their Total Maximum Daily Load (TMDL) assessment program. As part of the assessment, a basin-wide predictive water quality model was developed for the Tongue River. The model uses climate data, land use and the quality and quantity of discharged water, including CBNG water.

Results of these studies have found that the Tongue River above the T&Y Irrigation Diversion Dam where the CBNG development takes place is currently meeting water quality standards. In fact, it was found that even if all permitted discharges operated at their maximum allowable level (which rarely occurs) the River would continue to meet water quality standards established by both Federal and State laws.

However, it has also been revealed that below the T&Y Irrigation Diversion Dam water quality standards are often exceeded during the irrigation season when nearly all the water in the Tongue River is diverted into the T&Y Canal. During this time, the water in the lower Tongue River is limited that that which is accumulated from localized groundwater inflows and irrigation return flow, which does not derive from CBNG water that was discharged above the T&Y Diversion Dam.

Clearly this information demonstrates that the water quality of the Tongue River above the T&Y Diversion Dam was found unimpaired by CBNG development or any other use, while below the T&Y Diversion Dam impairment due to salinity and/or sodium exists and is caused by irrigation water uses.

Additional data generated by the USGS Montana Water Science Center along the Tongue River Surface-Water-Quality Monitoring Network has also been collected through the Tongue River Agronomic Monitoring and Protection Program (AMPP) The AMPP study involved the identification of soil characteristics and the monitoring of soil quality and crop yields. The Study's finding indicated that soils physical and chemical characteristics did not change as a result of CBNG development but rather, differences in crop yields were the result of farming practices.

Conclusion: All water produced from CBNG must meet specific narrative and numeric standards. According to data and studies conducted by independent researchers as well as USGS Montana Water Science Center and EPA it has been shown unequivocally that CBNG water discharged into the Tongue River and its tributaries has had no impact on the water quality of the River. Rather, it appears water quality problems associated with the Tongue River are caused by farming and irrigation practices. In addition, many landowners in the Powder River Basin have found that CBNG water provides many beneficial uses, including drinking water, livestock water and irrigation when it is coupled with various treatments. Consequently, there is no need for Congress to consider legislative measures to fix a problem that does not exist.

Thank you for this opportunity to provide you with testimony this morning. I will be happy to answer any questions.

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May 24, 2007

The Honorable Jim Costa
Chairman, Energy and Mineral Resources Subcommittee
The Honorable Raúl M. Grijalva
Chairman, National Parks, Forests and Public Lands Subcommittee
Committee on Natural Resources
The Honorable Stevan Pearce
Ranking Member of the Energy and Minerals Subcommittee
US House of Representatives
Washington, DC 20515

Re: Response to Questions from April 26 Hearing, House Resources Joint Subcommittee on Parks, Forests and Public Lands and the Subcommittee on Energy and Mineral Resources Oversight Hearing on "Land-Use Issues Associated with Onshore Oil and Gas Leasing and Development"

Dear Sirs:

Public Lands Advocacy (PLA) appreciated the opportunity to provide testimony before the Joint Subcommittee oversight hearing on "Land-Use Issues Associated with Onshore Oil and Gas Leasing and Development." Following are answers to your post-hearing questions.

1. What, in your opinion and previous experience, would be the effect of repealing Sec. 366 of EPAct 05 that require BLM be accountable to a timeframe for the processing of Applications of Permit to Drill?

The 30-day approval time frame for Applications for Permit to Drill (APD) was part of a strategy by Congress to establish BLM accountability in the Federal oil and gas permitting process. Over the past decade, permit processing time frames slipped to a point where it would sometimes take the agency as long as 2 years to process a single APD, which led to a backlog of thousands of applications. Of note, many of these APDs were for in-fill development, i.e., new wells in existing fields for which the requirements of NEPA had already been met. As a result of the new time frame established in EPAct 2005, BLM has taken steps to monitor permit approvals to ensure they are acted upon in a timely manner.

If Section 366 were repealed, it would mean domestic production of natural gas is not important to the Nation. Severe gas supply shortages would result, creating an even greater rift between supply and demand of the resource and higher prices for consumers.

Production from traditional U.S. and Canadian basins is declining because these supplies are produced from mature fields. Therefore, it is crucial that new conventional and non-conventional sources of natural gas be developed, such as coalbed natural gas, tar sands and oil shale, on public lands. There are abundant North American natural gas resources in the Rocky Mountain region outside designated wilderness and national park-type lands that are presently closed to leasing which could play a key role in providing future natural gas supplies if Federal leasing and permitting processes are responsive to the need. Outside of leasing and development of new conventional and non-conventional resources, a key factor in meeting demand is to ensure permits are approved within a 30-day time frame, provided they meet the criteria of a complete APD and meet the environmental protection requirements established through land use and project level planning.

2. As you know, oil and gas are a much sought after global commodity. With state-owned companies and the OPEC in control of a majority of the global market, do you feel the success of the federal leasing program at the BLM has national security implications?

Yes. Although some new oil and gas fields have been discovered here in the US, energy demand has grown at a much higher rate than supply, which has caused us to become even more dependent on foreign imports of oil and natural gas. Also, there has been a shift from oil to gas because as a clean burning fuel, gas can replace oil in many of its traditional uses, such as home heating fuel, power generation, industrial use and, to limited extent, as a transportation fuel. However, the

importance of bringing more natural gas to the North American market is crucial because in so doing future market volatility and fuel shortages can be diminished.

Although the Rocky Mountain region is projected to contain nearly double the reserves of natural gas than both coasts and the Gulf of Mexico combined, many of these areas are off-limits to leasing. Since most sources of energy on private lands have already been discovered, it is crucial that we expand the search for new energy to Federal land. That is why the success of the BLM leasing program is of vital importance to the nation as a whole. For the U.S. to secure energy for our economy, government policies must create a level playing field for U.S. companies to ensure international competitiveness. The net effect of current U.S. policy serving to inhibit U.S. oil and gas production and to increase our reliance on imports is, in fact, a matter of national security.

Questions from Minority Members

1. Why do we have federal split estates? In a split estate situation, what is the dominant estate? Why? When one buys federal split estate lands, is that land conditioned?

The United States government encouraged settlement and economic development of the West by reserving the mineral estate in land patents granted to homesteaders and others. This approach opened western lands for immediate agricultural and ranching development and reserved the mineral rights for later development. Split estate occurs when there are different owners of the mineral rights and surface rights. There may be federal mineral ownership with private surface or private mineral ownership with federal surface.

The split-estate lands in question are those where the surface rights and mineral rights were severed under the terms of the Nation's homesteading laws. These and other Federal laws give BLM explicit authority and direction for administering the development of Federal oil and natural gas resources beneath privately owned surface:

- Coal Lands Acts of 1909 and 1910
- Agricultural Entry Act of 1914
- Stock Raising Homestead Act of 1916
- Mineral Leasing Act of 1920 and amendments
- Federal Land Policy and Management Act of 1976

It is important to remember that split estate owners obtained their surface lands subject to development of the mineral estate. Established legal doctrine preserves the "dominance" of the mineral estate reflecting the fact that the mineral estate would have no value if the mineral owner did not enjoy access to the minerals through reasonable terms. This dominance extends to federal minerals where the revenue generated to the Federal Treasury exceeds billions of dollars annually. In fact, it is the policy of the Federal government to retain mineral rights only when it is determined that mineral potential exists. When private landowners purchase their land, they are notified of the split estate situation as required by law.

While in some states disclosure to buyers of severed surface rights is required, disclosure of the severed mineral estate may not have been common practice by realtors or sellers in areas where such requirements do not exist. Therefore, situations have arisen where surface owners are unaware that the Federal government has retained the mineral rights and that reasonable access to explore for and develop those minerals is required by Federal law.

Thousands of leases have been issued on America's public lands for the purpose of providing clean burning natural gas supplies for the nation. Any efforts by the federal government to change existing split estate practices will impact the nation's domestic natural gas supply by imposing unreasonable burdens on lessees of the mineral estate.

2. Other witnesses in their testimony advocate for Mr. Udall's H.R. 1180 because it would "require reclamation of the site to support the same uses it was capable of supporting prior to development." Isn't is true that under BLM law, BLM requires "returning disturbed land as near to its pre-disturbed condition as is reasonable practical or as specified in the APD? Are these really different standards?

According to Chapter 6 of the BLM's Gold Book, Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, Fourth Edition, 2006, it is required that "at final abandonment, well locations, production facilities, and access roads must undergo "final" reclamation so that the character and productivity of the land and water are restored. Planning for reclamation prior to construction is critical to achieving successful reclamation in the future—The long-term objective of final reclamation is to set the course for eventual ecosystem restoration, including

the restoration of the natural vegetation community, hydrology, and wildlife habitats. In most cases, this means returning the land to a condition approximating or equal to that which existed prior to the disturbance." In order to ensure satisfactory reclamation, the Gold Book provides direction on the specific requirements that must be met, including a detailed Reclamation Plan that must accompany an APD that addresses:

- Plugging the Well
- Pit Reclamation
- Site Preparation and Re-vegetation
- Pipeline and Flowline Reclamation
- Well Site Reclamation
- Road Reclamation
- Reclamation of Associated Facilities
- Water well conversion
- Final Reclamation

BLM ensures these requirements are met by conducting a thorough inspection before granting final abandonment approval. In the event agency requirements are not met, BLM will not release the liability bond for the project until established standards are met.

Clearly, BLM's enforcement authority to ensure reclamation is accomplished efficiently and appropriately is effective. No new legislative requirements are needed because extensive reclamation procedures and conditions are already in place.

Thank you for affording PLA this opportunity to provide Congress with additional information and answers to your important questions. Please do not hesitate to contact me should you have additional questions or require further clarification.

Sincerely,

Claire Moseley

Mr. GRIJALVA. Thank you for your testimony.

Mr. Muggli.

STATEMENT OF ROGER MUGGLI,
NORTHERN PLAINS RESOURCE COUNCIL

Mr. MUGGLI. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify here today.

My name is Roger Muggli, and I am here to represent the Tongue and Yellowstone Irrigation District and it is located in Mile City, and in our district there is 9,400 acres of irrigated land and its water supply is from the Tongue River 12 miles south of Mile City, and it has been in existence since 1886.

I am also representing my family farm, Muggli Brothers, Incorporated. I have been the chairman of this operation for the last 12 years, and we have 1,700 acres of irrigated land in this district.

We have also built a feed processing plant to process the hay produced on our farm, and mixed with grain we make a pelletized livestock feed, and we sell 14,000 tons of this feed in the local area in any given winter.

I am also here representing Northern Plains Resource Council, a family agricultural group that organizes Montana citizens to protect water quality, family farms, and ranches, and the unique quality of life we love here in Montana.

My grandfather came here to this valley in 1925 and bought his first farm, and he was also manager and secretary of the Tongue and Yellowstone Irrigation District, and sometime later bought a few more farms, and so did my father when he came on line, and he became manager and secretary of the Tongue and Yellowstone Irrigation District as well in about 1957, and I was elected to the

position in 1987, and the family has been actively involved in it for all of these years.

I also recognized another problem we had was fish going into the canal, and I worked hard to come up with a plan to divert the fish from our irrigation canal back into the river. The 1987 date is when I started, and it came on line in 1999.

I guess I am here today to talk about coalbed methane gas and its production, and how it is done. The first process is there is a main. The main thing about that is the pressure has to be released, and to release that pressure you have to pump the water out of the ground in great volumes. In the Powder River Basin, there is basically—the water is very good for people and animals to drink, but it is fatal for plants and aquatic life, and there are three major problems associated with the loss of groundwater.

The first one is the loss of groundwater, and the groundwater, first of all, when you take that much out it amounts to about—in the Tongue River drainage, it is about 38,000 acre feet, which is enough for a population of 345,000 people, or 2.2 million head of cattle, and there is about 2.6 million head of cattle in the entire State of Montana. Also by pumping this water out, we don't know how much water is in the aquifer, how it got there, and how long it has been there, and the draw down can go anywhere from 200 to 600 feet, and it may take as long as 100 to 1,000 years for this water to recharge.

The second major problem that is associated with this is for the ecosystem. The main constituents of this water are harmful to aquatic life, and sodium, magnesium, and calcium is the problem, and the fish population can—the reproductive part of it—the fish population is—will reduce it by 94 to 96 percent in some cases, and there are some endangered species in the river.

One of them is the famed pallid sturgeon that is barely hanging on, and it is not even sure where they spawn in the Yellowstone River, but it is likely they do move up the Tongue River, and hopefully they will be able to use the bypass I am currently working on and hope in the next year will come on line that will allow the fish to move around the end of the 12-mile dam, and it is sort of unprecedented. You don't see irrigators involved in fish-saving processes, but I have worked with this for 20 years, to try to make this a reality, and within the next year it will be, and I hope it isn't for want because of quality of water.

The third problem relative to water is soil and crops. The USDA, associated with the salinity lab in California, came and got a quarter ton sample of our dirt, and took it to California, and raised alfalfa in it, and the conclusion was after a two-year study that it was an SAR of two to four would significantly reduce the ability of the water to travel into the soil because of the clay content of the soil and the dispersion of the surface soil affected by sodium bicarbonate.

And as the pictures show what has happened on my farm in the last few years since this process has come into practice, we are now this last winter, I am just finishing up with a year-end of our pelleting season as winter is over and there isn't the demand for our feed, so it tapers off and we are just finished, about a third of my hay production is now gone, and CBM is the only factor that

I can attribute it to. The fertilizer program is still the same, the rotation is still the same. We are still managing to do everything that we have the same except we have this clay soil and you can see from the pictures that the big spot in the foreground of that picture is mountain clay, and usually before this kind of a thing has happened was that we can raise 100-bushel barley on there, and we are about a 7 ton average on our alfalfa, so it is declining at a very rapid rate, and there is no other explanation, and scientific world views that at the rates that we are exposed to CBM water in the Tongue River, that we are going to take damages and I hope that something can be done to at least re-inject this water and put it back into the system so we are not affected by it, and just stop, simply stop wasting the water, and put the water back into the river.

And Representatives Udall's H.R. 1180 will require that oil and gas operators to replace damaged wells and require them to submit plans stating how they will protect the water quality and the quantity, and other resources. The Northern Plains——

Mr. GRIJALVA. Mr. Muggli, your whole statement will be part of the record, and so can we get onto the questions I am going to ask you to wrap it up as quickly as you can, and then I can move on to the last witness.

Mr. MUGGLI. The Northern Plains Resource Council has been in existence and helped us with this situation, and they have been here for 30 years, and they intend to be here longer than CBM is going to be here, and I hope my family farm and irrigation can exist and still survive, but it is getting very doubtful.

Thank you very much.

[The prepared statement of Mr. Muggli follows:]

Statement of Roger Muggli, Manager, Tongue and Yellowstone River Irrigation District, Miles City, Montana

Mr. Chairmen and Members of the Subcommittees, thank you for the opportunity to testify today. My name is Roger Muggli. I am here today representing the Tongue and Yellowstone River Irrigation District, located in and around Miles City, Montana. This district consists of 9,400 acres of land that is irrigated with water diverted from the Tongue River, twelve miles south of Miles City.

I am also representing my family farm, Muggli Brothers Inc. I have been chairman of this operation for the past 12 years. The farm has 1,700 acres irrigated from the T&Y canal. We have also built a livestock feed plant that processes 14,000 tons of pellet type feed from alfalfa, barley, wheat, field peas, and corn for horse and cattle winter feed.

I am also representing Northern Plains Resource Council, a conservation and family agriculture group that organizes Montana citizens to protect water quality, family farms and ranches, and the unique quality of life we love in Montana.

I have lived in the Yellowstone River Valley near Miles City all my life. My grandfather, Joseph Muggli, came here in 1925 and bought a 120-acre farm. In 1930, he bought another farm that consists of 400 acres. In 1932, he became active in the T&Y Irrigation District and was elected to the secretary/manager position. He was also one of the authors of the 1950 Yellowstone River Compact, which defines the percentage of water from the Yellowstone's tributaries that will go to North Dakota, Wyoming, and Montana. This document was hard fought. In 15 years, two commissions failed to reach the goal that was finally achieved when the compact was signed in 1950.

My father, Don Muggli, was elected secretary/manager in 1957 and served for many years as in this position. My father and grandfather had great engineering minds and built and rebuilt many structures on the canal system, such as flumes, siphons, and canal checks (water stops).

Many discussions I listened to as a kid between my father and grandfather centered around water quality and the effects of salts on crops and soil. They worried

me so much that I wondered if the farm could survive until I was old enough to have a shot at managing it and the Irrigation District. I am much older now and have a better understanding of soils and water related salts and some of the terminology that goes with all of this. I have come to realize that my father and grandfather were right about the threat of salts and the impacts they have on the soils. Everyone who's lived in the Powder River Basin for long knows not to water their lawn with groundwater, much less use it on their crops.

At the age of five I was lucky enough to go with my grandfather some eighteen miles south of our farm to the diversion dam up on the Tongue River and check on all the related structures along the way. From then on, whether I was with my dad or grandpa, it was a learning experience. I had the privilege of going to the many fields on our farm that were flood irrigated from the big canal. I could run around and gather up the fish that entered the canal at the diversion dam and make a dash on my bicycle for the Yellowstone River to release them, sparing them from death in the field. As I got older, I tried to come up with several plans to somehow save the fish. The only plan I came with was to screen them from the canal in the first place.

As time passed, I came to have a burning need to do something positive for the fish that ended up in our fields. Actually doing something was difficult, as my father did not think saving the fish was worth the cost. In fact, nobody in the irrigation district really supported this idea. Everyone was afraid of the additional expense.

In 1987, I was elected manager of the T&Y. By then I had concept plans in hand and talked to every agency and organization I could find. From time to time, I would take a bucket with a few catfish or smallmouth bass, sauger or whatever the catch of the day was to the Fish and Game office and show them. Finally, they agreed there was a problem.

More time went by, months turned into years, and in 1999 we had completed a new inlet structure complete with a 90-foot fish louver, a fish bypass flume that will let the fish back into the river below the dam. The final stage of the project will be completed this year.

After all of this blood, sweat, and tears, after all the efforts we have made to make irrigation and the fish conservation compatible, we could lose both to decreased water quality from the discharge of wastewater from coal bed methane development in the Powder River Basin.

All for a short-term industry that is projected to be around for 20-30 years.

Coal bed methane is a gas trapped under water in coal seams. In order to extract this resource, developers must release the pressure from the coal seam by pumping massive quantities of water to the surface. In the Powder River Basin, the water from this process is safe for consumption by livestock and as drinking water, but creates a disaster for plants and aquatic life. The three problems associated with pumping this volume of water are the loss of the groundwater, the damage to the aquatic life and the damage to irrigated soils and crops.

Mr. Chairmen, in each of these areas, scientists independent of the CBM industry and the BLM have predicted that damages from produced water will be more widespread and more extreme than either the industry or the BLM will acknowledge. And, in each of these areas, the predictions of these independent scientists are being borne out.

First, groundwater. To put the quantity of water that we are addressing in perspective, the amount of groundwater currently discharged in the Powder River Basin from coal bed methane extraction is 38,339 acre-feet of water/year. This is enough water to sustain 345,000 people or more than 2.2 million head of cattle. This is well over a third of the population in Montana or 60% of the population of Washington, DC. And there are 2.6 million head of cattle in the entire state of Montana.

Pumping this quantity of water will drain aquifers used for drinking and stock water by 240 to 600 feet, with recharge taking over 100 years and possibly as long as1000 years. We really don't know how long it will take, but we do know that it will dry up valuable springs and wells. This water could be reinjected, but instead most of it is being dumped on the land or sent down the river never to be used again.

The second major problem with CBM produced water is the impact it can have on aquatic ecosystems. The main constituents of the wastewater that are harmful to aquatic life are sodium, magnesium and calcium. Studies have shown that an increase of these constituents our rivers will reduce reproductive rates of fish by as much as 94 to 96%. A recently released U.S. Fish and Wildlife Service study found that excessive levels of these contaminants in water and tissue samples taken from fish and birds in the Powder River—levels associated with increases in deformities and reproductive damage. The fish cannot sustain this level of contamination. Entire species could be wiped out by this change in water chemistry.

The third major problem associated with CBM produced water is its impacts on soil and crops. The majority of the soils on my farm and in the T & Y Irrigation District are largely made up of clay. Last June, a study sponsored by the EPA and conducted by the USDA's Salinity Lab of soil samples from our farm concluded that increased sodium, magnesium, and calcium imbalance would drastically lower the infiltration rate of water and air to the soil, limiting soil productivity and plant growth. In other words, discharges of CBM water into the Tongue River will ruin much of the soil located in my irrigation district, making our farms less productive.

Once again, we are seeing on the ground what independent scientists have predicted would occur. Last August, I irrigated 320 acres of my farm with water from the Tongue River. In September, there were several rain events which created an imbalance of sodium, calcium and magnesium in the soil and caused a dispersion of the clay particles. The rain was the trigger for a chemical reaction that caused the alfalfa on my field to turn yellow in some areas and killed the crop in others—the exact situation predicted in the Salinity Lab Report. In last year's growing season, production from our farm was off by one-third. Increased discharges of CBM water is the only factor that could have caused this loss. You can see why farmers in our region feel that agriculture is threatened by this industry.

There is hope, however, especially in Montana, where development is still just beginning. How big these problems become will depend on how rapidly coal bed methane production occurs and how the produced water is managed. There's hope if they will slow down and do it right.

What we're asking for is relatively straightforward—stop wasting water and every single one of the problems I've talked about will be minimized.

Treat it and reinject it. If that truly cannot be done, put it to a true beneficial use. The industry is doing this in New Mexico and we've shown that this approach is technically and financially feasible in the Powder River Basin.

Mr. Chairmen, your subcommittees can help protect the livelihoods of those who farm, ranch, and irrigate in Southeastern Montana by ensuring that necessary safeguards are put into place before more development occurs. You can help by passing Representative Udall's H.R. 1180. Require oil and gas operators to replace damaged wells. Require them to submit plans stating how they will protect water quality and quantity, and other resources.

I urge you to go further. Require the industry to treat and reinject produced water and, if they can't, require them to put the water to a true beneficial use—not try to irrigate with it and not discharge it onto our land or into our rivers.

Finally, it's time to replace the self-recording and self-reporting with more government monitoring and enforcement. Last summer, samples from the Tongue River concluded that the discharges from coal bed methane increased the salinity of the river and exceeded Montana's new water quality standards for three months. This was brought to the attention of the Montana Department of Environmental Quality, but little was done to enforce the violation that had taken place. As a taxpayer and Montanan, I demand more from my government agencies to protect my interests. This industry self monitoring and reporting is blatantly irresponsible and is an indication of a broken system.

Mr. Chairmen, the Northern Plains Resource Council has been in existence for over 30 years, and has every intention of being here long after the CBM industry is gone. I'd like my family to be here too, farming and managing the T&Y Irrigation District. And, I'd like the fish I've spent all of my life trying to restore to the Tongue River to be here too. We have never been opposed to coal bed methane development, but they must do it right.

Thank you again for the opportunity to testify.

Mr. GRIJALVA. Thank you. Thank you for traveling this far. Appreciate your testimony very much.

Ms. Utesch. Did I get that right?

Ms. UTESCH. Yes, you did.

Mr. GRIJALVA. Oh, good.

STATEMENT OF PEGGY UTESCH, WESTERN ORGANIZATION OF RESOURCE COUNCILS & WESTERN COLORADO CONGRESS

Ms. UTESCH. Thank you for the opportunity to testify today.

My name is Peggy Utesch, and I have lived with natural gas drilling at my front door for four years, during which time I have

worked hard on a number of projects aimed at systems improvements. I am here today representing the Western Organization of Resource Councils and Western Colorado Congress.

Before I begin my remarks, I would like to make a couple of unplanned comments. So many times and a lot of the testimony that we have heard here today tries to paint people like myself and the other panelists that we have heard testify today are having problems with the gas industry as obstructionists. They try to make this issue black and white, and it is not black and white.

I am a landowner who lost my livelihood and my home to gas drilling. Am I against energy development? No. I am for energy development. I understand that it is an important thing for this country. I understand that it is an important concept that we are embracing in terms of national security. I am not against energy development.

The statement was made early on today that the natural resources of the West belong to the nation. I would agree with that statement. What does not belong to the Nation is the ability of ranchers and farmers to make a living on their land from people who own the surface to co-exist, and that is what I am here talking about today.

The Rocky Mountain West is experiencing an unprecedented scale of natural gas development, facilitated by Federal tax breaks, reduced regulation, and BLM directives to issue more permits faster. Mr. Chairman, I am here today to tell you that that production has come at a great cost. Two specific issues come to mind that I would like to discuss—reclamation bonding and inspection oversight.

The state and Federal bonding and reclamation system has not changed since 1960, yet the industry has changed dramatically. During the last 10 years, well pad spacing in Colorado where I live has gone from one pad per square mile, one pad per 640 acres, down to one pad per 10 acres. That is a huge change.

The current bonding system allows operators to post state and national blanket bonds, whether they drill three wells or 3,000 wells. Unlike bonds for coal and hard rock mining industry, the BLM does not require oil and gas operators to cover the true cost of reclamation.

In 2005, a professional engineering firm, Kuipers and Associates, which does reclamation work with the hard rock mining industry, invented the bonding system that is in place for natural gas. In Colorado, in 2005, EnCana Oil and Gas had 3,652 wells under a blanket bond of $235,000. That works out to $64 per well. In Montana, Fidelity Exploration and Production had a bond that totaled $473 per well, and in Wyoming seven operators had bonds that provided only $75 per well. How can we believe that reclamation can be accomplished with these insignificant amounts?

In 2004, the BLM and the State of Wyoming estimated that it will cost $4 million to reclaim 120 abandoned well sites, and I want to point out to you those are sites that were drilled within the last four years. We are not talking about historic wells that were drilled in the twenties and thirties.

The state's blanket bond of $125,000 was insufficient, so the Wyoming Conservation Fund had to contribute $2.6 million. That

leaves $1.4 million in clean up costs with only a $25,000 Federal blanket bond to cover the work.

We are looking at the tip of an iceberg called taxpayer liability if this problem is not addressed. Here is what the Western Organization of Resource Councils recommends:

Require site-specific reclamation plans; improve the performance standards for oil and gas operators to be consistent with the coal and hard rock mining industries; and base bond amounts on professional engineering estimates; abolish or update the blanket bond system; require that reclamation plans and bond amounts be reviewed and updated annually; and I would urge this Subcommittee and the committee as a whole to work hard to pass Representative Udall's bill, H.R. 1180.

Also in need of updating is the inspection and enforcement system. The Western Organization of Resource Councils did a 2005 report that looked into this particular system titled "Law and Order in the Gas Fields." These were the findings:

The Bureau of Land Management inspection system improvements targeted production, not environmental compliance. The number of inspectors has not increased to reflect almost a yearly doubling of drilling activities in many states. In 2003, environmental compliance inspectors only spent 15 percent of their time doing environmental inspections. Of the six BLM offices that were studied, they oversaw 79 percent of the active gas wells but they only employed 26 percent of the inspection staff. And based on 2003 staffing levels, environmental compliance inspections were only completed every four to 49 years.

The pictures that you see scrolling are pictures that were taken within a five-mile radius of my home, and I can tell you that there are incidents and violations on every well pad that you see in those pictures. We need environmental inspections on a more regular basis, at least once a year, not once every 50 years.

While the number of inspectors and inspection activities has increased significantly since 2003, the BLM has not provided the hard data that the Western Organization of Resource Councils has requested under FOIA. We do not yet know, for example, how many environmental inspections are being conducted. We have been given a number of inspections as a whole, but we don't know the percentage of environmental versus production.

What can we do to make the system better? Increase environmental inspection staff, fill all newly created positions, develop standardized compliance check lists, repeal the 30-day permitting time frame that was set in Section 366 of the Energy Policy Act, and don't rely on industry self-reporting as an enforcement strategy.

Consumers are being hit hard by rising energy prices. Please don't make us pay a second time with a broken regulatory system.

Thank you for your time, and I appreciate the opportunity to testify.

[The prepared statement of Ms. Utesch follows:]

Statement of Peggy Utesch, Western Organization of Resource Councils and Western Colorado Congress

My name is Peggy Utesch. I am a Colorado landowner who lived for four years in and around natural gas drilling in the Piceance Basin. During that time, I

worked hard to expose illegal and unethical industry practices, with the intention of improving the system. In 2005, I spearheaded a collaborative project that brought a drilling company together with a rural community. The resulting agreement—called the Rifle, Silt, New Castle Community Development Plan—has been endorsed by Senator Ken Salazar as a new model for how industry and communities can work together.

I am here today representing the Western Organization of Resource Councils (WORC) and the Western Colorado Congress, two non-profit organizations that have worked proactively for responsible energy development in the West for nearly 30 years. WORC is a network of grassroots organizations from seven western states that include 9,700 members and 44 local community groups. About a third of WORC's members are family farmers and ranchers, many of whom are directly impacted by oil and gas development. Western Colorado Congress is an alliance for community action made up of eight chapters and over 3,200 members on the Western Slope of Colorado.

The Rocky Mountain West has become the nation's new center for natural gas production. The scale of development is unprecedented, with the number of wells being drilled doubling annually in some areas. This energy boom affects public and private lands; water, soil and air quality; agriculture, quality of life; property values; wildlife habitat; local economies and health.

Congress and the Bush Administration have facilitated this boom by offering energy companies tax breaks, easing regulations and directing the Bureau of Land Management (BLM) to issue more permits at a faster pace. Although industry complained a few years ago that the permitting process was too slow, they now sit on more leases than they can drill with a year's time.

Mr. Chairmen, I'm here to tell you that this emphasis on production has come at a great cost. It undermines the BLM's inspection and enforcement responsibilities and sends the message that drilling should not be slowed for any reason and human beings are simply collateral damage. Taking the time to listen to substantive public concerns, mitigate drilling impacts and ensure that we have enough inspectors and an adequate bonding system are viewed by the current system as unacceptable delays.

In this climate, the industry has no incentive to operate responsibly and, to no one's surprise, it is not doing so. I know. In Garfield County, where I life, there are over 50 drilling rigs operating full-time. Over 18,000 wells were permitted in 2006 alone. Within three years, more than 30 natural gas wells were drilled within a mile of my home, and I lived with the consequences of an oversight system that is inadequate. The single largest accident in Colorado history, happened three miles from my home. Due to faulty well-bore cementing, 115 million cubic feet of gas were released underground. The gas leaked to the surface and sickened ranch families and livestock, as well as contaminating water wells and West Divide Creek. The accident could have been prevented.

Today I'm here to outline specific problems and propose solutions in two areas:

1) reclamation bonding; and
2) oversight inspections.

The state and federal bonding and reclamation systems have not changed since 1960, even though gas production has changed significantly. During the last 45 years, well pad spacing has been reduced from one well pad per 640 acres to one per ten acres in some areas, and the rise of coal bed methane development has brought impacts on a scale that was previously unimaginable. Twelve to fifteen years ago, some of the technologies that are making this boom possible didn't even exist.

The current bonding system allows operators to post state or national blanket bonds that cover their operations whether they drill 30 wells or 3,000. The minimum federal bond amounts are $10,000 per lease, $25,000 covering all of a company's leases statewide, or $150,000 covering all of a company's leases nationwide. Although the BLM has the authority to require higher bonds, they rarely do, and still in those cases, the amounts fall far short of the what is necessary to repair the unprecedented level of disturbance we are seeing on the ground today. Unlike coal and hard rock mining industry bonds, the BLM does not require bonding at the true cost of reclamation for oil and gas operators.

In 2005 WORC asked the professional engineering firm of Kuipers and Associates to investigate the adequacy of the bonding and reclamation system. The findings are contained in a report called "Filling the Gaps." In general, it was found that land management agencies are not balancing booming energy development with protecting taxpayers, landowners, local economies and natural resources:

1. In Colorado in 2005, EnCana Oil and Gas had 3,652 wells covered by federal bonds of $300,000 and a state bond of $235,000, or $146 per well.

2. In Montana, Fidelity Exploration and Production Company operated 571 wells under a federal blanket bond of $220,000 or $736 per well.

How can we believe that removal of equipment, re-vegetation of drilling sites and reclamation of roads and pipeline corridors can be accomplished for these insignificant amounts? Environmental engineers have estimated the bond shortfalls for these projects and others amount to hundreds of thousands at each site, and in some cases several million.

The BLM and the State of Wyoming estimated in 2004 that it will cost $4 million dollars to reclaim 120 well sites that were abandoned by Emerald Restoration and Production in 2001. The state's blanket bond of $125,000 didn't begin to touch the actual cost. The Wyoming Conservation Fund contributed $2.6 million dollars to fund the state of Wyoming's share of this reclamation effort. For the 64 wells on federal land that will cost an estimated $1.4 million to clean up, the only funding available is the $25,000 federal bond. The rest will be paid by taxpayers or the cleanup will not happen.

We are looking at the tip of an iceberg called taxpayer liability if this problem is not addressed. Under the current administration, the Department of Interior has refused to finalize a rulemaking effort begun during the Clinton Administration that would have raised the minimum bond amounts and have also rejected a rulemaking initiative proposed by WORC.

If the federal oil and gas bonding program is going to be fixed in the next few years, Congress will have to do it. Here is what WORC recommends:

- Require site-specific reclamation plans;
- Improve the reclamation performance standards for the oil and gas industry to be consistent with other extractive industries, such as coal;
- Abolish or substantively update the blanket bond system;
- Base financial assurance on estimates from professional engineers and cover the full cost of reclamation; and
- Require that reclamation plans and bond amounts be reviewed and updated annually.

Passing Representative Udall's bill, H.R. 1180, would be a great first step toward meeting these goals.

Also in need of updating is the inspection and enforcement system, which is under-staffed and outdated, as documented by WORC's 2005 report called "Law and Order in the Oil and Gas Fields." The report finds that:

1. The BLM has made improvements to its Inspection and Enforcement program since 1998, but those improvements have targeted production rather than environmental compliance inspections;
2. The number of BLM inspections had not significantly increased while drilling activities have exploded—more than doubling in some states each year from FY2000 to FY2003;
3. In 2003, environmental compliance inspectors spend an average of only 15% of their time completing inspection and enforcement activities, in large part because they were being diverted to permitting activities;
4. The 6 BLM Offices studied were responsible for 79% of active oil and gas wells on BLM lands nationwide in 2003, yet they only employed 26% of all inspection staff; and
5. Based on 2003 staffing and inspection levels, BLM inspectors inspect active wells only once every 2-10 years on average. Environmental compliance inspections are only completed every 4-49 years on average.

While the number of inspectors and inspection activities has increased significantly since 2003, the BLM has not provided the hard data requested by WORC under the Freedom of Information Act on this issue. We do not yet know, for example, whether the inspections being conducted are environmental compliance inspections or production inspections, and we have not verified whether they are keeping up with the continuing explosive increases in the number of wells. In Colorado where I live, several of the BLM's newly created environmental inspection positions remain unfilled, while additional staff positions to facilitate permitting were hired immediately.

What can we do to make it better? For starters, I urge members of these Subcommittees, in particular, to closely watch what BLM is doing on inspections and enforcement and ensure that environmental compliance is getting the long-overdue resources and attention that are so greatly needed. We also recommend:

1. Increasing inspection staff to keep pace with the rapid growth of the industry;
2. Filling newly created positions;
3. Don't rely on industry self-reporting as a compliance strategy;
4. Requiring regular reviews of environmental inspection programs for accuracy and adequacy;

5. Developing standardized compliance checklists; and
6. Repealing the 30-day permitting timeframe in Section 366 of the Energy Policy Act.

In closing, consumers are getting hit hard by rising energy prices. Don't make them pay again as taxpayers for the failures of an outdated regulatory system.

Throughout its history, Colorado has been through resource booms that have left us with a legacy of scarred landscapes, polluted streams and a tax burden for future generations to clean up the mess. If we are to avoid repeating this history, the federal government must play an active role in protecting our environment while permitting the extraction of resources that are so vital to our nation. The choice you are making is not for a safe and clean environment or energy extraction. We can and should have both.

Thank you for your time and the opportunity to testify.

Mr. GRIJALVA. Thank you very much. Let me at the outset thank all the panelists. Your comments and testimony are very much appreciated.

Let me begin my round of questioning with Ms. Moseley. There is a reference to the 1977 Surface Mining Control and Reclamation Act. Under that Act, surface owners over Federal coal deposits must give written consent to surface mining operations before that Federal coal can be leased, and no harm has been done.

On the contrary, I think that the coal industry in the West has thrived and there has been no harm as a consequence of this provision, in my estimation, despite the predictions to the contrary at the time from representatives of the western coal industry.

Having said that, do you think surface owners over Federal oil and gas deposits deserve that same consent right that surface owners over coal deposits now have under the 1977 law?

Ms. MOSELEY. Thanks for that question.

No, I do not believe that they deserve the same rights. The difference between a coal mine and an oil or gas well are so magnificently different. The impacts are completely different. They are shorter in term. I don't think that it is necessary for surface owner consent to be applied to oil and gas.

Mr. GRIJALVA. As we go through this process in the full committee, that is a contradiction in process that is going to have to be looked at. In one hand there is a consent required; on the other hand there isn't. I think at the very minimum that needs to be well debated.

Ms. MOSELEY. Mr. Chairman, I know that BLM has taken a look at that, and they provided a report to Congress on that specific issue.

Mr. GRIJALVA. OK.

Ms. MOSELEY. It was one of the split estate reports that they did.

Mr. GRIJALVA. Let me follow up with one more, then I have a couple for some of the other witnesses.

Ms. Utesch, in her testimony, talked about the cost to reclaim a gas well, and then the example I am going to use is Delta County, Colorado, where that energy corporation has posted a $25,000 bond to cover all the wells in the state, and I think it is between 400 and 500 wells on Federal land.

Do you think a bond of at the most $63 per well is adequate?

Ms. MOSELEY. I don't think that is the purpose of the bond, Mr. Chairman. The purpose of a bond is to make a company aware that it has legal responsibilities to reclaim its property. It is sort of an

insurance policy. It is not intended to cover the actual amount of the reclamation procedure. Just like with car insurance, you don't pay to have your car fixed, you know, every month that you pay.

Mr. GRIJALVA. I know that——

Ms. MOSELEY. Go ahead.

Mr. GRIJALVA. I know, but using the analogy of an insurance company, it is a heck of a deductible for the taxpayer, isn't it?

Ms. MOSELEY. I don't believe so, Mr. Chairman. I think that the companies are held to those bonds. They cannot have their bond released until they have met the criteria established by BLM for reclamation procedures.

Mr. GRIJALVA. Thank you.

Mr. Muggli, thank you again for your testimony. We have heard from several Montana ranchers who are using produced water for their livestock, and want to continue to do so. Can you talk a little bit about that?

Mr. MUGGLI. Mr. Chairman, Members of the Committee, yes, I can address that.

We have never felt that they should not be able to use the water for reasonable watering of livestock and human consumption, and that is what the water is there for, and that is why I want the water to remain there, not pumping out thousands of times more water than what ranch communities or ranch households and their livestock can use, and that it is the real problem to pump out that much extra water, and it would not be a problem for us if that is what they were using. That is what that water is there intended for is stock water. We have never limited that because that is the type of water, the same water that I have in my well at my house is that same type of water. It has got sodium bicarbonate in it, but you just flat can't irrigate with it.

Mr. GRIJALVA. Thank you.

Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

Ms. Moseley, if we were going to consider—we heard from Mr. Muggli that there were three conditions that really were problematic and those made sense to me, but where he was making the observation that the only thing he could attribute the loss of crop to was coalbed methane water.

You seem to be familiar. Are you familiar with any of the USGS studies, or who else might be doing studies?

In other words, I know in New Mexico they measure the water at different increments, and we have measuring points to see where problems occur. Tell me a little bit about that, if you would.

Ms. MOSELEY. It is my understanding that the USGS has been monitoring the water quality in the Tongue River since the early 1970s. They have several points in which they monitor, and as a result of the coalbed natural gas development, they have found no change in the water composition. That is what I found on their website.

Mr. PEARCE. So they have points at which they measure. Is there a point at which they do begin to find problems?

Ms. MOSELEY. Well, it is my understanding that once the water has been drained out of the river through the T&Y Diversion Dam, that the water that comes back out into the river has problems

with water quality. But the water that goes into the diversion dam does not have the problem. When the water comes out, it does.

Mr. PEARCE. And that is what I understand also. That both EPA, which I have not found to be a pushover in water quality issues, we deal with them a lot in New Mexico, and in fact we have a couple of cities that re-inject their sewage back in, and the EPA is checking them, and they have to be at zero parts per million TDS.

So I tend to believe that if they say they have checked the water along a run and it is clear until it gets to the diversion for irrigation, then it might be that this water is picking up things in the irrigation process, because I know in New Mexico we have a lot of water that is just pulled off of the Rio Grande, and then it is pushed back into the Rio Grande, and it simply percolates down through the soil, so I see that as being a possibility.

Now, you are somewhat familiar with the split estate question. The idea that we would—I think you heard from Mr. Adami that we would want to let split estate lapse, maybe after 15 years, that the mineral estate would go back to the landowner. How much would that cost the Federal government? A lot or a little?

Ms. MOSELEY. Well, let us put it this way. When the lands were homesteaded back in the 1800s, the Federal government reserved the mineral rights for those lands because it was a significant source of revenue for the Federal government, and as it states today mineral development is second only to the IRS in revenue generation.

So from their standpoint, they did the right thing by withholding the minerals from the surface owner. They were able to get the lands homesteaded and had crops put on them at the expense of—not at the expense, but in a hurry, and then they reserved the mineral rights for later use.

Mr. PEARCE. So it was economic to the IRS, so we wouldn't need to pay go for this provision, we would need a pay went.

Ms. MOSELEY. I think it would be a problem, sir.

Mr. PEARCE. OK. On the whole idea of the split estate, what production do people like Mr. Adami have? In other words, he is going to buy a ranch, and is it just kind of slid under the table that it is a split estate? What notification, what right does he have to understand that there minerals aren't attached to that land?

Ms. MOSELEY. You know, it is interesting that you ask that because I have bought three houses and every time I have bought a house I have looked to see who owns the minerals. Now, maybe it is because I work for the mineral industry, but even before I did I always looked, and I think that it is part of the record that is involved, and I would recommend that people take a look at that to see if——

Mr. PEARCE. So you are saying it is on the deed or whatever piece of legal——

Ms. MOSELEY. Yes. Yes.

Mr. PEARCE. So it is not like people wake up one day and there is a knock at the door, hey, we own your mineral rights. It is in fact right there on a piece of paper.

Ms. MOSELEY. Well, it is made public.

Mr. PEARCE. But it is on the deed also.

Ms. MOSELEY. Whether people look at it or not is another story.

Mr. PEARCE. I have a couple more rounds of questions, but I will yield back.

Mr. GRIJALVA. Thank you, and let me wrap up my turn. To begin with let me ask you, Mr. Muggli, how do you respond to the comments that Ms. Moseley just made about water quality data that she says was posted on the USGS website?

Mr. MUGGLI. Water quality data posted on that website is rounded numbers, and if you go to the true side, it is a very long process to do so, it is rounded off to the nearest one percentage point. And if you go to some different location on there and get the numbers, we have taken a 44 percent increase in sodium adsorption ratio numbers on the lower Tongue, and that is what the salinity lab claims that we are over that limit of two, between two and four, that we are going to start seeing collapses that you were seeing on the pictures.

Insofar as the river return, between the 12 Mile Dam, if you can feature the Tongue River runs north, dumps into the Yellowstone. Our diversion dam, and we have five flumes that cross five major creeks that drain 850 square miles of land that dump into the Tongue River below the 12 Mile Diversion, and this water mostly comes out of badlands country that is influenced by coal seams and heavy clay soils, and that is where the increase is coming.

The land that T&Y irrigates is less than half of one percent in that reach. Seventy-six percent of our land drains back is below Mile City on the banks of the Yellowstone.

Mr. GRIJALVA. Thank you, and let me wrap up my turn of questioning, for that matter the questions in general from my perspective.

I am going to ask Ms. Utesch, in your testimony I know you have experience the impacts of oil and gas drilling in a very personal level, and if you could elaborate on that for the committee.

Ms. UTESCH. In 2001, my husband and I purchased four acres of land fives miles south of the Town of Silt. At that time in Colorado—I am sorry, we purchased the land in 2000. At that time in Colorado mandatory disclosure of mineral or split estate was not required in Colorado, so we did not know that we didn't own our minerals.

We also never had mineral development on our small four acres because there was a wetlands that ran through it, and when you have an average well pad that is four acres, there was nowhere on our property they could put a well pad.

However, within four years I had more than 30 gas wells drilled within a mile of my home. The mile long road that I used to live on that was a dead end, and some, maybe 15 to 17 cars a day became a thoroughfare that saw over 100 semi-trucks every day. I ate the dust of those trucks. I watched the magnesium chloride that was used to try to mitigate the dust drain into my wetlands, and kill grass and kill the plant life that was in the wetlands.

Also, because our area was low lying area, many of the fumes that came off of the wells settled down. They are heavier than air, and the ozone and all the production chemicals settled down over the area where we lived.

In 2005, I sold my home. I had lung problems. I had an all-over-body rash. I had extreme fatigue and I had headaches. My doctor

said that the most likely cause of all of those, particularly the unusual skin rash that I suffered, was exposure to industry chemicals.

I lost my home, I lost my way of life to the gas industry, and during that time I was working hard to try to get the industry to understand I didn't want them to go away. I just wanted them to consider that I had a right to be there too.

Mr. GRIJALVA. Thank you.

Mr. Adami, if you could share your personal perspective and your experience.

Mr. ADAMI. With the split estate, Mr. Chairman?

When we bought our ranch, I was aware that we didn't have the mineral rights, and there had been no mineral development, and as the coalbed methane moved from the eastern part of the Powder River Basin to the western edge where we were located, I visited with a number of clients and friends that had negotiated with the mineral companies, and asked them what problems did you have, what areas did you wish you had done different in your agreements, and so I had a fairly long list of things that I wanted to address when the mineral company arrived.

What they offered was a one-size-fits-all, take-it-or-leave-it surface agreement. And in the case where I was bonded on, they offered that agreement, withdrew it. It was never offered again, and they just simply proceeded to bond on.

The local BLM office made no effort beyond a token effort to require them to negotiate. They were a relatively accommodating partner in that process.

Mr. GRIJALVA. Thank you very much. I have no further questions.

Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

I would request unanimous consent, one of our witnesses stated that North Dakota made a serious mistake in accepting oil and gas exploration, and I just would like to ask unanimous consent to submit for the record from the Governor of North Dakota saying that actually it has been very positive for North Dakota.

Mr. GRIJALVA. Without objection.

[The letter from the Governor of North Dakota follows:]

P.O. Box [illegible] Oklahoma City, Oklahoma [illegible]
[illegible] Oklahoma City, Oklahoma [illegible]
Phone: [illegible] Fax: [illegible]

April 25, 2007

The Honorable Jim Costa
Chairman
Subcommittee on Energy
and Mineral Resources
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Steve Pearce
Ranking Member
Subcommittee on Energy
and Mineral Resources
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Raul M. Grijalva
Chairman
Subcommittee on National Parks,
Forests and Public Lands
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Rob Bishop
Ranking Member
Subcommittee on National Parks,
Forests and Public Lands
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Gentlemen,

I am writing this letter in my capacity as Chairman of the Interstate Oil and Gas Compact Commission (IOGCC). The IOGCC represents the Governors of 30 member and 7 associate states. The member states of the IOGCC produce more than 99% of the oil and natural gas produced onshore in the United States. Formed in 1935, the IOGCC is the nation's leading advocate for conservation and wise development of domestic petroleum resources. The mission of the IOGCC is two-fold: to conserve our nation's oil and gas resources and to protect human health and the environment.

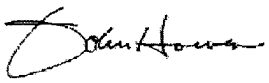
My letter today is to put to rest any notion that some may have that oil and natural gas production is not important to the states which produce it. On the contrary in most of the 30 member states of the IOGCC it is a critical component of the state's economy. I know it is in the State of North Dakota. It provides jobs to a great many people and revenues that in North Dakota, and most producing states, directly benefit public education. Regulated by the states, the oil and natural gas industry has proven over a great many decades that it is a safe and desirable component of our economies.

While not every state has federal public lands containing oil and natural gas resources, many of our member states do, particularly in the West. These lands contain some of the most important oil and natural gas resources in our country. Not only does development of these fields benefit the host states' economy, we must always bear in mind that every barrel of oil not produced domestically must be imported. Not every parcel of federal land is suitable for exploitation but some would have us believe that we should severely

curtail production on all federal land. For a country as dependent upon foreign sources of production as we are in the United States, we can ill afford such a strategy. No, we must continue to responsibly develop this nation's oil and natural gas resources, on federal, state and private lands alike.

I thank the subcommittees for the opportunity to share the views of oil and natural gas producing states on the importance of oil and natural gas production to our states.

Sincerely,



John Hoeven
Governor of North Dakota
Chairman
Interstate Oil and Gas Compact Commission

Mr. PEARCE. Ms. Moseley, would you want to—again you kind of got into this already. We are talking about the abysmally low bonds that are required now. That bond requirement is not a total economic requirement for that company. That is not all the companies do. Again, it is not $63 per well that they are going to pay to keep them up. It is that they are taking out this bond that says I am responsible for every single well that I drill, and this $25,000 is the beginning point.

Have you ever found a company that would only pay $63 to clean up a site?

Ms. MOSELEY. No, absolutely not. In fact, in some cases, depending on where the well location is, it can cost hundreds of thousands of dollars.

Mr. PEARCE. And because they only had the $25,000 bond, because they only had the $63 per well, did they walk away from their investment? Did they walk away from their responsibility?

Ms. MOSELEY. No.

Mr. PEARCE. So they paid the 100,000?

Ms. MOSELEY. They are required to follow the law. They are required to follow the guidelines——

Mr. PEARCE. OK.

Ms. MOSELEY.—that have been established by the government.

Mr. PEARCE. Ms. Korenblat, you look like you have a comment to make here.

Ms. KORENBLAT. I am sorry. You should finish that line.

Mr. PEARCE. I mean it is fine, yes.

Ms. KORENBLAT. I think that was misinterpreted. I think you are referring to my comment about North Dakota.

Mr. PEARCE. Oh, yes. Excuse me.

Ms. KORENBLAT. Sorry. And my point was that the mistake was made in building the trail and spending lots of money to market it after the oil wells had been put in, after the oil fields have been established.

Mr. PEARCE. Fair enough. Yes, fair enough.
Ms. KORENBLAT. Thank you.
Mr. PEARCE. I appreciate that clarification.
Ms. Adami, when did you buy your ranch?
Mr. ADAMI. In 1993.
Mr. PEARCE. 1993?
Mr. ADAMI. Yes, sir.
Mr. PEARCE. And you were aware of the split estate question?
Mr. ADAMI. Actually, I was not.
Mr. PEARCE. But it was on the deed.
Mr. ADAMI. No, it was not. It is not disclosed in any fashion. Your warranty deed makes no reference whatsoever to the minerals in Wyoming.
Mr. PEARCE. So would you recommend that we pass a law that would say stamp on the face of a piece of property "This property is split estate"?
Mr. ADAMI. That to me——
Mr. PEARCE. That would seem reasonable.
Mr. ADAMI. I think that would be reasonable, and maybe a small disclosure about——
Mr. PEARCE. What do you think that would do to property values of those pieces of property?
Mr. ADAMI. I am not sure that it would have much of an effect. Colorado could probably answer that where they have done that, but I am not sure.
Mr. PEARCE. I think that is probably the push-back that we would get, that people don't want their property value diminished by full disclosure.
Ms. UTESCH. Colorado does have mandatory disclosure and that disclosure has not affected property values. That was established in a study that was done in 2004.
Mr. PEARCE. OK. Now, you sold your ranch?
Mr. ADAMI. Yes, sir.
Mr. PEARCE. Who did you sell that to?
Mr. ADAMI. To Yates Petroleum for New Mexico.
Mr. PEARCE. Were they the ones who were drilling close by on the land?
Mr. ADAMI. No. Yates was the third developer to come, and it was in the negotiation process that they made the offer to purchase, but at that point they had not developed any of their minerals.
Mr. PEARCE. Are they in the process now?
Mr. ADAMI. You know, I haven't been back in the last three-four months.
Mr. PEARCE. What did you get per acre for the land?
Mr. ADAMI. The terms of the agreement were confidential, Congressman. I guess I would have to refrain from answering that.
Mr. PEARCE. Above market or below market?
Mr. ADAMI. I am afraid I shouldn't answer that, sir.
Mr. PEARCE. OK. I suspect, I suspect I could guess.
Mr. Muggli, you had some contentious response, you didn't think that I was accurate in what I was saying about the EPA. Do you think the EPA is allowing the oil and gas to put that coalbed methane water into the river and contaminate it?

Mr. MUGGLI. Yes.

Mr. PEARCE. Mr. Chairman, I would at this point ask that we have a hearing, because I think Mr. Muggli is really sincere, and I believe he is here with the best of intentions, and if the EPA is not doing its job, I think that we should hold them to task and we should take a look at that because I have found them to be pretty strict in New Mexico. In fact, we are always having to work to clear up problems, and this is a pretty serious allegation because that is—EPA is one of the key guardians of our fresh water, so I would take that as a pretty serious problem, and would request—would you join me in the request that we would have an open hearing about the standards——

Mr. MUGGLI. Yes.

Mr. PEARCE.—that EPA is enforcing on that particular coalbed methane project?

Mr. MUGGLI. Yes.

Mr. PEARCE. OK, appreciate that.

Ms. Moseley, let us say that we take the recommendations that you have heard here to drive the price up per well, put a well bond on, who will be impacted by that kind of a—Mr. Chairman, I would yield back if you want me to. I have another round of questions——

Mr. GRIJALVA. Yes, please continue.

Mr. PEARCE. You bet. I saw that red light. You know, it scares me.

Let us say that we do put that bond in. Who is going to be affected among the producers?

Ms. MOSELEY. If it increases the amount that a company has to spend.

Mr. PEARCE. Yes.

Ms. MOSELEY. Is that your question?

Mr. PEARCE. Yes.

Ms. MOSELEY. I would guess that it would make energy prices more expensive.

Mr. PEARCE. It would make energy prices more expenses. What about the size of companies? In other words, in New Mexico, we are almost down to just the mom and pops. We are down to the independents. Exxon has moved out a long time ago. Those fields are wearing out, people are not much interested. There is a little excitement right now with $70 oil, but when it drops back down to 50, they are all going to disappear again.

So what is going to be the effect on the small operator?

Ms. MOSELEY. Well, the small operators, the one who is most affected by these kind of increases in costs of drilling a well. As you heard earlier this morning, 90 percent of the discovery wells are drilled by independents. If they can't afford to go out and drill, then they probably will never be drilled, and maybe some people feel that that is a good thing. I don't believe that. I think that our country is based upon energy for its economy and for its standard of living, and I would recommend that we have a chance to work together to come up with the best solutions instead of being attacked for providing the service that we absolutely have to have.

Mr. PEARCE. You heard the testimony by Ms. Korenblat about the problems with the oil and gas industry. Tell me a little bit

about the positive relationship between say the biking industry and oil and gas. Where do they intersect?

Ms. MOSELEY. Well, I would guess that without the oil and gas industry and the mining industry you wouldn't have your bikes.

Mr. PEARCE. Yes, I was hoping we would get a little response here. Ms. Korenblat, obviously, we are into the engaging piece of this, but really you get carbon fibers, you get your tires, you get the people traveling in, not in a black reference I made in my opening statement, and you can take this opportunity to dig into that if you would like with full vigor too, if you would like.

Ms. KORENBLAT. If I am going to go out of business, does it really matter whether I lose my customers first or the supply first?

As you said in your opening statement, my customers fly in airplanes to get to the trips, and if the prices of their airplane tickets go up, I am going to have less customers. But if we continue to drill without regard to recreation planning and without any effort to coexist, then I am losing supply because I am going to be losing trips. So it is sort of a chicken and egg problem really.

Mr. PEARCE. Yes, and that really is a problem that we all have here is that with every single problem that we have, we do need to reach a balance point because, to be honest with you, as a backpacker I have probably been as many miles as anybody in Congress just with a pack, a really heavy pack too. I don't much anymore, but I have been. So as a backpacker, I will tell you that the bikes and the motorcycles and those things I consider to be—I mean, you made the statement that we should be naturalists, we should have natural space or something. I am not trying to put words——

Ms. KORENBLAT. Operate under our own power.

Mr. PEARCE. No. But you were saying that we should have nature, that that should be it, and to be honest, there are people who would say that really your bikes are invasive, that they are not natural, and I am not that sort of purist. I was the one who said, you know, we ought to have a place in our parks that we can use motorized stuff, not every place in the parks. That was Mr. Watkins' language, and I felt like always that was the balance. Not every place for everything, but some way we have to get the balance here.

We have to get the protection for these landowners, and I am sympathetic to Mr. Adami that has got 12 of the 20. This is like a golf game. High score is not very good in those problems. Still, we can overreact, overrespond, and suddenly we begin to squeeze off this little golden goose that really provides a lot of jobs, and I am talking about the oil and gas industry, provides accessible, affordable energy.

Ms. KORENBLAT. But——

Mr. PEARCE. Go ahead.

Ms. KORENBLAT. Well, my question though is aren't we on the downhill side? In 300 years, are we going to be burning oil? I don't think so. Right? We know it is going to last 20, but is it going to last 300? It is somewhere between 20 and 300, right?

Mr. PEARCE. So how would you feel about wind and solar on Federal lands?

Ms. KORENBLAT. It totally depends on how it is put in, and you talk about balance, and I agree with that, but I think one of the

points needs to be looking at the longer term. So many people are so focused on the current situation that we are so dependent on oil, but don't we have the opportunity—we are going to make a transition. I don't think my grandchildren are going to be using oil. They are going to have to use alternative fuels.

So my question is do we really want to damage—I mean, land in its pristine form is shrinking from the earth. They are not making any more of it. You can't re-create it. Sure, you can mitigate, and you can try to clean up the mess, but land that hasn't ever been touched is very—it is in very short supply.

So when we look, we talked about 39 years worth of natural gas. I mean, that is—in the big picture that is a very short time frame. So what I am adding to the equation is not just looking at balance, but looking at balance over the really long term because my son can make a living the same way I am, and my grandchildren can make a living the same way I am, but an oil well has a life span, but the damage is relatively permanent.

Ms. MOSELEY. I don't agree with that, and I don't know whether I am allowed to speak or not.

Mr. PEARCE. OK, OK, the Chairman is about to—let me make a couple more comments, Mr. Chairman, and we will be wrapped up, but these are the kind of conversations that we need to be in. I think everyone of us realizes that—I mean, my great fear is that we are going to run out of oil quicker than what we think, but the truth is we don't have anything that even comes close to replacing it—maybe nuclear, but wind is 1 percent, solar is 1 percent, hydrothermal, maybe 10.

Ms. KORENBLAT. Necessity is the mother of invention.

Mr. PEARCE. Yes, well, the mothers of invention are a little asleep at the wheel because we haven't got any way to get those inventions to the market. I mean, we really have slept through the last 30 years when we should be converting and we have not converted and tremendous dislocation awaits us if we just move wholeheartedly.

Mr. Chairman, with your indulgence Ms. Utesch tried to log in a couple of times, and we just haven't gotten to her. She wants to make closing comments. I don't have any. You have had comments to things that I have said so I am going to turn the floor over to her, and when she wraps it up, my time is way past gone, and you have been more than congenial, Mr. Chairman.

Mr. GRIJALVA. No, just 29 minutes. No problem.

Mr. PEARCE. No sweat. No problem.

[Laugher.]

Mr. PEARCE. Thanks.

Ms. UTESCH. Thank you for the opportunity to speak again. I just wanted to offer a couple of clarifications.

When it comes to the issue of bonding or any regulation of the industry, when consumers are—if the government puts additional regulation on industry often the argument is made that if the gas industry has to pay more, if their cost of business goes up, that that will get passed directly to the consumer, and I want to clarify for the record that that is not true.

The natural gas in this country is traded just like corn and soybeans, and any rancher can tell you that it doesn't matter how

much it costs him, it is the market value at which that commodity is traded that sets the price, and natural gas is the same way.

I also wanted the opportunity to also one more time look at the issue of small operators. Ms. Moseley had testified that if small companies that come in and want to do drilling have to post high bonds, they won't be able to do the work, and so that it would create a hardship on them in not being able to drill.

That may be true, but let us look at the other side of what happens, and this does happen and we have seen cases of it in New Mexico where small operators can't afford to post—they post a small bond, and they go into an area, and when they are done operating their choice is to pay the $100,000 in reclamation costs that Ms. Moseley cited, or to forfeit their $25,000 bond. It is a hell of a lot cheaper for them to walk that bond and it has happened.

So you know, there are two sides to that question. There are two ways to look at it. It is not black and white, and I would just welcome the opportunity for both sides to sit down at the table and proactively look at the needs on both sides, and address a system that is outdated to come up with something that works better for everyone.

Mr. PEARCE. Thank you very much.

Ms. UTESCH. Thank you.

Mr. GRIJALVA. Thank you, Mr. Pearce.

Now let me thank all of our witnesses today, and particularly this last panel.

In closing, I think I can comfortably say that I am not aware of a single member of this committee and the full committee who does not support responsible oil and gas development in the appropriate public places, and public lands, and as we go through this process the search for a balance, the search for responsibility and accountability on the part of agencies and businesses doing gas and oil on public lands, that process sometimes is going to be viewed as an attack, and I would venture to say that it will be described as an attack.

On the contrary. The search for balance many times is a difficult process. I wish we would have had this healthy debate as we were going through the Energy Act of 2005, and we will have this debate as we go through what we need to put together in May in terms of an energy policy.

Today's hearing and other hearings this month before this committee and all the various subcommittees have been held to find out what is not working with that energy policy, and what we need to do to fix it. I don't believe that any of the energy laws that have been enacted in the last five years are sacred or sacrosanct. We need to look at them. We need to dig for that balance, that accountability, that transparency, and the appropriate responsibility.

I want to thank all of you for coming today, and with that this meeting is adjourned. Thank you.

[Whereupon, at 2:05 p.m., the Subcommittees were adjourned.]

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