OVERSIGHT FIELD HEARING ON BUREAU OF LAND MANAGEMENT AND U.S. FOREST SERVICE OIL AND GAS REGULATIONS REGARDING ACCESS AND PERMITTING ISSUES

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

MONDAY, JUNE 30, 1997, CASPER, WYOMING

Serial No. 105–50

Printed for the use of the Committee on Resources

U.S. GOVERNMENT PRINTING OFFICE
44–388 CC WASHINGTON : 1997

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
BARBARA CUBIN, Wyoming
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
JOHN SHADEGG, Arizona
JOHN E. ENSIGN, Nevada
ROBERT F. SMITH, Oregon
CHRIS CANNON, Utah
KEVIN BRADY, Texas
JOHN PETERSON, Pennsylvania
RICK HILL, Montana
BOB SCHAFFER, Colorado
JIM GIBBONS, Nevada
MICHAEL D. CRAPO, Idaho

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
NEIL ABERCROMBIE, Hawaii
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELO, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island
ADAM SMITH, Washington
WILLIAM D. DELAHUNT, Massachusetts
CHRIS JOHN, Louisiana
DONNA CHRISTIAN-GREEN, Virgin Islands
RON KIND, Wisconsin
LLOYD DOGGETT, Texas

LLOYD A. JONES, *Chief of Staff*
ELIZABETH MEGGINSON, *Chief Counsel*
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

BARBARA CUBIN, Wyoming, CHAIRMAN

W.J. (BILLY) TAUZIN, Louisiana
JOHN L. DUNCAN, JR., Tennessee
KEN CALVERT, California
WILLIAM M. (MAC) THORNBERRY, Texas
CHRIS CANNON, Utah
KEVIN BRADY, Texas
JIM GIBBONS, Nevada

CARLOS ROMERO-BARCELÓ, Puerto Rico
NICK J. RAHALL II, West Virginia
SOLOMON P. ORTIZ, Texas
CALVIN M. DOOLEY, California
CHRIS JOHN, Louisiana
DONNA CHRISTIAN-GREEN, Virgin Islands

BILL CONDIT, *Professional Staff*
SHARLA BICKLEY, *Professional Staff*
DEBORAH LANZONE, *Democratic Counsel*

CONTENTS

OVERSIGHT FIELD HEARING ON BUREAU OF LAND MANAGEMENT AND U.S. FOREST SERVICE OIL AND GAS REGULATIONS REGARDING ACCESS AND PERMITTING ISSUES

MONDAY, JUNE 30, 1997

U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON RESOURCES, *Casper, WY.*

The Subcommittee met, pursuant to notice, at 10 a.m., at the Basko Building, 777 West First Street, Casper, Wyoming, Hon. Barbara Cubin [Chairwoman of the Subcommittee] presiding.

Mrs. CUBIN. If the first panel would please take your places at the table.

Sorry we're starting late. I had every intention of getting here early. And my son and I set the burglar alarm off at our house and had trouble trying to get it fixed so that the police wouldn't take us up to jail, instead of here.

The Subcommittee on Energy and Mineral Resources will come to order. I want to thank everyone for being with us today.

First, I'll introduce myself. I'm Barbara Cubin, Chairman of the Subcommittee on Minerals and Energy of the Committee on Resources; Bill Condit, and Sharla Bickley.

I have my staff here. Patty McDonald is my chief of staff. And then my district representatives who are stationed here in Casper, Vivian Stokes and Mantha Phillips.

So if you have any questions throughout the day and you see—and you see staff around, feel free to ask anyone for anything that you might need.

I'm not—I want to get the hearing started and go straight through as quickly as we can. We have a lot of witnesses to hear from, and all of their testimony is quite pertinent.

I thank everyone for submitting their testimony earlier. I have, in fact, read everyone's testimony and feel prepared to go on.

I will—after the first two panels, I will call a recess for about 15 to 20 minutes. And then we'll get right back at it. So if you want to plan around that somehow, that will be fine. So I figure that recess will be from 12:30—roughly—around 12:30 to 1. We'll be gone 20 minutes and then start right back up.

I also wanted you to know that, as a matter of rule, I always swear in all the witnesses that testify in front of this Committee. So I—and I always tell people that because I don't want them thinking that—that we think anyone isn't going to tell the truth.

We know everyone is going to tell the truth. But it's just good practice, in my opinion, to swear in all of the witnesses.

STATEMENT OF THE HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. Today, the Subcommittee on Energy and Mineral Resources meets to continue oversight of Federal oil and gas leasing programs. During the last Congress, the Subcommittee held two hearings on our Nation's energy policy, or lack thereof, I should say, and began a review of the role that our public lands and the Outer Continental Shelf play in providing a domestic supply of crude oil and natural gas.

The Committee on Resources, of which this Subcommittee is a part, is the panel of jurisdiction within the House of Representatives which oversees Federal land management by the Department of the Interior agencies and by the Department of Agriculture's Forest Service.

The Subcommittee has jurisdiction over the laws governing the disposition of the Federal mineral estate, from leased commodities like oil and gas, coal and trona, to metallic minerals like gold, silver, copper claimed under the mining law.

We are what I call an upstream Subcommittee. What I mean by that is that the legislation that—we have jurisdiction over the legislation that involves mineral leasing issues and access to one's lease for exploration and production. But downstream issues such as pipeline rights-of-way and EPA-imposed regulation of emissions and so on, for example, are not under the jurisdiction of this Subcommittee.

Obviously, it is the total regulatory framework that we live under which impacts public resource use decisions. And often the tail wags the dog. For example, someone might choose not to develop a mine site because of future potential liability that might come with reworking the mine; And therefore, some of our good mineral deposits are never, ever developed. And the Congress, as a whole, is the one that has to address the issues of the minerals and of the access to them.

But this Committee will focus on the piece of the action that we have—namely, should this part of public lands or that part of the OCS be open to mineral leasing, and if so, under what type of regulation of access and permitting.

And that's why I've called this hearing, to further our inquiry in finding ways to decrease our dependency on foreign sources of oil and gas. And where better to look than our public lands?

These issues facing both Congress and the executive branch are not easy to resolve. Finding and maintaining a proper balance in the exploitation of mineral resources versus potentially competing uses for the surface estate is an age-old problem. Ownership of the subsurface rights was dominant in such—in a lot of disputes over history, as a matter of fact, as is evidenced by the corollary to the biblical passage, "The meek shall inherit the earth, but not the mineral rights."

Clearly, attitudes have shifted toward requiring oil and gas operators to do more to protect surface values in the exercise of their mineral rights. I think that's a good thing. And I don't think that

anyone involved in the entire issue would say that that wasn't a good thing.

But at what point has the pendulum swung too far? The combination of de facto wilderness areas established in the circumvention of the public participation process mandated by Congress and the extraordinary costs associated with environmental assessments that ripen into full-blown environmental impact statements at the drop of a hat, or at the drop of a well-placed comment, together with ever-increasing mitigation requirements, proliferation of no surface occupancy lease stipulations, and other costly measures, sum to a high hurdle for our domestic producers to jump over in order to invest in our public lands.

Are there ways to achieve the same, or even better, level of protection of wildlife, air and water, and important cultural resources without scaring away investment and pricing the independent producer out of the picture?

I, like many others, was skeptical, to say the very least, when Secretary Babbitt first announced the Green River Basin Advisory Committee idea 2 years ago. But he, of course, went right ahead, anyway. He often doesn't call me for my opinion on what he does, and I often don't call him.

[Laughter.]

Mrs. CUBIN. Now, although a full consensus was reached for the recommendation of eco-credits against one's royalty obligation for going above and beyond the call of duty, so to speak, Mr. Babbitt seems quite reluctant to support the idea of a pilot project to test out the concept.

But this idea was agreed to by Colorado's Governor as well as Wyoming's. Why? Because the Department of Energy's economic model calculates increased revenues to the States and the Federal treasury, with eco-credits production coming on-line sooner than it might otherwise.

Instead, the Interior Secretary and his solicitor appear to be ready to formally reject the recommendation, signaling that the Mineral Leasing Act constrains his ability to offer this relief administratively.

But mind you, the Secretary is poised to stretch his authorities to the breaking point when it suits his policies. For example, he's ready to sell Federal oil rights right out from underneath existing leases, escrow those funds, and buy up old-growth redwoods threatened by the chainsaw and call it a FLPMA-authorized exchange. It didn't wash in Congress. There was no public input on it, but he proceeded, anyway. It shows you the length to which the Secretary will go to have creative interpretations when it so suits his mood.

So rather than hiding behind the so-called cost-recovery mandates, let's get the job done. If we need to amend the Mineral Leasing Act, or any other Federal statute, for that matter, to implement consensus good ideas, then we can do that.

I'm hereby putting the ball in the Secretary's court. He should send Congress a draft bill, and then the GRBAC folks will have done something truly praiseworthy. Their investment in time, energy, and good will truly should reap dividends because it was done by very bright people who know the issue and everyone involved agreed on the results.

[The prepared statement of Hon. Barbara Cubin follows:]

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Today the Subcommittee on Energy & Mineral Resources meets to continue oversight of Federal oil and gas leasing programs. During the last Congress the Subcommittee held two hearings on our Nation's energy policy, or lack thereof, and began a review of the role that our public lands and Outer Continental Shelf play in providing a domestic supply of crude oil and natural gas. The Committee on Resources, of which this Subcommittee is a part, is the panel of jurisdiction within the House of Representatives which oversees Federal land management by Department of the Interior agencies and the Department of Agriculture's Forest Service.

The Subcommittee has jurisdiction over the laws governing the disposition of the Federal mineral estate—from leased commodities like oil and gas, coal and trona, to metallic minerals like gold, silver and copper claimed under the mining law. We are an "upstream" subcommittee in that legislation involving mineral leasing issues and access to one's lease for exploration and production are in our bailiwick, but "downstream" issues such pipeline rights-of-way and EPA-imposed regulation of refined emissions, for example, are not.

Obviously, it is the total regulatory framework that we live under which impacts public resource use decisions, and often the tail wags the dog, so to speak. For example, potential Superfund liability years hence may well influence a mining company to stay away from reworking an old mining district, despite good potential for further ore discoveries. And the Congress, as a whole, addresses these issues ultimately. But, this committee must focus on the piece of the action we do have—namely, should this part of the public lands or that part of the OCS be open to mineral leasing—and if so, under what type of regulation of access and permitting?

And that's why I've called this hearing, to further our inquiry in finding ways to decrease our dependency on foreign sources of oil and gas—and where better to look than to our public lands. This issue facing both Congress and the executive branch, are not easy to solve. Finding and maintaining a proper "balance" in the exploitation of mineral resources versus potentially competing uses of the surface estate is an age-old problem. Ownership of the subsurface rights was dominant in such disputes over much of history, as evidenced by the corollary to the biblical passage, "The meek shall inherit the Earth . . . but not the mineral rights!" Clearly, attitudes have shifted toward requiring oil and gas operators to do more to protect surface values in the exercise of their mineral rights. And, for the most part, that's a good thing. Just look at the oil patch today versus thirty years ago.

But, at what point has the pendulum swung too far? The combination of *"de facto"* wilderness areas established in circumvention of the public participation process mandated by Congress, and the extraordinary costs associated with environmental assessments that "ripen" into full-blown environmental impact statements at the drop of a hat (or a well-placed comment), together with ever-increasing mitigation requirements, proliferation of "no surface occupancy" lease stipulations, and other costly measures, sum to a high hurdle for our domestic producers to jump over in order to invest in our public lands.

Are there ways to achieve the same, or even better, level of protection of wildlife, air and water, and important cultural resources without scaring away investment and pricing out the independent producer? I, like many others, was skeptical (to say the least) when Secretary Babbitt first announced the Green River Basin Advisory Committee idea 2 years ago, but of course he went ahead anyway. Now, although a full consensus was reached for the recommendation of "eco-credits" against one's royalty obligation for going "above and beyond the call of duty" so to speak, Mr. Babbitt seems quite reluctant to support the idea of a "pilot project" to test out the concept. But, this idea was agreed to by Colorado's Governor as well as our own. Why? Because, the Department of Energy's economic model calculates increased revenues to the States and Federal treasury. With eco-credits production comes on-line sooner than it might otherwise, if at all.

Instead the Interior Secretary and his Solicitor appear to be ready to formally reject the recommendation signaling that the Mineral Leasing Act constrains his ability to offer this relief administratively. But mind you, the Secretary is poised to stretch his authorities to the breaking point when it suits his policies. For example, he's ready to sell Federal oil rights out from underneath existing lessees, escrow those funds, and buy up old-growth redwoods threatened by the chainsaw, and call it a "FLPMA-authorized exchange." It didn't wash in Congress, but it shows you the length to which creative interpretations can be had in the Department of the Interior when the boss wants one.

So, rather than hiding behind so-called cost-recovery mandates, let's get the job done. If we need to amend the Mineral Leasing Act, or any other Federal statute for that matter, to implement consensus good ideas, then we can do so. I'm hereby putting the ball in the Secretary's court. He should send Congress a draft bill, and then the GRBAC folks will have done something truly praiseworthy.

As Governor Jim Geringer said at the Western Governors' Association meeting last week, "I'm tired of being up-dated. I want to do something."

BRIEFING PAPER—OVERSIGHT FIELD HEARING ON JUNE 30, 1997

CASPER, WYOMING

OIL AND GAS REGULATIONS REGARDING ACCESS AND PERMITTING ISSUES.

The Subcommittee is holding an oversight hearing in Casper, Wyoming to hear from the regulators, the regulated community and the public about project-specific and general policies that effectively prohibit or delay oil and gas exploration and development on public lands. The Department of the Interior's Bureau of Land Management (BLM) and the Department of Agriculture's Forest Service (USFS) are charged with proper management of these lands in the public interest. But, is the public well-served by the continuing trend away from promoting development through a long-standing multiple-use policy toward one of strict preservation?

Expected Witnesses

The Subcommittee has invited representatives from the Administration, including a DoI Regional Solicitor, the State Directors for BLM in Wyoming and Colorado, and the Lewis & Clark National Forest Supervisor. State interests will be represented by the Wyoming Office of Lands and Investments, the Wyoming Oil and Gas Commission and the Interstate Oil and Gas Compact Commission. Industry and public panels will include major and independent oil and gas producers and associations and Wyoming environmental organizations.

Issues

Wilderness

The Federal Land Protection and Management Act of 1976 (FLPMA), Section 603 provided a process for identification of wilderness study areas (WSAs) on BLM-managed public land by 1991. Since then, the Secretary of the Interior has interpreted this mandate to include managing all WSAs—whether recommended suitable or not suitable—as wilderness, in order to maintain the *status quo* with respect to a WSA's "wilderness character" until the Congress has had opportunity to legislate such areas as "designated wilderness," (i.e., components of the National Wilderness Preservation System initially established by the 1964 Wilderness Act). Generally, candidate areas for wilderness study by BLM had to be greater than 5,000 contiguous "roadless" acres or they were dropped from the initial inventory. Controversy over definitional terms arose during the winnowing process and were dealt with via BLM policy directives, principally during the Carter and Reagan Administrations that led to "final" state-by-state recommendations by BLM and the Secretary through then President Bush to Congress, few of which have been acted upon.

Now, at the direction of the Secretary, the BLM has effectively set aside "faux" wilderness study areas in Colorado, at the urging of the Colorado Environmental Coalition, and without opportunity for public input. Some of these lands had previously been identified as suitable for oil and gas leasing with specific surface-disturbance stipulations. Additionally, under color of "in-aid-of-legislation" policy, Secretary Babbitt has directed BLM not lease public lands outside WSAs which would be designated Wilderness if H.R. 1500 (Hinchey, D-NY) were enacted. The Subcommittee is concerned with the effective withdrawal of additional lands in Colorado and Utah (and likely elsewhere, but not yet identified) outside of the FLMPA-mandated process.

Because the Mineral Leasing Act of 1920 makes the lease-or-not-to-lease decision wholly at the discretion of the Secretary, oil and gas interests which would like to bid at competitive auction for leases on such lands may lack standing to sue in court despite the obvious lapses in fair and unbiased administrative procedures in the creation of the "faux" WSAs policy. Because judicial remedies are thus constrained, a legislative check on possible abuse of power by the executive branch is all the more timely. Given the fiscal austerity of the times and the attendant limitations on

BLM's resources, is the public best served by an agency acting outside the clear legislative mandate of its organic act (FLPMA) and thereby increasingly ignoring its legitimate tasks and responsibilities as a land (and minerals) manager?

Permitting Delays

Uncertainty plagues the Federal leasing and post-lease permitting process alike. The domestic industry's continued survival is dependent upon smart investment decisions and responsible development. Producers that choose to invest in and develop Federal lands over private lands or prospects overseas need defined time-frames and consistent, cost-effective regulations in order to succeed and thereby provide the public fair its share of revenues. The National Environmental Policy Act (NEPA) is the framework by which permitting for these activities is decided. The NEPA process requires an environmental evaluation, usually in the form of an Environmental Assessment (EA) for proposals likely to have little or no impact, or an Environmental Impact Statement (EIS) for major Federal actions affecting the human environment, and is undertaken to document the likely impacts of development on Federal lands.

One example of permitting and process delays is the is Cave Gulch-Bullfrog-Waltman Natural Gas Development Project in Natrona County, Wyoming. The estimated production potential from the field ranges from 600 billion to one trillion cubic feet of natural gas and planned development would indude about 160 gas wells drilled in the next 10 years. Although the field was discovered in 1959, industry interest heightened in 1994 at which time two separate EAs were initiated. One of the EAs was completed with a Finding of No Significant Impact (FONSI) after 8 months of review. The other EA was suspended after twelve months later. Because industry's interest in the field continued to grow as the gas discovery was delineated, BLM initiated an EIS. Eighteen months and over one-half million dollars later, the EIS was finalized *with the same mitigation measures required by the first EA.* The Final EIS was published on June 19th and focused on managing raptor nesting and on air quality issues associated with natural gas processing. Issues of interest to the Subcommittee include questions of "balance" by the agency in reviewing the Nation's needs and desires for "clean" natural gas as a fuel, the huge reserve potential of this field, and sensitive wildlife habitat in the area. In other words, would implementation of the stipulations derived from the initial EA allowed more timely development of a resource which this Administration professes to be in favor of utilizing over less clean burning fuels?

Another area of concern is the Draft EIS for oil and gas leasing in the Lewis and Clark National Forest in Montana. The Forest Service has released a draft EIS with an alternative which would outright preclude exploration and development of almost one-quarter of the available acres (those not in designated wilderness or wilderness study areas), with the remaining acreage restricted by a *no surface occupancy stipulation or other restrictive conditions.* The Governor of Montana has requested the Forest Service select a more balanced approach to the alternative selected in the draft EIS. A record of decision (RoD)is expected early this fall.

Cost Recovery and Eco-royalty Relief

The Department of the Interior Solicitor has issued a memorandum opinion on BLM's mandate for recovery of agency costs associated with permissive uses of public lands, specifically minerals development. Cost recovery is the method by which the Federal Government establishes fees with respect to transactions involving the public lands to recover the reasonable processing costs of services. A recent speech given by a Solicitor's office representative to a BLM workshop compared the cost recovery initiative to that of owning, licensing and driving a car. The analogy recognized that if you follow all the requirements and pay the fees for registering, inspecting and licensing a car, then government sanctions your activity, i.e. *you get to drive your car*! However, this facile comparison fails to recognize the common practice of industry paying fees and costs associated with environmental studies, then facing uncertainty and inordinate delays for oil and gas leases and permits, not to mention the proportion of projects that are denied. Would the public accept such treatment from automobile insurers and state governments if the analogy to minerals permitting cost recovery were exact? Clearly, not, *with the possible exception of long suffering residents of the District of Columbia who have become used to inordinate delays and ineffective government.* Does the cost recovery formula consider the current practice whereby industry pays for the costly studies associated with the EIS or EA? The oil and gas industry should expect to pay their fair share of these costs for the right to lease, explore and develop public lands, and shouldn't the Federal Government be expected to provide a fair and cost effective regulatory process for the industry to participate?

The "eco-credits" royalty relief proposal grew out of recommendations from the Green River Basin Advisory Council (GRBAC), established by Secretary Babbitt to study ways to develop southwestern Wyoming and Northwestern Colorado's natural gas potential while protecting the environment. The GRBAC was a 17-member panel including representatives from the county governments, oil and gas industry, state and Federal resource agencies, and the environmental community. Although initially criticized as "another layer of bureaucracy" by some, the GRBAC idea eventually was embraced by representatives from all facets of the debate.

Upon completion of the project in February of this year, three recommendations were forwarded to Secretary Babitt including the eco-royalty relief, or eco-credit, proposal with unanimous baby the panel (as was required by its charter for "consensus"). The proposal would allow an oil and gas operator a royalty credit against previous expenditures for certain environmental studies which are the responsibility of the Federal agency (as per NEPA), monitoring studies and mitigation measures that go beyond "standard operating procedures."

The GRBAC saw this initiative as one that would promote environmental protection yet allow operators to recoup some costs which industry believes to be extraordinary to rational NEPA compliance. The GRBAC transmittal letter to Secretary Babbitt stated:

> "In particular, eco-royalty relief is critical to the success of the NEPA streamlining recommendations and the successful mitigation of potential impacts, whether they be direct, indirect, or cumulative."

Conclusion

The Subcommittee on Energy & Mineral Resources will take testimony in Casper from representatives of all sides in the oil and gas development "equation." Oversight of BLM/USFS policy in this area is a principal function of the Subcommittee, which may ripen into legislative initiatives to balance Federal Government land management policies with respect to mineral development with non-mineral uses, and thereby potentially reverse the trend of investment capital leaving our onshore public lands for more favorable business climates.

Mrs. CUBIN. Let me remind the witnesses that, under our Committee rules, they must limit their oral arguments to 5 minutes, but that their entire statement will appear in the record. We will also allow the entire panel to testify, before questioning any of the witnesses.

Now I will introduce our first panel of witnesses. Mr. Al Pierson—thank you, Al, for being here—the State Director, the Bureau of Land Management for Wyoming; Mr. Robert Abbey, Acting State Director, Bureau of Land Management for Colorado; Ms. Gloria Flora, Supervisor of Lewis and Clark National Forest, USDA, Forest Service; and Ms. Gina Guy, Department of the Interior Regional Solicitor.

Again, I would like to swear in the witnesses. If these witnesses would please rise and raise your right hands, we'll do it panel by panel.

[Witnesses sworn.]

Mrs. CUBIN. Then we will just go right into the testimony. And Mr. Pierson, if you'd start for us today.

I have to tell you, I know there are only two microphones, and you have to talk right straight into them or you can't be heard.

STATEMENT OF ALAN PIERSON, STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, WYOMING

Mr. PIERSON. OK. Good morning, Madam Chairman.

I appreciate the opportunity to come before you today to discuss the Bureau of Land Management's role in Federal resource management in Wyoming.

We have made a number of significant accomplishments and have many projects and initiatives in progress which reflect our commitment to an open and cooperative process.

Within the State of Wyoming, the BLM manages 18.4 million acres of public lands. Of that, 17.9 million acres are available for oil and gas leasing and about 8 million acres are currently under lease. We also manage an additional 11 million acres of subsurface estate where we do not have jurisdiction over the surface.

Since the earliest days, our government has recognized that public lands should be managed for the local, as well as the national, interest. Statutes have created a balance so that revenues from public lands in Wyoming are shared with the State. Wyoming communities benefit from this arrangement. Each year, Federal mineral revenues amount to about $500 million from the public lands. Almost $250 million of these revenues go directly to the State to fund a number of its programs.

Our most recent oil and gas lease sale, held on June 3rd, resulted in $5.1 million in receipts with almost 85 percent of the tracts being sold. This suggests that our decision, in August of a year ago, to offer only tracts nominated by industry is paying off. Generally, the buyers nominate desirable tracts for inclusion in the sale. This process helps us reduce the number of properties that get offered repeatedly but not bid on.

BLM Wyoming is responsible for administering oil and gas minerals management laws on all federally owned minerals in Wyoming and Nebraska. Major operational responsibilities on Federal and Indian lands include processing Applications for Permits to Drill, unit agreements, and suspensions of operations and production, and so forth. We are also responsible for drainage protection and enforcement, inspection and enforcement of oil and gas operational and reclamation activities, and production accountability.

BLM-Wyoming is first in the Nation in generating Federal onshore oil production and royalty revenues. We are second only to New Mexico in natural gas production and gas royalty revenues received from the Federal onshore minerals. Southwest Wyoming is one of the leading gas producing regions in the United States.

The following information, current as of the end of this last fiscal year, provides the status of wells and completions on Federal and Indian lands in Wyoming, and outstanding unit and communitization agreements.

In the interest of brevity, Madam Chairman, I believe I'll just skip the table. It's in tabular form.

Mrs. CUBIN. Sure.

Mr. PIERSON. In addition to our operational responsibilities in developing mineral resources, we are also charged with, or share with other Federal agencies, the charge of protecting other resources. This is part of an overall process which begins with a Resource Management Plan. Our planning system is designed for multiple use and sustained yield and is tiered from general guidance to site specific elements. With the help of other Federal agencies, State and local governments and the public, we prepare plans for the overall land use and resource management in an entire resource area. The Resource Management Plan specifies general criteria for managing such resources as riparian areas, cultural sites, wildlife

habitat, historic trails, livestock grazing, as well as minerals development on the public lands. This plan is followed by more specific activity planning which provides detailed analyses and decisions on specific sites. BLM is able to manage oil and gas development alongside other types of land uses by stipulating protective measures in the oil and gas lease document. These protective measures are developed in part during the land use planning process, which includes extensive public participation. Protective stipulations allow oil and gas development to coexist with other surface uses on the public lands.

That brings us to the subject of Cave Gulch. The Cave Gulch-Bullfrog-Waltman project area is located in Natrona County. It encompasses 25,093 acres of mixed Federal, State and private lands. Although the BLM only manages 7,375 surface acres in the area, 76 percent of the mineral estate is Federal.

Following the discovery of a rich natural gas field in the Cave Gulch Unit in 1994 by Barrett Resources, the BLM prepared an environmental assessment to address Barrett's development proposal. Based on potential environmental impacts contained in the Barrett environmental assessment, we determined that impacts were not expected to be significant; therefore, an Impact Statement would not be required. In 1995, we issued approval for Barrett and Chevron Production Company to develop the field.

Subsequent to this initial decision, we received additional development proposals from Barrett and Chevron. Upon review, we found that the mitigation measures to protect raptors could not be carried out with the new proposals in hand.

In January 1996, we decided to reevaluate the decision to allow Barrett to develop the field because of Barrett's expanded development proposal and because of the inadequate raptor protective measures in the Barrett proposal. We determined that the analysis required an environmental impact statement to assess all of the direct and cumulative impacts from the combined Cave Gulch-Bullfrog-Waltman project area development proposals. We suspended further work on the Chevron environmental assessment, which was being prepared for the Bullfrog Unit adjacent to Cave Gulch.

Following that decision, the BLM established criteria for a moderate amount of development activities while the final EIS was being prepared. An interim agreement, involving numerous parties, including conservation groups and the affected companies, has led to some development in the interim. As of February 1st of this year, 42 gas wells have been drilled.

BLM issued the Final EIS earlier this month. Comment period ends July 20th. The Record of Decision is expected to be completed and signed no later than August 4th.

The preferred alternative in the final EIS addresses a number of issues raised in response to the draft EIS. It provides for increased natural gas production in the project area by allowing the operators to drill and develop 160—approximately 160 wells over the next 10 years, from 107 new pads and 24 existing pads, in addition to existing drilling and production operations. Any impacts to the raptor population and habitat can be effectively mitigated with artificial nest structures and buffers around those nests. As a result of a cooperative effort between the BLM, Fish and Wildlife Service

and the operators, we can immediately begin to implement these mitigative measures.

The final EIS also has an expanded socioeconomics and cumulative impacts analysis for air quality.

The total State severance tax for the 30- to 40-year life of this project is estimated to be $63 million. Total Federal mineral royalties are estimated at $116.8, half of which goes over to the State of Wyoming. In addition, the State will receive an estimated $6 million over the life of the project from mineral royalties, and the ad valorem property and production revenues from the lands for the life of the project are estimated at $76 million.

One final subject I would like to touch on is the Green River Basin Advisory Committee recommendations.

The advisory committee reached consensus on five recommendations and, in March 1997, forwarded these recommendations through the BLM to the Secretary of Interior for approval. They include road standards, NEPA streaming—streamlining, eco-royalty relief, transportation planning, and opportunities for partnership. To date, all but one of these recommendations can or are being implemented.

Eco-royalty relief is currently under review by the Department's Solicitor's Office. This recommendation would establish a 5-year pilot project for eco-royalty relief in the Greater Green River Basin. Under the pilot, producers in Wyoming would be allowed to take a royalty reduction on production of up to $4 million per year. Half of that could go toward NEPA implementation and development and half of it could go to monitoring and mitigation above and beyond the required standard operating procedures, required stipulations, or standard conditions of approval for mitigation.

Madam Chairman, I welcome the Subcommittee's continued interest in BLM programs and their effect on the State of Wyoming. I appreciate this opportunity to provide information on the activities we are involved in, and I look forward to responding to any questions that you may have.

[The prepared statement of Mr. Pierson may be found at end of hearing.]

Mrs. CUBIN. Thank you, Mr. Pierson.

Mr. Abbey?

STATEMENT OF ROBERT ABBEY, ACTING STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, COLORADO

Mr. ABBEY. Good morning.

Madam Chairman, members of the staff, I too appreciate the opportunity to discuss with you the oil and gas program for the Bureau of Land Management in the State of Colorado. I would like to give you a general overview of our program and also briefly discuss the BLM's Colorado State office policy concerning actions within non-wilderness study area lands included in the Colorado Environmental Coalition's wilderness proposal for BLM lands.

The BLM-Colorado is responsible for administering oil and gas minerals management laws on all federally owned minerals in the State. Within the State of Colorado, the BLM manages 8.3 million acres of surface and minerals and 5.3 million acres of reserved mineral estate, where we do not have jurisdiction over the surface. In

cooperation with the Forest Service, the BLM also administers mineral leasing on approximately 12.8 million acres of national forests. This totals over 26 million acres of Federal mineral estate within the State of Colorado, of which 3.3 million acres, I've been told, is currently under lease and nearly 20 million acres are available for oil and gas leasing.

During fiscal year 1996, 255 oil and gas leases, covering nearly 218,000 acres, were sold at competitive sales. This amounted to 70 percent of the offered tracts sold, generating $1.9 million in revenue. We too credit our high sale rate to the fact that we do not roll-over or re-offer dead leases. In Colorado, we offer only those lands requested by the public or where drainage either is occurring or determined likely to occur. Of the $78 million in total oil and gas revenues generated in fiscal year 1996, in accordance with the Mineral Leasing Act approximately 35 million went directly to the State of Colorado.

One of BLM-Colorado's most significant accomplishments during 1996 involved streamlining the way we process operating rights transfers. These transfers allow the holder of the lease to enter the lands and conduct oil and gas operations. In May 1996, BLM-Colorado had an 18-month backlog in processing these transfers. We developed new, streamlined procedures, which remain consistent with the requirements of the Mineral Leasing Act and national BLM policy, that allowed us to eliminate this backlog within 6 weeks, greatly improving our customer service.

We have also entered into Memorandums of Understanding with the Colorado Oil and Gas Conservation Commission relative to hearings and spacing and are currently looking at ways to apply the State's Orphan Well Fund to wells on public lands. We look forward to continuing our joint efforts to become more efficient and effective.

Congresswoman Cubin, if I could, I've provided information summarizing oil and gas activities on Federal lands in the State of Colorado as part of the record. I'm going to forego restating those facts at this point in time and move on.

If I may, I'd like to briefly discuss our Office's policy regarding conservationists' proposed wilderness areas and how we're dealing with this issue in Colorado.

In 1994, the Colorado Environmental Coalition, a consortium of 47 environmental groups in Colorado, published the "Conservationists' Wilderness Proposal for BLM Lands in Colorado." The proposal recommended wilderness protection for 300,000 acres of BLM-administered lands and an additional 250,000 acres of Forest Service lands outside existing wilderness study areas. Since that time, the BLM-Colorado State office has, as a matter of practice, not offered oil and gas leases within the CEC proposed areas while a policy for handling discretionary actions within these areas was being developed.

Overall management direction for public land use is established by the BLM through the land use planning process. The Resource Management Plan, as Al pointed out, identifies which lands are appropriate and eligible for various uses and under what terms and conditions uses can take place. With regard to the management of all public lands in Colorado, including the lands proposed for wil-

derness designation by CEC, where there is substantial public concern that a discretionary action could harm a resource value that may not have been sufficiently analyzed in this plan, the BLM has the authority to postpone approving that action for a reasonable period of time to allow the issue to be resolved through the planning process.

In light of evolving changes in public land use patterns, on-the-ground conditions, and an increase of legitimate, yet conflicting, uses, we in the BLM-Colorado State Office determined that it would be prudent to take another look at the CEC proposed areas. We have, therefore, initiated a review to determine if there are roadless tracts of at least 5,000 acres, or roadless tracts contiguous to existing wilderness study areas that may require further evaluation, prior to allowing certain resource development to occur.

Attached to my testimony that I submitted to the Subcommittee is a copy of my May 19th, 1997, Instruction Memorandum, issued to managers in Colorado, entitled "Policy for the Management of Lands Described in the Colorado Environmental Coalition's Wilderness Proposal for BLM Lands." I, or my representative, provided feedback to our, Colorado's, three Resource Advisory Councils at meetings in early May to describe whatever procedures we would be following to address this issue in Colorado.

After my other cohorts up here get through with their introductory remarks, I, too, would be happy to respond to any questions you may have.

[The prepared statement of Mr. Abbey may be found at end of hearing.]

Mrs. CUBIN. Thank you.

Ms. Flora?

STATEMENT OF GLORIA FLORA, SUPERVISOR, LEWIS AND CLARK NATIONAL FOREST, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. FLORA. Thank you, Madam Chairman and members of the staff. I appreciate the opportunity to discuss the Forest Service's Northern Region oil and gas program and the draft environmental impact statement for oil and gas leasing on the Lewis and Clark National Forest.

In response to the Secretary's oil and gas resources regulation of 1990, the Forest Service developed a schedule for analyzing all areas under its jurisdiction where industry had expressed a high interest in leasing. The analyses and decisions for 90 percent of the areas which were scheduled are now complete. In 1998, environmental impact statements addressing oil and gas leasing will be completed for all high potential oil and gas areas in the Northern Region.

Thus far, EISs have been completed in North Dakota, the Little Missouri Grasslands EIS, in Montana on part of the Custer National Forest and Beaverhead National Forest. Final EISs for the Helena and Lewis and Clark National Forests will be released this fall. The Custer National Forest will complete the EIS on high potential areas in South Dakota in 1998. As a result, the Northern Region has processed 1,039 leases since 1991.

We are proud that we've been able to meet the challenge of providing oil and gas development opportunities in an environmentally sound manner. It should be noted that many of these high potential oil and gas areas also have high values for threatened and endangered species habitat, cultural resources, recreation, and water resources. Through mitigation efforts and some restrictions on leases, we've been able to lease approximately 450,000 acres, bringing in approximately $10 million in bonus bids to the United States Treasury. In addition, 5.5 billion cubic feet of gas and 3.7 million barrels of oil were produced from National Forest System lands in the Northern Region in 1996.

Specifically regarding the Lewis and Clark oil and gas program, this forest has been analyzing the opportunities for leasing for oil and gas through an EIS process that began in February 1994. The area being analyzed in this EIS encompasses some 1.86 million acres, located on the Rocky Mountain Front, north and west of Great Falls, and six isolated mountain ranges in central Montana, east and south of Great Falls.

In addition to being a high potential area for oil and gas, 21 percent of the area is congressionally designated wilderness, 9 percent is in the Montana wilderness study areas also designated by Congress, and another 3 percent has been recommended for wilderness through the forest planning process under the National Forest Management Act. Sixteen percent of the area is already leased for oil and gas, but not without controversy. For instance, the Badger-Two Medicine Area has an approved Application to Drill and a pending APD. However, leases in this area have been suspended until resolution on a traditional cultural property.

The history of oil and gas leasing on the Front is complex and heated. Minimal development has taken place on the 52 existing leases. Ten lease applications are pending because at the time of their submittal the areas were under consideration for wilderness designation by Congress. Another 19 leases involving 26.6 thousand acres have been canceled due to court order.

Issues such as protection for a traditional cultural district which may be eligible for listing on the National Register of Historic Places, protection of the grizzly bear, strongly conflicting social values, and the economics of oil and gas development where leases may require no surface occupancy stipulations are examples of some of the difficult issues affecting decisions both on existing leases and future leasing options.

Regarding the status of the Lewis and Clark Oil and Gas Leasing EIS, the draft EIS was released in August 1996 and the public comment period closed in December 1996. The preferred alternative identified in the draft EIS proposes oil and gas leasing for approximately 52 percent, nearly a million acres, of the forest. In response to the draft, the public provided 1,495 comments, and we are in the process of analyzing those comments and incorporating information provided in the comments into the final EIS. The final EIS and the Record of Decision are scheduled to be issued in August of this year.

Let me close by saying that there has been extensive involvement by individuals, environmental groups, the petroleum indus-

try, the tribes and the agencies at the Federal, State and local level in this EIS process. It has been very open and very public.

That concludes my prepared testimony, and I, too, would be pleased to answer any questions the panel might have.

[The prepared statement of Ms. Flora may be found at end of hearing.]

Mrs. CUBIN. Ms. Guy?

STATEMENT OF GINA GUY

Ms. GUY. Thank you, Madam Chairman. It's a pleasure to be here, especially to be back home in Wyoming.

I was asked to testify today in connection with the cost recovery opinion that was issued by the Office of the Solicitor in Washington, DC, having to do with the legal authorities that the BLM has relative to recovery costs for mineral processing documents. This opinion was issued on December 5, 1996, and is attached as an appendix to my opinion. It's very lengthy. So I didn't want to—certainly couldn't possibly read it in 5 minutes. But my effort would be to explain why it happened and to outline the most basic elements of that.

It was issued after BLM came to the Office of the Solicitor in response to two separate reports by the Department's Office of Inspector General, suggesting that BLM had not maximized the authorities which it had in terms of recovering the costs in connection with permit applications or processing for various types of mineral documents which would have conferred a benefit on a private person.

The theory that the government has cost recovery authority was first expressed in a statute called the Independent Offices Appropriations Act, passed in 1952, and sort of reduced to binding government policy in 1959 by an OMB Circular No. A–25, published first in 1959 and last updated in 1993. That circular provides that it is the policy of the U.S. Government that, where the government provides a service providing a benefit to an identifiable person, then the government has the authority to recover all of those costs.

The theory of that was also incorporated into the Federal Land Management Policy Act, which became effective in 1976, following extensive meetings over a period of years by the Public Land Law Review Commission.

And in FLPMA, as the acronym is called, there are what are called reasonableness factors that governed why, under what circumstances, and when the government should exercise that cost recovery authority, how they are weighed, and whether or not some, but not all, of the costs should be recovered, depending on whether, and how private the benefit is versus the public one.

The actual FLPMA reasonableness factors are the monetary value of the rights and privileges sought, exclusive of management overhead, the monetary value of the right and privileges sought by the applicant, the efficiency to government process, the public service provided as apportioned between the general public interest and the exclusive benefit of the applicant.

The law provides that BLM has the authority to recoup all of its costs. And it's a judgment call on the part of BLM, which has been

exemplified in some regulations incident to FLPMA, about how that authority should be exercised.

There's a case from the 9th Circuit that requires BLM to consider all of those factors, particularly, for example, the public versus private benefit. The BLM believes that it has the authority to exercise cost recovery authority with respect to basic FLPMA actions such as rights-of-way as well as actions under the Mineral Leasing Act.

The Office of the Solicitor, as you know, Congresswoman Cubin, is the legal advisor to the Department of the Interior. And our office will be advising BLM, as it requests, with respect to the development of the rulemaking, to incorporate some of the principles in the cost recovery opinion. But until that happens, it is just that, an opinion.

One of the things that's very important about this rulemaking action is that there will be extensive public hearings seeking public input about how that weighing exercise should happen with respect to the reasonableness factors.

Touching just for a moment on the recommendations of the Green River Basin Advisory Committee, John Leshy, the Solicitor, has asked me to explain to the Committee that the issue of the eco-royalty (eco-credits) was in the office and that he expects to issue an opinion within the next several weeks.

This concludes my formal testimony. I'd be happy to answer your questions. Thank you.

[The prepared statement of Ms. Guy may be found at end of hearing.]

Mrs. CUBIN. Thank you.

Where do you start?

Well, obviously, there are several different topics going on here. And so I think I'll just start asking you, Mr. Pierson, and just kind of go down the line.

In your testimony, you stated that the original Barrett environmental assessment for Cave Gulch was inadequate for raptor protection, and this is a quote, "mitigation measures to protect raptors could not be carried out."

Could you describe to me the difference in that proposal and the requirements for raptor protection that came out in the final EIS?

Mr. PIERSON. Yes. The proposal in the Barrett EA decision that was vacated was for artificial nest structures onsite, on the project area. The final EIS, as it is issued—and while the Record of Decision is not signed yet, the EIS is out for final review—has the establishment of artificial nest structures offsite, in a low potential development area, where the birds will have secure nesting and hunting areas, versus onsite, where a lot of development activity was—or is scheduled to occur.

Mrs. CUBIN. OK. So are the number of nests—is the number the same?

Mr. PIERSON. Actually, I think the potential numbers of sites offsite is greater. There's 40-some, I believe, which will allow us to pick and choose among those 40. The number of birds hasn't changed that need to nest out there.

What we're trying to do is find a secure nesting site where they will not be disturbed and still allow the development to occur.

Mrs. CUBIN. What I am kind of trying to get around to in this questioning is we have cost recovery on the table. Certainly, that is, at the very least, controversial. And now there was an EA that recommended this mitigation for the raptors, 2 years and some months before, and maybe three-quarters of a million dollars later, and that doesn't count lost revenues to the State, to the Federal Government, taxes for schools.

What I'm trying to get at is, is there really that much difference for the enormous cost in between, and how are we going to get this regulatory process to become more realistic so that there isn't this constant fighting and so that we don't have this enormous problem we have. I mean the difference between the EA and the recommended—the EIS seems negligible compared to the enormous cost.

Could you comment on that for me, Al?

Mr. PIERSON. I'll try. You've covered a lot of ground, but I will try.

The—one major difference in the EIS, as it is now produced, versus the original Barrett environmental assessment is the kind of decision that you can make. You can make one of two decisions with an environmental assessment, an EA, either that there is no significant impact or that you need to go on and do an EIS. You have the ability in an EIS to tradeoff some resources, to accept some significant impact, or at least the potential for some significant impact, in the EIS, where you do not in the EA.

What we found, after first—after approving the first Barrett EA, was that companies were drilling, they were learning more, the proposal was changing, and they had essentially drilled themselves right out of the ability to mitigate as they had agreed to do in the environmental assessment. Chevron was on-line to——

Mrs. CUBIN. In what way?

Mr. PIERSON. Placing wells in secure artificial nest sites.

Mrs. CUBIN. How many changes actually were proposed?

Mr. PIERSON. I don't have those numbers. But they—but the area that was originally set for mitigation sites now had wells proposed on them. And you can't very well build a well pad on a raptor nest site. It just won't work, particularly for 6 or 8 weeks in the spring, when they're nesting.

So at that point we didn't have the options that we had available to us at the time we approved the environmental assessment. The company's needs had changed, their proposal had changed, the project had grown. The companies had learned much more about the area as they drilled wells. The find was bigger than predicted and many more wells. So it was a different project at that point than what was initially approved.

Mrs. CUBIN. OK. Well, I wasn't implying that, necessarily—maybe I was, but not definitely, that an EIS shouldn't have been done. I don't think that was my point.

It just seems to me that with such a little change from the original EA to the final opinion there has to be a more effective way, there has to be a less expensive way, to do this process.

There's nobody here who wants to degrade the environment. There's nobody here that wants to cause raptors to, you know, have problems or become extinct, or even close to that.

But can you make any suggestions for the future? I mean, did we learn anything from this Cave Gulch deal at all?

Mr. PIERSON. I think we did. We spent, we, the companies, the conservation community, the county, and other interested parties, spent a lot of time trying to get ourselves on some kind of an agreement that we could all live with on this one.

Had we done that up front, we maybe would have reached the same conclusion faster.

But as you well know, Madam Chairman, the gas development production business is not an exact science. And had the BLM said no, we will not allow you to change your proposal that we approved in the EA, we're going to hold you exactly to what you said you would do, then we wouldn't have had—we wouldn't have had to go to an EIS, but it would not have helped the company in any way.

Companies, as they develop a field, they don't know exactly what they're going to need to do when they first go into it. You have to remain flexible enough to accommodate changes, based on what you learn as you drill wells. Unfortunately, in this case, the changes were great enough that we could no longer say there is no significant impact, based on the laws that we have to operate under.

Mrs. CUBIN. Speaking of the companies not knowing exactly what they're going to run into and how changes and alterations and amendments have to be made, it's my understanding that, as of September 15th of this year, approximately 120 customers that are currently serviced with dry gas from Cave Gulch will have to switch to use propane, which will, in effect, double their monthly fuel bill. This switch comes about, as I understand it, because of the increased production from Cave Gulch and the use of the current line changing to wet gas that will subsequently be processed at Douglas.

At what point in the process did the BLM hear from the producers about changes in that transportation line? And at the same time, did the BLM consider the effect on customers along this line when they were looking at the socioeconomic impact?

Mr. PIERSON. I'm not aware of that switch, Madam Chairman. If I could research that and submit it for the record, I would.

Mrs. CUBIN. I'd appreciate that.

The thing is that it bothers me. I'm concerned that—first of all, that enough emphasis wasn't put on the socioeconomic issues. And I kind of see that—as a personal opinion, I kind of see that throughout the minerals leasing and the patenting process.

Mr. PIERSON. Uh-huh.

Mrs. CUBIN. As I said, that's just an opinion. But I think that sometimes a certain segment isn't heard enough.

And I'm going to switch now to Mr. Abbey, since this kind of goes along with his point.

It's my understanding that the Colorado Environmental Coalition—is that what it is, the name of the organization there? It's my understanding that that——

Mr. ABBEY. (Nodding.)

Mrs. CUBIN. [continuing] organization was given access to the BLM data base to insert the CEC's designation of wilderness areas on BLM records. Certainly, I have never heard of any other in-

volved party having that kind of access or input. And wouldn't you consider that a rather unbalanced collection of information?

Mr. ABBEY. Madam Chairman, I guess, as far as data bases are concerned—and I'd like for you, if you could, to be a little more specific about what data base.

Certainly, the inventory information that we collected in our inventory, that was completed in 1980, is a matter of public record, and that information is available to anyone.

It is my understanding, too, that when the Colorado Environmental Coalition was involved in going back to the public lands, and going back to regarding that, is that they did have—did use that information to come back in and state that they did not believe BLM in Colorado did a very good job of inventorying public lands.

Mrs. CUBIN. Excuse me. Who was that?

Mr. ABBEY. The Colorado Environmental Coalition, when they were preparing their own wilderness evaluations.

Mrs. CUBIN. And they said they didn't do a good job?

Mr. ABBEY. That's correct.

Mrs. CUBIN. And that's when they were allowed to go to the data base?

Mr. ABBEY. If that's the data base you're questioning. They were allowed to look at our records, as well as anyone who needs that information.

Mrs. CUBIN. Were they allowed to make entries?

Mr. ABBEY. Not at all. There would be no purpose in them making entries into our earlier inventory.

Mrs. CUBIN. And maybe, Ms. Guy, you can answer this. I don't care who answers it.

Wilderness study areas were to be identified and then, according to the original law, then the Congress would act upon making some areas wilderness and others not.

Well, I think that that expired in 1991, is that right, this identification process ended in 1991? Is that right?

Ms. GUY. I believe that's pending in the Federal Court in Utah, that question of whether or not the Secretary of Agriculture, Secretary of the Interior, having the authority—on an ongoing basis, to make recommendations.

Mrs. CUBIN. So there's——

Ms. GUY. I'd be happy to respond for the record. I believe that's pending now. I have no personal knowledge of it, but what I would ask the Chairman is if I could respond on it.

Mrs. CUBIN. Yes, I'd appreciate that. Because what it seems to me has happened throughout this process is that Congress passed a law asking for wilderness study areas to be identified, at which point they would evaluate those wilderness study areas. Some would be made wilderness, and probably some wouldn't.

What has essentially happened is that all of those areas are now treated as wilderness areas. There's no activity allowed on those that is outside the area of what is allowed in a wilderness.

Mr. ABBEY. Yeah. In Colorado, the BLM completed its wilderness inventory in 1980. Subsequently, we studied those 800,000 acres that were identified as wilderness study areas to determine existing rights that were in there, conflicts in uses, other values that

would be affected by wilderness designation. And we followed up in our studies with some recommendations to the administration where we recommended——

Mrs. CUBIN. When was that?

Mr. ABBEY. That was in 1991, where we recommended to the administration 400,000 acres of the 800,000 acres that had been identified as wilderness study areas should be recommended to Congress for possible wilderness designation.

In 1993, the administration's recommendations were forwarded to Congress.

There has not been any action by Members of Congress regarding public lands in the State of Colorado. So we are required, under law, to manage all 800,000 acres of wilderness study areas under what we refer to as the Interim Management Policy, and that's to protect any existing wilderness values that may exist out there until action by Congress to either designate those acreages or to release those acreages.

Mrs. CUBIN. I think that's questionable. I don't think that you can say that as a statement of fact. I think that this is a policy that has been adopted by the Interior Department, but I don't believe that's law. Is that correct or not?

Mr. ABBEY. Well, you have——

Mrs. CUBIN. That you have to manage all 800,000 acres as wilderness areas, isn't that stretching it a bit much? Because what should happen is if Congress wanted to make a wilderness area the Congress would in fact do it.

Mr. ABBEY. You would hope. But the fact is that 800,000 acres of public lands in the State of Colorado are wilderness study areas, and so they are being managed, particularly the IMP, to protect any values that exist out there.

Now, hopefully, you can convince your—the delegation from Colorado to introduce wilderness legislation for public lands in Colorado so that we can resolve this issue once and for all.

Mrs. CUBIN. Staff just helped me clear up this question.

Mr. ABBEY. OK.

Mrs. CUBIN. You're talking about the legal wilderness study areas, not the CEC's recommendations.

Mr. ABBEY. That's correct.

Mrs. CUBIN. That's what I'm talking about.

Mr. ABBEY. OK.

Mrs. CUBIN. The CEC's recommendation.

Mr. ABBEY. The CEC's recommendation is basically—and how we're managing those is based upon guidance that was issued in 1994 by Assistant Secretary Bob Armstrong, which basically told BLM offices to pay careful and particular attention to development proposals that could limit Congress's ability to designate certain BLM areas as wilderness, even though these areas are not designated formally as wilderness study areas.

So you're absolutely correct. That is not addressed by law. That is their own policy.

Our inventory which we are conducting right now provides for a second look to ensure that the information regarding the presence or absence of wilderness characteristics in Colorado is entirely current and accurate.

The inventory also will serve the public interest because the results are going to be made public, and if any land management recommendations or decisions are made in the future regarding changing the way we're managing those CEC-proposed areas, then such actions will be subject to full public participation, in following the language of the planning process that we have in place.

So that is, in fact, an internal policy.

Mrs. CUBIN. So CEC was able to establish these areas that now nothing can take place on them.

And what if the Rocky Mountain Oil and Gas Association wanted access to your computers? Would you allow them to go in and say, OK, this and this and this has to be done and that would affect everyone, no public input, just open your mouth and take it?

Mr. ABBEY. Yeah, we're—you know, again, as far as access to our computers, they can have access to our information and data, which is public information.

The way the Colorado Environmental Coalition and the conservation interests in Colorado addressed wilderness and came up with their own proposal certainly was outside the spectrum of public involvement. And that's why we are having to go back and revisit these areas. It was our intentions to raise this flag, to bring this information to the public and use our planning process, which will certainly involve opportunities for public comment and recommendations on how these areas should be managed in the future.

Mrs. CUBIN. So here we are with a situation of extreme budgetary constraints, and the BLM has a certain mission, and it costs money to fulfill that mission. But now you are using money that is being given to fulfill that mission to redo what's already been done.

Mr. ABBEY. That was done in 1980, yes, ma'am. So it's been 17 years.

The key thing here is that we are directing funding out of our wilderness program to revisit these Colorado Environmental Coalition proposed wilderness areas. We estimate that the cost from our budget is going to be around $25,000. It's money that was normally going to be used to monitor existing wilderness study areas that we're having to direct toward this inventory of wilderness areas, or whether or not they're wilderness is what the determination will make here shortly.

We're using individuals from the public to assist us in that wilderness review. These members represent a broad spectrum of interests, from the environmental interest to the industry interest. So that is helping us offset the cost of this wilderness inventory.

Mrs. CUBIN. One thing maybe I should know, but I don't know. How did it work out that CEC was able to just go in, no input, no nothing, just get BLM to identify psuedo-wilderness study areas or whatever you want to call them? How did that happen?

Mr. ABBEY. We didn't identify these psuedo-wilderness areas. Again, this is a conservationists' proposal.

We have never sanctioned their recommendations or actually formally acknowledged the fact that these areas do possess wilderness character. That's the whole purpose for our review right now, is to go back in and determine whether or not these areas are, in fact,

wilderness and whether or not they would meet minimum wilderness criteria. As you know the conservationists' proposal for Colorado is just one groups' opinion.

Mrs. CUBIN. Is that—did this happen because Dave Alberswerth told you to do it or said that it should happen? I have a memo that seems to indicate that to me.

Mr. ABBEY. This whole issue thing kicked around since 1994, shortly after the conservationists printed their wilderness proposal for Colorado. Then State Director Bob Moore had agreed not to lease public land tracts within the conservationists' proposed wilderness until we had a policy, either from Washington or the State of Colorado, identifying how we would proceed in dealing with the conservationists' proposal.

So since 1994, we have been under the assumption that the BLM, since Colorado is not the only State where there are conservationists who hold this opinion, that the BLM overall would issue a bureau-wide policy telling us or giving us some guidance on how best to address these conservationists' proposals.

The best we got was a written memorandum in 1994 from Assistant Secretary Bob Armstrong telling us and instructing us to pay careful and particular attention to these types of proposals.

So we were told by our Washington office that we could expect a policy on how to deal with these types of issues sometime in 1996.

In November 1996, when there wasn't any bureau-wide policy and when it did not appear that there was going to be a bureau-wide policy addressing this issue, we in the Colorado State Office put out our own.

Our policy was reviewed by the Solicitor's Office in Washington; it was reviewed by the Assistant Secretary's Office, which Dave Alberswerth is a member of or a staff member of; it was reviewed by our Washington office. And based upon all their comments and suggested changes, we did finalize our policy in May, which we're using to guide our actions.

Mrs. CUBIN. And that policy is?

Mr. ABBEY. The policy that we're using is to—where we have proposals pending, that approvals that could have irreversible or irretrievable impacts within the conservationists' proposed areas, that we would go out and review these areas to determine whether or not they have wilderness character.

If we determine that these areas are, in fact, roadless and they possess wilderness character, then we would use our land use planning process to address different management prescriptions on those lands that are not currently being advocated in our current land use plans.

If we find that those areas do contain roads, then we would look at those areas to determine whether or not our current land use prescriptions for those areas are still adequate, and therefore we could use our existing land use plans to guide future management actions.

Mrs. CUBIN. So let me see if I understand.

Mr. ABBEY. OK.

Mrs. CUBIN. If it—if you go out and find out it's a roadless area, it will be treated as wilderness.

Mr. ABBEY. No, ma'am. What we would do, if we find these areas are roadless, then what we will do is use our land use planning process to do further scoping to look at other alternatives for managing these lands.

A wilderness—a designation of wilderness study area certainly is one option, but it is not the only option. We have other management prescriptions that are available to us that would protect any values that are found out there on those tracts.

And so we could take a different approach. Or we could actually just stay with our current land use plans and continue to manage those tracts under the current prescriptions.

Mrs. CUBIN. You know, it's a—it's a constant mixed message that I get. I believe, and I know it to be true, that the Congress of the United States is the only entity that can establish a wilderness.

Mr. ABBEY. That's true.

Mrs. CUBIN. I know that to be true. But it seems to me that regulators can establish what is something that is basically a wilderness area because I would say what a wilderness area is is what you can do with it, on it. So regulators establish wilderness areas and call them something else. I've seen things like this happen throughout my time that I've been in Congress. It's interesting. I'm thinking now of the eco-credits, that the Secretary just doesn't think he quite has the authority to do a pilot project.

I mean this is not at you.

Mr. ABBEY. Yeah.

Mrs. CUBIN. I know the Secretary is the Secretary.

But then a contradiction I'd like to tell you about is there were some proposed rules that were brought out just recently, in 1996. The public input was given in 1991 and put on the shelf. And there was a recommended course of action. This is for a hard rock mining, bonding.

And there was a person named Dave Alberswerth that testified on behalf of an environmental organization.

Well, Dave Alberswerth now is the guy who's going to decide—who has decided what the final regulations will be. And guess what? They're 95 percent of the testimony that he gave back in 1991. And nobody else's—I don't say nobody, but maybe 5 percent of other people's opinions are in there.

I think I see this throughout—throughout the government. And I realize that all of you have people that you work for and that there are certain things that you have to do.

But I—I think that your jobs are more than to try to find a way around the letter of the law, around the concept of the law, just to establish somebody else's agenda. I think that is one of the biggest problems that we have between the public and the government.

Back to you for a second now. As part of your discussions with the States regarding the transfer of inspection and enforcement functions, BLM and the States agree that the individual States would submit a proposal by August. Wyoming submitted their letter to take over these responsibilities and establish a single regulatory program for oil and gas on June 13th, 1997.

Can you tell us how you're going to proceed now in responding to that letter, and do you have an idea what the timetables are going to be to implement that transfer?

Mr. PIERSON. Yes. I do intend to respond to the letter. The letter is not a proposal. We've had numerous discussions and some correspondence with the State Oil and Gas Commission. This—the letter that you're referring to I recently received is, again, a statement about—kind of a position statement. I don't have a proposal in hand to evaluate in terms of costs or effectiveness or standards that would be applied or any of that. And it would be real helpful if I had something like that to evaluate.

The idea of transferring the inspection and enforcement responsibilities has been with the Bureau and with the State since the passage of the Federal Oil and Gas Royalty Management Act. And I believe in that, too. This was discussion—that's what was offered a year and a half ago. That's been expanded greatly by some States in terms of desiring to take on the responsibilities, at least operations responsibilities, far beyond inspection and enforcement. So we need to get past that.

And then I need to see a proposal that deals with how enforcement and inspection would be taken on, are there cost savings, how will it be paid for, will it meet the standards, including independent production verification. That has been a big issue. And the primary reason that the Bureau has a rigid, stringent IME program now is to ensure that the Federal royalties are reported properly and collected properly. There needs to be an element in there dealing with environmental surface protection. I've not seen anything in that, in the proposal except, I believe, a statement saying they were not interested in it.

And I need to see some specifics. I stand ready to do that. Just haven't seen it, Madam Chairman.

Mrs. CUBIN. I think a huge part of the problem with Cave Gulch was a result of poor communication. And so I implore you, please, don't let that happen with this particular issue. Even if you think it shouldn't be your responsibility to call and say, hey, I don't have this yet, maybe it would be nice if you did. And I'll ask the same of Jim Magagna.

Mr. PIERSON. That would be good because those calls have been made and we're ready to sit down and talk with him. There's just, at this point, not a proposal to evaluate.

Mrs. CUBIN. We had a hearing of this Subcommittee on March 4th where BLM Assistant Director Ward Tipton testified. And then in a followup letter on April the 9th, I asked him if he would provide the State of Wyoming numbers that the State had been requesting for some time, quite some time, on how BLM spends its money to carry out its oil and gas program in Wyoming.

And what I specifically asked for was Wyoming's contribution to the net receipts sharing cost. That's been 3 months, and we still have no reply.

Mr. PIERSON. Yeah. That was requested of our Washington office?

Mrs. CUBIN. It was requested of Ward Tipton, yes, twice.

Mr. PIERSON. And it's a——

Mrs. CUBIN. At a March 4th hearing and then a reminder on April 9th. And certainly that will help the State be able to get the information to you that you need.

Another question that I submitted to the BLM on April 9th concerns the Green River Advisory Committee precedent. Are there other advisory committees working now? Do you know?

Mr. PIERSON. None that I'm aware of at this point. And the Green River Basin Committee has—the charter has expired. It was chartered for one year, and they did complete their work timely.

Mrs. CUBIN. Do you have plans to establish any more committees?

Mr. PIERSON. I'm not aware of any at this point.

Mrs. CUBIN. Give me your opinion of the whole process, the results, and just the whole process.

Mr. PIERSON. Of the Green River Basin?

Mrs. CUBIN. Right.

Mr. PIERSON. I, as you probably know, was very skeptical of that committee, going in.

Mrs. CUBIN. We both were, for different reasons.

Mr. PIERSON. I was asked for my advice. I gave it. And the decision was made to go ahead with it. And at that point it became my job to make it happen, and we did that.

The first meeting, as you may recall, there were some 1,200 people that attended that meeting, and most of them were angry. They felt like there was not a process in place for them to participate in discussions about gas development in southwest Wyoming and other impacts that were occurring nor to be a part of it. People, service companies in particular, were unemployed. There was a lot of misinformation around. There was some truth in that the gas drilling was slowing down and the NEPA process and the appeals and all this other stuff was going to result in the shutdown of drilling and oil and gas activity in southwest Wyoming.

So that was the purpose of the advisory committee, to see if we could sit down as Federal, State, local, private landowners, environmental groups, industry, and try to—try to sort out among the various interests in the two States a course of action or some recommendations that could help us get on with some development in a environmentally responsible way, that people could agree to.

Over the course of 12 months, I believe we had nine or ten meetings. The first one was very contentious, went on forever with public comment. People were sort of staking out their positions. And you know how all of that works.

Mrs. CUBIN. I do.

Mr. PIERSON. At the end of the process, we had arrived at five recommendations that we had consensus on. There were about 20 people that attended the last meeting, and I believe three wanted to speak. And they all spoke very much in favor of the work that had been done and the process that had been used, versus at the first meeting a lot of people spoke. I can't even remember how many. And they, almost by the numbers, were opposed to even trying this process.

So in that respect, I think it was very successful. It concluded with five recommendations, four of which are underway right now. And the fifth is the eco-royalty relief issue. That remains under review in the Secretary's office, and I don't know where it's going to come out.

But I think we did learn that people meaning well, but having very much different opinions about how things should be done, can work together. And given that this was chartered for one year and it didn't go on forever, I'd say it was a success, a very big success.

Mrs. CUBIN. Well, and certainly, I think that four of the five recommendations are going to be—or are being implemented speaks well for the process.

Frankly, I—never mind.

Ms. Flora, I know that you have an early flight to catch.

Ms. FLORA. Well, I think I'm probably too late for that. So let's just take our time.

Mrs. CUBIN. When I read the background information on Lewis and Clark National Forest, the bottom line appears to me to be that the Forest Service has concluded that oil and gas development is in conflict with all other resources.

Why don't you believe that these alleged conflicts can be mitigated and that there can be some development?

Ms. FLORA. Well, I don't share your conclusion, but I'll attempt to answer your concern.

We have spent many years, not just in working on this EIS, but also on various oil and gas issues across the forest. We have conducted very public and open processes, as well as using the best resource information available and the best resource information that we could obtain from the oil and gas industry.

In conclusion, when we look at the resource issues and we look at the socioeconomic issues involved, we have put forth a proposal that we feel is most responsive to the concerns that have been expressed and will result in the capability to develop this. As I said in my earlier testimony, over 50 percent of the forest would be open for leasing and potential development.

I don't think that that speaks to or supports the conclusion that we find that oil and gas exploration development is in conflict with all resources and not possible.

Mrs. CUBIN. What I'm fumbling for are my notes on exactly how much of the forest is to be used for different things.

Ms. FLORA. If you pause, I'll fumble for mine.

Mrs. CUBIN. OK. I think I found this.

OK. Let's see. OK. The draft EIS analyzes 1,862,453 acres of which 610,634 are legally unavailable due to their classification of wilderness, or wilderness study areas. This leaves about 1.2 million acres subject to review for oil and gas leasing. And the Forest Service's preferred alternative makes 60 percent of this area either administratively unavailable for leasing or unavailable for surface occupancy, while the remaining 40 percent is subject to severely restricted stipulations.

So in practical terms, the preferred alternative allows for oil and gas leasing on an extremely limited area containing a high potential for discovery, one-mile corridors along existing roads in certain basins and one-mile no surface occupancy stip along the eastern boundary of the Rocky Mountain National Forest, and that's out of 1.8 million—over 1.8 million acres.

Ms. FLORA. That's—the figures that you were just using, as far as describing the preferred alternative, is focusing on the Rocky

Mountain front. We're looking at the entire forest. The figures that you mention as far as acreage——

Mrs. CUBIN. Excuse me for a second. I need to respond to your first statement.

But the area that I'm referring to is where the high potential production is, and the rest of the forest has a much, much lower potential for production.

Ms. FLORA. That's correct.

Mrs. CUBIN. So I think that bears out my point, that this is one of those things that, you know, call something—decide what something is, and then call it something different, and people won't know that it's the same.

Ms. FLORA. I hardly think people are that easily fooled.

Mrs. CUBIN. Well, nor do I. But nonetheless, your statement that, what was it, 60 percent is there for production, or possible production, I mean it just simply isn't true when you consider where the high potential for production is.

Ms. FLORA. Well, I don't think it's a fact that it's not true. If we're talking about high potential areas, then we can't talk about the whole forest; we're talking about the Rocky Mountain front. If we're talking about the whole forest we can talk about the whole forest.

Mrs. CUBIN. If I—well, we don't need to—obviously, we agree to disagree about this.

However, if I have a yard and half of it is full of flowers and the other half has two flowers in it and I can't pick any flowers from the big side, you can't expect me to get a good bouquet. That's basically what we have here, the potential for production is extremely limited by the decisions that are being made.

And maybe you can't answer this question, since we aren't operating off the same foundation. But how do you—how do you explain fulfilling your mandate of multiple use when—and your obligation of producing the minerals to the best extent possible—how do you explain that you're doing that?

Ms. FLORA. Well, the multiple use mandate is really quite well crafted, and it's quite well stated, not only in the Multiple Use Sustained Act, but also the Federal Land Policy Act.

Mrs. CUBIN. I'm talking about what you do as opposed to what you're supposed to do.

Ms. FLORA. I thought I was doing what I was supposed to do.

The multiple use concept is that you attempt to provide the most beneficial uses possible to the widest range of people possible over a very large scale of land, but not to the point such that you cannot make different choices as conditions change, and also for present and for future generations. So in implementing that multiple use policy and the plethora of laws that accompany it, one also needs to balance what the public has to say about the situation.

In the case of the oil and gas EIS, as you know, we have received about 1,500 comments. Eighty percent of those supported less development than in the preferred alternative. Ten percent supported—didn't specify a level of development, just expressed specific concerns about certain resources. And 10 percent supported greater development.

Mrs. CUBIN. How do you treat public input where you have a certain organization mobilized and they all send in the same postcard with their names signed or the same letter with their names signed? Do those all have equal weight in decisionmaking with letters that are written by people from varying backgrounds and varying interests?

Ms. FLORA. No, we segregate those comments out. What we look at, when we're analyzing the comments—you know, it's not a voting contest. We're not counting up votes and whoever gets the most wins.

When we do our comment analysis, we segregate those signatures that have arrived on a petition, and we also segregate out those letters that are either on a preprinted form or they obviously use language that is very structured and follows solicitation letters that organizations and industries have sent out, so we know exactly how many comments have—or how many of those numbers of the 1,500 have been identified in the petition format or what we call an organized letter writing campaign. It was a very small percentage, and there were petitions and letter campaigns on both sides of the issue.

But the majority of comments received—and I'm sorry, I don't have the figures with me. But the majority of comments received were from individuals or on letterhead of some nature that were substantive personalized comments.

Mrs. CUBIN. So the 1,500 that you were talking about did or did not include the names on petitions?

Ms. FLORA. It does include that, but I would say we had about 300 names on petitions and organized letters on both sides of the fence.

Mrs. CUBIN. None of those are important?

Ms. FLORA. No. You get a sense of where people are coming from, if you will, but it does perhaps indicate that those persons have not spent a great deal of time in analyzing the issues themselves.

Mrs. CUBIN. What is the Forest Service's response to Governor Racicot in his request for a more balanced alternative? He certainly, in all the statements that's he's made, publicly and privately, feels that—that mineral development has taken the real short end of the stick there in Montana. So how have you responded to him, and do you intend to do anything?

Ms. FLORA. We have not responded to his comments individually. What we have done are taken his comments and segregated them out in development of the responses in the final EIS. And so each issue that he raised is similar to other comments, and we're grouping those comments and responding to each particular comment and point individually.

Mrs. CUBIN. So does a Governor, for example, have—do you weigh his testimony or her testimony heavier than someone else, or is it just in the mix? And I don't have any opinion what's right.

Ms. FLORA. Yeah, and that's a different question. We do try—we do recognize that the Governor represents, certainly, a majority of the people in the State who bothered to vote and put that Governor in position. And the—also, the Governor's letter attempted to incorporate responses from various agencies, State agencies, although it did not include all State agencies. So we recognize that it's a broad-

er scope and that there are certainly vested interests and concerns and a great wealth of knowledge behind that.

So besides, a letter from Bob P. Jones, public at large, versus a letter from the Governor, we certainly put a lot more weight on the letter from the Governor.

Mrs. CUBIN. Because some of the elected officials, Congressman Rick Hill from Montana and Governor Racicot, and maybe other folks from Montana who would like to know more information about this, I'm sure we're going to have another hearing on the Lewis and Clark National Forest situation. So I don't need to ask you any more questions.

What time did you say your plane left?

Ms. FLORA. It leaves at noon.

Mrs. CUBIN. I think you can make it.

Ms. FLORA. If my cab can get me and my luggage together in the same place, I possibly can.

Mrs. CUBIN. Well, you know, if I had a staffer around here that could take you out there, that would be all right.

Ms. FLORA. You bet.

Mrs. CUBIN. Is anybody here? OK. Yeah.

Ms. FLORA. Great. I thank you very much, and certainly would welcome any more questions. It's a most interesting subject and, as I say, been going on for decades, not just during the duration of this EIS process.

Mrs. CUBIN. That's certainly correct. And if we have any further questions, we'll submit them in writing.

Ms. FLORA. Thank you.

Mrs. CUBIN. So if you hurry——

Ms. FLORA. Well, I always love an adrenaline rush.

Mrs. CUBIN. By the way, I just wanted you to remember your plane runs on petroleum products.

[Laughter and applause.]

Mrs. CUBIN. I have all these different testimonies and questions. And a lot of them—I don't want to drag this on forever, but if I get some of this out of the way, I can get organized.

Mr. Pierson, I just want to go back, just for a minute, to the decision to do the environmental impact statement, as well as the environment assessment.

Are there documents—was this just decided verbally? Are there documents that are available that you could send us about that decision?

Mr. PIERSON. Sure. Those would be in our Casper district office here. I could either supply them through your office here or——

Mrs. CUBIN. That would be fine.

Mr. PIERSON. OK. Yes, there were documents. There were a lot of meetings occurring at the time with companies and everybody else.

Mrs. CUBIN. I have to ask you this for the Natrona County commissioners. And of course, this goes to local input for socioeconomic issues. And the decision was made that the county commissioners could not have cooperating agency status.

Mr. PIERSON. Uh-huh.

Mrs. CUBIN. Would you just give me an explanation of that?

Mr. PIERSON. Sure. Cooperating agency status is granted to an agency, usually a Federal agency, who has—who has jurisdiction. An example of that is—or could be a State agency in the case of our DEQ, for example, where OSM delegates authority to DEQ to manage mining and reclamation.

Mrs. CUBIN. So who determines that jurisdiction?

Mr. PIERSON. Usually by law. For example, the State has primacy in air quality. It comes from the EPA—the President to the EPA to the State. Same is true with water quality, with water rights, those kinds of things.

In the case of Natrona County and their request to become a cooperating agency, it implies that there is decisionmaking authority and that the county would have to concur with and actually make the same decision that BLM arrives at on public lands. It simply was not the case.

Mrs. CUBIN. Would you repeat that for me?

Mr. PIERSON. Would imply some decisionmaking authority over the decisions that were made in Cave Gulch, that is whether we're going to mitigate for raptors, whether we're going to comply with the National Environment Policy Act, as opposed to where they do have—where they do have jurisdiction, and that is over health and law enforcement in the county, any work permits, licenses that would be required.

Mrs. CUBIN. They wouldn't—they wouldn't have an opinion on whether or not you were going to comply with NEPA?

Mr. PIERSON. Certainly have an opinion whether we should mitigate for raptors or not and what that might cost and what birds are worth. That's all important information, but it doesn't have anything to do with complying with the Federal law that we have to comply with.

Mrs. CUBIN. OK. I want to understand this a little bit. When you have your team and, you know, I assume there are—there are some different folks that have cooperating agency status, is every decision to be unanimous? I mean it wouldn't be OK for them to disagree and still have the process move on? I just don't understand the exclusion.

Mr. PIERSON. The difference is jurisdiction and signing the record of decision. Yes, you have to have——

Mrs. CUBIN. OK, jurisdiction. Explain that to me.

Mr. PIERSON. The question—the question here in this case was does the county have the authority or jurisdiction to make the decisions in Cave Gulch on Federal minerals.

Mrs. CUBIN. That implies that the county would be the only one making the decision, and that's not what cooperating agency status is.

So tell me frankly, nuts and bolts, real specific reasons that they could not have cooperating agency status.

Mr. PIERSON. For the reasons I just described. The county would need to have signed the Record of Decision, that they—and become a signatory to the EIS.

Mrs. CUBIN. They never had the opportunity for that.

Mr. PIERSON. That's right.

Mrs. CUBIN. So how do you know they wouldn't?

Mr. PIERSON. Because——

Mrs. CUBIN. So you're saying, well, you can't do it because you can't do it.

Mr. PIERSON. Because there's no jurisdiction there.

Mrs. CUBIN. That's what I'm asking.

Mr. PIERSON. Right.

Mrs. CUBIN. Explain what that is to me.

Mr. PIERSON. Does the county have decisionmaking authority on Federal resources on Federal lands, that's the real decision.

Mrs. CUBIN. The county has the expertise that is absolutely essential——

Mr. PIERSON. I don't think anybody questions that.

Mrs. CUBIN. [continuing] for producing a good document.

Mr. PIERSON. Do they?

Mrs. CUBIN. Of course, they do.

Tell me why they don't, Al. Tell me why they don't. Tell me what you—what you just said was they couldn't have cooperating agency status because they wouldn't agree to the final document, they wouldn't sign it. Well, they didn't have the opportunity to sign it. So that isn't a good reason.

Mr. PIERSON. I didn't jump to the conclusion that they wouldn't sign it. I just said they do not have jurisdiction and couldn't sign it.

Mrs. CUBIN. Well, that's what I want you to explain to me. I want you to tell me exactly why they don't have jurisdiction.

Mr. PIERSON. Because they do not have management jurisdiction over Federal resources, just because they happen to fall within a certain county. That is the responsibility of the Secretary of the Interior in this case and on down to the Bureau of Land Management.

Mrs. CUBIN. List some cooperating agencies, some entities that have cooperating agency status.

Mr. PIERSON. Oh, Bureau of Reclamation over in the Fontenelle EIS.

Mrs. CUBIN. And do they have anything to do with the mineral resources of this country?

Mr. PIERSON. They manage the surface of part of the Fontenelle EIS area and yes, they do, they make the decisions on what's available for lease. We just lease it for them. We just provide the service—provide the service of lease operations once it is leased. Yes, that is Federal land withdrawn to the Bureau of Reclamation for reclamation purposes. So they have management responsibility on that land.

Mrs. CUBIN. Go on.

Mr. PIERSON. The U.S. Forest Service on the grasslands where we develop coal and oil and gas.

Mrs. CUBIN. OK. Let's shorten this, because I know this.

Is there any entity ever that has not been a Federal Government agency or subagency or something that has had cooperating agency status?

Mr. PIERSON. Yeah. I think Wyoming DEQ on mining and reclamation has it.

Mrs. CUBIN. And what is their authority over Federal minerals?

Mr. PIERSON. Their authority is delegated through the Office of Surface Mining to the State, with the recognized State—they are

a recognized regulatory agent to administer subsurface mining and control on the Reclamation Act. They have primacy, for example, in reclamation plans and mining plans. They are the approval authority in that instance.

Mrs. CUBIN. So since the expertise of the county commissioners would be socioeconomic factors, it seems to me that, just by definition, those socioeconomic factors don't have the same weight that the other aspects have.

Mr. PIERSON. No, I don't think that's the case. The difference is the BLM doesn't manage the socioeconomics. We certainly have an impact on it. And that's why we went to——

Mrs. CUBIN. What do you mean they don't?

Mr. PIERSON. We don't manage the socioeconomics.

Mrs. CUBIN. No, you don't manage it. Do you consider it?

Mr. PIERSON. Certainly, we do.

Mrs. CUBIN. How much? Heavily?

Mr. PIERSON. We went to great lengths in the Cave Gulch EIS to include the county in that part of the analysis, to use every piece of information that they chose to provide to us, to verify it, just like we do every other piece of information coming from anyplace else, and to expand greatly the socioeconomic section in that EIS. I referred to it in my testimony.

Mrs. CUBIN. I don't think they would feel they had a lot of input. But you know what this reminds me of? The blind people that are told to describe an elephant, and they're at different ends. That's what this reminds me of. I guess it's a perspective that, as government officials, we have to be as inclusive as possible. I can't see—I can't understand the reason that that status was denied.

Mr. PIERSON. Well, I believe I have explained that. We researched that. We asked our solicitors to provide us help on it. And it basically boils down to the county not having jurisdiction in the decisions that were to be made in the EIS.

Now, that does not—that does not relieve us or the county of our responsibilities to cooperate, to be a part of the process all the way through. And in those cases that really do have an impact and the county has good information to provide into their analysis, such as socioeconomic, it is—regardless of what you call it, you still have to have it in there, and the cooperation is necessary, desirable, and I believe was here on Cave Gulch.

Mrs. CUBIN. OK. I want to talk a little bit about cost recovery. And certainly, this is probably one of the most controversial things we're going to be dealing with.

Is the Department of Interior now drafting regulations for cost recovery?

Ms. GUY. I don't believe so, but I need to verify that. If so, it would be done in Washington, that the Solicitor's Office would not be involved unless the BLM regulations staff had specific questions. And ordinarily, they don't review it until the whole thing is done.

Mrs. CUBIN. So you don't know?

Ms. GUY. Yes, that's correct, but I will attempt to respond.

Mrs. CUBIN. Would you do that?

And also I'd appreciate it if you could furnish a timetable for me as to when those proposals might come out.

If administrative costs are currently deducted from royalties collected on Federal lands, would it be a duplicate charge by them assessing industry for minerals document processing?

Ms. GUY. I guess I—the answer is I don't know what you mean by administrative costs versus document processing. But it's possible that they would be the same thing.

Mrs. CUBIN. I think they're paying administrative costs right now, and then—then document processing on top of that would be—would be——

Ms. GUY. This would all be addressed in whatever rulemaking emerges.

Mrs. CUBIN. And you don't have any idea of any of the proposed services that will be assessed charges?

Ms. GUY. No, I don't, Madam Chairman, because the Solicitor's opinion was requested by BLM in a way to give it a lot of options, where the Office believed that it had authority to proceed. But it's up to BLM to choose how it wants to go. And the BLM would be the agency to make that decision about what sorts of things it wanted to include. And then there would be the notice and comment period and ask for the public to provide input on those factors, how it should weigh the reasonableness factors. The courts have said that the BLM has to include all the factors. But how those are weighed is something that would be initiated to be considered in the rulemaking process.

Mrs. CUBIN. I can see how this cost recovery might become very difficult for the BLM because I should think the people who pay the money would expect a good return. They would expect more because they're paying more. And I think they rightfully ought to be able to expect that.

I have observed personally, and I have been told with documentation, of circumstances where, frankly, industry's money has just been poured down a rat hole. It has been wasted in terms of time, in terms of delays in being able to start your project. And because I don't want to embarrass anybody here today, some of them are pretty egregious.

When money is handled that way, on the EAs and on the EISs, why—why would the government think that they could ask for more money when they don't even handle the money that they—well, that is spent on their function, that they don't even handle that well?

Ms. GUY. Madam Chairman, all the Solicitor's opinion says is they have the authority. What the agency does with it, that authority, is really a question I'd have to defer to BLM.

Mrs. CUBIN. So basically, I guess we're not going to get any more information today about cost recovery, other than the fact that the Solicitor says that it's OK for the government to assess costs.

Ms. GUY. If the criteria set out in the Independent Offices Appropriation Act, the OMB circular are met, along with those in FLMPA (if aplicable). If a private individual is receiving a benefit not available to the general public, the policy is that the government may recover those costs. And the IOAA indicated that, to the extent possible, such service provided is to be self-sustaining. But you'll also recall that one of the FLPMA reasonableness factors is

efficiency of government process. This speaks to that, whether it's BLM or some other government agency.

Mrs. CUBIN. Then the remedy for that—if one of the businesses didn't think that their money was being handled responsibly, then the remedy would be go to Court?

Ms. GUY. They could proceed to administrative challenge or negotiation.

Mrs. CUBIN. So spend more money on top of that. So the remedy might be worse than the illness.

Ms. GUY. Maybe not.

Mrs. CUBIN. You have a comment?

Mr. ABBEY. If I may, Madam Chairman, your comment regarding cost recovery is certainly on the mark.

A proponent who is paying the bill deserves a quality document in a timely manner. The cost recovery program as administered by the BLM is subject to audit. If a company believes that they're contributing funding to a particular product and they're not getting quality service and sort of inefficient service, then our records are subject to being audited to determine how we had to use that money. So that's already available to the company or to the proponent.

Mrs. CUBIN. I've seriously considered, as chairman of this Subcommittee, asking the GAO for an audit on the permitting access to public lands. I don't know how soon that will be able to be done; however, I think it's something that the truth—the facts need to be brought out into the light of day so that—you know, by an unbiased agency, so that we have a better idea of exactly what is going on because the perception is sure there that this administration has an agenda for the public lands that doesn't necessarily coincide with what the laws for public lands say.

I want to ask one question about the net sharing receipts formula that is in the law. I think it says that the States pay one-fourth of the total of the bill and Forest Service and MMS costs for onshore mineral leasing. Do you have any idea how that would affect the States?

Ms. GUY. I do not, depending on what BLM proposes.

Mrs. CUBIN. Well, what I would really appreciate a lot is if you could get the answer for me soon as to whether or not rules and regulations are being drafted and, if they are, what that timetable is.

Ms. GUY. Certainly.

Mrs. CUBIN. Do either of you know?

Mr. PIERSON. I believe late 1997 is when we expect to have the regulations out for public review.

Mrs. CUBIN. I didn't hear what you said.

Mr. PIERSON. I said I believe that late 1997 is when the regulations are due to come out for public review.

Mrs. CUBIN. So they are being drafted; right?

Mr. PIERSON. So far as I know. They're probably in the very early stages of being drafted.

Mrs. CUBIN. OK. Thank you.

I don't have any further questions. Thank you very much. I appreciate your patience.

If the second panel would please come forward.

If you wouldn't mind standing, I'll give you the oath.

[Witnesses sworn.]

Mrs. CUBIN. And Mr. Basko, I understand this is your very last day of work. And I—I mean of full-time work. And I just want to thank you so sincerely for the years of service that you have blessed the State of Wyoming with. You truly are one of the stalwarts in this industry and in this State. And you are a person that I am proud to know professionally and personally. And I think this beautiful building is the least we could do, to name it after you, for all the work you have done.

I know you're going to work half time for 6 months or so. But I just hope you will hang around for a long time because we still need—we need your brain, and we need your good common sense.

So if you will start the second panel testimony.

STATEMENT OF DONALD BASKO, SUPERVISOR, OIL AND GAS CONSERVATION COMMISSION

Mr. BASKO. Thank you, Madam Chairman.

You've already covered some of what I was going to say, but I'll read it to you one more time.

My name is Donald Basko, the supervisor of the Wyoming Oil and Gas Commission. I have been employed with the Commission for the last 37 and a quarter years. Today is my last day of full-time employment; however, the Commission was kind enough to give me a contract for six more months at half time.

I wish to touch on three concerns: The first, the assumption of enforcement and inspection responsibilities from BLM; the Cave Gulch EIS, specifically, and statewide delays of opportunities to drill caused by the general EIS process; and third, the recent field inspections of oilfield inspections by Wyoming—or the U.S. Fish and Wildlife Service and EPA, particularly the detailed checklist and the high-handed attitude of the Fifth Team from the Criminal Investigation Group, and the misleading purpose of those inspections.

For several years now, the States have been negotiating with BLM regarding the takeover of enforcement and inspection responsibilities. In my view, in spite of the face-to-face meetings, very little progress has been made. The problem has been that at least Wyoming is unwilling to replicate the activities of the BLM. Site security is a particular concern.

There are also a number of other unresolved issues the State—between the State and BLM. I have attached a copy of the letter—of my letter of June 13, 1997, which was referenced earlier, to Mr. Al Pierson with BLM because it sets out some of the provisions I feel should be a part of the agreement. This letter was prompted by a request from BLM to respond by August 1st of 1997. In essence, I believe that there should be one program, that the State is not interested in the NEPA process, that savings in running the program should result in lower administrative costs to the State, and that reimbursement for running the program should become—should come from the royalties stream.

Further, our program of regulations is a good one. At some point we would consider taking over the Application for Permit to Drill,

and realizing that this may not be feasible without a change in the law, we stand ready to support that legislation.

Finally, I am still waiting for a detailed breakdown of the cost to BLM for E and I in Wyoming. I feel that this is a requirement, so we can see where we can make some savings. I am not interested in taking over the program only to be reimbursed for what we do. However, if we can save a significant number of dollars and the State would be the beneficiary of half that savings, then the program is worthwhile looking at.

As you recall, the second issue, regarding the Cave Gulch EIS, is as follows:

The Green River Basin Advisory Committee made several recommendations to the Secretary of the Interior, Bruce Babbitt. One of those was to streamline the NEPA process by reducing the timeframe from approximately 26 months down to 16 months. The second was the required road standards consistent with the ultimate use of the road; in other words, to require construction of a road to a wildcat well that could be either rehabilitated, if the well were dry and abandoned, or upgraded if it became a producer. Both of these recommendations could have been introduced by BLM without the prompting from GRBAC.

To industry and the environmental community, the third and most important recommendation was the concept of eco-credits. Eco-credits would provide reimbursement through royalty reduction to the company paying for the EIS or other environmental documents and an equal amount for mitigation to environmental concerns—for mitigation of environmental concerns. This recommendation was rejected by Interior as being contrary to law, and no apparent way around the decision was offered. The two other recommendations were of lesser importance.

My purpose in bringing this issue up is I am wondering if BLM has employed the streamlined NEPA process at Cave Gulch, and if they are using the road standard recommendation for roads, or is everything business as usual.

The final issue I'd like to bring up is to discuss the fly over inspection of pits in Wyoming.

On January 9, 1997, the U.S. Fish and Wildlife Service and EPA was asked for a meeting with the Commission staff and the DEQ. Also in attendance were representatives from the BIA and the Forest Service. The meeting was to discuss oilfield pits and their impact on migratory birds. They were informed—we were informed that the U.S. Fish and Wildlife Service, with help from the EPA, was going to fly the State and make note of any pits they thought were a threat to the migratory birds.

Aerial surveys were conducted in April 1997. On May 19th, 1997, we received a list of 213 pits U.S. Fish and Wildlife Service and EPA had identified as problem pits. This list was subsequently reduced to 210 sites, of which 91 were the responsibility of the Commission, 86 BLM, 20 DEQ, and 13 BIA. We immediately sent our technicians into the field to check on all the State and fee mineral pits. We were informed by U.S. Fish and Wildlife Service that we had 30 days with operators—to work with operators in solving the problems. At that point U.S. Fish and Wildlife Service intended to put four teams in the field to do a ground inspection of the pits.

We were under the impression that these folks were looking for problems that were a threat to migratory birds. However, at the last minute, after a number of phone calls, we received a checklist that they'd planned to use, which was 12 pages long and constituted a full-blown audit of all Federal regulations. This was not just to protect migratory birds, but a power grab by EPA to assume regulation of oilfield pits. This has traditionally been the State's responsibility.

In addition, EPA put a fifth team in the field, without any notice, from their Criminal Investigation Group. This group had no State or BLM representation, nor did they want any. They took the position that they did not have to ask anyone for permission to do anything, including going on operator's leases without permission or prior warning.

This last item may not be germane to this committee, but I wanted you to know how other branches of our government perform.

My secretary's spellcheck was on vacation, I guess, because "germane" is spelled wrong.

In conclusion, I think the BLM is less than sincere about delegating E and I to the States that are unwilling to take every step that they take in all activities. Second, the delays in Cave Gulch were unconscionable, cost people jobs, the government tax dollars, and companies the opportunity to develop their leases. Finally, the attitude of EPA, particularly in inspections of oilfield pits in Wyoming, is a demonstration of government at its worst.

I'd be happy to answer any questions, Madam Chairman.

I did note that Mr. Pierson told you that he's waiting for a proposal from the State. Let me turn that around. It would be helpful to me if he sent me a proposal of what he expects. And then we can see what we're willing to do.

[The prepared statement of Mr. Basko may be found at end of hearing.]

Mrs. CUBIN. Thank you.

Mr. Magagna, welcome.

STATEMENT OF JIM MAGAGNA, DIRECTOR OF FEDERAL LAND POLICY, STATE OF WYOMING

Mr. MAGAGNA. Thank you. Thank you, Madam Chairman. And first, on behalf of Governor Jim Geringer, let me welcome you and your staff to Wyoming and express our gratitude for your scheduling this hearing on an issue that is so critical to the socioeconomic viability of the State of Wyoming.

I'd like to take this opportunity to expand on two or three of the issues that I addressed in my written testimony.

You are certainly well aware of the land ownership pattern in Wyoming, as well as the mineral ownership pattern. Due to this intermingled pattern, we often find that State trust lands and private lands are really, in many areas of the State, held hostage to mineral development that takes place on the Federal land.

Oil and gas, for example, is usually developed on a field basis, and most of those fields are going to contain scattered tracts of State land and in many areas scattered tracts of private lands, if any, together with the Federal lands.

So while we have, particularly in the case of State trust lands, an obligation to produce revenue from those lands, which means being active in the development of our mineral resources, we often find ourselves thwarted by policies in the Federal land agencies that discourage surrounding mineral development.

Even in those cases where it would seem apparent that we should be able to proceed—and Cave Gulch again stands out as an example. There a well, successful well, was completed on State lands, and yet production and revenues to the State from that well were delayed by several months because of BLM's refusal to allow the laying of a gathering line from that well to carry gas to a transportation pipeline, to remove it from the State land. So we're hurt in many ways there.

Once each month, I have the opportunity to sit in the very chair that you're sitting in today chairing the Oil and Gas Conservation Commission. And our charge there is to promote conservation through development, careful development, of our oil and gas resources in the State as well as protect the correlative rights of the various parties holding mineral rights in the State.

One of my greatest frustrations, and I believe I can speak for my fellow commissioners as well on this matter, is when parties appear before us and there would seem to be an obvious resolution to an issue, a decision that this Commission could issue, that would protect the interest of all the parties. We're told, no, we can't go that route because the BLM has said that they will not accept it.

Unfortunately, they're not a party that comes before the Commission. They're not subject to our jurisdiction. So it's like we're attempting to balance the relative interests with one of the key parties not subject to our jurisdiction, not before us in a formal sense as we're acting on these matters. The implications are very broad.

Cave Gulch, I know, is going to be talked about a lot of times today because it's such a fine example of many of the issues we're addressing.

Let me move back, though, to 2 years ago, when Governor Geringer held his first partnership conference in Wyoming. It was entitled "The Wyoming Partnership: Minerals, Energy, and the Future," held right here in Casper, with representatives of the mineral industry and related groups.

Among the consistent items that came out of that conference and through the workshops in that conference were the frustration over access to Federal lands, over permitting delays on Federal lands and over restrictions on production from those lands. In fact, and not stated in my written testimony, but certainly apparent in the outcome of that conference, was the call for the State to look at ways that they could expand their ability to assume control of those particular functions.

This ties in, I believe, very much with Mr. Basko's comments on inspection and enforcement because that's one major part of the regulatory process that is involved there.

I continually hear in my position as Director of the Office of Federal Land Policy is from producers who are frustrated in their attempts to do business on Federal lands in Wyoming. Wyoming, particularly in the oil segment, is highly dependent on our independents. Excuse the pun there. They don't have the resources finan-

cially to withstand a one- or two- or three-year delay process while permitting takes place, while the need for process is played out and appeals subsequent to that are carried forward before they are finally able to operate on Federal lands and receive a revenue therefrom. And of course, we in the State, as a primary beneficiary of those revenues, are suffering at the same time.

In the case of larger producers, the major companies operating in Wyoming, what I hear constantly from their local people employed and stationed here in Wyoming is their frustration that they can't compete successfully for their company's resource dollars for development and production because at the corporate level the companies are looking at where can they receive the best return in the shortest timeframe, time being money in this case, from the investment of their limited budgets. Repeatedly they are finding that Wyoming and some of the other heavily Federal Rocky Mountain States are not a good place to put those limited dollars because of the delays that are involved in getting a return on those investments.

The Green River Basin Advisory Committee has been discussed earlier by Mr. Pierson. Let me just comment briefly on two items there, having served on that Committee. One, while I know there are five recommendations and four of them are going forward to some degree, my observation would be that the success of those recommendations is relative to the level within the agency at which they can be implemented. Those, for example, on transportation planning that lent themselves to implementation at the district level within the Bureau of Land Management are moving forward quite well. The one on shortening the NEPA process, which is subject to a broader level of input and guidance, is being tried in a field test in the Jonah field development in Wyoming. Based on the conversations that I have had, both with industry and with agency employees, I'm led to believe that, while some progress is being made, we're likely, as members of the GRBAC, to be very disappointed in the final results of that trial of significantly shortening and simplifying the NEPA process.

Finally, let me talk just briefly about the socioeconomic standards and analysis that's done by the Federal agencies, and in this case, particularly, by BLM.

My observation would be that, even when as in the final Cave Gulch EIS, BLM does make a significantly improved effort to do socioeconomic impact analysis, that analysis is always going to suffer from the perspective that's brought to them. We need to know if this action is going to have a negative socioeconomic impact or a positive impact relative to the status quo.

We at the State level are looking at economic development for the State of Wyoming. It makes little sense for us to project forward and have an economic development plan for a State whose economy is heavily mineral dependent when 68 percent of our gas production and 60 percent of our oil production is coming from Federal minerals because, while we can develop the best plan in the world; we cannot guide the implementation of that plan, given that heavy Federal presence.

In doing socioeconomic analysis, the Federal agencies do not look at what the impacts of a particular project or a land use plan will

be on the State's economics goals or on local government's economic goals. They're simply looking at them in absolute terms, relative to the status quo. That's not adequate to allow the State government to build an economic future that is going to be based on our federally controlled natural resources.

Finally, in closing, I feel compelled to enter into the fray on the discussion of cooperating agency status.

In my office, we have done a rather thorough analysis of a wide array of Federal environmental land management laws, which make reference to State and local governments as having the ability to have cooperating agency status. I fail to find in that analysis the requirements outlined by Mr. Pierson, that they have to be in a decisionmaking position relative to the Federal resource before they can have such status. And in fact, and quite frustratingly, we're getting very mixed signals from one Federal land agency to the other and extremely mixed signals between the agencies at the Wyoming level and some of the leaders within the administration at the national level. We've repeatedly been assured, in fact, personally by Katie McGinty, who's the head of the Council on Environmental Quality, that cooperating agency status is available to State agencies, to County governments.

I believe that this issue, whatever the current law provides, needs to be resolved. There needs to be some consistency in the application of the law as it's been adopted by Congress toward the role of State agencies, local governments, conservation districts, any of those governmental entities, into these decisionmaking processes. And we do believe that they should be entitled to, in many circumstances, cooperating agency status.

I would submit, Madam Chairman, that very likely it's going to take your assistance and the assistance of Congress to finally provide some definitive, consistent answers to that question, which has really taken on a life of its own. I believe whether or not they're willing to listen to a County commission just as much without giving them that status, it's become a barrier to the communication that you referenced earlier that is so critical between local governments and the Federal managers in the oil and gas arena.

With that, again I want to thank you for this opportunity today and express our appreciation to you for the fine work you do in these areas as Chair of the Subcommittee that's so important to the State of Wyoming.

[The prepared statement of Mr. Magagna may be found at end of hearing.]

Mrs. CUBIN. Thank you very much.

Mr. Carter, would you——

STATEMENT OF JAMES W. CARTER, CHAIRMAN, PUBLIC LANDS COMMITTEE, INTERSTATE OIL AND GAS COMPACT COMMISSION

Mr. CARTER. Thank you.

Madam Chairman, the Interstate Oil and Gas Compact Commission appreciates this opportunity to address you on oil and gas regulatory issues. I'm Jim Carter. I'm the Director of the Utah Division of Oil, Gas and Mining, but I'm appearing before you today as Co-chair of the IOGCC's Public Lands Committee.

The Public Lands Committee has set out for itself an ambitious plan of work to study and make recommendations on a series of oil and gas matters relating to public lands, including land withdrawals, royalty in kind, idle wells, regulatory reform and cost recovery, among other issues. Although the Committee is in the early stages of work on those issues, I can share with you the gist of our discussions to date.

IOGCC Public Lands Committee members are supportive of the recommendations made by the Green River Basin Advisory Committee, particularly with regard to eco-credits. And I won't go into making any further comments on that because that's been well discussed.

The Public Lands Committee's thoughts on cost recovery are mixed. To the extent that cost recovery can facilitate timely BLM review and permitting processes, the State would generally be supportive; that is, to the extent that cost recovery is utilized to purchase higher levels of service. If, however, cost recovery is simply an alternate revenue source for the BLM, the States would not be likely to be supportive, particularly in light of the fact that the States are contributing to the administrative cost share of the overall expenses of operating the minerals program.

The issues surrounding access to oil and gas reserves on federally managed property generally fall outside the regulatory purview of the IOGCC states. Access issues do relate, however, to the conservation mission of State regulators to see that maximum economic recovery of oil and gas resources is achieved, consistent with other law, regulation and public policy. From the conservation standpoint, the IOGCC states believe that lands deemed to be suitable for oil and gas development by the BLM's public land planning and environmental review processes should not be made unavailable unilaterally or by decisions or processes which are other than the public processes by which BLM is required to make such decisions. The Public Lands Committee looks forward to providing the Committee with additional analysis and recommendations as our work progresses.

With regard to general regulatory issues, you are well aware that one of the major items of work of the Public Lands Committee for the past months has been the proposal by the BLM to transfer certain oil and gas regulatory functions to the States and tribes. I have appeared before this Subcommittee before. I'd like to thank you again for the Subcommittee's support of, and the encouragement of, this ongoing discussion with the Bureau of Land Management.

I don't have any specific progress to report to you today. I'll spare you discussing where we have been and what we have done over the last few months.

But based on the discussions held and the input we've received to date, the IOGCC sees three areas of opportunity for improvement of State and Federal oil and gas regulatory programs, along the lines suggested by the Subcommittee.

The first is improvement of coordination and communication between existing State and BLM regulatory programs. Simple, improved coordination and communication will go a long way.

A second opportunity is for delegation of inspection and enforcement functions from the BLM to the States pursuant to existing statutory authorities. Mr. Basko has addressed that in some detail. I'll skip over my detailed discussion of that, except to say that there are several States, in addition to the State of Wyoming, that are putting together proposals and will finally have them submitted to the BLM. As I said, the IOGCC does see some opportunity, given that limited delegation of authorities. We think we can save some money and make things work out.

The IOGCC States remain convinced, however, that the greatest opportunities for streamlining, simplification and improvement of regulatory programs lie in consolidation of State and Federal oil and gas regulatory programs in each State. The IOGCC States see several opportunities for congressional action to simplify implementation of the existing BLM regulatory programs, and to broaden opportunities for the BLM and the States to work better together to optimize regulatory programs.

A good example is BLM's program for ensuring production accountability. Site security was one of those aspects. As Assistant Secretary Bob Armstrong put it in a letter to the IOGCC, dated June 5th of this year, "'The Bureau of Land Management"—I'm quoting here. "The Bureau of Land Management's oil and gas inspection and enforcement program has been carefully scrutinized by the Office of the Inspector General, the General Accounting Office, and the Senate Select Committee on Indian Affairs. Recommendations made by those organizations have resulted in the evolution of BLM's program into its current form."

Unfortunately, those outside organizations have focused on changing the processes the BLM utilizes to ensure production accountability, rather than on the actual results of program implementation itself. The BLM finds itself constrained to insist that the States perform production accountability activities on Federal lands in the same manner—in the same manner it does to make a delegation of Federal production accountability responsibilities to the States. The States are not willing to replicate Federal processes. Congress could clarify and simplify its charge to the BLM with regard to production accountability, and direct the BLM and the Minerals Management Service to collaborate in developing a simpler, more cost-effective program for ensuring production accountability based on bottom-line results rather than the techniques BLM currently uses to achieve its objectives.

Another approach which could resolve this quandary, and other problems as well, would be to modify the Secretary of the Interior's delegation authority with regard to oil and gas regulatory programs. The model created by the Surface Mining Control Reclamation Act is instructive. Under SMCRA, the Federal Office of Surface Mining Reclamation and Enforcement does not delegate regulatory authority to the States. Instead, the States develop their own regulatory programs for coal mining as a matter of State law. OSM must then make a determination that the State regulatory program is no less effective than the Federal program. If it is no less effective, OSM defers to State regulation of coal, under the State's own program. OSM retains an oversight role to ensure that

the on-the-ground results mandated by SMCRA are achieved by limitation of the State by its own program.

If the Secretary and the Director of the BLM had similar authority with regard to oil and gas regulation, the long-standing debate over the meaning and scope of the term "delegation" could be mooted.

The IOGCC States are committed to continuing the work—to work more closely with the BLM to identify opportunities for streamlining and regulatory program improvement. As well, several IOGCC States, as I mentioned, will be making delegation proposals under existing FOGRMA delegation authorities. The IOGCC believes, however, that the BLM and the States must have broader authority to allow application of State regulations to Federal properties if significant cost savings and economies are to be achieved. The IOGCC also believes that continuing work toward consolidation of regulatory programs will benefit the regulated community and provide more efficient and better service to all our customers.

Thank you.

[The prepared statement of Mr. Carter may be found at end of hearing.]

Mrs. CUBIN. Thank you very much.

There are some questions that I'm going to ask that will be brief just because I wanted them to be on the record. Then I would like to have a little bit of a dialog with you.

Mr. Basko, I'll start with you.

You indicated that you support a single regulatory program in each State for oil and gas activities. Could you explain what the current situation is and why your proposal would be better for the State, the country and the industry?

Mr. BASKO. Well, obviously, the BLM does things differently than we do, particularly in the arena of site security. I've suggested to the BLM several times that, rather than have people run to the field and check valves and rattle chains and whatever else they do, that that same level of comfort could be achieved by comparing with computers the gross production, the sales and what is reported as production for the purpose of taxation. And I haven't gotten very far with it.

They feel that the presence of an inspector in the field has the same impact as a highway patrolman that keeps people from speeding. And yet you see people speeding all the time. And so I think if somebody is going to steal oil or whatever from a lease, as soon as the inspector leaves the field he's going to take it, and that really isn't a deterrent.

Certainly, it would be of benefit to the operators if they were operating under one set of rules, rather than two, especially where there are adjoining Federal, State and fee leases. And I think that's what I meant by a uniform regulatory program.

As I said in my testimony, we haven't gotten very far with BLM in resolving any of these issues. The biggest thing that I'm concerned about is, if there is a savings to be had, that the State be the beneficiary of half of that savings. And although that's implied, it hasn't come back as a firm commitment that that's what would happen. Otherwise, I'm—I guess I must say that I'm not interested in the program just to do it for a fee.

Mrs. CUBIN. Right. So it is fair for us to say on the record that you are confident that the State can properly protect the environment; is that right?

Mr. BASKO. Yeah, I believe so.

We're a little different than some of the other States. Some of the States duplicate activities that the BLM does with their own people on Federal lands. And I think of North Dakota right off the bat, where they witness plug and abandonment procedures on all wells regardless of ownership. And we don't do that. So there's a greater opportunity in some of the States to eliminate that duplication. And we're spread so thin that we don't have that luxury of being able to go out on a Federal lease and witness anything. Oh, I suppose on rare occasions we might do something like that, but generally speaking, that's not true.

Mrs. CUBIN. Do you think this Subcommittee ought to consider legislation to implement eco-royalty relief or eco-royalty credits?

Mr. MAGAGNA. I'll make an attempt to answer that. I'll say that the Secretary has not committed to me that everything has been placed back on the shoulders of the Solicitor's office, but I believe—I believe, if we want that to go forward, that's where it needs to come from.

The caution I would note, though, is in the provision that comes out of the Green River Basin Advisory Committee can't be implemented without the agreement of the States of Wyoming and Colorado.

I think it is critically important that we believe in the proposal, and we would like to see it go forward, so long as it doesn't become the excuse you used earlier, the high cost of some of these documents that industry is now paying.

Eco-relief is designed to provide some opportunities for reimbursement to industry there. If it is truly that, it can go forward. It needs safeguards to make sure it doesn't become an added cost burden and you end up with the industry as well as the States as well as the Federal Government being financially impacted further by this. But I believe it's a concept that ought to be explored by the Congress with appropriate safeguards.

That was the benefit. It was a 2-year trial, and it was based in a very localized area. I'm not sure, as the State of Wyoming, we're ready to have it legislatively mandated. I think it needs to be tested.

Mrs. CUBIN. Were the environmental organizations supportive of that part of the GRBAC report?

Mr. MAGAGNA. I don't want to pretend to speak for them. But yes, they were. It was a consensus recommendation. It has something for everyone. The industry stood to receive some financial relief in terms of NEPA, the environmental opportunity, and the enhanced litigation beyond that that's mandated. And the State, even though we would be giving up 50 percent of the moneys going into the program, stood to benefit from enhanced rate of development, assuming that it, in fact, led to an increased development scenario. If it fails to lead to the increased rate of development, then certainly we, as a State, would not remain supportive of it because of its direct impact on our share of royalty dollars.

Mrs. CUBIN. And certainly, that would be the problem if it did require legislation for a pilot project because it's a lot easier to implement rules and regulations, have public input, than it is to get an act of Congress to approve something or take it off the books once it's there. So ideally, it could be formulated by the BLM, by the Secretary of Interior, as a pilot project. In my opinion, that seems to be ideal.

Mr. Magagna, you said that you did an evaluation of the—or an assessment of the cooperating agency status, that you've gone through it. And I wondered if you could supply a copy of that to us for the record.

Mr. MAGAGNA. Be pleased to.

[The information referred to may be found at end of hearing.]

Mrs. CUBIN. I would appreciate that very much.

Do you think—does it seem to you, Jim, that the State governments, that industry, is more in an adversarial position with the Federal agencies? And I want to make just a little bit more of a delineation here.

It has been my experience that the land managers on ground, in whatever State it is, tend to be much more open-minded, to want to work with the local folks and to want to get things done, rather than delay them, whereas in Washington that is not the way it is. What kind of relationship is it? Is it truly an adversarial relationship with Washington, with the local managers?

Mr. MAGAGNA. I would say it is certainly not an adversarial relationship with the local managers for the most part. I think the State of Wyoming has a very good, open communication with the Federal resource managers and generally a good working relationship. In fact, I would go so far as to say especially good, given the fact that their direction from Washington is so often inconsistent with the needs and the goals of the State of Wyoming.

They're put in a very difficult position. Oftentimes, when we see opportunities for cooperation, we're not able to cooperate because to do so, to move in a direction that would be acceptable with the State of Wyoming, would simply not be consistent with the direction that they're being given at that point in time from Washington.

And I might add that, certainly, resource management suffers I believe that the people that are on the ground are looking at what's best for the resource and as are the people of Wyoming, where so often the people in power in Washington at any given point in time, in administration, are looking to implement a philosophy rather than manage a resource.

Mrs. CUBIN. I absolutely agree with that. That is the picture that I get both from Washington and from here. And the frustrating thing is that many times the person in Washington who ultimately makes the decision may never even have laid eyes on the situation, on the ground, or know very little about the area. I know that you are aware, and Congressmen, too, people in Washington have the idea that all of our public lands look like Grand Teton National Park. And so, when we are mining and drilling for oil and gas, they are convinced that we are polluting the water and there are horrible scenes of these rigs going up and dead animals laying in the water. And that is the truth. I am not exaggerating.

So in August it's already been reported, but there will be about 20 to 30 Congressmen coming out to look at coal mines, look at public lands and look at some oil and gas exploration. And I can't wait, because I can't wait until they see it. I think it's beautiful, the sagebrush and alkali where you can look and look and look and there is no water there, but—and to me it is beautiful. But they aren't going to find it to be what they think they're going to find.

Education and communication is the most important job that I have. And I honestly think that it's the most important job that everyone in this room has.

And speaking of communication, Don, I just heard two things here today that I'd sure like to see get off the ground and going. Mr. Pierson is saying they didn't do anything because they don't have this and this and this from the State, and the State says we don't know what to submit because they haven't told us what they want. And so if that could just be opened up. I don't know how, but it seems that ought to be easy. That ought to be the easy part. And so I hope that can happen.

One proposal—Mr. Carter, you brought this up, and I think it's really worth looking into. I don't want to have this hearing just so everybody can complain, you know, and other people defend themselves. I really would like to be able to find some solutions that we could implement in the short term at least, and we could be planning for solutions in the long term. One of those suggestions was setting up the regulatory access permitting process in the same structure as SMCRA, where the State—Federal Government has certain requirements and the State has to meet them. The State devises their own plan and their own enforcement and inspection and so on, and then the Federal Government approves the plan, and from then on the State has primacy to enforce, manage and so on.

How realistic do you think something like that really is?

Mr. CARTER. In my own view, here's what it would take. And let me background.

As you know, one of the things that my agency in Utah does is operate the State of Utah's coal-regulatory program under a primacy program under the Office of Surface Mining. So I'm familiar with that process. I also worked on a steering committee on oversight process.

And what we found we needed to do to get away from being more stringent or less stringent was to agree upon what the objectives were. When you're finished, everything else is some aspect of that.

My idea is, for a similar process to be successful, BLM is going to need to be willing to depart from a discussion just of their processes. And I understand the production accountability is a classic: We do it this way and we've always done it this way and we have all these pressures to do it this way. What is it you're trying to achieve? Trying to get all the money. How much money are you spending to get all the money?

This is a roundabout answer, but I think it's a realistic one, if we are able to convince the BLM and ourselves of what the objectives of our programs are and State what success is in each of those categories and then be willing to look at a variety of a different methods for achieving those results.

There's a concern in a centralized environment, that you can't turn the field folks loose too much. And I think this relates to how we work with BLM. They look at an on-the-ground, common sense solution to achieve the goal, whereas if you're three steps removed you want to try to steer the outcome through the process. So you create these increasingly detailed processes to reduce their problems.

But if we can agree on objectives and agree on measures and agree on the results or what the quality is if you fail to achieve the objectives, then that would provide a basis for having the states implement their long-standing and successful programs.

Mrs. CUBIN. I think that that approach is one that would help. Certainly, it isn't one without its own drawbacks.

I introduced a bill relating to SMCRA, because the Federal Government kept coming in and issuing notices of violations on 10-day notices over and above the State's. And there would even be arguments between the State and the Federal Government whether or not there was a violation. And just because the legislation was pending, I believe—I think the number of those things decreased like three or four hundred percent. So sometimes babysitting helps.

[Laughter.]

Mrs. CUBIN. Another proposal or possible option—and any of you climb in and say anything—as you know, MMS does the permitting and regulating of offshore drilling. How—would it be much better, or how much better would it be, to have one agency, rather than the Forest Service, the Park Service, Bureau of Reclamation, everybody who gives input, what are the pros and cons of having one agency do it like the MMS does it for the offshore?

Mr. CARTER. Any takers there? I'll take a stab.

Let me repeat to you some of the things I have heard in discussions and pros and cons that emerge. There's an argument that an agency that does a number of things is always at odds with itself about what it's trying to accomplish and is not able to develop a clear mission and it's struggling with itself. One school of thought would be that's a good thing. Another school of thought would be that's not.

My sense would be it's more important to have it in an agency that has a fairly narrow focus. Whether that's MMS, I don't know. But I see other land managing agencies that successfully manage their lands, like the Forest Service, without having oil and gas regulatory responsibilities, and that tells me BLM could also.

And whether the accounting for the royalties should be administered as it currently is I'm not sure. There's a field presence, as was pointed out. But if we see discrepancies, we go out or if we have complaints, we have suspicious activity, then we go out and do a field inspection. But whether that's two functions or it could be designed into a single agency I'm not sure.

Mrs. CUBIN. It seems like a single agency would be cheaper and maybe more efficient, although it may be too one-sided. But if an agency did that using scientists from another agency, there could be a certain amount of protection and make sure that all the aspects were looked at.

Mr. MAGAGNA. I would offer one more comment. I would certainly agree with everything Mr. Carter said, but would offer a

note of caution, that that would need to be accompanied by very, very clear direction of that responsibility because, as the land management's agency, it's going to be very difficult. I expect that for BLM to say OK, when we get to the point of a decision to lease or a lease being listed, probably a decision to lease once a land use plan is done, then we're going to give that up. The interrelationship between the multiple uses doesn't stop. And if you had MMS trying to do that with a more focused procedure, I think it would have more viability. But at the same time they need to be constantly relating back to the land agency. I guess you've got cooperating agency status, although I would be somewhat fearful you would have non-cooperating agency status in that scenario, simply being put in the position of having to deal on the same issue with two agencies where now they're dealing with one, at least on those circumstances.

Mrs. CUBIN. You know, another thing I have learned since I have been in Washington is that lots of times it isn't the law that is causing the problems, it is the rules and regulations and the interpretation of those by different managers as they come in. I wonder, were the problems with access and the problems with permitting as severe before President Clinton was elected to office? I have to be up front here. You know how I am.

[Laughter.]

Mrs. CUBIN. Secretary Babbitt does have a different agenda, does have a different philosophy. He would like to blow up every dam on the Colorado River system. He was angry with Helen Chenoweth because of an exchange we had. So the next week or two he went to her district and donned himself with fire-fighting clothes and took a match and threw it on there. I mean if that wasn't an in-your-face Chenoweth wish I don't know what is. I think, as a general rule, when you pass a law based on a person or a particular situation it's generally not going to be a very good law. I think you have to base laws on good sound policy and then have to work within those parameters.

So, Don, you've been around. Help me with this. Is it different than it used to be, and why? You can't be fired. Remember that.

Mr. BASKO. No, not really. I think it's become more difficult and more divisive. And to give you an example, we have nine district offices—I guess they call them district offices—for BLM in Wyoming. And operators tell me that operating in one district is not the same as in another one. They interpret things differently, even across county lines or section lines where the division between the two exists. And so there's that frustration in interpreting these laws, even between the different offices within BLM, which is—you know, that becomes a problem for operators. What is acceptable in one district is not necessarily the way it is in the next one.

Mrs. CUBIN. And that indicates lack of leadership, it would seem to me.

Mr. BASKO. Well, you know, I guess you have to say that. We entered into a memorandum of understanding with the BLM about who would do certain downhole functions several years ago. And at that time Bob Bennett was the acting director. And I said if we sign that does that mean that's the law of the land? He said not

necessarily; they're all independent. And I said why are we doing this if we're not all going to agree this is a way it's going to be?

Mrs. CUBIN. I think it's an accurate statement to say there is confusion in the leadership in the Department of Interior.

I wanted to point out that three of the four Federal witnesses are still here today, learning today. And in Washington they come in and testify for 5 minutes and split. They don't even want to hear what's going on. They don't even want to know. They have a different agenda. And I'd like to thank you for staying. I think that that indicates that things are better on the ground than in Washington.

I don't think I have any other questions.

Mr. BASKO. Just one more comment on the eco-credit topic. I was—had the opportunity to sit next to Bob Armstrong at an executive committee meeting of the Interstate Oil and Gas in Washington in March. This subject of eco-credits came up. And he turned to me and said we can't do it; it's contrary to law. So unless he's changed his position, that's the official position of the Secretary of the Interior.

Mrs. CUBIN. That's interesting. We just had a hearing and passed a law that allows penalty for legally kill a polar bear in Canada to legally bring the pelt to the United States. Well, the agencies, the Department of Interior, didn't want that to happen. And so when they promulgated their rules and regulations they especially denied that to happen. What happened was this. As Don Young, the chairman of the committee—it was his bill in the first place. So we had a hearing because we now have a mechanism through the Congress where we can eliminate rules and regulations that we feel are not consistent with legislative intent. So at this hearing, I believe it was Ward Tipton, when I was questioning him on how can you get this rule from this law, he said we interpret it as we want it to be.

[Laughter.]

Mrs. CUBIN. And I just think that that happens an awful lot.

One last remark. Don, you talked about EPA coming in the pits. And this committee does not have jurisdiction over the EPA or those issues. But fortunately, I'm on the Commerce Committee, and we do have jurisdiction over the EPA on the Subcommittee I'm serving on. And I will be inquiring more as to what action and what justification and authority for that action was there.

Mr. BASKO. They didn't tell the Governor they were putting that 15 in the field. They said, no, there is no 15, when in fact they were out there already.

Mrs. CUBIN. Thank you very much. We will break until quarter after one. So everybody go have a nap.

[Recess.]

[Witnesses sworn.]

Mrs. CUBIN. Thank you all very much for being here. I really do appreciate it. I think it will be very beneficiary for everyone involved.

So we will start Panel No. III with Mr. Tipton, please.

STATEMENT OF TIM N. TIPTON, PRODUCTION MANAGER, ROCKY MOUNTAIN REGION, MARATHON OIL COMPANY

Mr. TIPTON. Thank you, Madam Chairman. I'm Tim Tipton, Region Production Manager for Marathon Oil Company's Rocky Mountain Region, which covers all Western States.

We produce approximately 35,000 barrels of oil and approximately 70 million cubic feet of natural gas per day. Marathon holds over 900 Federal leases in Wyoming, Colorado, and Utah.

Southwestern Wyoming and northwestern Colorado have one of the largest remaining natural gas accumulations in the continental United States. Integrated, independent oil and gas companies have recently renewed their interest in exploration and development activity in these areas. Hydrocarbon accumulations have been identified on land owned by the United States and managed by the BLM. Timely access to these lands is critical to each State's economy.

While the example I'm about to cite occurred in Colorado, I believe it's a pattern which is spilling over to other Western States and is symptomatic of the inordinate delays and unjustified barriers to access to public lands.

In August 1996, Marathon filed an Expression of Interest in BLM-managed lands in northwestern Colorado. BLM withdrew some of the parcels from the November 1996 sale, even though a Resource Management Plan identified them as suitable for oil and gas leasing with certain surface stipulations. The parcels had been the subject of an Environmental Impact Statement and a final Record of Decision.

Colorado BLM withdrew the nominated parcels because they were in areas suggested by the Colorado Environment Coalition (the CEC) as having wilderness characteristics. Marathon did not know that, in 1994, the Colorado BLM had agreed with the CEC to manage hundreds of thousands of acres of additional public lands as wilderness. The agreement was reached without public notice or participation. The BLM had earlier inventoried all public land in Colorado and found the CEC-identified lands to not have wilderness characteristics.

In FLPMA, Congress specifically mandated that public land be managed for multiple use and sustained yield and that management practices recognize the nation's need for domestic sources of minerals. Development of energy resources and protection of the environment including Wilderness Areas are specifically governed by FLPMA.

Section 103 of FLPMA required the inventory of public lands for wilderness characteristics to be accomplished within a 15-year period, between 1976 and 1991. BLM inventoried lands and had made recommendations to Congress for Wyoming, Colorado, Utah, and other States. As I understand it, these recommendations remain pending, although those lands identified by the BLM as Wilderness Study Areas are being managed as wilderness. FLPMA requires an Act of Congress before the designation of wilderness can become effective.

I want to make it absolutely clear that Marathon is not advocating oil and gas operations on public lands that have been legitimately designated as Wilderness Study Areas via the 603 process, nor are we proposing that the BLM direct legitimate Wilderness

Study Areas to be open for oil and gas leasing. Marathon believes in the protection of Wilderness Areas if they are properly designated and have wilderness characteristics. Just as importantly, Marathon believes in and supports appropriate public participation in land use decisions, as required by FLPMA. We have a good relationship with State BLM staff and find them very cooperative in oil and gas leasing efforts.

Colorado BLM, however, has recently finalized a policy to reinventory public lands for potential Wilderness Areas. This policy was made final after Marathon brought legal action against the BLM challenging their agreement with the CEC. I understand that the BLM is also dedicating additional resources in Utah for the reinventory of lands at the insistence of the Southern Utah Wilderness Alliance. I have also seen a publication by the Sierra Club advocating designation and reinventory of additional lands in Wyoming as wilderness lands. The experience in Colorado is not isolated.

Marathon is concerned that FLPMA-mandated public input and resource management planning has become sidetracked and is being ignored to the detriment of responsible mineral development. BLM resources are being directed to duplicate an inventory process that was previously ordered by Congress and carried out to completion by the BLM. Section 603 of FLPMA is the exclusive source of authority for the Secretary to conduct wilderness inventory processes. That authority expired in 1991.

Congress declared that the BLM wilderness inventory process would not be open-ended. The State Directors in Utah and Colorado have been directed by the Washington office of the Department of the Interior to pay particular and careful attention to management of lands identified by environmental groups as having wilderness characteristics. These actions represent the de facto withdrawal of lands from other appropriate public use, lands which have been identified through the public process as being appropriate for uses other than wilderness designation.

As an example of the kind of problems we are faced with, the CEC was given access to the BLM data base to insert the CEC's designation of wilderness areas on BLM records.

In Utah, the Southern Utah Wilderness Alliance gave legal advice to the State Director about the Director's power to inventory, identify and manage lands as wilderness outside of the Section 603 FLPMA process.

Marathon's lawsuit against the BLM questioning the legality of the government's actions was recently dismissed on the narrow ground of standing. Marathon intends to appeal the decision, as the merits of the case were not reached.

But irrespective of the outcome of any legal challenge, Marathon believes that Congress is the best arbiter of Congress's intent.

Interior has ordered its employees to act to preserve Congress's actions—options for designation of Wilderness Areas—yet has made no proposal outside of Section 603 to Congress.

The Department of Interior intends to be—appears to be—managing public lands to satisfy a narrow constituency, to the exclusion of legitimate and necessary mineral development. In the instance I have mentioned, the Department is not carrying out its congres-

sionally mandated policy to manage lands for multiple use, sustained yield, and protection of domestic mineral resources.

Thank you for allowing me time to bring this matter to your attention.

[The prepared statement of Mr. Tipton may be found at end of hearing.]

Mrs. CUBIN. Thank you very much.

Mr. Robin Smith, with Chevron.

STATEMENT OF ROBIN M. SMITH, SENIOR ENVIRONMENTAL SPECIALIST, CHEVRON USA PRODUCTION COMPANY

Mr. SMITH. Thank you, Madam Chairman. My name is Robin Smith. My family and I are residents of Casper, and for more than 18 years I have worked throughout Wyoming as a petroleum geologist for Chevron USA Production Company. For the past 2 years, I have been the Waltman Area Project Coordinator for Chevron here in Casper.

The Waltman-Bullfrog field is adjacent to the Cave Gulch field, which has been mentioned many times this morning.

I appreciate the invitation to relate my company's recent experience in developing this world-class resource.

You've heard this over and over again this morning, but I'm going to say it again. Projects which occur on our nation's Federal lands are extremely important, not only important to Chevron, but important to every citizen in Natrona County, the State of Wyoming, and ultimately, all American citizens. Investments for natural gas development on Federal lands are important to the country because they provide clean-burning fuels, they are domestically produced energy sources, they generate thousands of American jobs, they help sustain and improve the economy, and they generate badly needed revenue for the local, State and Federal Governments.

This morning I want to share with you Chevron's experiences at Waltman–Bullfrog Field as examples of what is, and what is not, working in the Bureau of Land Management's permitting and National Environmental Policy Act compliance processes. Since we have been producing oil and gas at the Waltman and Bullfrog units since the 1950's, I feel Chevron is in a unique position to comment on the merits of the varying degrees of governmental oversight that this field has experienced.

I'm going to skip a lot of my written testimony, again because it's already been covered. But just in a nutshell, a latest round of proposed development by a number of operators in the field area has led to increased analysis by the BLM of the operators' activities and their potential associated impacts. This analysis was initiated in late 1994, and to date it's consisted of one complete EA, one nearly complete EA, and an EIS that is in the final comment period.

The BLM announced in January 1996 that the EAs that were either completed or being completed were not acceptable and that a full-blown environmental impact statement would be required. And I'd like to state for the record here that Chevron did not alter our development proposal that was originally proposed in the Chevron field development EA.

Though it was recognized that it would add cost and result in significant delays in responsible development of this field, the operators did agree to fund the EIS, as is almost always the case, to try to speed the process along.

As I mentioned, we are now in the final comment period of the EIS for the Cave Gulch-Bullfrog-Waltman Natural Gas Development Project. And the final EIS is scheduled to be issued around August the 4th. BLM's preferred alternative in the final EIS is essentially the same decision that was made over 2 years ago in Barrett's initial EA.

The oil and gas industry is held to unprecedented standards on Federal lands in States such as Wyoming. In most cases imposition of these standards result in an extreme case of overregulation whereby the industry and the Federal Government both expend huge sums of money and effort in the pursuit of NEPA compliance that, in my opinion, generally results in little benefit to the environment.

These costs, as you've also heard this morning, are set to increase as initiatives for cost recovery are introduced. And in my experience again, the delay is increased because of understaffing of the BLM offices to current—to handle the current workload.

But at the Waltman-Bullfrog fields, NEPA compliance has come at a great cost to almost everyone that was involved in the process. The operators have funded nearly three-quarters of a million dollars of NEPA analysis to date, and approximately two and a half years have been expended compiling these studies. And I'm not trying to be melodramatic, but this is a part of those studies that we've done at the Cave Gulch-Waltman field. And I want you to remember that at the beginning of my testimony I said we've been producing oil and gas out there since the 1950's. So this is a field that's seen 40 years of development.

Of course, that three-quarters of a million dollar figure does not include the salaries or expenses of the numerous oil and gas company employees, BLM employees, Wyoming State employees, Federal, State and county employees, Federal, State and county elected officials and their staffs, or the private citizens who have been involved in the process. When you add to that the lost revenues associated with the delay in natural gas production out there, the figure is easily several million dollars of lost or delayed revenues.

Over the last several months, BLM and industry have begun working together in a much more constructive fashion on this project. But in the beginning that wasn't necessarily the case. Representatives from the BLM, the city, the county, the State, congressional delegation, industry and conservation groups all sat at the table and endeavored to understand each other's viewpoints and concerns. Unfortunately, some of the participants used what they had learned at those meetings to try to publicly undermine the entire consensus process. This only served to pit BLM against stakeholders and proponents of the action, and each entity felt that their trust had been betrayed.

In order for the NEPA process to proceed smoothly, in my opinion, there has got to be a basis of mutual trust and respect among the members of the parties involved. It's absolutely impossible to proceed in a consensus-building effort if the participants' goals are

mutually exclusive and if one or another group has an agenda which they are not willing to honestly reveal and discuss. I think you heard that again, over and over, this morning.

I want to point out, though, that BLM does deserve credit for recognizing that there was a problem and taking the necessary steps to restore trust in communication among the parties who were willing to work with them toward solutions.

As you also heard over and over again this morning, Wyoming is a State whose economy depends heavily on revenues from the minerals extraction industry. And I've got some figures in my written testimony that I won't go over.

But I think the point that I want to make is that with 50 percent of the lands and two-thirds of the mineral estate in Wyoming under the control of the Federal Government and the heavy dependence on these industries for Wyoming's economy, that we've got to try to find some solutions to the problems that we've heard about this morning.

Wyoming citizens, the people who live, play and work here, overwhelmingly support the responsible development of the State's great natural resources. According to public opinion polls conducted by the Wyoming Heritage Society, 80 percent of those surveyed believed that oil and gas development could coexist with recreational uses and wildlife.

Chevron understands and appreciates the need for protecting all resources on Federal lands. We also believe that improvements in BLM's permitting and NEPA's compliance processes is absolutely critical.

We believe that the costs and the current timeframes for many oil and gas operations in conducting NEPA studies can be greatly reduced without compromising protection of the environment. We believe these improvements can be accomplished in great part by widely implementing all of the NEPA streamlining recommendations made by the Green River Basin Advisory Committee, which we've also heard about this morning. The outcome of the process could be so much more practical if timeframes and costs could be reduced. And instead of wasting dollars on repetitive environmental studies, moneys could be diverted to monitoring projects or mitigations or eco-royalty relief that would create or improve habitat.

In closing, I'd like to say, in agreement with the comments that Mr. Carter made on the previous panel, I believe that we've lost sight of our goals. The NEPA process needs to focus on producing benefits to, and protection of, the environment, instead of focusing on the process itself and making sure that the process complies with the process. Otherwise, it just becomes a classic case of form over function.

I believe much of the problem appears to have occurred from the fear of threatened or real litigation by the conservation groups on almost every Federal decision made approving development in Wyoming in the last several years.

Thank you again for the opportunity to share Chevron's views. And I'll be glad to answer any questions after the rest of the panel members speak.

[The prepared statement of Mr. Smith may be found at end of hearing.]

Mrs. CUBIN. Thank you very much.

Next, I'd like to call on Mr. Robert Nance, President of Nance Petroleum.

STATEMENT OF ROBERT NANCE, PRESIDENT AND CEO, NANCE PETROLEUM CORPORATION

Mr. NANCE. Thank you, Madam Chairman.

I'm Bob Nance, President and CEO of Nance Petroleum Corporation, from Billings, Montana.

And I guess my being here contradicts an AP story that appeared in yesterday morning's Billings Gazette, that the people of Montana were barred, I think the way that headline said, from this hearing.

We have Federal production in Montana.

Mrs. CUBIN. I've been in a lot better bars than this.

Mr. NANCE. Pardon me?

Mrs. CUBIN. I've been in a lot better bars than this.

[Laughter.]

Mr. NANCE. Yeah, that's it.

We have Federal production on—or Federal production on leases in Montana, North Dakota, South Dakota and Wyoming.

I am here also today on behalf of the Independent Petroleum Association of America, IPAA, which represents nearly 6,000 of America's oil and gas producers.

I'd like to thank you for holding this hearing to increase revenues for the Treasury, States, and the education from public land activities.

Frankly, independents resist doing business on many Federal lands because of the hassle and the red tape. That's true even though we know that one of the last frontiers for unexplored, major oil and gas reserves is onshore public lands. The lack of access, the uncertainty of permits, the costly regulations have chilled the Wildcatter spirit for developing public lands. To restore a can-do attitude for public lands, the IPAA is proposing a six-point reform program for consideration.

I'd like to go—and some of these things have been talked about this morning.

No. 1, increase public lands available for development. We can do this by restoring multiple use as a mandate for Federal lands requiring risk management and restricting unilateral land withdrawals.

No. 2, eliminate Federal activities which duplicate State activities. The IPAA advocates the legislative transfer of regulatory responsibilities to the States wherever possible. We believe that that saves money for everybody. The way producers look at it, if we have to pay for the cost of government, then we want the most cost-effective government to provide those services. Most likely, that's going to be the States.

No. 3, establish an advocate for onshore development. We need to study ways to consolidate those government functions not transferred to the States to a single Federal agency with a clear mul-

tiple use mandate. I think that's being done now in the Federal offshore.

No. 4, increase certainty. Last August, I attended President Clinton's signing of the royalty fairness law in Jackson Hole, Wyoming, and I had the opportunity to discuss with the President the excessive amount of time it takes to obtain a permit or lease and the uncertainties of doing business on the public lands. I suggested to the President that the government should streamline the permitting and leasing process and, within a date certain, make leasing, permitting and appeal decisions. The President expressed support for these concepts.

No. 5, reduce costly regulatory burdens. We'd like to streamline programs and prevent the shift of regulatory costs to oil and gas producers. My written testimony contains a number of suggestions regarding cost recovery and offsetting costs against royalty payments. So I won't get into those right now.

No. 6, implement incentive programs. We need to continue the royalty enhancement program for stripper oil wells, royalty incentive for marginal gas wells, and investment credits for frontier areas.

This is a very aggressive reform program. Many of these initiatives may have to be accomplished via a legislative vehicle. But the IPAA stands ready to work with this committee and with the administration to develop the comprehensive blueprint for reform.

I would like to take a couple of minutes of the Committee's time to discuss another example of land preservation right in my own back yard, and that's the draft EIS prepared by the Forest Service for the Lewis and Clark Forest in Montana.

The Rocky Mountain division of the forest is in the over-thrust belt and has the potential to contain a minimum of two trillion cubic feet of gas or perhaps as much as 11 trillion cubic feet of gas, and that's according to the Forest Service's own study. There have been other studies done by industry and other organizations that put that potential a lot higher than that.

The Montana thrust belt is rated third in the entire country for potential conventional gas reserves and second for potential deep gas reserves. Unfortunately, I must report that the independents believe that under the current circumstances and attitudes of the government, these reserves won't be explored and produced.

And I can point to the fact that the reason that we feel that way is that there's been no lease issues on forest lands in the State of Montana for 17 years—16 years, I'm sorry. Nineteen eighty one was the last time a Forest Service lease was issued in Montana.

The Forest Service maintains that 52 percent of the Lewis and Clark, or about 1.2 million acres, will remain open for leasing under their preferred alternative; however, the plain fact is that these leases would be so severely restricted in stipulations, including no service occupancy, that for all practical purposes the 1.2 million acres have been taken out of play.

We can't wish oil and gas out of the ground. We have to go on the land to evaluate it, drill it and produce it.

The Forest Service plan is an empty promise that does not provide a meaningful opportunity to explore for or produce oil and gas. This is extremely disappointing.

The Forest Service itself estimates that if the oil and gas industry were turned loose, with no restrictions, standard lease terms, that we would drill only 30 wells and, in fact, only 300 acres of that forest. I can't comment on that, because that's their estimate. But if you have a calculator, you'd see we're talking about less than one quarter of 1 percent of the entire forest.

I'd also like to point out some concerns we have with the Forest Service analysis. Even though the Forest Service claims otherwise, there is no question it gave more weight to environmental impacts than to the socioeconomic impacts. It assumed that mineral resource development is in direct conflict with all other resources and that these conflicts cannot be mitigated. It did not take into account the many technical advances which allow drilling to be conducted in sensitive areas with minimal impact to the environment. It ignored the impact that these reserves would have on the national security and trade balance, which is contrary to their own program policy documents.

We agree with Governor Mark Racicot of Montana, who stated, in response to the Forest Service, that with regard to the Rocky Mountain front, "resource protection and leasing for oil and gas potential can occur in a more balanced manner."

The Governor recommended additional leasing within this Rocky Mountain division. He recognizes that oil and gas development occurs in phases and that the Forest Service has the ability to control the process.

Madam Chairwoman, time is running out. Our latest report from the Forest Service is that they are planning to issue a record of decision sometime this fall. I'm not sure there's much we can do about it. However, we do urge this committee to intervene to help convince the Forest Service to adopt the recommendations of Governor Racicot. And I would hope, in the least, they would respond to him, rather than not, as they have in the past.

In the long term, we believe that the only permanent solution for giving mineral development a fair and reasonable chance on public lands is to reconfirm a multiple use mandate and require the Federal Government to equally weigh the importance of socioeconomic impacts and the views of State officials in its land use decisionmaking process.

Again, I want to thank you, Madam Chairwoman, for coming out here to listen to the challenges we face on public lands and to offer assistance in changing the current operating environment. We can no longer afford to ignore needed mineral revenues lying dormant beneath public lands. Through reform of the Federal oil and gas regulatory program, oil and gas producers can begin to bring these revenues to the surface for the use of the nation, the States, and most importantly, those educating the children of the West. We stand ready to help in a blueprint for reform, or however you think we can be.

Thank you very much.

[The prepared statement of Mr. Nance may be found at end of hearing.]

Mrs. CUBIN. Thank you, Mr. Nance.

Now call on Mr. Terry Belton from RMOGA.

STATEMENT OF TERRY BELTON, ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

Mr. BELTON. Madam Chairwoman, my name is Terry Belton. I am here today representing the Rocky Mountain Oil and Gas Association. I also work for Texaco and was a member of the Green River Advisory Committee.

I'd like to discuss several issues of importance to the oil and gas industry in the Rocky Mountain States.

RMOGA is extremely troubled by the growing trend in the Department of Interior's policies in recent years which threaten future prospects for oil and gas exploration and development on public lands.

Specifically, I will discuss DOI's unwillingness to adopt and implement GRBAC's eco-royalty relief recommendations; development of new, comprehensive cost recovery measures in DOI's minerals program; lack of consideration given socioeconomic factors by Federal land management agencies when making decisions pursuant to NEPA, as well as some other NEPA concerns, particularly the delays, costs and uncertainty which accompany the NEPA process; and some thoughts on GRBAC's NEPA streamlining recommendations.

We were going to spend a lot of time talking about the de-facto wilderness land withdrawals by BLM, but I feel that's been well-covered today by Marathon Oil. So I think we'll probably minimize our time on that issue.

On eco-royalty relief, industry initially opposed establishment of GRBAC due to concerns over potential additional permitting delays and greater uncertainty already associated with the already lengthy and cumbersome NEPA process. However, when DOI moved ahead with this initiative, we endeavored to make the best of it. After much hard work and dedication, GRBAC members developed a consensus-based innovative solution to reduce conflicts in the Green River Basin and to ensure reasonable development of oil and gas while protecting, and in many cases enhancing, the environment through the use of eco-royalty relief.

This is a voluntary, two-pronged approach which balances oil and gas development with the need to protect the environment by allowing a credit to be taken against royalty payments in situations where operators pay for NEPA documentation and related activities, which are BLM's responsibility, and in instances where project mitigation or monitoring go above and beyond lease and regulatory requirements. The final GRBAC report included a Department of Energy final analysis which indicated application of eco-royalty relief would actually help accelerate royalty payments to the States and Counties in the Green River Basin.

Unanimously agreed upon by industry, environmental groups and affected States and counties, the ERR recommendation proposed a 5-year pilot project. I'm not going to go into the details of that. I think they were probably covered by one of our speakers earlier.

But we have yet to receive an official response on the Final Report/Recommendations, but all the indications are that it's been killed by the Solicitor's office. We are convinced Secretary Babbitt has the authority to implement eco-royalty relief but are extremely

disappointed that the Department has failed to adopt this concept and particularly disappointed that they haven't assumed leadership in finding ways to make it work. GRBAC has done its job. Unfortunately, the Department of Interior has dropped the ball, and a win-win opportunity has so far been lost.

Cost recovery. In December 1996, the Solicitor's Office issued its M–36987 opinion, which claims that BLM not only has the authority to recover all costs associated with minerals document processing, including NEPA documentation, but it is also legally mandated to do so. And I stress this "legally mandated" because, as I heard it earlier in the solicitor's testimony, this was shifted back to the BLM to make a decision on whether to implement this or not. This was not the thrust of the opinion. The opinion basically said that BLM has to do it. So BLM is kind of between a rock and a hard place.

We believe that this opinion is politically motivated by an administration that is more interested in creating an off-budget source of funding and constraining mineral development on public lands than allowing such development to proceed in an environmentally sound manner. We are concerned the administration's intent is to balance the Federal budget and reduce the deficit by increasing fees for public land users, such as oil and gas producers. New cost recovery measures must not be aimed at providing alternative or supplementary funding for BLM programs.

We especially take exception to the concept of DOI charging additional fees for minerals processing without assurances that BLM service will be commensurate with fees paid. We have no guarantee that customer service will be enhanced, permits expedited. We predict the majority of these fees would go to a general fund, not be redirected back to programs in the geographical areas that generated these fees. This could lead to an unprecedented revenue collection by the agency. If these additional funds are retained by BLM, the revenue windfall, and I stress "windfall," could lead to further BLM budget cuts by Congress. This, in turn, would expand the ever-increasing burden on industry and other public land users to fund the Federal Government.

A coalition of industry associations, many of whom are represented here today, have submitted a FOIA request to determine the extent of this cost recovery effort and its financial impact on oil and gas operations on public lands.

Madam Chairman, you earlier in the testimony discussed the idea of a GAO inquiry. We support that. We believe that's a great idea. We believe that this would provide an objective analysis and come up with some reasonable recommendations. GAO could also compare the revenue generated by the onshore oil and gas program with the cost of the administration.

Industry already pays its own way. According to the MMS, industry paid about $650 million in bonuses, rents and royalties in 1996 to the Federal Government. It is our understanding that a significant portion, about 25 percent, of this revenue is used to pay for the administration of its oil and gas program before MMS disperses to the States the net receipts share. It would seem that the Department of Interior intends to charge industry twice for the administration costs of the onshore oil and gas program.

There is a limit to what industry is able and willing to pay. Oil and gas operators, regardless of their size, have finite resources available to them and will cease to invest in the exploration and development of Federal lands if additional operating costs imposed by the Federal Government render projects uneconomical. Further decline in domestic exploration and development due to a cost recovery program would also have a significant socioeconomic impact on Western States and their citizens who rely on such activities as a critical component of their economic well-being.

But it's been covered in earlier testimony. I was going to discuss the de facto wilderness at length. The only thing I will say here is that we support everything that's been said about the BLM policy of withdrawing lands from leasing, both in Colorado and Utah. We believe that a process has been utilized through the FLPMA, a wilderness review process and land management review process and so forth. And we, industry, bought into that. We have accepted the results, and we believe the administration should do the same thing.

NEPA concerns. In the two decades since FLPMA, NFMA and NEPA were enacted, it is plainly evident that socioeconomic needs and impacts and values have played little or no role in the Federal decisionmaking process. When the lack of adequate analysis of socioeconomic impacts and benefits in the NEPA process is raised as an issue to Federal land managers, industry is often told that NEPA merely requires an analysis of environmental impacts of decisions. The cursory socioeconomic analysis included in the NEPA documentation is of little value in making decisions which affect the immediate and future economic conditions of user groups, States and local communities. The conspicuous lack of attention to socioeconomic benefits stemming from commodity development and the adverse economic impacts of severe limitations on uses due to aesthetic or other reasons is of tremendous concern to the Western States who are adversely affected because they hold 90 percent of the Federal lands within their borders.

Delays, uncertainty and costs associated with the NEPA process are also primary industry concerns. While the Department of Interior has formally adopted the GRBAC NEPA Streamlining recommendations, we are concerned that little has been done outside the application of the Jonah project in Wyoming regarding its implementation. GRBAC's goal was to improve the quality of documentation while cutting delays and paperwork associated with the process by 50 percent. Even though the committee's focus was on the Green River Basin, the elements of NEPA streamlining should be implemented Bureau-wide. To do so would be in the best interest of the Department of Interior, industry and the public. The Subcommittee could ensure and monitor DOI's implementation of NEPA streamlining recommendations by requiring an annual report from BLM that identifies time, manpower and cost savings realized by the agency.

The following RMOGA recommendations are designed to provide for a balanced policy that encourages environmentally responsible exploration and development of oil and gas resources on public lands:

No. 1, subcommittee support in the advocacy of GRBAC eco-royalty relief recommendations.

No. 2, subcommittee advocacy in support for marginal gas royalty relief and renewal of the stripper oil royalty relief program.

No. 3, GAO study of the potential effects of the Department of Interior's cost recovery measures on the domestic industry.

No.4, review of DOI de facto wilderness policy discussed earlier.

No. 5, advocacy of greater consideration of socioeconomic impacts in NEPA documents and the Federal decisionmaking process.

And finally, an annual progress report from BLM detailing implementation of GRBAC's NEPA streamlining recommendations.

One final note. I just wanted to stress the importance that we feel of renewing the stripper oil program. We feel this has been a critical program in lengthening the economic life of many fields in the Rocky Mountain region. And as far as I've been able to ascertain, the target set by BLM in instituting the program has been reached. The statistics bear that out. So I think the program has been successful. We think it's critical to renew that program.

We appreciate the opportunity to provide you with our views. I'll be glad to answer any questions at this time.

[The prepared statement of Mr. Belton may be found at end of hearing.]

Mrs. CUBIN. Thank you very much.

And I guess our next witness will tell us how well those GRBAC things are being implemented. John Martin, McMurry Oil Company.

STATEMENT OF JOHN W. MARTIN, PRESIDENT, McMURRY OIL COMPANY, INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES

Mr. MARTIN. Thank you. Madam Chairwoman and Committee, thank you for having me here today.

I represent IPAMS' hundreds of members that are independent oil and gas producers in the Rocky Mountain region. And I'm here as well to represent my company, McMurry Oil Company. We're probably the tail of the dog here today, 17 employees and strong. And I want you to know that we're glad to be able to report from the foxhole about how this EIS procedure is working.

Our Jonah field project is the test case for the GRBAC streamlined environmental impact statement process.

What I'd like to do quickly is—I want to thank IPAMS first for the staff and the people that helped contribute the remarks that are contained in the written testimony. And I certainly concur and will heartily support everything that is presented there.

However, I wanted to spend my 5 minutes to tell you some of the day-to-day, real life things that we face as we try to develop oil and gas on Federal leases. And so to that end, I want to talk briefly about the environmental impact statement process that we've been undergoing for some time, and in so doing talk about the legislation by regulation, which is alive and well, talk about the Endan-

gered Species Act as it relates to that, and talk about air quality, which are the—these are the topics that hit me the hardest in our process.

I've heard, since the beginning of testimony today, that legislation by regulation really is the problem, and I couldn't agree more. Congress passes a well-intentioned law, and the Federal agencies do with it as they will in many cases. And that's difficult for us to live with and to understand what we have to do.

Agencies tend to microregulate. I've seen a trend in the past 5 years where—you asked the question was it better 4 years ago. Yeah, it was. It certainly was. And it's tough now because every single thing that occurs in any environmental impact statement across the board, you see it show up everywhere else. It's kind of like a magnet. If it shows up in Cave Gulch, we'd better put it in Jones, just to be safe. And it's a lousy precedent, but it's the way it's working.

The APD process, the permit to drill process that we go through from the BLM, I think, is unreasonably long. It takes forever, and it's 30 days if it's a miracle. It's more likely 60 to 90 days, if there are no problems, and God knows how long it will be if you find an arrowhead or half an arrowhead or somebody thinks there might be an endangered species nearby.

So at Waltman, there's a Federal APD. Thirty days if it's a miracle. A hundred and eighty days, who knows. You can go to the State of Wyoming and get permission to drill an oil and gas well on a State lease or a fee lease and be out of there in two or three days, and you're going to be bound by some mighty tough regulations. They don't cut you any slack, but they give you the ability to get going and get on with your life.

I think that the BLM should take heed of how Wyoming has its processes going. Lease stipulations are growing every day. If you've ever seen the book that comes out, look at the small print, lease stipulations. The stipulations take up more print space than the documents in the actual Federal parcels do. And I see that same little tendency there, well, gee, if we've got a stip for that over here, maybe we'd better put it on anything within 50 miles. You can mark my words. That's the trend that I see that is alarming.

We've had drilling delays and restrictions in Jonah field for some of the doggonedest [sic] reasons. Most of them have had to do—a lot of them have had to do with archeology. Archeology is a growing field of interest in there. You know, we have to arch-check anything. If they even think there's a sign or whatnot, we're delayed. We shut a rig down this winter because of frost restrictions. For frost restrictions we put 14 guys out of work? Yeah, frost restrictions. Well, you can't separate topsoil when the ground is frozen. OK, so topsoil is more important than jobs. OK, if that's the way. The other reasons are archeology. You can't really look for arrowheads and you can't see pot parts very well if you dig it up in chunks, rather than have the ground unfrozen.

I mean, those are the reasons, and that's real. That happened to us this winter.

I concur with Robin's comment, and I think the Federal agencies generally are in fear of lawsuits by environmental agencies and

they react and make decisions accordingly. I've seen it. I can't prove it. But I tell you that's my opinion.

The environmental impact statement process that's supposed to be streamlined, it really isn't. We're going to get a record decision, if we're lucky, in November. It's been delayed. It should have come out in August. It's been delayed, and I'll tell you why it's been delayed, because the air quality provision of it is being argued among Federal agencies. They can't decide what protocols to use and how to tell whether air quality is good, bad or indifferent. And so we sit there, I guess, with our arms crossed, waiting for them to decide how we address air quality.

Here's what we have so far. And it's not as impressive as Robin's stack, but it's getting there. But the air quality part is not here yet. We don't know what it will do, what it will say. And air quality is a critical issue to me. I've lived in Wyoming for 23 years. Nobody can argue wanting good air quality more than I will.

But the problem is air quality is being used as an excuse. It's being used as the issue to drag this process on and perhaps delay us, for whatever reason.

Quickly, because I know I'm running out of time, on the Endangered Species Act, I've got a couple of things. It's a well-intentioned Act gone astray. It needs to be changed. It's a tool—it's a tool for stalling or delaying. The listing criteria, I think, is flawed.

I have a solution. I say that no species can be listed unless 50 percent of the Congress can identify it from a picture out of 50 choices.

[Laughter.]

Mr. MARTIN. Yeah, that's pretty funny, but you think about it. I had it suggested to me that we have flip cards for our field personnel so we could recognize a Rocky Mountain clover, when I asked what's a Rocky Mountain clover. It's not endangered, but it's a candidate. So we have to worry about the 100 million species that exist plus candidates, plus subspecies and whatnot. The law has gone astray, and it needs to be fixed.

And I will quickly say that our project at Jonah is the solution, not the problem.

One important thing about socioeconomic impacts, I agree that they are not given the weight they deserve. But there's another aspect of it that I think is very important to be considered. We've identified probably a trillion cubic feet of natural gas that we can produce out of our Jonah field. Nobody will take the time, despite my constant harping and carping, to determine the air quality, whether it will be better or worse if that trillion cubic feet stays in the ground or is delayed or an alternative fuel is burned somewhere else in the United States that might not be as good for the air as natural gas. Nobody will sit and talk to me about that. It's a lot of work, but it's a heck of a valid point. So I lay that on the table.

And with that, I thank you for caring. I thank you for being kind enough to come and listen to us. And I'd be happy to answer questions when you finish.

[The prepared statement of Mr. Martin may be found at end of hearing.]

Mrs. CUBIN. Thank you, John.

Next is George Fancher, Jr., Fancher Oil Company.

STATEMENT OF GEORGE H. FANCHER, JR., OWNER, FANCHER OIL COMPANY

Mr. FANCHER. Thank you, Madam Chairman, for the privilege of appearing before you and your staff on Energy and Mineral Resources. It is time we examine the issues which are adversely affecting our industry. You are to be complimented on your interest in listening to some of the problems that producers in the Rocky Mountain region are having with governmental agencies such as the BLM.

The goal of government should be to encourage and help industry be more efficient and to economically develop and produce the domestic oil and gas reserves that are available in the United States.

My name is George Fancher, and I am the owner of Fancher Oil Company, a small independent producer located in Denver, Colorado. I have been active in Wyoming and the Rocky Mountain region since 1969. I am a member of IPAMS, WIPA, and so forth.

However, today I am not representing any organization, and my comments reflect only my concern about the procedures used by the BLM in approving the environmental impact statement for the Express Pipeline Project. As a result of my experience with the Express Project, I am concerned about the lack of a comprehensive process to evaluate the need for and impact of an international pipeline on local and State economies and to the domestic oil and gas industry.

The Express Pipeline has been in operation for only a few months, and its impact upon crude oil prices has already been felt. Prices for crude oil have fallen by approximately $2.50 a barrel and have virtually wiped out the bonus over posted price which Wyoming crude oil producers were receiving. I expect that by the end of the year that bonuses will no longer exist. This is due to the fact that Express Pipeline will be shipping 172,000 barrels a day of crude oil from Hardisty, Alberta, to its connection with the Platte Pipeline here at Casper, Wyoming. I anticipate that substantial quantities of crude oil being shipped on Express will be used to compete with oil produced by Rocky Mountain producers in markets which include Wyoming, Colorado and Utah. The balance of Express's crude will be shipped eastward on the Platte Pipeline to its terminus at Wood River, Illinois.

In my view, the BLM did an inadequate job of evaluating the impact of this pipeline. In fact, the BLM capitulated to Express after Express's attorneys objected to the consultants' analysis which resulted in dramatic changes to their revised report.

While the initial report concluded that there would be a price reduction of $2.50 per barrel for all types of Wyoming crude as a result of the pipeline, the revised report concluded that there would be a price reduction of only $.35 a barrel.

The initial report concluded that the potential total cumulative loss of income to Wyoming producers resulting in the lower prices could be as much as $2.1 billion. In the final report, the BLM consultants concluded the potential loss of income resulting would be a $.35 reduction, but by 2005 would be only $196 million. Thus, the consultants changed their evaluation of cumulative impact to local

producers from $2.1 billion to $196 million, a change of over $1.9 billion.

Now, because of the radical changes between the two reports, the Wyoming State office of the BLM should have been very concerned about this shift and sought independent review. The Wyoming State office never independently challenged or even questioned this dramatic $1.9 billion change and the consultants' reversal of its initial conclusion. The WSO never disclosed the presence of the two radically different socioeconomic analyses and never disclosed why it rejected the initial report and accepted the revised report. They made no attempt to quantify the loss of nonrenewable natural resources which will result from the construction and operation of the pipeline. Thus, the Wyoming State office of the BLM, breached its obligations under NEPA to independently review and analyze the consultants' work on socioeconomic impacts and failed to ensure the professional integrity of the analysis contained in the consultants' final report. The first time the public had an opportunity to review the analysis performed by the consultants was when the FEIS was issued.

In particular, on June the 13th, 1996, I learned that the consultants had new information which would have caused them to reach different conclusions from those in the final report. On or about June the 20th, 1996, I spoke to Mr. Ogaard of the BLM about the consultants' new information. Mr. Ogaard informed me that he did not really care if there was new information or if the consultants' opinion may have changed, that he had to draw the line somewhere and the WSO was not about to reopen the case to consider the impact the pipeline would have on domestic crude oil production and related socioeconomic impacts.

It was, and is, reasonably foreseeable that the inundation of large volumes of Canadian crude oil in the Rocky Mountain region would cause the price of oil in Wyoming to fall and wells to be shut-in, resulting in a loss of otherwise recoverable domestic natural resources, which violates one of the fundamental purposes of the National Environmental Policy Act, which is the prevention of waste of nonrenewable natural resources. The WSO was obligated to evaluate and disclose "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented," including the loss to domestic oil reserves resulting from the project.

As many as two-thirds of all marginal properties (including non-heavy oil properties), could be lost during a period of sustained low oil prices. The danger in losing the marginal wells is that, although production from individual wells may be small, their collective production is significant, accounting for one-third of all domestic production excluding Alaska.

Nowhere in the analysis of the socioeconomic impact of the pipeline did the Wyoming State office address the impact of these regulations which were promulgated by its own agency. Neither the draft EIS nor the final EIS contained any analysis of the economic limits of domestic oil production or any quantification of the domestic oil reserves which will be lost as a result of the proposed pipeline.

The failure of the BLM to adequately assess the impact of Express on local prices violates NEPA, which provides that it is the responsibility of the Federal Government to enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. Crude oil is a natural resource, but it is depletable. If fields or wells have to be abandoned before the resource has been produced to its maximum attainable limit, then waste will occur. The prevention of waste of natural resources is a fundamental purpose of NEPA. The broad aim of NEPA is well established.

Here, economic and environmental effects are clearly interrelated. It is reasonably foreseeable that the pipeline will cause a substantial number of domestic oil wells to be shut-in, resulting in the loss of otherwise recoverable domestic natural resources.

In summary, the process must ensure that the socioeconomic aspects of the NEPA process receive more comprehensive treatment than was done with the Express Pipeline Project. The failure to disclose the radical shift in the analysis of the socioeconomic impact of this pipeline to the public must be prevented in the future, especially where the lack of a truly independent analysis may lead to the waste of natural resources.

In the future, our industry will be faced with similar situations involving foreign oil and gas projects that will directly impact the domestic energy industry. The Express Pipeline Project illustrates the fact that no State or Federal Governmental agency has the final or overall authority to evaluate the need for and the impact of an international pipeline on local and State economies and the domestic energy industry in general.

Because of the many questions that the Express Pipeline has raised, I recommend that the government, in conjunction with industry, develop a comprehensive approval process for foreign pipelines transporting foreign crude oil, natural gas and/or refined products into this country which will evaluate the viability and effect of the project on all concerned.

Thank you.

[The prepared statement of Mr. Fancher may be found at end of hearing.]

Mrs. CUBIN. Thank you, Mr. Fancher.

There's just a common thread through everyone's testimony today that has had dealings with trying to get permitting accomplished for exploration and production.

I talked a little bit about an adversarial relationship between the parties involved in the process. And certainly, another party that is involved in the process was referred to by a couple of you on the panel, is that the government, or the BLM, or the permitting agency, sometimes makes decisions based on whether or not they think they are going to be sued by an environmental organization.

I don't—I don't believe that today there are companies that are willing to pollute the land or the water or the air. I honestly, in my heart, believe that everybody in this room wants to reach some kind of balance between the environment, jobs in the economy, and producing energy. I really do believe that.

And, you know, everyone might have a—different groups might have a different take on where that is. But I do believe that.

I wonder if just a couple of you from the panel would describe to me what you think a win-win situation would be. Is there such a thing as a win-win situation in today's environment?

Terry?

Mr. BELTON. Well, ironically, I think the GRBAC eco-royalty relief recommendation was just that. I mean, I think what it did—one of the reasons we came out with our recommendations was we threw off the table all the controversial issues. All the things we couldn't agree on we just threw off the table. And what we did was we said let's look for things we all want. And, you know, one of our big issues was the added cost of NEPA documentation, cultural surveys, inventories, you've heard the litany today of the problems we're having.

We need some way to offset those costs. Those are not our responsibility; they're BLM's responsibility. But we're paying for it.

And if those costs increase—if those costs continue to increase, it will put us out of business, essentially, because operators are faced with the choice between operating on private land versus Federal land. How long are they going to endure these kinds of delays and costs? So this is one of our main concerns.

One of the main concerns of the environmental groups was to try to mitigate potential impacts and to have a better way of assessing those impacts.

I was surprised in the process to find that there were—there was a lot of commonality. In other words, a lot of the conclusions we drew were the same. We all felt the process was flawed, that the documentation was flawed. And I found the environmental groups—although this may sound naive, I always felt previously that all they wanted was the longer it takes the better it is. But that's not what played out on the Committee. What played out on the Committee is not the quantity of the paper and time, but the quality of the analysis.

And so I think, once we stressed improving the quality of the documentation while cutting the time and cost, it made sense to everybody.

So what you have is a tool that will enable operators to discuss controversial issues fairly early on and put those issues to rest. But you can do one of two things. One of the things it can do is it can keep the project at the EA level and not into the EIS level, which is time and money. The other thing is, even if there is an EIS, you can settle those controversies early enough where you can move on. You can get on with it.

The reason eco-royalty relief is so important it that it provides an incentive for operators to come to the table and say, OK, we really don't want to have to go out and do a block survey on raptor nests, but if we can reduce our royalties by those costs then maybe we'll agree to it. That's not going to guarantee it's going to solve all the problems, but it's a move ahead. One incentive that might enable that process to move on.

So these are just some of the things that I think were win-win's that came out of that process and that I think are good. I think eco-streamlining is another one.

Mrs. CUBIN. My reaction to that is that in theory it sounds great, but we just heard from John Martin, of McMurry Oil Company, that it isn't working.

Mr. MARTIN. Right, right.

Mrs. CUBIN. So I guess that's what I'm asking. How do we facilitate a win-win situation, given what we have today?

Mr. NANCE. Madam Chairwoman, I think we have to get back to the basics, and I think it has to be—somebody has to mandate, and it probably is going to have to be Congress, mandate a multiuse attitude on Federal lands. I think if we could come to that, everybody could come to a point where we start there and all the agencies are focused in on that, then we can sit down and work out our differences. But I think until that happens I don't see it happening. And I think it's going to have to be mandated.

Mrs. CUBIN. Thank you. Mr. Tipton, you stated that Marathon intended to appeal the lawsuit, Marathon vs. Babbitt, at this point; is that right?

Mr. TIPTON. That's right. Those are our intentions.

Mrs. CUBIN. And it was thrown out. Would you refresh my memory? It was thrown out because they said Marathon didn't have standing because you weren't entitled to bring—you didn't have the right to a permit or something?

Mr. TIPTON. As it was explained to us, the reason it was thrown out is the judge felt like he did not have the authority to grant us a decision that would satisfy what he interpreted our request to be. In other words, he said he did not have the power to force the Department of Interior to grant us leases, which is not what we were after to begin with. We just wanted the existing process to be enforced as it was intended to be.

Mrs. CUBIN. It seems to me that industry as a whole is harmed, if you will, by being unable to bid on certain tracts of land. Has Marathon sought out any other organizations that might want to join with them in pursuing this action?

Mr. TIPTON. You bet. We've publicized our efforts. We've gone through PAW, RMOGA, and different agencies. As Terry indicated, a lot of people are encountering the same type problems. There's general, widespread support for our cause, and it's disappointing to see the decisions that have been made so far.

And in the end, it's not just the oil companies that are suffering. Every delay in a well drilled on Federal lands is money that the State loses in revenues. And as we stand now, battling money and needs for school funding, all we're doing is compounding the problem by continuing to delay access on Federal lands.

Mrs. CUBIN. I've heard some other common threads through this discussion today. The NEPA process seems to be more involved with the process than the result. Certainly, that's true of the super fund, where more than half of the money that's paid into the super fund goes to litigation, and actually there's very little cleanup of toxic sites.

The Endangered Species Act, Mr. Martin brought up the problems with that. In California, during the floods this year, there were some levees that the Corps of Engineers said these levees will fail, and when they fail, human life will be lost, but it would re-

quire a whole environmental impact statement to maintain existing levees.

There were elderberry bushes on those levees. No elderberry beetles, which is the endangered species, but the bushes.

The water came. The levees failed. And six people died.

And I don't think that is what—I know that's not what the law is intended to do. And I think it's just incumbent on everyone in government, from the Congress to the people that work for State and Federal agencies, to get a grip. This is just out of control. It is just ridiculous.

Another point that I want to make that I picked up from a lot of your testimony is that not only is it harder to invest in places like Wyoming when you want to produce some wells, it's easier to invest in Oklahoma or Texas where you don't have to deal with all the Federal problems, but it's easier, even yet, to take your business overseas.

Now, environmental organizations, their main objection to the production and exploration are possible degradation to the environment. Well, what kind of regulations are there overseas? Is this a world environment or is this just a Wyoming environment because it's got public lands in it? I mean, we just have to get some common sense into some of this.

Mr. Smith, I worked with you throughout the environmental impact statement process there at Cave Gulch. I understand you don't have a record of decision signed yet.

Mr. SMITH. No. It's due.

Mrs. CUBIN. So will you be real nice until it's signed, or can I ask you some mean stuff?

[Laughter.]

Mr. SMITH. Go ahead. I'll take my chances.

Mrs. CUBIN. Could you give me some examples of the breakdown, I don't care whether it was communications, but just the frustrations you faced and kind of a time line on some of those things so that I can have a good understanding, and an understanding in the record, of the sort of things that we're talking about here? Because I think if we don't have specifics it isn't going to help. So would you mind doing that?

Mr. SMITH. Well, one example that Mr. Magagna brought up this morning was a situation where we had State leases that were within the Bullfrog unit. So the leases were committed to the unit. However, they weren't Federal minerals; it wasn't Federal surface, and so the BLM didn't administer our activities on those leases.

We wanted to drill a couple of wells on those leases and run a gathering line from those leases, from those wells on those leases, to a central sales point in the field. That gathering line system, primarily, would run from the wells along existing access roads to an existing County highway, down to the metering station.

We were told that—well, let me first say what our position was. Our position was that because these gathering lines were in the unit that we didn't have to file a right-of-way application, that we could request approval from BLM with a sundry notice.

The determination at the local level was that no, we had to file a right-of-way application, which we did, and in the interest of trying to speed things along, once again, because we wanted to get

these wells drilled and on-line so that we could start seeing some revenues from them.

After we complied with that request and filed the right-of-way application, we were then told that the approval of that application would have to be withheld until the wells were drilled because, until the wells were drilled and there was a need shown by the production from those wells, we didn't need to put the gathering lines in. So they couldn't answer right away.

Time frame on that was—I think we filed the right-of-way application in July. We had a February 1 raptor stipulation out there that we were fighting. I think we got approval in December, if I'm not mistaken, to lay those lines. And it was approved through the application of the sundry notice, rather than the right-of-way application.

I think this goes back——

Mrs. CUBIN. So that was about 5 months?

Mr. SMITH. Yeah, about 5 months. Now, there were——

Mrs. CUBIN. For a right-of-way.

Mr. SMITH. Yes, for a right-of-way, less than two miles of gathering lines.

It didn't delay the production of the wells. I think there was a misstatement this morning. We were able to drill the wells at the time that we wanted to and get the wells on-line before the raptor stipulations kicked in. So we didn't have delayed production of those wells.

But a tremendous amount of effort and frustration went into trying to resolve that issue, which I think that you're aware of because we involved you in that.

Again, I want to say that many times the problem is the interpretation of the regulations. Like John said, it's not the act; it's the interpretation of those regulations that creates many of these problems.

Another example, I guess, would be the—I hate to even bring this up, but the Chevron Waltman No. 43 well.

Mrs. CUBIN. I hate for you to bring that up. So does Tom.

Mr. SMITH. You heard this morning that we were allowed some moderate interim development by the BLM. They were in a consensus process, whereby a number of wells, I think 14 wells, were allowed to be drilled while the EIS was being conducted, which was a very nice thing for, I think, everyone concerned. We got some production. We got some more wells drilled. We understand better the geology of the field, which is very complicated. We understand better how many wells we need to drill because of that.

One of the wells that we proposed was the Chevron Waltman No. 43. We proposed that well in the interim package because we felt that we had a royalty rights issue or a drainage problem by an offsite operator. In the consensus process a number of locations for that well were proposed, and I felt like, matter of factly, and without any analysis, that might be a problem, that this might be a problem. So we're not going to approve that well.

I kept trying to raise the issue of drainage. And we still were denied permission to drill that well.

At that point, we felt we had a problem that we had to resolve then and there. So I went back to the BLM and sat down and said

we have to resolve this; it's not all right to have "no" as an answer because we're—our rights are being infringed on.

A number of solutions were discussed. And eventually, what happened was the 43 well location was approved to be drilled directionally. We gave up another well that had been approved in the interim development package in order to keep the impacts of that package at that same level. And that timeframe for all of that was probably another 4 months, 5 months, of a lot of letter writing, meetings and discussion, and finger-pointing and raised tempers and other things.

Those are two of the best examples I think I can give you.

Mrs. CUBIN. I think you mentioned also that understaffing at the BLM was a problem.

Mr. SMITH. Uh-huh.

Mrs. CUBIN. Could you go into that a little more for me, please?

Mr. SMITH. Yeah. It's a situation that I think we're facing in another part of the State, rather than the Platte River Resource Area. In southwest Wyoming, we have a unit called the Birch Creek unit, and we're trying to get some wells approved over there. We scheduled onsites with the BLM personnel, who canceled on us twice due to scheduling conflicts. We had a meeting with the district manager, and she suggested that we get someone else in there to—rather than somebody from that resource area office, but from another resource area out, to sort of fill in for the people because they were so overwhelmed by the APDs and onsites that they had to come back. And what's happened in that situation is that person did work with us, but he won't make a decision without talking to the person that wouldn't—or wasn't able to come in the first place.

So we have a situation where the BLM personnel are just literally not able to handle the work load that they're faced with. That's a seasonal thing over there because of the winter range restrictions that we have, too. I need to point that out. They go months, I think, without a lot of APD activity and then, in the spring, get hit with tons of them all at once.

So it's difficult to solve. You can't add staff and have them sit around all winter waiting for the APDs to get in. But it is a problem that impacts the business.

Mrs. CUBIN. And did it impact—I mean, it seems to me I recall having a meeting with BLM where they didn't have a biologist that they really needed to move Cave Gulch along expeditiously.

Mr. SMITH. They do have a biologist in the Platte River Resource Area, but Cave Gulch isn't his only project that he's working on, although they did move the Cave Gulch to the list—to the top of the priority list. Everything else can't stop just because of that. He still has to do other things, and that impacted his list somewhat, too.

Mrs. CUBIN. Were you satisfied with industry's role in assisting the BLM develop the mitigation for raptors?

Mr. SMITH. If you'd asked me that question 6 months ago, the answer would have been no. But, as I said in my testimony, I think that our relationship has improved dramatically, and I believe that there's a lot better communication between BLM and industry on this project, and I think we are working constructively together now toward cost efficiency and effective mitigation, which has been

our goal. Our goal has not been to avoid mitigation, but to make sure that the mitigation that we pay for doesn't cost us more than it should and that it actually works, that it impacts—that the impacts that we're trying to mitigate are mitigated. That's what's important to us.

Mrs. CUBIN. Well, speaking about paying for it, would you explain to me exactly how the money bid is handled with all of this? Do you just give money to BLM and they have the work done? When you do a NEPA study or an EIS, how does that money transaction work?

Mr. SMITH. It's between industry and the contractor, the consultant that produces these reports. In this case it's Gary Holsan. BLM determines that the study needs to be done. We go to them with the proposal. They respond to us and say you're going to do an environmental assessment.

It's our responsibility. If we're not budgeted to do it, if we don't have people to do it, if you want us to do it it will be x-number of years, generally an unacceptable number of years to industry. So we say we will fund the study in order to expedite this process.

It's a very strange relationship because the consultant is paid by industry but works for BLM, which creates some concerns.

Mrs. CUBIN. OK. It's paid for by industry, but they work for BLM?

Mr. SMITH. For BLM. They are doing the analysis at the direction of and for the benefit of the Bureau of Land Management.

Mrs. CUBIN. "At the direction of," explain that to me a little more. BLM tells them what information they want or do they tell them how to document it or what?

Mr. SMITH. Both. They—what industry's role is—I think it's easier to describe what that is, is we propose an action. In the case of Waltman-Bull Frog-Cave Gulch, we proposed drilling a number of wells from a number of well pads.

The consultant then begins gathering information and working with an interdisciplinary team within the BLM that's comprised of a number of individuals with different areas of expertise. And the consultant has an interdisciplinary team that basically mirrors what the BLM has. And those team members exchange information, ideas, and discussions on their areas of expertise, and, generally, over time, produce a document like this.

Mrs. CUBIN. Is there much disagreement ever between the consultant and the BLM?

Mr. SMITH. I'm not sure that I can comment on that. We're not generally privy to all of those discussions. So I'm not sure what takes place. I'm sure there are disagreements. I'm sure there are.

Mrs. CUBIN. As time goes on, do you get—I mean, do they say, well, we need more; we need more or—up front, or do they say these are the things we're going to need and these are the professionals we need to study them?

Mr. SMITH. In the case of Cave Gulch and Waltman and Bullfrog, it's been involving a data base. We have started out monitoring small areas for raptor nesting, habitat and activity. And as the EAs progressed and the EIS progressed, that area of monitoring has grown and grown to the point that we are now monitoring an area

of about 273 square miles, around the project area of about 40 square miles.

Mrs. CUBIN. So would you say that the uncertainty—or that uncertainty with your investments and how much it's going to cost up front and—you know, is that a factor in when the company decides where they're going to invest their money?

Mr. SMITH. Certainly. As you mentioned this morning, we have budgetary constraints. There's only so much money in the pot. And the companies are going to invest that money where they can see the fastest and the best return on their investments. A lot of economic analysis takes into account the risk. And the risk in operating on Federal lands is whether or not you're going to be able to operate this year or next year or the year after that. It's very difficult to plan your business.

Mrs. CUBIN. Not even considering the risk of not getting oil or gas when you drill.

Mr. SMITH. Yeah, that's right.

Mrs. CUBIN. Mr. Nance, you mentioned in your testimony that technology was not considered in the EIS for the Lewis and Clark Forest. What kind of technology were you referring to?

Mr. NANCE. Well, evaluation technology primarily, but also the ability to drill wells more efficiently and in a more environmentally friendly manner. Nobody is going to go in to a high risk area like Lewis and Clark and drill expensive wells without a fair amount of data being required beforehand. And that data, in today's world, is probably going to be 3D-seismic. That can be done in a very environmentally friendly way now. It can be very costly. It would probably be hand-held drills that would have to be walked through the forest and you could drill a hole that is not very deep to—for the charges for the seismic that comes out with a pile of dirt about this high that is very easily filled back in and very little problems with the surface. That can be done. A primacord can be used on the surface. That may be a little noisy for wildlife around here. I'm not sure. But there are several ways to do 3D-seismic in there to give us an evaluation.

And while we think that there's an awful lot of reserves there, it's all not going to be productive. So we have got to be pretty specific about our evaluation process.

But that's going to be awfully expensive. And nobody is going to be willing to go in there and spend that kind of money without the assurance that you're going to get a lease or, when you get a lease, that your permit to drill is going to be acted upon.

I think probably Robin can speak maybe to that better than anybody. I think Chevron, as I understand it, has had a permit to drill pending in the Lewis and Clark for about the last 16 or 17 years. So nobody is going to do that sort of thing without the assurance that they can do something with it. So it's sort of like the chicken and the egg thing. But it can be done.

And you said awhile ago that we all are concerned about the environment. And there's not a soul here that's sitting at this table, I don't think, that is choosing to live in the Rocky Mountains without concern about the environment. We're going to do it in a sensible way.

And there are ways to do it. We can drill wells from a single pad. Locations can be small, contained mud pits. There's a lot of things that can be done that was not considered at all.

Mrs. CUBIN. I think in your testimony that was related to the Lewis and Clark Forest, National Forest.

Mr. NANCE. Yeah.

Mrs. CUBIN. Are you aware of other instances where that technology has been taken into consideration?

Mr. NANCE. Well, I believe down in Wyoming, in the Thrust Belt of Wyoming, and in Utah. I can't specifically tell you what fields, but I'm sure that there—well, I know there is. There is Wyoming and the Thrust Belt in Utah that have been done that way, and Canada.

Mrs. CUBIN. So maybe just depends on the regulator that is looking at the proposal than it is actual policy?

Mr. NANCE. I don't know. I don't know whether the regulator in Montana really wants to look at the ability of industry to do that. I think it's the motivation behind why they're making the regulations that they're making.

Mrs. CUBIN. It would seem to be.

Would you support legislation transferring—all of you or any of you, transferring the responsibilities to the States?

Mr. NANCE. Absolutely. I think in one of IPAA's recommendations that we do recommend the transfer of that kind of regulations to the States. I think it would be much more effective.

Mrs. CUBIN. Mr. Fancher, I was very interested in your testimony about the Express Pipeline. I have wondered, and I've asked people, haven't really been able to get a good answer.

I think it took 9 months to permit the Express Pipeline coming down from Canada, across the international border. It's my understanding it crossed seven rivers or——

Mr. NANCE. In Montana.

Mrs. CUBIN. [continuing] in Montana, and then it came down through Cave Gulch. It was permitted in 9 months?

Mr. FANCHER. Uh-huh.

Mrs. CUBIN. And Cave Gulch itself took a couple of years, and it isn't quite done yet.

Do any of you have any idea why that is?

Mr. FANCHER. I can explain. Well, I think they used the Altamont right-of-way to some extent.

Mrs. CUBIN. And what did that entail then? What did that——

Mr. FANCHER. You know what the Altamont——

Mrs. CUBIN. Yes, I do.

Mr. FANCHER. That was a gas line they had proposed to built, but they never did build. But they did acquire the EIS environmental work on that prior to that.

Now, the Altamont line didn't end up in Casper. It was going down in western Wyoming. So they had to do some additional EIS work. And we were amazed at how fast they got it done.

Mrs. CUBIN. So did the Express Pipeline buy that information, if you will?

Mr. FANCHER. I don't know whether they were given that information or whether they bought it. I don't know how they acquired it, but they did use it. And I think that's fine. I think they should

be able to use whatever was available to them. There's no sense in reinventing the wheel, when you're trying to do it again.

But regardless of that, just the size of the project and the fact that they had to do additional EIS work, it was amazing to us, comparing it to some of the projects that we have tried to get approval on in the past, much smaller projects, as to how fast they were able to act on that.

Mrs. CUBIN. I think the thing that really just sort of makes me want to laugh is that it went through Cave Gulch. It's just hard to understand that.

Mr. FANCHER. Strange things do happen.

[Laughter.]

Mrs. CUBIN. Well, they do. That's right. And there may very well be some other good reasons, but I have not been able to find anyone that could give them to me, other than the information from the EIS about Altamont. I was aware of that.

What do you recommend as a solution to the problems that you pointed out with the environmental impact statement and the decision that was made for Express Pipeline? Where do we go from here?

Mr. FANCHER. I think that we need to develop it. We're going to have other pipelines that are going to be proposed. I think there's six or seven new pipelines proposed from Canada into the United States on the drawing board right now.

I think that the study that was done was inadequate, as I mentioned, and they didn't really consider the impact that the line would have on the economy in the States and on the domestic oil and gas industry. And it seems like that government doesn't care what—if a—if a line or more imported oil has a negative effect on our industry. They don't care about that.

In other words, all that the American people care about, and I perceive the government too, all they care about is they have cheap energy, and they don't care where it comes from.

And we're losing our infrastructure. We're not going to be here, when they need us down the road, if they don't keep us in business. And when I say keep us in business, we don't want any subsidies as such. We just want a level playing field.

We can't compete with all the other countries around the world because our standards are much higher. It costs us more to operate, yet we get paid a lower price, too.

Mrs. CUBIN. So am I correct in this summary of your testimony, that you aren't asking for any change or any action on the Express Pipeline and that whole issue, but you would like to have some sort of legislation protection, if you will, for future international pipelines that might be built?

Mr. FANCHER. Well, I think that the impact of Express should be analyzed for the benefit of the people in Wyoming, the municipalities and so forth, that are going to be severely impacted, as well as the State, because they have to figure out where they're going to make up the difference.

Mrs. CUBIN. I missed a little bit of your testimony. You said that there was a big change in the report, and at one point a $9 billion change in estimates. Who made that?

Mr. FANCHER. Well, the—the BLM had a consultant that did an analysis on the socioeconomic impact of the pipeline. It's a consulting firm they use by the name of Petroleum Information Corporation. And they did this at the 11th hour. There wasn't any socioeconomic study done until the initial scoping analysis that was a report which was done on Express pipeline. And so they hired this firm at the 11th hour. And they did an initial report that said there was going to be a significant impact.

Express didn't like that. They made comments to the BLM. And in 10 days they changed the report to reflect that there was only going to be a small impact and only on sweet crude, not on sour crude.

All of that is in my written testimony.

And so the reporting process was kind of a farce. And really, the BLM considers that they don't need to consider socioeconomic impacts. In other words, that's not their job. Their job is only to look at what effects something like that has on the environment.

And that was the point I'm trying to make, is that there needs to be somewhere in the process that we think that the BLM through the NEPA process, that they should fairly review that sort of thing. But if they don't, I don't know who else will or who else would want to. And that's something that I think you need to look into.

Mrs. CUBIN. Thank you.

Mr. Martin, what do you perceive from all your years of experience to be the biggest threat to the oil and gas industry in terms of land management policy? Is it access? Is it ESA? Is it air? What is it?

Mr. MARTIN. Well, in southwest Wyoming, which is where most of my experience falls from, it's—the air quality issue is the one that's arisen to the forefront.

Mrs. CUBIN. Would this be Utah, Grand Canyon?

Mr. MARTIN. Yes, it's the same area. It's air quality as it relates to any and every environmental impact statement that has been done or is underway or that will be done because that's the new, difficult issue—I think that's the most difficult issue to come to grips with.

And to that end, I would like to clarify, in case there is any misunderstanding, yes, we have had great difficulty with our environmental impact statement process, as most of them are. But I think the BLM managers are as frustrated with it as I am. And I think, to their credit, they have done an enormous amount—I will give them an A+ for effort. I think they are trying, to the best of their ability, to make it work.

But I have seen the breakdown and the arguments over how do you measure air quality, how do you get a baseline, what's it going to mean. And you can't answer those questions. The data doesn't exist, or doesn't exist in sufficient quantity, to allow for a decision that you're absolutely confident is correct.

And so what happens is the Federal agencies have not been able to get together on a protocol. I think that they have now, but it's—I really don't know what it's going to be, what it's going to turn out.

And so that issue alone has delayed our EIS. Now, maybe that's a growing pain. Maybe that's something that can, and should, and ought to be eliminated in the future ones, but it's certainly a big problem for us.

But air quality in southwest Wyoming. You know, there's the matter of the 977 tons of NOx issue that came out. We don't see any legal basis for it. We think that if you study it and look at what it really means, that it only includes our industry, doesn't include other sources. It was thrown out on appeal, thank goodness, but it's still there. It's going to trigger something, and I'm not sure what, but it's going to trigger something. And when it occurs, and it's going to occur sooner or later, because now anybody that has any kind of a permit is rushing to the gate to get permits that use up that 977, and one day a bell might ring somewhere, and I'm not sure where we're going to be or what we're going to do.

Mrs. CUBIN. I am in complete agreement with you, especially when you look at the new proposal that Carol Brown has made that the President has since come out in support of. I think that you're right. I think that's going to be one of the problems.

I know you have to go, Terry. So I'm going to ask you one quick question.

Talking about the de facto wilderness areas withdrawals, in your testimony you said it was done in secret, secret agreements. Was that with the CEC? Is that what you were referring to?

Mr. BELTON. Yes, that's what I was referring to.

Mrs. CUBIN. OK. That's what I thought. Thank you.

Mr. BELTON. Thank you.

Mrs. CUBIN. I don't think I have any more questions for the panel. I thank you for being here. I know some of you have planes to catch, and I appreciate your being here. Thank you.

Thank you all for waiting. Would you raise your right hands?

[Witnesses sworn.]

Mrs. CUBIN. It has been a long day. Again, I thank you for bearing with us all day.

And we'll start this panel by asking Mr. Robert Hoskins, who's a member of the board of the Wyoming Wildlife Federation, to talk to us.

STATEMENT OF ROBERT HOSKINS, MEMBER OF THE BOARD OF DIRECTORS, WYOMING WILDLIFE FEDERATION

Mr. HOSKINS. Thank you, Representative Cubin, Members of the Committee.

As you said, my name is Robert Hoskins. I serve on the board of directors for the nonprofit Wyoming Wildlife Federation. Our members are 4,000 hunters, anglers, and wildlife enthusiasts who share an unwavering commitment to wildlife and the protection of public lands in our State to benefit all citizens.

As you know, our executive director, Dan Chu, served on the GRBAC. So if you have any specific questions about the GRBAC, I would request that you direct those to him, since I was not on that Committee.

In any case, today I will discuss what we expect from the GRBAC's recommendations to the Secretary of the Interior, as you requested. In particular, I wish to address our one expectation that

GRBAC failed to meet, assessing and mitigating the cumulative impacts of industrial development on wildlife and wildlife habitat in the Green River Basin.

What the GRBAC faced was the unprecedented intensity and scope of natural gas development proposed for the Green River Basin over the next 20 years. The GRBAC's charge was to reach consensus on managing two world class resources, the Basin's massive natural gas reserves and its incomparable wildlife resource.

The GRBAC held its first meeting in March 1996 under a cloud of misinformation spread by industry groups, not to mention Wyoming State officials. Nevertheless, GRBAC members developed recommendations for the more efficient management of natural gas development: NEPA streamlining, updated road standards, eco-royalty relief, transportation planning, and partnership opportunities.

Unfortunately, in our opinion, the GRBAC dropped the ball on protecting the Green River Basin's incomparable wildlife resource. It failed to address the Federation's primary concern, the identification, analysis and mitigation of the cumulative impacts of industrial development on wildlife. Given our willingness to reach consensus, particularly on the controversial eco-royalty relief, we are deeply disappointed with the GRBAC's failure to develop recommendations for dealing with the undeniable threat of cumulative impacts. Therefore, we consider the work of the GRBAC unfinished and we intend to vigorously press the issue until it is resolved to our satisfaction.

What are cumulative impacts? Simply, and getting away from the legal jargon, they are the disruptions, displacements, degradation, and destruction of natural resources by unsustainable human economic activities that occur over a very long period of time.

The historical and scientific record of the cumulative impact of man's economic activities on the environment is unassailable. Developing case law and legal scholarship on NEPA and watershed protection—and the Green River Basin is clearly a major watershed—indicate that cumulative impacts analysis is necessary, especially when development on Federal land triggers substantive legislation like the Clean Water Act, the Clean Air Act, the Endangered Species Act, or the Migratory Bird Treaty Act.

Historically, no industry has remained unscathed from scientific findings that its activities produce long-term, harmful impacts on the environment. That's what environmental laws are about.

Nevertheless, industry refuses to acknowledge the cumulative impacts of its activities, claiming that we do not have adequate information that demonstrates those impacts, nor the technology to mitigate them even if we did. From our standpoint, this claim makes as much sense as would a claim that deferred equipment maintenance has no cumulative impact on industry operations and earnings.

The oil and gas industry cannot deny the facts. Over the last decade and a half, the scientific disciplines of conservation biology and restoration ecology have produced much research into the long-term harmful impact of human economic activities. Activities that fragment and degrade wildlife habitat, or create opportunities for exotic species to invade disturbed land, have severe, long-term impacts. This research has been widely published.

Industry's primary objection to cumulative impacts analysis and mitigation is the cost and the requirement that development, and thus profits, be spread out over a long period of time. We don't believe those complaints are good enough for the Green River Basin's incomparable wildlife resource. For the privilege of using publicly owned resources for profit, we expect industry to accept full responsibility for its actions and pay for its impacts on the Green River Basin. Nevertheless, in the spirit of compromise we tried to meet industry's concerns over cost by supporting eco-royalty relief. If eco-royalty relief comes about, we fully expect cumulative impact analysis to be funded.

We believe it would be easier for industry to embark on cumulative impacts analysis and mitigation if it would integrate with its operations an innovative, science-based management scheme called adaptive management. Such an approach would treat all operations as scientific experiments; that is, operations would be designed to produce scientific information on cumulative impacts as a necessary operational output.

In closing, I wish to make clear our expectations. We are committed to the GRBAC's recommendations. Nevertheless, in return, we expect the Federal Government and the oil and gas industry to acknowledge their unqualified responsibilities to identify, analyze, and mitigate cumulative impacts on wildlife, wildlife habitat, and other public lands values. We believe that if development is prudent and carefully managed over the long term, such impacts can be mitigated if properly funded.

Thank you for this opportunity to present our views.

[The prepared statement of Mr. Hoskins may be found at end of hearing.]

Mrs. CUBIN. Thank you.

Next witness is Mr. Tom Throop, of the Wyoming Outdoor Council.

STATEMENT OF TOM THROOP, EXECUTIVE DIRECTOR, WYOMING OUTDOOR COUNCIL

Mr. THROOP. Thank you, Madam Chair, and thank you for the invitation to participate and the opportunity to testify today.

Robert, you certainly were well-rehearsed ahead of time. That was right on 5 minutes.

Mrs. CUBIN. Take your time. We've listened to a lot.

Mr. THROOP. My name is Tom Throop. I'm executive director of the Wyoming Outdoor Council, and we go by the acronym of WOC. And we are all Wyoming, as we're unaffiliated with any regional or national organizations. And we do appreciate the opportunity and the invitation.

At the same time I need to tell you that the public interest organizations from our sister States of Montana and Colorado are very upset with this hearing, as you may know. The scope of the hearing directly relates to issues that are being dealt with in those States. Witnesses have been here representing seats in industry that hear from both of those States, who have been here from both of those States, yet there was no notice or invitation to the public interest groups in Colorado or Montana.

Our phones rang off the hook all last week. And I promised them that I would relay that concern. They view this hearing and process as extremely unfair and do believe that if you're going to discuss issues that affect their States, hearings should be held in those States. And you may well plan to do that, but they are not aware of that, nor am I, and that public interest witnesses from those States should be invited to testify. And again, I promised I would tell you that.

Let me begin by reminding the Committee that the lands in question are public lands, owned jointly by all the citizens of the United States. By law, these public lands must be managed and, in fact, are mandated to be managed for multiple use.

In the definition of multiple use, it states the resources are not to be managed for the greatest economic return or the greatest unit output. Increasingly, however, we are seeing a fundamental shift away from a multiple use to a dominant use for energy and mineral development, which I think this has been aptly demonstrated today, often at the expense of the public lands' uses for wildlife and habitat, open space, historic recreation opportunities, clean air, clean water and overall environmental quality.

The BLM's management plans for the public lands in Wyoming that are, in part, the subject of this hearing today, authorize oil and gas leasing on an astounding 98 percent of the total lands available, including crucial big game wintering, areas of critical environmental concern, and areas having high scenic routing.

Presently, oil and gas leases cover the vast majority of the areas under discussion, approximately 90 percent, and do not carry stipulations sufficient to protect the surface resources on these lands.

There are, in fact, a multitude of uses and very significant environmental issues to be dealt with on the public lands of the Green River Basin and at Cave Gulch. For example, Federal law requires that there be careful review prior to development activities on these lands. For example, there are cumulative impacts to a host of wildlife species and their habitat.

Let me assure you that the air quality and visibility issues are a very real and legitimate issue, not an excuse. And there are a host of groups that are working on these issues. These groups have not reached consensus on how to protect Class I wilderness areas from emissions, nitrogen, and volatile organic compounds, VOCs. Maintaining historic recreation opportunities, implementation of the Clean Water Act on public lands, protecting significant cultural and archeological resources are also significant environmental and land use considerations that must be dealt with before these lands are developed.

Concerning the GRBAC, we did request the formation of this process, and appreciated the Secretary's appointment and Assistant Secretary Bob Armstrong's personal attention to the Committee in this process. The GRBAC, as Terry Belton aptly described, was a collaborative process that we enthusiastically endorse. Certainly, Mr. Hoskins was correct that many of the issues that we wanted to be dealt with were not dealt with. But one of the ground rules is that issues that we could all agree on would be dealt with and those we didn't agree on would be set aside.

Most of the recommendations can be implemented administratively. For example, the excellent work that was done by the committee on transportation issues. We certainly hope that the Secretary will approve the primary, outstanding issue, which is the eco-royalty relief. If the Secretary does not approve eco-royalty relief, there is a readily available alternative that will accomplish the same objective that you ought to be aware of. The BLM can change its policy for Wyoming and give Wyoming BLM the authority to authorize offsite mitigation, like is done in other Western States.

And finally, I wanted to mention on this issue that, though this issue is not resolved, we feel strongly that the government should not pay for industry's NEPA analysis. This is their responsibility. It should be a cost of their development proposals.

We are surprised and disappointed that Cave Gulch was characterized as field development delays. And we obviously have some intense personal experience with that issue, as you know. We were involved throughout the process.

Cave Gulch is on a fast track the likes of which we've never witnessed before for a major, full field development project. While a fast-track EIS has been underway during the past year, industry was given virtually everything it wanted in the interim development agreement, that we clearly agreed to and clearly supported, but even though, such a far-reaching interim development agreement was unprecedented. Even though the interim development agreement was a collaborative process, it was agreed to by all the parties. BLM broke the agreement when one of the companies wanted one more well that was specifically excluded because it was deemed to violate NEPA. We've been around that one before.

The final EIS is on the street. The BLM openly admits that their decision sacrifices other resources on the public lands in this area. For example, because industry didn't like it, BLM deleted the raptor recovery area for a species that is in Canada for USA listing, the Ferruginous hawk.

Though most people believe we should be taking actions to prevent listing of threatened and endangered species, BLM takes an action at Cave Gulch that cumulatively adds one more step toward listing.

Cave Gulch operators can say that they have some—Cave Gulch operators say they have somehow experienced obstructions at Cave Gulch. From our perspective, it's the best demonstration yet that Wyoming is still viewed by some of those companies as a Third World resource colony, where quick and easy is all that matters.

The best gauge to demonstrate whether we have a problem or not are the numbers. To quote from the April 9th edition of the Star Tribune, the rig counts for Wyoming and the Rocky Mountain region have soared over the figures from last year. According to the Petroleum Information Corporation, Wyoming had 15 rigs in the State at the same time last year. This year, there are 35, or a 133 percent increase. Wyoming had the largest increase in the nation, twice the increase in No. 2 Louisiana. For the Rocky Mountain region, the rig count is up 36 percent. In addition, there are hundreds, if not thousands, of wells that have been approved that are not being developed by the companies who hold approvals to develop it, because of market problems, higher priority projects and

a host of other economic reasons. Examples are 72 wells at Stage Coach Draw, 750 wells at Wamsutter 2, 1,300 wells at Fontenelle, and 1,300 wells at Moxa Arch have all been approved, just to name a few.

Things are pretty busy here in Wyoming. And if allegations of access and regulatory issues are any kind of inhibitor to development in the State, it's nothing more than a thinly disguised attempt by some, certainly not all, oil, gas and mineral companies to commandeer this nation's land to their own use.

In closing, the single most important factor in expediting development, and I'd like to echo precisely what Terry Belton said, but in my own words, is industry's willingness to come to the table early in the process to participate in identifying key issues early and to work in good faith to resolve issues early with the U.S. Forest Service, EPA, the U.S. Fish and Wildlife Service, the Wyoming Game and Fish Department, to name a few, as well as the citizens of Wyoming.

Historically, industry has instead ignored the pleas for collaboration and, as a result, has forced many of the significant issues to be dealt with in appeals and litigation. Fortunately, we are beginning to see the culture of decisionmaking change—for example, GRBAC and a host of quality air quality processes that are currently underway. But we still have a long journey ahead of us.

And, Representative Cubin, I plead with you to play a constructive role by working to help bring the parties together to find solutions to the problems that we face. Now, I must admit today has felt a little bit more of a witch hunt.

[The prepared statement of Mr. Throop may be found at end of hearing.]

Mrs. CUBIN. Thank you very much for your comments, Mr. Throop.

I first will respond to the out-of-State folks who wished that they had been invited.

We encouraged for many weeks the Democrats on the Committee to identify the people that they wanted us to invite. I guess they didn't care whether or not people came, because they never did do that. I knew the people in my State that, you know, I thought would present a good picture, you being one. And so that's why these folks were invited.

And as I said earlier, we will have more hearings. This is just one of several. So no one ever will be barred from the process as long as I have the chairmanship of this Committee. I think it's very important.

You and I have worked together earlier. I want to ask you something. It's kind of a—I hope it's not a personal question, but maybe.

When we talked out at the BLM building, at that time you were very upset about something that happened. And I'm not passing judgment on who was right or wrong because, frankly, I don't know. But I wonder, now that this time has passed, are you still willing to hang in there and try to get solutions made, like you were doing at that time, and so that one incident there, that No. 43, didn't sour you on the whole process of cooperation?

Mr. THROOP. Absolutely. Let me be very clear about this. Our primary method of problem resolution is through collaboration and cooperative decisionmaking among all the parties.

I want to be equally candid with you and tell you that, most of the time when we seek collaborative processes with many of the multinational corporations that do business in this State, we are told clearly that they aren't going to give us the time of day unless we can stop their project or slow their project down to a timetable that's not acceptable to them. And unfortunately, the culture, historically, has been appeal and litigate first and then you can begin discussions.

That is not the way we want to do business. We would like to collaborate on every issue and are absolutely sincere that the solution is getting the parties together early in the process, identifying issues, and trying to resolve those issues.

They're not always going to work. And I think, by and large, the Cave Gulch interim development process was, over all, a positive. There was a problem as time has passed, and I think the primary problem was between our organization and Chevron. And I still consider Robin Smith, you know, an acquaintance, a friend, and somebody I respect, and harbor no personal animosities or resentment.

But I think the primary problem we have here is companies who want to work through a regulatory process that's as minimal as possible with as few distractions as possible. We are a distraction, and collaboration is a distraction, and they won't do it unless they're forced to do so.

But from our perspective that's our No. 1 approach. We will always do it first. It's a sad commentary that we have two attorneys full-time on our staff, but that's the way we've been forced to do business in this State, appeal, litigate first, and then you get their attention and they'll give you their attention and then you can begin to find some collaborative solutions. Even when we have an appeal or even when we have litigation, we are always looking for that opportunity, get the parties to the table and try to collaboratively come up with something that will work for all of us.

But unfortunately, until very recently, those opportunities have been very few and far between, and hopefully that climate is changing.

Mrs. CUBIN. Are you satisfied with the final EIS on Cave Gulch?

Mr. THROOP. We are unequivocally not satisfied with the final EIS on Cave Gulch.

Mrs. CUBIN. Do you think that you could be and still have development?

Mr. THROOP. Oh, absolutely, absolutely.

Mrs. CUBIN. What would those—what changes would there be?

Mr. THROOP. Well, we strongly believe—let me say, first of all, we are not going to appeal the final EIS, even though we're dissatisfied with it. From our perspective, we believe that that area, for lack of a better way to describe it, will become a national sacrifice area, that the other resources will be sacrificed. It will be converted to a dominant use for oil and gas. And we believe that there's nothing that we can do to prevent that from occurring.

Now, specifically to your question, there are a number of steps that the industry, in collaboration with the Federal agencies, could have taken to have protected the raptors. They chose not to do so. As I mentioned—I think, as I mentioned in my testimony, I actually made a good note of that piece, but there was—let's see if I have that. No, I did mention that the raptor recovery area was originally proposed. That is something that would have—if that had remained in the document, that would have resulted in a better decision. One has to understand the Ferruginous hawk. They're very susceptible to human activities. And we believe extremely strongly the consultants that we've been consulting with. We believe very strongly that the land will not be adequately protected for Ferruginous hawk and other species. And again, we believe that in this area we're moving to a dominant use.

And that's a scenario that we're seeing throughout Wyoming, where you have 98 percent of the available lands in the Green River Basin that are available for oil and gas leasing and development. That's not multiple use. That's dominant use. Many other resources will be sacrificed in that process. Very special areas that should be protected, critical habitat, areas of environmental concern, are not being adequately protected.

So again, we think that if we had had the parties together there truly would have been a collaborative process. There was a collaborative process in the interim. Coming out of that interim development at Cave Gulch, there was the—kind of theory or thought that there may be some collaborative efforts toward the final EIS. None of that happened. There was zero collaboration. But again, we're folding the tent on that one. We think that that's a lost area, and we're going to let it go.

Mrs. CUBIN. You know, I think balance—balance has to be the most important word to each and every one of us.

You know, I talked to you a little earlier about the levees in California that were not repaired. There was an amendment on the—offered to the Endangered Species Act. And what it said was in order to save human life or prevent substantial property loss you can maintain existing levees without doing an environmental impact study. That was defeated in the Congress because the Sierra Club and a lot of the environmental organizations came in and lobbied against that. People voted and have subsequently said let's have another revote on that, I didn't understand that six people were going to die.

And I know those kinds of things hurt what you believe in, just as much as somebody polluting an area hurts what these producers believe in.

And so I'm glad to hear that you do want to continue to talk about these issues and try to get them worked out so we don't have to deal with those extreme things and say, see, that's your fault and, see, that's your fault. I think assessing blame is certainly not a constructive thing to do and it certainly is a waste of time.

Would you tell me a little bit about what you meant in this statement. In your testimony you said BLM can change its policies for Wyoming and give Wyoming BLM the authority to authorize an offsite mitigation, like it's done in other Western States. What were you referring to there, Tom?

Mr. THROOP. If, let's say, for example, there's a full field development that is approved and APDs are approved where we have, let's say, 8 wells per section or 16 wells per section. I think it gets very obvious at that point that, with a well every 40 acres or a well every 80 acres on a leasehold, that the opportunities to do onsite mitigation for the loss of other natural resources are nonexistent; and if there is going to be mitigation, it's going to have to be offsite. There are other Western States where BLM is given the authority and, in fact, does use offsite mitigation as a way to mitigate impacts to development on BLM lands. I know New Mexico is an example of one State where BLM in that State uses offsite mitigation.

In Wyoming, there's a decision, and I think it's at the Washington, DC, level, but there's a decision that Wyoming could not use offsite mitigation in order to mitigate impacts on a leasehold. If that policy were to be changed and BLM was given the authority to authorize and utilize offsite mitigation in the decisions that they make in this State, in large measure eco-royalty relief may not be as necessary.

Mrs. CUBIN. That's just what I was thinking, wouldn't eco-royalty relief address that?

Mr. THROOP. Eco-royalty relief would clearly address that, and we clearly support that. We were part of the process that made that recommendation, and we unequivocally support that. But it sounds like it's going to be difficult to get it through the executive branch, and if it is to be adopted it's going to have to be done by the legislative branch. And I thought your comments were particularly insightful about the advantages and disadvantages in doing that legislatively.

Mrs. CUBIN. It's hard to know, isn't it?

Mr. THROOP. It's hard to know and, if it's not possible to do that, a fall-back position, clearly a second strategy, may be to do the offsite mitigation.

Mrs. CUBIN. You said that BLM in New Mexico can do offsite mitigation, but the BLM in Wyoming can't. Who makes that decision, who can and who can't?

Mr. THROOP. I'm not—and, in fact, if Dan Heilig, who's our associate director and the head of our legal department, was here, he could tell you that. I'm a little bit unclear. Mr. Pierson may be able to answer that question.

But my understanding was that that was a policy decision that was made by BLM in Washington, DC. And I do not know why there would be a difference between policy decisions for implementation between New Mexico versus Wyoming. And I will, for myself, figure that one out.

Mrs. CUBIN. Some of those things are a mystery.

Mr. THROOP. Yes.

Mrs. CUBIN. You referred to a 90 percent figure of land that is available. Are you saying that the oil and gas industry impacts 90 percent of the land? Is that what you meant?

Mr. THROOP. What I meant here was, of the BLM lands that are available for leasing in the Green River Basin and in the Cave Gulch-Bullfrog area, it's my understanding that approximately 90 percent of those lands are under lease, of the BLM lands.

Mrs. CUBIN. You were on the GRBAC, weren't you?

Mr. THROOP. I was not. Dan Heilig, our associate director, was. I followed the process pretty closely. So, like Robert, I can't definitively respond to specific questions.

Mrs. CUBIN. I asked the other panel what would—and I think you've answered it partially, but just so you have the opportunity to add more, if you wish, what would you consider to be a win-win situation for minerals development from where you sit today?

Mr. THROOP. And I want to make it very clear that I fully agree with you. The most important word is balance, you know, is multiple use, is balance, in the allocation of how resources are used and protected on public lands. And I believe strongly that there is a win-win situation in virtually every issue that we face. And I think what it takes is it takes parties who are willing to invest in the collaboration. I think it takes parties who are willing to leave their egos and their predetermined positions at the door, be willing to identify issues early on in the process, be willing to compromise, be willing to work with the other parties, to try to walk in one another's shoes and resolve each other's issues. And I believe strongly that that can be done.

And specifically, in oil and gas development of minerals, it's very important to the economy and the future of Wyoming. I have two children in schools in this State and they're getting a good education, and I know where the resources are coming from, and I appreciate it.

But we don't have to, to a frenzy, destroy the other crucially important public land resources in the wake of that development, where we have crucial winter range, wildlife habitat, calving areas, migration corridors. There can be protection for those areas.

Where there are raptor concentration areas and there are sensitive seasons, I think we can put on seasonal restrictions that will work for industry as well as work for the other resources. Where there are soils problems or where there are air quality concerns or where there are water quality problems, we can work together to try to find solutions that allow development to go forward but not sacrifice those other resources.

And I clearly believe that that can be done in a balanced fashion that brings all parties to the table and gives collaborative solutions. We just haven't quite arrived there yet. I think the GRBAC is a good start.

I'd like to mention that on the Jonah 2 project I was very surprised to hear John Martin say that that process is not working.

We have been very involved in that Jonah 2 project. And I will tell you clearly that one of the biggest problems that we had in Jonah 2 and other projects in southwest Wyoming is that BLM was very late in the process to bring other cooperating agencies to the table. They knew the Forest Service was going to be involved. They knew the EPA was going to be involved. But they tried to shut them out of the process until it was obvious they could not do so.

Industry and BLM were very late in getting the scope and the details of the project in Jonah 2 to the other agencies so it could be modeled, in the first place, and determinations could be made as to what kind of air quality impacts there would be. There has been a delay from August to November. But frankly, the primary

reason for that delay is BLM and industry was very late getting the scope and details of the project to the other agencies so they could model and provide input.

Mrs. CUBIN. Well, I think Mr. Martin's testimony was that the problem was they disagreed. So even as we speak, there's a stalemate, and they can't move forward. And the success was, the way I would interpret it, to be measured by whether or not, in fact, going through the steps they did would reduce the amount of time to complete the NEPA process. And I think his assessment, what I understood him to say, was that it wasn't working because it wasn't achieving the goal they set out to achieve.

Mr. THROOP. And I'm telling you I believe strongly that it is definitely achieving the goal that GRBAC set out to achieve. The process is not stalemated. The process is moving forward. I've attended those same meetings. In fact, I didn't see him at the last meeting, and I was at the last meeting. But I'm here to tell you I think the process is going forward very well and that could be a model.

If you also look at Mr. Martin's testimony, he also talked about how he felt that the air quality requirements they're going to face in that project were unfair and that we should be able to pollute a little here so we can possibly have some beneficial impacts on air quality maybe in some larger area somewhere else. That's not the law. This is the largest Class I clean air shift in the lower 48 States that is potentially going to be impacted here. There are Class I wilderness areas that have been designated by Congress. The Clean Air Act is very clear that those wilderness areas cannot be degraded. And that's what this process is all about now, is trying to determine how do we facilitate development but at the same time not negatively impact one of the single most significant resources that we have in the State. And that's the largest block of clean air in the entire lower 48 States.

Mrs. CUBIN. I think I'll let you take that up with Mr. Martin.

Mr. THROOP. Sure.

Mrs. CUBIN. That would be a good place to work it out, to start.

What is your response to the fact that, because of the difficulty that is experienced in dealing with the Federal Government in trying to get permits, that investment goes to Texas, Oklahoma, places where they don't have public land to deal with, and then, on top of that, maybe worse, to other countries. What is your reaction to that?

Mr. THROOP. Well, let me be very clear with my reaction. I don't believe it.

Mrs. CUBIN. Oh, that's interesting. I sure do.

Mr. THROOP. Oh, well, we may have a difference of opinion on that. But you look at the number of companies, you look at the number of operators that are actively involved in development in this State, and you look at the time lines for the processes, you know, here compared to other Western States, and my understanding is all of the information indicates that there's nothing out of the norm here, that what we're experiencing——

Mrs. CUBIN. I'm not talking about just Wyoming. I'm talking about public land States.

Mr. THROOP. And there may well be an issue there. But I think we do, again, need to remember that these are public lands that

are owned by every single citizen of the United States and Wyoming, and that there are other extremely important resources on those lands.

And GRBAC, I guess I heard earlier that the number of months was 16 months, was the target for getting an EIS completed. I think if we look at the Cave Gulch EIS process, it's probably pretty close to 16 months. And I don't think it was many more than that. If we count back and look at those dates, I don't think it will be many more than that. And again, that process and project was very definitely fast-tracked, and many of the other public interests not adequately considered.

You know, again, I don't believe that these large companies who are doing business here are disadvantaged in this State.

Mrs. CUBIN. Even over Louisiana or Alaska?

Mr. THROOP. No.

Mrs. CUBIN. You don't think that it's a disadvantage to have to do the environmental impact statement and go through all of the things required to get that when you don't have to do any of it in Louisiana?

Mr. THROOP. I definitely do not, because these are different lands, these are different resources. These are public land resources. And the numbers speak for themselves. You know, again, what are we, the No. 2 natural gas-producing State, behind New Mexico? We have a very active oil industry in this State that certainly has had more impacts—in fact, they both have had far more impacts by market price and access to transportation of product than any other factor. And if you look at the amount of product that we're producing in this State and you look at the number of companies that are doing business in this State and, if they are truly, in fact, here for the long-term, they should be willing to roll up their sleeves and work for the citizens of Wyoming. You can certainly get access to that resource for the national benefit, but also to protect those other crucially important land resources that are on those lands, some of the most spectacular wildlife herds in the country, the cleanest air in the country.

Mrs. CUBIN. I love it.

Mr. THROOP. We all love it. So let's have balanced decisions that protect those resources while developing oil and gas for this State and its nation's future. It's all very obtainable.

Mrs. CUBIN. Didn't mean to leave you out of this whole thing.

Would you give me your response to my question about companies going out of the State dealing with the Federal Government and also going out of the country as well?

Mr. HOSKINS. Well, first of all, I will point out that these are, in fact, public lands and they are part of the sovereignty, sovereign ownership of the people of the United States. As Tom said, they're not going elsewhere. If they make that decision, that's a business decision.

I think one of the things that truly bothers me, when I hear a lot of talk about the socioeconomic impacts and the failure to analyze those, we should ask ourselves what true benefits are we getting from the oil and gas industry in this State. Obviously, most of our tax revenues come from mining, but also oil and gas. And you have to ask yourself what benefit to the State is such a reli-

ance on a small and narrow range of economic development. And when I think about the issues of companies deciding to go elsewhere, I have to think it might be something like when the military bases closed around the country. And a lot of people might—you can talk to those who say one of the best things that ever happened to them was that the military base closed, because it forced the community to think about its long-term economic development in terms of diversity, rather than relying on one resource to fund their areas.

Economic extraction of minerals from the West over the last few years has been associated with a number of things. One of the big problems, when the boom started in 1970's, was the impact on—the socioeconomic impact, alcoholism, drugs, crime, additional impacts on infrastructure and those kinds of things, and that's why Wyoming passed the industrial siting act, to try to deal with some of those things.

I think the issue then comes down to what degree will the oil and gas industry be a part of a diversified economy in the West, and I think right now it is not. And so my personal belief—and I'm not going to say this is the Wyoming Wildlife Federation's, but my personal feeling is that we need to look at controlling the development of oil and gas in this State and the West to allow communities to sit down and do the hard work that's necessary to look to the future and diversify their economies, because it is simply not happening now.

Mrs. CUBIN. Why isn't it happening now?

Mr. HOSKINS. It would be just a personal opinion. I believe that it's largely cultural, that we have been doing extraction in the West for over a hundred years now and we're just addicted to it. It's an addiction, like an addiction to alcohol and drugs. We are addicted to the easy money that comes out of the minerals industry. You know, we in Wyoming don't have to pay income tax. That's great. What happens when the oil and gas industry goes into a bust, like it did in the 1980's?

Mrs. CUBIN. Where are you originally from?

Mr. HOSKINS. I'm from North Carolina, and I grew up raising tobacco, and so all of my friends who stayed in tobacco were looking at the same kinds of things that I think that people in the West who are involved in the extraction industries are looking at. And in North Carolina, people simply don't want to think that things will be different. And right now they are learning that it is going to be different, although they're probably going to be able to ship everything overseas to—because people smoke quite a bit overseas.

Mrs. CUBIN. You know, just the response that you've given, as compared to the response that Tom gave us, it seems to me you have different goals. Tom would like to achieve some balance and be able to produce the resources, and you would like to not produce the resources.

Mr. HOSKINS. What I'm saying is I would like to see more diversity in the economics of the West, and we simply don't have that now.

Mrs. CUBIN. I find it interesting that lots of times people move here because they love it. Then the first thing they want to do is change it to how it was where they came from or something and

eliminate what they came here for in the first place. I'm not saying that's you, but I find that a lot.

Are you satisfied, Robert, with the EIS on Cave Gulch?

Mr. HOSKINS. Well, once again, the Federation hasn't gotten involved in this. My primary concern with the EIS is the political—the politics of it. I was not here when the original scoping meeting was held. I was living in Laramie at the time. I did come up and I attended the March 11th hearing. And I'm deeply concerned with the political atmosphere, circus atmosphere that I saw at the BLM meeting.

Mrs. CUBIN. And what was that date?

Mr. HOSKINS. That was on the 11th of March, I think. It was right after the legislative session.

And my primary concern with that was the issue that everybody seemed to be heating up on was that that was a conflict between birds and jobs. And in particular, virtually everyone who stood up and spoke was talking about how the 6-month stipulation, that it was absolutely—that they treated it as if it was absolute, that there was 6 months where nobody could do anything around in the areas, around the raptor areas. And if you look carefully at the draft EIS where they talk about that, those were extremely limited to buffer zones, a quarter mile or half mile buffer zones around various nesting sites and, of course, applied to the raptor—key raptor area, and that area was bound by BLM. And there was a lot of disagreement over that. It was not—did not have much potential for gas exploration or drilling in that area. People might disagree with that, but that's what the issue was.

And so I was concerned, when everybody stood up and berated the BLM and environmentalists for causing, quote unquote, delays in the Cave Gulch development, that they sort of keyed in on this 6-month stipulation, by claiming it was an absolute stipulation where nobody could do anything during that 6 months, which was false.

So I have to ask the question when I look at the political process that's involved around Cave Gulch is that, if everybody has his ducks in a row, why is it necessary to sort of resort to that kind of misinformation.

It was also clear that many people who spoke simply hadn't read the draft EIS and were simply going on what they had been told to say. I don't call that public participation.

So as far as——

Mrs. CUBIN. So if you had it to do yourself, you'd make all the decisions?

Mr. HOSKINS. No. The decisions—this brings up another question. The decisions are the Federal Government's. Seems to me if we were to look for, you know, closing down the delays, quote unquote, it seems to me we'd have to make an amendment to recognize that the final authority belongs to the Federal Government. Doesn't belong to Natrona County, doesn't belong to Wyoming, doesn't belong to the oil and gas industry. It belongs to the Federal Government.

And I think that these constant challenges to the authority of the Federal Government over Federal lands is probably just as much responsible for political delays as anything else, if we spent a lot

less time trying to do end runs around with the lawyers and complaining about interpreting—how regulations are interpreted.

When I was in the military, that's the most rigid organization in the Federal Government. We all interpreted regulations based upon our own knowledge and our own experience. If it happens in the military you know it's going to happen in the BLM. I think that's something that obfuscates the issue. We need to recognize that the Federal Government is the final authority on Federal lands and start dealing with that and accepting that and going forward from there.

Mrs. CUBIN. Thank you. I appreciate your testimony from both of you.

You know, I think another solution that we need to start working toward is I think we need to make land exchanges. It would be so much more economically feasible for the Federal Government to manage a larger portion of land and get rid of some of these parcels where there's Federal land in between all private and State and so on. If we could just accommodate larger blocks of land, I think everybody would be happier. There would be better recreational use on the Federal land. They wouldn't even have to allow mining or drilling.

Mr. THROOP. We would agree with you entirely. We think that's a really good future solution, land exchanges.

The problem we're seeing right now is there's such inequality in the two land exchanges that are the focus of the attention.

Mrs. CUBIN. You mean the two now?

Mr. THROOP. The Two Trails in the Big Horn Basin and then the Elk Mountain-Seminole in the south central.

And I guess our primary concern is if we have such inequitable land exchanges that sacrifice the public interest to such an alarming degree, the public is going to react by saying land exchanges are the same as selling our public lands, and they're going to oppose those as well.

In a former life, I was a chairman of a board of county commissioners and was involved in two very large land exchanges that included two Federal agencies, a State agency, and a County government. And those had public support because all of the interests worked jointly to try to make certain that private interests were protected, but also public interests were protected as well. And that's something—that's a message that you can send to the BLM, if you're going to exchange, let's make sure there's something in it for the public.

Mrs. CUBIN. And I guess, if those decisions were easy and those exchanges were easy and everyone agreed, we probably wouldn't be here today talking about this problem that we have.

Thank you.

Mr. HOSKINS. Let me—could I just make one other quick mention?

Mrs. CUBIN. Sure.

Mr. HOSKINS. I think there is a lot of middle ground that we can work with. I wanted to mention a couple of areas where I totally agree with Robin Smith.

Inadequate resources within BLM, you know, that's something that industry and the conservation community strongly agree on.

Also this bizarre relationship between BLM and industry and independent consultants, that's one that's troubling to us as well, and maybe for slightly different reasons. But I thought Robin's description of that issue was a very good one.

There's a lot of common ground here.

And I think one—a point I'd like to leave you with is, certainly, the parties have to be willing to come to the table, but we also need to establish a climate in this State where the decisionmaking bodies, both legislative and executive branch decisionmaking bodies, establish a climate where there's an expectation that the parties will come together and try to find common ground. I strongly believe at this point the feedback from the agencies, both the legislative and executive branches of the State and Federal Government, is go ahead and do your end runs; you'll get away with it, and not requiring or establishing a climate where collaboration is something that has a high value and is a requirement of the decisionmaking process.

Mrs. CUBIN. Certainly can keep working for that.

Thank you very much. Thank you, all of you, for being here today.

This Subcommittee stands adjourned.

[Whereupon, the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF GLORIA FLORA, FOREST SUPERVISOR, LEWIS AND CLARK NATIONAL FOREST, USDA, FOREST SERVICE

Madam Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss the Forest Service's Northern Region oil and gas program and the Draft Environmental Impact Statement (HIS) for oil and gas leasing on the Lewis and Clark National Forest.

In response to the Secretary's Oil and Gas Resources Regulation of 1990, the Forest Service developed a schedule for analyzing all areas under its jurisdiction where industry had expressed a high interest in leasing. The analyses and decisions forgo percept of the areas which were scheduled are now complete.

Background

The Northern Regional Forester has been analyzing the opportunities for oil and gas leasing on areas with high mineral potential on National Forests and Grasslands in Montana, North Dakota, South Dakota, and Northern Idaho in accordance with the Secretary's regulations (36 CFR 228). In 1998, Environmental Impact Statements (EIS) addressing oil and gas leasing will be completed for all "high potential" oil and gas areas in the Northern Region.

Thus far, EIS's have been completed in North Dakota (Little Missouri EIS), and in Montana on the Beartooth Ranger District of the Custer National Forest and Beaverhead National Forest. Final EIS's for the Helena and Lewis and Clark National Forests will be released this fall. The Custer National Forest will complete the EIS on high potential areas in South Dakota in 1998. As a result, the Northern Region has processed 1,039 leases since 1991.

We are proud that we've been able to meet the challenge of providing oil and gas development opportunities in an environmentally sound manner. It should be noted that many of these high potential oil and gas areas also have high values for threatened and endangered species habitat, cultural resources, recreation, and water resources. Through mitigation efforts and some restrictions on leases, we've been able lease approximately 450,000 acres, bringing in approximately $10 million in bonus bids to the United States Treasury. In addition, 5.5 billion cubic feet of gas and 3.7 million barrels of oil were produced from National Forest System lands in the Northern Region in 1996.

Lewis and Clark Oil and Gas Program

The Lewis and Clark National Forest has been analyzing the opportunities for leasing for oil and gas through an EIS process that began February 24, 1994. The area being analyzed in this EIS encompasses some 1.86 million acres, located on the Rocky Mountain Front north and west of Great Falls and several isolated mountain ranges in central Montana, east and south of Great Falls.

In addition to being a high potential area for oil and gas, 21 percent of the area is Congressionally designated wilderness, 9 percent is in the Montana Wilderness Study Areas also designated by the Congress, and another 3 percent has been recommended for wilderness through the forest planning process under the National Forest Management Act. Sixteen percent of the area is already leased for oil and gas, but not without controversy. For instance, the Badger-Two Medicine Area has an approved Application to Drill (APD) and a pending APD. However, leases in this area have been suspended until resolution is reached on a traditional cultural property.

The history of oil and gas leasing on the Front is complex and heated. Minimal development has taken place on the 52 existing leases. Ten lease applications are pending because at the time of their submittal, the areas were under consideration for wilderness designation by the Congress. Another 19 leases involving 26,653 acres have been canceled due to court order.

Issues such as protection for a traditional cultural district which may be eligible for listing on the National Register of Historic Places, protection of the grizzly bear, strongly conflicting social values, and the economics of oil and gas development where leases may require No Surface Occupancy stipulations are examples of the difficult issues affecting decisions both on existing leases and future leasing options.

Status of Lewis and Clark Oil and Gas Leasing EIS

The draft EIS was released in August of 1996 and the public comment period closed in December, 1996. The preferred alternative identified in the Draft EIS proposes oil and gas leasing for approximately 52 percent—nearly a million acres—of the forest. In response to the draft, the public provided 1,495 comments and we are in the process of analyzing those comments and incorporating information provided in the comments into the final EIS. The final EIS and the Record of Decision are scheduled to be issued in August, 1997.

Conclusion

Let me close by saying that there has been extensive involvement by individuals, environmental groups, the petroleum industry, the tribes and agencies at the federal, state and local level in this EIS process. It has been a very open and public process.

That concludes my prepared testimony. I would be pleased to answer questions you may have.

STATEMENT OF GINA GUY, REGIONAL SOLICITOR, ROCKY MOUNTAIN REGION, DEPARTMENT OF THE INTERIOR

Good morning Madam Chairman and Members of the Subcommittee, Ladies and Gentlemen. It is a pleasure to be with you today.

I. Cost-recovery Opinion.

As the members of the Subcommittee are aware, the Office of the Solicitor recently issued an opinion to the Director, Bureau of Land Management (M-36987; December 5, 1996) on the subject "BLM's Authority to Recover Costs of Minerals Document Processing." A copy of the Opinion is appended for the record. The Opinion was intended to assist BLM in its cost recovery efforts in response to two separate reports from the Department's Office of Inspector General, which concluded that BLM's delay in undertaking certain cost recovery actions pursuant to existing authorities had resulted in the loss of significant sums.

It is important to distinguish cost recovery from royalty payments, lease rentals, and bonus bids which are monies paid to the United States (and in some cases shared with states) for the privilege of exploring for and producing federal minerals. Costs which may be subject to recovery in the minerals area refer only to the processing costs incurred by the BLM. BLM is authorized to recover its reasonable processing costs from identifiable beneficiaries who receive a special benefit beyond the benefits received by the general public.

The policy of the Federal government to recover costs for services resulting in private benefits has been in force at least since the Eisenhower Administration. The Independent Offices Appropriation Act (IOWA), passed in 1952, provided generally for cost recovery by federal agencies so as to make the services furnished as nearly self-sustaining as possible. This statute was interpreted in 1959 by the Office of Management and Budget in OMB Circular A-25, last updated in 1993. The circular stated that it is the general policy of the United States Government to assess user charges against "each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

Conversely, the circular also provided that no costs could be recovered when the identity of the beneficiary is obscure, and the service primarily benefits the general public at large. An example of this would be the preparation of a programmatic environmental impact statement in support of a general agency program, such as a Resource Management Plan for a BLM district or a General Management Plan by the National Park Service for a particular park.

The circular also provides that even when the public benefits as a "necessary consequence" of the service provided to an identifiable recipient, the agency is not required under the IOAA to allocate any cost to the public and may seek to recover the full cost of the service. Thus, even if the public derives some incidental benefit, such as contribution to the general knowledge base as a result of environmental studies, in connection with processing of a federal permit or license or other document sought by or issued to an identifiable party, the government has the authority under the IOAA to recover all its costs. This could also be described as a "but for" test: if the agency would not have incurred the cost but for the service to an identifiable recipient, the agency may recover the full cost irrespective of the incidental benefit to the public. This policy has been incorporated in Interior's Departmental Manual, which allows some exceptions, most notably in cases where the cost of collection would consume an unduly large amount of the money collected, and if the recipient is engaged in a non-profit activity devoted to the public safety, health or welfare.

Agency efforts to pursue cost recovery and the reasonableness of the fees sought have spawned a great deal of litigation over the years. At the same time, the Congress has not hesitated to enact new laws or expand existing statutes with respect to cost recovery authority. Much of that litigation and the statutes pertinent to today's healing are discussed in detail in the Opinion.

One of the most important sources of BLM's cost recovery authority is found in the Federal Land Policy and Management Act ("FLPMA"), enacted in 1976 after

years of debate and an exhaustive report from the Public Land Law Review Commission. FLPMA (Section 304) addresses two types of fees: filing fees and processing fees. Filing fees are basically nominal fees intended to limit filings to serious applicants. Processing fees reimburse the government for reasonable processing costs. The statute provides authority for BLM to recoup reasonable costs which include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining what costs are reasonable under FLPMA, BLM may decide that less than all costs should be recovered. Statutorily identified reasonableness factors include actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought, the efficiency to government process, the public service provided, and an apportionment between the general public interest and the exclusive benefit of the applicant. The Congress has provided that BLM has the authority to recover up to its full processing costs. Case law requires that BLM, in determining what is reasonable, consider all of the FLPMA reasonableness factors, such as the benefit of the project to the public. BLM can consider, for example, whether the project provides a specific public service, such as better road access, in reaching its decision on cost recovery pursuant to FLPMA.

Subject to the reasonableness factors, the BLM may exercise cost recovery authority under FLPMA when it processes actions taken pursuant to the Mineral Leasing Act in situations where an identifiable beneficiary receives a benefit or privilege beyond those received by the general public. Therefore, many of the BLM's costs incurred in the competitive leasing process for both coal and oil and gas are recoverable.

The Office of the Solicitor will continue to offer such assistance as BLM may request in the development of cost-recovery rulemakings. The rulemakings will be designed to implement the Solicitor's Opinion, and will include the opportunity for public comment about how the BLM should weigh the various reasonableness factors.

II. Green River Basin Advisory Council Report

At the request of Assistant Secretary Armstrong, the Office of the Solicitor is examining the recommendations with respect to royalty "ecocredits". An opinion is in progress, but is not yet complete.

This concludes my prepared statement. I would be happy to answer any questions the Subcommittee may have.

STATEMENT OF GEORGE H. FANCHER, JR.

Thank you Madam Chairman for the privilege to appear before you and the subcommittee on Energy and Mineral Resources. It is time we examine the issues which are adversely affecting our industry. You are to be complimented on your interest in listening to some of the problems that producers in the Rocky Mountain Region are having with governmental agencies such as the BLM. The goal of the government should be to encourage and help private industry to be more efficient and to economically develop and produce the domestic oil and gas reserves that are available in the United States.

My name is George Fancher and I am the owner of Fancher Oil Company, a small independent producer located in Denver, Colorado. I have been active in the Rocky Mountain area since 1969. I am a member of the Independent Petroleum Association of Mountain States (IPAMS), the Wyoming Independent Producers Association (WIPA), and the Independent Petroleum Association of America (IPAA). From 1991 through 1996, I served as Chairman of IPAMS Crude Oil Committee and last year I was a member of Governor Geringer's State and Industry Negotiating Committee for the Express Pipeline Project State Land's Right-of-Way issue.

However, today, I am not representing any organization and my comments reflect only my concern about the procedures used by the BLM in approving the Environmental Impact Statement (FEIS) for the Express Pipeline Project which is projected to deliver 172,000 BPD of Canadian crude oil from Hardisty, Alberta to Casper, Wyoming. As a result of my experience with the Express Project, I am concerned about the lack of a comprehensive process to evaluate the need for and impact of an international pipeline on local and state economies and to the domestic oil and gas industry.

The Express Pipeline has been in operation for only a few months and its impact upon crude oil prices has already been felt. Prices for crude oil have fallen by approximately $2.50 a barrel and have virtually wiped out the premiums (bonus) over

posted price which Wyoming crude oil producers were receiving. I expect that by the end of the year the premiums will no longer exist. This is due to the fact that by the end of the year Express Pipeline will be shipping approximately 172,000 barrels of crude oil per day from Hardisty, Alberta to its connection with the Platte Pipeline at Casper, Wyoming. I anticipate that substantial quantities of crude oil being shipped on Express Pipeline will be used to compete with oil produced by Rocky Mountain oil producers in markets which include Wyoming, Colorado, and Utah. The balance of Express' crude will be shipped eastward on the Platte Pipeline to its terminus at Wood River, Illinois.

Initial studies commissioned by the BLM of the socio-economic impact of the pipeline predicted the effect which is now being felt. The initial studies concluded that there would be a price reduction of approximately $2.50 per barrel for all types of Wyoming crude as a result of the pipeline. The initial report by the BLM's consultants concluded that the potential total cumulative loss of income to Wyoming producers resulting from foregone production (accelerated decline) and lower prices through 2005 would be as much as $2.1 billion. The initial report also found the total impact on Wyoming state and local tax revenues would be about $23.3 million in 1997. These initial reports directly contradicted conclusions reached by the BLM in the Draft Environmental Impact Statement for Express Pipeline ("DEIS") stating that the pipeline would not directly affect oil production in Wyoming and Montana. The initial report described above confirmed comments made by producers which were received by the BLM after the DEIS was published, that there would be a substantial impact on crude oil production in Wyoming.

In my view, the BLM did an inadequate job in evaluating the impact of this pipeline. In fact, the BLM capitulated to Express after Express' attorneys objected to the consultants analysis which resulted in dramatic changes to their revised report.

While the initial report concluded that there would be a price reduction of $2.50 per barrel for all types of Wyoming crude as a result of the Pipeline, the revised report concluded that there would be a price reduction of only $1 per barrel for just Wyoming sweet crude, and that since "sweet crude only comprises 35 percent of Wyoming's total production, the overall income and tax revenue effects would be similar to a $0.35 per barrel decline for all Wyoming production." The initial report stated that "the total impact on Wyoming State and local tax revenues would be about $23.3 million in 1997." Ten days after receiving criticisms from Express' attorney, however, the BLM consultant revised its report and concluded that "[t]he total impact on Wyoming State and local tax revenues would amount to $3.4 million in 1997."

Also, the initial report concluded that "[t]he potential total cumulative loss of income to Wyoming producers resulting from foregone production (accelerated decline) and lower prices through 2005 could be as much as $2.1 billion." Ten days later, BLM's consultant concluded that the Pipeline "is not expected to accelerate the overall rate of decline in production of Wyoming oil" and that "[b]ased on the projected annual rate of decline of 4.0 percent for the next ten years, the potential loss of income resulting from the $1 per barrel reduction in sweet crude through 2005 could be as much as $195.8 million." In the span of ten days, the BLM's consultant changed its evaluation of the cumulative impact to local producers from $2.1 billion through 2005 to $195.8 million through 2005 (a **change of over $1.9 billion**).

The Final EIS incorporated the conclusions of the revised report issued ten days after Express's attorney criticized the initial report.

The final EIS report recognized that the premiums or bonus being paid at that time for sweet crude were in the range of $2.25 per bbl and up to $4.50 per bbl for general sour crude. With refineries in the region operating at capacity, the impact of an additional 100,000 BPD of crude via Express was only expected to reduce the price of sweet crude by $1 per bbl and would have no effect on Wyoming general sour crude.

The final report contains numerous flaws including, but not limited to 1) the use of the same production decline rate to forecast what would happen without the Pipeline and what would happen with the Pipeline; 2) the failure to adequately support its conclusion that even though a bonus in the range of $2.25 to $4.50 per barrel is being paid for Wyoming crude oil because of purported shortages of oil, and even though the consultants assumed that the Pipeline would more than adequately meet local demand for crude oil, that somehow the Pipeline would effectively reduce the price of Wyoming crude by only $.35 per barrel; 3) the failure to specifically identify the sources upon which the consultants relied for material assumptions; 4) inconsistent assumptions concerning transportation costs; and 5) an inadequately supported assumption that Canadian crude will not displace Rocky Mountain oil production; 6) failure of the WSO to include information based on regional historical

retail gasoline prices and, whether or not a crude oil oversupply has ever resulted in lower gasoline prices at the pump.

Because of the radical changes between these two reports, the Wyoming State Office of the BLM (WSO) should have been very concerned about this shift and sought independent review. The WSO never independently challenged or even questioned this dramatic $1.9 billion change and the consultant's reversal of its initial conclusion. The WSO never disclosed the presence of the two radically different socio-economic analyzes and never disclosed why it rejected the initial Report and accepted the revised Report. The WSO made no attempt to quantify the loss of non-renewable natural resources which will result from the construction and operation of the Pipeline. Thus, the WSO breached its obligations under NEPA to independently review and analyze the consultant's work on socio-economic impacts and failed to ensure the professional integrity of the analysis contained in the consultant's Final Report. The first time the public had an opportunity to review the analysis performed by the reports was when the FEIS was issued.

The WSO refused to extend the FEIS comment period to allow the Governor of Wyoming an opportunity to address the final report which was disclosed to the public for the first time in the FEIS. The WSO failed to adequately address and consider relevant information submitted to it during the commenting process on the FEIS which put into question the validity of key assumptions upon which the final report was based, including the transcript of a March 20, 1996 hearing held before the Wyoming State Senate Select Committee on Mineral Transportation which was submitted to the WSO, and other information concerning domestic oil production and related socio-economic impacts this Pipeline would cause. The WSO should have treated the final report as new information not previously disclosed in the DEIS and afforded the public the same commenting opportunity which was provided on other areas originally covered in the DEIS.

On June 13, 1996, I learned that the consultant had new information which would have caused them to reach different conclusions from those in the final report. On or about June 20, 1996, I spoke to Mr. Ogaard of the WSO about the consultant's new information. Mr. Ogaard informed me that he did not really care if there was new information or if the consultant's opinion may have changed, that he had to draw the line somewhere and the WSO was not about to re-open the case to consider the impact the pipeline would have on domestic crude oil production and related socio-economic impacts.

It was and is reasonably foreseeable that the inundation of large volumes of Canadian crude oil in the Rocky Mountain region would cause the price of oil in Wyoming to fall and wells to be shut-in, resulting in a loss of otherwise recoverable domestic natural resources which violates one of the fundamental purposes of NEPA which is the prevention of waste of non-renewable natural resources. The WSO was obligated to evaluate and disclose "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented" including the loss to domestic oil reserves resulting from the project.

"In order to encourage the greatest recovery of oil and in the interest of conservation," the BLM announced new regulations reducing the rate of federal royalties for heavy grades of crude oil. 61 Fed. Reg. 4748 (February 8, 1996). These new rules were designed to "provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of [marginal] wells until the maximum amount of economically recoverable oil can be obtained from the reservoir or field." 61 Fed. Reg. at 4748. The BLM explained why it felt royalty relief was needed:

> As many as two-thirds of all marginal properties (including non-heavy oil properties) could be lost during a period of sustained low oil prices (Marginal Wells, a Report of the National Petroleum Council, 1994, p.3). The danger in losing the marginal wells is that, although production from individual wells may be small, their collective production is significant, accounting for one-third of onshore domestic production excluding Alaska.

Nowhere in the analysis of the socio-economic impact of the Pipeline did the WSO address the impact of these regulations which were promulgated by its own agency. Neither the DEIS nor the FEIS contained any analysis of the economic limits of domestic oil production or any quantification of the domestic oil reserves which will be lost as a result of the proposed Pipeline.

The failure of the BLM to adequately assess the impact of Express on local prices violates NEPA which provides that it is the responsibility of the Federal Government to Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. Crude oil is a natural resource, but it is depletable. If fields or wells have to be abandoned before the resource has been produced to its maximum attainable limit, then waste will occur. The prevention of

waste of natural resources is a fundamental purpose of NEPA. The broad aim of NEPA is well established.

> The National Environmental Policy Act contains no exhaustive list of so-called "environmental considerations" but without question its aims extend beyond sewage and garbage and even beyond water and air pollution. The act must be construed to include protection of the quality of life . . . (citations omitted).

When economic and environmental effects are interrelated, the EIS must discuss all of the effects of the proposal on the human environment, including social and economic. The scope of effects to be considered under NEPA is expansive. Under NEPA, the term "effects" includes:

> Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Effects and impacts as used in these regulations are synonymous . . . Effects includes . . . economic, social, or health, whether direct, indirect or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

A cumulative impact is defined in NEPA regulations as:

> [T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Here economic and environmental effects are clearly interrelated. It is "reasonably foreseeable" that the Pipeline will cause a substantial number of domestic oil wells to be shut in, resulting in the loss of otherwise recoverable domestic natural resources.

In summary, the process must ensure that the socio-economic aspects of the NEPA process receive more comprehensive treatment than was done with the Express Pipeline project. The failure to disclose the radical shift in the analysis of the socio-economic impact of this pipeline to the public must be prevented in the future, especially where the lack of a truly independent analysis may lead to the waste of natural resources.

In the future, our industry will be faced with similar situations involving foreign oil and gas projects that will directly impact the domestic energy industry. The Express Pipeline Project illustrates the fact that no state or federal governmental agency has the final or overall authority to evaluate the need for and the impact of an international pipeline on local and state economies and the domestic energy industry in general.

Because of the many questions that the Express pipeline has raised, I recommend that the government, in conjunction with industry, develop a comprehensive approval process for foreign pipelines transporting foreign crude oil, natural gas and/or refined products into this country which will evaluate the viability and effect of the project on all concerned.

STATEMENT OF TOM THROOP, EXECUTIVE DIRECTOR, WYOMING OUTDOOR COUNCIL

My name is Tom Throop and I'm the executive director for the Wyoming Outdoor Council (WOC). WOC was established by Wyoming citizens 30 years ago in 1967 and today remains the leading voice for the conservation of Wyoming's natural resources and the protection of its environment. WOC is a non-profit membership organization governed by a 17-member board of directors comprised of Wyoming citizens and has a staff of four. WOC is all Wyoming, as we are unaffiliated with any regional or national groups.

Throughout its history, WOC has played a leading role in helping to resolve some of the state's most difficult natural resource challenges, from coal strip mining in the Powder River Basin, to unsustainable timber harvests and clearcutting on the Bridger-Teton and Shoshone National Forests and now energy and mineral development in the Green River Basin and the southern Big Horn Mountains.

I thank you for the invitation and the opportunity to testify. At the same time, I need to tell you that the public interest organizations from our sister states of Montana and Colorado are very upset with this hearing. The scope of this hearing directly relates to issues that are being dealt with in those states. Witnesses representing public agencies and industry are here from both those states. Yet there was no notice nor invitations to public interest groups in Colorado and Montana. They view this hearing and process as extremely unfair and believe that if you are going to discuss issues that affect their states, hearings should be held in those

states and public interest group witnesses from those states should be invited to testify.

Let me begin by reminding the Committee that the lands in question are public lands owned jointly by all the citizens of the United States, and Wyoming. By law, these public lands must be managed for multiple use. In the definition of multiple use, it states that resources are not to be managed for the greatest economic return or greatest unit output. Increasingly, however, we are seeing a fundamental shift away from multiple use to dominant use for energy and mineral development, often at the expense of the public land's uses for wildlife and habitat, open space, historic recreation opportunities, clean air, clean water and overall environmental quality. The BLM's management plans for the public lands in Wyoming that are the subject of this hearing authorize oil and gas leasing on all lands outside witness study areas; or an astounding 98 percent of the total lands available, including crucial big game winter range, areas of critical environmental concern and areas having high scenic value. Presently, oil and gas leases cover the vast majority of the areas under discussion, approximately 90 percent, and do not carry stipulations sufficient to protect the surface resources.

There are a multitude of uses and very significant environmental issues to be dealt with on the public lands of the Green River Basin and Cave Gulch. Federal law requires that there be careful review prior to development activities on these public lands. For example, there are cumulative impacts to a host of wildlife species and their habitat, including antelope, deer, elk, raptors and sage grouse. Air quality and visibility are major issues and the groups working on these issues have not yet reached consensus on how to protect Class I wilderness areas from emissions of nitrogen and volatile organic compounds (VOCs). Implementation of the Clean Water Act on the public lands, maintaining historic recreation opportunities, and protecting significant cultural and archaeological resources are also significant environmental and land use considerations that must be dealt before these lands are developed.

Concerning the Green River Basin Advisory Committee (GRBAC), we requested the formation of this FACA process and appreciated the Secretary's appointment and Assistant Secretary Bob Armstrong's personal attention. GRBAC was a collaborative process and product that we enthusiastically endorse. Most of the recommendations can be implemented administratively, for example the excellent work done by the Committee on transportation issues. We sincerely expect and hope that the Secretary will approve the primary outstanding issue, eco-royalty relief. If the Secretary does not, there is a readily available alternative that will accomplish the same objective. BLM can change its policy for Wyoming and give Wyoming BLM the authority to authorize off-site mitigation like is done in other western states. It is obvious that if development occurs at 8 or 16 wells per section, there is no remaining opportunity for on-site mitigation. Any mitigation must occur off the lease. And finally, though this issue was not resolved, we feel strongly that the government should NOT pay for industry's NEPA analysis. That is their responsibility and a cost of their development proposals.

We are surprised and disappointed, Representative Cubin, that you would characterize Cave Gulch in your letter of June 18th as "Cave Gulch field development delays." We have been involved in Cave Gulch throughout the entire process. Cave Gulch is on a fast track the likes of which we have never before witnessed. In fact, the process has been so bad that the district manager has been driven off, the area manager corrupted, and staff morale at an all-time low and the worst in the state. While the fast-track EIS has been underway during the past year, industry was given everything it wanted in an interim development agreement, even though such a far-reaching interim development agreement was unprecedented. Even though the interim development agreement was a collaborative process that was agreed to by all the parties, BLM broke the agreement when they discovered Chevron wanted one more well that was specifically excluded because it was deemed to violate NEPA. The final EIS and Record of Record of Decision are on the street. BLM openly admits that the decision sacrifices the other resources on the public lands of this area. For example, because industry didn't like it, BLM deleted the raptor recovery area for a candidate species for ESA listing, the ferrugenous hawk. Though most people believe we should be taking actions to prevent listing of threatened and endangered species, BLM takes an action at Cave Gulch that cumulatively adds one more step toward listing. That these multi-national corporations headquartered outside Wyoming can say that they have somehow experienced obstructions at Cave Gulch is the best demonstration yet that Wyoming is still viewed by some of these companies as a third-world resource colony where quick and easy is all that matters.

The best gauge to demonstrate whether we have a problem or not are the numbers. To quote from the April 9th edition of the Casper Star Tribune, "The rig counts for Wyoming and the Rocky Mountain region have soared over the figures from . . . last year." According to the Petroleum Information Corporation, Wyoming had 15 rigs in the state at the same time last year. This year, there are 35, or a 133 percent increase. Wyoming had the largest increase in the nation, twice the increase of #2 Louisiana. For the Rocky Mountain region, the rig count is up 36 percent.

In addition, there are hundreds, if not thousands, of APDs that have been approved, but are not being developed by the companies who hold approvals to develop, because of market problems, higher priority projects, and a host of other economic reasons. Examples are 72 wells at Stagecoach Draw, 750 wells at Wamsutter II, 1,300 wells at Fontenelle, and 1,300 wells at Moxa Arch have all been approved, just to name a few. Things are pretty busy here in Wyoming and the allegation that access and regulatory issues are any kind of inhibitor to development in this state is nothing more than a thinly disguised attempt by some, certainly not all, oil, gas and minerals companies to commandeer this nation's public lands for their own use.

In closing, the single most important factor in expediting development is industry's willingness to come to the table early in the process, to participate in identifying key issues early and to work in good faith to resolve issues early with the U.S. Forest Service, EPA, U.S. Fish and Wildlife Service, Wyoming Game and Fish Department, to name a few, and the citizens of Wyoming. Historically, industry has instead ignored pleas for collaboration, and as a result, has forced many of the significant issues to be dealt with in appeals or litigation. Fortunately, we are beginning to see the culture of decisionmaking change, for example, the GRBAC and a host of air quality processes that are currently underway, but we still have a long journey ahead of us. Representative Cubin, I plead with you to play a constructive role by working to help bring the parties together to find Wyoming solutions to Wyoming problems. Thank you.

STATEMENT OF ALAN PIERSON, STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, WYOMING

Good Morning, Madam Chairman. I appreciate the opportunity to come before you today to discuss the Bureau of Land Management's (BLM) involvement with Federal resource management in Wyoming. We have made a number of significant accomplishments and have many projects and initiatives in progress which reflect our commitment to an open and cooperative process.

Overview

Within the state of Wyoming, the BLM manages some 18.4 million acres of public lands. Of that, about 17.9 million acres are available for oil and gas leasing and about 8 million acres are currently leased. We also manage 11 million acres of minerals where we do not have jurisdiction over the surface.

Since the earliest days of our country, our Government has recognized that public lands should be managed for the local, as well as the national interest. Statutes have created a balance so that revenues from public lands in Wyoming are shared with the State. Wyoming communities benefit from this arrangement. Each year, Federal mineral revenues amount to about $500 million from Wyoming's public lands. Almost $250 million of these revenues go directly to the State to fund a number of its programs. Our most recent oil and gas lease sale, held on June 3, 1997, resulted in $5.1 million in receipts with 85 percent of the tracts sold. This suggests that our August, 1996 decision to offer only nominated tracts is paying off. Generally, buyers nominate desirable tracts for inclusion in the sale. This process helps to reduce the number of properties included repeatedly in lease sales and minimizes the amount of personnel required to conduct sale activities.

BLM Oil and Gas Program in Wyoming

BLM Wyoming is typically responsible for administering oil and gas minerals management laws on all federally owned minerals in Wyoming and Nebraska. Major operational responsibilities on Federal and Indian lands include processing applications for: permits to drill, unit agreements, and suspensions of operations and production, etc. We are also typically responsible for drainage protection enforcement

responsibilities, inspection and enforcement of oil and gas operational and reclamation activities, and production accountability. BLM Wyoming is first in the nation in generating Federal onshore oil production and royalty revenues. BLM Wyoming is second only to New Mexico for natural gas production and gas royalty revenues received from Federal onshore mineral leases. Southwest Wyoming is one of the leading gas producing regions in the United States.

The following information, current as of the end of last fiscal year, provides the status of wells and completions on Federal and Indian lands in Wyoming, and outstanding unit and communitization agreements activity:

BLM Wyoming (Historical Data through end of FY 96)

7,124 producing oil wells
2,978 producing gas wells
1,174 shut-in oil wells
519 shut-in gas wells
2,801 service wells (this includes injection and disposal wells, water source wells, etc.)
17,457 plugged and abandoned wells
19,179 oil and gas leases under supervision encompassing 12,478,659 acres
726 exploratory and secondary unit agreements
512 enhanced recovery unit agreements
1,290 communitization agreements
8 gas storage agreements
3 development contracts
476 APD's (Applications for Permit to Drill) approved in FY 96

Protecting Environmental Resources

In addition to our operational responsibilities in developing mineral resources, we are also charged with or share with other Federal agencies the charge of protecting other resources. This is part of an overall process which begins with a resource management plan (RMP). BLM's planning is designed for multiple use and sustained yield and is tiered from general guidance to site specific elements. With the help of other Federal agencies, State and local governments and the public, we prepare plans for overall land use and resource management to serve an entire resource area. The RMP specifies general criteria for managing such resources as riparian areas, cultural sites, wildlife habitat, historic trails, and livestock grazing, as well as minerals development. This plan is followed by more specific activity planning which provides detailed analyses and decisions on specific sites. BLM is able to manage oil and gas development alongside other types of land uses by stipulating protective measure requirements in the oil and gas lease document. The protective measures are developed in part during the land use planning process, which includes extensive public participation. Protect measure stipulations allow oil and gas development to coexist with other surface uses of public lands.

Cave Gulch

That brings us to the subject of Cave Gulch. The Cave Gulch-Bullfrog-Waltman project area is located in Natrona County and encompasses 25,093 acres of mixed Federal, State, and private lands. Although the BLM manages only 7,375 surface acres in the area, 76.5 percent of the mineral estate is Federal.

Following discovery of a rich natural gas field in the Cave Gulch Unit in 1994 by Barrett Resources Corporation, the BLM prepared an environmental assessment (EA) to address Barrett's development proposal. Based on potential environmental impacts contained in the Barrett EA, we determined that impacts were not expected to be significant, therefore, an environmental impact statement (EIS) would not be required. In 1995, the BLM issued approval to Barrett and Chevron USA Production Company to develop the field.

Subsequent to this initial decision, we received additional development proposals from Barrett and Chevron. Upon review, we found that mitigation measures to protect raptors could not be carried out. In January 1996, the BLM decided to reevaluate its decision to allow Barrett to develop the field because of Barrett's expanded development proposal and because of the inadequate raptor protection measures in Barrett's proposal. The BLM determined that the analysis required an EIS to assess all of the direct and cumulative impacts from the combined Cave Gulch-Bullfrog-

Waltman project area development proposals. We suspended further work on the Chevron EA which was being prepared for the Bullfrog Unit adjacent to Cave Gulch.

Following that decision, the BLM established criteria for a moderate amount of development activities while the final EIS was being prepared. An interim agreement involving various parties, including conservation groups and the affected companies, has led to some development. As of February 1, 1997, 42 natural gas wells have been drilled.

BLM issued the Cave Gulch-Bullfrog-Waltman Final EIS earlier this month for public comment. The comment period ends July 20, 1997. The Record of Decision is expected to be complete and ready for signature by August 4, 1997.

The preferred alternative in the final EIS addresses a number of the issues raised in response to the draft EIS. It provides for increased natural gas production in the Cave Gulch-Bullfrog-Waltman project area by allowing the operators to drill and develop approximately 160 natural gas wells over the next 10 years on 107 new and 24 existing well sites, in addition to existing drilling and production operations. Any impacts to the raptor population and habitat can be effectively mitigated with artificial nest sites and buffers around the nests. As a result of a cooperative effort by the BLM, U.S. Fish and Wildlife Service and the operators, BLM can immediately begin to implement these mitigative measures.

The final EIS also has an expanded socio-economic and cumulative impacts analysis of air quality. The total State severance tax for the 30 to 40-year life of the project is estimated to be about $63 million. Total Federal mineral royalties are estimated to be $116.8 million, half of which goes to the States. In addition, the State will receive royalties of $6 million, over the life of the project. Total estimated ad valorem property and production tax revenues from their lands for the life of the project are about $76 million.

Green River Basin Advisory Committee

One final subject I would like to touch on is the Green River Basin Advisory Committee recommendations.

The Green River Basin Advisory Committee reached consensus on five recommendations and, in March 1997, forwarded these recommendations through the BLM to the Secretary of the Interior for approval. They include road standards, NEPA process streamlining, eco-royalty relief, transportation planning, and opportunities for partnership. To date, all but one of these recommendations can and are being implemented. Eco-royalty relief is currently under review by the Department's Solicitor's Office. This recommendation would establish a 5-year pilot project for eco-royalty relief in the Greater Green River Basin. Under the pilot, producers in Wyoming would be allowed to take a royalty reduction on production of up to $4 million ($2 million for NEPA implementation and $2 million for monitoring and mitigation) annually to be used for monitoring studies and any mitigation measures which go above and beyond standard operating procedures, required stipulations, or standard conditions of approval for mitigation.

Madam Chairman, I welcome the subcommittee's continued interest in the BLM's programs and their effect on the State of Wyoming. I appreciate this opportunity to provide information on the activities we are involved in, and I look forward to responding to any questions you may have.

STATEMENT OF BOB NANCE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NANCE PETROLEUM

Dear Madam Chairwoman and members of the Committee:

I am Bob Nance, president and CEO of Nance Petroleum, an independent producer who has federal production in Montana, North Dakota, and Wyoming. I am here today on behalf of Nance Petroleum and the Independent Petroleum Association of America ("IPAA"), a national trade association representing nearly 6,000 members of America's oil and gas producing community.

The IPAA has increased its efforts at the national level in the last couple years in the areas of federal onshore and offshore oil and gas issues. The association has a very active Land and Royalty Committee specifically dedicated to creating a business environment that encourages producers to explore and produce on federal lands. I've been appointed to be the Vice-Chairman of Lands for this IPAA committee.

Why has IPAA stepped-up its efforts on public lands? The reason is simple. We must make public lands accessible to the independent oil and gas community if we

are going to increase domestic production. Each year the IPAA surveys its membership to determine if independents are increasing their activities on onshore federal leases. Year after year the answer comes back the same—no! This is alarming, especially given that government reports, supported by private and industry studies, indicate that one of the last frontiers for unexplored onshore oil and gas reserves lie beneath public lands.

We need to open these potential reserves to independents who drill over 85 percent of the wells in the U.S. and produce nearly 45 percent of America's oil and two-thirds of its natural gas. We thank you and the Committee for coming to the West to advance the cause of removing impediments to sound and safe exploration of the federal lands spread throughout the Rockies. If independent producers are successful in developing public lands, then everyone benefits by creating more jobs, stimulating the economy and increasing federal and state revenues, especially for education. To accomplish this goal, reform of the federal government's oil and gas federal land programs is needed now, not ten years from now, after the government concludes another series of studies and pilots.

To move ahead with reform, we need to identify the barriers prohibiting independents from drilling on federal lands:

1. *Lack of access.* The vast majority of high-potential, federal lands remain unavailable for leasing. And if they are leased, stipulations, such as no surface occupancy, are added, precluding any drilling or seismic evaluation. The Department of Interior has neutralized an advocacy for onshore development and has replaced multiple-use with land preservation.

2. *Uncertainty.* Once making a financial commitment to develop a federal prospect, you are likely to experience indefinite delays in obtaining a lease and a permit to drill. The delays result in independents walking away from potential reserves.

3. *Costly regulations.* If you do obtain your lease, and hopefully your drilling permit, the cost to drill and operate a federal lease far exceeds a private lease transaction. Many federal requirements duplicate state processes. Unnecessary regulatory requirements kill plausible projects. More and more, the government is deferring its costs by shifting burdens onto industry.

How can we encourage independents to drill and produce from federal lands?

The IPAA is proposing a six-point reform plan:

1. *Increase public lands available for development.* This reform goal can be accomplished in a number of ways: restoring multiple-use as a mandate for federal lands, requiring risk management for decision making, restricting unilateral withdrawal of lands by the executive branch and stopping Secretarial policies which prohibit multiple-use of lands already determined to be outside the scope of a wilderness area. We support efforts to legally challenge the Secretary's authority to create *"de facto"* wilderness areas (e.g., *Marathon v. Babbitt).*

2. *Eliminate federal activities which duplicate state activities.* If the state and federal governments are performing similar oil and gas regulatory activities, we support consolidation of the two programs and having the single program administered by the state. States, and its citizens, who receive 50 percent of all royalty streams, must have a more direct role in federal oil and gas regulatory programs.

3. *Establish an advocate for onshore development.* Oil and gas responsibilities are spread throughout the U.S. government. For programs not transferred to the state, we recommend studying the benefits and drawbacks of consolidating all oil and gas regulatory programs into a single agency, such as the Minerals Management Service's Offshore Program.

4. *Increase certainty.* Set definitive time-frames, a date certain, for issuing leases and development approvals. This is a concept that appears to have the support of the President. Additionally, similar to what was accomplished under the Royalty Fairness Law for royalty appeals, have the IBLA decide oil and gas BLM appeals within a date certain.

5. *Reduce costly regulatory burdens.* Implement recommendations to streamline regulatory processes like issuing drilling permits. Prevent the shift of regulatory costs to oil and gas producers who already pay rents, royalties, and bonuses totaling more than approximately $650 million a year for onshore properties. There are a number of ways to proceed with cost recovery: 1) give the Secretary clearer authority to offset environmental and other related costs against royalty payments; 2) clarify that cost recovery is not appropriate for oil and gas activities due to the rents, royalties and bonuses; or, 3) dedicate a portion of the revenue from oil and gas royalty streams going to the Reclamation Fund (approxi-

mately $350 million per year) to cover the government's costs to administer these programs. This reallocation of proceeds would save the states millions of dollars by eliminating the need for states to pay a quarter of the government's costs.

6. *Implement incentive programs.* Such programs are critical for encouraging development and/or sustaining production from marginal wells. Examples of such programs include continuation of the royalty enhancement program for stripper oil wells, royalty incentives for marginal gas wells and investment credits for frontier areas. An incentive program could also be created for abandoned well sites.

This is a very aggressive reform program. Many of these initiatives may have to be accomplished via a legislative vehicle. The IPAA stands ready to work with the Committee in developing a comprehensive blueprint for reform.

I will now expand further on three of the six reform initiatives:

1. Consolidating federal and state regulatory activities.

Even though this project seems to be slow moving, IPAA, for the record, continues to support state transfer to the fullest extent possible if significant cost savings can be realized for both the government and industry. We need to begin to quantify potential cost savings. If this type of reform is able to save real dollars, we believe a legislative effort will be necessary.

This legislative initiative may absolutely be necessary if the BLM is successful in implementing a program to recover its costs. If we are going to pay for the cost of the government to do business, we want the entity who is most cost-effective to provide those services. If given unencumbered authority, it appears that the states can perform federal oil and gas regulatory activities at a fraction of the cost. Lower government costs equate to lower cost recovery which reduces the impact on producers.

2. Public land access and the Lewis and Clark Forest.

There are many recent examples, which demonstrate that multiple-use has been replaced with land preservation (e.g. Escalante National Monument, re-inventorying Wilderness Study Areas and not allowing development of lands determined to be outside the scope of wilderness study areas). I want to discuss another example of land preservation right in my own backyard—the draft EIS prepared by the Forest Service for the Lewis and Clark Forest.

The Rocky Mountain Division of the Forest is in the over-thrust belt and has the potential to contain as much as 2.5 to 11.1 trillion cubic feet of gas, as estimated by the Forest Service. Less conservative estimates reveal that approximately 83 trillion cubic feet of gas could be remaining in the over-thrust belt largely in Montana, as estimated by the Geological Survey of Canada. Governor Racicot estimates that gas from this area could heat 369,000 residences in Montana for a period of 60 to 275 years. The Montana Thrust Belt is rated third in the entire country for conventional gas reserves and second for deep gas reserves. Unfortunately, the Forest Service has turned its back on this world class gas reserve to favor the desires of those who prefer to place public lands off limits for multiple-use.

When the Forest Service issued its draft EIS August 9, 1996, it is our conclusion that its preferred alternative essentially eliminates oil and gas development in the Rocky Mountain Division. These reserves will be abandoned for a minimum of 10 to 15 years, if not indefinitely. The draft EIS analyzes 1,862,453 acres, of which 610,634 acres are legally unavailable due to their classification as wilderness or wilderness study areas. This leaves 1,230,612 acres subject to review for oil and gas leasing. The Forest Service's preferred alternative makes 60 percent of this area either administratively unavailable for leasing or unavailable for surface occupancy, while the remaining 40 percent is subject to severely restrictive stipulations. In practical terms, the preferred alternative allows for oil and gas leasing on an extremely limited area containing high potential for discovery—one mile corridors along existing roads in certain basins and a one mile, no surface occupancy strip along the eastern boundary of the Rocky Mountain Division of the Forest.

The preferred alternative does not provide a meaningful opportunity to explore for and produce oil and gas from the Lewis and Clark Forest. This is extremely disappointing. The Forest Service's own analysis of an unconstrained development scenario projected that only 30 wells would be drilled, impacting only 300 acres if leasing were allowed throughout the entire Forest. Yet, with an impact of less than a quarter of one percent on the entire forest, the Forest Service is promoting land preservation by requiring no surface occupancy or other very restrictive surface use conditions.

I'd like to point out some flaws in the analysis which seems to falsely support their conclusions. One of the most important flaws is the insignificance given to the

socio-economic impacts of oil and gas development. For education alone, Governor Racicot has highlighted this fact by pointing out that the Forest Service's preference will cost the state $2 to $7 million per year in lost revenue.

The Forest Service claims that it did evaluate the biological, physical, social, and economic impacts of oil and gas leasing. They claim that the authorized officer weighed each of these effects when arriving at a decision as to which lands should be made available or offered for lease. We believe that the Forest Service did not equally weigh the socio-economic impacts against alleged environmental impacts. It appears that much more weight was given to biological and physical impacts of oil and gas leasing.

The Forest Service assumes that mineral resource development is in indirect conflict with other resources and that these conflicts cannot be mitigated. This view results in the authorized officer giving a preference to land preservation over multiple use. The Forest Service ignores a number of tools the government has available to protect resources during the leasing and permitting phases of oil and gas development. In fact, in many cases, mitigation measures related to oil and gas resources can improve other resources, such as wildlife habitat.

Additionally, we believe the Forest Service failed to take into account the many technical advances which allow drilling to be conducted in sensitive areas with minimal impact to the environment. The Forest Service acknowledges that it assumed the "basics" when it comes to oil and gas exploration and the use of new technologies was not considered in its analysis. Sound science and the advancements in technology allow for the effective management of all resources in the Rocky Mountain Region.

The Forest Service ignores its own Minerals Program Policy (revised August 8, 1995) which states, *"... the national forests and grasslands have an essential role in contributing to an adequate and stable supply of mineral and energy resources."* One of the policy objectives is to, *"Maintain opportunities to access mineral and energy resources that are important to sustain viable rural economies and to contribute to the national defense and economic growth."* With regard to the Lewis and Clark Forest, the Forest Service readily admits that, *"... trade balance and National security is beyond the scope of this analysis."* This is very unfortunate. As I stated early, the future of domestic production is dependent on the development of potential vast oil and gas reserves which lie beneath federal land.

We agree with Governor Racicot who stated in a letter dated December 12, 1996, to Gloria E. Flora; Supervisor of the Lewis and Clark National Forest, that with regard to the Rocky Mountain Front, "*... resource protection and leasing for oil and gas potential can occur in a more balanced manner."* He goes on to urge the Lewis and Clark Forest to reconsider adoption of the preferred alternative in favor of an alternative that provides additional opportunity for leasing within the Rocky Mountain Division, consider the phased nature of the oil and gas development process and the ability of the Forest to control individual activities and location, and develop creative stipulations and mitigation measures to accomplish resource protection.

We hope the Forest Service is seriously considering the views of the Governor and his constituency—the citizens of Montana. The Governor's view should outweigh the hundreds of letters submitted via an environmental lobbying campaign. Through the use of alerts and form letters, environmentalists were able to have "concerned citizens," from across the country, despite the unfamiliarity with the Lewis and Clark Forest, send in letters of opposition to multiple-use. If the views of the state are ignored, it further exemplifies the need to return more power to the state when it comes to deciding how best to manage the public resources contained within their boundaries.

Madam Chairwoman, time is running out. Our latest report from the Forest Service is that they are planning to issue a record of decision sometime in the fall. I'm not sure there is much we can do. However, if the Committee can intervene to help convince the Forest Service to consider other alternatives before making a final decision, this would be helpful. At a minimum, before making a final decision, the Forest Service should allow seismic testing to be conducted in the area. There are a number of techniques, other than just heliport, that can provide for 3D seismic with minimal surface disturbance. In this way, we can delineate areas with the highest potential for development and conduct a more accurate analysis of impacts.

In the long-term, we believe that the only permanent solution for giving mineral development a fair and reasonable chance on public lands, is to reconfirm a multiple-use mandate and require the federal government to equally weigh the importance of socio-economic impacts and the views of state officials in its land use decision making process. This legislative mandate could require the federal government not to discard mineral development before conducting a risk assessment and at-

tempting to mitigate conflicts. Environmental impacts must be on a level playing field with the impacts on humans, the economy, and the state in general.

3. Certainty for the leasing and permitting processes.

On behalf of IPAA, I attended the presidential signing of the Royalty Fairness Law last August in Jackson Hole, Wyoming. Now that I have mentioned Royalty Fairness, on behalf of IPAA, I want to thank the Chairwoman and the entire Committee and staff for passage of this important reform initiative. Hopefully, we can accomplish similar reform of the BLM's and Forest Service's oil and gas regulatory practices.

Prior to signing the bill, President Clinton met with representatives from the oil and gas industry to discuss a number of issues. The issue I personally raised with the President was the excessive amount of time it takes to obtain a permit and the uncertainty associated with doing business on public lands. I suggested to the president that the government should, within a date certain, notify a producer if it is going to issue a lease or a drilling permit. If the government's answer is no, set forth a timetable for determining how the alleged conflicts can be mitigated.

The President responded to these comments by stating the following: 1) He was frustrated with the fact that the drilling permit process had not been streamlined. He has asked the department to accomplish this goal; and, 2) He can understand the need for certainty when attempting to develop public lands. It appeared that he supported the idea of establishing specific time-frames for the BLM's oil and gas processes.

The President's remarks were very encouraging. We would like to work with the committee and the administration in developing bipartisan legislation to accomplish this type of reform. There a number of details that would have to be worked out, but, certainly, we should be able to develop a legislative package that results in a more efficient leasing, permitting, and appeals process. By adding certainty, independents will be more likely to commit capital to public land projects, as this capital will not be tied-up indefinitely in a never-ending decision making process.

Conclusion

Again, I want to thank you Madam Chairwoman and the entire committee for coming out West to listen to the challenges we face on public lands and offer assistance in changing the current operating environment. We can no longer afford to ignore needed mineral revenues lying dormant beneath public lands. Through reform of the federal oil and gas regulatory program, we can begin to bring these revenues to the surface for use by the nation, states, and most importantly, those educating the children of the West. We stand ready to help develop a blueprint for reform. With your leadership and through hearings like the one today, we can make a difference on public lands. Thank you.

ANSWERS TO QUESTIONS FROM CHAIRMAN OF THE COMMITTEE BY MS. GINA GUY

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
ROCKY MOUNTAIN REGION,
755 PARFET STREET, SUITE 151,
LAKEWOOD, COLORADO 80215
July 16, 1997

The Honorable Barbara Cubin,
Chair, Subcommittee on Energy and Mineral Resources,
Resources Committee,
U.S. House of Representatives,
Washington, DC 20515

Re: Proposed Rulemaking; Bureau of Land Management; Cost Recovery for Mineral Document Processing

DEAR MRS. CUBIN: At your Subcommittee's Field Hearing in Casper on June 30, you asked about the relationship between the cost recovery opinion and the state's one-fourth share of administrative costs. I responded that it was my understanding that such costs would be addressed in the proposed rulemaking.

I believe I misunderstood your question. The cost recovery rulemaking will apply to amounts applicants reimburse BLM for BLM's processing of documents in order for the applicant to receive a benefit or privilege not available to the public at large. What you may have been referring to is the allocation of administrative costs against the royalties payable to states pursuant to the Mineral Leasing Act, as amended, 30 U.8.C. §191(b)(1). The 1993 amendment to that section (Public Law

103–66) removed the provision that payments to states would not be reduced by administrative costs incurred in royalty collection. This statutory cost-sharing program with the states benefiting from the federal on-shore mineral leasing program was discussed in the cost recovery M-opinion:

> Receipts retained by the United States under this section are paid into the Treasury and do not directly fund program operations. This section provides no new source of recovery for administrative costs and merely ensures that states share the burden of such costs for a program from which they benefit. This section has no bearing on fees charged to recoup the costs of agency services.

M–36987, at 24 n.27 (Dec. 5, 1996). Therefore, the rulemaking will not address the issue of revenue and costs shared with the states.

I apologize for any confusion my remarks might have caused, and request that this clarification be added to the record of the hearing.

Sincerely,

Gina Guy,

Regional Solicitor

Testimony of Robert V. Abbey
Acting State Director, Colorado
Bureau of Land Management
Before the House of Representatives
Subcommittee on Energy and Mineral Resources
Field Hearing, Casper, Wyoming
June 30, 1997

Madam Chairman, members of the subcommittee, I appreciate the opportunity to discuss with you the oil and gas program for the Bureau of Land Management (BLM) in the State of Colorado. I would like to give you a general overview of our program and also briefly discuss the BLM's Colorado State Office policy concerning actions within non-wilderness study area lands included in the Colorado Environmental Coalition's (CEC) wilderness proposal for BLM lands.

BLM Oil and Gas Program in Colorado

The BLM Colorado is responsible for administering oil and gas minerals management laws on all Federally owned minerals in Colorado. Within the State of Colorado, the BLM manages 8.3 million acres of surface and minerals, and 5.3 million acres of reserved mineral estate where it does not have jurisdiction over the surface. In cooperation with the Forest Service (U.S. Department of Agriculture), the BLM also administers mineral leasing on approximately 12.8 million acres of national forests. This totals over 26 million acres of Federal mineral estate within Colorado, of which 3.3 million acres is currently under lease and nearly 20 million acres are available for oil and gas leasing.

During FY 96, 255 oil and gas leases covering nearly 218,000 acres were sold at competitive sales. This amounted to 70% of the offered tracts sold, generating $1.9 million

in revenues. We credit our high sell rate to the fact that we do not "roll over" or re-offer dead leases. In Colorado, we offer only those lands requested by the public or where drainage either is occurring or determined likely to occur. Of the $78 million in total oil and gas revenues generated in FY 96, in accordance with the Mineral Leasing Act, approximately $35 million went directly to the State.

Significant Accomplishments

One of BLM Colorado's most significant accomplishments during FY 1996 involved streamlining the way we process operating rights transfers. These transfers allow the holder of the lease to enter the lands and conduct oil and gas operations. In May 1996, BLM Colorado had an 18 month backlog in processing these transfers. We developed new streamlined procedures, which remain consistent with the requirements of the Mineral Leasing Act and national BLM policy, that allowed us to eliminate the backlog within 6 weeks, greatly improving our customer service.

We have also entered into Memorandums of Understanding (MOU) with the Colorado Oil and Gas Commission relative to hearings and spacing and are currently looking at ways to apply the State's Orphan Well Fund to wells on public lands. We look forward to continuing our joint efforts to become more efficient and effective.

The following information is a summary of oil and gas activities on Federal and Indian lands in Colorado.

BLM Colorado (Historical Data through end of FY 1996)

956 producing oil wells

3,546 producing gas wells

97 shut-in oil wells

648 shut-in gas wells

612 service wells (includes injection and disposal wells, water source wells, etc.)

948 plugged and abandoned wells

2,122 producing oil and gas leases under supervision encompassing 1,398,000 acres

159 exploratory and secondary units

1,006 communitization agreements

5 gas storage agreements

0 development contracts

176 approved Applications for Permit to Drill

The BLM Colorado is proud of its accomplishments in the oil and gas program and we look forward to continuing to work with our customers to implement improvements in the future.

General Overview of Colorado Wilderness

In 1994, the CEC, a consortium of 47 environmental groups in Colorado, published the *Conservationists' Wilderness Proposal for BLM Lands in Colorado.* The proposal recommended wilderness protection for 300,000 acres of BLM lands and an additional 250,000 acres of Forest Service lands outside existing Wilderness Study Areas (WSA's). Since that time, the BLM Colorado State office has, as a matter of practice, not offered oil and gas leases within the CEC proposed areas while a policy for handling discretionary actions within these areas was being developed.

Overall management direction for public land use is established by the BLM through the land use planning process. The resource management plan (RMP) identifies which lands are appropriate and eligible for various uses and under what terms and conditions uses can take place. With regard to the management of all public lands in Colorado, including the

lands proposed for wilderness designation by CEC, where there is substantial public concern that a discretionary action could harm a resource value that may not have been sufficiently analyzed in the plan, the BLM has the authority to postpone approving that action for a reasonable period of time to allow the issue to be resolved through the planning process.

In light of evolving changes in public land use patterns, on-the-ground conditions, and an increase of legitimate, yet conflicting uses, the BLM Colorado State Office determined that it would be prudent to take another look at the CEC proposed areas. We have, therefore, initiated a review to determine if there are roadless tracts of at least 5000 acres, or roadless tracts contiguous to existing WSA's that may require further evaluation prior to allowing certain resource development to occur.

Attached to this testimony is a copy of my May 19, 1997, Instruction Memorandum, issued to managers, entitled "Policy for the Management of Lands Described in the Colorado Environmental Coalition's Wilderness Proposal for BLM Lands." I presented this policy at Colorado's three Resource Advisory Councils (RACs) meetings in early May.

Thank you for the opportunity to testify, I will be happy to answer any questions.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLORADO STATE OFFICE
2850 YOUNGFIELD STREET
LAKEWOOD, COLORADO 80215-7076

May 19, 1997

In Reply Refer To:
8550 (CO-930)(N)

EMS Transmission 05/19/97
Instruction Memorandum No. CO-97-044
Expires: 4/30/98

To: District Managers, Area Managers, and
Deputy State Director, Resource Services

From: State Director

Subject: Policy for the Management of Lands Described in the Colorado Environmental Coalition's (CEC) Wilderness Proposal for Bureau of Land Management (BLM) Lands

This memorandum provides procedures and an initial schedule to be used when considering actions within non-Wilderness Study Area (WSA) lands included in the CEC's "Conservationists' Wilderness Proposal for BLM Lands," dated January 1, 1994. This policy applies to all discretionary actions.

The BLM completed the wilderness review of public lands mandated by Section 603 of the Federal Land Policy and Management Act (FLPMA) in 1991, and that recommendation was subsequently forwarded to Congress. In 1994, the CEC proposed wilderness designation for some public land areas not included in the Bureau's recommendation.

The CEC proposal includes maps and descriptions of each of its areas. In light of this information and evolving changes in public land use patterns and on the ground conditions, CEC's presentation raises legitimate issues that deserve further inquiry by BLM regarding appropriate management of these areas. Accordingly, BLM intends to review those lands covered by the CEC proposal to determine whether there are wilderness values within such lands and whether such values require further protection.

The overall management direction for public land use is established through the land use planning process. The plan identifies which lands are appropriate and eligible for various uses. Where there is substantial public concern that an action could harm a resource value that may not have been sufficiently analyzed in the plan, the BLM has the authority to postpone approving that action for a reasonable period of time to allow the issue to be resolved primarily through the planning process. This has essentially been our approach for the management of all public lands in Colorado, including the

lands proposed for wilderness by the CEC. Proposals for actions are addressed on a case by case basis. Since BLM received CEC's proposal in 1994, we have postponed some actions in areas proposed for wilderness by the CEC while we consider how to preserve Congress' options with respect to such areas.

It is our policy to hold discretionary actions that might have irreversible or irretrievable impacts temporarily in abeyance in accordance with the schedule contained in this memorandum until the wilderness issues raised by the CEC are addressed and resolved through the BLM planning process.

Specific steps to implement this policy are:

1. Initiate an evaluation of an area or areas whenever discretionary actions that might have irreversible or irretrievable impacts are proposed in the areas recommended for wilderness by the CEC.

2. Review the area to determine if it meets the wilderness criteria as being roadless as described in the provisions of Section 3(c) of the Wilderness Act of 1964, 16 U.S.C. § 1132(c). The Wilderness Act requires that the roadless tract be 5,000 acres or of sufficient size as to make practicable its preservation and use in an unimpaired condition. If a road exists but the impact of that road does not affect the entire area of consideration, then evaluate the portion of the CEC proposal not affected by the existence of the road using the process described in item 3 below. If this is the case the portion of the proposed CEC area containing the road will be managed pursuant to the existing land use plan. This could include oil and gas leasing where the existing plan allows leasing.

3. (a) For those areas or portions of areas found to be roadless, initiate a public outreach process to determine if sufficient basis exists to warrant initiation of the plan amendment process. Concentrate outreach on objective consideration of the presence and relative merits of the area's wilderness values and other potential values and uses. Concurrently, initiate an on-the-ground analysis of the resource values of the area.

(b) If the documented values are already protected within existing management guidance, and the proposed uses can occur or be accommodated, then current planning is adequate and no plan amendment is required.

(c) If the on-the-ground review and the outreach process determine that the area contains wilderness values as defined in Section 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c), and these values appear not to be protected under the provisions of the current plan, the field manager, with State Director review and approval, will initiate a plan amendment to determine how these lands should be managed.

4. In summary, the land management decision called for by this review could result either in:

(a) affirmation of existing planning decisions; or

(b) result in a proposed amendment to the applicable land use plan that provides for one or more of the following options:

(I) protection of natural or wilderness values through special designations, such as Areas of Critical Environmental Concern, or

(ii) a recommendation that an area be designated as wilderness with a provision for its interim management as a WSA, or

(iii) a proposal for a withdrawal order,

As indicated above, BLM has previously deferred a number of proposed actions with respect to certain of the lands covered by the CEC proposal. The review required by this policy with respect to those lands for which BLM has delayed action previously should be completed expeditiously. The following is a schedule for review of CEC proposed wilderness areas where actions have been previously proposed and for such areas where future proposals for action may be made:

1. Complete the road analysis of Vermillion Basin, South Shale Ridge, Pinyon Ridge, Yampa River, and Bangs Canyon by September 30, 1997. This date could change based on the weather and soil conditions if it is determined that an on-the-ground verification is necessary. If these areas or portions of these areas are found to contain roads, the area or portion of the area affected by the road may be made available for a future oil and gas lease sale. If industry nominated tracts are found to contain roads, and are not offered at a future sale for which they have been requested, BLM will provide an articulated rationale describing what on-the-ground management concerns warrant the deferral or exclusion of the tracts.

2. If any of the areas listed in the previous paragraph are found to be roadless, evaluate them through a public outreach process to obtain information from all interested publics on the conditions and values in the areas. Concurrently complete an on-the-ground analysis. This will be initiated by September 30, 1997, and completed by November 30, 1997.

3. Decide whether to initiate plan amendments for areas identified as roadless. For areas where no amendment is needed, implementation of existing plans would continue. Leases may be made available for sale in these areas by the February 1998, lease sale where the analysis has been completed and no wilderness values were identified. If industry nominated tracts are not offered at this or any future sale, BLM will provide an articulated rationale describing what on-the-ground management concerns warrant the deferral or exclusion of the tracts.

4. For areas where plan amendments are warranted, initiate them by January 1, 1998, and complete them within 10 months. Plan amendments are subject to protests and appeals under applicable regulations; see 43 CFR 1610.5-2.

5. Initiate the above process and schedule for other areas proposed for wilderness by the CEC whenever actions that could impact these areas are received.

If you have any questions about the interpretation of this policy, please contact me at (303) 239-3702 or Frank Salwerowicz, Deputy State Director for Resource Services at (303) 239-3745.

Signed by
Robert V. Abbey
Acting State Director

Authenticated by
Don Snow
EMS Operator

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

DEC -5 1996

M-36987

Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: BLM's Authority to Recover Costs of Minerals Document Processing

I. INTRODUCTION

This Opinion addresses the Bureau of Land Management's (BLM) cost recovery efforts for minerals document processing. It is intended to resolve legal questions that have arisen regarding cost recovery. Some of these questions resulted from the issuance of two reports by the Office of Inspector General (OIG) in the past eight years. The January 1995 OIG report, Report No. 95-I-379[1], found that delayed implementation of a revised user fees schedule had resulted in loss of the opportunity to recover an estimated $40 million from September 1989 to August 1993, and continued delay results in an estimated annual loss of $7.6 million beginning with fiscal year 1994. Id. at 5. The report recommended (id. at 7) that BLM

> take action to expedite the establishment and the collection of user fees for processing documents that have a significant impact on the amount of cost recovery and continue efforts to establish and collect user fees on those documents that have less financial significance.

This Opinion is intended to assist BLM in implementing cost recovery measures. It examines the statutory authority and Departmental policy relating to cost recovery, discusses the case law interpreting the applicable statutes, analyzes a BLM study relating to specific cost recovery items, and discusses options for BLM to consider as it drafts proposed regulations.

---

[1] Entitled "Followup of Recommendations Relating to Bureau of Land Management User Charges for Mineral-Related Document Processing."

II. SUMMARY

BLM has authority under the Federal Land Policy and Management Act (FLPMA) to establish fees with respect to transactions involving the public lands to recover the reasonable processing cost of services that provide a special benefit not shared by the general public to an identifiable recipient. Because Congress expects services provided by federal agencies to be "self-sustaining to the extent possible" (Independent Offices Appropriation Act), and because the Departmental Manual mandates cost recovery whenever possible, BLM has an obligation to establish fees for all services for which it has cost recovery authority.

Cost recovery authority is quite broad. Courts have held that the conferral of a required license or permit bestows a special benefit, as do routine inspections, required environmental reviews, license renewals, and myriad other agency actions. However, FLPMA contains several "reasonableness factors" that BLM must take into consideration when promulgating cost recovery regulations. These factors are: actual costs, the monetary value of the rights or privileges sought, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest, the public service provided, and "other [relevant] factors".[2]

Each of the "reasonableness factors" must be considered in setting a fee. One factor is actual costs; therefore, those costs must be calculated for each type of action for which BLM has cost recovery authority. The agency may not, however, base a fee decision on one factor to the exclusion of others; therefore, a fee may not be based on consideration of actual costs alone. By the same reasoning, the fact that a portion of the cost is incurred for the benefit of the general public interest is not a basis to decide that no fee will be charged; it is only one factor to consider along with the others.

So long as it considers all of the required factors, BLM may be creative in structuring the regulatory framework. One example it may wish to consider is the right-of-way regulations, which combine a fee schedule for routine actions with case-by-case determination of fees for complex actions. BLM should also consider providing in the regulations for periodic automatic fee

---

[2] The FLPMA reasonableness factors have been defined by BLM in the context of its right-of-way regulations at 43 C.F.R. § 2800.0-5. For example, "efficiency to the government processing" is there defined as "the ability of the United States to process an application with a minimum of waste, expense and effort." BLM may find these definitions helpful in preparing minerals document processing regulations.

adjustments due to inflation in order to eliminate the need to undertake future rulemakings to make such adjustments.

III. COST RECOVERY AUTHORITY

A. Statutory Authority

The 1952 Independent Offices Appropriation Act (IOAA), as amended, 31 U.S.C. § 9701 (originally codified at 31 U.S.C. § 483a), provides generally for cost recovery by federal agencies. The IOAA expresses the intent that services provided by agencies should be "self-sustaining to the extent possible," 31 U.S.C. § 9701(a), and authorizes agency heads to "prescribe regulations establishing the charge for a service or thing of value provided by the agency." 31 U.S.C. § 9701(b).

In 1976 Congress passed the Federal Land Policy and Management Act (FLPMA),[3] 43 U.S.C. §§ 1701-1784. Section 304(a) of FLPMA specifically authorizes the Secretary of the Interior to "establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands"[4] and to "change and

---

[3] Sixteen years before FLPMA, and eight years after the IOAA, Congress had, in the Public Land Administration Act (PLAA), 43 U.S.C. §§ 1371, 1374 (repealed 90 Stat. 2792 (1976)), specifically authorized the Secretary of the Interior to establish reasonable fees. The PLAA was expressly repealed by FLPMA.

[4] This provision is broadly inclusive. Documents "relating to the public lands" may pertain to transactions arising either under FLPMA itself or under other statutes, such as the Mineral Lands Leasing Act of 1920, 41 Stat. 437 (30 U.S.C. §§ 181-263), or the General Mining Law of 1872, Rev. Stat. § 2319 (30 U.S.C. §§ 22-47). Under the rulemaking provision at section 310 of FLPMA, 43 U.S.C. § 1740, the Secretary may promulgate cost recovery regulations relating to transactions arising under other statutes: "The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands...." (Emphasis added.) Section 103(e) of FLPMA defines "public lands," with certain exceptions, as "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management ...." 43 U.S.C. § 1702(e).

abolish such fees, charges, and commissions." 43 U.S.C. § 1734(a).[5]

In section 304(b) of FLPMA, the Secretary is authorized to "require a deposit of any payments intended to reimburse the United States for reasonable costs,"[6] which "include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities." 43 U.S.C. § 1734(b).

Section 304(b) also lists the following factors that the Secretary "may take into consideration" in determining whether costs to be reimbursed under that subsection are "reasonable":

> actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive

---

[5] Congress may itself establish certain fees for transactions involving the public lands. See, e.g., the Omnibus Budget Reconciliation Act of 1993, Sec. 10102, mandating a $25 fee for recording the location of a mining claim. Such independent legislative provisions do not, of course, trigger the application of the FLPMA reasonableness factors. This Opinion focuses on the authority granted by section 304 of FLPMA. Any questions that BLM may have regarding other statutes or provisions that it believes might supersede or impact on section 304 should be addressed to this Office.

[6] Section 304(b) of FLPMA does not apply to all of the amounts authorized in section 304(a), but only to those "intended to reimburse the United States for reasonable costs." Nominal "filing" fees, which serve to limit filings to serious applicants, are not intended to reimburse the United States for its processing costs and therefore do not fall under section 304(b). While filing fees must be "reasonable," as mandated by subsection (a) ("the Secretary may establish reasonable filing and service fees..."), they are not subject to the "reasonableness factors" listed in subsection (b). "Service fees," however, are intended to recover the costs of processing, and are subject to the provisions of subsection (b). A filing fee is not, of course, a substitute for a service fee. In determining the amount of a service fee, BLM may take into account any filing fee relating to the same transaction, so that the total amount does not exceed BLM's processing costs.

> benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs.

43 U.S.C. § 1734(b). A federal court of appeals has held that, despite the use of the word "may," the Secretary in fact must take these "reasonableness factors" into consideration when establishing the reasonable costs of document processing. Nevada Power Co. v. Watt, 711 F.2d 913, 925 (10th Cir. 1983) (discussed in subsection D., infra).[7]

FLPMA did not repeal the IOAA in the context of public land management; instead, section 701 of FLPMA cautions that nothing in it "shall be deemed to repeal any existing law by implication." 43 U.S.C. § 1701 note, 90 Stat. at 2786. The interplay between the IOAA and FLPMA is discussed infra at subsection D.[8]

---

[7] The Nevada Power court noted that "Sections 304(a) and 504(g) grant Interior authority to charge reasonable fees. Section 304(b) is not another grant of authority, but rather appears intended by Congress to establish the outer boundaries of the blanket delegation given the Secretary elsewhere." 711 F.2d at 921.

[8] The disposition of receipts differs under the two statutes. Under section 304(b) of FLPMA the amounts recovered "shall be deposited ... in a special account and are ... authorized to be appropriated and made available until expended." 43 U.S.C. § 1734(b). In contrast, as noted in the Departmental Manual, "[a]mounts collected under the IOAA authority must be deposited into the General Fund of the Treasury as Miscellaneous Receipts." 346 DM 1.3 C (emphasis added). Department of the Interior appropriations acts have for years appropriated amounts collected under section 304 of FLPMA. See, e.g., Department of the Interior and Related Agencies Appropriations Act for the Fiscal Year ending Sept. 30, 1996, Pub. L. 104-134, section entitled "Service Charges, Deposits, and Forfeitures." The appropriations act passed on Sept. 30, 1996, makes permanent the appropriation of amounts under section 304 that are in excess of 1996 collections and not otherwise committed:

> [I]n fiscal year 1997 and thereafter, all fees, excluding mining claim fees, in excess of the fiscal year 1996 collections ... under the authority of 43 U.S.C. 1734 ... which are not presently being covered into any Bureau of Land Management appropriation accounts, and not otherwise dedicated by law for a specific distribution, shall be made

B. OMB Circular No. A-25

Office of Management and Budget (OMB) Circular No. A-25, 58 Fed. Reg. 38144 (adopted 1959; revised July 15, 1993), establishes federal policy regarding user charges under the IOAA. It also "provides guidance to agencies regarding their assessment of user charges under other statutes....to the extent permitted by law."

The Circular sets out the general federal policy on cost recovery: "A user charge ... will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

C. Departmental Manual

The Department of the Interior Manual mandates cost recovery for special services:

> Departmental policy requires (unless otherwise prohibited or limited by statute or other authority) that a charge, which recovers the bureau or office costs, be imposed for services which provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.

346 DM 1.2 A. The Manual also specifies situations in which exemptions from cost recovery are appropriate:

> (1) The charge is prohibited by legislation or executive order.
>
> (2) The incremental cost of collecting the charges would be an unduly large part of the receipts from the activity.

> immediately available for program operations in this account and remain available until expended.

Department of the Interior and Related Agencies Appropriations Act for the Fiscal Year ending Sept. 30, 1997, Pub. L. 104-208. This means that any future increases in recovered costs which are not currently covered by another permanent appropriation or otherwise dedicated for a specific purpose, will be available to BLM for expenditure without the need for future appropriations.

(3) [Certain charges to foreign countries or international organizations.]

(4) The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(5) The bureau or office has some other rational reason for exempting the program, subject to the approval of the Office of Financial Management.

346 DM 1.2 C.

The Departmental Manual provides a process for exempting agency activities under the provisions described above, 346 DM 1.2 C., through which BLM has in the past exempted some of its actions. Unless and until BLM establishes through this process that a specific exemption applies, the Departmental policy on cost recovery must be followed.

D. Case Law

In 1974 the Supreme Court decided two companion cases outlining the limits of cost recovery under the IOAA. National Cable Television Ass'n v. United States, 415 U.S. 336 (1974) and Federal Power Comm'n v. New England Power Co., 415 U.S. 345 (1974), involved challenges to fee schedules of the Federal Communications Commission and the Federal Power Commission, respectively. The Court interpreted the IOAA to permit only specific charges to identifiable recipients for services that provide special benefits not shared by the general public. A reimbursable fee, the Court noted, is "incident to a voluntary act, e.g., a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station." 415 U.S. at 340.[9] The agencies' fee schedules before the Court had sought to recover the entire costs of regulation without regard to specific benefits received by the regulated entities. Characterizing them as improper tax levies, the Court struck them down.

Although the Court was construing the IOAA, it set limits on cost recovery based on constitutional restrictions on the power to tax. Those limits, as subsequently interpreted by the

[9] This "voluntary act" identifies an applicant for "a grant which ... bestows a benefit ... not shared by other members of society." Id. at 341. For a more detailed discussion of "identifiable recipients," see note 13 infra.

appellate courts, are therefore also applicable to cost recovery under FLPMA.

A seminal lower court decision applying National Cable Television and New England Power is Mississippi Power & Light Co. v. United States Nuclear Regulatory Comm'n, 601 F.2d 223 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980).[10] There the Fifth Circuit upheld a Nuclear Regulatory Commission (NRC) licensing fee schedule. The court first rejected petitioners' argument "that the work of the NRC benefits the general public solely and that the conferral of a license or permit does not bestow upon [petitioners] any special benefit whatsoever." Id. at 228. The court concluded that "[a] license from the NRC is an absolute prerequisite to operating a nuclear facility, and as such, is a benefit 'not shared by other members of society.'" Id. at 229, quoting National Cable Television, 415 U.S. at 341. In addition, the court pointed out that petitioners benefited from a limitation on liability and that routine NRC inspections could uncover hazardous conditions which undetected would jeopardize safe operation of the facility. Id.

The Fifth Circuit also rejected the argument that, even if some special benefit to petitioners were found, the NRC should exclude from its fees the portion of the agency service representing the benefit inhering to the public. The court held that under the IOAA as interpreted by the Supreme Court in New England Power, "the NRC may recover the full cost of providing a service to an identifiable beneficiary, regardless of the incidental public benefits flowing from the provision of that service." Id. at 230.

The court borrowed the term "incidental" from the D.C. Circuit opinion in Electronic Industries Ass'n v. Federal Communications Comm'n, 554 F.2d 1109 (D.C. Cir 1976). An "incidental" public benefit is one that is incident[11] to the providing of a special benefit. In contrast, as noted by the Fifth Circuit, "expenses incurred to serve some 'independent' public interest cannot be included in the fee...." 601 F.2d at 230.

The D.C. Circuit further delineated the distinction between incidental and independent public benefits in Central & Southern Motor Freight Tariff Ass'n v. United States, 777 F.2d 722 (D.C. Cir. 1985). There petitioners had argued that an agency must

---

[10] Mississippi Power & Light is cited twice in the Departmental Manual. 346 DM 2.3 B. and 2.4 B.(1).

[11] "Incident" in this context is defined in Webster's II New Riverside University Dictionary (1994): "adj. ... 2. Law. Contingent upon or related to something else".

exclude from its fees that part of costs attributable to public benefit if that benefit were "greater than incidental." The court rejected this argument, concluding that:

> The proper test ... is whether the agency activity at issue produces a public benefit that is independent of the private benefit upon which the agency properly relies in assessing the fee. ... Accordingly, whether an agency must allocate a portion of its costs depends not so much on the magnitude of the benefits to the public, as petitioners suggest, but rather on the nature of the public benefits and on their relationship to the private benefits produced by the agency action. What flows from this is the following principle: If the asserted public benefits are the necessary consequence of the agency's provision of the relevant private benefits, then the public benefits are not independent, and the agency would therefore not need to allocate any costs to the public.

Id. at 731-32 (footnote omitted)(final emphasis added). See also, OMB Circular No. A-25, at 6.a.(3) ("when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient ... an agency need not allocate any costs to the public ...."); 346 DM 2.3.

The Fifth Circuit in Mississippi Power & Light gave an example of an independent public benefit:

> [A] programmatic [environmental] statement prepared by [an agency] on its own instigation in support of a general agency program expected to have significant benefit both for the public and for private recipients as yet unidentified ... creates an 'independent public benefit' in the sense used by the District of Columbia Circuit in Electronic Industries.

601 F.2d at 231 n.17.[12] This kind of programmatic function of an agency does not specifically benefit an identifiable recipient,

---

[12] The Departmental Manual quotes this footnote at 346 DM 2.4 B.(1).

and is easily distinguishable from a service that does benefit an identifiable recipient.[13]

The Fifth Circuit went on in Mississippi Power & Light to uphold the following specific fees assessed by the NRC:

(1) Routine Inspections. The court noted that "the receipt and retention of the license is of unquestionable benefit to the applicant. In conducting routine inspections, the Commission provides a service to the licensee by assisting him in complying with those statutory and regulatory requirements necessary for retention of his license." Id. at 231.

(2) Environmental Reviews required by the National Environmental Policy Act (NEPA). The court found these to be "a necessary part of the cost of providing a special benefit to the licensee." Id.

(3) Uncontested Hearings. The court reasoned that "these costs are necessarily incurred by the agency in providing a service to the applicant." Id.

(4) License Renewals. Fees were upheld even where a license must also be obtained from the appropriate state. The court concluded that "[a] company operating a waste disposal site ... must of necessity obtain a license from the NRC, and the Commission is entitled to recover the full cost of conferring that benefit." Id. at 233.

---

[13] According to the Supreme Court, "the proper construction of the [IOAA]" is the OMB Circular test that "no charge should be made for services rendered, 'when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public.'" New England Power, 415 U.S. at 350, quoting OMB Circular No. A-25 at 6.a.(4). An identifiable recipient does not necessarily have to be identifiable by name at the time the agency performs the special service. The Supreme Court in New England Power went on to give a hypothetical example that illustrates this point: "A blanket ruling by the Commission, say on accounting practices, may not be the result of an application. But each member of the industry which is required to adopt the new accounting system is an 'identifiable recipient' of the service and could be charged a fee, if the new system was indeed beneficial to the members of the industry. There may well be other variations of a like nature which would warrant the fixing of a 'fee' for services rendered." 415 U.S. at 351. The Court makes it clear that the beneficiaries in this hypothetical example are not "obscure," even though their identification by name would apparently only occur after the agency costs had been incurred.

The court also upheld the authority of the agency under the IOAA to include administrative and technical support costs within the fee schedule. Id. at 232.

The Tenth Circuit has also addressed the Supreme Court's interpretation of the IOAA, in a case involving both the IOAA and FLPMA. In Nevada Power Co. v. Watt, 711 F.2d 913 (10th Cir. 1983), a consolidation of three cases contesting BLM's cost recovery regulations for right-of-way applications, the court examined the history of the acts and the regulations at issue, with special emphasis on the legislative history of FLPMA.

Two of the three consolidated cases involved rights-of-way granted subsequent to enactment of FLPMA. In these, the Tenth Circuit interpreted the regulations under FLPMA, but also referenced the case law interpreting cost recovery under the IOAA to determine the outer parameters within which the Department of the Interior must structure cost recovery. Citing Mississippi Power & Light, the court concluded that the Supreme Court doctrines laid out in National Cable Television and New England Power did not restrain Interior from charging the full cost of environmental impact statements required by law to be performed when an application triggers NEPA, because "[t]hese studies are a necessary prerequisite to the receipt by the applicant of a 'special benefit,' the grant of a right-of-way." 711 F.2d at 930. The Nevada Power court did, however, conclude that restraints exist under FLPMA.

The court concluded that the language of FLPMA is more restrictive on the Secretary than that of the IOAA.[14]

---

[14] The IOAA cannot be read independently from FLPMA in connection with activities governed by FLPMA. The IOAA itself provides that it "does not affect a law of the United States ... prescribing bases for determining charges ...." 31 U.S.C. § 9701(c). The OMB Circular which establishes federal policy regarding user charges under the IOAA specifies that "where a statute ... addresses an aspect of the user charge (e.g., ... how much is the charge ...), the statute shall take precedence over the Circular." OMB Circular No. A-25 at 4.b. The Departmental Manual also provides that "[t]he principles and guidelines in this Part must be used in recovering costs to the extent they are not in conflict with ... specific [statutory cost recovery] authority [for individual programs or services]." 346 DM 1.3 A. The Departmental Manual includes FLPMA in its list of examples of specific authority. The greater restrictions of FLPMA thus govern over the IOAA for cost recovery "with respect to applications and other documents relating to the public lands." 43 U.S.C. § 1734(a).

Specifically, the court held that, despite the facially discretionary language of FLPMA, "the Secretary must, when establishing reasonable costs of processing applications, consider the reasonableness factors listed in section 304(b) [43 U.S.C. §1734(b)]." Id. at 925.[15] (These factors are quoted in subsection A., supra.)

The court found that in promulgating the post-FLPMA regulations at issue the Secretary had considered only the first factor: "actual costs." Id. at 926-27. The court concluded that FLPMA mandates consideration of each of the factors,[16] and consequently invalidated the regulations. Id.[17]

In certain instances, a statutory provision may address cost recovery for applications or documents that relate to the public lands but are governed by statutes other than FLPMA. In a case involving a pipeline right-of-way under the Mineral Leasing Act (MLA), the Federal Circuit noted that the MLA contained a specific reimbursement clause for pipeline rights-of-way: "The applicant for a right-of-way ... shall reimburse the United States for administrative and other costs incurred in processing the application ...." MLA section 28, 30 U.S.C. § 185(l), quoted in Sohio Transp. Co. v. United States, 766 F.2d 499, 502 (Fed. Cir. 1985). Because the MLA mandated reimbursement of administrative and other costs in this specific instance, its cost recovery provision took precedence over FLPMA.

[15] As already noted, section 304(b) of FLPMA provides that "'reasonable costs' include ... the costs of ... environmental impact statements ...." The Nevada Power court made it clear that the costs of environmental impact statements are not thereby "reasonable per se," but must be weighed against the reasonableness factors on the same basis as other processing costs. 711 F.2d at 929-30.

[16] This does not mean that the Secretary may never impose a fee that recovers actual costs. See infra note 45 and accompanying text.

[17] The court in Nevada Power held that Interior could determine reasonable costs "either by rulemaking or by case-by-case adjudication." 711 F.2d at 933. In 1987 the Secretary promulgated new right-of-way cost recovery regulations at 43 C.F.R. Subpart 2808, combining a fee schedule with case-by-case determination. These regulations specifically permit right-of-way applicants in complex cases to request reduction or waiver of reimbursable costs, and list ten factors for the State Director to consider in processing such requests. 43 C.F.R. § 2808.5. For a more detailed discussion of options for rulemaking, see Section V, infra.

The third consolidated case in Nevada Power involved a right-of-way application granted prior to enactment of FLPMA. There the court considered the regulations only under the IOAA, and concluded from its discussion of National Cable Television, New England Power, and Mississippi Power & Light that the Department of the Interior could recover the full costs of an environmental impact statement triggered under NEPA by the application. Id. at 933.

Collectively, these decisions establish the following principles: (1) an agency action that provides both a special benefit to an identifiable recipient and an incidental public benefit is not automatically excluded from consideration for cost recovery; rather, (2) if the agency action meets the criteria of providing a special benefit to an identifiable beneficiary, the costs associated with it may be recovered, whether or not there is incidental public benefit associated with the action.

The Departmental Manual requires that a charge be imposed in this latter circumstance.[18] FLPMA requires that the agency, in establishing this charge, consider the "reasonableness factors" of section 304(b), including what portion of the cost was incurred to benefit the public interest. As with the right-of-way regulations promulgated in response to the dictates of Nevada Power, regulations implementing the cost recovery measures for minerals document processing will have to include consideration of the "reasonableness factors."[19]

---

[18] The Departmental Manual specifies three prerequisites to recovering costs for services: (i) "special benefits or privileges" to (ii) "an identifiable non-Federal recipient" that are (iii) "above and beyond those which accrue to the public at large." 346 DM 1.2 A.

[19] Any new such regulations will apply to present as well as future mineral leases, as modern federal mineral leases include language making them subject to future regulations. See, e.g., BLM Form 3100-11 (October 1992) "Offer to Lease and Lease for Oil and Gas" ("Rights granted are subject to ... the Secretary of the Interior's regulations and formal orders in effect as of lease issuance, and to regulations and formal orders hereafter promulgated when not inconsistent with lease rights granted or specific provisions of this lease.") Coal leases and previous versions of oil and gas leases contain similar language.

The original grant of rights in the underlying lease does not impede BLM from recovering costs for subsequent services that are necessary to continued operations under the lease. As already noted, in Mississippi Power & Light the court upheld the right of the NRC to assess fees for routine inspections despite the prior grant of a license. 601 F.2d at 231. The rights

There has, not surprisingly, been considerable disagreement between agencies and regulated entities over whether certain agency actions provide any private "special benefits." The petitioners in Mississippi Power & Light argued, for example, that NRC regulation did not confer any benefit on them whatsoever. Many regulated industries might echo this sentiment. The courts, however, have been consistent in rejecting this subjective interpretation of a "benefit," as explained in a 1987 law review article:

> Certainly, some industries would prefer no regulation to regulation, and in this subjective sense they receive no benefit from regulation. Nevertheless, each court that has addressed the issue has joined the Mississippi Power & Light court's judgment that industry distaste for regulation, standing alone, is insufficient to contradict the presumption of a benefit. The rationale for this conclusion appears to be that fees under the IOAA are properly imposed for "voluntary acts," a standard derived from the Supreme Court's analysis in National Cable Television. That standard presumes that if an entity voluntarily enters a business believing that the business will return benefits superior to the next best use of the entity's resources, it necessarily assumes all the burdens associated with operating that business, including the payment of fees.

Gillette & Hopkins, Federal User Fees: A Legal and Economic Analysis, 67 B.U. L. Rev. 795, 831 (1987)(footnotes omitted). The article cited, as illustrations, two companion cases from the D.C. Circuit: National Cable Television Ass'n v. Federal Communications Comm'n, 554 F.2d 1094, 1101-02 (D.C. Cir. 1976) (National Cable II) (rejecting as irrelevant petitioners' argument that cable TV industry could have developed better without FCC regulation because "[t]he fact is that the FCC has undertaken to regulate this industry ... with the result that a certificate of compliance has become a necessary and therefore valuable license"); and Electronic Industries Ass'n v. Federal Communications Comm'n, 554 F.2d 1109, 1115 (D.C. Cir. 1976) (an agency "is entitled to charge for services which assist a person

---

granted by a license or lease are not absolute. Exercise of those underlying rights depends on continued compliance with applicable laws and regulations; when such compliance necessitates the services of the regulatory agency, the agency has authority to recover those costs.

in complying with his statutory duties. Such services create an independent private benefit").

Almost every court that has examined the question has found that a filing requirement in and of itself is sufficient to satisfy the private benefit test. The only court to identify this as a possible issue declined to address it, and went on to find that the agency could charge a processing fee in connection with a statutory tariff filing requirement, because one purpose of the requirement was "'insuring the economic stability of the trucking industry.'" Central & Southern Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 734 (D.C. Cir. 1985) (citation omitted). The key question, according to the court, was whether the underlying statute was "passed in large measure for the benefit of the individuals, firms, or industry upon which the agency seeks to impose a fee."

Central & Southern Motor Freight is out of the mainstream of case law in this area and was not addressed on this point in subsequent decisions, even one decision written by the same judge in the D.C. Circuit. Ayuda, Inc. v. Attorney General, 848 F.2d 1297 (D.C. Cir. 1988)(citing Electronic Industries as indicative of broad sweep of cost recovery authority); Phillips Petroleum Co. v. Federal Energy Regulatory Comm'n, 786 F.2d 370, 375 (10th Cir. 1986), cert. denied 479 U.S. 823 (1986)("the term 'special benefits' is broadly defined to include even assisting regulated entities in complying with regulatory statutes").[20]

In Ayuda, the D.C. Circuit upheld Immigration and Naturalization Service filing fees for deportation order stays, appeals to the Board of Immigration Appeals, and motions to reopen or reconsider decisions. While admitting to an initial

---

[20] The Central & Southern Motor Freight approach of examining statutory purpose is thus not controlling law in this area. Even if it were, however, the mining and mineral leasing laws would satisfy the court's requirement because of the many benefits they provide to industry. For example, the Mining Law of 1872 was passed in order to make the public lands "open to exploration and purchase" by private interests. 30 U.S.C. § 22. Its rules were derived in large part from rules developed by miners themselves with the goal of preventing lawlessness and allowing miners to hold claims by operation of law rather than violence. FLPMA filing requirements and rental/maintenance fee requirements are intended to rid the public lands of stale claims, substantially for the purpose of making them available to bona fide miners. Leases issued under the Mineral Leasing Act and related laws grant lessees a monopoly on the opportunity to develop a particular mineral on a particular tract, to the exclusion of other operators seeking similar development opportunities.

hesitation at "requir[ing] payment of a fee before the agency will review its own determinations," 848 F.2d at 1299, the court concluded that prior case law constrained it to uphold the fees where "we are presented with specific procedural devices that redound to the obvious, substantial, and direct benefit of specific, identifiable individuals, individuals who have themselves invoked those procedures." Id. at 1301.

Even when an application is withdrawn before a license can be issued, resulting in no measurable benefit to the applicant, an agency can impose a processing fee for work done prior to the withdrawal. New England Power Co. v. United States Nuclear Regulatory Comm'n, 683 F.2d 12 (1st Cir. 1982)("[T]he work done is a necessary part of the process of obtaining a license. That the utility subsequently withdraws its application does not defeat the fact that it has already received a benefit by virtue of the work already done at its request." Id. at 14.) BLM has taken this approach. See 43 C.F.R. § 2808.3-3(b) (applicant for right-of-way who withdraws application before grant or permit is issued is liable for processing costs).

This case law makes it clear that the term "private benefit" is to be broadly construed. The vast majority of court opinions that address the issue look no further than whether a permit or license has been applied for or whether the agency action assists an applicant in complying with statutory or regulatory duties.

IV. ANALYSIS OF BUREAU OF LAND MANAGEMENT COST RECOVERY CATEGORIES

We note at the outset that the term "cost recovery" refers to both the level of costs recovered for a category of transactions and the array of categories for which the recovery of costs is possible. The Departmental Manual mandates cost recovery in both senses of the term. It requires (unless prohibited or limited by statute or other authority) (1) recovery at a level equal to the bureau or office costs, and (2) recovery of costs for all categories of service that provide special benefits to an identifiable recipient above and beyond those which accrue to the public at large. 346 DM 1.2 A. For cost recovery under section 304 of FLPMA, the level of recovery addressed by the first part of the Departmental Manual mandate is limited by the reasonableness factors. 43 U.S.C. § 1734(b). See supra Section III.D. For cost recovery undertaken pursuant to section 304, the array of categories addressed by the second part of this mandate is limited to transactions "relating to the public lands." 43 U.S.C. § 1734(a).

In documents provided to the Solicitor's Office for review, BLM staff divided mineral cost recovery actions/documents into four categories: (1) Not Subject to Cost Recovery; (2) Deferral

Items; (3) Exemptions; and (4) Items Recommended for Cost Recovery Fees. See Bureau of Land Management Energy & Minerals Cost Recovery Analysis (undated); BLM Information Bulletin No. 95-219, dated 6/13/95 - Program Area: Cost Recovery for Minerals Document Processing (summarizing the Cost Recovery Analysis, supra). The "Deferral Items" were determined by BLM to be "subject to cost recovery, but due to insufficient data to prepare a cost analysis, any new fee proposal has been deferred." Information Bulletin No. 95-219, Attachment 3 at 3.

This section specifically addresses the items in the categories "Not Subject to Cost Recovery" and "Exemptions" in light of the statutory and case authority discussed in Section III, supra. This analysis is directed at determining which agency actions are subject to cost recovery, i.e., which actions confer a special benefit not shared by the general public on an identifiable recipient, according to the case law interpretation of these criteria. In promulgating regulations, BLM will have to determine its actual costs for each type of action for which it has cost recovery authority. BLM must then consider each of the FLPMA reasonableness factors, of which actual costs is one and the public benefit is another, in determining the final fee. The relationship of actual costs to the other factors is addressed more specifically in subsection A, infra. The weighing of the reasonableness factors, culminating in the promulgation of regulations, is discussed further at Section V, infra.

This section also considers, at subsection B, infra, certain items for which BLM is inadequately recovering costs.

A. Relationship of Agency's Cost to Other Factors

This section examines certain specific items for which BLM in the past has not asserted cost recovery authority. We conclude that in many such instances BLM does possess the authority to recover costs. Such a conclusion does not imply that BLM must necessarily recover the actual cost to the agency of those items. Under FLPMA, the actual cost to the agency is but one of the criteria to be considered in setting the fee. In the course of establishing the regulatory framework for cost recovery and determining individual fees, each of the "reasonableness factors" must be considered.

BLM must bear in mind that no single factor can be considered to the exclusion of the other factors. In Nevada Power the Tenth Circuit addressed this very issue: "We do not accept the argument ... that Interior could by purportedly considering [one factor] eliminate other factors also required by Congress to be considered. Such reasoning ... completely negates Congress' explicit inclusion of the other factors - a result that Congress clearly did not intend." 711 F.2d at 926 n.10.

Thus, for example, although BLM may not exclude an item from consideration for cost recovery on the ground that it benefits the public as well as the applicant, that public benefit will be examined in the process of applying the reasonableness factors to determine the fee to be charged.

That BLM must take into consideration the FLPMA section 304(b) factors before setting a final fee is implicit in each of the discussions in this section of cost recovery for specific kinds of agency actions.

B. Inadequate Cost Recovery

There are categories of document processing services where BLM has been recovering partial costs, but for which it has the statutory authority and the Departmental Manual mandate to recover full costs (subject, of course, to consideration of the FLPMA reasonableness factors). For example, we are informed that the current fee charged for a mineral patent application is based only on such costs as docketing the application and any supporting materials. It does not include recovery of the costs of the required mineral examination and mineral report, which constitute the major expenses of the application. The mineral examination and report are performed as a direct result of the application for a patent, and provide a valuable special benefit to the applicant, who cannot otherwise receive a patent. BLM thus clearly has the authority under applicable law to recover its costs for mineral examinations and reports.

We note that requiring patent applicants to bear the cost of the required mineral examination and resulting report in no way impairs the rights of any locators or claims under the Mining Law of 1872. See FLPMA section 302, 43 U.S.C. § 1732(b). The Mining Law of 1872 requires that a patent applicant show compliance with the terms of the law, which includes a showing of a valid discovery. 30 U.S.C. §§ 22, 23, 29. Regulations reflect that BLM must confirm such a discovery by examination. 43 C.F.R. §§ 3862.1-1(a), 3863.1(a). Nothing in the Mining Law of 1872 requires the United States to bear the costs of confirming that a valid discovery exists under that law.

We also note that the Department of the Interior and Related Agencies Appropriations Act for the Fiscal Year ending Sept. 30, 1996, Pub. L. 104-134, section 322(c), contains a provision that "upon the request of a patent applicant, the Secretary of the Interior shall allow the applicant to fund a qualified third-party contractor to be selected by the Bureau of Land Management to conduct a mineral examination of the mining claims or mill sites contained in a patent application ...." This language was reiterated in the appropriations act for fiscal year 1997. Pub. L. 104-208. This provision must be read against a companion provision that requires BLM to prepare and implement a plan to

process 90% of the outstanding grandfathered patent applications within five years. It addresses the shortage of BLM resources to meet that target of completion. It does not affect BLM's authority to recover costs for BLM mineral examinations.

Congress has specifically recognized that the Secretary may recover costs for the processing of actions relating to the general mining laws. In 1988 Congress provided that "all receipts from fees established by the Secretary of the Interior for processing of actions relating to the administration of the General Mining Laws shall be available for program operations in Mining Law Administration by the Bureau of Land Management to supplement funds otherwise available, to remain available until expended." Title I of the Department of the Interior and Related Agencies Appropriations Act for the Fiscal Year ending Sept. 30, 1989, 102 Stat. 1774, 43 U.S.C. § 1474.

Four years later, in 1992, Congress directed the imposition for two years of an annual mining claim rental/holding fee for claimants holding more than 10 claims. Department of the Interior and Related Agencies Appropriations Act for the Fiscal Year ending Sept. 30, 1993, Pub. L. 102-381. The following year, Congress authorized the fee to continue through fiscal year 1998. Omnibus Budget Reconciliation Act of 1993, 107 Stat. 405, 30 U.S.C. § 28f. This fee was intended to "confirm the serious intent of claim holders to develop such claims," as well as to provide revenue. H.R. REP. No. 626, 102d Cong., 2d Sess. 14. The fee thus serves the purpose of "ridding federal lands of stale mining claims." Kunkes v. United States, 78 F.3d 1549, 1554 (Fed. Cir. 1996), cert. denied, ___ U.S. ___, 117 S.Ct. 74 (1996). It was not specifically designed to assess and recover the costs of administration.

In recent appropriations acts Congress has earmarked a certain amount of the revenue from mining claim fees for mining law program administration and for the costs of administering the mining claim fee program. See, e.g., Department of the Interior and Related Agencies Appropriations Act for the Fiscal Year ending Sept. 30, 1997. There is, however, no indication in these annual appropriations acts or their legislative history that the earmark was intended to repeal or modify the pre-existing authority of the Secretary to engage in cost recovery for minerals document processing. Congress has contemplated, in other words, that mining law program administration will be funded by the collection of both processing fees and mining claim maintenance fees.

There may be other services in addition to the mineral patent examination and report for which BLM has not been attempting to recover full costs. Any such services should also be analyzed in light of the framework provided in this Opinion in order to ascertain whether BLM in fact has the authority, and

therefore the mandate (unless BLM seeks and is granted an exemption pursuant to the process in the Departmental Manual), to recover full costs.

C. Not Subject to Cost Recovery

Several actions described below, which are listed by BLM in the category of "Not Subject to Cost Recovery," appear in fact to be suitable candidates for cost recovery, subject to the application of the reasonableness factors. As already noted, if a service provides a "special benefit[] or privilege[] to an identifiable non-Federal recipient above and beyond those which accrue to the public at large," then "Departmental policy requires ... that a charge ... be imposed." 346 DM 1.2 A.

1. Inspection and Enforcement Activities, including Inspection Reports; Production Verification; Payment of Assessments; Payment of Civil and Criminal Penalties; Well Completion Record; Well Logs; and Written Notice of Violation

With the exception of the payment of civil and criminal penalties, the agency actions listed above appear to be monitoring activities which would be encompassed by the language in section 304(b) of FLPMA specifically authorizing the recovery of reasonable costs for "monitoring construction, operation, maintenance, and termination of any authorized facility ...." 43 U.S.C. § 1734(b).[21]

The case law does not directly address cost recovery in connection with the imposition of civil or criminal penalties. We are not prepared to say it provides a special benefit to an operator. In contrast, the possibility of a written notice of violation or non-compliance is inherent in inspections and benefits the operator by ensuring compliance and preventing civil and criminal penalties or termination of operations.

Cost recovery for routine inspections was specifically upheld in Mississippi Power & Light, 601 F.2d at 231. Again with the exception of the payment of civil and criminal penalties, the agency actions listed appear to be of the same nature as actions held by the courts to be reimbursable. The benefit to the

[21] The term "facility" is not defined in the act. It is easily broad enough to include the kinds of things used in mineral extraction and development operations. See, e.g., the definition of "facility" in Webster's II New Riverside University Dictionary (1994): "4. Something created to serve a particular function ...."

lessee/operator is the ability to continue operations, which would not be possible without such compliance with applicable statutes, regulations, lease terms, and plans of operations or exploration plans from which these agency actions derive. Other benefits may include, as in Mississippi Power & Light, the uncovering of hazardous conditions that undetected could jeopardize the safety of the operation and create substantial liability for monetary damages; no doubt additional similar benefits can be compiled by those specifically familiar with each action.

BLM cites the public benefits that flow from these agency actions as justification for excluding the actions from cost recovery. The applicable case law clearly teaches, however, that these public benefits are incidental to the private benefits. Thus, BLM has authority to recover costs for these services, and the Departmental Manual requires that a fee be imposed where such authority exists, unless properly exempted.

2. Force Majeure and Government-ordered Suspensions

Force majeure suspensions differ from government-initiated suspensions on the question of whether they confer a special benefit on the recipient. In the case of a force majeure suspension, the lessee/operator applies to the government for a suspension of lease terms. While the events giving rise to the application are presumably beyond the control of the applicant, the application nevertheless requests a special benefit, namely, the release for a certain time period from the obligation to comply with all terms and conditions of the lease. As such, the cost of processing the application is subject to cost recovery.

We are not prepared to say that a government-initiated suspension under which a lessee must cease operations or production necessarily confers a special benefit on the lessee. If BLM determines that its actions are indeed beneficial to a lessee, it would be entitled to recover its costs of processing the suspension.

3. Request for Competitive Lease Sale Parcel (Coal; Non-energy Minerals; Geothermal)[22]; Request for Sale (Mineral Materials); and Expressions of Interest for Competitive Lease Sale (Oil and Gas)

[22] Although the BLM Energy & Minerals Cost Recovery Analysis, Appendix 2 at 4, places "Geothermal" under the category "Expressions of Interest for Competitive Lease Sale," we are advised that the correct category is "Request for Competitive Lease Sale Parcel."

BLM's rationale for not subjecting the above requests and expressions of interest to cost recovery is that the requestor receives no special benefit because the opportunity to participate in competitive bidding is afforded to the public at large. BLM Energy & Minerals Cost Recovery Analysis, Appendix 2 at 3-4.

This formulation, however, appears to be too narrow. A request or expression of interest apparently results in BLM offering the nominated parcel for lease or sales contract (unless it is already under lease or otherwise unavailable[23]). The processing functions performed by BLM in order to offer the parcel actually provide special benefits to three classes of recipients: the requestor, the bidders, and the successful bidder.

The special benefit to the requestor is the opportunity to influence the selection of parcels offered for lease sale or sales contract. This is a benefit resulting from agency action that is not available to those not making such a request. Entities that submit bids (a class which presumably will also include the requestor) receive the opportunity of being considered for a lease or sales contract. This benefit is not available to the public at large. The successful bidder receives the opportunity to remove minerals under a lease or sales contract. This benefit would not be possible without BLM's processing work in preparation for offering the parcel.

We note that the requestor and the successful bidder may or may not be the same entity.[24] The requestor, the bidders, and the ultimately successful bidder are all identifiable beneficiaries at the time BLM performs the processing work: the requestor is identifiable by name, and the bidders and the ultimately successful bidder are identifiable by definition as the entities who will submit bids and the one to whom the lease

---

[23] We are advised that information regarding the status of such parcels is readily available and could be easily ascertained prior to the filing of an expression of interest.

[24] There is no guarantee that the party making the request or expression of interest will ultimately make the highest bid and be awarded the lease or sales contract. The special benefits to the requestor and the bidders are benefits of opportunity, not guaranteed outcome. A requestor who is unsuccessful at winning the lease has still enjoyed the benefit of having BLM offer the particular parcel, as opposed to others not making such a request; the bidders have enjoyed the opportunity of being considered for the lease or sales contract. This formulation of special benefits appears to be within the broad parameters of the definition of benefits in the case law.

will be awarded. See supra note 13. All have voluntarily requested the agency's services, either by making the original request or expression of interest for lease sale or sale, or by participating in the process of bidding for an agency lease or sales contract.

BLM will need to decide what is a fair allocation of costs among these three possible classes of beneficiaries. It cannot, of course, recover double or triple costs. In applying the FLPMA reasonableness factors, BLM will especially need to weigh the factor of "the monetary value of the rights or privileges sought by the applicant" in deciding what share of the processing costs it is reasonable to recover from each of these beneficiaries.

4. Bonds (except Stockraising Homestead Bonds[25])

A bond, or some other form of financial guarantee, is a regulatory requirement that is a precondition to the commencement of operational activities. See BLM Energy & Minerals Cost Recovery Analysis, Appendix 2 at 6. That fact makes it valuable to an applicant - without it, no operations can begin. As already seen in the discussion of the applicable case law, where statutory or regulatory requirements make approval of an application necessary for the applicant to operate, it is considered to confer a special benefit and the costs of processing are subject to recovery. See, e.g., Mississippi Power & Light, 601 F.2d at 229, 231-33. When a bond is reviewed in connection with review of an application, e.g., for approval of a lease or of the beginning of operations, the costs of reviewing the bond to ensure its sufficiency are recoverable as part of the costs of processing the application.

5. Mineral Operations, including Application for Permit to Drill, Exploration Plan, Mine Plan, Monthly Report of Operations, Notice of Completion of Exploration Operations, Application for Approval of Participating Area,[26] Plan of

---

[25] Stockraising homestead bonds have been determined by BLM to be subject to cost recovery, but are included in the category "Deferral Items." BLM Information Bulletin No. 95-219, Attachment 3 at 3.

[26] The BLM Energy & Minerals Cost Recovery Analysis, Appendix 2 at 8, and the BLM Information Bulletin No. 95-219, Attachment 3 at 2 (6/13/95), listed a "Notice of Completion of Exploration Operations Participating Area." BLM staff has informed this Office that this should read: "Notice of Completion of

Operations, Subsequent Well Operation/Sundry Notice, Unit Plans of Development, Well Abandonment, Final Abandonment Notice, etc.

The rationale given in the BLM Energy & Minerals Cost Recovery Analysis, Appendix 2 at 8, for not subjecting the agency costs of processing the above documents to cost recovery is that inherent in the issuance of a mining lease or mining claim recordation is the right to conduct operations. A lessee/operator/claimant has, however, no right under applicable statutes and regulations to begin or continue operations in the absence of the authorizations listed above.

FLPMA specifically allows recovering costs for "monitoring construction, operation, maintenance, and termination of any authorized facility ...." 43 U.S.C. § 1734(b). The courts have also made it clear that agencies may charge fees for processing costs related to continued operations and to permits and licenses subsequent to those initially required. See, e.g., Mississippi Power & Light, 601 F.2d at 231: "An applicant ... must meet certain requirements as a prerequisite to obtaining a license; likewise a licensee must comply with certain statutory and regulatory requirements in order to maintain his license."

Agency approval of the above documents allows a lessee/operator/claimant to conduct operations and thus confers a special benefit on the applicant. Processing of these documents is therefore subject to cost recovery.[27]

Exploration Operations" and "Application for Approval of Participating Area."

[27] We note that Congress has addressed one aspect of the administrative costs of the onshore mineral leasing program. Section 35 of the Mineral Leasing Act, as amended, provides that fifty percent of the Department's administrative costs related to onshore mineral leasing is to be deducted before receipts from sales, bonuses, royalties, and rentals of the public lands will be shared with the state within whose boundaries the leased lands are located. 30 U.S.C. § 191. (Sales, bonuses, royalties, and rentals are compensation to the United States for the opportunity to develop resources on public lands; they are not reimbursement for administrative services rendered.) Receipts retained by the United States under this section are paid into the Treasury and do not directly fund program operations. This section provides no new source of recovery for administrative costs and merely ensures that states share the burden of such costs for a program from which they benefit. The section has no bearing on fees charged to recoup the costs of agency services.

6. Notice: Disturbance of 5 acres or less

The filing of a notice under 43 C.F.R. § 3809.1-3 (termed by BLM a "Notice of Disturbance") is a regulatory requirement with which an operator must comply in order to proceed with operations that disturb an area of five acres or less. While formal agency approval is not required, agency review is necessary to ascertain whether the proposed operations are appropriate under such a notice. This section mandates that notification be made at least 15 days before commencing operations, thereby allowing time for agency review.

The provisions of this section benefit the operator by "permit[ting] operations with limited geographic disturbance to begin after a quick review for potential resource conflicts" and by eliminating the need for preparation of environmental documents, as the review does not qualify as major federal action under NEPA. BLM Manual 3809.13. Operators are thus provided, in appropriate circumstances, with a simpler alternative to the submission and approval process for a plan of operations. Filing a notice under this section triggers agency review, which provides a special benefit to an identifiable recipient. BLM thus has authority to recover the agency costs of processing notices under 43 C.F.R. § 3809.1-3.

This section also contemplates agency monitoring to ensure that operations will not cause unnecessary or undue degradation of the land. 43 C.F.R. § 3809.1-3(e). Such monitoring benefits the operator by ensuring compliance with FLPMA and avoiding a notice of non-compliance or other enforcement action. It is clearly subject to cost recovery. See, e.g., Mississippi Power & Light, 601 F.2d at 231 (upholding agency authority to recover costs of routine inspections); 43 U.S.C. § 1734(b) (FLPMA authorization of fees for "monitoring ... operation ... of any authorized facility ....").

7. Lease Relinquishments, Terminations, Expirations, and Cancellations (Oil and gas, Geothermal, Coal and Non-energy)

Lease relinquishments are initiated by the applicant and provide the special benefit of releasing the applicant from terms and conditions of the lease, including rental and royalty payments. BLM's recognition that all production operations must thereby cease does not negate this benefit; it is precisely the outcome requested by the applicant. Costs of processing

relinquishment applications are clearly subject to recovery under applicable case law.[28]

Unlike relinquishments - in which the operator specifically requests agency action - terminations,[29] expirations, and cancellations are initiated by the agency, either through operation of law (terminations and expirations) or through agency action (cancellations[30]). We are not prepared to say that a lease termination, expiration, or cancellation necessarily confers a special benefit on a lessee. If BLM determines that its actions are indeed beneficial to a lessee, it would be entitled to recover its processing costs.

BLM must often, however, expend money even after a lease has expired or has been terminated, cancelled, or relinquished, on activities such as approving and monitoring reclamation and abandonment procedures. BLM clearly has the authority to recover its costs for these services because reclamation and abandonment obligations on the former lessee flow out of the original agreement to abide by the terms of the lease and the governing regulations.[31]

---

[28] Certain relinquishments are effective as of the date of filing. See 30 U.S.C. §§ 187b (oil and gas leases) and 1009 (geothermal leases). To ensure collection of processing fees in these cases, BLM may wish to include in the regulations a provision that a written relinquishment under these sections will not be accepted for filing until any required filing fees have been paid.

[29] Terminations may also be subject to reinstatement. See, e.g., 43 C.F.R. §§ 3108.2-2 to 3108.2-4. BLM has correctly determined that fees for reinstatements are subject to cost recovery. See Items Recommended for Cost Recovery, BLM Information Bulletin No. 95-219, Attachment 3 at 10.

[30] Many lease cancellations are due to a lease having been issued in error, in which case the cancellation occurs prior to any production under the lease. Other causes for cancellation include, e.g., failure to maintain continued operation or failure to meet the requirement for submission of a resource recovery and protection plan (coal). 43 C.F.R. § 3483.2.

[31] See 30 U.S.C. §§ 187b (oil and gas) and 1009 (geothermal) (lease relinquishment is subject to the continued obligation of the lessee to place all wells in condition for suspension or abandonment "in accordance with the applicable lease terms and regulations"; "no such relinquishment shall release such lessee ... from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment"); cf. EP Operating

For example, coal and non-energy lessees must apply for agency approval of a reclamation plan before beginning operations.[32] BLM has authority to recover its costs for approval of the plan and for any monitoring subsequently required, including monitoring that is required after the relinquishment, termination, expiration, or cancellation of the lease. FLPMA section 304(b) specifically authorizes cost recovery for "monitoring ... termination of any authorized facility." 43 U.S.C. § 1734(b).

Oil and gas lessees must file with the application for permit to drill a surface use plan of operations containing, inter alia, plans for reclamation of the surface and waste disposal plans. 43 C.F.R. § 3162.3-1(f). Geothermal lessees must file a plan of operation including methods for waste disposal and measures to protect the environment, 43 C.F.R. § 3262.4, and a plan of utilization including the method of abandonment of utilization facilities and site restoration procedures. 43 C.F.R. § 3262.4-1. In addition, when ready to abandon a well, an oil and gas or geothermal lessee must submit for agency approval a plan to plug and abandon the well. 43 C.F.R. § 3162.3-4 (oil and gas); 43 C.F.R. § 3262.5-5

Ltd. Partnership v. Placid Oil Co., 26 F.3d 563, 567 n.11 (5th Cir. 1994)(citing with approval federal regulations "requir[ing] that when a lease expires or is abandoned, the equipment must be properly cleared from the OCS [Outer Continental Shelf]," noting that one concern of the underlying statute "is that the resources of the OCS be developed in an environmentally safe manner"); 30 C.F.R. § 773.11(a)(regulations regarding surface coal mining and reclamation operations permits provide that "[o]bligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended"); 58 Fed. Reg. 45257 (Aug. 27, 1993)(preamble to Minerals Management Service bonding regulations for sulphur or oil and gas leasing in Outer Continental Shelf, recognizing that certain obligations may "accrue[] but [are] not yet due for performance," including the obligations "of sealing wells, removing platforms, and clearing the ocean of obstructions[, which] accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until [abandonment procedures] are followed." Virtually identical language is included in the "Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf", NTL No. 93-2N, Oct. 6, 1993.)

[32] See 43 C.F.R. §§ 3482.1(b) & (c)(5) (coal); 43 C.F.R. §§ 3512.3-3, 3522.3-3, 3532.3-3, 3542.3-3, 3552.3-3, 3562.3-3, & 3592 (non-energy).

(geothermal). Again, BLM has authority to recover its costs for approval of the plan and for subsequent monitoring, without regard to the status of the lease.

8. Lessee Qualification Documents

BLM's rationale for not subjecting review of lessee qualification documents to cost recovery is that "recommendation for processing fees for lease issuance include the review of qualification documents ...." BLM Energy & Minerals Cost Recovery Analysis, Appendix 2 at 9. This presumably means that costs of this review are in fact being recovered in the processing fees for lease issuance. Review of these documents clearly qualifies for cost recovery as part of the initial lease application processing costs.[33]

9. Appeals

As noted in Section III.D., supra, a 1988 D.C. Circuit case upheld, under the IOAA, Immigration and Naturalization Service filing fees for deportation order stays, appeals to the Board of Immigration Appeals, and motions to reopen or reconside decisions. Ayuda, Inc. v. Attorney General, 848 F.2d 1297 (D.C. Cir. 1988). BLM notes that most appeals of its decisions are processed within the Office of Hearings and Appeals and that BLM is not authorized to make fee recommendations for that Office. BLM Energy & Minerals Cost Recovery Analysis, Appendix 2, Addendum.

Some appeals, however, are made first to the BLM State Director. See, e.g., 43 C.F.R. § 3165.3(b). Under the reasonin of Ayuda, BLM could recover costs for processing appeals to a BL State Director. It could also recover the costs of the minimal processing that takes place in BLM offices prior to the transfer of a case file to the Office of Hearings and Appeals.

10. Other Actions

Compensatory Royalty Assessment/Agreement; Government Initiated Contests

We are not prepared to say that compensatory royalty assessments/agreements or government-initiated contests confer a

[33] We are informed that oil and gas lessee qualification is process of self-certification. Nevertheless, if BLM reviews self certification documents, the costs of that review may be recovered.

special benefit on a lessee or claimant. In the absence of a special benefit, they would not be subject to cost recovery.

D. Exemptions

This category in BLM Information Bulletin No. 95-219, Attachment 3 at 4-6, lists 17 exemption items. Four of these items were "determined by the Bureau to be exempt from cost recovery." BLM Energy & Minerals Cost Recovery Analysis, List of Documents/Actions Determined By the Bureau To Be Exempt From Cost Recovery, unnumbered section at 1. These four, based on the Departmental exemptions for statutory prohibitions and non-profit activities, are addressed in subsections 1 and 2, infra.

The remaining 13 items were the subject of an exemption request from BLM to the Director of Financial Management, and are addressed in subsection 3, infra.

1. Exemptions Based on Statutory Prohibitions

BLM determined that "Lease Exchanges - Coal" and "Lease Exchanges - Nonenergy" should be exempted from cost recovery due to statutory prohibitions (exemption #1 in the Departmental Manual; see Section III.C., supra). BLM cites the Federal Land Exchange Facilitation Act of 1988 (FLEFA), 43 U.S.C. § 1716(b)-(i), which amended FLPMA in order to facilitate and expedite land exchanges. Section 3(a) of FLEFA provides, at 43 U.S.C. § 1716(f)(2):

> [T]he provisions of such rules and regulations shall- ...
> (B) with respect to costs or other responsibilities or requirements associated with land exchanges-
> (i) recognize that the parties involved in an exchange may mutually agree that one party (or parties) will assume, without compensation, all or part of certain costs or other responsibilities or requirements ordinarily borne by the other party or parties; and
> (ii) also permit the Secretary ... upon mutual agreement of the parties, to make adjustments to the relative values involved in an exchange transaction in order to compensate a party ... for assuming costs ... which would ordinarily be borne by the other party ....

It is not appropriate to characterize the language of the statute as a "prohibition" against recovering costs. Rather,

the statute provides a separate framework for addressing lease exchange issues, including the apportionment of costs.

The Departmental Manual, as already noted, requires that a charge be imposed for "services which provide special benefits or privileges." 346 DM 1.2 A (emphasis added). Negotiable agreements such as lease exchanges are by their very nature subject to bargaining and do not constitute "services." They do not fall under the Departmental mandate for cost recovery and there is thus no need to consider the exemptions to that mandate. Because lease exchanges are governed by an independent statutory framework, it is unnecessary to address them in this Opinion. BLM remains free, in its discretion, to recover some costs of processing exchanges by mutual agreement through adjustments to the relative values involved in the exchange transaction.

2. Exemptions Based on Non-Profit Activity

a. BLM also determined that "License to Mine - Coal" should be exempted from full cost recovery,[34] under exemption #4 in the Departmental Manual: "The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare." See Section III.C., supra.

The licenses to mine coal at issue here are governed by section 8 of the Mineral Leasing Act of 1920, which provides:

> In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may [by regulation] issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied ....

30 U.S.C. § 208. The implementing regulations allow an individual, association of individuals, municipality, charitable organization, or relief agency to hold a license to mine. 43 C.F.R. § 3440.1-2.

BLM is correct that mining under such a license must be a non-profit activity (thus satisfying the first prong of the

---

[34] BLM's recommendation is: "Exempt from cost recovery, but retain current [$10] fee." BLM Energy & Minerals Cost Recovery Analysis, List of Documents/Actions Determined By the Bureau To Be Exempt From Cost Recovery, unnumbered section at 4.

Departmental exemption). 43 C.F.R. § 3440.1-3(b) ("[c]oal extracted under a license to mine shall not be disposed of for profit.") However, mining under a license to mine does not necessarily fall within the second prong of the Departmental exemption, i.e., an "activity designed for the public safety, health, or welfare."

BLM apparently concluded that a license to mine was related to the public safety, health, or welfare by assuming that "[t]he intent and effect of the issuance of a license to mine is to serve a public purpose in instances of demonstrated hardship." BLM Energy & Minerals Cost Recovery Analysis. However, while this may be true in certain instances (e.g., in the case of a charitable organization or relief agency), a showing of hardship, or of public purpose, is not required by the statute or the regulations.

The only clear intent of the act is to "provide for the supply of strictly local domestic needs for fuel."[35] Individuals are apparently allowed to use such coal for their personal domestic fuel needs, without any demonstration that their usage relates to the public safety, health, or welfare. It is thus not appropriate to apply exemption #4 across-the-board to all license-to-mine applicants. Unless the applicant is in fact "engaged in a nonprofit activity designed for the public safety, health, or welfare," BLM has the authority to recover the costs of processing a license to mine.[36]

b. BLM further determined that "Free Use Permit - Mineral Materials" should be exempted from cost recovery, also under exemption #4 in the Departmental Manual: "The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare." See Section III.C., supra.

Free use permits are governed by section 1 of the Materials Act of 1947, which provides:

> [T]he Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association

---

[35] This section, now codified at 30 U.S.C. § 208, was part of the original 1920 law.

[36] While the act grants the holder of such a license the right to mine coal without charge, this does not mean that the license must also be issued without charge. The processing of the license application is distinct from the underlying right to mine and is subject to cost recovery.

> or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchapter, for use other than for commercial or industrial purposes or resale.

30 U.S.C. § 601. The implementing regulations specify that a free use permit may be issued to a governmental entity only upon "a satisfactory showing to the authorized officer that these materials will be used for a public project." 43 C.F.R. § 3621.2(a). It is not clear, however, that "public project" is synonymous with the "public safety, health, or welfare" standard of the Departmental exemption. Nor is it evident that every project of "any association or corporation not organized for profit" necessarily qualifies for the "public safety, health, or welfare" exemption.

A statute providing that materials may be taken and removed without charge does not automatically mean that the permit to do so must also be issued without charge. BLM has the authority to require that applicants for free use permits make a showing that their activities are "designed for the public safety, health, or welfare" before exempting them from cost recovery.

3. Exemptions Based on Public Interest

BLM has recommended that 13 items be exempted from full cost recovery under the rationale of "public interest."[37] This is not a specific exemption in the Departmental Manual. Rather, BLM appears to be relying on exemption #5: "The bureau or office has some other rational reason for exempting the program, subject to the approval of the Office of Financial Management." 346 DM 1.2 C. See Section III.C., supra. In a memorandum to the BLM Director dated Nov. 6, 1992, the Director of Financial Management granted exemptions from full cost recovery for these 13 items, emphasizing that the twelve document categories for which partial costs were being recovered through user fees should be included

---

[37] These 13 items are: Exploration License - Coal; Exploration License - Nonenergy; Nonenergy Fringe Acreage Lease Application; Prospecting Permit Application; Coal Lease Modification; Nonenergy Lease Modification; Deferment of Assessment Work - Mining Claim; Adverse Claim - Mining Claim; Protest - Mining Claim; Stockraising Homestead Bond - Locatable Minerals; Oil and Gas Geophysical Exploration Permit (Alaska only); Geothermal Unit Review and Approval; and Geothermal Successor Unit Operator. BLM Energy & Minerals Cost Recovery Analysis, List of Exemption Requests, unnumbered section at 1.

in biennial reviews required by section 205 of the Chief Financial Officers Act of 1990. 31 U.S.C. § 902(a)(8).

Although BLM requested exemption of these items based on "public interest," the memorandum from the Director of Financial Management showed that he also considered other factors:

> In addition to the justifications given, the Office of Financial Management calculates ... that the estimated annual total cost of the 13 documents identified amounts to slightly over $300,000 .... The activities involved do not constitute a material amount and further deliberations on the matter would neither be prudent nor cost effective.

These considerations relate to exemption #2: "The incremental cost of collecting the charges would be an unduly large part of the receipts from the activity." 346 DM 1.2 C.

At the time it sought exemptions for these actions, BLM may not have been aware of the applicable case law in the area of cost recovery. As already noted, the Tenth Circuit in Nevada Power concluded that FLPMA mandates consideration of each of the factors in section 304(b). 711 F.2d at 926-27 & n.10. See Sections III.D. & IV.A., supra, and Section V., infra. When BLM conducts its biennial review of these exemption requests,[35] it and the Office of Financial Management should bear in mind that a fee set under FLPMA cannot be based on a single reasonableness factor.

V. RULEMAKING OPTIONS

One of the FLPMA "reasonableness factors" that BLM must consider in promulgating cost recovery regulations is actual costs. The first step toward determining a "reasonable" cost for a service is therefore ascertaining the actual cost to BLM of providing that type of service. The next step is to take into consideration the actual cost along with all of the other reasonableness factors in determining the final fee.

The Nevada Power court made it clear that it is not acceptable simply to set fees, then point to general background statements as evidence of having considered the factors. The

---

[35] BLM is also required, by the terms of the Nov. 6, 1992, memorandum from the Director of Financial Management granting the exemptions, to recertify the exemption for Stock Raising Homestead Bonds five years from the date of that memorandum.

court rejected Interior's contention that the regulatory preambles at issue in that case reflected sufficient consideration of each of the reasonable factors. It found, instead, that Interior had provided no evidence of having given "the effective consideration that must be given each of the 304(b) factors." Indeed, the court noted that there was "no showing in the record that the factors other than actual costs were considered at all." 711 F.2d at 926-27.

Interior had stipulated that it gave no consideration to the "monetary value of the rights or privileges sought by the applicant." It justified this on the ground that the independent review of each application that would be required would violate the companion factor in FLPMA of "efficiency to the government processing involved." 711 F.2d at 926. The court rejected the contention, implicit in this argument, that consideration of one 304(b) factor could eliminate consideration of others.

The court in Nevada Power recognized that Interior has considerable latitude in choosing how to address the reasonableness factors: "Interior may, consistently with this opinion, determine and assess the reasonable costs of processing an individual application either by rulemaking or by case-by-case adjudication." 711 F.2d at 933. While finding it "difficult to envision in what manner [several of the reasonableness factors] may be calculated other than by a determination in an individual case," the court concluded that "Interior is free to do so by whatever means it finds practicable. The Department may, if it so chooses, use rulemaking as far as possible to achieve this result, bearing in mind only that 'the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule.'" 711 F.2d at 927, quoting Securities & Exchange Comm'n v. Chenery Corp., 332 U.S. 194, 203 (1947).

As BLM constructs a regulatory framework for cost recovery regulations for minerals document processing, it would do well to examine other frameworks in which the same considerations have been addressed. A prime example is the right-of-way cost recovery regulations promulgated in response to Nevada Power, at 43 C.F.R. Subpart 2808.

The right-of-way regulations combine a fee schedule for routine, predictable actions, with case-by-case determination of fees for complex actions. This type of framework charts a middle course between, on the one hand, the enormous labor involved if every application were to be individually reviewed in light of each of the reasonableness factors and, on the other hand, the seeming impossibility of assessing in advance combinations of

individual circumstances with reasonableness factors in a complex case.[39]

Right-of-way applications are divided into five categories, depending on how much of the data necessary to comply with NEPA and other statutes are readily available and how many field examinations, if any, are required. 43 C.F.R. § 2808.2-1. The first four categories are assigned specific fees ranging from $125 to $925; the fee for the fifth, most complex category - Category V - is "as required."[40] 43 C.F.R. § 2808.3-1(a). In determining fees for applications falling into Category V, the authorized officer must give consideration to the section 304(b) factors on a case-by-case basis.[41] 43 C.F.R § 2808.3-1(e). An applicant under Category V may also request that the State Director reduce or waive reimbursable costs. 43 C.F.R. §§ 2808.3-1(c)(2) & 2808.5. The State Director may base this case-by-case determination on any of ten factors listed in the regulations. 43 C.F.R. § 2808.5(b).

BLM may be creative in structuring its regulatory framework, so long as it articulates how each of the reasonableness factors was taken into account.[42] For example, BLM could consider

---

[39] The Nevada Power court was particularly skeptical regarding the possibility of assessing in a general rule "'the monetary value of the rights or privileges sought', the 'portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant,' or 'the public service provided.'" 711 F.2d at 927.

[40] The right-of-way regulations provide that the authorized officer may periodically estimate the costs to be incurred by the United States in processing or monitoring, and the applicant must make advance payments based on those estimates. 43 C.F.R. § 2808.3-2(a). Excess payments are adjusted, and actual costs may be re-estimated if necessary. 43 C.F.R. §§ 2808.3-2(b) and (c). Minerals document processing regulations presumably should include similar advance payment provisions.

[41] The factors as they relate to right-of-way cost recovery are defined at 43 C.F.R. § 2800.0-5. BLM may wish to use parts of these definitions as it defines the factors in the context of minerals management cost recovery.

[42] "The touchstone of the Secretary's determination is reasonableness, and the Secretary is thus vested with considerable discretion in performing the weighing mandated by section 304(b), whether by rulemaking or adjudication. However, .. the Secretary must provide a reasonably articulate record showing the bases of the determination...." Nevada Power, 711 F.2d at 927-28.

developing guidelines regarding how much weight should be accorded each of the reasonableness factors in individual determinations.[43] A factor such as "the monetary value of the rights or privileges sought by the applicant" could, when that value is greater than BLM's processing costs, be weighed as an enhancing factor, offsetting a diminution due to another factor such as "the public service provided." BLM might thus in appropriate cases recover all of its processing costs[44] after weighing the factors.[45] Rules could also be developed regarding actions which may at first appear to be routine, but have unusual costs that appear at a later stage.[46] BLM could decide in certain instances to structure a rule so that a new fee is phased in over a period of time, if it finds this arrangement to be indicated by the existence of "other factors relevant to determining the reasonableness of the costs," 43 U.S.C. § 1734(b). Such a phase-in would need to be supportable by BLM's determination that a particular group needs a period of adjustment. A phase-in is more defensible where fees would be sharply increased over current levels. BLM would, of course, need to articulate the reasoning behind such a decision.

A final consideration is that fees specifically set out in regulations with no provision for adjustment must remain at those levels, regardless of how obsolete, until new regulations are promulgated. We strongly recommend that BLM include a provision in its regulations mandating periodic adjustment of regulatory fees by reference to a price index, such as the Consumer Price

---

[43] Cf. 30 C.F.R. Part 845 (regulatory scheme for assessing civil penalties related to surface coal mining and reclamation operations, in which points are assigned to a number of factors, and penalties are calculated according to total number of points).

[44] See National Cable Television Ass'n v. F.C.C., 554 F.2d 1094, 1106 (D.C. Cir. 1976)(an agency cannot set a fee greater than "a reasonable approximation of the attributable costs ... expended to benefit the recipient").

[45] The court in Nevada Power noted that: "We do not imply that Interior may never require an applicant to bear all of the costs of processing an application. We emphasize that before assessing any costs, Interior must give thorough consideration to the 304(b) factors." 711 F.2d at 925 n.6.

[46] The right-of-way regulations address one aspect of this problem by providing that during processing, the authorized officer may change a category determination and place an application in Category V at any time that it is determined that the application requires the preparation of an environmental impact statement. 43 C.F.R. § 2808.2-2(b).

Index. In this way, fees can be increased so as not to lose ground to inflation, without the need for a new rulemaking.[47]

BLM has considerable flexibility in designing a regulatory framework, but the case law makes clear that it must ensure that genuine consideration is given to each of the FLPMA reasonableness factors. The factors must be applied as objectively and systematically as reasonably possible so that similarly situated applicants are treated in a similar fashion. It is incumbent on BLM to preserve the record of its consideration of the factors so that this Office or the courts may review the rationale to ensure the cost recovery fees are legally justified.

VI. CONCLUSION

BLM has authority under applicable statutory and case law to recover costs of minerals document processing for a greater number of categories than it has proposed. Because it has this authority and because the Departmental Manual and OMB policy require that costs be recovered where possible, BLM should take steps to initiate cost recovery for such items, or obtain necessary exemptions pursuant to the Departmental Manual.

This Opinion was prepared with the substantial assistance of Barbara Fugate and Sharon Allender of the Branch of Onshore Minerals, Division of Mineral Resources.

John D. Leshy
Solicitor

I concur: _____ 8/5/96
Secretary of the Interior Date

[47] See 60 Fed. Reg. 57071 (Nov. 13, 1995)(to be codified at 43 C.F.R. § 2803.1-2(d)(2)(i)) (BLM right-of-way rental schedules to be adjusted annually based on Consumer Price Index for All Urban Consumers (CPI-U)); 60 Fed. Reg. 41034 (Aug. 11, 1995) (proposed regulatory amendments of Minerals Management Service to increase filing fees for processing Outer Continental Shelf right-of-way applications, etc., and index those fees to CPI-U).

State of Wyoming

Oil and Gas Conservation Commission

GOVERNOR JIM GERINGER, CHAIRMAN
COMMISSIONERS
JAMES H. MAGAGNA GARY B. GLASS ELMER B. PARSON ROBERT E. MCDOUGALL
STATE OIL AND GAS SUPERVISOR
DONALD B. BASKO

June 26, 1997

Congresswoman Cubin:

My name is Donald Basko, Supervisor of the Wyoming Oil and Gas Conservation Commission. I have been employed by the Commission for the last 37 1/4 years. Today is my last day of full-time employment. However, I have a contract with the Commission for six more months at half-time.

I wish to touch on three concerns:

1. The assumption of enforcement and inspection responsibilities from BLM

2. The Cave Gulch EIS, specifically, and statewide delays of opportunities to drill caused by the general EIS process

3. The recent field inspections of oil fields by USFWS and EPA; particularly the detailed check list, the high-handed attitude of the Fifth Team from the Criminal Investigation Group, and the misleading purpose of the inspections

I would like to discuss in detail the enforcement and inspection issue as follows:

For several years states have been negotiating with the BLM regarding the takeover of enforcement and inspection responsibilities. In my view, in spite of face-to-face meetings, very little progress has been made. The problem has been that at least Wyoming is unwilling to replicate the activities of the BLM. Site security is a particular concern.

There are also a number of other unresolved issues between the State and BLM. I have attached a copy of my letter of June 13, 1997, to Mr. Al Pierson with BLM because it sets out some of the provisions I feel should be a part of the agreement. This letter was prompted by a request from BLM to respond by August 1, 1997. In essence, I believe that there should be one program, that the state is not interested in the NEPA process, that savings in running the program should result in lower administrative costs to the State, and that reimbursement for running the program should come from the royalties stream. Further, our program of regulations is a good one. At some point we would consider taking over the Application for Permit to Drill (APD), and realizing that some of this may not be feasible without a change in the law, we stand ready to support such legislation.

777 West First Street, P.O. Box 2640, Casper, Wyoming 82602 (307) 234-7147 Fax (307) 234-5306 Internet wogcc@coffey.com

Finally, I am still waiting for a detailed break down of the cost to BLM for E & I in Wyoming. I feel that is a requirement so we can see where we could make some savings. I am not interested in taking over the program only to be reimbursed for what we do. However, if we can save a significant number of dollars and the state would be the beneficiary of half of the savings, then the program is worth looking at further.

As you recall the second issue regarding the Cave Gulch EIS is as follows:

The Green River Advisory Committee made several recommendations to the Secretary of the Interior, Bruce Babbitt. One of these was to streamline the NEPA process by reducing the time frame from approximately 26 months down to 16 months. The second was to require road standards consistent with ultimate use of the road. In other words, to require construction of a road to a wildcat well that could be either rehabilitated, if the well were dry and abandoned or upgraded if it became a producer. Both of these recommendations could have been introduced by BLM without the prompting by GRBAC.

To industry and the environmental community, the third and most important recommendation was the concept of ECO credits. ECO credits would provide reimbursement through royalty reduction to the company paying for an EIS or other environmental documents and an equal amount for mitigation of environmental concerns. This recommendation was rejected by Interior as being contrary to law and no apparent way around the decision was offered.

My purpose in bringing this issue up was that I am wondering if BLM employed the streamlined NEPA process at Cave Gulch, and if they are using the road standard recommendation for roads; or, is everything business as usual.

The final issue I'd like to discuss was the flyover inspection of pits in Wyoming:

On January 9, 1997, the USFWS and EPA asked for a meeting with the Commission staff and DEQ. Also in attendance were representatives of BIA and the Forest Service. The meeting was to discuss oil field pits and their impact on migratory birds. We were informed that USFWS, with help from EPA, were going to fly the state and make note of any pits they thought were a threat to birds.

Aerial surveys were conducted in April 1997. On May 19, 1997, we received a list of 213 pits USFWS and EPA identified as problem pits. This list was subsequently reduced to 210 sites of which 91 were the responsibility of the WOGCC, 86 BLM, 20 DEQ, and 13 BIA. We immediately sent our technicians into the field to check on all the state and fee mineral pits. We were informed by USFWS that we had 30 days to work with operators in solving the problems. At that point, USFWS intended to put four teams in the field to do a ground inspection of the pits. We were under the impression that those folks would be looking for problems that were a threat to migratory birds. However, at the last minute, after a number of phone calls, we received the check list they planned to use which was 12 pages long and constituted a full-blown audit of all federal regulations. This was not just a check to protect migratory birds, but a power grab by

EPA to assume regulation of oilfield pits. This has traditionally been the state's responsibility.

In addition, EPA put a fifth team into the field without any notice from their Criminal Investigation Group. This group had no state nor BLM representation and did not want any. They took the position that they did not have to ask anyone for permission to do anything; including going on operator's leases without permission or prior warning.

This last item may not be germain to this committee, but I wanted you to know how other branches of our government perform.

In conclusion, I think that the BLM is less than sincere about delegating E & I to the states that are unwilling to take every step they take in all their activities. Second the delays in Cave Gulch were unconscionable, cost people jobs, and governments tax dollars. Finally, the attitude of EPA particularly in the inspections of oilfield pits in Wyoming is a demonstration of government at its worst.

State of Wyoming

Oil and Gas Conservation Commission

June 13, 1997

Mr. Al Pierson
State Director
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

Dear Mr. Pierson:

As you know, the discussions regarding enforcement and inspections between the states, BLM, and I.O.G.C.C. have been going on for two years. The latest correspondence from B.L.M. indicated you wanted to know if we were interested in assuming responsibility for E & I in Wyoming by August 1, 1997.

I am interested in taking over that responsibility but want to reiterate some of the provisions that I feel should be a part of that agreement:

1. In each state, a single regulatory program should govern oil and gas activities on all lands, regardless of ownership.

2. I believe that the Bureau of Land Management's regulatory surface management and mineral management functions are distinct, and that evaluation of possible improvements to the regulatory program should keep those distinctions in mind. Therefore, I am not interested in the N.E.P.A. process, at least for the time being.

3. To the extent our efforts at streamlining, simplification and improvement result in lower program costs, we must benefit in the form of reduced administrative cost share for operation of the federal minerals program.

4. To the extent assumption of increased regulatory responsibilities by Wyoming necessitates federal funding, that funding must come from the royalty stream from federal minerals produced in that state.

5. I am not willing to replicate federal regulatory techniques to replace my own. As discussed in Washington, the states' regulatory programs, although growing from a common rootstock, have been modified and customized over decades to fit the circumstances of each state. My program has been intensively scrutinized by industry, environmental groups, citizens and other state regulators in the EPA-sponsored state review program. I will

777 West First Street, P.O. Box 2640, Casper, Wyoming 82602 (307) 234-7147 Fax (307) 234-5306 Internet wogcc@coffey.com

embrace opportunities to improve our programs, but am not interested in throwing them over in favor of the federal approach to regulation.

6. At some point, I would like to consider assuming responsibility for approval of A.P.D.'s, but for the time being, I am willing to put that issue on the back burner.

7. I realize that you and your associates have said that some of the provisions cannot be implemented without a change in the law. I stand ready to support any legislation that will improve and streamline the process. I am certain that our delegation would be happy to support such a change.

I look forward to further discussions of this issue, but in the meantime, I would like to get a detailed accounting of the program costs. I have a number of $2.7 million that your office gave me a long time ago. I have asked several times for a breakdown of how much is spent, but never received that information.

Very truly yours,

Donald B. Basko,
State Oil and Gas Supervisor

CC: Ms. Christine Hansen
Mr. Bob Armstrong
Commission Members

DBB/dl

STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

STATE CAPITOL BUILDING
CHEYENNE, WY 82002

TESTIMONY BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES OF THE HOUSE COMMITTEE ON RESOURCES

Monday, June 30, 1997

Casper, Wyoming

Jim Magagna

Director of Federal Land Policy

State of Wyoming

INTERNET GOVERNOR@MISSC.STATE.WY.US • TELEPHONE (307) 777-7434 • FAX (307) 632-3909

Madam Chairman, members of the Subcommittee. My name is Jim Magagna. I serve as Director of the Office of State Lands and Investments and Director of Federal Land Policy for the State of Wyoming. On behalf of Governor Jim Geringer, I want to express appreciation to the Chairman for holding this oversight hearing in a state where development of federal oil and gas reserves is so crucial to economic viability.

Today our nation complacently accepts a dangerous reliance on foreign petroleum supplies. This past year Governor Geringer has joined governors of the other twenty-eight member states of the Interstate Oil and Gas Compact Commission in calling for a national energy policy designed to reduce this foreign dependence. Wyoming, with the nation's fourth largest known natural gas reserves and remaining significant oil reserves, is one of the major domestic petroleum suppliers.

Federal mineral resources account for 68% of Wyoming's natural gas production and 60% of oil production. However, even these high percentages fail to relate the full impact of federal mineral development policies on the state. Due to the intermingled land pattern prevalent in Wyoming, it is often unattractive, or even impossible, to produce private and state minerals without concurrent production of federal minerals. Impacts on state trust lands are particularly significant. These lands were granted to the state by the federal government with the specific mandate that they be managed to produce revenues for the schools and other designated beneficiaries. Restrictions and delays affecting development of the mineral resources of adjoining federal lands can deny these beneficiaries their single most significant revenue stream--mineral royalties. Wilderness Study Areas, Areas of Critical Environmental Concern, Research Natural Areas and Biologically Sensitive Areas are but a few of the designations that impact development of federal, state and private lands. A recent delay of several months in securing a pipeline right of way from a well completed on state lands in the Cave Gulch field caused a delay in the flow of royalty monies to the Permanent Land Fund.

While the issue of access is fundamental to oil and gas development, costly restrictions and delays resulting from the NEPA process are causing the most significant impacts on development and production in Wyoming today. It is important that I emphasize the State's commitment to assuring that mineral development be conducted in an environmentally sound manner. This fundamental standard need not preclude efficiency, timeliness and cost-effectiveness.

The Cave Gulch field in Natrona County will surely provide the textbook case of a process which became so overwhelming that it became self-destructive. The details will be left to others. Lack of cooperation, poor communication, secrecy, personal agendas and the absence of leadership may all be applicable terms. It must be noted that recent statements by the BLM provide hope that the Record of Decision for Cave Gulch will accept the developer's proposed action with adequate but reasonable environmental mitigation. This is a result which likely could have been achieved a year earlier through the use of strong communication and negotiation tools.

Cave Gulch will be fully developed, albeit with significant additional cost and delay. Much more difficult to asses is the impact of a Cave Gulch scenario on the development of other reserves. How many independent producers cannot withstand the cost of expensive environmental documents and long delays? How many major corporations direct exploration and production dollars away from Wyoming to opportunities that are not burdened in this manner and will result in an earlier payout? Based on conversations with industry representatives, I believe that the impacts in both areas are significant.

It is insightful to the issues being addressed in this hearing to review the concerns and recommendations which were the outcome of The Wyoming Partnership: Minerals, Energy and the Future. This was the Governor's conference held in Casper in April, 1995. Among the recommended actions directed toward oil and gas development were:

- Need to Improve Permitting: To Reduce Time and Increase Consistency and Predictability
- Increase Access to Federal Lands

Much of the dialogue at the conference centered on the frustrations with delays in the federal processes for leasing and permitting.

As intense gas development continues in southwestern Wyoming, the quality of air sheds must be protected. Standards must be based on defensible scientific data and modeling. Activities contributing to degradation should be identified and quantified. Restrictions and mitigation requirements imposed on gas developers should relate only to the relative contribution of this industry's activities to overall impacts. Recent attempts by BLM to impose an emissions cap did not meet any of these criteria and necessitated an appeal by the state as well as industry.

The recently terminated Green River Basin Advisory Committee was widely heralded by the Department of Interior as a vehicle to resolve resource conflicts associated with gas development in the Basin. The Committee is deserving of everyone's compliments and gratitude for the effort and spirit with which members collaborated in developing recommendations on several significant issues including the NEPA process, transportation planning and eco-royalty relief. Nevertheless, the outcome of Interior's initiative can only be measured by the extent to which the Committee's recommendations are successfully implemented.

In the significant area of eco-royalty relief it has become apparent that the Committee's recommendation has been rejected. This proposal, in which the States of Wyoming and Colorado were willing to consider participation at a net cost in the states' share of federal royalty returns, was designed to address two significant funding issues. First, it has become a standard practice for the BLM to require the project proponent to assume the full costs of any required NEPA document preparation. As EIS's in particular have grown in length and time of preparation, these costs have become burdensome to and uncontrollable by the applicant. Second, there is currently no stable source of funding for environmental mitigation measures that may be beneficial but not mandated. Eco-royalty relief is designed to enhance mitigation, reduce delays in development and reduce developer costs.

Failure to implement eco-royalty relief has been attributed to concerns expressed by the Solicitor. It continues to be our belief that the Secretary of Interior has not aggressively pursued this recommendation. If there are genuine legal obstacles, the Secretary should support necessary implementing legislation.

BLM is currently attempting to implement the GRBAC NEPA streamlining recommendation as a pilot project in the Jonah Field Environmental Impact Statement. While it is too early to determine the success of this initiative, it appears doubtful that the goals established by GRBAC will be met.

The State continues to be frustrated by the lack of adequate socio-economic impact analysis in NEPA documents. We perceive that the federal agencies place little emphasis on preparation of this component of NEPA analysis because it is not their intent to give it significant weight in the subsequent Record of Decision. The NEPA process should be modified to assure adequate consideration of socio-economic impacts. If this is not successful, legislation should be enacted providing for independent socio-economic impact analysis to be conducted parallel to the NEPA analysis.

Community priorities-- environmental, economic and social-- must be given full consideration in decisions on resource development. State and local government representatives are in a unique position to identify these priorities. This role is explicitly recognized in numerous federal natural resource laws including NEPA. Nevertheless many federal agencies in Wyoming, including the BLM, have steadfastly refused to grant cooperating agency status to local governments. Today this issue hovers as a cloud over inter-governmental relationships.

In closing I must emphasize that many of the concerns which I have enumerated are, I believe, shared by dedicated Wyoming personnel in these federal agencies. Without appropriate guidance from superiors, their frustrations will continue, sound development of our natural resources, including oil and gas, will be thwarted and the State of Wyoming will experience the loss of jobs, economic opportunity and tax base.

Testimony of
The Interstate Oil and Gas Compact Commission
by
James W. Carter
Director, Utah Division of Oil, Gas and Mining

Submitted to the
U.S. House of Representatives
Committee on Resources
Subcommittee on Energy and Mineral Resources

June 30, 1997
Casper, Wyoming

Madam Chairman and members of the committee, the Interstate Oil and Gas Compact Commission (IOGCC) appreciates this opportunity to address you on oil and gas regulatory issues. I am appearing before you today as co-chair of the IOGCC's Public Lands Committee.

We understand that the primary focus of today's hearing is on such matters as cost recovery, land withdrawals and eco-credits, with a secondary focus on oil and gas development and regulatory issues. The Public Lands Committee has set out for itself an ambitious plan of work to study and make recommendations on a series of oil and gas matters relating to public lands, including land withdrawals, royalty in kind, idle wells, regulatory reform and cost recovery, among other issues. Although the Committee is in the early stages of work on those issues, I can share with you the gist of our discussions to date.

IOGCC Public Lands Committee members are supportive of the recommendations made by the Green River Basin Advisory Committee, particularly with regard to eco-credits. Committee members see the creation and granting of eco-credits as a mechanism which will both expedite BLM's environmental review process and benefit responsible operators. The Public Lands Committee's thoughts on cost recovery are mixed. To the extent that cost recovery facilitates BLM's review and permitting process, the states are generally supportive. If, however, cost recovery is simply an alternate revenue source for the BLM, the states would not be likely to be supportive.

The issues surrounding access to oil and gas reserves on federally-managed property generally fall outside the regulatory purview of the IOGCC states. Access issues do relate, however, to the conservation mission of state regulators to see that maximum economic recovery of oil and gas resources is achieved,

consistent with other law, regulation and public policy. From the conservation standpoint, the IOGCC states believe that lands deemed to be suitable for oil and gas development by the BLM's public land planning and environmental review processes should not be made unavailable unilaterally or by decisions or processes which are other than the public processes by which BLM is required to make such decisions. The Public Lands Committee looks forward to providing the Committee with additional analysis and recommendations on these and other public lands issues as our work progresses.

With regard to general regulatory issues, you are well aware that one of the major items of work of the Public Lands Committee for the past months has been the proposal by the Bureau of Land Management to transfer certain oil and gas regulatory functions to the states and tribes. I have appeared before your Subcommittee on two occasions to discuss the status of that proposal and the proposal of the IOGCC states, and I must again thank the Subcommittee for your interest in and support of our combined efforts to streamline, simplify and improve state and federal oil and gas regulatory programs.

In March, the Public Lands Committee forwarded a letter to Assistant Secretary Bob Armstrong setting forth five principles and objectives which the IOGCC states believe should underpin our efforts to achieve regulatory reform: 1) In each state, a single regulatory program should govern oil and gas activities on all lands, regardless of ownership; 2) BLM's regulatory, surface management and minerals management functions are distinct, and evaluation of possible improvements to the regulatory program should keep those distinctions in mind; 3) To the extent our efforts at streamlining, simplification and improvement result in lower program costs, the states should benefit in the form of reduced administrative cost share for operation of the federal minerals program; 4) To the extent assumption of additional regulatory responsibilities by the states necessitates federal funding, that funding should come from the royalty stream from federal minerals in each state; and 5) Proven, existing state regulatory programs should be the bases for streamlined and improved regulatory activities.

Based on the discussions held and input received to date, the Interstate Oil and Gas Compact Commission sees three areas of opportunity for improvement and streamlining of state and federal oil and gas regulatory programs. The first is improvement of coordination and communication between existing state and BLM regulatory programs. State and BLM regulators should be in regular communication with each other to coordinate their

activities, take advantage of economies of scale and eliminate, to the extent possible, duplication of effort and requirements on oil and gas operators in their areas.

The second opportunity is for delegation of inspection and enforcement functions from the BLM to the states pursuant to existing statutory authorities. Although the thrust of the IOGCC's counter-proposal of April, 1996 was to broaden the delegation discussion to include permitting, review and approval of sundry notices, inspection and enforcement, spacing, unitization and follow-up enforcement activities, some states believe efficiencies and improvement may be possible through the narrower delegation of inspection and enforcement activities initially proposed by the BLM. Accordingly, several states are preparing delegation proposals pursuant to BLM's request that IOGCC states make state-specific proposals for delegation under existing authorities by August 1 of this year in order to bring closure their original offer of March, 1995.

The IOGCC states remain convinced, however, that the greatest opportunities for streamlining, simplification and improvement of regulatory programs lie in consolidation of state and federal oil and gas regulatory programs in each state. To make progress in this third area of opportunity, it is likely that the BLM and the IOGCC states will need the assistance of Congress. The IOGCC states see several opportunities for congressional action to simplify implementation of the BLM regulatory program, and to broaden opportunities for the BLM and the states to work together to optimize regulatory programs.

A good example is BLM's program for ensuring production accountability. Although the Federal Oil and Gas Royalty Management Act (FOGRMA) contains relatively few specific directions with regard to ensuring that oil and gas produced are properly measured and accounted for, the current implementation program is most likely not the most efficient or effective use of compliance resources. As Assistant Secretary Bob Armstrong put it in a letter dated June 5th of this year, "The Bureau of Land Managements's oil and gas inspection and enforcement program has been carefully scrutinized by the Office of the Inspector General, the General Accounting Office, and the Senate Select Committee on Indian Affairs. Recommendations made by those organizations have resulted in the evolution of BLM's program into its current form." Unfortunately, those outside organizations have focused on changing the processes the BLM uses, rather than on the actual results of program implementation. The BLM finds itself constrained to insist that the states perform production accountability activities on

federal lands in the same manner it does to make a "delegation" of federal production accountability responsibilities to the states. The states are unwilling to replicate processes that they believe to be wasteful and a misdirection of resources, so "delegation" of production accountability is thwarted. Congress could clarify and simplify its charge to the BLM with regard to production accountability, and direct the BLM and the Minerals Management Service to collaborate in developing a simpler, more cost-effective program for ensuring production accountability based on bottom-line results rather than the techniques BLM uses to achieve its objectives.

Another approach which could resolve this quandary, and other problems, would be to modify the Secretary of the Interior's delegation authority with regard to oil and gas regulatory programs. The model created by the Surface Mining Control Reclamation Act (SMCRA) is instructive. Under SMCRA, the federal Office of Surface Mining Reclamation and Enforcement (OSM) does not "delegate" regulatory responsibility to the states. Instead, the states develop their own programs for the regulation of coal mining as a matter of state law. OSM must then make a determination that the state regulatory program is no less effective than the federal program. If it is no less effective, OSM defers to state regulation of coal, under the state's own program, from permitting through compliance to reclamation and follow-up enforcement, if necessary. OSM retains an oversight role to ensure that the on-the-ground results mandated by SMCRA are achieved.

While state and federal coal regulatory programs have been virtually identical in the past, implementation of a new, results-based oversight program has resulted in allowing for variability of methodology among state programs to account for geologic and climatic differences among the states. The bottom-line objectives of program implementation remain, however, consistent from state to state. If the Secretary and the Director of the BLM had similar authority with regard to oil and gas regulation, the long-standing debate over the meaning and scope of the term "delegation" could be mooted. The Secretary would be free to determine whether, for example, application of the New Mexico state regulatory program to federal production in New Mexico would result in achievement of the same objectives as application of the federal program. The "no less effective than" standard forces an evaluation of the actual results of program implementation, rather than a line-by-line comparison of program requirements and the resulting debate about which language is more or less stringent.

The IOGCC states are committed to continuing to work more closely with the BLM to identify opportunities for streamlining and regulatory program improvement. As well, several IOGCC states will be making delegation proposals under existing FOGRMA delegation authorities. The IOGCC believes, however, that the Bureau of Land Management and the states must have broader authority to allow application of state regulations to federal properties if significant cost savings and economies are to be achieved. The IOGCC also believes that continuing work toward consolidation of regulatory programs will benefit the regulated community and provide more efficient and better service to all our customers.

TIM N. TIPTON
PRODUCTION MANAGER, ROCKY MOUNTAIN REGION
MARATHON OIL COMPANY

June 1978

- Graduated *cum laude* from Rose-Hulman Institute of Technology with a B.S. Degree in Mechanical Engineering.

- Employed by Marathon Oil Company, working in several different capacities for the Company over the past 19 years.

1978 to 1982

- Petroleum/Production/Reservoir Engineer in the Illinois Basin, Bridgeport, Illinois.

1982 to 1984

- Reservoir Engineer - Northern Louisiana properties, Shreveport, Louisiana.

1984 to 1985

- Constructed reservoir models for Gulf of Mexico and North Sea fields from Marathon's Petroleum Technology Center, Littleton, Colorado.

1985 to 1987

- District Reservoir Engineer in the Rocky Mountain Region, Cody, Wyoming.

1987 to 1990

- Operations Engineering Manager, Domestic Production, Houston, Texas.

1990 to 1996

- Operations Superintendent, Engineering Manager and Production Manager in the Mid-Continent Region, Midland, Texas.

November 1996 to Present

- Production Manager, Rocky Mountain Region, Cody, Wyoming.

SUPPLEMENTAL INFORMATION

Tim N. Tipton
Production Manager
Rocky Mountain Region
MARATHON OIL COMPANY
1501 Stampede Avenue
Cody, Wyoming 82414
(307) 587-4961 x3042

Outline of Statement

I. Background

A. Marathon's Rocky Mountain Region currently holds over 900 federal leases in Wyoming, Colorado and Utah.

B. Marathon's Rocky Mountain Region produces approximately 35,000 barrels of oil per day and 70 million cubic feet of natural gas per day.

C. Southwestern Wyoming and northwestern Colorado has been identified as having one of the largest remaining natural gas accumulations in the continental United States, and much of the land available for oil and gas leasing in this area is owned by the United States and managed by the BLM.

II. Federal Lands Policy and Management Act (enacted by Congress in 1976)

A. Altered the management practices of federal lands, specifically mandated that management practices be based on the concepts of multiple use and sustained yield, recognizing the Nation's need for domestic sources of minerals.

B. Provided for an inventory of public lands to be accomplished within a 15-year period between 1976 and 1991.

C. BLM has inventoried lands and made recommendations to Congress for Wyoming, Colorado, Utah and other states. The recommendations are pending in Congress. BLM Wilderness Study Areas are currently being managed as wilderness.

D. FLPMA requires an Act of Congress before the designation can becomes effective.

III. FLPMA requires public participation in land use decisions.

A. In August 1996, Marathon filed an Expression of Interest in certain parcels of BLM-managed land in northwestern Colorado and was notified that some of the parcels were being withdrawn from the November 1996 sale. The BLM withdrew the parcels because they were identified by the Colorado Environmental Coalition (CEC) as having wilderness characteristics.

B. Marathon and others did not know that, in 1994, the CEC had prevailed upon the Colorado BLM to manage hundreds of thousands of acres of public lands as wilderness. There was no public notice or participation about this, and the BLM had already found the CEC-identified lands to **not** have wilderness characteristics.

C. The Colorado BLM proposed a policy to reinventory public lands under its management for potential Wilderness Areas. The policy was finalized after Marathon brought legal action against the BLM for entering into this secret agreement with the CEC.

D. FLPMA process of public input and resource management planning has been side-tracked and is being ignored at the insistence of a narrow constituency. BLM resources are being inappropriately directed to duplicate a process ordered by Congress and carried out to completion by the BLM for the inventory and designation of Wilderness Study Areas.

IV. *De Facto* Withdrawal of Lands for Appropriate Public Use

A. State BLM Directors in Utah and Colorado have been directed by the DOI to "pay particular and careful attention" to management of lands identified by environmental groups as having potential wilderness characteristics.

B. Marathon believes in the efficient use of its resources and the resources of federal agencies as it relates to their responsibility for management of public lands

C. In passing FLPMA, Congress declared that the BLM's wilderness inventory process would not be open-ended. By allowing the CEC and others to reinitiate the process after it had been finalized, the Secretary's actions are in violation of the law.

V. Summary

A. Marathon believes Congress is the best arbiter of Congress's intent. The DOI should not order its employees to "preserve Congress's option" for designation of Wilderness Areas; no proposal outside the Section 603 FLPMA process has been sent to Congress.

B. The DOI is managing federal lands to satisfy narrow constituencies and is not carrying out its mandated policy to manage lands for multiple use, sustained yield, and production of domestic natural resources.

C. The DOI is ignoring Congress's mandates in FLPMA. The issues go beyond oil and gas, affecting all users of public lands.

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U. S. HOUSE OF REPRESENTATIVES
Field Hearing
June 30, 1997
Casper, Wyoming

STATEMENT OF T. N. TIPTON
Marathon Oil Company
Rocky Mountain Region

Marathon's Rocky Mountain Region covers the entire western part of the United States, and we are currently active in Wyoming, Colorado, North Dakota, Utah and California. In the Rockies, Marathon operates 61% of the oil and gas properties in which it has interests. Marathon is the Lessee of fee, state and federal oil and gas leases and currently holds over 900 federal leases in Wyoming, Colorado and Utah. Marathon's Rocky Mountain Region operates approximately 35,000 barrels of oil per day and approximately 70 million cubic feet of natural gas per day. Marathon is concerned with federal oil and gas leasing and access to public lands in the states of Wyoming, Colorado and Utah, and that is the subject of this statement.

Southwestern Wyoming and northwestern Colorado have been identified as having one of the largest remaining natural gas accumulations in the continental United States. The area has produced a significant amount of gas over the years and recently has enjoyed a renewed interest in exploration activity by both major integrated and independent oil and gas companies. Through the use of recent developments in technology, exploration efforts have increased, and additional potential hydrocarbon accumulations have been identified. Much of the land available for oil and gas leasing in this area is owned by the United States and managed by the Bureau of Land Management.

The Federal Oil and Gas Competitive Leasing system that is followed to gain access to public lands for oil and gas development works well. Regulations require the Director of the Bureau of Land Management to have quarterly lease sales. Interested parties may file an expression of interest in particular parcels, which are then put on the lease sale list. In Colorado, parcels available for oil and gas leasing have been identified as suitable for leasing by the BLM through the Resource Management Planning (RMP) process, during which lands were identified, public notice and comment occurred, Environmental Impact Statements were prepared and a final Record Of Decision was issued. In Wyoming, the Environmental Impact Statement process is initiated in areas which have been available for oil and gas leasing after it has been determined that the NEPA process must be initiated.

Congress enacted the Federal Lands Policy and Management Act (FLPMA) in 1976. FLPMA significantly altered the management practices of federal lands, and Congress specifically mandated that management be based on the concepts of multiple use and sustained yield and that management practices recognize the Nation's need for domestic sources of minerals. The development of energy resources of the United States and protection of the environment, including wilderness areas, are management policies specifically addressed in FLPMA.

In Section 603 of FLPMA, Congress provided that inventory of public lands for wilderness designation should be accomplished within a 15-year period between 1976 and 1991. BLM inventoried lands and has made recommendations to Congress for Wyoming, Colorado, Utah and other states. As I understand it, these recommendations are currently pending in Congress and have been for some time. In the meantime, those lands identified by the BLM as Wilderness Study Areas are currently being managed as wilderness. FLPMA requires an Act of Congress before the designation of wilderness can become effective.

I want to make it absolutely clear that Marathon has no interest in conducting oil and gas exploration on public lands that have been legitimately designated Wilderness Study Areas via the Section 603 process, nor are we proposing that the BLM direct Wilderness Study Areas to be opened for oil and gas leasing. Marathon and its employees believe in the protection of wilderness areas if they are appropriately designated as such and have wilderness characteristics. Just as importantly, Marathon believes in and supports appropriate public participation in land use decisions as required by FLPMA and the Constitution.

The following is an example of a problem with energy development on public lands. In August 1996, Marathon filed an Expression of Interest in certain parcels of BLM-managed land in northwestern Colorado. Marathon was notified that some of the parcels in which it expressed an interest were going to be withdrawn from the November 1996 sale, even though the parcels had been identified by the Little Snake Resource Area RMP as being suitable for oil and gas leasing with certain surface stipulations. The parcels had been the subject of an EIS and a final ROD was issued in June 1989. Forty-four percent (44%) of the lands in the Little Snake Resource area which had been identified as suitable for oil an gas leasing had surface stipulations ranging from Seasonal, Performance and No Surface Occupancy. Irrespective of the previous land use planning process and the protections BLM had imposed for the area, the BLM withdrew the nominated parcels because they were within an area suggested by the Colorado Environmental Coalition (the CEC) as having wilderness characteristics.

Marathon understands that the BLM administers and manages Public Lands per Congressional authority and direction. However, in this case, unbeknownst to Marathon and many others, in 1994 the Colorado Environmental Coalition had prevailed upon the Colorado BLM to manage hundreds of thousand of acres of additional public lands as wilderness. This management decision was made without the required public notice or participation, even though the BLM had previously inventoried all public land in Colorado and had found the CEC-identified lands to ***not*** have wilderness characteristics. Marathon believes that the BLM has inappropriately delegated management of these public lands to the CEC and has entered into agreements with the CEC to manage additional lands as Wilderness Areas even though the lands were previously approved for oil and gas leasing. This was all done without the benefit of public participation or Congressional action.

Colorado BLM has now adopted a policy to reinventory public lands under its management for potential Wilderness Areas. This policy was finalized after Marathon brought legal action against the BLM for entering into the agreement with the CEC. This change in policy follows years of BLM public lands management under the RMP, and came about in a manner inconsistent with the Resource Management Planning process, without public notice and an opportunity for public

hearing. As another example of this management practice, and while Marathon has no current exploration program in Utah, I understand the BLM is dedicating additional resources in Utah for the reinventory of lands at the insistence of the Southern Utah Wilderness Alliance. I have also seen a publication by the Sierra Club advocating designation and reinventory of additional lands in the state of Wyoming as Wilderness Areas.

Marathon is concerned that the FLPMA process of public input and resource management planning has become side-tracked and is being ignored. Marathon is also concerned that BLM resources are being inappropriately directed to duplicate a wilderness land inventory process previously ordered by Congress and carried out to completion by BLM for the inventory and designation of Wilderness Study Areas. Marathon is concerned that this process is outside the bounds of FLPMA.

The State Directors in Utah and Colorado have been directed by the Washington office of the Department of the Interior to "pay particular and careful attention" to management of lands identified by environmental groups as having potential wilderness characteristics. These actions represent the *de facto* withdrawal of lands from appropriate public use, lands which have been identified in the Resource Management Planning as being appropriate for uses other than wilderness designation. Copies of these directives from the Washington office are attached to this statement.

Marathon believes the most efficient and fair government is that conducted by agencies in accordance with the law established by Congress. Marathon believes in the efficient use of its resources and the resources of federal agencies, given their responsibility for management of public lands. We are disturbed that significant BLM resources that could be directed to the legitimate management for improvement of public lands are now being directed to reinventory and designation of additional areas as Wilderness Areas. Not only are these efforts a duplicative waste of prior efforts, Marathon believes the efforts have been expressly prohibited by an act of Congress. Section 603 of FLPMA was enacted by Congress as the *exclusive* source of authority for the Secretary to conduct the wilderness inventory processes. That authority expired in 1991. Congress imposed that deadline in FLPMA as a political compromise to avoid the historical experience of RARE II. Under RARE II the United States Forest Service had locked up lands from multiple use management indefinitely, all in the name of preserving Congress's options to designate lands as wilderness at some point in the indeterminate future. In passing FLPMA, Congress declared that the BLM's wilderness inventory process would not be open-ended. The BLM's actions in Utah and Colorado of indefinitely denying access to public lands for mineral development while awaiting another inventory appears to be inconsistent with FLPMA.

We are concerned and dismayed that environmental groups apparently have inappropriate access to BLM records for identification of lands which they (not the public after the RMP process completion) believe should not be open to mineral development. For example, in Colorado, the CEC has been given access to the BLM database to insert its designation of Wilderness Areas on BLM records, even though these parcels have been identified as appropriate for oil and gas leasing through the public process. In Utah, the Southern Utah Wilderness Alliance provided the State Director with a legal memorandum giving the State Director legal advice about the Director's power to inventory, identify and manage lands as wilderness outside of the Section 603 FLPMA process. Documents supporting these contentions are attached to this statement.

Marathon's lawsuit against the BLM questioning the legality of the Government's action was recently dismissed on the narrow ground of standing. Marathon intends to appeal the dismissal as the merits of the case were not reached. Irrespective of the outcome of any legal challenge, Marathon believes Congress is the best arbiter of Congress's intent. The Department of the Interior has ordered its employees to act in such a manner as to "preserve Congress's options" for designation of Wilderness Areas, yet no proposal outside of the Section 603 FLPMA process has been sent to Congress.

The Department of the Interior appears to be managing public lands to satisfy environmental groups at the expense of the general public. In the instances cited in this statement, the Department is not carrying out its congressionally mandated policy to manage lands for multiple use, sustained yield, production of domestic mineral resources, and management of public lands appropriately for all uses. The Department justifies its position by saying it is protecting Congress's options to designate additional wilderness lands, yet it is ignoring the mandates Congress has given the Department in FLPMA. These issues go beyond oil and gas; they affect all users of public lands, including grazing, mining and recreational uses.

Thank you for allowing me time to bring this matter to your attention.

THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 1 . 1988

Memorandum

To: Director, Bureau of Land Management

From: Secretary of the Interior

Subject: Utah Wilderness

I am generally aware of the debate that has, for well over a decade, swirled around the adequacy of the Bureau of Land Management's (BLM) inventory of wilderness study areas (WSA) in Utah under the Federal Land Policy and Management Act. I want you to make sure that any BLM management decisions affecting potential wilderness on BLM lands in Utah, whether within formally designated WSA's or not, are given your careful attention.

cc: Solicitor
Assistant Secretary for Land and Minerals Management

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 12 1994

3.

Honorable James V. Hansen
House of Representatives
Washington, D.C. 20515

Dear Mr. Hansen:

Thank you for your letters of February 24 and March 14, 1994, to Secretary of the Interior Bruce Babbitt, regarding wilderness issues in the State of Utah. Secretary Babbitt has asked me to respond.

The Department of the Interior is strongly committed to the protection of wilderness values on public lands, as part of the process of fulfilling the multiple use mandates contained in Section 102 of the Federal Land Policy and Management Act (FLPMA). Congress has given us the responsibility to balance the various resource values on the public lands when considering development and use potentials to meet present and future needs of the American people.

As your letter indicates, Secretary Babbitt has instructed the Bureau of Land Management (BLM) to pay careful and particular attention to development proposals that could limit Congress' ability to designate certain BLM areas in Utah as wilderness, even though these areas have not formally been designated as wilderness study areas (WSA's). These are the so-called H.R. 1500 areas. The Secretary's directive does not mean that the BLM is to now manage these areas as formal WSA's, but rather that particular care is taken to review all proposals that might prevent the Congress from designating them as wilderness in the future.

Lands formally proposed for designation, but not included in the BLM WSA's, are to be managed in accordance with Section 202 of FLPMA, which requires the Secretary, acting through the BLM, to take appropriate action to prevent unnecessary or undue degradation of the values found on those lands, including wilderness values. This statutory obligation provides the legislative mandate under which all BLM management decisions are made. Management issues will continue to be addressed in these areas on a case-by-case basis, considering the wilderness values along with other values that also exist in the areas.

It appears from the letter signed by some employees of the BLM Cedar City District that there is confusion over the policy articulated by Secretary Babbitt. This policy is fully consistent with the mandates found in the FLPMA and fully appropriate given the level of interest and controversy which surrounds wilderness issues in Utah.

Bureau of Land Management Utah State Director Jim Parker has said that he will provide the clear direction asked for and will clarify any confusion which may exist in the BLM Cedar City District. We expect the laws to be followed and believe the employees in this district will be given the direction they are seeking to carry out their duties.

Sincerely,

/s/ Bob Armstrong

Bob Armstrong
Assistant Secretary, Land and
Minerals Management

SOUTHERN UTAH WILDERNESS ALLIANCE

STATE DIRECTOR'S OFFICE

FILE	OFFICE	ACTION	INITIAL	DATE

October 24, 1994

Matt Millenbach
State Director
Bureau of Land Management
P.O. Box 45155
Salt Lake City, Utah 84145-0155

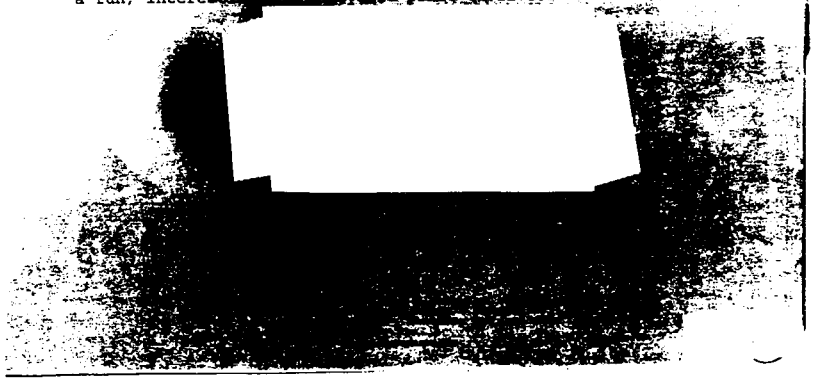
Dear Matt,

Thanks again for coming by the office to meet with us last week. We greatly appreciate the opportunity to get to know you and to establish a good working relationship with you. We value the open lines of communication we've begun to establish, and look forward with optimism to your tenure here in Utah. Welcome.

As you know, large tracts of public lands with outstanding wilderness values were excluded from the BLM wilderness inventory in the late 1980s. Nonetheless, we believe that the BLM has the discretionary authority to manage the excluded lands to protect those values pending Congressional action on H.R. 1500, the citizen's wilderness proposal. Only through the enforcement of interim protection for these unique, breathtaking lands can we be assured that the they will be protected until Congress acts.

Enclosed is the memo I drafted earlier this year which describes the legal authority on which our request for interim protection is based. Give me a call if you have any questions about this issue, or would like to discuss this matter further. I'd be interested in your thoughts on this topic.

Again, welcome to Salt Lake City. I'm sure you will find it a fun, interesting, and [illegible] place to live.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7076

CO-921A
3120

NOV 9 1994

CERTIFIED MAIL

Mr. Norm Mullen
Colorado Environmental Coalition
Western Colorado Office
P.O. Box 2583
Grand Junction, Colorado 81502

Dear Mr. Mullen:

Thank you for your telefax received in this office today, November 9, 1994, concerning parcels COC57384, 57394, 57447, 57448, and 57449. These parcels were offered for competitive oil and gas leasing as a result of formal presale applications. The applicant has withdrawn the offers on all but parcel COC57447. As those four remaining parcels no longer have a presale offer, they will be withdrawn from the sale. However, as COC57447 maintains a noncompetitive lease application, it will be offered.

We have discovered an error in the San Juan Resource Area stipulation data base, and though parcel COC57394 will be deleted from the sale, the correction is noted and will be expedited in both the Resource Area and State Office data bases.

In reference to parcel COC57281, we have confirmed with the U.S. Forest Service that the parcel configuration is in conflict with Forest boundaries. As a result, COC57281 is also deleted from the sale. We appreciate your bringing these issues to our attention and will take whatever measures necessary to correct our records.

It is important to us that we assist you in maintaining copies of the current stipulation data base. The data base is updated on a regular basis in both the field offices and here in the Colorado State Office. We are available to provide whatever assistance you find necessary in obtaining the current data base, either in hard copy or diskette form.

As always, we appreciate your bringing any inconsistencies to our attention. If you have any questions or need additional information, please feel free to call me or anyone on the attached list.

Sincerely,

Christine S. Turja
Land Law Examiner
Oil and Gas Lease Sales Team

cc: Sheep Mountain Alliance

S H E E P
MOUNTAIN
ALLIANCE

a citizens' group for the defense & preservation of southwestern Colorado's high country

303-728-3729

Box 389
Telluride
Colorado
81435

November 9, 1994

James D. Crisp
Chief, Branch of Minerals Adjudication
Colorado State Office, Bureau of Land Management
2850 Youngfield Street
Lakewood, Colorado 80215-7076
By facsimile to: (303) 239-3799

Dear Mr. Crisp,

Sheep Mountain Alliance protests the sale of parcels COC 57384, 57394, 57447, 57448 and 57449 in the November 10, 1994 lease sale. As you are aware we join the Colorado Environmental Coalition, Sierra Club, and numerous other groups in this protest. These lease parcels are within areas that have been identified and proposed for wilderness designation by 48 organizations in the July 1994 *Conservationists' Wilderness Proposal for BLM Lands in Colorado*. In addition, these sales are adjacent to areas designated as Wilderness Study Areas, which the Bureau of Land Management is directed to protect pending congressional action.

The environmental impacts of these sales have not been adequately addressed. The sale, exploration, and development of these parcels will cause undue degradation to the immediate and adjacent areas. It is certainly not within the public interest to allow this type of activity until Congress has had an opportunity to review the suitability of these areas for wilderness. This information has been presented in the above-referenced proposal.

We urge you to remove these parcels from the sale. Further, we hereby request that you inform us of your decision regarding this matter, and to inform us of any future decisions regarding these parcels. Thank you for your time and attention. We look forward to hearing from you.

Sincerely,

Cameron Brooks
Organizer

8500
(UT-933)

MAR 2 9 1995

Honorable James V. Hansen
House of Representatives
Washington, DC 20515

Dear Mr. Hansen:

Thank you for your letter of March 6, 1995, about management of congressionally proposed wilderness areas outside of Bureau of Land Management (BLM) wilderness study areas (WSAs). We appreciate the opportunity to clarify the BLM's position further regarding this important issue.

As you know, the Secretary of the Interior has asked BLM to "pay careful and particular attention to development proposals that could limit Congress' ability to designate certain BLM areas in Utah (H.R. 1500 lands) as wilderness even though these areas have not formally been designated as WSAs." This Secretarial direction is largely articulated in Assistant Secretary Bob Armstrong's letter written to you dated April 22, 1994. Utah BLM has been using this letter as a basis for guidance to our employees.

However, it is true that there has been some uncertainty among a number of Utah BLM employees regarding exactly how to apply this policy. For this reason, we have requested further information from our Washington Office. We have sought more detailed direction and have suggested that policy on issues such as this should be national in scope, in order to provide management consistency for any BLM area where citizen wilderness proposals or other types of Congressional interest are involved. Towards this end, my staff is participating on a national BLM task group discussing this issue. We will send you any guidance that we receive in the future.

What are we doing in the meantime?

We are not managing non-WSA areas as wilderness or as WSAs. BLM's Interim Management Policy for WSAs does not apply to H.R. 1500 lands. For example, in WSAs, actions requiring rehabilitation are not allowed except where grandfathered uses or valid existing rights are involved. In non-WSA H.R. 1500 areas, such actions may be and have been approved after a careful case-by-case review.

We are, however, paying careful and particular attention, as specifically directed by the Secretary. We are being careful in our application of the National Environmental Policy Act (NEPA) process used to review proposed actions within H.R. 1500 lands. This more deliberate approach, which invariably means additional opportunities for public involvement, seems wise given the extremely high level of interest shown by Congress and the public regarding this issue. It is important to note that the review and public collaboration undertaken in these instances are consistent with levels of scrutiny given any proposal where controversy, public or Congressional interest, or sensitive resources are involved, whether the project is located in H.R. 1500 or any other public lands managed by the BLM.

___ CENTRAL FILES (UT 950)
___ READING FILE (UT-[illegible])
X READING FILE (UT-[illegible])
___ IB / IM (UT-930)
___ ORIG ([illegible])

BLM 581

Specifically we—

1. Notify interested publics by posting notice of the action on our electronic bulletin board that an action is proposed in an H.R. 1500 area and that an environmental review of the proposal is beginning.

2. Identify in the environmental assessment (EA) or environmental impact statement (EIS) that the action is proposed in an H.R. 1500 area.

3. Consider reasonable alternatives for carrying out the intent of the proposal, including locations outside of H.R. 1500 areas and the no-action alternative. As part of our analysis, we address the effect the proposed action and alternatives might have on Congress' ability to consider these areas for wilderness designation in the future. Alternatives are analyzed to the same degree as the proposed action.

4. Provide a 30-day public comment period on the EA in cases where the manager determines that it is warranted.

5. Select an alternative based on the information provided in the EA and in the public record. We mitigate potential impacts to assure that there is no unnecessary and undue degradation, a standard we apply to activities on all public lands, regardless of their sensitivity.

It is true that in many cases, additional scrutiny and public involvement have resulted in extra time to process a proposal. But overall, our experience has shown that resolutions satisfactory to all concerned parties generally have been found. In some cases, like the Wayne County landfill and an exploratory well near Stinkhorse Peak in the Escalante Resource Area, resolution was achieved by approving alternative locations outside H.R. 1500 areas. Where alternative locations are neither feasible nor justified, we have approved actions within H.R. 1500 areas.

Examples of the latter include:

- Issuance of a multi-year permit authorizing the running of the annual Easter Jeep Safari in the Moab District.
- Issuance of approximately 25 film permits per year in the Moab District.
- Development of a water pipeline and other range improvements for livestock in the San Juan Resource Area.
- Placement of a cellular phone dish on Black Ridge in the Dixie Resource Area of the Cedar City District.
- Approval of the Eco-Challenge endurance race in the Moab District.

In addition to the above examples, we are currently processing applications for permits to drill (APDs) oil and gas wells, including the Samedan well proposal in the Vernal District.

Oil and gas leasing is an area of particular concern. Since August 1993, we have been exercising our discretionary authority not to reoffer automatically all expired or terminated oil and gas leases. As you know, leases periodically come available and we conduct quarterly competitive oil and gas lease sales as part of routine business. Although leases in H.R. 1500 areas are not automatically reoffered, should

industry nominate a specific parcel within H.R. 1500, the district manager makes the call on a case-by-case basis as to whether or not to offer a lease.

We believe that this approach is appropriate for a number of reasons: (1) It makes sense to focus our leasing workload on areas where the return to the Government is greatest. Many of these reoffered lease areas in H.R. 1500 areas have marginal oil and gas resource potential. When leases are issued for such areas, there can be a large workload created (e.g., processing APDs, working through appeals, etc.) even when there is little likelihood for development; (2) The added time for processing APDs, etc., in controversial areas, due to public involvement and appeals, may frustrate the lessees. Our experience has shown that potential bidders normally do not want to incur additional risks inherent with leasing in areas embroiled in public controversy; (3) We believe that the demands of the oil and gas industry are adequately being met without automatically reoffering all areas. Our last quarterly oil and gas lease sale conducted in February, for example, was quite successful. The sale generated over $1.5 million in bonus bids and rents, indicating that we are meeting the needs of the industry. We offered 266 parcels, totaling almost 290,000 acres. Of that number, 81 parcels, totaling just under 75,000 acres, were acquired. Of the remaining 185 parcels that were made available for noncompetitive filing, an additional 36 were filed upon. It is important to acknowledge, however, that even in a successful sale, generally less than one-third of reoffered leases are acquired during the competitive auction portion of the sale.

I do hope that this information has clarified the BLM's current efforts to carry out the Secretary's directions. We believe our policies are consistent with FLPMA and appropriate given the level of interest and controversy which surrounds wilderness issues in Utah.

The enclosed copy of Assistant Secretary Armstrong's April 22, 1994, letter may be useful in addressing some of the issues you bring up in your March 6, 1995, inquiry. Please let me know if I can be of further assistance to you regarding this matter.

Sincerely,

/s/ MAT MILLENBACH

Mat Millenbach
State Director

Enclosure
Instruction Memorandum UT 94-134, dated 7/5/94 (3 pp)

cc: Bob Armstrong, Assistant Secretary
Land & Minerals Management

Mike Dombeck, Director
Bureau of Land Management

MKelsey:tlg:3/17/95(3/30/95):a\ltr(hansen1.wsa)

In Reply Refer To: 4/96?

CO-930

1210/3100

Mr. Norm Mullen
Western Slope Representative
Colorado Environmental Coalition
P.O. Box 2583
Grand Junction, Colorado 81502

Dear Mr. Mullen:

In 1994, a coalition of environmental organizations developed the *Conservationist's Wilderness Proposal for BLM Lands* in Colorado. This proposal included public land acreage outside Bureau of Land Management (BLM) designated Wilderness Study Areas (WSA). On numerous occasions you and other members of the environmental community have expressed concern about protection of wilderness values for these non-WSA lands. Because of these concerns, I stated previously I would establish a statewide policy to guide decisions on proposed actions and management within these areas.

My staff and I have conducted an extensive review of this issue. We have considered your proposals, our entire wilderness review process and decisions, current management plans, and all pertinent laws and policies. We have consulted with our field offices on the specifics of the conservationists' proposals; with other BLM offices and staff; with the Secretary of the Interior's staff; and, with you and other groups interested in the wilderness issue. It has taken time to develop this policy, but I feel the time was well spent in coming to the right decision.

It is our intent to preserve Congress' options on the BLM WSAs as required by Section 603 of the Federal Land Policy and Management Act (FLPMA) and BLM's Wilderness Interim Management Policy and also to preserve wilderness values that may exist on other areas proposed for wilderness designation by the environmental community. I have established a policy intended to protect wilderness values where they exist on all BLM administered lands in Colorado while being fair with other public land interests and honoring valid existing rights.

Congress has not taken any action on wilderness recommendations or proposals in Colorado. Therefore, I have relied upon guidance given the Utah BLM by the Secretary's office in April of 1994 through a letter to Congressman James Hansen. The Colorado situation is not the same as Utah, in that no wilderness bill has been introduced in Congress, but the Hansen letter appears to best represent the Secretary's thinking on the matter.

colorado
environmental
coalition

777 Grant Street, Suite 606
Denver, Colorado 80203-3518 • (303) 837-8701

April 26, 1996

Frank Salwerowicz
Deputy State Director
USDI, Bureau of Land Management
2850 Youngfield St.
Lakewood, CO 80215-7076

Re CO-930, 3100/1210

Dear Mr. Salwerowicz,

Thank you for your letter of April 9, 1996. I want to address just one item. On page 1, paragraph 3, "We are also in need of improved maps and legal descriptions for the various proposed wilderness study areas in you document, the Conservationists' Wilderness proposal for BLM Lands."

I am the person who is doing this work on behalf of CEC and the other organizations. When Dave Porter told me that the "maps have been requested a number of times" it occurred to me that the process which Eric Finstick and I designed was not generally known. Since Eric is still out of the country, this letter is to reiterate my understanding of the status of providing BLM with accurate boundaries.

The general procedure is for me to annotate the boundaries on 1:24,000 quad topo maps which BLM will then scan or digitize into your GIS database. Any further legal description, such as township, range, section, etc. were to be BLM's responsibility.

1. The highest priority maps were the 12 areas which are not Wilderness Study Areas: Bangs Canyon, Deep Greek, Granite Creek, Hunter Canyon, Pinyon Ridge, Rio Grande, South Shale Ridge, Thompson Creek, Unaweep, Vermillion Basin, West Elk Addition, Yampa River. All except Deep Creek were given to Eric last spring. I am sorry, I do not have the exact date.

Because the proposed BLM/USFS Wild and Scenic boundaries for Deep Creek are somewhat larger in several areas than the Conservationists' Proposal, we were hoping to get a field team up there to look again. That was not done last summer. The map will be completed as soon as possible, given conditions especially on the north side of the canyon. In the meantime, the Wild and Scenic proposed boundaries are adequate.

2. The second priority are the WSAs where Conservationists' boundaries differ from BLM's. There are 29 of these. Because of the number, these need to be ranked as to urgency. Potential oil and gas activity would be an important factor.

In the case of these areas, all of which are already in BLM's computer system, BLM was to provide me with the topo printouts, which I would then annotate and return for scanning or

BLM 568

digitizing. No work has been done on these, but I will proceed when I have printouts from BLM.

3. In the remaining 7 areas, all WSAs, the Conservationists' boundaries are essentially the same as BLM, and so they are of lowest priority. There are 3 which may need minor annotation.

It is my understanding that Eric will contact me when BLM can schedule computer time for printouts. In terms of my schedule, I would like to allow approximately one-half day per printout. It would be best to have 5 or 6 at a time, and if I have enough advance notice, I can turn them around quickly.

Sincerely,

Jean C. Smith

cc: Dave Porter, Eric Finstick, Norm Mullen

From: Dave Strunk
To: KWitherb, JRhett
Date: 5/3/96 12:50pm
Subject: Round 3 (of Round 4 of Round 5 . . .) -Forwarded

Forwarded Mail received from: Dave Strunk
Kermit/Jim, Attached are draft responses prepared by "our side" at Frank's request in response to the latest letter from Norm Mullen to the Secretary and the Director. We pretty much built on our mutual draft that Jim Rhett, Frank and Dave Porter wrote a few weeks ago. However, you'll note a change in direction as a result of Don Glaser's WO meeting with the AsstSec last week - we had previously said "...will use decisions in the land use plans", Don was apparently asked to not allow leasing or other uses in the CEC proposed areas until a "national policy" is prepared (to be released after the election).

Also, attached is a draft IM to the Field from the SD indicating this policy shift (requested by SobA and Frank to take to Don on Monday) - the dilemna is that Don was told not to issue any policy.??? Anyway, please review these two drafts to reflect oil & gas concerns but keep in mind we are now constrained by the direction given to the SD. Also, any policy should be interpreted as interim. thanks, Dave

CC: DPorter, EFinstick

TESTIMONY OF

ROBIN M. SMITH

Madam Chairwoman and members of the subcommittee, my name is Robin M. Smith. My family and I are residents of Casper, and for more than 18 years I have worked throughout Wyoming as a petroleum geologist for Chevron USA Production Company. For the past two years, I have been the Waltman Area Project Coordinator for Chevron. The Waltman/Bullfrog Field is adjacent to the Cave Gulch Field.

I appreciate the invitation to relate my company's recent experience in developing this world class resource. Projects which occur on our nation's federal lands are extremely important, not only to Chevron, but to *every* citizen in Natrona County, the state of Wyoming, and ultimately, *all* American citizens. Investments for natural gas development on federal lands are important to the country because they provide clean-burning fuels, they are domestically produced energy sources, they generate thousands of jobs, they help sustain and improve the economy, and they generate badly needed revenue for the local, state and federal governments. This revenue on a local level is largely used to support the education of our children.

This project, and many others like it, have proven to be compatible with protecting the environment. Chevron has a long track record of conducting our Wyoming operations in an environmentally responsible manner that leaves a soft footprint. This is a record that we are extremely proud of.

This morning, I will share with you Chevron's experiences at Waltman/Bullfrog as examples of what *is* and what *is not* working in the Bureau of Land Management's (BLM) permitting and National Environmental Policy Act compliance processes. Since we have been producing oil and gas at the Waltman and Bullfrog Units since the 1950's, I feel Chevron is in a unique position to comment on the merits of the varying degrees of governmental oversight this field has experienced.

The Waltman/Bullfrog area is bounded by a state highway and a railroad and bisected by a county road. This area is located on federal, state, and private lands which have been used extensively in modern times for grazing sheep and cattle. The Waltman/Bullfrog Field shares the Wyoming countryside with a large automobile junkyard, huge power transmission lines, and a pipeline corridor. In short, this is an area that has seen a lot of use and development by the public and industry over the years.

The Waltman Field was discovered by Chevron. The Waltman Unit was approved effective April 13, 1959. As a result of expensive deeper drilling which revealed pay in new reservoirs, the Bullfrog Unit was approved, and the Waltman Unit merged with it effective March 30, 1977. In 1994, Barrett Resources Corporation established the Cave Gulch Unit adjacent to the Bullfrog Unit.

It is this latest proposed development by Chevron, Barrett and other operators that has resulted in increased analysis by BLM of the operators' activities and their potential, associated impacts. This analysis was initiated in late 1994 with the Barrett Field Development Environmental Assessment (EA). This EA was completed with a Finding Of No Significant Impacts (FONSI), in which mitigation to offset potential impacts to nesting raptors was proposed. The Chevron Field Development EA was initiated and nearly completed when BLM announced in January of 1996 that neither EA was

considered adequate, and an Environmental Impact Statement (EIS) would be required. Though it would add significantly to the cost of responsibly developing this resource and increase delays, the operators reluctantly agreed to fund the EIS in order to attempt to speed the process along.

We are now in the final comment period of the EIS for the Cave Gulch - Bullfrog - Waltman Natural Gas Development Project. BLM's preferred alternative in the EIS is to accept the operators' Proposed Action with some mitigation for potential impacts to nesting raptors in the project area. This is the same decision made over two years ago in the first EA.

The operators have funded nearly ¾ of a million dollars of NEPA analyses at Waltman/Bullfrog/Cave Gulch. As of today, approximately 2.5 years have been expended compiling these studies. The ¾ of a million dollars does not include the salaries or expenses of the numerous oil and gas company employees, BLM employees, Wyoming State employees, Federal/State/County employees and elected officials and their staffs, or private citizens that have been involved in the process. If you include all costs and the delayed production which has resulted in delays of royalties, ad valorem taxes, property taxes, etc., the figure would easily triple. Of course, the associated loss of worker productivity also has a staggering cost. Many man-years of effort have been expended on the two EAs, the EIS, and the associated technical reports for the Cave Gulch - Bullfrog - Waltman Natural Gas Development Project.

Overall, BLM and industry are now working well together on this project. But this hasn't always been the case. When the EIS was initiated, BLM tried to include all "interested parties" or stakeholders in discussions and work sessions. The BLM, local, state, and federal elected officials , industry, and conservation groups all sat at the table at various times and endeavored to understand each other's viewpoints and concerns. Unfortunately some individuals used what had been learned at those meetings to try to publicly undermine the entire process. This only served to pit BLM against stakeholders and the proponents of the action as each entity felt that their trust had been betrayed. We believe this severely inhibited the process.

In order for the NEPA process to proceed smoothly, there must be a basis of mutual trust and respect among the members of the parties involved. It is impossible to proceed in a consensus-building effort if the participant's goals are mutually exclusive. If one participant has an agenda which they are not willing to honestly reveal and discuss, and work towards compromise, then the process breaks down.

BLM deserves credit for recognizing that there was a problem and taking the necessary steps to restore trust and communication between the parties who were willing to work towards solutions.

The oil and gas industry is held to unprecedented standards on federal lands in states such as Wyoming. Some important and positive outcomes of the application of these standards can be cited, but in most cases, they result in an extreme case of over-regulation. Industry and the federal government expend huge sums of money in the pursuit of NEPA compliance that generally result in little benefit to the environment. The cost of complying with NEPA, the permitting process, and operating on federal lands in general, is very high, compared to operations on state and private surface. These costs are potentially increasing as new fees are proposed and from delays because of under-staffing of BLM offices. In the case of Waltman/Bullfrog, these costs and delays are conservatively estimated to amount to more than $3 million dollars.

The US oil & gas industry is brutally competitive, highly subject to wide market swings in product price, and is the most highly taxed industry in the United States. Industry efforts to remain competitive with imported oil have resulted in the loss of hundreds of

thousands of jobs over the last decade. Operating on federal lands in the current scenario does not make very good economic sense, when considered in the context of this lean, cost-conscious atmosphere. The obvious outcome in light of today's competitive environment is for industry to continue investing more and more funds overseas where profitability is not so significantly impacted by the cost of complying with non-productive regulations and permitting processes.

Wyoming is a state whose economy depends heavily on revenues from minerals extraction industries. According to figures recently released by the Petroleum Association of Wyoming, more than 16,000 people with an annual payroll of over $450 million are directly employed by Wyoming's petroleum industry. In fiscal year 1996, oil and gas production in Wyoming contributed $378.1 million in property and severance taxes, state and federal royalties, and sales and use taxes. These jobs and revenues are declining significantly from previous years, and cannot be easily replaced. With nearly 50% of the lands and 2/3 of the mineral estate in Wyoming under the control of the federal government, declining oil and gas investments on federal lands has serious implications.

Wyoming's citizens, the people who live and work here, overwhelmingly support the development of the state's great natural resources. According to public opinion polls conducted by the Wyoming Heritage Society, 80% of those surveyed believed that oil and gas development can co-exist with recreational use and wildlife. These sentiments were borne out in our very positive experiences during the Waltman/Bullfrog project. Hundreds of citizens attended two BLM-hosted public meetings to overwhelmingly express their support for the project.

Chevron's goal for our operations is to prudently explore for and produce oil and gas in an environmentally responsible manner while maintaining the long-term viability and sustainability of the lands on which we operate. Chevron has and will continue to comply with all regulations. My purpose in presenting this testimony is to try to assist in improving BLM's permitting and NEPA compliance processes. Chevron is optimistic that the costs and current timeframes for permitting oil and gas operations and conducting environmental studies can be greatly reduced *without* compromising the results. This can be accomplished in large part by implementing all of the NEPA streamlining recommendations submitted to the Secretary of the Interior on February 3, 1997 by the Green River Basin Advisory Committee (GRBAC). Those recommendations include:

NEPA STREAMLING RECOMMENDATIONS

1. Submission of conceptual project plans with standard operating practices and preferred mitigation to help resolve issues early, diffuse controversy, reduce environmental impacts and minimize appeals.
2. Early identification and resolution of critical issues while screening out unproductive time and paperwork spent on peripheral matters and previously resolved issues.
3. Improving coordination and communication among project proponents, affected agencies and stakeholders to reduce adverse comments and time required for BLM to respond to those comments.
4. Improvements in the format and content of the NEPA document that will improve its quality while reducing its size.
   a. Eliminating duplication in data requirements as well as consolidating and accessing existing data bases.
   b. Reducing delays caused by BLM budget constraints by using eco-royalty relief as a tool to fill critical data gaps, to monitor mitigation

effectiveness, and to explore new and creative ways to further reduce environmental impacts.

ECO ROYALTY RELIEF RECOMMENDATION

1. Producers would be allowed to take a royalty reduction on production from specified leases, properties, or units for studies which are the responsibility of the BLM or other federal land management agency, any monitoring studies, and any mitigation measures which go above and beyond standard operating procedures, required stipulations, or standard conditions of approval for mitigation.

NEPA compliance is a process based on a sound principle: studying the impacts to all resources on federal lands and revealing them to the public while allowing exploration for, and production of, oil and gas. But we seem to have lost sight of our goals. Effort tends to focus on the process, not the outcomes. This is form over substance. It has become a self-perpetuating exercise in bureaucratic red tape with very little positive benefit to the environment. Perhaps this is a result of fear realized from the conservation group's litigation of every decision made approving development on public lands.

The outcome of the process could be so much more practical if timeframes and costs could be reduced. Results would be enhanced if some percentage of the dollars needlessly spent on repetitive environmental studies could be diverted to monitoring projects or mitigation that would create or improve habitat!

Thank you, Madam Chairwoman for the opportunity to share Chevron's views. I welcome any questions you and the subcommittee may have.

FIELD HEARING TESTIMONY
PRESENTED BY TERRY BELTON

Madam Chairwoman, Subcommittee members and invited guests, my name is Terry Belton. I am here today representing the Rocky Mountain Oil and Gas Association (RMOGA), a trade organization representing both independent and major oil companies who account for 90 percent of the exploration and development activities in an eight-state region. I work for Texaco North America Production, a division of Texaco Exploration and Production Inc., as head of the Regulatory Section, Denver Region Land Department, and was one of four industry members of the Green River Basin Advisory Committee (GRBAC). I appreciate the opportunity to discuss before the House Resources Committee's Subcommittee on Energy and Mineral Resources several issues of importance to the oil and gas industry in the Rocky Mountain states.

RMOGA is extremely troubled by the growing trend in Department of Interior (DOI) policies in recent years which threatens future prospects for exploration and development of oil and gas on public lands. Specifically, I will discuss:

- DOI's unwillingness to adopt and implement GRBAC's Eco-Royalty Relief recommendations
- Development of new comprehensive cost recovery measures in DOI's minerals program
- De-facto wilderness land withdrawals by BLM
- The lack of consideration given socio-economic factors by Federal land management agencies when making decisions in accordance with the National Environmental Policy Act (NEPA)

Eco-Royalty Relief

Industry initially opposed establishment of GRBAC due to concerns over potential additional permitting delays and greater uncertainty associated with the already lengthy and cumbersome NEPA process. However, when DOI moved ahead with the initiative, we endeavored to make the best of it. After much hard work and dedication, GRBAC members developed a consensus-based innovative solution to reduce conflicts in the Green River Basin and to ensure reasonable development of oil and gas while protecting, and in many cases enhancing, the environment through the use of Eco-Royalty Relief (ERR).

ERR is a voluntary two-pronged approach which balances oil and gas development with the need to protect the environment by allowing a "credit" to be taken against royalty payments in situations where operators pay for NEPA documentation and related activities, which are BLM's responsibility, and in instances where project mitigation or monitoring go above and beyond lease and regulatory requirements. The final GRBAC report included a Department of Energy financial analysis which indicated application of ERR would actually help accelerate royalty payments to the states and counties in the Green River Basin.

Unanimously agreed upon by industry, environmental groups and affected states and counties, the ERR recommendation proposed a five-year pilot

project limited to the Green River Basin with an annual cost cap of $4.8 million (roughly 1 percent of the annual federal royalties paid in Wyoming). Although GRBAC has yet to receive an official response to its Final Report/Recommendations, the revenue-positive ERR concept was essentially "killed" by the Solicitor's office. We are convinced Secretary Babbitt has the authority to implement ERR but are extremely disappointed that DOI has failed to adopt ERR or even to assume leadership in finding ways to implement the recommendation. GRBAC has done its job. Unfortunately, DOI has dropped the ball and a win-win opportunity has so far been lost.

Cost Recovery

In December 1996, the Solicitor's office issued its M-36987 Opinion which claims that BLM not only has the authority to recover all costs associated with minerals document processing, including NEPA documentation, but it is also legally mandated to do so. We believe this Opinion is politically motivated by an Administration that is more interested in creating an off-budget source of funding and constraining mineral development on public lands than allowing such development to proceed in an environmentally sound manner. We are concerned the Administration's intent is to balance the federal budget and further reduce the deficit by increasing fees for public land users, such as oil and gas producers. New cost recovery measures must not be aimed at providing alternative or supplementary funding for BLM programs.

We especially take exception to the concept of DOI charging additional fees for minerals processing without assurances that BLM service will be commensurate with fees paid. We have no guarantee that customer service will be enhanced and permits expedited. In the absence of specific mechanisms in place to collect fees, we predict the majority of the proposed fees would not be earmarked for distribution back to specific programs or geographic areas generating the fees; rather, they would likely go to the general fund. Cost recovery could lead to unprecedented revenue collection by the agency. If these additional funds are retained by BLM, the revenue **windfall** could lead to further BLM budget cuts by Congress. This, in turn, would expand the ever-increasing burden on industry and other public land users to fund the federal government.

A coalition of industry associations, many of whom are represented here today, recently submitted a Freedom of Information Act request (Exhibit A) to the DOI in an effort to determine the extent of this cost recovery effort and its financial impact on oil and gas operations on public lands. You will note the FOIA request includes fee schedules for all public land users, analyses related to setting such fees, a description of how financial benefits of the domestic oil and gas program to the Federal Treasury and public were considered in developing a cost recovery program, projected impacts of the program on the oil and gas industry, along with related briefing papers, reports and studies.

On behalf of the oil and gas industry, RMOGA requests the Subcommittee's help in determining the financial impacts of the proposed cost recovery program on industry, the onshore oil and gas program, and the Congressional budget appropriation process. We believe a General Accounting Office (GAO) inquiry would be instrumental in conducting an objective analysis and formulating reasonable recommendations. GAO could also investigate the revenue generated by the onshore oil and gas program and compare it with the actual cost of its administration. DOI records show, industry already pays its own way. According to the Minerals Management Service (MMS), industry paid approximately $650 million in 1996 in bonuses, rents and royalties to the Federal government. It is our understanding that a significant portion (25 percent) of this revenue is used to pay for the administration of the oil and gas program before MMS disperses to the states the net receipts share. It would seem DOI intends to charge industry twice for the administrative costs of the onshore oil and gas program.

Finally, there is a limit to what industry is able and willing to pay. Oil and gas operators, regardless of their size, have finite resources available to them and will cease to invest in the exploration and development of federal lands if additional operating costs imposed by the federal government render projects uneconomical. Further decline in domestic exploration and development due to a cost recovery program would also have a significant

socio-economic impact on western states and their citizens who rely on such activities as a significant component of their economic well being.

De Facto Wilderness Withdrawals

Oil and gas leasing has been thwarted in both Colorado and Utah due to the Department's pro-wilderness agenda. DOI has refused to lease certain multiple-use lands in both states because they have been nominated for wilderness designation by preservation groups. RMOGA asserts these withdrawals are improper because they fail to conform with BLM's wilderness review process established under the Federal Land Policy and Management Act (FLPMA) and in accordance with the 1964 Wilderness Act. Our members did not endorse all of BLM's wilderness recommendations, particularly those which place areas with significant oil and gas potential off-limits. Nevertheless, RMOGA accepted BLM's wilderness recommendations as being based on extensive site-specific data and professional judgment. BLM's final wilderness recommendations comply with all public land laws which included extensive public input and scrutiny. The "de facto" wilderness withdrawals at issue here were made in accordance with secret agreements between BLM and preservationists.

We strongly object to the Department's decision to ignore the considerable time, money and manpower expended by all involved parties to manage or participate in the wilderness review and land management planning processes. Unless stopped, we fear the same policy will spread to other

public land states. Neither the states nor industry can afford these delays or additional, arbitrary land withdrawals. Industry has played by the rules; the Department and the Administration should do the same.

NEPA Concerns

In the two decades since FLPMA, NFMA (National Forest Management Act) and NEPA were enacted, it is plainly evident that socio-economic needs and impacts and values have played little or no role in the Federal decisionmaking process. When the lack of adequate analysis of socio-economic impacts and benefits in the NEPA process is raised as an issue to Federal land managers, industry is often told that NEPA merely requires an analysis of environmental impacts of decisions. The cursory socio-economic analysis included in the NEPA documentation is of little value in making decisions which affect the immediate and future economic conditions of user groups, states and local communities. The conspicuous lack of attention to socio-economic benefits stemming from commodity development and the adverse economic impacts of severe limitations on uses due to aesthetic or similar reasons is of tremendous concern to the western states who are adversely affected because they hold 90 percent of the federal lands within their borders.

Delays, uncertainty and costs associated with the NEPA process are also primary industry concerns. While DOI has formally adopted the NEPA Streamlining recommendation submitted by GRBAC, we are concerned that

little has been done outside the Jonah project in Wyoming regarding its implementation. GRBAC's goal was to improve the quality of documentation as well as to cut delays and paperwork associated with the NEPA process by 50 percent. Even though the Committee's focus was on the Green River Basin, the elements of NEPA streamlining should be implemented Bureau-wide. To do so would be in the best interest of DOI, industry, and the public. The Subcommittee could ensure and monitor DOI's implementation of the NEPA Streamlining recommendation by requiring an annual report from BLM that identifies time, manpower, and cost savings realized by the agency.

The following RMOGA recommendations are designed to provide for a balanced policy that encourages environmentally responsible exploration and development of oil and gas resources on public lands:

Recommendations

- **Subcommittee advocacy of GRBAC Eco-royalty Relief recommendation**
- **Subcommittee advocacy for marginal gas and renewal of the stripper oil royalty relief**
- **GAO study of the potential effects of DOI's cost recovery measures on the domestic oil and gas industry**
- **Review of DOI de facto wilderness policy for managing nonwilderness lands proposed for wilderness by preservation groups**
- **Advocacy of greater consideration of socio-economic impacts in NEPA documents and the Federal decisionmaking process**

- **Annual progress report from BLM detailing implementation of GRBAC's NEPA streamlining recommendation**

RMOGA appreciates this opportunity to provide you with our views. I will be glad to answer any questions the Subcommittee may have at this time.

EXHIBIT "A"

June 9, 1997

Director
Office of Administrative Services
US Department of Interior
1849 C Street, NW
Washington, DC 20240

Re: FREEDOM OF INFORMATION ACT REQUEST
Pertaining to the Department of Interior's Direction to Maximize Cost Recovery Efforts Related to Minerals Document Processing or Other Program Costs

Dear Sir/Madam:

It has come to the oil and gas industry's attention that the Department of Interior (DOI) is initiating a new cost recovery plan for minerals documents processing as indicated in the *Regulatory Agenda* published in 62 FR 21860, April 25, as well as the speeches and announcements made by BLM. Industry is uncertain how extensive this cost recovery plan is and how it will financially impact oil and gas operations on public lands. In order to better understand DOI's intent, industry needs information beyond that provided at the recent Combined State of Colorado and BLM National Petroleum Exposition and Workshop. Therefore, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, and the Department's regulations, 43 CFR Part 2, the undersigned organizations hereby request:

1. A copy of all documents relating to Solicitor's Opinion M-36987 on the recovery of costs of mineral document processing or other program costs within the Department or BLM. For purposes of this request, the term "document" also includes, but is not limited to, any writing, report, letter, manual, note, electronic data or mail, memorandum, guide, guidance, instruction, text, correspondence, communication, computer data, drawings, graphs, charts, photographs. Documents we are requesting include:

    1.1. All correspondence between or among the Asst. Sec. Land & Minerals Management, the Solicitor's office, BLM, Office of Financial Management, Inspector General for Audits, and Program Leads, e.g., Durga Rimal and Barbara Fugate, on the minerals cost recovery effort
    1.2. Fee schedules for all users of public lands, including
        1.2.1. Cost of analysis required to set fees
        1.2.2. Initial program and processing fees
        1.2.3. Itemization of fee increases adopted since fees were originally set
        1.2.4. Customer service improvements planned by BLM
    1.3. User fees for mineral related document processing

1.4. Past draft proposed rules on cost recovery previously considered
1.5. Between 1980-1996, on an annual basis:
  1.5.1. how many Federal applications for permits to drill, sundry notices, inspections, and rights-of-way (ROW) were filed and approved
  1.5.2. the cost to BLM for processing these actions
  1.5.3. the revenue generated by the Federal oil and gas program
1.6. Description of how financial benefits of the domestic oil and gas program to the Federal Treasury and public were considered in developing the cost recovery program and direction
1.7. Exemption requests and approvals
1.8. FLPMA Reasonableness Factors analysis, including:
  1.8.1. the cost of determining and assigning defensible recovery fees
  1.8.2. a comparison of fees BLM expects to collect compared to the cost of collecting the fees
1.9. Cost of processing ROWs v. fees charged
1.10. BLM minerals processing cost studies since 1988
1.11. Description of projected effects to the domestic oil and gas industry of the proposed program
1.12. OIG Final Audit Report On Recommendations Relating To BLM
1.13. Cost recovery action plans and/or timelines
1.14. Memoranda and correspondence related to M-36987 Opinion draft(s)
1.15. Memoranda and correspondence related to the final M-36987 Opinion
1.16. Accountability measures DOI will institute to keep program costs down
1.17. Number, type and cost of NEPA documents prepared by DOI on APDs and ROWs
1.18. Number, type and cost of NEPA documents prepared by 3rd party contractors, paid for by industry, for DOI on APDs and ROWs
1.19. Decision papers since 1988
1.20. Briefing papers on a Minerals Cost Recovery Program
1.21. All materials, information and documents which address or relate to:
  1.21.1. Paperwork Reduction Act
  1.21.2. Regulatory Flexibility Act
  1.21.3. applicable Executive Orders
  1.21.4. DOI reinventing government initiatives (REGO 1 and 2)

Should you determine any of the requested information is exempt from disclosure, please delete such allegedly exempt portions. This consent is intended to facilitate your prompt response and in no way waives our entitlement to complete satisfaction of our FOIA request. If we are denied any document or any portion of any requested document, please precisely identify each document and specify the statutory basis for the denial of each document or portion withheld along with the names and title of the persons responsible for the denial.

The fee category for this FOIA request is 43 CFR Part 2.20 (e). However, we request a waiver of all fees because, in accordance with 43 CFR Part 2.21(a)(I) and (ii), respectively, this request will contribute significantly to public understanding of the operations or activities of the Department of Interior and is not primarily in the commercial interests of the undersigned associations.

Please direct your response to the undersigned associations **in care of**:

Claire M. Moseley
Rocky Mountain Oil & Gas Association
1775 Sherman Street, Suite 2501
Denver, CO 80203
(303) 860-0099, FAX (303) 860-0310

We look forward to your prompt response.

ROCKY MOUNTAIN OIL & GAS ASSOCIATION

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES

NEW MEXICO OIL & GAS ASSOCIATION

WESTERN STATES PETROLEUM ASSOCIATION

AMERICAN ASSOCIATION OF PROFESSIONAL LANDMEN

CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION

AMERICAN PETROLEUM INSTITUTE

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO

WYOMING INDEPENDENT PETROLEUM ASSOCIATION

Presented by John W. Martin, President, McMurry Oil Company
Casper, Wyoming 1

IPAMS is a non-profit, non-partisan trade association representing the interests of independent oil and natural gas producers, royalty owners, industry consultants, and service/supply companies operating in a thirteen-state Rocky Mountain area: Wyoming, Colorado, Montana, New Mexico, Utah, Nebraska, North Dakota, South Dakota, Nevada, Arizona, Idaho, Washington, and Oregon.

IPAMS appreciates the opportunity to present testimony at this public hearing. We find it encouraging that members of the Subcommittee on Energy and Mineral Resources would travel this distance to learn more about the public land issues of concern to our Western communities.

It would be naive to think that in a hearing of this length, it is possible to discuss all of the complex issues involved in developing oil and gas on public lands. At best, one can look at past and current events and try to understand the trends.

I. THE BIG PICTURE

In the current atmosphere of less government, budget cuts, and smaller agency staffs throughout government, more is being demanded of public land managers. They must balance the needs and pressures of at least three interest groups: (1) Natural resource industries which would like government to perform like an efficient business of the 90's, maximizing value and customer service; (2) Recreationists who are looking for more opportunities to enjoy the outdoors; and (3) Environmentalists who would like to see the public lands left undisturbed, to flourish in their natural state.

One of the great things about this country is that all of these groups have a right to their own values; however, it is left to our government officials to balance these often overlapping interests.

IPAMS is interested in providing some recommendations on how to improve the system in place that allows each of these diverse interests to simultaneously enjoy and thrive on public lands.

II. THE MULTIPLE USE MANDATE

First, we would remind policy makers that '**multiple use**' is the law governing Federal lands and that not all uses pay their own way. Many uses, such as wilderness, operate in the red. Courts have interpreted multiple use to mean that each use is required **"due consideration."** This "due consideration" is especially important now that land management agencies have expanded their missions at the same time that their budgets have been cut, forcing them to seek new sources of funding. Naturally, they are turning to the users of federal lands for these additional funds. As budgets are tied to revenues generated by some users of federal lands, new consideration must be given to profit generating uses of public land.

Multiple use decisions by agencies must distinguish between profit-generating uses and those uses that operate in the red. **Agencies must exercise their responsibility to steward a profit center that annually creates over three billion dollars in revenues for the federal government. Oil and gas development on Federal land is the third largest source of revenues to the federal government.** Oil and gas development produces over **81% of the commercial output** that occurs on federal land. Of the $23.9 billion in commercial output that occurs on federal BLM lands, over **$19.4 billion** comes from oil and gas.

Multiple use decisions affect **rural communities** in the United States. Nearly 1.5 million jobs are created nationwide by our industry and those jobs are especially critical for rural communities in Wyoming, Western Colorado, Utah, Montana, and New Mexico. Multiple use impacts the economic health of these States. Citizens and school children depend upon the tax revenue and federal royalty revenue which is provided by the efforts of the industry. In Wyoming, the State's share of revenues from oil and gas provides over one third of the funding for the public school system.

Equally important to revenues and employment, multiple use decisions affect **national security**. A healthy oil and gas industry is imperative to maintaining national security without increasing dependency on foreign oil to satisfy our fundamental energy needs.

More opportunities must be made available to the profit centers of public lands to fund the ever-increasing, revenue-demanding programs that come on line. Leases must be issued and development of these leases permitted in order to fund these programs. This year Acting BLM Director Sylvia Baca requested a $31.9 million increase over the '97 budget, citing projects such as the newly created Escalante/Grand Staircase National Monument as the basis for increased need.

Oil and gas development follows a logical process. First you perform geological analysis; then you need to obtain a lease; then you need access to the lease for exploration; finally you have to be able to develop the lease if and when discoveries are made. Even with a lease, access, and the ability to develop, there is no guarantee of success. Nine out of ten exploratory wells drilled are dry holes. They produce nothing, but cost an average of $500,000 to drill here in the Rockies. Oil and gas exploration is a gamble where all the risk is managed by the private sector; but there are tremendous potential benefits to citizens of this country in the form of bonuses, rentals, royalties, and taxes paid to the government, not to mention the enhanced quality of life that is provided by oil and gas.

III. WITHHOLDING PUBLIC LANDS FROM THE LEASING PROCESS

There is a saying within the oil and gas industry: "No lease, no grease." Nothing has a more profound effect on our industry than restricting and decreasing access to Federal lands. Oil and gas development is location sensitive; only those lands under which the resource occurs are worth developing. When those lands are arbitrarily withdrawn, oil and gas development is precluded and benefits are lost.

The BLM and Forest Service have, for a variety of reasons, withheld public lands from the leasing process, and in fact, continue to do so:

- The **Rawlins District** recently withheld 29,122 acres in the Shamrock Hills ACEC (supposedly to be available in the October 1997 sale) and has withdrawn 200 out of a proposed 1432 acres in the Nine Mile Hill area.

- The **Rock Springs District** continues to withhold thousands of acres on Steamboat Mountain.

- The **Bridger-Teton National Forest** has held applications for leases and the associated deposits without processing them for over three years. Can you imagine a business where you give a $45,000 deposit to a company along with a signed contract and then you don't hear for them for three years? This is occurring after a resource management planning effort was conducted on the forest that took ten years to complete and cost taxpayers more than $4 million. Yet, the Forest Service is still unable to make leasing decisions for these high potential areas. Imagine the cost and lost opportunity to taxpayers. This is an ongoing problem and helps to explain why the oil and gas industry has responded to land management agency surveys as having the lowest customer satisfaction among users of public lands. If an area has been identified as available for leasing, but the agency does not offer it for lease, they are in effect, creating a defacto withdrawal of lands from use, simply through their inaction.

- The Casper District also proposed to withhold 2799 acres near Hell's Half Acre (which will now be offered due to operator protests) and has withdrawn 160 acres on Cedar Ridge in perpetuity.

These defacto withdrawals of lands from the leasing process stymie development and may have a questionable legal basis (reference Mountain States Legal Foundation v. Hodel, Civ. No. 86-0022-K, D.WY.1986).

RECOMMENDATION

Regional or programmatic NEPA analysis that is incapable of providing a basis for decision making is a waste of taxpayers money. Programmatic documents must address the expected impacts of a group of actions or impacts common to projects in a program. If NEPA analysis is properly

done during the development stages of the programmatic document, subsequent lease decisions for a region, site or facility can be made by referring to previous decisions that were made at the programmatic level.

IV. NEPA'S EFFECT ON ACCESS AND DEVELOPMENT

Once an operator purchases a lease, the challenge has just started. Developing oil and gas requires access to land for geologic evaluation, exploration, and engineering. Oil and gas producers are primarily interested in sub-surface geologic features. However, these companies work hand in hand with land managers to protect the surface environment and mitigate potential impacts. Unfortunately, the overriding trend by Federal land managers is to limit or restrict access and development. It is comparable to being allowed to buy a car, but not having the right to drive it. What's the point?

Not only do funding restrictions prohibit agencies from performing necessary analysis, problems with access and development are due in part to the increasing level of investigation, mitigation and resulting restrictions imposed by the NEPA process.

A. Increasing Level of Investigation Required Under NEPA

The National Environmental Policy Act of 1970 (NEPA) requires that federal agencies consider the environmental effects of, and any alternatives to, all proposals for major federal actions that may significantly affect the quality of the **human environment**. NEPA, in short, was designed to help government make better decisions. The assumption is that if potential impacts are documented, alternatives explored, and mitigation measures implemented, unforeseen impacts affecting the **human environment** will be less likely to occur.

Unfortunately, the authors of NEPA left the language of the Act very broad, and in doing so, created a policy that would be shaped in a fragmented way through various court decisions. Eventually, much of the original intent of NEPA was lost.

Over the past few years we have seen the range of topics that land management agencies require to be studied under NEPA analysis, such as critical habitat, wildlife, and air quality, greatly expand. All topics considered in previous studies, even those seemingly unique to a particular project, have become standard fare, with embellishments, in all subsequent NEPA analysis. The level of investigation conducted on these subjects has also gotten out of hand.

The Council On Environmental Quality Agrees

"Congress envisioned that federal agencies would use NEPA as a planning tool to integrate environmental, social, and economic concerns directly into projects

and programs. However, during the first 25 years of NEPA, application has focused on decisions related to site-specific construction, development, or resource extraction projects. NEPA is virtually ignored in formulating specific policies and often is skirted in developing programs, usually because agencies believe NEPA cannot be applied within the time available or without a detailed proposal. Instead, agencies tend to examine project-level environmental effects in microscopic detail. The reluctance to apply NEPA analysis to programs and policies reflects the fear that microscopic detail will be expected, even when such depth of analysis is not possible that early in the proposal stage." (The National Environmental Policy Act: A study of its effectiveness after twenty five years. Executive Office of the President, Council on Environmental Quality. January 1997.)

Examples of an ineffective use of NEPA analysis can be seen in the following cases:

- **The Jonah EIS in Wyoming** which is a streamlined version of NEPA analysis is projected to cost in excess of $300,000 and may take up to two years to complete.

- The **Price Coalbed Methane Project** in Utah is in its final stages of an EIS that took more than three years and ran $1,000,000 over budget to gain access to federal lands which had been previously issued to the company by the BLM.

- **Special stipulations that can severely restrict access are provided for Animal species that are not even threatened or Endangered**. By listing a species as a "sensitive" or "special status species", protection from being impacted in some way by human activity is provided as if that species were "endangered" or "threatened', regardless of whether the species fits either qualification.

- **Timing and seasonal restrictions** are imposed on access in favor of expanding feeding grounds for even the most common animals like deer and elk. By doing so the window of development is often severely limited. In other cases, these restrictions overlap to the degree that there is no reasonable opportunity for exploration.

RECOMMENDATION

JUDGMENT NEEDS TO BE APPLIED DURING THE SCOPING PHASE OF ENVIRONMENTAL STUDIES SO THAT A MORE APPROPRIATE LEVEL OF EVALUATION IS CONDUCTED, NOT SIMPLY EVERYTHING WHICH HAS BEEN DONE BEFORE. THE DISCRETIONARY DECISIONS IN EACH PROJECT SHOULD NOT SET THE PRECEDENT FOR ALL SUBSEQUENT PROJECTS. APPROPRIATE CHANGES

WILL RESULT IN A TIMELY, LESS COSTLY PROCESS THAT WILL YIELD BETTER DECISION MAKING DOCUMENTS.

B. Delays and Costs Associated with NEPA Analysis.

NEPA analysis has become open-ended, both in terms of timing and cost. Agencies are unable to perform NEPA studies because programmatic funds are allocated elsewhere. This means industry is forced to pick up the tab for environmental studies if they want to do business on public lands in a timely manner. What's more, because agencies are no longer accountable for the cost of environmental studies, industry believes the agencies often condone very costly and time consuming analytical procedures or mitigation measures that are significantly out of proportion to the magnitude of the underlying proposal.

RECOMMENDATIONS

POLICY MAKERS NEED TO DEVELOP POLICY FOR LIMITING THE EXCESSIVE FINANCIAL BARRIERS RELATING TO EXCESSIVE NEPA ANALYSIS AND THE RESULTING MITIGATION MEASURES IMPOSED. A COMPANY BUDGETS ITS DRILLING EFFORTS ON AN ANNUAL BASIS. NEPA REQUIREMENTS MAY DELAY A WELL BY SEVERAL YEARS. BY THEN THE COMPANY'S ECONOMIC ANALYSIS OF THE WELL IS NO LONGER VALID. THERE IS A POINT AT WHICH THE COST AND LENGTHY DELAYS OF NEPA WILL NO LONGER JUSTIFY THE POTENTIAL RISK AND BENEFITS ASSOCIATED WITH OIL AND GAS DEVELOPMENT. AT THAT POINT, THE COUNTRY, STATES, COUNTIES, SCHOOL DISTRICTS AND THE INDUSTRY BECOME THE LOSERS.

C. Inconsistent Interpretation of Environmental Laws during NEPA Analysis.

Another barrier to access and development is the inconsistency in interpreting environmental laws. If a company gets a different answer or decision from every agency or field office there is no way to properly plan and budget for anticipated environmental compliance. Examples of this problem can be seen in how various agencies interpret The Clean Air Act and The Endangered Species Act during NEPA analysis.

1. Air Emission Limitations and the Clean Air Act

One of the most threatening recent policy trends to limit development is the emissions limitation imposed by the BLM in the Green River Basin. This policy will certainly limit oil and gas development on Federal lands. The limitation is particularly objectionable because it applies only to oil and gas development and agencies disagree over authority and interpretation of the Act. No other industry is subject to the emissions limitation, yet

emissions from other industries apply towards the cap imposed on the oil and gas industry. Even more ironic, natural gas is part of the solution to air quality, but you have to drill wells to get it to end users. **BLM statements suggest that the intended effect is to shift development from Federal to private or state land.**

RECOMMENDATION
POLICY MAKERS SHOULD INTERVENE TO PREVENT THE DIVISIVE USE OF UNSOUND SCIENCE TO LIMIT AIR EMISSIONS. THIS IS AN ATTEMPT TO FORCE OIL AND GAS OFF PUBLIC LAND. A SHIFT FROM PUBLIC TO PRIVATE LANDS IS NOT ONLY IMPRACTICAL, IT IS UNFEASIBLE. IN MOST WESTERN STATES, PUBLIC LANDS CAN COMPRISE UP TO 90 PERCENT OF THE STATES TOTAL LAND. IN WYOMING, OVER 50 PERCENT OF THE STATE'S TOTAL LAND IS OWNED BY THE FEDERAL GOVERNMENT.

2. The Endangered Species Act and NEPA analysis.

- A BLM office in Vernal Utah uses the term *special status species* to compensate for a species that is not listed, while the neighboring Rock Springs Wyoming District does not.

- Development of the Monument Butte oil field in Utah was delayed pending the possible nesting of a bird which is not listed as an endangered species. The Endangered Species Act was not designed to extend the same protection to potential candidate species as those received by listed species.

  In another instance, BLM policy required that industry operations be moved outside a ½-mile radius from nesting feruginous hawks. Feruginous hawks are, again, a candidate threatened and endangered species. The additional irony is that many feruginous hawks voluntarily locate their nest within this ½-mile radius and have done so in numerous recorded cases since the early 1960's.

Recommendation
DISTINCTIONS MUST BE DRAWN BETWEEN THE CANDIDATE SPECIES AND THOSE SPECIES LISTED AS THREATENED OR ENDANGERED. THERE IS A CLEAR NEED FOR REGULATORY CONSISTENCY AND CERTAINTY WITHIN THE SAME DEPARTMENT AND BETWEEN DEPARTMENTS OF GOVERNMENT.

An example of real progress can be found in the form of a government publication called the ***Red Book.*** The ***Red Book*** was a collaborative effort between EPA, The National Forest Service, the BLM, Fish and Wildlife and the Army Corps of Engineers to deal with wetlands issues. **The same idea could be required across the span of environmental laws to bring some consistency and certainty to environmental decision making.**

E. Economic Impacts Analysis under NEPA

While NEPA requires that consideration be given to economic impacts, the level of economic analysis in the majority of present-day oil and gas field development NEPA documents is not as detailed as necessary. The economic impact should clearly assess not only the benefits if the project goes ahead as proposed, but also the impacts of partial denial or the imposition of restrictive development measures.

In Wyoming, oil and gas activity on Federal lands generated over $140 million in revenue in 95', half of which went to the Federal Government and the remainder went to the state. Of the 1,882 parcels offered for lease here in Wyoming in '96, 971 were leased resulting in bonus bids amounting to over $8.6 million in revenues to the Federal Treasury and State of Wyoming. These bonus bid revenues are paid over and above the lease price in a competitive bid process. And for the sake of perspective, Wyoming is ranked seventh in the country for crude oil production and sixth nationally for natural gas production.

RECOMMENDATION

Our final recommendation is to encourage policy makers to require agencies to be accountable for multiple use decisions and their associated economic impacts. No other multiple use of public lands can boast a four-to-one ratio of return on investment to the government (For every $1 it spends to manage the oil and gas program, government gets $4 in return). Wouldn't you like having all of your investment decisions reap a 400 percent return?

IPAMS strongly supports the higher level of economic analysis being performed for the most recent NEPA documents. However, agencies must go further in their analysis of Socio-economic impacts and consider the positive impacts of oil and gas development. **AGENCIES MUST BE ACCOUNTABLE FOR THE REAL MONETARY EFFECTS OF BOTH THEIR ACTION AND INACTION.**

V. CONCLUSION

In closing, we would like to again thank you for listening to our comments and recommendations for improvements. Hopefully you will leave today with a new

appreciation for the contributions of this industry. There are some frightening trends emerging, but the timing is right for making changes that will reverse these trends. Our industry is willing to participate in the process of bringing common sense back into environmental decision making and NEPA analysis. We are confident that policy makers will actively seek solutions to ensure the future of this vital industry.

America is a great country and we are blessed to have an immense amount of public lands and all the opportunity associated with them. It is no coincidence that we call these lands the great outdoors; they provide a great number of overlapping uses for this country. If we are allowed the opportunity to acquire leases, gain access to them, and develop leases, the industry is committed to being an integral partner on Federal lands, sharing both the responsibility and the opportunity with other users of public lands. Contrary to what some groups may say, we are not the problem, we are part of the solution. Thank you for your time and interest.

Robert Hoskins
Board of Directors

The Green River Basin Advisory Committee (GRBAC) and Cumulative Impacts Analysis/Mitigation for Wildlife Conservation

My name is Robert Hoskins. I serve on the Board of Directors for the non-profit Wyoming Wildlife Federation. Our members are 4000 hunters, anglers, and wildlife enthusiasts who share an unwavering commitment to wildlife and the protection of public lands in our state to benefit *all* citizens.[1]

As you know, our Executive Director Dan Chu served on the GRBAC. Today, I will discuss what we expect from the GRBAC's recommendations to the Secretary of the Interior. In particular, I wish to address our one expectation that GRBAC failed to meet--assessing and mitigating the cumulative impacts of industrial development on wildlife and wildlife habitat in the Green River Basin.

What the GRBAC faced was the unprecedented intensity and scope of natural gas development proposed for the Green River Basin over the next 20 years. The GRBAC's charge was to reach consensus on managing "two world class resources"--the Basin's *massive* natural gas reserves and its *incomparable* wildlife resource.

The GRBAC held its first meeting in March 1996 under a cloud of misinformation spread by industry groups, not to mention Wyoming state officials.[2] Nevertheless, GRBAC members developed recommendations

---

[1] Most of our members live and work in Wyoming, and they take a very special interest in the management of their *local* public lands.

[2] The GRBAC Final Report, at 84, notes that at GRBAC's first public hearing, "nearly 1000 people attended the 3-hour public comment period (extended from 1 hour originally scheduled) ... Oilfield workers, industry representatives, and other observers blamed excessive environmental regulations and environmental groups for slowing gas development in the greater Green River Basin area. Several speakers criticized the Interior for forming the GRBAC as being redundant, and potentially slowing down the process for approval of new natural gas drilling projects. Many oilfield workers expressed frustration from permitting delays that are causing hardships for employees and their families."

Such speakers offered no proof for their claims--the oil & gas industry merely used its employees during the 3-hour session to blame environmentalists and environmental laws for all industry problems. Problems such as unstable markets from natural gas deregulation, glutted markets and low prices due to competition from Canadian natural gas, inadequate transportation infrastructure, geological uncertainty in the gas fields, etc., mattered little. Environmentalists were to blame for everything.

for the more efficient management of natural gas development: NEPA streamlining, updated road standards, eco-royalty relief, transportation planning, and partnership opportunities.

Unfortunately, the GRBAC dropped the ball on protecting the Green River Basin's incomparable wildlife resource. It failed to address the Federation's primary concern--the identification, analysis, and mitigation of the cumulative impacts of industrial development on wildlife. Given our willingness to reach consensus, particularly on the controversial "eco-royalty relief," we are deeply disappointed with the GRBAC's failure to develop recommendations for dealing with the undeniable threat of cumulative impacts. Therefore, we consider the work of the GRBAC unfinished and we intend to vigorously press the issue until it is resolved to our satisfaction.

What are cumulative impacts? Simply, they are the disruptions, displacements, degradation, and destruction of natural resources by unsustainable human economic activities that occur over a very long period of time.

The historical and scientific record of the cumulative impact of man's economic activities on the environment is unassailable.[3] Developing case law and legal scholarship on NEPA and watershed protection--and the

---

Wyoming State Representative Gordon Parks, R-Evanston, added fuel to the anti-environmentalist rhetoric by comparing environmentalists to prostitutes, saying " power without responsibility has been the perogative of harlots throughout the ages, and it's the goal of environmentalists." Katherine Collins, "Development advocates assail environmentalists," *Casper Star-Tribune*, 28 April 1995 at B1. Parks made these remarks at an anti-environmentalist rally held the night before the Wyoming Conservation Congress, which addressed the problems natural gas development posed, opened in Rock Springs. Parks' rhetorical excesses helped cause his defeat in the 1996 elections by Evanston Democrat Ken DeCaria.

[3] The depletion of big-game herds in the East and Mid-west; the near extinction of the bison from the coming of the rail and agricultural industries to the West; the Dust Bowl of the 1930s; the pollution of Boston Harbor, Chesapeake Bay, the Great Lakes, and the Mississippi River system; the current unsustainable depletion of the Great Plains aquifers; the increasing salinization of the Colorado River basin; the severe decline of salmon runs in the dammed-up Columbia River system; this year's devastating floods in the Missouri, Mississippi, and Ohio River systems; and a whole host of environmental disasters around the world dating back to Mesopotamia that would take pages to list;--all resulted from man's failure to recognize, consider, and mitigate the long-term impact of his manipulation of the environment.

Green River Basin is clearly a major watershed--indicate that cumulative impacts analysis is necessary, *especially* when development on federal land triggers substantive legislation like the Clean Water Act, the Clean Air Act, the Endangered Species Act, or the Migratory Bird Treaty Act.[4]

Historically, no industry has remained unscathed from scientific findings that its activities produce harmful long-term impacts on the environment. That's what environmental laws are about.[5]

Nevertheless, industry refuses to acknowledge the cumulative impacts of its activities, claiming that we do not have adequate scientific information that demonstrates those impacts, nor the technology to mitigate them even if we did. From our standpoint, this claim makes as much sense as would a claim that deferred equipment maintenance has no cumulative impact on industry operations and earnings.

The oil & gas industry cannot deny the facts. Over the last decade and a half, the scientific disciplines of conservation biology and restoration ecology have produced much research into the long-term harmful impact of human economic activities. Activities that fragment and degrade wildlife habitat, or create opportunities for exotic species to invade disturbed land, have severe long-term impacts. This research has been widely published.[6]

Industry's primary objection to cumulative impacts analysis and mitigation is the cost and the requirement that development, and thus profits, be spread out over a long period of time. We don't believe those complaints are good enough for the Green River Basin's incomparable wildlife

---

[4] See Coggins et al. 1993, *Federal Public Land and Resources Law,* 3d Ed., Westbury NY: The Foundation Press, Inc., at 415-421 and Glicksman and Coggins, 1995, *Modern Public Land Law,* St. Paul MN: West Publishing Co., at 125-127 and 195.

[5] Let's not forget that the chemical industry vilified Rachel Carson's findings in *Silent Spring* that pesticides such as DDT had significant cumulative impact on watersheds and wetlands, that the coal industry refused to acknowledge the tremendous watershed damage mining did in the Appalachian Mountains until the passage of the Surface Mining and Control Reclamation Act, and that until recently, the tobacco industry--in which I grew up--denied that smoking had cumulative impacts on human health.

[6] See, for example, the peer-reviewed scientific journals *Conservation Biology* and *Restoration Ecology.*

resource. For the privilege of using publicly owned resources for profit, we expect industry to accept full responsibility for its actions and pay for its impacts on the Green River Basin. Nevertheless, in the spirit of compromise we tried to meet industry's concerns over cost by supporting eco-royalty relief. If eco-royalty relief comes about, we fully expect cumulative impact analysis to be funded.[7]

We believe it would be easier for industry to embark on cumulative impacts analysis and mitigation if it would integrate with its operations an innovative, science-based management scheme called *adaptive management.* Such an approach would treat all operations as scientific experiments; that is, operations would be designed to produce scientific information on cumulative impacts as a necessary operational output.

In closing, I wish to make clear our expectations. We are committed to the GRBAC's recommendations. Nevertheless, in return, we expect the federal government and the oil & gas industry to acknowledge their unqualified responsibilities to identify, analyze, and mitigate cumulative impacts on wildlife, wildlife habitat, and other public lands values. We believe that IF development is prudent and carefully managed over the long term, such impacts can be mitigated IF properly funded.

Thank you for this opportunity to present our views.

---

[7] The intent of eco-royalty relief is to "identify environmental costs incurred by industry to complete NEPA analyses, enhance the management of oil and gas development, and help mitigate impacts on wildlife and other resources that could be recovered through eco-royalty relief." GRBAC Final Report at 7. The Interior Department Solicitor's opinion is that section 39 of the Mineral Leasing Act (MLA) would prohibits eco-royalty relief. GRBAC Final Report, Appendix B. It appears that Congress will have to change the Mineral Leasing Act to allow eco-royalty relief.

Section 4

Green River Basin Advisory Committee

Cumulative Impact Analysis

CUMULATIVE IMPACT ASSESSMENT (CIA) OF OIL AND GAS DEVELOPMENT AND WILDLIFE RESOURCES

Full and adequate disclosure of impacts and effects of development is required in all NEPA documents. 40 CFR 1508.8 stipulates that effects and impacts, as used in these regulations, are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic or health, whether direct, indirect, or cumulative.

Cumulative impacts are the sum of direct and indirect impacts within a given area of concern. The Federal Council on Environmental Quality (CEQ), in regulation 40 CFR 1508.7&8, defines cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

To determine the true impacts of development, an adequate cumulative impacts assessment must be conducted. Only after such an assessment is conducted can an agency have the ability to manage public lands for balanced multiple use through cumulative impacts management. The purpose of a cumulative impacts assessment is to try to determine the overall impacts of a variety of activities on a given area of analysis. Ideally, areas of analysis should be biological and geographical in nature, for example a watershed or given habitat type. If a proposed project is placed in an area that already has other developments and activities the impacts of the proposed project must be assessed in conjunction with all other activities that impact the analysis area. For instance, to truly assess the impact of development on an antelope herd, the area comprising summer, winter, and transitional range should be assessed and all development activities inventoried with regards to their overall or cumulative effects on the herd.

Ultimately, the CIA process is directed toward ensuring the orderly development of oil and gas in a manner which ensures compatibility with the other resource users in a multiple-use setting. The adequate assessment of cumulative impacts resulting from oil and gas development in Wyoming has become the central issue that is addressed in appeals to the Interior Board of Land Appeals.

In 1990, the Bureau of Land Management (BLM) and the Wyoming Game and Fish Department (WGFD) drafted a Memorandum of Understanding (MOU) regarding oil and gas coordination procedures. This served as an impetus for a multidisciplinary team to conduct a pre-leasing Technical Procedures Review (TPR) in December, 1990, and a post-leasing TPR in August, 1993. This multi-disciplinary team consisted of representatives for BLM, WGFD, Petroleum Association of Wyoming (PAW), National Wildlife Federation (NWF), and the U.S. Fish and Wildlife Service. The post-leasing TPR states:

1) some personnel felt that often there was not enough baseline data regarding wildlife and other natural resources to do an adequate impacts analysis in NEPA documents and,

other natural resources to do an adequate impacts analysis in NEPA documents and,
2) some BLM and WGFD personnel believed that cumulative impacts were not being adequately addressed.

To address these findings, the multi-disciplinary team recommended that BLM set up a committee composed of BLM, WGFD, conservation, and industry representatives to address data inadequacy and cumulative impact concerns. This committee was formed in March, 1995, and named the Cumulative Impacts Task Force (CITF). The CITF's basic mission was to "examine and develop, if necessary, an approach to better address the cumulative impact of energy development on public land wildlife resources in Wyoming.". To date, a series of consensus driven meetings have occurred which resulted in a draft document entitled "The Wildlife Chapter Planning Aids" designed as a supplement to be used in conjunction with the Council of Environmental Quality handbook, *Cumulative Effects Analysis - Handbook for NEPA Practitioners*.

The Wildlife Chapter document is not intended to be prescriptive nor is it a new set of regulations. Rather, its purpose is to serve as a reference guide to aid NEPA document preparers in conducting adequate cumulative impact analyses. The document sets out a process to initially determine whether cumulative impacts exist, and if so, how best to assess any such cumulative impacts. Even though a document was produced, various GRBAC members expressed concerns about how it might be interpreted or used. For this reason, the GRBAC could not reach consensus to endorse the document. The GRBAC encourages the BLM to circulate the document to NEPA practitioners for their feedback on its feasibility and utility as a planning aid. There are portions of the document that are consistent with GRBAC recommendations on NEPA streamlining and eco-royalty relief.

These include:

NEPA Streamlining

- Acknowledgment of the importance of conducting early informal discussions among all interested parties prior to formal NEPA scoping as well as throughout the entire NEPA evaluation
- Impact analysis should be based on scientific and realistic impact assessment, not speculation
- BLM should clarify and finalize procedures for conducting cumulative impact assessments. These procedures should be applied consistently in all NEPA analysis

Eco-Royalty Relief

- Avoidance of duplication of efforts and wasteful spending as database of knowledge, techniques, study results and information is improved and available for the oil and gas industry and other resource users
- Fostering continued communication among BLM multiple use stakeholders
- Providing the opportunity for the use of monitoring and mitigation techniques to allow an EIS requirement to be downgraded to an EA, saving time and money, and reducing impacts
- Directing more money to efforts "on the ground" vs. towards transaction and legal fees

- Encouraging producers to take steps beyond what is required to prevent the listing of T&E species

The GRBAC supports and encourages the cooperative efforts of the CITF and any other processes that involve all affected interests. The GRBAC encourages public participation in the BLM's efforts to better assess cumulative impacts. An adequate cumulative impacts assessment can serve to alleviate conflicts within the Green River Basin regarding oil and gas development and wildlife resources.