BLM OIL AND GAS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

IMPROVING LEASE MANAGEMENT OF FEDERAL OIL AND GAS RESOURCES

JUNE 20, 1996—WASHINGTON, DC

Serial No. 104–79

Printed for the use of the Committee on Resources

U.S. GOVERNMENT PRINTING OFFICE

26–475CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-053412-7

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 ALLARD, Colorado
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
PETER G. TORKILDSEN, Massachusetts
J.D. HAYWORTH, Arizona
FRANK A. CREMEANS, Ohio
BARBARA CUBIN, Wyoming
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
RICHARD (DOC) HASTINGS, Washington
JACK METCALF, Washington
JAMES B. LONGLEY, JR., Maine
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
SAM GEJDENSON, Connecticut
BILL RICHARDSON, New Mexico
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
TIM JOHNSON, South Dakota
NEIL ABERCROMBIE, Hawaii
GERRY E. STUDDS, Massachusetts
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELÓ, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island

DANIEL VAL KISH, *Chief of Staff*
DAVID G. DYE, *Chief Counsel*
CHRISTINE A.KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

KEN CALVERT, California, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
J.D. HAYWORTH, Arizona
FRANK A. CREMEANS, Ohio
BARBARA CUBIN, Wyoming
HELEN CHENOWETH, Idaho
WILLIAM M. (MAC) THORNBERRY, Texas

NEIL ABERCROMBIE, Hawaii
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
CALVIN M. DOOLEY, California
SOLOMON P. ORTIZ, Texas

WILLIAM CONDIT, *Professional Staff*
SHARLA BICKLEY, *Professional Staff*
LIZ BIRNBAUM, *Democratic Counsel*

CONTENTS

BLM OIL AND GAS

THURSDAY, JUNE 20, 1996

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

The Subcommittee met, pursuant to call, at 2:07 p.m., in room 1334, Longworth House Office Building, Hon. Ken Calvert (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. KEN CALVERT, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mr. CALVERT. The Subcommittee will come to order. The Subcommittee meets today to continue oversight on improving lease management of Federal oil and gas resources. To date this Congress, the Subcommittee has held two hearings on the Clinton Administration's Reinvent Government II, or otherwise known as REGO II, proposals concerning MMS offshore and royalty management programs, oversight and legislative hearings on H.R. 1975, a bill to improve the efficiencies of royalty collections, and two hearings on domestic energy policy related to increasing domestic production and creating jobs.

Today's hearings will investigate the Department of Interior's progress on a proposal to transfer the Bureau of Land Management's oil and gas inspection and enforcement functions to the States. Of course, the relatively new requirement that States bear a portion of the Federal Government's costs to administer the Mineral Leasing Act of 1920 for leases within their borders is in large measure why we are here today addressing the possible transfer of certain functions to those States which seek an alternative.

Federal bureaucratic inefficiencies now cost States twice, once when royalties which may be properly owed go uncollected because the Department of Interior's Mineral Management Service has other priorities—or as I have said before, spending dollars to chase dimes—and, secondly, when the BLM, Forest Service, and MMS costs to run the leasing program—from initial land-use planning through royalty collections—are forced upon States without a means for control of those costs.

Except, perhaps, in a cumulative fashion only through the Interior Department appropriations bill which we struggle with each year. Unfortunately, that doesn't provide sufficient detail necessary to rein in Federal agency costs on a State-by-State basis.

But that is not the only reason. If oil and gas operators are significantly affected through redundant regulation by the Feds and the States, then there must be an impact manifested in lesser competition for Federal leases initially, and premature shut-in of marginal wells. I have asked our last panel of witnesses today to address this important perspective.

My bill to make reforms in the royalty management program would provide an avenue for those States which are ready, willing, and able to audit Federal lease obligations and enforce the results of such audits. Along a parallel track, the BLM proposal has moved internally at the Department of the Interior as a regulatory initiative. One thing we hope to discuss here today is any possible legislative changes needed to implement this proposal.

Our ultimate goal is to develop sound streamlining proposals that not only decrease costs of Federal and State governments, but also promote investment in domestic exploration and production through reduced government burdens on industry, where appropriate.

Of the many onshore mineral leasing and operational activities performed by BLM, the REGO II proposal was limited to transferring only the inspection program to the States. Under a broader shift of responsibilities, including leasing and drilling permits, the States would enjoy more land management discretion for development within their State. Oversight of this program is necessary to determine what transfer can be effected administratively versus that which may require statutory fixing.

My friend and ranking member is not yet here. There is a meeting that he has to attend so we will wait for his opening statement a little later, but we will be happy to recognize my other good friend from the great State of California, Mr. Dooley.

Mr. DOOLEY. Thank you, Mr. Chairman, but I have nothing.

[Statement of Mrs. Chenoweth follows:]

STATEMENT OF HON. HELEN CHENOWETH, A U.S. REPRESENTATIVE FROM IDAHO

Chairman Calvert, Ranking Member Abercrombie, I would like to thank you for calling this hearing today on the Bureau of Land Management's oil and gas inspection and enforcement responsibilities. While I don't have any of the energy resources in my area in Idaho that are effected by these regulatory burdens, this hearing focuses on two very important issues to me.

First, State primacy for inspection programs. State management gives the people who are closest to the projects a greater say in the standards involved in a given project. It is the neighbors to an oil and gas development who are most effected by the environment; and it is those neighbors who will directly experience the repercussions of mistakes and oversights. Therefore, maintaining strong communication between the regulators, neighbors and operators is of the utmost importance. The lines of communication must be locally designed on a case by case basis so that high safety standards and proper attention to local interests can be ensured. This concept and direction is not a radical idea—it was all detailed in the Clinton Administration's Reinvent Government II proposal unveiled on March 27, 1995. The States must have primacy in these inspection programs.

Second, is the government's policy to reduce costs, to promote domestic production, and create jobs? If so, I firmly believe that one factor that should be taken into account every time we consider new regulations is jobs. Are we going to simply implement a regulatory agenda that, while protecting a snail the size of a poppy seed, will devastate a local economy? And for that matter, is our inspection process going to be flexible enough to cover new technology that will benefit efficiency and cost effectiveness, as well as the environment? We must look to where more of the expertise resides in the United States. And at the same time, we must ask about how many duplicative regulations our resource businesses have to comply with.

Balancing the inspection and enforcement with the need for continued development is difficult. I believe this is better done with State primacy over such programs. There is a fine line between profitability and insolvency, and we must remain vigilant so that regulations are not pushing our industries into the red, resulting in a risk to the United States' energy and job security.

Although I have no oil and gas in Idaho, I recognize and encourage the benefits we derive from State oil and gas inspection. I believe these State primacy inspections should be duplicated for phosphate inspection which is in my district. The issues are very much the same.

I cannot think of a better way of giving the taxpayers their money's worth than through local accountability. I have received numerous letters from the people of Idaho who worry whether Federal regulations are sufficient to protect their water and lands. Here, I want to be clear, I am not advocating increased Federal presence. By returning safety authority back to the States, these citizens can be assured their locally elected officials—officials who share their health and safety interests—will safeguard the community.

Again, I would like to thank the Chairman.

Mr. CALVERT. OK. With that then, we would like to recognize our first panel from the Federal Government, the witness list. Let us see: Mr. W. Hord Tipton, Assistant Director, Resource Use and Protection, Bureau of Land Management; Bob Brown, Acting Associate Director, Royalty Management Program, Minerals Management Service; and Janice McDougle—that is a name we hear a lot of lately—Associate Deputy Chief, National Forest Systems, USDA Forest Service. If you would please come on up to the witness stand. We certainly appreciate your attendance today, and, Mr. Tipton, would you like to begin your testimony?

STATEMENT OF W. HORD TIPTON, ASSISTANT DIRECTOR, RESOURCE USE AND PROTECTION, BUREAU OF LAND MANAGEMENT

Mr. TIPTON. Thank you, Mr. Chairman. Again, it is a pleasure to testify before you today on our oil and gas program. Rather than reading my entire testimony, I would just like to highlight some things from our oil and gas program and our progress on the reinvention of government, but do request that my entire testimony be submitted for the record.

Mr. CALVERT. Without objection.

Mr. TIPTON. Thank you. The onshore oil and gas program is, of course, a major program of the Department of Interior. At the end of 1995, we have had more than 51,000 onshore oil and gas leases on 37 million acres of Federal land. About 19,000 leases are in producing status, with more than 63,000 producing wells on these public lands. We also have operational oversight of about 4,200 producing leases on Indian lands.

Royalty income from onshore oil and gas production on these lands is over $500 million per year. All receipts, except filing fees, are shared with the State in which the leasing occurs. We want to also recognize that we recognize the important role that these receipts and moneys play in the economies of several Western States and communities.

On our leasing, leasing is a discretionary action. However, most of our post-leasing actions are mandatory. And the reason for this is to ensure compliance with governing of our lease terms, regulations, onshore orders, notices to lessees, and conditions of approval, and also to protect other resources present as the lessee uses the rights contained in this lease.

The objectives of our oil and gas I & E and Environmental Compliance Programs are quite simple. First, we want to ensure that public and Indian oil and gas reserves are developed in a manner that maximizes resource recovery. Secondly, we want to ensure proper accounting of all production from Federal and Indian lands.

And then, third, we must protect the environment, public health, and safety. Although these are easily said, they are quite complex and very difficult to carry on. In addition, BLM also conducts inspections regarding drilling, abandonment, and other operations pursuant to our regulations.

With respect to Reinventing Government, Round II, as we call it, a little more than a year ago BLM proposed a transfer of the oil and gas I & E responsibilities concerning production verification and environmental compliance to individual States and Indian tribes.

For purposes of trying to implement this proposal, BLM formed a task force comprised of State, Federal, and tribal representatives to prepare a report on the transfer proposal and initiate some consultation with State and tribal representatives.

On May the 7th of this year, the Department of Interior, with the BLM and the Interstate Oil and Gas Compact Commission, at a meeting in Indianapolis resolved to support discussion between BLM, the States, the IOGCC to identify opportunities and propose implementation plans to delegate to the States as much of the I & E functions as permitted under FOGRMA as they are willing to assume.

Earlier this year, the IOGCC shared a proposal to devolve most of BLM's oil and gas regulatory activities to the States. This led to the adoption of a resolution in the May meeting that would continue discussions to identify opportunities and propose these implementation plans to eliminate duplicate State and Federal regulation of oil and gas production in production activities, and to also streamline, simplify, consolidate Federal and State regulatory oil and gas programs.

BLM is in the process of forming a position relative to this effective transfer, and at the request of the IOGCC and many representatives of industry, we have agreed to provide some parameters, if you will, to our State directors and to assure among one thing consistency amongst the agreements that we have asked our State directors to negotiate with individual States.

Some of the things that we want to discuss during these negotiations include the agreements ensuring that States conduct inspections consistent with uniformly interpreted Federal standards. There has been several negotiating points about whose rules, whose standards do we use.

Secondly, agreements cannot be signed if the action will not produce a cost savings or eliminate some duplication of effort. States will not inspect Indian leases since this is prohibited by FOGRMA without the direct consent of the Indian mineral owner. Fourth, BLM will retain authority to evaluate State inspection activities and intercede if the appropriate action should occur. We recognize this is a contentious point.

Let me summarize by saying we recognize some State concerns with our proposal. One of these concerns is funding. We are now open to negotiating funding with the States and hope to find ways to save some money. There are concerns of the degree of authority and responsibility, and then there is the concern about consistency.

Operators have concerns primarily centered around being subjected to a greater variety of rules and reporting where each State would require adherence to different policies, thus the reasoning for our closely monitoring negotiations to try to maintain the highest degree of consistency that we can.

At this point, we have issued in final the I & E transfer report, and I would like to note that this has been acknowledged by our partners in the IOGCC as an excellent document which will serve as a very constructive road map for States as they begin their individual in-depth analysis of accepting or rejecting transfer of all or part of these programs. BLM realizes and agrees that by parting with the States and IOGCC, we can move forward with the I & E transfer to the benefit of all parties involved.

The second subject of the hearing, the net receipts sharing, just let me briefly say we recognize that this process is required by the 1991 Appropriations Act and includes a provision to recover approximately 25 percent as a bottom line of the Federal Government's cost of conducting mineral leasing activities on Federal lands within State boundaries. And these costs are apparently being deducted from royalty payments to the States and are derived from cost contributed by MMS, the BLM, and the Forest Service.

Our role in this process is to provide the MMS, Minerals Management Service, with our cost data, and we have a series of steps that we go through to arrive at that cost. And they very quickly are determining our direct cost for conducting minerals program in each of the States, and then there are a number of things that we deduct off the top of those costs so as not to affect the administrative burden that is passed onto the States.

One of those things is the money for the management of Indian-owned minerals. And we also deduct the amount of money that we spend on the management of minerals materials because receipts from minerals materials sales are not shared with the States. And then, finally, costs relating to mining law administration are excluded from the calculations.

A factor of 19 percent is added to the above total to account for the direct program share of administrative costs which are applicable to all of our programs. A separate figure for filing fees, which is not a very large number, about $2.5 million last year, is also collected and provided to the MMS. And these fees are not shared with the States so they are not figured in the calculations either.

Our methodology is applied on a State-by-State basis, and when a BLM State office has jurisdiction over more than one State, these costs are then prorated on the basis of the number of producing leases in each State.

Although this may tend to overestimate costs to any particular State if producing leases are large, the methodology is sound in our minds because both the majority of the expenditures and the majority of the revenues tend to be associated with producing leases. Once BLM completes these calculations, they are forwarded to the MMS for processing into a final number for the Department. Mr.

Chairman, that concludes my testimony, and I will remain open for questions.

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

Mr. CALVERT. Thank you, Mr. Tipton, for your testimony. Next, Janice McDougle, Associate Deputy Director, National Forest Systems. Welcome.

STATEMENT OF JANICE MCDOUGLE, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEMS, USDA FOREST SERVICE

Ms. MCDOUGLE. Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide information concerning the Forest Service's role in managing mineral resources on National Forest System lands. The Forest Service is responsible for making energy and mineral resources available for development as part of its mission.

The role of the Forest Service is primarily that of the surface resource manager and as such involves land-use planning, ensuring compliance with environmental statutes governing the issuance of leases, deciding where leases may occur, and surface resource protection and mitigation. The sole royalty-related function of the Forest Service is as disbursing agent for mineral revenues generated from national grasslands.

The Mineral Management Service collects all mineral revenues from lands under the jurisdiction of the Forest Service. The MMS transfers the receipts from the national grasslands to the Department of Agriculture's National Finance Center. There, mineral revenue collections are merged in Forest Service accounts with revenues from other resources such as timber sales and grazing fees.

Twenty-five percent of these receipts are disbursed to States and counties under Public Law 60–136 procedures for the benefit of public schools and roads. This royalty disbursement responsibility of the Forest Service requires no more than one person-year of effort on a national scale.

The Forest Service's cost of managing the leasable minerals program is reported to MMS for purposes of determining net receipts shared with States under the Omnibus Budget and Reconciliation Act of 1993. Forest Service program management costs, along with those of the BLM and MMS, are deducted from the total receipts to determine net receipts sharing with the States.

The Forest Service program costs include environmental study and analysis for determining leasing suitability, administration and compliance work on exploration and development projects for leasable minerals such as oil, gas, coal, phosphate, and geothermal energy resources. These costs also include the day-to-day monitoring of exploration and production sites operating on National Forest System lands.

In fiscal year 1995, total receipts for mineral activities on National Forest System lands were more than $200 million. For the same fiscal year, $10.5 million was reported to MMS as the Forest Service's share of costs for managing the leasable program as described above. It is important to note that while these costs are reported, no Forest Service costs are funded by mineral receipts. All costs are funded through appropriations.

For purposes of responding to the committee's interest in overhead costs, we identified those regional and Washington office costs in accordance with your request. In fiscal year 1995, those costs were $2.3 million out of the total $10.5 reported. These costs are tracked through our accounting system or charge-as-worked records, which summarize actual expenditures from the mineral management appropriations.

We would note that these overhead costs support the mineral program at the field level in various ways, which are important to project activities, including providing costly technical expertise and skills which are most efficiently provided on a regional or national basis.

Other common and necessary overhead functions include responding to appeals and providing the Department of Justice the background information, documents, and witness statements in the event of litigation. This concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions you may have.

Mr. CALVERT. Thank you. Bob Brown, Acting Associate Director, Royalty Management Program, Minerals Management Service. You may begin your testimony.

STATEMENT OF BOB BROWN, ACTING ASSOCIATE DIRECTOR, ROYALTY MANAGEMENT PROGRAM, MINERALS MANAGEMENT SERVICE

Mr. BROWN. Good afternoon, Mr. Chairman and members of the committee. I am pleased to be here today to provide testimony on net receipts sharing. Your letter requested that we provide a specific description of our costs. However, I would like to first briefly review the background of net receipts sharing and the requirements of the '93 legislation, which permanently enacted it.

In fiscal year 1991, Congress decided that States should share in the costs the Federal Government incurs in managing onshore mineral leases and revenues. States share in the revenues and in most cases get half of revenues. Therefore, full cost sharing would require that they share 50 percent of the costs. However, to reduce the full impact of net receipts sharing, Congress provided the States pay only approximately 25 percent.

Each State's share of the costs is deducted from the monthly royalty distributions made by the Minerals Management Service. While MMS is responsible for making those monthly deductions, our costs make up only about 30 percent of the total charged to the States. The Bureau of Land Management and the Forest Service comprise the other 70 percent of the costs. BLM and the Forest Service submit cost estimates and allocations to MMS. We use those figures, merge them with our own, and then allocate costs according to methodologies authorized in statute.

To estimate and allocate MMS costs for the onshore minerals program, we initially developed a methodology which was based on the ratio of Federal onshore producing leases to total producing leases—onshore, offshore, and Indian.

This amount, along with BLM and Forest Service estimates, were then allocated to each State in the same proportion as that State's revenues to total revenues. This is referred to as the Revenue Method. Several States objected to this method, arguing that costs allocated to them were too high and not representative of the actual costs expended in managing leases within their State.

As a result, the Department's fiscal year '92 Appropriations Act required MMS, in conjunction with BLM and the Forest Service, to study the costs to collect onshore revenues. This study confirmed that MMS costs to perform onshore mineral activities for a few States were less than costs allocated to those States under the Revenue Method.

Permanent net receipts sharing language was enacted in the Omnibus Budget Reconciliation Act of '93. This Act statutorily established two methodologies for calculating net receipts amounts. One method was the Revenue Method previously described. The other was the Cost Method, which is designed to cap some of the higher cost allocations derived from the Revenue Method.

The Cost Method is the best estimate of the three agencies' actual costs to conduct onshore mineral activities in each State. The language of the Act calls for MMS to calculate the State shares using both methods and then charge each State the lower of the two. Report language accompanying the legislation further specifies the process to be used.

Because net receipts sharing has been a contentious issue with respect to MMS's relationship with the State partners, we have sought to make our costs accurate and to operate as cost effectively as possible.

We have looked for more efficient ways to do our business. For example, a common reference data reinvention laboratory resulted in the reengineering of the mineral lease and payer data process. Also, we now offer a variety of electronic reporting options to payers, thereby increasing significantly the accuracy of the data we receive.

We believe MMS is cost effective. Federal onshore revenue collections of $1.04 billion compares to MMS's Federal onshore revenue management costs of $32.9 million, a cost of slightly more than three percent.

Additionally, MMS performs many compliance functions in a cost effective manner. For example, in audit, for every dollar we expend, we collect $8. In the area of production volume comparisons, for every dollar we spend, we collect $15.

We have made an effort to lower our costs, and as a result, the costs charged to States for royalty collection has decreased about 26 percent over the last two fiscal years. In the past, we hired Coopers and Lybrand, a certified public accounting firm, to look at our methodologies. They concluded that our allocation methods were acceptable. Additionally, each year we have sought refinements in our process.

In fiscal '95, MMS formed a team which included a representative of the Department's Inspector General to again review the methodologies used in allocating costs to States. This group recommended a number of changes which have been implemented. Last fall, prior to implementing the recommendations, we consulted with the States impacted by net receipts sharing, as well as other interest groups.

Eight States responded. While some remain irrevocably opposed to net receipts sharing under any circumstances, most supported the methodological changes recommended by the team. When the proposals are fully implemented, State deductions will decrease overall by approximately $5 million annually, and each State's individual deduction will decrease.

As I stated above, MMS has already implemented most of the improvements recommended by the team. They include improved procedures for allocating program support and executive direction costs and more precise workload factors for the Audit and the Systems Management Divisions. These changes will result in a $3 million savings for the States this year.

I would like now to turn to a discussion of how MMS allocated its '95 costs, as specified in OBRA, to the States for fiscal year '96. Since our original allocation of fiscal year '95 costs, we have reviewed the way in which we have categorized and aggregated them in a manner which is more reflective of how we operate.

However, while some of our terminology describing these costs has been recently modified, the bottom line allocation to the States did not change. Our costs are now broken out as to program, program support, and executive direction costs.

Program costs include payroll and other costs that can be directly identified to processes that a division performs. Program support costs include the administrative costs such as office space and telecommunications. And executive direction costs include the Minerals Management Service and Royalty Management Program's management costs.

Our MMS Washington headquarter's budget is first divided among the Offshore Minerals Management and Royalty Management Programs. The portion allocated to royalty management, program support, and executive direction, is further allocated to RMP divisions based on each division's budgeted dollars in proportion to the total royalty budget.

The divisions further allocate the combined program costs and its allocated portion of program support and executive direction costs among onshore Federal, offshore Federal, and Indian revenue management.

In analyzing the activities in its divisions, MMS looks for indications of where the work is being done or workload indicators to identify relationships between a division's allocated budget and the three areas of revenue management—Federal onshore, Federal offshore, and Indian. Workload indicators include reported royalty lines, production lines, producing leases, nonproducing leases, et cetera. This analysis is done for each category of MMS costs.

Audit costs are handled somewhat differently because some of the States actually do the audit work under the FOGRMA Section 205 contracts with MMS and are fully reimbursed for their work.

For States that do not perform audits under a Section 205 delegated audit, direct audit program costs are allocated based on that State's revenue collections. For example, Alaska does not have a funded 205 audit agreement. Therefore, direct audit costs are allocated to Alaska based on revenue collections for Alaska leases compared with total revenue collections.

The appropriation of $4 million for 205 audit agreements is not included in the net receipts calculation, as directed by the OBRA report language. However, States such as Wyoming and New Mexico, as an example, which perform funded delegated audits share audit management and support costs.

Again, for example, the RMP division that oversees these 205 audits provides coordination and contract monitoring. These types of audit management costs and others such as audit training, computers, audit manuals and other support functions are allocated to States that have funded audit agreements based on the amount of their contract.

Further refinements. The Department formed the Royalty Policy Committee in fiscal year 1995 as part of the Minerals Management Advisory Board to provide advice to the Secretary on the Department's management of Federal and Indian mineral leases and to serve as a sounding board for new procedures and policies.

The committee formed eight subcommittees, one of which is the Subcommittee on Disbursements and New Receipts Sharing. This subcommittee presented an interim report to the Royalty Policy Committee on June 4, 1996, and will likely have a final report later this year.

The Net Receipts Subcommittee is chaired by Ms. Johnnie Burton of Wyoming and includes representatives from Colorado, Montana, New Mexico, Wyoming, and Utah. MMS has provided extensive information to the subcommittee to assist in its efforts and will continue to work diligently with the Royalty Policy Committee to pursue any recommendations that the committee adopts.

MMS also continues to conduct ongoing dialogs on this issue with the Interstate Oil and Gas Compact Commission and the State and Tribal Audit Committee. In addition, currently the Department of Interior's Office of Inspector General and the General Accounting Office are concurrently performing reviews of net receipts sharing.

Finally, MMS plans to continue to examine the issue to identify areas where we can further improve our cost estimates and refine the formulas set out in the statute. We have recently begun a benchmarking study to compare our costs to those of the States. This concludes my prepared testimony. However, I would be pleased to answer any questions that you might have.

Mr. CALVERT. Thank you, Mr. Brown. I first have a question for Mr. Tipton. I understand the DOI solicitor has reviewed IOGCC's proposal. Has the Department made a determination if any of the inspection and enforcement functions listed in the REGO II report for the IOGCC proposal are inherently Federal? And will legislation enable the transfer of such functions to the States?

Mr. TIPTON. Mr. Chairman, there has been a lot of discussion on those functions that go beyond the inspection and enforcement in the environmental compliance areas. However, there is no final decision within the Department on how we can interpret that.

The way we have chosen to deal with those questions is to flush out, first of all, the inspection and enforcement component of it with the States, make sure that all parties understand what is expected on both sides, and having developed some success, at that point, we will continue our deliberation on what the government functions might have to be.

We will continue to try to interpret the OMB guidance on that along with our solicitors. And at the right point in time, during the negotiations, also discussed within those States and tribes, which of those functions do they really want?

And my intent is to collectively prepare a report back after we have our meetings and discussions with States and tribes to voice what their preferences are with our attorneys, with the Department, and to see just what the final Department position will be on it.

Mr. CALVERT. How soon do you think that report or analysis will be ready?

Mr. TIPTON. I issued just yesterday instructions to the State offices, with BLM to rapidly begin the discussions with their counterparts. We didn't put them a definite time line to come back because we know these are complicated issues. However, we did ask that they give us indications of a schedule that they thought was workable with their State on the parts and also on those parts that the State was interested in. And we would hope to have a clear indication of the interest of those States by the 1st of September.

Mr. CALVERT. I certainly would like to get a copy of that once you are in receipt of it.

Mr. TIPTON. Yes, sir.

Mr. CALVERT. In testimony before this Subcommittee in June of 1995, the Deputy Assistant Secretary of Interior said that the REGO II Task Force on this issue would report to the BLM Director by October 1 of last year. The report appears to be dated April of 1996. Just how strong is the Department's commitment to see this transfer proposal through?

Mr. TIPTON. Mr. Chairman, we had a preliminary report by October the 1st. We worked along with the State and the tribes very, very diligently on that. However, the State, through the IOGCC, was also in the process of developing their report.

And they asked that we hold off before issuing our report in final until we could get our heads together and say there is progress to be made from that area. So we did hold off, and we had further meetings in the first of this year involving the State counterparts, and as a result of that, our report did not get out until March.

Mr. CALVERT. In your REGO II report, reference is made to continued Federal oversight after transfer of the inspection and enforcement functions that was mentioned earlier. As you may know, given your prior services, OSM's Acting Director, the issue of Federal oversight of State primacy under SMCRA remains contentious, to say the least. How can the BLM, States, and perhaps Congress help avoid a like situation in this area?

Mr. TIPTON. You can rest assured, Mr. Chairman, that I haven't forgotten the scars of trying to administer oversight programs with the Office of Surface Mining. On the other hand, I think all parties here recognize a need of oversight of some sort at least through a transition period to make sure that the interests of all parties are protected.

Now, it would be my vision that oversight would diminish rapidly. Once agreements are consummated with States, once there is experience gained with operating under new standards, once the

State folks are trained in our ways, then to some extent, I guess, we are trained in the ways of the States.

So, again, we may not even save any money the first year on this due to the need to have some reserve of oversight or assistance, if we want to call it that. But I would hope in the very rapid outyears that we could reflect those savings. And that is why I have asked the State directors—to not look at this as a narrow period in time, limited only to transition, but what are the forecasts of how you might save money two to three years from now?

Mr. CALVERT. As you know, my philosophy on that is that the transferring functions would reduce redundant costs and save everybody money—Federal Government, the States, operators, everyone involved. So I hope we rush along, and I don't think we need to compromise the ability to protect the surface and downhole environments or necessarily begin to hurt the environment in any way. So I am hoping that we can move along with this as quickly as possible. Then I would like to ask Mr. Dooley if he has any questions?

Mr. DOOLEY. I have no questions.

Mr. CALVERT. OK. Then I will go ahead and continue until our associate comes in. Mr. Brown——

Mr. BROWN. Yes, Mr. Chairman.

Mr. CALVERT. [continuing]—are MMS employees required to track the amount of time spent related to a specific State—the offshore or Indian leases? And, if not, why not?

Mr. BROWN. Individual employees don't track the time, but, as I indicated earlier, you used measurable workload measures that are recoverable without the actual intervention of each individual employee, the presumption being that you could introduce into the mix of misreporting when you were relying on an individual employee to write down, "Today I did so much onshore, and I did so much offshore."

So depending on the division that we are working with, we use a workload indicator that is recoverable from our automated systems or from some other methodology that doesn't require individual employee intervention.

Mr. CALVERT. Do you track any type of time management at all as far as offshore or onshore type of activities?

Mr. BROWN. No. The division of workload in terms of people's time is not tracked by onshore or offshore activities. As I said, as an example, in our compliance verification division where a unit is responsible for tracking producing leases, we divide up the costs in that unit by the amount of producing leases that are attributable to onshore activity, attributable to offshore activity, and are attributable to Indian activity, and then divide the entire costs of the unit by those indicators.

We find that to be the easiest and best methodology that avoids any misrepresentations as a result of somebody misreporting their time. And it divides up the costs of such things as annual leave, sick leave, and Workmen's Compensation, and other costs that are attributable to operating the division.

Mr. CALVERT. I just wouldn't think it would be that difficult to put a track in your computer system just to track your various time allocations. But I was just curious to find out how that is allocated through the system, but you don't have that type of statistics available?

Mr. BROWN. No.

Mr. CALVERT. Speaking of Indian lands, I realize they do not share in these costs—the States. At Mr. Hayworth's hearing yesterday, it gave us an idea of how much the Indian Trust Fund managers can't account for. But I am curious about how much money MMS spends on royalty collection on the Indian leases? And based on the previous question, do you have any idea?

Mr. BROWN. Yes. I don't know how we could give you that. I am prepared to talk about how much was spent on onshore activities and what goes into the net receipts sharing formula. But we have available that information. I could provide that for the record.

Mr. CALVERT. I would be curious to find out. Do you have that broken down by reservation, by tribe?

Mr. BROWN. Well, certainly for the costs that we provided to, the 202, which is the ancillary part of Section 205. Section 202 is contract, audits as performed by the tribes. I can give you specific information by tribe there. I don't want to be—not be forthcoming, but I am not certain that we have broken down the costs of the processing of production and royalty volumes by tribe within the system. I am not certain that I could do that.

Mr. CALVERT. For those States with cooperative agreements to perform auditing, does the MMS deduct its own audit costs from receipts due that stayed under the net revenue sharing formula?

Mr. BROWN. No. The amount of costs that are provided to the States for audit under 205 is not a part of the net receipts sharing formula. However, as I testified earlier, some costs associated with managing those contracts and costs associated with the training and audit manuals are spread across all the States that have 205 agreements.

Mr. CALVERT. Are some of those auditing procedures under Section 205 redundant? Do you move through those more than once? And I guess the question also would be if they are, do you count those costs duplicative back to the States?

Mr. BROWN. Well, we struggle very manfully to avoid double counting of costs. I don't believe the costs of those manuals are redundant. What we are doing is, as I noted earlier, we spread the costs of the entire division and break it out by the offshore costs, the onshore costs, and the Indian costs.

In the case of the audit division, approximately 77 percent of its costs are attributable to offshore, and the other 23 percent are a charge to the onshore and Indian activity. Because the methodology you use there is to distribute it by revenue. Collections in the vast preponderance of the revenues collected are offshore.

Mr. CALVERT. And that was going to be my next question. What is a split on the onshore/offshore/Indian leases, and how did you formulate the split? You mentioned 70 what?

Mr. BROWN. Again, speaking strictly about the audit function, 77 percent of the costs are attributable to offshore activities, and the other 23 percent of the costs are attributable to onshore and Indian.

Mr. CALVERT. And you don't know what the split between the onshore and the Indian would be?

Mr. BROWN. I don't have that at the tip of my fingers. No, Mr. Chairman, we could provide that for the record.

Mr. CALVERT. I would appreciate that.

Mr. BROWN. Sure.

Mr. CALVERT. Thank you. Ms. McDougle, in your testimony you identify overhead costs as costly technical expertise and skills which are most efficiently provided on a regional and national basis. Could you describe for me these types of expertise and skills?

Ms. MCDOUGLE. Yes, I can, Mr. Chairman. Our surface minerals program is comprised of about two major components. One is determining land suitable for leasing, and the second one is reviewing and deciding on proposals to explore or develop.

We also have the inspection and monitoring component as well. But in terms of the primary cost, we are talking about the leasing exploration and development components which require a NEPA analysis. The way we go about that is to form an interdisciplinary team of specialists to comply with NEPA. And this team includes geologists and foresters, range conservationists, biologists, botanists, engineers, archaeologists, mineral technicians, depending on the issues involved.

These jobs are in the range of the GS–9 to 13 level, and the forest inspection and monitoring is performed by employees with various science or engineering backgrounds, depending on the expertise that is needed.

Mr. CALVERT. These overhead costs count for $2.3 million of the total of $2.5 million in annual costs, which is mentioned in your testimony. What type of tasks or functions account for the remaining $8.2 million?

Ms. MCDOUGLE. Of the $10.5 million that we estimated at the beginning of fiscal year 1995, we actually spent $9.8 million in total. The field activities such as I described a moment ago cost it $7.5 million, and the remainder is the overhead, the $2.3 million.

Some of the things that we provide at the national and the regional level—some of the services, some of the technical skills we provide at those levels. We provide them there because we no longer can duplicate those skills everywhere. We have downsized. We have lost some of our institutional knowledge.

And what we have done is determined who we have out there with these skills, and we deploy them to measure complicated projects on an as-need basis. It is easier for us to do it that way, and to view national priorities and deploy them that way because we can no longer afford to have them at all units.

Mr. CALVERT. What type of leasing moratoria exists on Federal service lands, and how much acreage is off limits because of that moratorium?

Ms. MCDOUGLE. Moratorium?

Mr. CALVERT. Moratoria on leasing on Federal property. Do you have a moratorium on any type of leasing on Federal property? Already leased but not drilled, to be more specific.

Ms. MCDOUGLE. Only in one region, and that is our northern region. And in terms of the acreage, I will be happy to provide that to the committee and staff. I don't have it here.

Mr. CALVERT. Could you do that for us please? While you are doing it, I would like to know what portion of the $10.5 million charge is attributable to the leases for which no drilling and oil exploration activities are permitted.

Ms. MCDOUGLE. I will be happy to provide that to the committee.

Mr. CALVERT. And, lastly, before I turn it over to Mr. Abercrombie, does the Forest Service have an obligation to balance commodity needs with the ecology and its needs, and how is that accomplished?

Ms. MCDOUGLE. The Forest Service, as all Federal agencies, have responsibility to comply with the statutes of the regulatory agencies always. And, however, they are viewed on a case-by-case, site-specific basis in terms of what the issues are on the local level. It is very difficult to generalize in terms of what the compliance is, but it is very, very site-specific.

We do it at several stages. When we develop our forest plans, we invite review and assessment of those plans if it contains any decision at that level. We also, when we get to the specific projects, do it again in a more rigorous way. And the outcome of those assessments by those agencies with regulatory authority determine how the project looks, if it goes forward at all.

Mr. CALVERT. Thank you. Mr. Abercrombie.

Mr. ABERCROMBIE. No questions.

Mr. CALVERT. Mr. Abercrombie doesn't have any questions for this panel, but I want to thank you for your attendance, and we appreciate your testimony and answering the questions and look forward to your additional answers to questions we may be sending to you.

Next, I would like to recognize our second panel. First, Elin D. Miller, Director of the California Department of Conservation; Donald L. Mason, Chief, Ohio Department of Natural Resources; and James W. Carter, Director, Utah Division of Oil, Gas and Mining. And, Elin, you can start your testimony whenever you like.

STATEMENT OF ELIN D. MILLER, DIRECTOR, CALIFORNIA DEPARTMENT OF CONSERVATION

Ms. MILLER. Mr. Chairman, Mr. Abercrombie, thank you for the opportunity to speak before you today. I appreciate being able to provide you with information regarding California's efforts related to the Federal Government's 1995 Reinventing Government II initiative.

The State is very interested in the proposal to transfer oil field inspection and enforcement operations on Federal lands from the U.S. Department of Interior's Bureau of Land Management to the States, and I believe California has taken the first step toward that end.

The Department of Conservation is responsible for regulating oil field production operations on both public and private lands throughout California. The Department also regulates produced-water injection for enhanced oil recovery and disposal operations.

Because most Federal leases are interspersed with other leases in California's oil fields, the Department and the BLM have worked to develop compatible regulatory programs. Our most recent effort has been the development of a comprehensive memorandum of understanding that delineates areas of regulatory responsibility and eliminates duplication.

For any given activity on the BLM administered land within the State of California, oil and gas operators are now obtaining only one permit and receive inspection from only one agency.

The MOU was the culmination of an intensive two-year process by BLM and the Department staff that included the input and support of industry representatives. Its purpose is to clarify and simplify the permitting and regulatory process for operators and to avoid duplication wherever possible.

The format is a general statement of purpose and intent followed by six operating agreements. The operating agreements may be changed as further streamlining opportunities are identified or as the need arises.

During the development of the MOU, differences in the scope of our respective agencies' jurisdictional responsibilities were identified. The Department's primary focus is on downhole permitting and inspection, with emphasis on the protection of hydrocarbon reservoirs and groundwater aquifers.

The BLM has similar responsibilities and, as landowner and royalty owner, requires environmental impact evaluations for surface land-use decisions and production audits for royalty verification purposes.

To address these program differences, the MOU was designed to be flexible and intended to incorporate additional activities. The MOU was implemented fully on March 15, 1996, although certain provisions of this MOU have been in effect for some time. The most significant change is that with few exceptions permit applications will be filed with only one agency, and that agency will conduct all required field inspection activities for the permitted operation.

For downhole well permitting—that is drilling, reworking, and abandoning—operations file essentially all applications for the production well permits with BLM. This eliminates duplicate filing and streamlines procedures. Conditions and approvals are prepared and issued by BLM. Likewise, BLM performs the field inspections for the downhole operations it permits. This operating agreement includes a list of more stringent State requirements than BLM enforces.

To eliminate duplicative field activities, BLM permits all surface operations and performs inspections to ensure compliance with environmental and lease maintenance requirements.

With the exception of injection wells and facilities, BLM permits and inspections cover tank, pipeline, and other facility operations, the closure of surface impoundments, and site restoration following well plugging and abandonment activities. Also, BLM issues rights-of-way for pipelines.

The Department has primacy for the U.S. Environmental Protection Agency for the Underground Injection Control permitting and approves all water injection projects, including all oil field wells that inject liquid, steam, or gas. The Department inspects injection facilities, including injection pumps, pipelines, well heads, et cetera.

Wells used for cyclic steaming are permitted by BLM. Also, observation wells which do not inject fluids are permitted by BLM. The BLM approves notices to convert injection wells to production status or other use. The BLM and the Department idle-well policies are similar and require testing of long-term wells to ensure mechanical integrity and protection of groundwater and oil and gas resources.

The BLM conducts an idle-well monitoring program on BLM-administered land, addressing both its land management and regulatory responsibilities. Both agencies conduct programs to minimize the number of orphan wells and work with industry to address wells without a responsible operator. When required by statute, State well-bond coverage must still be obtained in addition to BLM leased bonds. However, the agencies are committed to eliminating this dual requirement.

The BLM and the Department worked cooperatively, sharing information, provided only to one agency, and striving for well record automation which can be managed and accessed electronically. Furthermore, the agencies may exchange personnel so staffs are more familiar with each others' functions and operational processes.

The MOU described serves to reduce costs, eliminate duplication, and streamline procedures. I will identify it as goals and the first recommendation of States for the REGO II transfer report. While we continue to evaluate the effectiveness of the MOU, California will begin discussions with BLM regarding the next logical step in the process—identification of costs and savings, if any, that State assumption of BLM's permitting and inspection programs might realize.

It is our expectation that California could undertake all downhole permitting and well inspection activities on BLM administered leases at no cost to the Federal Government.

This is possible because California is in a unique position of having the most BLM leases concentrated in one geographic area and interspersed in the checkerboard fashion among private leases in a heavily developed area.

The assumption of other responsibilities would require additional State resources, and our decision to assume these responsibilities can only be made after we thoroughly examine the costs and benefits to the State, the operators, and taxpayers. Thank you, Mr. Chairman.

Mr. CALVERT. Thank you, Ms. Miller. Could you please submit for the record the copy of the MOU for us?

Ms. MILLER. Yes. I would be happy to give that to you.

Mr. CALVERT. Thank you very much. Next, Donald Mason, Chief, Division of Oil and Gas. You may begin your testimony. Thank you.

STATEMENT OF DONALD L. MASON, CHIEF, OHIO DEPARTMENT OF NATURAL RESOURCES

Mr. MASON. Good afternoon, Mr. Chairman, and members of the House Energy and Mineral Resources Subcommittee. Thank you for providing this opportunity to present testimony on a subject of transferring oil and gas inspection and enforcement authority from the Federal Bureau of Land Management to the State governments. My name is Donald L. Mason, Esquire, Chief of the Division of Oil and Gas, Ohio Department of Natural Resources.

Additionally, I have been designated as the associate representative to the Interstate Oil and Gas Compact Commission by the

Governor of Ohio, George V. Voinovich. As a member of the IOGCC, I am Chairman of the Illinois-Appalachian Basin Regulatory Directors and am here today to represent their concerns and viewpoints as they pertain to REGO II.

As regulatory chiefs, we are accustomed to managing State programs according to Federal delegation or to State law, whichever pertains to the appropriate situation. Secondly, by being close to our constituents and to industry organizations, we are able to understand how government can best serve the needs of the citizens.

To summarize, REGO II is the distribution of enforcement and inspection workload from the Federal Government's Bureau of Land Management to the respective State governments, oil and gas regulatory programs. We support the REGO II concept because it can lead to reduced government overlap and an increased likelihood that the oil and gas industry will be regulated with the appropriate controls.

The eastern States have unique concerns that do not exist in the States west of the Mississippi River. Presently, operators of many wells are burdened with strict reporting requirements that may be applicable to large producing wells in western States. But when applied to older, lower volume Appalachian wells, create an artificial economic hardship to the operator and ultimately cause the premature plugging of the wells. For example, operators must measure and report on a monthly basis oil and tank facilities whether or not it has been picked up for sale.

Secondly, highly technical expensive equipment for measuring volume based on temperature is specified, even though temperature does not play a role in low production wells for which the operator may never recapture his investment.

Our wells are typified by low but steady production. It is not unusual for wells to operate 30 to 50 years providing oil and natural gas. The need to keep these wells on line and producing is in our States' and national best interest.

For example, in Ohio, many rural gas consumers are served off gathering lines that collect natural gas directly from the well head. This is especially true in southern Ohio and the area known as the Wayne National Forest. State rules are more than adequate to deal with any situation that may arise in connection with operation at these wells. And State inspectors are present in almost every producing county.

We encourage the transfer from the Federal Government to the State government the authority to regulate permit and inspect all wells on Federal leases. Presently, State inspectors oversee these functions, and the Federal involvement is at best redundant and at worse, conflicting with State requirements.

Typically, State law and regulations are based on decades of information gathering and analysis of geologic situations, unique to every geographic area. Such laws directly relate to local environmental, health, and safety concerns. For example, the States are in the best position to play surface case requirements to protect underground sources of drinking water because the States are mapping such zones.

The States have field enforcement staffs providing advice based upon years of local experience to operators, even though many times these wells are drilled or operating on Federal leases. When problems arise, the State inspector is the first to be called out to the site. It has the authority to oversee corrective action.

These low producing wells are an asset to the States because they provide a local supply of natural gas during extreme cold months when interstate transmission lines do not have the capacity to handle the extreme demand.

In Ohio, last calendar year saw a 10 percent increase over the 35-year-average in cumulative degree days. Therefore, the rural customers—schools, institutions, hospitals and homes—were kept warm because a local production was available.

We encourage these wells to continue to operate even through their later years. Practical, tailor-made, environmental and business practices must apply to them. By transferring enforcement and inspection functions to the States, such tailor-made rules can be put in place in lieu of Federal regulations that attempt to apply cookie-cutter standards that do not work well in all parts of the country.

In closing, let me refer to a speech made February 6, 1996, by President Clinton to the National Governors Association. He states that we cannot solve the complex problems of the modern world unless we have worked together in a genuine spirit of community where everyone does his or her part, where we sharply define what the role of the government is and what the role of the Federal, State, and local governments are. He goes on to say that we know that one-size-fit-all regulation of government does not work. Thank you very much for this time.

Mr. CALVERT. Thank you for your testimony. Next, Mr. Carter, Director of Utah Division of oil, gas, and mining. Mr. Carter.

STATEMENT OF JAMES W. CARTER, DIRECTOR, UTAH DIVISION OF OIL, GAS AND MINING

Mr. CARTER. Thank you, Mr. Chairman, members of the committee, we appreciate the opportunity to discuss with you the Bureau of Land Management's 1995 REGO II proposal to transfer Federal oil and gas inspection and enforcement functions to the States.

I am appearing before you here today as a representative of the Interstate Oil and Gas Compact Commission, an association of 29 member States and 6 associate States, originally formed by the 74 U.S. Congress in 1935 to conserve the country's oil and gas resources and support the oil and gas producing States in effective regulation of petroleum exploration and development activities.

In March of 1995, the Bureau of Land Management proposed to transfer certain Federal oil and gas field inspection and enforcement functions to States and tribes. The thrust of the BLM proposal is to transfer Federal inspection and enforcement functions under the existing authorities contained in the Federal Oil and Gas Royalty Management Act of 1982, FOGRMA.

Last fall, the IOGCC convened a working subgroup of its standing Public Lands Committee to evaluate the BLM transfer proposal and to provide the BLM with a coordinated State response. As you would expect, the 29 IOGCC member States don't have identical views of the petroleum world, but their regulator objectives of all the State programs are very similar.

It was, therefore, possible to develop a consensus response to the BLM proposal, which response was formally adopted by the IOGCC at its 1996 spring quarterly meeting and was presented to the Department of the Interior and the BLM shortly thereafter. A copy of that proposal is attached to my submitted written testimony, and I ask that it be made part of the record.

Mr. CALVERT. Without objection, so ordered.

Mr. CARTER. Thank you. In a nutshell, the IOGCC believes that the BLM transfer proposal is a step in the right direction, and that cost savings and program efficiencies are possible. However, the IOGCC believes that the scope of the BLM proposal is too narrow, and that in order to fully realize the program economies and efficiencies available, the States and the BLM must step out of the box and take a fresh comprehensive look at the whole regulatory program free of the constraints of existing policies, procedures, guidelines, and perhaps even the regulations themselves.

The existing FOGRMA delegation authorities essentially allow the BLM to hire States to perform Federal inspections against Federal regulatory requirements. Violations written by State inspectors would be appealed through Federal administrative and judicial processes.

While some economies of operation may be available with such limited delegation, the IOGCC States believe that far more significant program improvements are achievable by utilizing more efficient, and cost effective means to obtain desired results.

The broad objectives of the oil and gas regulation, the program for States and the Federal Government are so similar as to be almost identical. In fact, the BLM's own regulatory program was designed in the late 1950's based on the IOGCC model program.

The IOGCC believes that the only significant differences between the State and Federal oil and gas regulatory programs are the differing methods which have evolved over time from that common IOGCC-designed root. The benefits of streamlined and consolidated regulatory programs are several. The IOGCC believes that substantial cost savings to both the States and the Federal Government are possible.

In the event, consolidation of a single State and Federal programs can be accomplished, the operators in that State will have a single regulatory agency to work with. In the event, a number of State and Federal programs can be consolidated, it is likely that the differences between State and Federal programs and between State programs will diminish.

On a more philosophical level, the IOGCC believes that it is incumbent upon all levels of government to operate more efficiently and cooperate more fully in providing public services. To date, a number of IOGCC member States have been conducting productive discussions with our BLM counterparts.

Several, as you heard including California and Colorado, have identified efficiencies and entered into agreements with the BLM to take advantage of them.

While we remain cautiously optimistic, we have not yet received a clear commitment from the Bureau of Land Management to discuss functions beyond the somewhat limited delegations currently authorized by FOGRMA.

No State has yet taken advantage of existing FOGRMA delegation opportunities. Our concern is that the absence of support by the BLM for comprehensive discussions of streamlining, simplification, and consolidation of Federal and State oil and gas regulatory programs may stifle otherwise productive discussions. And they ultimately thwart the objectives of the REGO II initiative itself.

The breadth and objectives of the discussions IOGCC States hope to have with the BLM are set out in an IOGCC resolution dated May 7, 1996, a copy of which is also attached to my testimony. We are cognizant of BLM's concerns that there may be legal impediments to delegation of certain functions.

We are also cognizant of BLM's need to ensure that Federal standards are met. IOGCC's proposal is to set aside discussion of impediments for the moment and to work with the BLM to identify and quantify the on-the-ground performance standards the ideal oil and gas regulatory program would achieve.

We should then evaluate the effectiveness and efficiency of both Federal and State tools now in use in pursuit of those performance standards and select the best tools for the ideal program. Only then should we identify impediments to implementing the best program when we are in a position to make the necessary corrections.

There is no doubt that implementing the IOGCC's proposal, or even consummating a single FOGRMA transfer, will be complex and difficult. It is, however, the work the States and the BLM should be doing now. We appreciate the committee's interest in this important initiative and request your support for comprehensive and innovation-seeking discussions between the BLM and the IOGCC member States. Thank you.

[Report may be found at end of hearing.]

Mr. CALVERT. Thank you for your testimony. Director Miller, once again it seems like California is leading the way for the rest of the nation. Your testimony makes that quite clear, but we both know Ed Hasty—he is certainly a unique individual. He is the State Director for the BLM. It makes me want to go out and get a haircut just thinking about him. Do you think that other BLM State directors could do the MOU's that you just described or the other States can do just as well?

Ms. MILLER. Actually, with this MOU, although it took a couple of years, and I think a lot of times it is motivating at the middle-management level as well as from the top. It took a couple years to get this together. But at this stage at least we—our main goal in the first phase was to make sure we were in sync with environmental protections and all, and in California's case, ours are more stringent in many cases than BLM so BLM is actually enforcing our standards.

But the whole idea was to have a one-stop shop for the regulated industry. So now there is one permit—a singular place to go. This next step is the critical part as far as I am concerned. When we take a look at the costs and efficiencies of doing it the way we are doing it now, unless you might have understood my testimony—a lot of it BLM is doing under this MOU. And it is our feeling that we can take it over at no cost to the Federal Government.

Most of the inspection—enforcement so that is really where the rubber is going to meet the road, and our discussion of the next step that I—hopefully we will be proceeding on in the next couple of months.

Mr. CALVERT. Well, that sounds great. Maybe States like Wyoming will just want to copy California. Mr. Mason, in your testimony, you speak to Ohio's ability to properly and effectively enforce environmental and operational guidelines. How can the Federal Government be sure that the Ohio program is adequate?

Mr. MASON. There is probably a couple of ways. One is just recently the United States EPA, with the IOGCC, did a peer review of many of the States. Ohio was one of them. We were found to be extremely solid. There was no shortcomings. We were encouraged to do more studies in terms of bioremediation. But as far as our programs, they are rated amongst the best in the nation.

Secondly, the State of Ohio has the ability to environmentally protect the waters of the State, literally. The waters of the State—is everything—that is not an artificial holding pond. So, therefore, we can protect all waters in the United States—excuse me—in the State of Ohio. So, therefore, our standards are actually more stringent than what Federal standards are, for example, for SPPC and things of that nature.

Mr. CALVERT. Mr. Carter, throughout the discussions we have been having, it is my understanding that the transfer of the inspection and enforcement responsibilities would produce cost savings and program efficiencies, obviously. With those thoughts in mind, what amount of funding do you expect from the Federal Government to perform these functions?

Mr. CARTER. Well, Ms. Miller is going to be tough to follow. I think that the objective certainly is cost savings. I think that should be the primary objective. And IOGCC's suggestion is that there are substantial differences between the States, existing State regulatory programs, and Federal regulatory programs, and differences in where the lands are located.

Now, I can speak for Utah. I think there are aspects of the BLM's regulatory program that the State of Utah is currently already performing, and that BLM can simply cease performing those activities. We can initiate some reporting mechanisms or something of the kind to ensure that their objectives are being met for no cost.

I think there are other aspects of the regulatory program that would require the State of Utah to assume additional workload burdens depending, again, on the flexibility we have to reinvent the process if we are to simply assume the work BLM is now doing is exactly the way they are doing it. I think there is a relatively small incremental savings we can offer.

But if we are allowed to reengineer their process to more closely align with our existing processes, we think there could be substantial savings. Since we are bidding here, I will say in the neighborhood of 50 to 60 percent of their program cost.

Mr. CALVERT. You are getting closer to California.

Mr. CARTER. This is going to be very tough to put it against.

Mr. CALVERT. Mr. Abercrombie.

Mr. ABERCROMBIE. No. I appreciate the testimony, and while it seems quite detailed, nonetheless, it seems much too general for me. I don't understand what all the difficulty in figuring out what the costs are. I can't find anything in any of the testimony here. It just simply puts how much it costs to do each of these things.

It doesn't seem to me that hard to figure out. You already say—Mr. Carter—I will use you as—because you had it here the transfer of oil and gas inspection—responsibilities—this addendum here. I have gone through it. It seems to me pretty good. You have everything in here.

The Federal Government sets the minimum standards at least that everybody has to follow so you don't get off into some kind of 50 State morass, particularly because we know that where minerals are concerned, you cross boundaries, there is all kinds of regional problems associated with everything from marketing to extraction.

All right. There are geological problems, geographical problems, regional problems, water commissions, dams, rivers running through States across lines, et cetera. All those things that come into play. So it is not as if it was simply a matter of, you know, shrugging off a mantle of Federal bureaucracy or whatever the cliche of the moment might be.

The point would be is to have a series of, or a set of, standards, rules, regulations, which would be applicable in virtually every instance in a generic way, and then apply them as it makes sense, either State by State or intrastate. Are you with me so far?

Mr. CARTER. I think I am.

Mr. ABERCROMBIE. If that is the case then, and the idea then, once that is set up, is to minimize the role of the Federal Government and actually doing things that States could do or are already doing.

I am not quite sure exactly where the savings would be because—unless there was a showing of duplication where someone was merely verifying that you are doing what they already do at the Federal level.

In that instance, I am perfectly content to let the States do it all and simply establish a reporting mechanism where there is someone and perhaps particularly under circumstances where you have computerization now, where you could be monitored in that sense. Now, obviously, you are going to have to be dependent upon professionalism and standards of conduct that would not allow for fudging information and all those things.

But presuming professionalism and presuming good faith and good will being exercised, there is no reason why States and/or regions couldn't do this kind of thing and indicate whether they are in compliance with these generic rules and regulations and standards, and meet such further specific standards, rules, and regulations as might be required given the context of whatever mineral or other aspect was being pursued.

So if that is the case, and it appears from reading all of this that there is a good contact between the Federal Government and the State's already. The people know one another. The forms and functions are pretty clear. Couldn't the Chairman have in relatively rapid order a proposal from the States and the Federal Government to move and do this?

Mr. CARTER. I think there is a sufficient difference between the circumstance of the States. This is really what we ran up against as we were working with the 29-member States to come up with a comprehensive proposal.

We couldn't get very specific because, for instance, in Wyoming and New Mexico they are very well established and have quite separate Federal regulatory programs and State regulatory programs. In Utah, we see the Federal inspectors everywhere we go, and they see us. And there is, I think, a great deal of duplication and overlap that can result in a lot of savings if we eliminate it.

But I think the hangup in my perception right now is that there has been not a willingness on the part of the Bureau of Land Management to discuss standards in the general sense. In other words, I read the proposal to be we would like you to do our inspections exactly the way we do them against our regulations.

And the States are saying, "We have got regulations that cover those exact same subject areas, and since we have been doing this since 1935, have figured out more efficient ways to get those same results."

Mr. ABERCROMBIE. I understand.

Mr. CARTER. We think we can make you an offer that will be attractive, much like a contract. We can deliver the results.

Mr. ABERCROMBIE. I understand. Well, how long will that take?

Mr. CARTER. We could put together a proposal I think in 60 days.

Mr. ABERCROMBIE. OK. That is what I was thinking, because if I just look at the May resolution of the IOGCC, BLM dialog on regulatory issues that is attached to your testimony. What it really comes down—the last—the be it resolved section is just one long sentence—well, I shouldn't say one long sentence.

It is a summary sentence of the dialog that we have just had, I think, and there is nothing to prevent a State from having more stringent—just as constitutionally there is nothing to prevent any State from, say, expanding the First Amendment or the Second Amendment or the Third Amendment provided they don't diminish it to the Constitution.

Same here. There is nothing to say—prevent a State from saying, "Well, with respect to—let us say that. You know, with respect to bauxite, whatever it is. Because of the unique characteristics and circumstances of our topography and all that, we want even more strict or a broader range of responsibilities to be met before we will sanction or certify some activity."

You could do all of that, but I guess my point then is like I say, 60 days. I am certainly not trying to say this is easy or it is some kind of perfunctory exercise, but to the degree that there is already from what I gather relatively sophisticated inspection and fee process, then maybe we could just move ahead with this in fairly rapid order.

Mr. CARTER. I think the only impediment is if I made—actually I could put together an offer in less time. We have a proposal in draft. We are not sure though that the Utah State Director has direction from his higherups to discuss with us the kind of proposal we would make because our proposal would be driven by existing Utah regulations. We would invite them to evaluate our program and the performance of our program against their objectives and make recommendations to us about improvements, we might make——

Mr. ABERCROMBIE. Well, the Chairman has shown me some more of the detail, and I think the proposal is 90 days. Am I reading that correctly?

Mr. CALVERT. This is fiscal year '97, Mr. Abercrombie.

Mr. ABERCROMBIE. On the Interior appropriations bill it would be 90 days. Do you think that would be a sufficient amount of time?

Mr. CARTER. I think it would be.

Mr. ABERCROMBIE. Does everybody else agree?

Ms. MILLER. I would agree.

Mr. ABERCROMBIE. OK.

Mr. MASON. Can I add one point to answer a question?

Mr. ABERCROMBIE. You can if the Chairman indulges me because the red light is on.

Mr. CALVERT. Go ahead.

Mr. MASON. One of the difficulties we have had in Ohio in identifying what the savings would be in the eastern States that work out of the BLM Milwaukee Office, the cost is not broken down on a State-by-State basis. So once BLM would break that down for us on a State-by-State basis, we could turn around and tell you how much you are going to save. For Ohio, since we are doing everything anyway, whatever is being spent in Ohio is money that could be moved to the save column.

Mr. ABERCROMBIE. Well, I appreciate that. Let me just conclude then, if you will indulge me just a moment further. I would not presume myself that all of this is going to amount to savings. There may be some instances or maybe several or I don't know, I won't say a majority of instances, but in such instances where more expense is required in order to do the job right, I think then that should be brought forward to. What we are looking for is to safeguard the public interest here as well.

So it is not an axiom, at least from this member's point of view, that in every instance there will be what can be construed as being a savings. Because I am sure just like any other category of savings and expenses, it depends on who is doing the books and what the accounting methodology is.

And without trying to say that there is going to be trickery involved, what I mean is is that depending on the accounting approach that is taken, I am presuming that not in every instance you will be able to put a savings column category to it.

Mr. MASON. May I respond briefly? The context of the IOGCC proposal is a negotiation, and our vision is that the States would be free and the BLM State directors would be free to negotiate free of the constraints of—you can only delegate it exactly the way it is already written up.

Mr. ABERCROMBIE. So the bottom line would be is that where you could get savings and be efficient, fine. Where it costs a little more in order to be efficient, that would be the recommendation based on professional judgment. And overall one would hope then that you would achieve the most efficient and cost saving approach. Is that a fair summary?

Mr. MASON. That is.

Mr. MILLER. Mr. Chairman, if I may also add, I think when you look at our relationship with EPA, with the underground injection control program, and that being a performance-based program, that would be an ideal way to look at this we think with BLM. The EPA and California has periodic review meetings, and we file annual reports to them to meet their overall standards.

So once again them—basically having us in charge of that program in the State of California with the type of oversights on a performance base versus the widgets, and this is exactly how you will perform the inspection. And I hope that will be the dialog we will get to with BLM.

Mr. CALVERT. Thank you. Just as a comment as a side on this, I wonder from some testimony I heard the other day regarding the Native American Indian Tribes where we absorbed the entire cost of collection on royalty collection on tribes, but yet we are missing about $2.4 billion.

And I know the Osage Tribe already collects on their own—the royalties, and gives it to the United States Treasury, and they wouldn't have it any other way. I wonder if some tribes may feel the same way about now—collect their own revenues just to make sure they receive them, even if it is an additional cost to them. With that, I will ask the gentlelady from Wyoming if she has any questions.

Mrs. CUBIN. Yes. Thank you, Mr. Chairman. I would like to address a couple questions to Mr. Carter. You have testified in front of this committee on the issue of redundant regulations in inspections and so on—in cooperations. And as you are aware, I have introduced a bill, H.R. 2372, that is intended to fix these redundancies in the coal industry.

How do you think, if this devolution occurs in oil and gas, how do you think you will be able to avoid those same kind of problems?

Mr. CARTER. Let me start with a reason that I believe they won't occur—won't be as severe initially, and that is that in this circumstance, we are talking about regulatory programs that have been running for years and years. In the coal program circumstance, we had a brand new Federal program with initial implementation by a Federal agency, and then devolutioned to the States on a primacy basis.

So right off the bat, I think we don't have to argue too much about whether the States can do it or are going to be tough enough or whatever because all you have to do is look at the State's history and draw your own conclusions.

I think that what Ms. Miller spoke about is really the key to oversight, and that is that the oversight that is performed needs to be performance based. And I am pleased to report then in the coal regulatory program, the Office of Surface Mining and the States are beginning a new performance-based oversight plan which will focus on the actual outputs of results of the implementation of the program in Utah and compare those against the objectives of the law—adequate reclamation and environmental protection.

So oversight that is focused on the result rather than on the process, and the means by which the result is achieved is really the only oversight that tells you anything. And I think for years and years the difficulty that OSM and the States experienced was OSM was trying to perform oversight by critiquing the inputs—the mechanisms—and was unable to measure anything much by doing that, and it drove the States nuts. So I think a key would be an appropriately designed oversight plan.

Mrs. CUBIN. Well, frankly, I think all of our environmental laws and rules and regulations should be based on outcomes rather than technologies and certain regulations that don't fit either in an area or a technology or something like that.

And I am aware of the fact that OSM has really made progress as far as the problem with notices of violations are concerned. My main worry and the reason that I continue on with H.R. 2372 is that when the personnel changes in OSM, the policy could change too. And that is something that I, frankly, would like to avoid.

I think that the industry deserves to have stability and predictability, the oil and gas industry, the coal industry, whatever, and that we ought to deal with the industries that create good paying jobs for our workers in a manner that helps them stay in business and pay for government and all those things they do. Thank you very much.

Mr. CARTER. Thank you.

Mr. CALVERT. Well, on the personnel changes on OSM, I wouldn't mind doing that through an election process. The gentleman from Ohio.

Mr. CREMEANS. Thank you, Mr. Chairman. Mr. Mason, welcome. Glad to have you from the great State of Ohio. I, a number of years ago, and since then even, have been on different occasions asked the question about the duplication of both the State environmental people and the Federal and not only environmental agencies and representatives, but surface mining in Ohio and a number of other equally important agencies.

And the claim that has been made is that many times as a vendor or an operator either in pursuit of natural gas or other minerals, namely coal or aggregates, the question has arisen about the conflict between the interpretation of the law, and which usually results in the vendor or the private owner being the victim if I could stretch it that far.

I never heard—and perhaps you would want to comment on this—I have never heard anyone step forth and say that there is a positive side to having both a Federal agency and also a State regulatory agency.

I would like to ask your comment on that as I am very—seem to be over the last at least 15 years, I think that the great State of Ohio is doing a very adequate job as far as regulating, you know, these protected mechanisms throughout the State of Ohio. Do you have a comment either for or against that particular comment that I am frequently asked?

Mr. MASON. Mr. Chairman, Mr. Congressman, that is an excellent question that goes to the very heart of what we are discussing. And I can honestly tell you I cannot think of an instance where duplication has yielded a better product. If we have a question at State government regarding a matter, a lot of times we do go to the Federal Government for insights, how other States handle it, things like that. That is just good communication.

We basically can run a better program locally because we know where the geology is, we know where the geography is, we know who the players are. If there is a problem in one part of our State, we can deal with that. Again, on private property versus—we can deal with the problem on a Federal lease. So I cannot think of any additional arrows that we can have by having two different entities out there.

My background is primarily oil and gas. I do have knowledge of the coal mining industry in Ohio. Again, I am from southern Ohio, and there seems to be a lot of duplication there also.

Mr. CREMEANS. The issue about environmental protection, as a matter of fact, continues to surface, and the question that I am asked, given the shift from Washington back to the States, can we be assured that the great State of Ohio or Utah or any other State, Wyoming, will actually provide the same level of protection without the strong arm of the Federal Government? And, if so, how?

Mr. MASON. Let me give you a good example. Two nights ago, I was at a public meeting north of Youngstown 30 miles. The Bureau of Land Management is looking at leasing out property underneath Mosquito Creek, which is about a 9-mile long by one-mile wide lake.

The citizens of that area asked what kind of casing protection can be required by the BLM? Their answer was to protect the aquifer. Their answer came back, "Well, we really can't make it more stringent here than anywhere else." The nice thing is I was able to answer that.

The State of Ohio does have a law in place that we use very routinely, where we can upgrade casing requirements to protect aquifers. And in this case, it was a well head protection area. So, frankly, to answer your question, we can do it better because, in fact, we have the authority to protect waters of the State, whereas the Federal Government really does not.

Mr. CREMEANS. Thank you, Mr. Mason. Thank you, Mr. Chairman. I yield back.

Mrs. CUBIN. Mr. Chairman?

Mr. CALVERT. Yes.

Mrs. CUBIN. I would like to put into the record a statement from Senator Craig Thomas who is not able to be with us today.

Mr. CALVERT. Without objection, so ordered.

Mrs. CUBIN. Thank you.

[Statement of Senator Thomas follows:]

STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM WYOMING

Mr. Chairman, I want to thank you for holding this hearing today to further examine the royalty management program at the Minerals Management Service (MMS) and other Federal land management agencies. This is not a new issue. I have long been an advocate of looking for ways to allow States, such as Wyoming, to manage the collection of Federal mineral royalty receipts.

Collection of mineral royalties on Federal lands is vital to the economy of Wyoming. As many of you know, roughly 50 percent of my State is owned by the Federal Government. This has some serious consequences for Wyoming's residents and requires the State and the Federal Government to work together on numerous issues. Resources collected from the mineral royalty program are used to support various programs including education, road construction and payments to towns and counties.

For a number of years, I have been interested in the way the MMS collects royalties on Federal lands. Wyoming is by far the largest producer of mineral receipts on Federal lands and has an important stake in ensuring these funds are collected in an efficient and cost-effective manner. Unfortunately, the MMS has not been up to the task and continues to operate inefficiently.

The MMS is a Federal agency that must be overhauled. It is a classic example of a Federal bureaucracy that is both costly and performs the same function as State audit agencies. Most of the States have similar collection programs, but they do this work far more efficiently and with less expense. In fact, in a hearing before this Subcommittee in 1993, then Governor Mike Sullivan of Wyoming testified that it costs the State of Wyoming roughly $5 in administrative costs to collect $1000 in royalties, while it costs the MMS roughly $58 to collect $1000 in royalties. This is nearly a 12-fold increase in the administrative costs.

There have been a number of proposals discussed to address this situation and give the States more authority over the royalty collection program. The House has passed and the Senate is currently considering the "Federal Oil and Gas Royalty Simplification and Fairness Act of 1996," which is designed to streamline the royalty collection process and give the States the opportunity to assume some royalty collection and audit functions. In addition, in 1995 the Clinton Administration proposed abolishing the MMS and transferring the royalty collection functions to the States. However, the proposal was never seriously considered by the Department of the Interior and was withdrawn a few months after it was proposed.

In an effort to gather additional information regarding the costs of the MMS royalty collection program compared to the States, I have asked the General Accounting Office (GAO) to conduct a review of costs associated with the onshore portion of the royalty collection program at the MMS. Specifically, I have asked the GAO to compare the costs of royalty collection and audit programs in Wyoming, New Mexico and California and contrast those with MMS. I am hopeful the GAO will be able to provide additional insight into this situation and give some answers regarding the high cost of the MMS program.

Mr. Chairman, it is clear the current net receipts program at the MMS is not working. Although there have been some positive actions taken by the agency to streamline operations and reduce costs, the program is still inefficient and costs significant amounts of money. Rather than trying to preserve the same old system of royalty collection on Federal lands, I believe we should give the States the opportunity to assume the royalty collection and audit functions.

Thank you again, Mr. Chairman, for holding this hearing today. I look forward to continuing to work with you and the Subcommittee to develop some solutions that will give the States more authority to collect these royalties.

Mr. CALVERT. Any other questions for this panel? If not, thank you very much for coming out long distances or little distances. We appreciate your testimony. The last panel today from industry. First, Gene Kozlowski, President, MAKOIL, Inc.; Frank Yates, Jr., Vice President, Yates Petroleum Corporation; Danny Thompson, General Manager of Carlton Oil Corporation; Dan Kramer, the Executive Director, California Independent Petroleum Association; and Randy Maebon, Regulatory Coordinator of the Rocky Mountain Region, Marathon Oil Company. Gene Kozlowski, you may begin your testimony.

STATEMENT OF GENE KOZLOWSKI, PRESIDENT, MAKOIL, INC.

Mr. KOZLOWSKI. Mr. Chairman and members of the committee, it appears as though all the bureaucrats have left, and now we are down to the folks with desperation in their heart every day and night who go out and try to find more oil and gas so we can be in here talking about royalties.

I am Gene Kozlowski, an independent oil and gas producer. My company, MAKOIL—and we, incidentally, make oil—is the largest producer of oil and gas from Federal lands in the State of Nevada.

As you may know, 85 percent of the State of Nevada is Federal lands. I am here today on behalf of the Independent Petroleum Association of America, the IPAA, a national trade association representing more than 5,500 independent oil and natural gas producers.

I also appear on behalf of the Independent Petroleum Association of Mountain States, IPAMS, which represents independent producers in 11 western States in the Rocky Mountain region. My comments reflect the views of independents producing from Federal leases throughout the West where most of the Federal lands are located.

Independents are the major force in developing America's oil and natural gas resource base. We drill 85 percent of the nation's wells, produce 65 percent of the natural gas, and 40 percent of the domestic oil. Despite this record nationwide, independents generally have not looked to onshore Federal lands as a promising place to do business. We believe that Federal lands hold enormous potential oil and natural gas.

However, we know that operating on Federal lands can be expensive and subject to frequent and costly delays in acquiring needed permits. As a result, independents are not expanding their exploration and production on onshore Federal lands. With your help, however, we hope to change that.

Of the almost 2.3 billion acres of land in our nation, nearly 650 million acres, or 29 percent, is owned by the Federal Government. More than one-fifth of the total oil production and one-third of the natural gas production in the United States comes from public lands. A recent U.S. Geological Survey report concluded that the greatest potential for oil and gas development in America is on lands under Federal stewardship.

The orderly development of domestic oil and natural gas resources makes more than just economic sense. Less than 18 months ago, President Clinton reported to Congress that his investigation through the Department of Commerce under the Trade Expansion Act found that America's increasing dependence on imported oil threatened to impair U.S. national security.

Now, unfortunately, nothing was done about it. Therefore, maintaining access to public lands for oil and gas development is essential to America's energy security. However, the people who decide where to invest in oil and gas development are shying away from onshore public lands.

The first step in encouraging development of oil and gas on Federal lands should be a cooperative effort to identify and eliminate any and all duplicative and unnecessary costs associated with onshore development. There are currently unnecessary costs associated with obtaining Federal leases, getting permits to drill, payment of royalties, and auditing procedures.

The cost and uncertainty associated with each of these steps drives independent oil and gas producers away from Federal onshore lands. A result is that America is more dependent on foreign oil than it really needs to be or has ever been. We must step up the efforts to get the Federal Government, State government, the industry, and the public to work together on Federal lands for the good of all involved.

In the Federal royalty arena, your bill, Mr. Chairman, the Royalty Fairness bill, demonstrates the type of reform that can occur when all parties work together. Your bill reforms costly royalty practices and increases the involvement of States in royalty collections.

Your bill serves as a model for future public legislation by bringing together various States and receiving bipartisan support on Capitol Hill, unanimous support from a diverse oil industry, and, finally, support from the Clinton Administration. I think you got it all. We hope we can get this important bill signed into law in the very near future.

I am pleased to see that Washington policymakers are rethinking the relationship between the Federal Government and the States and, where justified, are giving the States greater responsibility for managing a single program for both State and Federal leases.

The States have the basic motivation for prudently managing the oil and gas programs. First of all, it is their constituents who find employment, and this is high paying job employment, in the industry. New wealth is created, and the States receive a 50 percent share of the 12.5 percent royalties from oil and gas production. These funds then are normally invested in the State in local education programs that benefit all of the citizens. So the incentive is clearly there.

I agree with those who believe that the States can responsibly administer oil and gas production on Federal lands within their borders. The States already have their own oil and gas programs and have as much, if not more, experience in managing them than does the Federal Government. The States too are currently undergoing a reevaluation of their energy development programs. It is time to combine State and Federal efforts to streamline these programs.

Through the Interstate Oil and Gas Compact Commission, the IPAA is participating in a framework that will attempt to reduce administrative burdens facing producers on Federal and State lands. Making cost reductions and eliminating duplication can be achieved without compromising essential government programs.

To this end, the IOGCC proposal before you deserves a chance. This proposal was prepared in response to a BLM proposition to transfer partial responsibility for the oil and gas inspection and enforcement programs to the States.

The IOGCC believes, as we do and as the BLM does, incidentally, that there is extensive duplication by the BLM and State oil and gas regulatory authorities, and that a consolidation of BLM and State regulatory activities will result in significant cost savings through a single coordinated regulatory regime.

If this transfer of authority and responsibility is done correctly, the end result will be saving taxpayers dollars, eliminating duplication in State and Federal oil and gas administration, reducing the size of government, and transferring decisionmaking to the States and communities most directly affected.

We must, however, under any downsizing proposal prevent the reduction of Federal costs being shifted to an already troubled and heavily regulated industry. To secure cost savings for all those involved, we must strive, when possible, to eliminate duplication and multiple sets of laws and regulations.

Effective transfer of responsibility must also include adequate funding and authority for the States to enforce the activities they are performing. As you can imagine, uncertainty and litigation costs increase if an action taken by the State is second-guessed by the Federal Government.

If Federal regulations and standards are not folded into a clear State legal authority, then the State employee is required to enforce two different sets of regulations causing inconsistency and resulting in no cost savings to the government or the producers. The only benefit then becomes the elimination of personnel at the Federal level.

However, if the State has laws and rules, and most do, consistent with the requirements of the Federal Government, then there would be no need for Federal "oversight and enforcement," which is very costly.

In conclusion, the IOGCC proposal allows for the orderly transfer of BLM oil and gas post-lease activities to the States. It is the consensus of IPAA and IPAMS that the States are well equipped to carry out this responsibility if adequately funded.

The States have been performing many of these duties for some time, as I pointed out, and they have a vested interest in seeing that it is done expeditiously and accurately. As this work progresses, we suggest that producers be consulted each step of the way to prevent unintended consequences and to ensure that cost savings will be realized for both the government and producers on Federal land. Thank you, Mr. Chairman, and members of the committee.

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

Mr. CALVERT. Thank you, Mr. Kozlowski. I only hope you can get over and see Senator Reid and encourage him to—he is the only one left in town that hasn't supported my bill.

Mr. KOZLOWSKI. I have already.

Mr. CALVERT. OK. Thank you. Next, Mr. Yates, Vice President of Yates Petroleum Corporation.

STATEMENT OF FRANK YATES, JR., VICE PRESIDENT, YATES PETROLEUM CORPORATION

Mr. YATES. Thank you, Mr. Chairman. And it might be a hard act to follow here, but I will give it a shot. My name is Frank Yates, Jr. I am Vice President of Yates Petroleum Corporation in Artesia, New Mexico, which is the largest oil and gas production company native to the State of New Mexico. We are a closely held family corporation that has been in the business for four generations. And I am here to promote the transfer of regulatory responsibility for oil and gas operations to the States.

I would like to touch on about three reasons today why I think that this is important. One is that I believe that there is more expertise that exists with the State agencies. Another is the fact that there are redundancies in the regulations imposed by the Federal Government, as well as the States. And the third reason is I believe that there is greater accountability in the State regulatory programs than there is in the Federal programs.

Getting back to my first reason with regard to expertise, one of the reasons I would like to bring this up is a recent e-mail excerpt from our production manager—well, he is actually the head of our engineering department and oversees production operations, as well as drilling and completion operations. That goes like this.

He says that, "I am disturbed that the Bureau of Land Management is checking our casing designs and in some cases requesting modifications to our designs. This is most disturbing because I believe that the BLM engineers checking the designs are unfamiliar with many critical design concepts, are inexperienced or have no prior experience doing casing designs.

"They lack detailed, well-specific knowledge, and are using computer programs to check designs without knowing what criteria need to be checked. In other words, garbage in, garbage out. In short, I think they are unqualified and possibly incompetent to be checking our casing designs. Amateurs are checking the experts."

We do not necessarily have this type of a problem with the State people because we worked fairly well with the States, and in most cases representatives from the Oil Conservation Division have worked in the industry for a considerable period of time. They have grown up in the oil field. Many of them have had jobs in the oil and gas industry and understand the criteria involved in designing casing programs and so forth.

Brian Collins is a good example—have experts in this area that do nothing but casing designs and designing completion techniques, and these gentlemen have master's degrees in petroleum engineering and are very capable individuals with a considerable amount of expertise. So this does tend to be a problem occasionally.

The other area or the second area I mentioned was redundancy. Certainly, the Oil Conservation Division has responsibility for the protection of freshwater. This can present conflicts with some Federal regulations such as the Clean Water Act, and here recently I participated in the review process which was sponsored by this joint venture between the Interstate Oil and Gas Compact Commission and the Environmental Protection Agency.

We concluded that in the State of New Mexico that the Oil Conservation Division rules and guidelines with respect to the oil and gas waste programs were adequate in the State of New Mexico, and that with a few refinements that our program met the guidelines that were published by the Interstate Oil and Gas Compact Commission.

Oh, and if you are looking for the specific words, I am kind of shooting from the hip a little bit here. But at any rate, the point is here that the State program is adequate, has been determined to be adequate by the review process.

The third reason that I brought up was accountability. We feel that the accountability with the Federal programs goes one direction, and that is directly to the oil and gas industry and that there is little or no accountability on the part of Federal regulators if they make mistakes or if they are overburdensome or overzealous in their efforts to protect health and safety in the quality of the environment.

With regard to the State programs, accountability goes both ways. The States have a little bit more flexible guidelines in some cases. Industry has access to the Director of the Oil Conservation Division. And if we have a problem, we can go directly to him, and we can work those problems out fairly quickly.

One reason is because I think that we do not have to deal with a uniform regulatory policy that establishes specific standards for all 50 States. Certainly, standards that may be established in New Mexico may not be appropriate for Ohio.

The Clean Water Act, for example. We have a lot of areas in New Mexico where we have tributaries of streams which don't have water in them for as much as seven years at a time. It certainly makes much more sense to go do a bit of remediation onsite in an area like that rather than try and clean all that up and haul it to some other facility, and you run actually less risk of generating contamination along the way.

So accountability is also important, but I don't think that the solution would simply be to delegate responsibility for the—imposing the Federal regulations on the States because of this because I don't think that uniform regulatory policies always work.

One example of that, and I believe it was mentioned earlier, was the premise that the Oil Conservation Division in the State of New Mexico has for implementation of the underground injection control program in the State. And the OCD in New Mexico is responsible for all underground injection control for the purpose of disposing of produced waters in the State of New Mexico.

So to conclude, I think that that is three reasons. There are other reasons that I think might also be important, but we do feel that that would be of benefit to the State and the people of New Mexico to pass that responsibility of regulating oil and gas waste to the States. Thank you very much.

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

Mr. CALVERT. Thank you. Thank you for your testimony, Mr. Yates. Next, Danny Thompson, General Manager of the Carlton Oil Corporation.

STATEMENT OF DANNY THOMPSON, GENERAL MANAGER, CARLTON OIL CORPORATION

Mr. THOMPSON. Mr. Chairman and Congressman Cremeans, members of this Subcommittee, I would first, if I could, Mr. Chairman, request that I do a revised short summary of my statement. Your staff has advised that I had a very lengthy presentation. However, I would make a request that my full presentation be entered as part of the record.

Mr. CALVERT. Certainly. Without objection, so ordered.

Mr. THOMPSON. Mr. Chairman, Congressman Cremeans, members of the Subcommittee on Energy and Minerals, I appreciate the opportunity to appear before you today to discuss my views on transferring oil and gas regulations from the Federal Government to the States.

The views I am expressing represent those of the vast majority of oil and gas producers in southeastern Ohio. While the decision to transfer enforcement would affect producers across America, my comments are directed solely toward those producers in Ohio.

Mr. Chairman, I am the Owner and President of Carlton Oil Corporation located in Newport, Ohio. My operation is, for lack of a better term, a mom and pop operation. The wells which I run operate on a very slim revenue margin. These wells are burdened with the unnecessary and overburdensome Federal regulations. They are quickly becoming uneconomical to operate.

The issue entailed here is not one of safety or of protecting the environment. Ohio has some of the most stringent environmental and safety laws of any State in the nation. The real issue here and the debate within this Subcommittee should be on how to reduce the overburdensome double, sometimes triple, regulations. It would seem to me that if one set of regulations, whether Federal or State, reached the desired level of acceptable standards, that should be sufficient.

In today's world, a producer in southeastern Ohio must meet regulations of Ohio Chapter 1509, Federal CFR 43, BLM standards, the U.S. Forest Service Management Plan, Federal DOT, and the Federal Regulatory Commission to name a few of the regulatory bodies I must deal with when operating a well.

Let me give you an example of one issue which is a clear example of the overburdensome regulation which operators must endure—operational bonding. Ohio has a $15,000 plugging bond, the U.S. Forest Service has a $20,000 plugging bond, and the BLM requires a $25,000 bond.

I would ask a member of either agency to advise me why one bond would not be sufficient. Bonding is just one of the many issues. There are different tank standards for each agency, different meter measurement, different site plans, and different valving systems.

Members of the committee, I would suggest to you that while transferring enforcement of regulations is a good move and has been needed for a long time, there needs to be more done. The double and triple bureaucratic regulations need to be removed. Transferring enforcement simply is not enough. Likewise, these intergovernment turf battles to gain ground and agency security need to stop.

I would like to mention a short story which illustrates the problems I have had dealing with excessive bureaucrats. I first became involved in reverting mineral leases around 1979. Being a little cautious, several producers, including myself, questioned the Forest Service about what happens when the mineral reservation runs out and reverts to the Federal Government.

The response was the same as what happens in the private sector. You continue to operate your lease and wells while switching royalty payments to the government. After being in several informal discussions and being somewhat reassured, I jumped in and leased some of these reverted minerals.

All negotiations took place between the mineral holder and the producer, in this case myself. The Forest Service took no part as the minerals were reserved. My company, Carlton, leased eight separate tracts totaling about 800 acres. Probably the biggest mistake of my life.

My experience with Carlton's Littleton Lease has been grueling to say the least. For the past nine years, Carlton has been through meeting after meeting with the U.S. Forest Service and Bureau of Land Management; compensatory royalty agreements, Federal legislation, Federal appeal process, and, finally, giving in to the Bureau of Land Management because as the saying goes, you can't fight the Federal Government.

Following my giving in to the Bureau of Land Management, I encountered delay after delay from the U.S. Forest Service. Finally, today, this morning, Congressman Cremeans, you probably would like to know, I went to the Bureau of Land Management lease sale in Springfield, Virginia. I bid a total of $426, gentleman, for nine years of total bureaucratic delay and bought my lease back—$426.

I purchased the lease. What lays ahead, I am not really sure now. I will probably find out when I get home and call the Bureau of Land Management. But I would add here that for the four years the Littleton well has been shut in at a loss of probably $2,000 to $5,000 based on what the well was producing prior to being shut in in 1992, I would give an estimate that it would probably be $2,000 to $5,000 royalty that the Federal Government has lost to gain $426 today. Had that well been recompleted, then most likely the royalty would have been higher.

I would add there though, Mr. Chairman, that the Federal Government did receive $75 filing fee for their administrative—for all the problems over the nine years so maybe there is a little bit of balance there.

In summary, my full presentation gives more in-depth detail of my Littleton lease experience, as well as other thoughts I have. I assume everyone has received a copy of that presentation. I would end my oral comments and be most happy to answer any questions that I could. Thank you.

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

Mr. CALVERT. Thank you very much, Mr. Thompson. Next, Dan Kramer, Executive Director, California Independent Petroleum Association.

STATEMENT OF DAN KRAMER, EXECUTIVE DIRECTOR, CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION

Mr. KRAMER. Mr. Chairman, committee members, thank you for the opportunity to testify before you today. I will keep my comments short. CIPA represents approximately 500 independent oil and natural gas producers, service and supply companies operating in California.

I am here today because California producers have a unique perspective to share with you on the subject of transferring oil field inspection and enforcement operations on Federal lands from the BLM to the States.

As late as 1992, the relationship between the industry and the Bureau of Land Management in California was fraught with stories of producers unable to obtain timely permits, a reluctance on their part to cede any turf to the State's oil and gas regulatory agency, even when it was clear that the State could do something faster and less expensively.

Over the past several years, California's oil and gas industry, working with the BLM and the California Division of Oil and Gas and the California Oil and Gas Work Group, sought and reached agreement on the development of a plan to eliminate regulatory overlap in several areas, as Elin Miller talked about earlier.

The most significant change is that with few exceptions, permit applications are now filed with only one agency, and that is a big improvement, let me tell you. Our producers are very happy with that arrangement. They had a very hard time getting through to the BLM in the past.

On March 15, 1996, as Ms. Miller said, a memorandum of understanding or MOU became effective which formalized the newly constituted working agreement between all of the parties. That would be the industry, the DIG, and the BLM.

The purpose of the MOU is and was to clarify and simplify the permitting and regulatory processes for operators and to avoid duplication wherever possible. Producers hopefully have gotten what they have asked for, and that is an element of regulatory certainty. The timeframe has been short. The implementation has only been since March so we are taking a wait-and-see attitude there, but things look pretty good.

In the interim, costs of operation have been reduced while red tape and excessive paperwork have been eliminated without any detrimental effect on the environment. We have developed a general statement of purpose and intent along with six operating agreements. I have a copy of that to enter into the record. These flexible operating agreements can be changed as further streamlining opportunities are identified or as the need arises.

While we are pleased at the progress made through the cooperation of each of the interested parties in California, there may be remaining inefficiencies particularly in other States. It sounds like it. It sounds like that is what we have heard here today.

As a result, CIPA members support the continued examination and oversight of Federal oil and gas programs to streamline the process as well as relinquishing control of duplicative and overlapping regulatory functions to the States wherever possible and practical.

The MOU concept is one model that might be used successfully in other States as the devolution process continues. I would be, again, pleased to work with members of the committee and staff to provide further information on the California perspective. Thank you.

Mr. CALVERT. Thank you. Next, Randy Maebon, Regulatory Coordinator, Rocky Mountain Region, Marathon Oil Company.

STATEMENT OF RANDY MAEBON, REGULATORY COORDINATOR, ROCKY MOUNTAIN REGION, MARATHON OIL COMPANY

Mr. MAEBON. Good afternoon, Mr. Chairman, and Subcommittee members. My name is Randy Maebon, Regulatory Coordinator for Marathon Oil Company in Cody, Wyoming. I am testifying today on behalf of the Rocky Mountain Oil and Gas Association otherwise known as RMOGA. We appreciate this opportunity to provide the Subcommittee on Energy and Mineral Resources with our views on the Bureau of Land Management's Inspection and Enforcement Transfer proposal.

RMOGA is a trade association with hundreds of members, both independents and majors, who are responsible for over 90 percent of oil and gas exploration, development, transportation, refining, and marketing activities in the eight-State region it serves. RMOGA members maintain a substantial presence on Federal acreage.

RMOGA can support the BLM's I & E transfer proposal only if it results in clear and demonstrable benefits to industry and affected government agencies. RMOGA's major concern with the transfer proposal is its failure to provide definitive information about innovative alternatives for cutting costs and streamlining the onshore oil and gas program

We have been involved with the transfer proposal since it was initiated. Recognizing considerable time and financial resources were expended in the I & E transfer effort, industry assumed the BLM's proposal would represent a significant departure from the existing I & E responsibilities procedures and authorities.

Unfortunately, while providing an overview of the Bureau's I & E and environmental compliance programs, the draft and final I & E transfer reports have not offered specific details on how the proposal differs from existing regulations regarding transfer authorities.

Throughout the process, industry has raised many questions which have yet to be adequately addressed. Until our questions are thoroughly answered or addressed, industry will continue to have serious concerns with the transfer proposal.

RMOGA feels that the BLM should provide a clear explanation of how the transfer proposal differs from existing regulations, allowing States and tribes to assume responsibility for assuring oil and gas compliance on Federal lands, explicitly define the scope of authorities being considered for transfer, identify the legal limitations associated with authorities available for transfer, identify possible options to overcome the legal obstacles should expanded State and tribal authorities be considered, outline the procedural and operational changes which would be required of the government and industry to accomplish the transfer of Federal responsibilities to the States and tribes, offer an analysis of cost savings and benefits to be gained by the envisioned transfer.

If the proposed transfer of I & E function goes forward, industry must be involved in the dialog between States, tribes, and the BLM on the manner in which transfers will be structured. Inspection and enforcement programs must be consistent from State to State.

The major goal of the government reinvention will be negated if States negotiate individual and diverse I & E programs. The transfer should provide a common I & E work frame for all States wishing to assume responsibility over Federal leases. I & E responsibilities should be delegated to tribes only if they have the necessary expertise and have demonstrated their ability to manage the complex issues involved in oil and gas operations.

Should States or tribes assume I & E responsibilities, the Federal Government must relinquish its oversight role and its responsibility of the inherently Federal functions. We appreciate your interest in this important issue and your careful consideration of our comments. I will be happy to answer any questions you may have.

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

Mr. CALVERT. Thank you very much. You probably heard all of those bells and whistles going off. That happens here often, and that means we are having a series of votes so we are going to ask our questions now because we have got to go to the Floor. The first vote is starting now. They are checking. But why don't we go ahead and ask some questions, and then we will be able to send you on your way. First, I would like to go ahead and recognize Mr. Cremeans since he needs to leave early.

Mr. CREMEANS. OK. Thank you, Mr. Chairman. I would like to address a question to Mr. Thompson, who I know has labored long and hard in getting here, and for that I appreciate your effort. Just a couple quick questions. You mentioned the fact that the Federal Government lost between $2,000 and $5,000 on royalty. Was that since '92 of May when this well was shut in?

Mr. THOMPSON. Since May of '92.

Mr. CREMEANS. OK. All right. Now, as an experienced operator, do you feel that both the Forest Service and the Bureau of Land Management have had overlapping authority with respect to say the Wayne National Forest? Have you experienced that in your years of——

Mr. THOMPSON. Absolutely. There is no doubt about it, that between the Wayne National Forest and the Bureau of Land Management and the overlapping of each regulatory body in trying to decide who is going to address which particular issue or which part of the issue when it comes to developing and producing the mineral resources has really become a bureaucratic comic strip.

Mr. CREMEANS. Would you say that that is a part of your problem?

Mr. THOMPSON. Absolutely.

Mr. CREMEANS. And also you, in your testimony, discussed the onerous paperwork requirements from the Minerals Management Service. Would you take just a minute and elaborate on that comment? Because I know all of us, and I think you especially, face difficulties in complying with those requirements.

Mr. THOMPSON. Well, Mr. Chairman, Mr. Congressman, I would, you know, just first start off as saying that even the IRS has a form, 1040-EC form, and the Minerals Management Service could take some lessons from the IRS.

The double, triplicate forms to fill out for these marginal wells—right now, I have volume one, two, and three from the Minerals Management Service, and they just sent up a revised volume for volume one.

And to report the sales of oil and gas—and I guess one of the biggest problems I have with them is that when I produce and sell natural gas, in my part of the country, I sell it direct to a public utility in most cases. We don't have the lines, nor the resources, as my friends from out West do, to move this stuff over the country.

We have one statement, one check, and it is very simple—is whatever you get paid for, they tell you what you sold and send them a check. The State of Ohio has a card. It is a three-by-five card that you pay on their royalty for the State leases, and you show what you received and what their royalty percentage is and how much you owe them and be sure to send a check with it.

I would think the State of Ohio could manage the Minerals Management Service the same way, and it would be just as efficient and just as cheap. And if they were in question as to where they were getting their money, an auditor might be in order, but it wouldn't be hard to audit.

Mr. CREMEANS. I know the background on your attempt and apparently you have now purchased the lease at the auction. Is that what you said earlier?

Mr. THOMPSON. Yes.

Mr. CREMEANS. Do you feel that in retrospect that there was some confusion or perhaps even you were misled by either the Bureau of Land Management or the Forest Service in the acquisition of that lease?

Mr. THOMPSON. I feel that there was nothing but complete denial by delay by the U.S. Forest Service. Had yourself, Congressman Ney, and Senator DeWine not written some letters, had some meetings, I doubt if it would have even been up on the lease sale today. It has been bypassed on by lease sales over the past year or two. The Bureau of Land Management I don't think delayed this in retrospect. However, they did and have continued to delay the reverting mineral issue and the leases of those. So, yes, to answer your question, there has been considerable delay by both agencies, in my opinion.

Mr. CREMEANS. Quickly, how long have you been involved in trying to bring this to a closure?

Mr. THOMPSON. On this particular Littleton lease?

Mr. CREMEANS. Yes. I know you have labored hard.

Mr. THOMPSON. Nine years.

Mr. CREMEANS. Thank you, Mr. Thompson. Thank you, Mr. Chairman.

Mr. CALVERT. Thank you, Mr. Cremeans. I apologize to the panel. I have some questions I would like to submit to some of you for answers in writing if I may. I am certainly very interested in what is going on in California and with the new spirit of cooperation and how efficient that might be and how maybe that can affect other States and where we are trying to create a more positive attitude from the Federal perspective and trying to increase productivity in this country and certainly to help the industry out. So I apologize for having to leave early, and I thank you all for coming out and testifying today. This Subcommittee is adjourned.

[Whereupon, at 4:20 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

TESTIMONY OF W. HORD TIPTON
Assistant Director, Resource Use and Protection
BUREAU OF LAND MANAGEMENT

Before the House of Representatives Subcommittee on Energy and Mineral Resources

Oversight Hearing on the Proposal to Transfer Inspection and Enforcement Activities to the States

June 20, 1996

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to discuss the Bureau of Land Management's Reinventing Government (REGO II) initiative to transfer certain Federal oil and gas program responsibilities to oil and gas producing states. The purpose of this proposal is to reduce or eliminate duplication of downhole regulations of oil and gas operations. As evidenced by our efforts under this initiative, we agree that certain inspection and enforcement (I&E) functions could be transferred to the states. However, we are focused on ensuring that this streamlining and consolidation project results in a reduction of costs to the taxpayers, simplification of compliance for the operators and improvement in the effectiveness of the regulation of oil and gas exploration and production (E&P) activities in the United States. Our goal is to ensure prudent oversight of mineral assets and protection of American taxpayer interests.

Introduction

The onshore oil and gas program, administered by the Bureau of Land Management (BLM), is one of the major programs in the Department of the Interior (DOI). At the end of 1995, more than 51,000 onshore oil and gas leases existed on 37 million acres of Federal lands. About 19,000 leases were in producing status and contained more than 63,000 producing wells on public lands. The BLM is also responsible for operational management oversight of about 4,200 producing leases on Indian lands, supervision of drilling on non-producing leases, and advising the Bureau of Indian Affairs and Indian tribes and allottees on leasing matters. Royalty income from onshore oil and gas production on Federal and Indian lands is over $500 million dollars per year. All receipts, except for filing fees are shared with the state in which the leasing occurs. These revenues play an important role in the economies of several western states and communities.

Leasing is a discretionary action, but post-lease actions are mostly mandatory workloads to ensure compliance with the governing lease terms, regulations, onshore orders, notice to lessee, and conditions of approval; and to protect other resources present as the lessee uses the rights contained in the lease. To fulfill the Secretary of the Interior's statutory and Indian trust responsibilities, the BLM is responsible for the oversight of oil and gas operations on Federal and Indian lands, with the exception of Osage tribal lands and surface resource disturbing operations on National Forest System Lands. The objectives of the oil and gas Inspection and Enforcement (I&E) and Environmental Compliance Programs are to ensure that public and Indian oil and gas resources are properly developed in a manner that maximizes recovery while minimizing waste; ensure the proper accounting of all production from Federal and Indian lands; and protect the environment, public health, and public safety. The BLM also conducts inspections regarding drilling, abandonment, and certain other operations pursuant to regulations.

Reinventing Government II Proposal

Under Vice President Gore's REGO II the BLM proposed to transfer oil and gas inspection and enforcement responsibilities concerning production verification to the individual states and Indian tribes. To implement the REGO II proposal, the BLM formed a task force comprised of state, tribal, and Federal representatives to prepare a report on the transfer proposal and initial consultation with state and tribal representatives. The purpose of the task force was to 1) review statutory, regulatory and field operational requirements; 2) perform an initial evaluation of the feasibility of transfers, types of agreements with states and tribes, timing, funding, and the need for regulatory or legislative revisions; 3) assist in the preparation of the task force report; and 4) provide a consultation framework for BLM State Directors and state and tribal officials to independently negotiate program transfers.

The BLM REGO II proposal recommends that the BLM transfer oil and gas I&E responsibilities concerning production verification and environmental compliance to the individual states and Indian tribes. On May 7, 1996, the IOGCC along with the DOI and the BLM resolved to support discussions between the BLM, individual states and the IOGCC to identify opportunities and propose implementation plans to delegate to the states as much of the I&E functions as permitted by the Federal Oil & Gas Royalty Management Act (FOGRMA) as they are willing to assume.

Interstate Oil and Gas Compact Commission (IOGCC) Proposal

Earlier this year, the IOGCC shared with the BLM a proposal that most of the BLM's oil and gas regulatory activities be "devolved" to the states. Subsequent discussions with IOGCC representatives resulted in the adoption of a resolution at its May meeting seeking support for:

> ...discussions between BLM, individual states, and the IOGCC to identify opportunities and to propose implementation plans to eliminate duplicate state/federal regulation of oil and gas E&P activities, and to streamline, simplify and consolidate federal and state oil

and gas regulatory programs on terms which will result in the reduction of costs to the taxpayers, simplification of compliance for the operators and improvement in the effectiveness of the regulation of oil and gas E&P activities.

It is our view that this resolution provides a constructive basis upon which to proceed with the states to implement our REGO II inspection and enforcement proposal.

Any transfer must be tailored to fit the regional circumstances of the individual states willing to take on this responsibility. We also agree that the transfer of the responsibilities must be of such scope as to be attractive for the states to assume this additional burden. However, certain principles must be followed in order for an effective transfer of regulatory responsibilities to occur. First, all agreements to perform inspections on Federal leases that the BLM would otherwise perform will require that the states conduct inspections consistent with uniformly interpreted Federal standards. Second, agreements will not be signed if the action will not produce a cost savings or eliminate duplication of effort. Third, states will not inspect Indian leases (FOGRMA prohibits this without consent of the Indian mineral owner); and fourth, the BLM will retain authority to evaluate state inspection activities and intercede if inappropriate action should occur. The Department and IOGCC agreed at IOGCC's May 1996 meeting that the transfer of I&E functions to states would be an excellent first step on which to base further discussions that could identify and consider additional opportunities to streamline oil and gas regulatory activities within individual states.

Summary of I&E Transfer

The three primary objectives of BLM's fluid minerals management program are (1) to foster a fair return to the public for its resources, (2) to ensure environmentally acceptable activities, and (3) to provide for conservation of the fluid mineral resource in the context of multiple-use management. Areas of operation include review and action on "Industry Applications," and industry inspections to ensure compliance with all imposed requirements.

The proposed transfer of BLM's oil and gas I&E and environmental compliance responsibilities is most appealing to western states with the most oil and gas production. The BLM recognizes state concerns for issues of funding and degrees of authority and responsibility in accepting these functions. We anticipate funding being commensurate with the additional workload assumed by the states, but dependent upon BLM budget appropriations. The BLM also acknowledges that although the avowed goal is to speed government processes, a number of operators are concerned that devolvement might subject them to a greater variety of rules and reporting where each state requires adherence to different policies, thereby reducing any efficiencies expected from the transfer. The BLM will play a crucial role in ensuring such situations are minimized through its proposed oversight policies and application review process.

Recently, the BLM issued its Final I&E Transfer Report for REGO II. This report was based upon the draft proposal which was issued in September 1995. As acknowledged by one of the IOGCC officials from Oklahoma City, "[it] is an excellent document. It will serve as a constructive road map for states as they begin their individual, in-depth analysis of accepting transfer of these programs." The BLM wholly agrees and realizes that by partnering with the states and the IOGCC, the BLM can move forward with the I&E transfer to benefit all parties involved.

Net Receipts Sharing

The FY1991 DOI Appropriations Act included a provision to recover approximately half of the Federal Government's cost of conducting mineral leasing activities on Federal lands within state boundaries. This was the first "Net Receipts Sharing" (NRS) requirement established by the Congress. The costs currently being deducted from royalty payments to the states are derived from three sources: 1) the MMS, 2) the BLM, and 3) the Forest Service.

The BLM provides MMS with data it needs in order to make the determination of the amount to deduct to calculate the net mineral leasing receipts to be shared with the states. In order to determine its program costs, the BLM uses the following methodology:

(1) The BLM determines the cost of conducting minerals programs in each state.

(2) From the cost of each program, BLM deducts the amount of money its spends on management of Indian owned minerals. The BLM also deducts the amount of money it spends on management of mineral materials because receipts from minerals materials sales are not shared with states. Finally, program costs relating to mining law administration are excluded from all calculations.

(3) A factor of 19 percent is added to the above total to account for the direct program's share of administrative costs which are applicable to all programs.

(4) A separate figure for filing fees which are collected is also provided to MMS. These fees are not shared with the states.

This methodology is applied on a state-by-state basis. When a BLM state office has jurisdiction over more than one state, costs are prorated on the basis of the number of producing leases in each state. Although this may tend to overestimate costs if the ratio of non-producing to producing leases is large, the methodology is sound because both the majority of expenditures and the majority of revenues tend to be associated with producing leases. Once BLM completes these calculations, they are forwarded to the MMS for processing into a final NRS number for the Department.

Mr. Chairman, I appreciate the opportunity to testify before the Committee and will answer any questions the members might have at this time.

ATTACHMENT

RESOLUTION 96.503
Regarding IOGCC/BLM Dialogue on Regulatory Issues

Whereas, the Interstate Oil and Gas Compact Commission Public Lands Project Core Working Group has recommended reforms to the Bureau of Land Management onshore oil and gas regulatory program to achieve greater effectiveness, efficiency and cost savings, and

Whereas, the Bureau of Land Management has proposed the transfer of certain oil and gas inspection and enforcement functions to the states for the same purpose, and

Whereas, the IOGCC unanimously passed a resolution in September of 1995 recommending that the BLM through their performance review process, accept certain downhole regulatory conclusions and approvals rendered by qualified state oil and gas regulatory agencies, and

Whereas, the IOGCC has prepared a comprehensive response to the BLM oil and gas inspection and enforcement transfer proposal which recognizes both the variations and similarities of existing state regulatory programs;

Now, Therefore Be It Resolved, by the IOGCC on this 7th day of May, 1996, that Department of the Interior and Bureau of Land Management support discussions between BLM, individual states, and the IOGCC to identify opportunities and to propose implementation plans to eliminate duplicate state/federal regulation of oil and gas E & P activities, and to streamline, simplify and consolidate federal and state oil and gas regulatory programs on terms which will result in the reduction of costs to the taxpayers, simplification of compliance for the operators and improvement in the effectiveness of the regulation of oil and gas E & P activities in the United States.

May 1996

The Transfer of Oil and Gas Inspection and Enforcement Responsibilities on Federal Lands from the Bureau of Land Management to the States

A Project of the Regulatory Transfer Work Group
of the IOGCC Public Lands Committee

Work Group Chairman
James W. Carter, Director
Utah Division of Oil, Gas and Mining
June 1996

INTRODUCTION

The Interstate Oil and Gas Compact Commission (IOGCC) is an association of 29 member states and seven associate states originally formed by the 74th U. S. Congress in 1935 to conserve the country's oil and gas resources and enable the oil and gas producing states to effectively regulate petroleum exploration and development activities. Since its creation, the Compact Commission has expanded its compass to address and resolve emerging issues relating to oil and gas production, conservation and environmental protection. Member states have been effectively regulating well spacing, exploration and drilling activities, production, transportation, and surface environmental compliance on private, state and federal lands for decades. Many states also regulate the underground injection of fluids for waste disposal and enhanced recovery purposes under delegations of primacy from the Environmental Protection Agency.

In 1982, Congress passed the Federal Oil and Gas Royalty Management Act (FOGRMA) which provided, in part, an opportunity for states to take over certain, limited federal oil and gas field inspection and enforcement responsibilities. Although states took advantage of similar opportunities for state implementation of federal regulatory programs under other laws, to date no state has requested either delegation or a cooperative agreement under the provisions of FOGRMA. In March, 1995, as part of Vice President Gore's Reinventing Government II (REGO II) initiative, the Bureau of Land Management proposed to transfer federal oil and gas inspection and enforcement functions to the states and tribes. That proposal was not specifically limited to the transfer of responsibilities authorized by FOGRMA, but subsequent discussions and evaluation of the proposal have relied, in large part, on FOGRMA's existing authorities.

In 1994, the IOGCC initiated a cooperative effort between petroleum producing states, the Department of the Interior, the Department of Energy, the Environmental Protection Agency, the U.S. Forest Service, and petroleum industry and environmental interest representatives, to identify and recommend reforms to streamline state and Bureau of Land Management oil and gas regulatory programs. The project, known as the IOGCC Public Lands Project, convened a core working group of key state, industry and environmental representatives, which met during 1994 and 1995. The Core Working Group summarized its work to date in a letter to Secretary Babbitt dated September 15, 1995, which recommended adoption of BLM policy direction to eliminate duplication of downhole regulation of oil and gas operations.

After review of the BLM proposal, analysis of the Core Working Group discussions and recommendations, and evaluation of the federal and state oil and gas regulatory programs, the IOGCC recommends that the Bureau of Land Management and IOGCC member states agree upon a comprehensive method for the transfer to the states of all of the BLM's oil and gas regulatory activities, not limited to the inspection and enforcement activities now under discussion in REGO II. The IOGCC believes that there exists extensive duplication of effort by the BLM and state oil and gas regulatory authorities, and that a transfer of all of BLM's regulatory activities will result in significant cost savings through a single coordinated and comprehensive regulatory program, while ensuring that the objectives of both the state and federal regulatory programs are achieved.

IOGCC's proposal is not unprecedented. There exist a number of examples of "cooperative federalism" in which states are the primary implementors of federal regulatory programs. State implementation of the Environmental Protection Agency's NPDES and underground injection control programs, the Occupational Safety and Health Administration's industrial health and safety program and the Office of Surface Mining's coal regulatory program are excellent examples. The facts that states have been successfully regulating oil and gas activities for decades, and that the states and BLM implement very similar regulatory performance standards, will make the assumption by the states of federal oil and gas regulatory responsibilities an incremental addition of workload, rather than creation and delegation of a new state or federal program, and therefore highly cost efficient and relatively simple.

The IOGCC further recommends that the transfer be available by delegation, cooperative agreement or by contract, and that the mechanics and details of each transfer be worked out between the affected state and its counterpart BLM state office. We are cognizant that a one-size-fits-all approach to transferring regulatory responsibilities will not work, and that the states and their BLM counterparts must be free to design a transfer arrangement that is suited to the existing state and federal programs and to local and regional circumstances. Although each successful transfer will be unique, there are key principles which are common to all successful transfers of regulatory responsibility. Likewise, there are substantive elements which will be common to all transfers, and which should be worked out in advance of any transfer or delegation. Following are the principles IOGCC believes underpin a successful transfer model, and a discussion of the substantive elements which will need to be addressed in each transfer.

PRINCIPLES OF EFFECTIVE TRANSFER OF REGULATORY RESPONSIBILITIES

I. The regulatory program must be comprehensive

The lack of state response to the original transfer proposal of FOGRMA demonstrates that state assumption of only the field inspection portion of the regulatory program is not attractive. The thrust of modern regulatory programs is to offer one-stop shopping, even for the most complex projects. Providing for a single responsible agency, or for a lead agency in the case of multiple jurisdictional responsibilities enhances coordination and timeliness, saves considerable administrative expense and reduces the administrative burden on regulated entities. The current system requires separate, and frequently duplicate, federal and state approvals for oil and gas activities on federal lands. State and federal inspectors frequently scrutinize site preparation, drilling, production and reclamation activities at the same wells, often witnessing the same events.

While centralizing the field activities of state and federal programs would eliminate some of the redundancy, operators would still need separate approvals for field activities and pooling and unitization, and would find themselves appealing state-written violations with BLM levied assessments to federal appeals officers. Both BLM and the states would be required to maintain full permitting and compliance staffs, and much of the potential for consolidation and cost savings would be lost. As well, the segmentation of permitting, field compliance and enforcement activities would reduce coordination of regulatory functions and would likely increase the regulatory burden on oil and gas operators. For financial, administrative and customer service reasons, a single-office, comprehensive oil and gas regulatory program should be an important objective of the transfer.

II. The allocation of responsibilities must be logical and coordinated

The Bureau of Land Management occupies several significant, but distinct, roles in managing federal resources, including oil and gas. The BLM acts as agent for the owners of the public domain, and is called upon to make land-use decisions balancing a variety of public and private interests. In that capacity, the BLM is analogous to the state or private "surface owner" whose interests are in minimizing the adverse impacts of mineral activities and in ensuring that after production has ceased, the land is returned to a productive condition. The BLM is also agent for the mineral interest owners of the public domain. In that capacity, the BLM is acting as the "mineral owner", interested in securing the public's just and equitable share of oil and gas produced and in ensuring that valuable resources are not wasted. The BLM also acts as the "regulator", charged with implementing a number of police-power regulations governing the use of the land and the mineral resources.

The IOGCC believes that the states, which are already implementing their own police power oil and gas regulatory programs, can easily assume responsibility for implementing BLM's entire regulatory program. There exists a clear delineation between BLM's land and resource management responsibilities, which would remain unaffected by IOGCC's proposal, and BLM's oil and gas regulatory responsibilities, all of which should be available for transfer to interested states. In fact, the BLM and the U.S. Forest Service have recently acknowledged that same distinction between the Forest Service's land management responsibilities and the BLM's regulatory responsibilities for oil and gas development on lands administered by the Forest Service. (Proposed Rules at 43 CFR Part 3160, 60 FR 228, page 58590-58593, November 28, 1995). Like the BLM/Forest Service division of responsibilities, the states and BLM should distinguish between BLM's non-delegated surface management responsibilities and its transferrable oil and gas regulatory responsibilities.

III. Oversight must be flexible and focus on results

The BLM will need to be able to verify that the objectives of the laws and regulations it is responsible for implementing are being met. At the same time, the states will need flexibility in adapting federal requirements into existing state programs to maximize administrative savings and minimize disruptions in program operation. Both objectives can be met with a carefully developed oversight program which focuses on the results of program implementation rather than on methodology.

The historical, and now disfavored, model of oversight was for a federal agency to require a state to adopt a verbatim replica of the federal program. The federal agency would then measure the activities of the state program for conformance with the activities of an idealized federal program. Although the actual results of implementation were never measured, it was assumed that performance of the activities by the state in the manner dictated by the federal agency would deliver the program objectives. Unfortunately, more time was spent in arguing about process and procedure than in measuring program performance.

A successful transfer must begin with a clear identification of the objectives of both the transfer itself and of the transferred responsibilities. The BLM and the state involved must then agree on what will constitute successful accomplishment of those objectives and how success will be measured. Only then should the BLM and the state begin examination of the federal and state procedures or "tools" for implementation and decide which procedures should be adopted, used or modified by the state in order to accomplish the agreed-upon objectives. The transfer document should establish performance objectives and measures of the success of the transfer. A wholesale transfer of BLM procedures to the states will neither ensure that the objectives of the federal regulations will be met, nor will it result in the increased efficiency and cost savings the transfer seeks.

IV. Efficiencies must be realized and funding must be equitable and adequate

If not the primary purpose, one of the most important purposes of the transfer proposal is to reduce duplication of effort and expense by the states and federal government in implementing oil and gas regulatory programs. IOGCC believes there are duplications in federal and state activities which can be eliminated with a comprehensive regulatory program transfer. The extent of that duplication varies from state to state, but it appears that certain BLM regulatory activities can simply cease in many states because state regulation of the activity is already delivering the desired result. In other cases, states will assume increased workload in existing regulatory activities. In yet others, the objectives of existing BLM programs will be met by different, pre-existing means. In some cases, states will begin performing new activities, not already a part of their regulatory programs. Each transfer, in order to be successful, must identify areas of duplication and accurately identify what BLM should cease doing and what it should transfer.

Cessation of the performance of a regulatory function by the BLM in deference to an existing state program may or may not result in an increased state workload or program expense. The transfer of existing BLM workload and the assumption of new functions by the states, however, will almost certainly place new fiscal and workload burdens on existing state regulatory programs. The reduction in BLM workload and the increase in states' workloads will require the transfer of funding to follow the workload. The quantity and sources of those funds will vary from state to state, but both the BLM and the states must acknowledge that, in each successful transfer, the responsibility to perform federal regulatory activities will be fully supported by funds now utilized by federal agencies to perform those functions.

ELEMENTS OF SUCCESSFUL TRANSFER OF REGULATORY RESPONSIBILITIES

The BLM describes its Fluid Minerals Management program to have three primary objectives: 1) to foster a fair return to the public for its resources; 2) to ensure environmentally acceptable activities; and 3) to provide for conservation of the fluid mineral resources in the context of multiple use management. (Copy of description attached). BLM characterizes its regulatory activities as "basically concerned with the approval and supervision of industry operations." The BLM has grouped its responsibilities in a way that renders them easily administered, but also in a way which obscures the distinction between their several roles with regard to fluid minerals; landowner, mineral interest owner, and regulator. Nevertheless, the IOGCC believes the BLM's trust and core land management responsibilities are severable from its delegable regulatory responsibilities.

The first broad area of operation is review and action on "Industry Applications", which includes NEPA review, approval of APD's and Sundry Notices ("Lease Operations") and approval of communitization and unitization agreements, gas storage agreements, compensatory royalty agreements and development agreements ("Agreements and Contracts"). The NEPA review is a land managing responsibility of the BLM rather than a regulatory responsibility. Information generated by NEPA compliance studies may be relied upon during permit review, but NEPA implementation cuts across all federal programs. In approving contracts and agreements, BLM is not acting in a regulatory capacity, but is instead discharging its trust responsibilities as owner and manager of the nation's mineral resources. Only the review and approval of APD's and Sundry Notices (hereafter "Permitting") is truly regulatory activity.

The second area of operation is inspection of industry operations to ensure compliance with all imposed requirements (hereafter "Compliance"). All of the BLM's duties described, including both FOGRMA and non-FOGRMA inspections, are regulatory compliance activities.

The BLM also performs Reservoir Management activities, including protecting U.S. and Indian lessors from drainage, approval and administration of federal units, and ensuring the diligent development of Indian leases. Here, the BLM has mixed its interest as "mineral owner" in protecting federal and Indian correlative rights with a regulatory role which all the petroleum producing states are already performing. The actual reservoir management activity (hereafter "conservation") is distinct from the BLM's role as mineral interest owner, and can be successfully "transferred" to the states without compromising the BLM's ability to protect federal and Indian mineral interests.

Successful transfers of regulatory functions will acknowledge and clearly distinguish between the truly regulatory responsibilities now performed by the BLM, which are readily susceptible to transfer, and the truly "inherently federal" land management and mineral ownership responsibilities which should remain the purview of the BLM. Each successful transfer will be documented with a cooperative agreement, delegation document, or contract which represents a mutual agreement between the BLM and the state involved and will address the following critical elements:

I. Permitting

The decision whether and under what conditions federal oil and gas should be made available by lease are elements of the BLM's mineral interest ownership and land management responsibilities, respectively. BLM acknowledges that leasing is a "discretionary" action, but that post-leasing actions are essentially regulatory, and therefore susceptible of delegation. The states are already familiar with APD and Sundry Notice approval processes. Many states already consult extensively with the land managing agency before permit approval. Through state consultation with BLM and incorporation of appropriate conditions in the state permit approval process, there is no real need for a separate BLM review or approval of an APD or Sundry Notice. If the state takes the permitting lead, BLM will need only an abbreviated review of state permitting determinations, or no review at all in repetitive, non-sensitive permitting circumstances.

Each transfer agreement should describe the mechanisms by which applications filed with the states are circulated for review and the level of scrutiny and time frames for review by the BLM and other jurisdictional agencies. The cooperative agreement should also describe the public review and comment process to be applied to each application. To the extent possible, the cooperative agreement should also describe BLM's NEPA review process and its relationship to each type of application reviewed.

II. Conservation

The member states of the IOGCC invented conservation. Well spacing, communitization, forced pooling and proratable production are all tools created by the producing states to protect the correlative rights of all owners of petroleum in a common pool or common source of supply to ensure that all recoverable reserves are realized and equitably distributed among the owners of the pool. Under the conservation statutes of all producing states, all mineral interest owners, including fee, state and federal owners, are entitled to protection of their correlative rights and have remedies and recourse if those rights are impinged upon. In some states, tribes and allottees also acquiesce in state regulation of pooling, spacing and production. The performance by the BLM of its pooling an unitization duties on non-Indian lands has long been seen as a duplication of state conservation regulation.

Although the BLM and other federal agencies own extensive reserved and other water rights, the federal government has historically deferred to the water rights regulatory authorities of prior appropriation states to protect their interests. Likewise, in many states the BLM has acquiesced in the state regulation of spacing and pooling of federal and non-federal interests. As a mineral interest owner, the BLM is entitled to the same protection of its correlative rights under state law as are all other mineral interest owners. The BLM is also able to protect its mineral interests as matters of contract and property law. The BLM can adequately discharge its responsibility to protect the correlative rights of the federal government by actively participating in existing state conservation adjudications. The BLM will, of course, retain its responsibility for the review and approval of communitization and unit agreements as contractual matters, but can relinquish the burdens of federal regulatory unit approval and administration in favor of state conservation regulation.

Transfer agreements should describe the state conservation program and how the BLM and other interested persons and entities will participate in state processes, including special notices, consultations or other provisions unique to the participation of federal agencies in the state regulatory processes.

III. Compliance

The transfer of responsibilities suggested by FOGRMA would have state inspectors issuing federal notices of Incidents of Non-Compliance ("INCs"). The BLM, however, would levy assessments or civil penalties, order shut-downs, and hear appeals of INCs. The problems created by segregating the permitting and compliance functions would be compounded by a further subdivision of the compliance program itself. It has been suggested that the assessment of penalties is an "inherently federal" function, but current practice in many other regulatory programs demonstrates otherwise.

There exist numerous examples and several models of state implementation of federal enforcement authority. INC's should be written as violations of state, rather than federal, law. Likewise, the assessment of penalties and the entire appeals process are state functions. Upon a federal determination that state laws and regulations are no less effective than the federal counterparts in achieving the purposes of the regulations, there is no legitimate reason to artificially segregate any regulatory compliance program into federal and state pieces.

Transfer agreements should describe the authorities and processes to be utilized by states in ensuring compliance with state and federal requirements of the regulatory program. Those agreements should also spell out the means by which the BLM and other federal agencies may participate, if at all, in state compliance and appeals activities.

IV. Oversight

Successful transfers of implementation authority carry with them accountability for successful program implementation, and reasonable methods for insuring that accountability. Fortunately, or unfortunately, much has been learned from years of overly intrusive, micro-managing oversight in other state-implemented, federal regulatory programs. Oversight must evaluate the tangible results of program implementation, not the activities of the program. While it is much easier to measure number of inspections or degree of adherence to procedures, such bean-counting not only stifles innovation and efficiency, it produces strongly counter-productive stresses between the implementing and oversight agencies.

Successful oversight begins with a mutual agreement between the BLM and the state on the ultimate objectives of the regulatory program. Meaningful measures, or indicators, of the level of achievement of those objectives must then be agreed upon. Only then should the processes or "tools" available for achievement of the objective be discussed and agreed upon. Much of the opportunity for savings and increased efficiency lies in devising better mousetraps, tailored to each state's unique circumstances, for reaching the objectives. Each transfer agreement should describe the objectives, scope and method of oversight which will allow each state the maximum flexibility in implementation of the program while allowing the BLM to verify that the objectives of the regulatory program are being met.

V. Funding

Transfer agreements must provide for adequate federal funding of costs attributable to state implementation of federal regulatory requirements. Each transfer agreement must both identify cost savings and provide federal funding commensurate with the additional workload assumed by the state. Because of existing duplications in the state and BLM regulatory programs, it is anticipated that cost savings will be both identified and quantified in the process of negotiation of transfer agreements.

Public land states are paying the BLM to administer the federal oil and gas regulatory program through federal withholding of royalties payable to the states. Because of differing physical, administrative and financial circumstances form state to state, the funding provisions of each transfer agreement should be agreed upon by the BLM and the affected state. In all cases, transfer agreements should address funding method, formulas for calculation, audit requirements (if any) and should provide contingencies for reduced or terminated federal funding.

CONCLUSION

The current proposal to transfer BLM oil and gas inspection and enforcement activities to the states is a good one, but it should not be constrained by the existing delegation authorities of FOGRMA, or by overly expansive definitions of "inherently federal" functions. The BLM and the oil and gas producing states should seize this opportunity to truly "reinvent" the entire oil and gas regulatory program and realize the tremendous savings and efficiencies which are obviously available. The final report of the REGO II Inspection and Enforcement task force and the work of the IOGCC Public Lands

Project should serve as the catalysts for the creation of a framework for the comprehensive realignment of responsibilities for regulation of the oil and gas production industry to eliminate regulatory duplication, maintain high performance standards, and reduce overall program costs.

It is likely that implementation of the IOGCC proposal will require legislative and regulatory change. We solicit the support of the Bureau of Land Management and the Department of the Interior in establishing the framework necessary for the realization of this opportunity. There is, as well, an opportunity to forge true partnerships between the states and the BLM in the pursuit of a common objective, the effective, efficient regulation of a healthy, productive United States oil and gas industry. We look forward to working with you in the pursuit of these objectives.

IOGCC / BLM Regulatory Transfer Work Group

James W. Carter
Salt Lake City, UT

Donald B. Basko
Casper, WY

Rick Bender
Lexington, KY

Russell A. Fields
Carson City, NV

Richard T. Griebling
Denver, CO

William F. Guerard, Jr.
Sacramento, CA

William J. LeMay
Santa Fe, NM

Wesley D. Norton
Bismark, ND

Pary G. Shofner
Oklahoma City, OK

Fred V. Steece
Rapid City, SD

William H. Sydow
Sidney, NE

Bureau of Land Management
Fluid Minerals Management

I. Description of the Program

The three primary objectives of the Bureau of Land Management's (BLM) Fluid Mineral Lease and Reservoir Management Programs are to foster a fair return to the public for its resources, to ensure environmentally acceptable activities, and to provide for conservation of the fluid mineral resource, as well as other resources, in the context of multiple use management. The BLM also has been delegated the Secretary's Trust responsibility for Indian lands once a lease is issued by BIA.

All industry applications to conduct operation and other related proposals are reviewed to ensure technical competence and to ensure that due consideration is given to resource conservation and environmental protection.

Field inspections are performed prior to the approval of drilling proposals and during drilling, producing, and other related operations to ensure compliance with the applicable laws, regulations, lease terms , and the provisions of the approved operating plan to insure that the program objectives are being met. In the event of noncompliance, the BLM is authorized to take appropriate enforcement actions.

In addition, the Bureau manages an active Reservoir Management program designed to assure that Federal and Indian mineral interests are properly protected. This involves protection against drainage, diligent development of Indian leases, and appropriate distribution of proceeds when Federal/Indian interests are pooled with other mineral owners.

II. Major Issues

A. NEPA COMPLIANCE

In view of conflicting appellate court decisions and the language of the 1987 Reform act, we must continue to assure that the environmental consequences of industry proposed actions are timely and appropriately considered.

B. RESERVOIR MANAGEMENT

Emphasis needs to be maintained in the drainage program to ensure continued monitoring and protection of the Federal/Indian mineral resources.

C. AUTOMATION

Automating program processes in order to streamline and effect efficiencies, as well as merging with the Bureau's target automated system, will be a demanding and resource draining effort.

D. LIABILITY

There are currently 60,000 wells located on public lands that either are marginal producers (produce less than 10 barrels of oil per day or less than 50 MCFG per day), or are injection/disposal wells, shut-in or temporarily abandoned. Approximately 60 percent of these wells are operated by "small" companies (companies that operate three or fewer wells). Although it is impossible to predict whether these small operators will plug their wells and restore the surface when the well is depleted, there is a risk that some of them will not. According to Office of Inspector General (OIG) estimates, the Government will face some liability for plugging between 150-600 of these wells. The costs to plug and abandon these wells will vary widely, however, the OIG estimates the costs to the taxpayer could be between $1.2-$4.8 million (estimate $8,000/well).

Comprehensive Description

Bureau of Land Management
Fluid Mineral Lease and Reservoir Management

I. Description of Program

The three primary objectives of the Bureau of Land Management's (BLM) fluid mineral lease and reservoir management program are to foster a fair return to the public for its resources, to ensure environmentally acceptable activities within the program, and to provide for conservation of the fluid mineral resource, as well as other resources, in the context of multiple-use management.

The Bureau has a Trust responsibility for all Indian tribal lands and all Indian allotted lands and individual allottees whose restrictions have been lifted. This Trust responsibility authorizes the Bureau to supervise and direct operations under oil and gas leases, to furnish scientific and technical information and advice, and to ascertain and record the amount of production. Portions of this responsibility were originally transferred from the Secretary to the Geological Survey by Secretarial Order Nos. 731 and 1112, dated January 2, 1934, and September 4, 1936, respectively. This responsibility was subsequently transferred to the Mineral Management Service (MMS) on January 19, 1982, by Secretarial Order No. 3071, and then to the Bureau on February 7, 1983, by amended Secretarial Order No. 3087.

The Bureau's fluid minerals management program with respect to Federal and Indian lands leased for oil, gas and geothermal resources is basically concerned with the approval and supervision of industry operations. The general requirements imposed on the lessees and operators are set forth in the individual lease instruments and any stipulations thereto; the operating regulations (43 CFR 3160 for oil and gas and 43 CFR 3260 for geothermal); and the leasing regulations (43 CFR 3100 for Federal, and 25 CFR 211 and 212 et seq. for Indian oil and gas, and 43 CFR 3200 for geothermal). Greater specificity as to our requirements in particular instances is provided by the Onshore Oil and Gas Orders or the nationwide Notices to Lessees and Operators (NTL's) for oil and gas operations and Geothermal Resources Operational Orders (GRO Orders) for geothermal operations. Related supplementary regulations are contained in 43 CFR 3180 and 3280, which govern the unitization of Federal lands for oil and gas and geothermal resources, respectively. The regulatory functions performed may be broadly categorized as:

> Consideration of industry applications to conduct operations an other related proposals and the approval, approval with modification, or denial thereof.
>
> The inspection of industry operations to ensure compliance with all imposed requirements. with particular emphasis on site security and production verification.

A. Industry Applications

The Bureau reviews all applications to conduct operations and other related proposals to ensure technical competence and that due consideration is given to resource conservation and environmental protection. Coordination within the Bureau and with the involved surface management agency is necessary to ensure compliance with the National Environmental Policy Act (NEPA) and other pertinent laws. Preparation of the appropriate environmental documentation is the basis for the approving official's determination of whether approval would be a "major" Federal action necessitating the preparation of an environmental impact statement (EIS).

1. Lease Operations

After a lease is issued, the BLM is responsible for supervising and managing all exploration, development, and production operations that occur on Federal and Indian lands. The BLM issues leases on Federal lands, and the Bureau of Indian Affairs (BIA) issues leases on Indian lands. In order for the operator to perform work on a lease, an application or proposal is submitted for approval. To drill a well, an Application for Permit to Drill (APD) must be reviewed and approved. Subsequent well operations, such as redrilling, deepening, repairing casing, converting to injection, recompletion to a new zone, or permanently plugging and abandoning an existing well are handled through filing Sundry Notices for approval. Other lease operations, including disposal of produced water and natural gas venting or flaring, also require prior approval, except in emergency situations.

2. Agreements and Contracts

When a lease or a portion of a lease cannot be independently developed and operated in conformity with an established well spacing program, the BLM may approve a communitization agreement (CA) for such lands with other Federal or non-Federal land, if determined to be in the public interest. A CA normally covers only one well and one geologic formation. The agreement provides for the allocation of production or royalties to the parties in interest, and these allocations are normally determined by the parties' amount of mineral ownership on a surface acreage basis. Unit agreements (UA) have some similarities to CAs in that they are established to pool the interests of several parties and allocate the production and royalties from the committed Federal and non-Federal lands. However, UAs normally cover all geologic formations of an entire structure or area and involve numerous wells with the ultimate goal of orderly and timely development of Federal and non-Federal oil and gas resources within the unit area. Other oil and gas agreements and contracts approved by the BLM include gas storage and compensatory royalty agreements and development contracts. The purpose of a gas storage agreement is to authorize the subsurface storage of natural gas on Federal lands during periods of excess production so that supplies will be available to meet peak demands. A compensatory royalty agreement is a means by which the United States is compensated by an operator who is producing a well adjacent to and draining unleased Federal lands, in cases where it is legally or administratively difficult to lease the lands.

A compensatory royalty assessment, however, is an assessment made on the lease with the Federal lands being drained are under lease and the lessee fails to drill a protective well. A development contract is an agreement between BLM and an operator which requires the operator to perform a certain amount of exploratory work in a relatively unexplored area, with the benefit to the operator being that the acreage under his control in the contract area is exempt form the state acreage limitation.

B. Inspection and Enforcement

Inspections are performed prior to the commencement of operations and during drilling, producing, and other related operations to ensure compliance with the applicable laws, regulations, lease terms, and/or provisions of the approved operating plan. In the event of noncompliance, notices of incident of noncompliance are issued and assessments, penalties, shut-ins, and/or recommendations for lease cancellation may result.

Inspections can be grouped into those related to production accountability, as required by the Federal Oil and Gas Royalty Management Act (FOGRMA), and those not related to production (non-FOGRMA).

1. FOGRMA-related Inspections

These inspections are divided into three levels as follows:

Level One Inspection: This basic production accountability inspection is an on-the-ground screening process and is intended to identify whether production is properly handled, measured, and reported and whether company records verify our independent observations.

Level Two Inspection: Level Two Inspections are exception resolution inspections. They are performed in response to problems identified in Level One inspections or in response to problems identified by some other source, such as the MMS or the BIA.

Level Three Inspection: The Level Three inspection is a production verification inspection. This type of inspection is designed for cases where there is reason to suspect significant loss due to mishandling of oil and gas production. The inspection must be done for an entire specified production period. The functions of this inspection are to verify on-hand inventories; ensure proper measurement techniques are used by the operator and purchaser, witness every transfer of production; ensure measurement equipment used for sales meets standard specifications; compare statistical inventory, production, and sales reports; and compare results with a past comparable production period.

2. Non-FOGRMA-related Inspections

These inspections are to ensure that operations in and around the well and lease do not cause serious impacts to the environment, public health and safety, or subsurface resources (fresh water aquifers, coal seams, or other minerals). The three types of inspections that are in this category are surface, drilling, and abandonment inspections. The surface inspection includes both the predrilling inspection and the reclamation inspection. The redrilling inspection checks the location of the proposed access road, drilling pad, and mud and reserve pits for proximity to environmental concerns. The reclamation inspection ensures the abandoned dry hole or producing well site is left environmentally sound and reclaimed. The drilling inspection checks such items as well location, blowout preventor rating, mud weight, drilling log, and hydrogen sulfide evacuation plan, if applicable, to ensure operations are being performed as approved. Abandonment inspections may involve witnessing plugging operations, requiring the plug to be tagged, or pressure testing the plug to ensure fresh water zones or other mineral resources are protected form any further contamination.

C. Reservoir Management

In addition to responding to industry applications and performing inspections of industry operations, three other important BLM responsibilities are described as follows:

1. Drainage Protection Program

Protecting the United States Government and Indian lessors from loss of royalty as a result of drainage is a major function of the Bureau. When drainage cannot be prevented, it is the responsibility of the Bureau to ensure that compensation is obtained. A potential drainage situation exists when a producing well, located on State, private, and sometimes Federal land, is withdrawing (draining) oil and/or gas from beneath adjacent Federal or Indian lands. Therefore, the Bureau must monitor all drilling and recompletion activity on non-Federal lands, in addition to Federal lands.

2. Diligent Development of Producing Indian Oil and Gas Leases

The Bureau of Land Management has a trust responsibility to oversee operations on Indian leases and to ensure that lessees comply fully and timely with the terms thereof. Indian oil and gas lease provisions require that the lessee shall drill oil/gas wells as the Authorized Officer may reasonably require for the orderly and timely development of the lease. The Bureau is required to annually determine whether all producing Indian leases are fully developed or being diligently developed for the current review cycle.

3. Unit Agreement (UA) Determinations

Before a UA application can be reviewed for final approval, the Bureau must determine whether the operator has proposed a logical unit area. That is, the proposed area must include just those lands which are reasonably likely to be within a subsurface structure potentially containing oil or gas. The Bureau makes this determination based on seismic data, well logs and/or production data from neighboring wells, and data interpretation submitted by the operator. After the UA is approved, drilling occurs, and if production is achieved, the Bureau will make a determination of whether or not the well is a paying well on a unit basis. If the well is paying, a determination is made as to which lands will share in the production, that is, the approval of a participating area (PA). A well is determined paying on a unit basis if the production value exceeds both the drilling costs and the operating costs of production. Determination of the PA is based on reservoir analysis of life, amount, and extent of production. As further producing wells are drilled within a unit, each well is reviewed to determine whether it is paying. If the well is determined to be paying, a new PA may be established or an old one revised.

II. Major Issues

A. NEPA Compliance

As a result of recent court decisions, existing Resources Management Plans/Environmental Impact Statements (RMP/EIS) and Management Framework Plans (MFP) need to be amended in order to be brought into compliance with NEPA and other related laws. Over the next few years, guidelines for development scenarios and cumulative impact assessments need to be prepared and the planning documents amended. To provide guidance to the field, a handbook for energy and minerals assessment will be prepared. It will contain guidance on preparing development scenarios and reliable cumulative impact assessments. Many actions previously categorically excluded from further NEPA analysis are slated to be eliminated from this category. The Bureau will develop criteria for including these action in the RMP/EISs to assure their adequate discussion. Future RMP/EISs will be reviewed more closely to ensure their adequacy for NEPA compliance.

B. Reservoir Management

The identification of cases where Federal and/or Indian minerals are potentially being drained and the resolution of these cases has received high priority over the last 4 years. Efforts to facilitate the program have included providing additional staff, specialized training for existing and new staff, the establishment of the Technical Assistance Committee (TAC) to provide expert assistance to field offices in the reservoir management program, preparation of the Manual Section on drainage standards and procedures, the preparation of an oil and gas data base manual and handbook for reservoir management, the acquisition of well date (including Petroleum Information Corporation and Dwight's Energydata Incorporated data), and the development and implementation of stand-alone computer systems.

C. Automation

The Automated Fluid Minerals Support System (AFMSS) is scheduled for completion by 1995. The Washington Office, the Denver Service Center and personnel located at field test sites will all take an active role in the development, testing, and implementation of the System. Prior to the implementation of AFMSS our existing information systems must be maintained and enhanced to meet our ongoing responsibilities. Existing information systems include the Monthly Report of Operations (MRO), the Automated Inspection Record System (AIRS), the Quarterly Fluid Mineral Report (QFMR), and the Case Recordation System (CRS). The MRO is a summary of all production activities conducted on a lease or on an agreement during a specific reporting period. This report includes well identification and status and production and disposition information. The responsibility to receive the MRO has been transferred to the MMS. MRO software will be implemented to extract and manipulate the data from MMS. AIRS contains data related to inspection sites designed to aid inspectors. Data includes inspection items, inspection history and inspection follow-up. AIRS will continue to experience an ongoing expansion of the database and software enhancement to provide easier manipulation of the data. The QFMR maintains historical operational data/statistics including numbers of APDs, UAs, CAs approved, number of producing leases, number of producing wells, agreement, drainage and Indian diligence statistics, etc. CRS contains basis data and information related to all oil and gas agreements and contracts and producing leases, as well as data on all other Bureau case files. Over the next year and a half, a significant volume of fluid mineral operations data will be entered by the field on the CRS. Systems to automate panel maps, showing wells, location and status of leases and agreements, and ownership, are in progress in some states, and the WO will continue to evaluate their usefulness nationwide. As an ongoing and continuing effort, fluid minerals operations staff at all levels are reviewing data elements used and recorded within and outside the program to take actions to standardize the data. Automation efforts will continue to receive high priority to ensure AFMSS is implemented timely, is effective, and provides for all fluid mineral applications and to ensure the interim systems are maintained to adequately meet our responsibilities prior to implementation of AFMSS.

D. Liability

In November 1989, the Office of the Inspector General (OIG) found that many BLM offices did not adequately track the status of all of their shut-in and temporarily abandoned (TA) wells. As a result, the OIG assumed that many of these wells presently shut-in or TA are not capable of producing oil or gas in paying quantities or have no future use as either a service well or to enhance recovery. The OIG determined the BLM was not requiring the operator to promptly plug and abandon these wells.

As a result of the OIG's findings, In November 1990, the BLM's Division of Program Evaluation conducted an in-depth study entitled "Potential Government Liability for Plugging Oil and Gas Wells". The study attempted to address the problems identified by the OIG (and other related problems) and proposed several recommendations. The study concluded that the Federal Government could become partially liable for the cost to plugging many of these wells, and estimated the total cost could exceed $300,000,000.00nation-wide (worst case scenario).

The Division of Fluid Minerals has developed an action plan in response to the OIG and Program Evaluation findings and recommendations. The plan indicates the BLM will set a high priority on ensuring that wells be plugged and abandoned as soon as it is determined that they have no further economic use by the current well operator. The BLM will also evaluate current oil and gas bonds ($10,000/lease bond, $25,000/state-wide bond and $150,000/nation-wide bond) in order to determine if coverage is adequate when weighed against the magnitude of and level of risk for potential government liability for plugging and reclamation of all wells. The BLM has established guidelines when it is appropriate to raise the bond amount and by how much.

Written Statement by
Gene Kozlowski
President - Makoil, Inc.
representing
Independent Petroleum Association of America (IPAA)
and
Independent Petroleum Association of Mountain States (IPAMS)
before the
Committee on Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
June 20, 1996

Mr. Chairman and Members of the Committee:

I am Gene Kozlowski, an independent oil and gas producer. My company, Makoil, is the largest producer from federal lands in the state of Nevada. I am here today on behalf of the Independent Petroleum Association of America (IPAA), a national trade association representing more than 5,500 independent oil and natural gas producers. I also appear on behalf of the Independent Petroleum Association of Mountain States (IPAMS) which represents independent producers in the Rocky Mountain region. My comments reflect the views of independents producing from federal leases throughout the west.

Independents are the major force in developing America's oil and natural gas resource base. We drill 85 percent of the nation's wells, produce 65 percent of the natural gas and 40 percent of the domestic oil. Despite this record nationwide, independents generally have not looked to federal lands as a promising place to do business. We believe that federal lands hold enormous potential oil and natural gas resources. However, we know that operating on federal lands can be expensive and subject to frequent and costly delays in acquiring needed permits. As a result, independents are not expanding their exploration and production on federal lands. With your help, we hope to change that.

Public Lands Hold Key To U.S. Energy Security

Of the almost 2.3 billion acres of land in our nation, nearly 650 million acres, or 29 percent, is owned by the federal government. More than one-fifth of the total oil production and one-third of the natural gas production in the United States comes from public lands. Recent U.S. Geological Survey's report concludes that the greatest potential for oil and gas development in America is on lands under "federal stewardship."

The orderly development of domestic oil and natural gas resources makes more than just economic sense. Less than 18 months ago, President Clinton reported to Congress that his investigation under the Trade Expansion Act found that America's increasing dependence on imported oil threatened to impair U.S. national security.

Obviously, maintaining access to public lands for oil and gas development is essential to America's energy security. However, the people who decide where to invest in oil and gas development are shying away from public lands.

A recent IPAA survey of more than 5,000 independents revealed that their production and investment on public lands over the past few years remains unchanged. Behind those survey results is very disturbing news, indeed. While independents' overall investment in public lands remains relatively flat, independents have greatly expanded their participation in the federal offshore region, drilling more than 59 percent of offshore wells in the Gulf of Mexico last year. That tells me that investments in onshore federal lands probably are falling. Given these circumstances, it should be clear why the IPAA and IPAMS have stepped up their efforts to make oil and gas development on public lands, especially onshore federal lands, more attractive to cost-conscientious independents.

The first step should be a cooperative effort to identify and eliminate any and all unnecessary costs associated with onshore development. In part, that task will require bringing clarity and predictability to rules and regulations that now add uncertainty to the already risky business of oil and gas development. There are unnecessary costs and complexities at every step of the process of obtaining a federal lease, getting permits to drill and produce a well, to payment of royalties and even being audited. The cost and uncertainty associated with each of these steps drives independent oil and gas producers away from federal onshore lands. One result is that America is more dependent on foreign oil than it needs to be. We must step up the efforts to get the federal government, state government, the industry, and the public to work together on federal lands for the good of all involved.

In the federal royalty arena, your bill Mr. Chairman, the Royalty Fairness bill, demonstrates the type of reform that can occur when all parties work together. Your bill reforms costly royalty practices and increases the involvement of states in royalty collections. Your bill serves as a model for future public lands legislation bringing together various states while receiving bipartisan support on Capitol Hill, unanimous support from a diverse oil industry, and support from the Clinton administration. We hope we can get this important bill signed into law in the very near future.

I am pleased to see that Washington policymakers are re-thinking the relationship between the federal government and the states, and, where justified, are giving the states greater responsibility for managing a single program for both state and federal leases. Clearly, where oil and gas development are concerned, the states have the most basic motivation for managing some of the oil and gas programs traditionally handled by the federal government -- the success of those programs hits home. It is their neighbors who find employment in the industry. It is their communities that reap the direct economic benefits that multiply on Main Street when new wealth is created. The states also receive a fifty-percent share of royalties from oil and gas production on federal lands, which is often invested in education programs that benefit all their citizens.

I agree with those who believe that the states can responsibly administer oil and gas production on federal lands within their borders. The states have their own oil and gas programs and have as much, if not more, experience in managing them than does the federal government. The states, too, are undergoing a re-evaluation of their energy development programs. It is time to combine state and federal efforts to streamline these programs.

Through the Interstate Oil and Gas Compact Commission (IOGCC), IPAA is participating in a framework that will attempt to reduce administrative burdens facing producers on federal and state lands. If done correctly, the end result will be saving taxpayers dollars, eliminating duplication in state and federal oil and gas administration, reducing the size of government and transferring decision-making to the communities and states most directly affected. This type of reform will shift revenue for independents from regulatory administration to exploration and production of public resources, thereby strengthening our domestic energy supply.

Making cost reductions and eliminating duplication can be achieved without compromising essential government programs. To this end, the IOGCC proposal before you deserves a chance. We understand that this proposal was prepared in response to a BLM proposition to transfer partial responsibility for the oil and gas inspection and enforcement programs to the states. The IOGCC believes, as we do, that there is extensive duplication by the BLM and state oil and gas regulatory authorities, and that a consolidation of BLM and state regulatory activities will result in significant cost savings through a single, coordinated regulatory regime.

There is ample precedent for the IOGCC's recommendations. Examples of states as the primary implementors of federal regulatory programs are numerous. The Environmental Protection Agency's NPDES and underground injection control program, the Occupational Safety and Health Administration's industrial health and safety program, and the Office of Surface Mining's coal regulatory program are just a few examples of successful state implementation of federal programs. The states have been regulating oil and gas activities for decades. Their performance standards and review processes are remarkably similar to the BLM's. The states can assume the federal oil and gas regulatory responsibilities without disruption to ongoing or future development projects and without the need to create new administrative programs.

We would like to make the Committee aware of factors that must be considered to make such a transfer successful for federal and state governments and industry. We must, under any downsizing proposal, prevent a reduction of federal costs being brought about by shifting additional costs and burdens to an already troubled and heavily regulated industry. To secure cost savings for all those involved, we must strive to, when possible, eliminate duplication and multiple sets of laws and regulations.

Little is gained if resources currently allocated to oil and gas activities are simply "reshuffled" to "oversight and enforcement" activities. A comprehensive and cost-effective transfer of responsibility must also include adequate funding and authority for the states to enforce the activities they are performing. These lessons have already been learned under the Office of Surface Mining's coal regulatory program. Uncertainty and litigation costs increase if an action taken by the state is second guessed by the federal government.

The "inherently federal" concept seems to be serving as justification for BLM to maintain an extensive oversight role subsequent to activities being transferred to the states. Given the limitations of the IOGCC's proposal to post-lease activities, it is doubtful if these activities will be deemed "inherently federal." Post-lease activities are mostly mandatory workloads to ensure compliance with the governing lease terms and regulations and do not infringe upon the Secretary's discretionary responsibilities related to leasing and environmental documentation. If there is a legislative barrier preventing the transfer of so called "inherently federal" activities to states, then we should seek a legislative fix that provides for an expedient transfer of responsibility.

Another area of concern for driving up costs is the delegation of responsibility to the states with the requirement that the states enforce both federal regulations for federal leases and state regulations for all types of leases within the state. If federal regulations and standards are not folded into a clear state legal authority, then the state employee is required to enforce two different sets of regulations, causing inconsistency and resulting in no cost savings to the government or producers. The only benefit then becomes the elimination of personnel at the federal level. If the state has laws and rules consistent with the requirements of the federal government, then the state should be able to complete the action and provide a right of appeal to the producer.

Conclusion

The IOGCC proposal allows for the transfer of BLM oil and gas post-lease activities to the states. It is the consensus of IPAA and IPAMS members that the states are well equipped to carry out this responsibility. The states have been performing these duties for some time, and they have a vested interest in seeing that it is done expeditiously and accurately. Significant additional work will be necessary to identify an oil and gas program acceptable to states, harmonize state and BLM requirements to avoid duplication in enforcement and compliance, and provide adequate funding for states. As this work progresses, we suggest that producers be consulted each step of the way to prevent unintended consequences and to ensure that cost savings will be realized for both the government and producers on federal land.

Written Statement by
Frank Yates, Jr.
before the Committee on Resources
Subcommittee on Energy and Mineral Resources
U. S. House of Representatives
June 20, 1996

Mr. Chairman and Members of the Committee:

I am Frank Yates, Jr., part owner and a Vice President of the largest oil and gas production company native to the State of New Mexico. Yates Petroleum Corporation is actively exploring for oil and gas throughout the Rocky Mountain States. I am here today to promote the transfer of responsibility for oil and gas operations to the individual States. The individual States have the ability and required knowledge to administer their own oil and gas programs often preferred over the Bureau of Land Management's.

One basic reason for our support for transferring Bureau of Land Management (BLM) functions to the States comes from this excerpt of an email from our production manager Brian Collins:

> I am disturbed that the BLM is checking our casing designs and in some cases requesting modification to our designs. This is most disturbing because I believe that the BLM engineers checking the designs are unfamiliar with many critical design concepts, are inexperienced or have no prior experience doing casing designs, lack detailed well-specific knowledge, and are using computer programs to check designs without knowing what design criteria need to be checked (garbage in = garbage out). In short, I think they are unqualified and possibly incompetent to be checking our casing designs. Amateurs are checking the experts.

In years past, the government was where anyone looked for expertise on a particular subject, however, more often in today's market the experts are found employed by the States and in the private sector. These are the people who understand what is going on in industry and are currently managing the oil and gas programs, not the BLM. BLM's personnel are forced to make decisions based from handbooks and checklists, and lack required knowledge to understand what it takes to drill, produce and market the natural resources.

Properly transferring management responsibility to the States is important because the function the BLM performs is duplicating functions performed by the individual States.

What I mean by proper transfer is the transfer of oil and gas management responsibility to the States without the transfer of federal regulations and the associated burdens created thereby. Oil and gas States where we operate have well developed management programs in place for the management of exploration and production activities. Specifically in New Mexico, as evidenced by the recent Interstate Oil and Gas Compact Commission (IOGCC) review of New Mexico, of which I was one of the review team members, it was determined that State regulatory management over oil and gas is accomplishing the desired environmental protection while allowing operators to conduct business with little interference from regulators.

Refinement of State established programs, in contrast to creating new State programs designed to meet federal requirements, makes good management sense. Every operator who operates in an individual State must become familiar only with the State's program. Furthermore, claims that the transfer of BLM's management responsibility to the States will impact operators that conduct business in more than one State can be discounted by the fact that many operators with established operations already operate on lands regulated by such State agencies. Each of these operators must know and understand the State's rules to be in compliance. Existing operations cause the operator to deal with multiple agencies and this transfer we are discussing today would eliminate one layer of regulatory compliance that is redundant.

Transferring responsibility to the States also provides more accountability for the management decisions. Local people interact with the regulatory agencies. Problems are addressed swiftly because of the communication established between the regulators and the operators. Operators are not placed in a defensive posture every time they meet and discuss actual or perceived problems because they know that rectifying problem is the main concern, not issuing fines or notices of non-compliance. Additionally, at the State level quick response from the Director of the regulatory agency is possible. For example in New Mexico, the Director of the Oil Conservation Division can quickly support or not support a decision made by the State's people in the field. These decisions can range from over zealous regulatory enforcement to the lack of regulatory compliance. Regardless of the type of decision, quick response from the State is possible, avoiding expensive delays and legal expenses.

Any transfer of management responsibility should be a complete transfer. A State program should not be tied to the bureaucratic management style of the Bureau of Land Management, nor any of the policies or practices. I will suggest that a model program include suspension of all federal regulations in favor of operating under a State's regulatory umbrella. States have proven regulatory, environmental and conservation control regulations. The IOGCC report on New Mexico even supports the concept that within New Mexico the regulatory manner, while not perfect, is working to effectively protect the environment while managing the oil and gas activities. Transfer of management responsibility avoids redundancy in the regulatory functions under which an operator must conduct business.

Additionally, this opportunity to transfer responsibility to the States should not be compromised by allowing the existing BLM system to stay intact for the State. This presents a great opportunity to reduce the size of the federal government. States have an equal interest in seeing that oil and gas is developed in effective and environmentally sound manner. State personnel can do the job of the required BLM employees.

Thank you Mr. Chairman and Members of the Committee:

Frank Yates Jr.

Frank Yates, Jr.

Statement of Mr. Danny Thompson
June 20, 1996
Oversight hearing on the transfer of oil and gas operation regulations from federal to state enforcement
Committee on Resources
Subcommittee on Energy and Minerals

Mr. Chairman, Congressman Cremeans, Members of the Subcommittee on Energy and Minerals, I appreciate the opportunity to appear before you today to discuss my views on transferring oil and gas regulation from the federal government to the states. The views I am expressing represent those of the vast majority of oil and gas producers in Southeastern Ohio. While the decision to transfer enforcement would affect producers across America, my comments are directed solely toward oil and gas operations in Ohio.

First, a little background on oil and gas production in Ohio. I surely do not want to take any glory from my friends in Pennsylvania who claim the first oil well. However, that is not quite accurate. It is fact that the first commercial oil well was drilled by Colonel Drake just outside Oil City, Pennsylvania. However, the first well to produce crude oil was discovered just outside Caldwell, Ohio in 1814, 45 years before Colonel Drake's well in Pennsylvania. Since that first discovery in Caldwell, Ohioans have been supporting their families from proceeds derived in the oil and gas business. Major oil companies such as Pure Oil and Marathon Oil started their operations in Ohio.

In Ohio, most wells drilled fall into the category of stripper wells. Ninety-five percent of those wells drilled in Southeastern Ohio are stripper wells producing an average of 200 BBL of crude oil per year and 500, MCF of natural gas. My company, Carlton Oil Corporation, produced 12,118 BBL of crude oil and 147,912 MCF of gas in 1995 for an average of 33.20 BBL and 405.23 MCF per day. Carlton Oil Corporation, like most other oil companies in Ohio is, for lack a better term, a mom and pop operation. My company includes myself as general manager, my wife who does the bookkeeping and accounting, and four field personnel.

As you can probably guess from the production numbers I mentioned earlier, the wells which I run operate on a very slim revenue margin. If these wells are burdened with unnecessary and overburdensome federal regulations, they quickly become uneconomical to operate. The issue entailed here is not one of safety or protecting the environment. Ohio has some of the most stringent environmental and safety laws of any state in the nation as evidenced by the Interstate Oil and Gas Compact Commission and Environmental Protection Agency joint review completed in May 1995, and I must live under those rules as an operator. The real issue here and the debate within this subcommittee should be on how to reduce the overburdensome double and sometimes triple regulations. It would seem to me that if one set of regulations, whether federal or state, reach the desired level of acceptable standards that should be sufficient.

In today's world, a producer in Southeastern Ohio must meet regulations of Ohio Chapter 1509, Federal CFR 43, BLM standards, the U.S. Forest Service Management Plan, Federal DOT, and the Federal Regulatory Commission to name just a few of the regulatory bodies I must deal with when operating a well. Let me give you an example of one issue which is a clear example of the overburdensome regulations which operators must endure -- operational bonding. Ohio has a $15,000 plugging bond, the U.S. Forest Service has a $20,000 bond and the BLM requires a $25,000 bond. I would ask a member of either agency to advise me why one bond would not be sufficient. Bonding is just one of many issues. There are different tank standards for each agency, different meter measurement, different site plans, and different valving systems.

I could go on for a while comparing Ohio's 1509 regulations with the Federal CFR 43. However, let me go to another area of great concern, paperwork. The Mineral Management Service must have been in recess when Congress passed the Paperwork Reduction Act. To report a ten dollar royalty check, a producer probably spends another ten dollars. The forms and requirements are ridiculous and the sad part is that the MMS does not know what to do with or how to use the information which you provide. The requirement that you estimate production and then complete additional paperwork for adjustment is absurd. What is wrong with simply showing what amount of production was sold, the dollar received, and send in a check for the federal share. If you do not trust me, have it reviewed by an auditor. With today's reporting requirements on the seller, hauler, and purchaser, it would be hard not to catch a thief pretty quickly. All of my crude oil is sold to Quaker State. Quaker State pays the royalty directly to the royalty owner. There should be no questions as to the royalty amount. However, Quaker State would most likely not buy my crude oil if they were forced to take time to complete the MMS paperwork. This in turn is more paperwork on the producer.

For natural gas sales, I get a statement from the gas purchaser for natural gas. This should be simple: whatever I get paid for, you get your royalty share. The purchaser or measurement representatives of my gas sales are Columbia Gas Transmission and East Ohio Gas Company. Both companies set their choice of meters at tie in point between their line and my line. Both of these companies use rotary measurement as standard policy. The BLM requires an orifice meter and it must be set on the lease. This requirement causes the producer to get and maintain an additional meter. What is the difference between a Ford and a Chevrolet? The issue should be accurate measurement.

Members of the committee, I would suggest to you that while transferring enforcement of regulations is a good move and has been needed for a long time, there needs to be more done. The double and triple bureaucratic regulations need to be removed. Transferring enforcement simply is not enough. Likewise, these inter government turf battles to gain ground and agency security need to stop. Producers need to have more common sense interjected into BLM's oil and gas operating regulations. There is virtually no distinction made in measurement and production accountability standards for a 1 BOFD/MCFGD well versus a 100 BOFD/MCFGD well. If nothing else happens with transferring responsibilities to the states, BLM needs to modify operating requirements for low volume wells.

In fiscal year 1994, the BLM, Forest Service, and MMS spent a combined total of $604,000 to administer 182 Federal oil and gas leases in the State of Ohio....$3,319 per lease.

In calendar year 1994, the MMS reports that $389,807 was collected from these 182 leases in the form of rents, royalties, and bonuses...$2,142 per lease.

It doesn't take a mathematical whiz to see that the Federal government needs to cut its costs to administer the oil and gas program in the State of Ohio.

Let me see if I can create a scenario for your thoughts.

Southeastern Ohio, Grandview Township, Washington County. There are five oil wells within one mile of each other. These wells are on 20 acre tracts. Each tract is owned by the Federal Government. Because these wells are in Ohio, they are subject to Ohio oil and gas regulations. The tracts are a part of the Wayne National Forest, subject to the Wayne Management Plan. Because the Bureau of land Management oversees minerals for this area, the wells are also subject to Federal Code CFR 43.

At 2 p.m. on June 20, 1996, onto site #1 pulls a 1994 Ford 4x4 pickup carrying the State of Ohio oil and gas inspector. Next arrives a 1995 Dodge 4x4 carrying a Wayne National Forest field inspector. Finally, parking just off the location is a 1996 Jeep Wagon carrying a Bureau of Land Management inspector. He has to park off the location because it was becoming too crowded.

My question: What is one of these inspectors going to do that the other cannot?

How much are these vehicles costing the taxpayers? How much are the wages and benefits costing the taxpayers? What are the reporting requirements and paperwork costing the producer?

Each inspector pulls out his code book. Each book is different. Who is top dog? Which book has authority over the others?

After discussing policy for a few minutes, baseball for a few more minutes, and maybe how rough we have it because the cost of living went up another percent or two, they move from one well to the next well and so on.

Let us now move onto leases and the tangled mess in Southeastern Ohio. The Wayne National Forest extends to parts of ten counties in Southeastern Ohio with three district units: the Ironton unit, the Marietta unit, and the Athens unit. I live and work in the Marietta unit so I will reference that general area. The Wayne National Forest is made up of fragmented land ownership by the federal government. Much of the acreage was purchased in smaller 20-100 acre tracts which make up what is now about 30 percent ownership of land in the Marietta unit. I would estimate that probably 75 percent of the federal land in the Marietta unit is under oil and gas leases.

There are basically three types of leases or mineral holdings within the Marietta unit.

1. Private minerals. These are minerals for oil and gas that were reserved at the time of property transfer. This could have happened many years ago by warranty deed or at the time the government purchased the land. Either way the oil and gas leasing rights are owned by someone other than the Federal Government.

2. Outstanding minerals. This could include a mineral reservation or an existing lease in compliance at the time the Federal Government purchased the property. I have several leases where I lease and drill wells only later to have the landowner sell to the Federal Government. The Federal Government purchased this property knowing full well that there was a lease in place. For example, I drilled six wells on a 160 acre tract from 1983 through 1985. Later, the Federal Government bought the property with the lease in place. Under terms of the lease, I can drill more wells and I will hold this lease so long as I produce oil and gas. The wells are subject to Ohio regulations, but not Federal, as the lease was in place at the time of purchase.

3. Reverting minerals. During the 1940's and the 1950's, the government was having trouble purchasing land in Southeastern Ohio because of the oil and gas potential. The Forest Service started a practice where it would buy the property but allow the seller to reserve the right to lease the minerals for oil and gas development and receive all royalty from same for a number of years. These reservations were for anywhere from five years to 50 years. Carlton owns a lease that had a 100 year reservation.

Because of the bureaucratic overrule of the Federal Government, most producers would not touch these leases, thus the mineral was not produced and the reservor did not benefit. Along about 1973 and throughout the 1970's, our country suffered an energy crunch. Congress created a very favorable tax write-off for investors in oil and gas development. Money men started flocking to Southeastern Ohio from all parts of the country. There was an oil boom on and we good ole boys were thrown money to drill like there would be no end. Leases were in dire need for drilling of new wells. Producers started looking at Federal lands and the reverting leases.

I first became involved with reverting leases around 1979. Being a little cautious, several producers including myself questioned the Forest Service about what happens when the mineral reservation runs out and reverts to the Federal Government. The response was the same as what happens in the private sector. You continue to operate your lease and wells while switching royalty payments to the government. After being in several informal discussions and being somewhat reassured, I jumped in and leased some of these reverting minerals. All negotiations took place between the mineral holder and the producer, in this case myself. The Forest Service took no part as the minerals were reserved. My company, Carlton, leased eight separate tracts totaling about eight hundred acres. Probably the biggest mistake of my life.

Let me guide you through my grueling experience of Carlton's Littleton lease.

January 28, 1984 -- Carlton leased 213 acres from James and Dorothy Littleton. The Littleton's had sold the 213 acres to the Forest Service on November 8, 1971, reserving the right to lease and receive royalty from oil and gas through November 1, 1991 (20 years).

April 1984 -- Carlton drilled a well with approximately $175,000 of investor raised money. The well, while not a boomer, was commercially productive.

Mid-1987 -- the Bureau of Land Management suddenly appear in Southeastern Ohio. I do not know how they found their way down here from Milwaukee as I do not remember seeing their representative in the area before that time. The BLM took the position that as the minerals reverted, all rights, including producing wells, were lost and if the owner wants to keep his well he must now go to an auction and bid for the well and lease.

For the next two years, debate over the issue was ongoing between producers, the Forest Service, Bureau of Land Management, and Congressional Representatives with no end in sight.

1989 -- Congressman Bob McEwen drafted legislation to correct the problem. During this time the BLM revealed that a compensatory royalty agreement could be issued and legislation would not be needed. As this was believed satisfactory, legislation was dropped. Several compensatory royalty agreements were put in place.

Spring of 1990 -- legal staff of the BLM indicated that compensatory royalty agreements were inappropriate and that no more would be issued.

September 26, 1991 -- Representatives Applegate, McEwen, and Miller introduced House Resolution 3421. Southeastern Ohio Oil and Gas Association members made many trips to Washington to testify in support of the bill.

May 1992 -- Carlton Oil shut in Carlton's Littleton well under threat of prosecution for mineral thief by the Bureau of Land Management.

October 1992 -- President Bush signed into law HR 3421 as part of the Comprehensive National Energy Policy Act.

Over the next year, several meetings were held between Southeastern Ohio Oil and Gas Association, the BLM, and the Forest Service to discuss procedures for transferring of lease rights under H.R. 3421.

January 1994 -- the BLM indicated that Carlton had failed to submit the required application for the Littleton lease and rights to the Littleton lease were denied.

February 1994 -- Carlton filed notice of appeal to the Bureau of Land Appeals.

March 22, 1994 -- Carlton filed Statement of Reasons to the appeal.

April 18, 1994 -- the Office of Hearings and Appeals denied Carlton's appeal.

July 16, 1994 -- Carlton filed petition to reconsider the appeal.

August 17, 1994 -- the Office of Hearings and Appeals denied Carlton's petition to reconsider.

Through numerous discussions between Carlton and the BLM, Carlton attempted to settle the issue. Carlton's attempts were to no avail. Finally, Carlton gave up and informed the BLM that if the BLM would put the Littleton lease up for sale, Carlton would travel anywhere in the United States to bid and buy the Littleton lease at lease sale.

January 5, 1995 -- Chris Hanson of the BLM in Milwaukee wrote a letter to the U.S. Forest Service requesting that the Littleton lease be put up for lease sale. A copy of the letter was sent to D. Greatorex of the Marietta office of the Wayne National Forest.

Throughout 1995, word from Forest Service personnel was that the Littleton lease would be put up for auction. As there was a lease sale scheduled for September 1995. I assumed that the Littleton lease would be on that sale.

September 1995 -- a lease sale was held in Marietta, Ohio but the Littleton lease was not included. The BLM excuse was that the Forest Service had not given consent. The Forest Service excuse was; "sorry, we just overlooked the lease. Don't worry, it will be on the next lease sale."

Early November 1995 -- Carlton received notice of a lease sale scheduled for December 7, 1995. The Littleton lease was not on the list. The Forest Service said they did not have the time to do the necessary paperwork and give consent. I noticed that they did have time to put other Ohio acreage on the list.

Typical Forest Service procedure -- "Delay, the deadliest form of denial."

November 2, 1995 -- I met with Eurial Turner, Supervisor of the Wayne National Forest, at the Athens office of the Wayne National Forest. He gave me his word that consent of the Littleton lease would leave his office on November 6, 1995 for the Milwaukee office for approval. I contacted personnel from the Forest Service in Milwaukee. The BLM said that if the Wayne National Forest would give consent that they would do whatever necessary to get the Littleton lease on the December lease sale.

November 7, 1995 -- I received a call from D. Greatorex that the procedures could not be completed in time because the Forest Service must give public notice, etc. However, he said they would complete everything so that it could be on the next sale.

November 29, 1995 -- D. Greatorex informed me that only one comment was received and that was in favor of allowing the lease.

January 1996 -- article in the January 1996 Wayne Quarterly newsletter produced by the Wayne National Forest states that the scoping was completed in December 1995 for consent to lease the Littleton 212.44 acre tract. Also note that the tract would be on the March 1996 lease sale.

February 15, 1996 -- Carlton receives notice of March 28, 1996 lease sale in Springfield, Virginia. You guessed it, the Littleton lease was not on the sale notice.

February 21, 1996 -- After several days of trying to call Eurial Turner I finally reached him by telephone. Asked why BLM was not given consent for the Littleton lease to sell, he said, "because of the federal budget shutdown he did not have time to complete the necessary paperwork."

Frustrated to the highest level, I called Congressman Frank Cremeans, Congressman Bob Ney, and Senator Mike DeWine. Somehow, progress was made.

Early May 1996 -- I received notice of a June 20, 1996 lease sale to be held in Springfield, VA. The Littleton lease was finally on the lease sale. The lease is burdened with heavy stipulations such as no surface occupancy over three-fourths of the acreage which includes areas already developed.

Congressman Cremeans presently has H.R. 2354 in committee. This bill would go a long way toward rectifying this issue.

I would like to make one more point in reference to reverting minerals. The Littleton well was drilled in April 1984. The well was permitted under Ohio 1509 oil and gas laws. The well operated and produced in compliance with these laws until shut in during May 1992. The well remains shut in today. I would ask anyone present to explain the difference in the physical operations of this well between June 19, 1996 and June 21, 1996. What caused the major problem that all of a sudden the well needed considerable more bureaucratic regulations?

As mentioned throughout this testimony, and as the Littleton case shows, the real problem that small oil and gas operators like myself face is overregulation. It is hard enough trying to make the operation work when you must comply with one set of regulations. But when you double and triple the regulations, there is little if any incentive to produce oil or gas when it is economically unfeasible. I certainly support transferring the responsibility of regulating oil and gas operators back to the states.

In summary, I would recommend several courses of action for this committee:

1. Transfer of enforcement for oil and gas regulations should be given to individual states.

2. Individual state regulations and federal regulations should be combined. Have one set of standards meeting the needs of operations as affected by the individual state.

3. The Forest Service should be required to complete an impact study on each individual tract of ground prior to purchasing. This study would reveal if the particular tract met Federal standards along with compatible use prior to spending taxpayer monies.

4. The Federal lands should be under one management agency. Why are the Forest Service and

the BLM managing the same tracts of land? The Forest Service as well as the BLM should show cost efficiency of double personnel on one area of federal lands.

5. Mineral Management Service should be abolished. The monies should be collected by the states for proper disbursement.

6. Safety and sound environmental practices should be of priority. The management agency should be required to provide Congress with a plan to more efficiently produce our natural resources. This would increase tax dollars to our states and schools, create jobs, and provide some monies toward reducing our national debt.

Thank you for the opportunity to testify and I will answer your questions to the best of my ability.

Danny Thompson is a resident of Newport, Ohio. He has spent over two decades in oil and gas production in the Appalachian Basin. He is past president of the Southeastern Ohio Oil and Gas Association and remains on the Board of Directors. He is a Board member of the Ohio Oil and Gas Association as well as a member of the Independent Petroleum Association of America. Danny is also in his second term as a Gubernatorial appointee to the Ohio Oil and Gas Technical Advisory Council. He is owner, president, and general manager of Carlton Oil Corporation located in Newport, Ohio.

WRITTEN STATEMENT

OF

ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

SUBMITTED TO THE

HOUSE COMMITTEE ON RESOURCES

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HEARING ON

BLM PROPOSAL TO

TRANSFER INSPECTION AND ENFORCEMENT RESPONSIBILITIES

TO STATES AND TRIBES

JUNE 20, 1996

INTRODUCTION

The Rocky Mountain Oil and Gas Association (RMOGA) appreciates this opportunity to provide the House Resources Committee's Subcommittee on Energy and Mineral Resources with our views on the Bureau of Land Management's Final Inspection and Enforcement Transfer Report. RMOGA is a trade association with hundreds of members, both large and small, who account for over 90 percent of the oil and gas exploration, development, transportation, refining and marketing activities in the eight-state region it serves. RMOGA members maintain a substantial presence on Federal acreage.

RMOGA'S POSITION

RMOGA's major concern with the BLM's REGO II Inspection and Enforcement Transfer Report is its failure to provide definitive, innovative information about alternatives for cutting costs and streamlining the onshore oil and gas program. We have been involved with the transfer proposal since it was initiated. Throughout the process, industry has raised many questions which have yet to be adequately addressed. Until our questions, the most significant of which are enumerated below, are thoroughly addressed, industry will continue to have serious concerns with the transfer proposal. RMOGA can support the REGO II I&E transfer proposal only if it results in clear and demonstrable benefits to industry and the affected government agencies.

If the proposed transfer goes forward, industry must be involved in the dialogue between States, Tribes and the BLM on the manner in which transfers will be structured. Inspection and enforcement programs must also be consistent from state-to-state. The major goal of the government reinvention will be negated if States negotiate individual and diverse I&E programs. The transfer should provide a common I&E framework for all States wishing to assume responsibility over Federal leases. Finally, should States assume I&E responsibilities, the Federal government must relinquish its oversight role and its responsibility for "inherently federal" functions.

BACKGROUND

The BLM proposed transferring its oil and gas inspection and enforcement responsibilities to States and Tribes approximately one year ago as part of Vice President Gore's Reinventing Government II (REGO II) initiative. In June of 1995 RMOGA testified before this body on the REGO II initiatives, including the proposed transfer of I&E. At that time we questioned whether it was appropriate to mandate the transfer of these authorities since a mechanism is already in place allowing States and Tribes to enter cooperative agreements with BLM or to assume delegation for I&E functions should they so desire.

In September of last year, the BLM released a draft report on the transfer proposal. RMOGA again questioned its necessity and criticized the report for its lack of specificity. Recognizing considerable time and financial resources were expended in the I&E transfer effort, industry assumed the draft report would represent a significant departure from existing I&E responsibilities, procedures and authorities. Unfortunately, while providing an overview of the Bureau's I&E and environmental compliance programs, the report did not offer specific details on how the proposal differed from existing regulations at 43 CFR 3190 regarding transfer authorities. Nor were state and tribal issues/recommendations which arose during a July, 1995 meeting addressed with any specificity. RMOGA commented on the draft report raising numerous questions in the belief that more details would be provided in the final transfer report.

FINAL REPORT ON TRANSFERRING INSPECTION & ENFORCEMENT FUNCTIONS TO STATES & TRIBES

The BLM's final Inspection and Enforcement Transfer Report was issued in April of this year. The majority of changes from the draft report were grammatical in nature. The Bureau generally responded to industry's questions and concerns by stating that the issues would be addressed as each State and/or Tribe negotiated the details of their individual program with the BLM. As we previously testified, lacking specifics, it is impossible to discern the full ramifications of the transfer proposal. RMOGA, therefore, continues to have questions and concerns with the transfer proposal. Industry's major concerns lie in two areas - the scope of Federal responsibilities being transferred and whether the transfer would truly benefit the industry and the regulatory agencies.

Scope of Federal Authorities Being Transferred

The final report continues to be very confusing with regard to the Federal authorities available and under consideration for transfer to States and Tribes. The discussion of "inherently federal" functions adds to the confusion with the use of terminology such as "certain BLM functions" in evaluating the extent of Federal authorities available for transfer. The BLM needs to clearly define the scope of Federal authorities being considered for transfer to States and Tribes.

- Is the BLM suggesting States and Tribes may be able to assume responsibilities beyond I&E responsibilities?
- Is the intent of the REGO II proposal strictly limited to I&E responsibilities? If not, the expanded authorities envisioned for States and Tribes should be enumerated.

The report also appears to identify environmental compliance as a function which is distinct and separate from the I&E function. The discussion regarding the extent to which States and Tribes can "customize" the Federal I&E program also adds to the confusion.

- Does this imply States and Tribes may be allowed to shift their individual regulatory programs to Federal lands and conduct inspections in accordance with **their** respective rules?
- Will States and Tribes be involved with permitting decisions as delegated enforcement agencies?
- The Bureau should clearly state whether inspections will be in accordance with BLM standards, State and Tribal standards or a "hybrid" of the various agencies' standards.

Even if one limits their focus in reviewing the proposal exclusively to BLM's I&E authorities, it is unclear whether all or only portions of those authorities can be transferred to States and Tribes. Again, because of unresolved questions regarding "inherently federal" functions, the

Bureau has not offered additional clarification regarding whether I&E delegations under the REGO II proposal will be managed as they currently are under 3190.

- As is now the case, will States and Tribes be limited to issuing only the first notice of noncompliance and shut-in orders with BLM retaining responsibility for imposing and collecting monetary assessments/penalties?
- How will the appeals process work? Will industry continue to challenge I&E decisions using FOGRMA's appeal procedures?
- Will BLM retain responsibility for pursuing criminal enforcement actions?

If the I&E transfer proposal is to be of value, these questions must be researched and a determination rendered with regard to the extent of Federal authorities available and under consideration for transfer.

Benefits of Transferring Only I&E

Should only I&E authority be transferred to States and Tribes with BLM retaining responsibility for permitting, bonding, penalty assessment, etc., a single Federal lease will be subject to multiple agency authorities. If I&E responsibility for surface operations is assigned to one agency and responsibility for downhole operations to another, the result is the same. Regardless of how BLM's existing authorities are partitioned, multiple agency jurisdiction over operations conducted on Federal lands will result in a more burdensome, complicated and expensive compliance scheme negating the purpose of reinvention. The same applies to BLM maintaining an oversight role on State and Tribal I&E programs and its responsibility for "inherently federal" functions.

The questions and concerns raised by industry as well as the States and Tribes must be adequately addressed before RMOGA can wholeheartedly support the I&E transfer. The BLM should:

- Provide a clear explanation of how the REGO II transfer proposal differs from existing regulations allowing States and Tribes to assume responsibility for assuring oil and gas compliance on Federal lands;
- Explicitly define the scope of authorities being considered for transfer;
- Identify the legal limitations associated with authorities available for transfer;
- Identify possible options to overcome the legal obstacles should expanded State and Tribal authorities be considered;
- Outline the procedural and operational changes which would be required of government and industry to accomplish the REGO II transfer of Federal responsibilities to States and Tribes;
- Offer an analysis of the costs savings and benefits to be gained by the envisioned transfer.

We appreciate your interest in this important issue and your careful consideration of our comments.

○

ISBN 0-16-053412-7