HEARING ON H.R. 3972, H.R. 3878, AND H.R. 1467

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 3972, TO AMEND THE OUTER CONTINENTAL SHELF LANDS ACT TO PROHIBIT THE SECRETARY OF THE INTERIOR FROM CHARGING STATE AND LOCAL GOVERNMENT AGENCIES FOR CERTAIN USES OF THE SAND, GRAVEL, AND SHELL RESOURCES OF THE OUTER CONTINENTAL SHELF

H.R. 3878, TO SUBJECT CERTAIN RESERVED MINERAL INTERESTS OF THE OPERATION OF THE MINERAL LEASING ACT, AND FOR OTHER PURPOSES

H.R. 1467, TO PROVIDE FOR THE CONTINUANCE OF OIL AND GAS OPERATIONS PURSUANT TO CERTAIN EXISTING LEASES IN THE WAYNE NATIONAL FOREST

JULY 21, 1998, WASHINGTON, DC

Serial No. 105–101

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://www.house.gov/resources

U.S. GOVERNMENT PRINTING OFFICE

49–994 CC WASHINGTON : 1998

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

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

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

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

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

BARBARA CUBIN, Wyoming, CHAIRMAN

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

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

BILL CONDIT, *Staff Director*
MIKE HENRY, *Professional Staff*
DEBORAH LANZONE, *Professsional Staff*

CONTENTS

HEARINGS ON H.R. 3972, TO AMEND THE OUTER CONTINENTAL SHELF LANDS ACT TO PROHIBIT THE SECRETARY OF THE INTERIOR FROM CHARGING STATE AND LOCAL GOVERNMENT AGENCIES FOR CERTAIN USES OF THE SAND, GRAVEL, AND SHELL RESOURCES OF THE OUTER CONTINENTAL SHELF; H.R. 3878, TO SUBJECT CERTAIN RESERVED MINERAL INTERESTS OF THE OPERATION OF THE MINERAL LEASING ACT, AND FOR OTHER PURPOSES; AND H.R. 1467, TO PROVIDE FOR THE CONTINUANCE OF OIL AND GAS OPERATIONS PURSUANT TO CERTAIN EXISTING LEASES IN THE WAYNE NATIONAL FOREST

TUESDAY, JULY 21, 1998

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

The Subcommittee met, pursuant to call, at 2:07 p.m. in room 1324, Longworth House Office Building, Hon. Barbara Cubin [chairman of the Subcommittee] presiding.

Mrs. CUBIN. The Subcommittee on Energy and Mineral Resources will come to order.

The Subcommittee is meeting today to hear testimony on three small bills, big bills to the people who they affect, but Bill thought it was small, so he put that word in here.

First is H.R. 3972, introduced by our Full Committee Colleague, Mr. Pickett of Virginia, to address the issue of payments for Outer Continental Shelf sand resources used for beach reclamation projects. Mr. Pickett's bill would put State and local governments on such projects on the same footing as the Federal Government; that is, the sand resources would be made available without charge to State and local governments, not unlike the situation for communities in the West, which procure sand and gravel without charge from Federal lands for public works projects under the 1947 Minerals Sales Act.

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

Mrs. CUBIN. Second is H.R. 3878, which I introduced, to lift Federal leasing restrictions on two tracts of lands in Sublette County, Wyoming, which are prospectively valuable for natural gas.

Several decades ago, when the Federal Government patented the surface estate but reserved the mineral estate, but withdrew its minerals from leasing under the terms of the 1964 Act authorizing such sales, the lands in question remained rangeland and were never developed for commercial uses, which was the thought that might have happened, which was a thought they took into consideration at that time. They thought that oil and gas exploration or development might be in conflict with that use. So that was why it was done in the first place, but the land is still grazing land, and so we would like to rescind that and withdraw those regulations.

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

Mrs. CUBIN. Third is H.R. 1467, introduced by Mr. Ney of Ohio, to address concerns by small oil producers on the Wayne National Forest who find themselves in a unique situation. Certain operators there are lessees of the United States because they owned wells on formerly reserved private minerals, now Federal, since the expiration of 50-year reservations.

A compromise bill was drafted by the Department of the Interior and is agreed with by the operators affected and the Ohio Department of Natural Resources, the State agency which currently holds financial guarantees for the plugging and abandonment of existing wells of these operators.

The substitute will recognize such bonds as adequate protection to the environment for existing wells only. Any new development on these Federal leases must be bonded under BLM rules in force at the time the permits are sought.

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

Mrs. CUBIN. Under rule 6(f) of the Committee rules, any opening statements at hearings are limited to the chairman and the Ranking Minority Member, but since we do not have any other members here, we do not have to worry about that.

I now yield to Mr. Romero-Barceló for an opening statement.

STATEMENT OF HON. CARLOS A. ROMERO-BARCELÓ, A DELEGATE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. It is a pleasure to be here. The three bills that are before us today appear to be noncontroversial. We see no impediment whatsoever to the prompt consideration of these bills.

On H.R. 1467, which would allow expired leases in the Wayne National Forest to resume production without compliance with the existing law, the administration opposes this legislation. The bill is the concern of a small group of oil and gas producers in the Wayne National Forest in Ohio who, on average, produce less than 15 barrels of oil a day, a very small amount. Congress addressed their concerns in 1992 and believed we had resolved their problems with lapsed production and royalty payments by allowing them the opportunity to regain their leases. However, it appears that additional legislation is required, and we urge the administration to work with the Subcommittee to resolve this issue once and for all.

H.R. 3878 would open two tracts of withdrawn land in Sublette County, Wyoming, to oil and gas leasing. The Administration supports enactment of this bill. We would, too, particularly since it is our chairperson's bill. We see no difficulty in moving the bill expeditiously.

H.R. 3972, introduced by Representative Owens Pickett, who is here with us today, our colleague, would direct the Department of the Interior to waive the required fees for sand, gravel and shell resources from the Outer Continental Shelf to State and local governments who need such resources for beach replenishment and other related public purposes.

The administration opposes this bill, apparently due to cost recovery concerns. The minority, however, supports our colleague's efforts to ensure that State and local governments may acquire free of charge sand and gravel resources from the federally controlled Outer Continental Shelf.

Thank you.

Mrs. CUBIN. Thank you.

[The prepared statement of Mr. Romero-Barceló follows:]

STATEMENT OF HON. CARLOS ROMERO-BARCELÓ, A DELEGATE IN CONGRESS FROM THE STATE OF PUERTO RICO

Madame Chair, the three mineral bills before us today appear to be non-controversial. We see no impediment to prompt consideration of these bills.

H.R 1467 would allow expired leases in the Wayne National Forest to resume production without compliance with existing law. The Administration opposes this legislation. The bill is the concern of a small group of oil and gas producers in the Wayne National Forest, in Ohio, who, on average, produce less than 15 barrels of oil a day—a very small amount. Congress addressed their concerns in 1992, and believed we had resolved their problems with lapsed production and royalty payments, by allowing them the opportunity to regain their leases. However, it appears that additional legislation is required. We urge the Administration to work with the Subcommittee to resolve this issue once and for all.

H.R. 3878 would open two tracts of withdrawn land in Sublette County, Wyoming, to oil and gas leasing. The Administration supports enactment of this bill. And, we, too, see no difficulty in moving the bill expeditiously.

H.R 3972, introduced by Rep. Owen Pickett, would direct the Department of the Interior to waive the required fees for sand, gravel and shell resources from the Outer Continental Shelf to State and local governments who need such resources for beach replenishment and other related public purposes. The Administration opposes this bill apparently due to cost-recovery concerns. The Minority, however, supports our colleague's efforts to ensure that State and Local governments may acquire, free-of- charge, sand and gravel resources from the federally controlled outer continental shelf.

Mrs. CUBIN. I will now introduce our panel of witnesses for the bill, H.R. 3972: The Honorable Owen Pickett, Representative of the Second District of Virginia, it is nice to have you today; Mayor Meyera Oberndorf, from the city of Virginia Beach, Virginia; and Ms. Carol Hartgen, Chief, Office of International Activities and Marine Minerals at the Minerals Management Service, Department of the Interior.

I thank all of you for being here.

Let me remind the witnesses that under our Committee rules, they must limit their oral statements to 5 minutes, but their statement will appear in the Record, and we will also have the entire panel testify before questioning, if there are any questions by the Committee. But since we are so small, maybe there won't even be.

I would like to first of all recognize our Colleague, Mr. Pickett.

STATEMENT OF HON. OWEN PICKETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. PICKETT. Thank you, Madam Chair. I appreciate the opportunity to offer remarks before the Committee today regarding H.R. 3972, that amends the Minerals Management Service policy of assessing a tax against State and local governments for the use of the Outer Continental Shelf sand and gravel.

I might pause here a moment, Madam Chairman, and say this is becoming increasingly important because of the administration's policy of shifting more of the cost of these projects to State and local governments and away from the Federal Government. So it is having a compound effect on local governments to impose this tax for the sand and gravel.

During the 103d Congress, Public Law 103–426 was enacted to remove procedural obstacles and allow government agencies to negotiate and obtain OCS sand and gravel. This law exempted the Federal Government from being assessed a tax but, of course, imposed a tax on State and local governments.

In October, 1997, the Minerals Management Service formalized its guidelines regarding the tax for OCS sand, gravel, and shell resources when used in shore protection and beach erosion projects by State and local governments. In the new policy, MMS decided to assess State and local governments a tax for OCS sand and gravel used in shore protection projects, even in those cases where the projects are authorized by Federal law.

I do not believe it was Congress' intent to impose an additional tax on State and local governments for costly yet necessary shore protection projects. Although the costs involved for OCS sand and gravel may not appear significant when compared to the overall cost of a shore protection or beach restoration project, it is considerable enough to make such projects less attractive and more costly when undertaken by State and local governments. So this begs the question of why should we impose a cost on State and local governments that the Federal Government does not pay itself when it is performing a similar kind of a project.

Even worse, in the case of the city of Virginia Beach, which is in my congressional district, we recently had the case where the Minerals Management Service assessed a fee of some $200,000 for sand and gravel for use on a project that had already been planned, approved, and financed. Because this was assessed after the project in effect had been funded, the only option for the local government was to decrease the amount of sand that was going to be put on the beach to make up for this money that had to be paid to the Federal Government. Now, as a result of that, this project is going to have a shorter useful life and is going to require the local government to replace the project earlier than planned at a much higher cost.

So I think it is a compelling reason, Madam Chair, that this law be amended, so that we treat State and local governments at least as well as we treat the Federal Government, which is to say, do not assess them this tax for the sand and gravel they need for the beach restoration and protection projects.

Thank you very much for the time. I will be happy to respond to any questions.

Mrs. CUBIN. Thank you very much.

[The prepared statement of Mr. Pickett follows:]

STATEMENT OF HON. OWEN B. PICKETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you for the opportunity to offer remarks before this Committee today regarding the Minerals Management Service's (MMS) policy of assessing a tax against state and local governments for the use of Outer Continental Shelf (OCS) sand and gravel. During the 103rd Congress, Public Law 103-426 was enacted to remove procedural obstacles and allow government agencies to negotiate and obtain OCS sand and gravel. This law exempted the Federal Government from being assessed a tax for OCS sand, gravel, and shell resources. In October 1997, MMS formalized its guidelines regarding the tax for OCS sand, gravel, and shell resources when used in shore protection and beach restoration projects by state and local governments. In this new policy, MMS decided to assess state and local governments a tax for OCS sand and gravel used in shore protection projects, even in those cases where the projects are authorized by Federal law. I do not believe it was Congress' intent to impose an additional tax on state and local governments for costly, yet necessary shore protection projects.

In 1947, Congress passed the Minerals Materials Sales Act. This law allows localities to borrow mineral resources from public lands for public works projects, such as road construction, without the fear of having a tax assessed on them by MMS. Although localities must pay money into an account to reclaim the land from which the sand and gravel was taken, there is no analogous law for coastal states that use offshore mineral resources for shore protection projects. In this case, sand and gravel mined from the OCS is naturally reclaimed through hydrodynamic processes.

Although the costs involved for OCS sand and gravel may not be significant when compared to the overall cost of a shore protection or beach restoration project, it is considerable enough to make such projects less attractive and more costly when undertaken by state and local governments. Even worse, the City of Virginia Beach, which is located in my Congressional District, recently paid MMS approximately $200,000 for 1.1 million cubic yards of OCS sand for a federally authorized project that had already been planned, approved, and funded. Due to this increase in the project cost for the fee to MMS, the only option for the local government was to reduce, by 400,000 cubic yards, the quantity of 1.5 million cubic yards of sand required by the engineers in the original plans and specifications for this project. This project will now have a shorter useful life and will require the local government to replace the project earlier than planned at a much higher cost.

As the Administration seeks to change the nation's shore protection policy, the costs incurred by state and local governments for OCS sand and gravel will continue to rise dramatically unless this ill-advised tax law is changed. Historically, the Federal Government has entered into 65/35 cost share agreements with local governments for federally authorized shore protection projects. A recent proposal by the Administration, if adopted, will reverse this cost share ratio upon completion of the initial construction with the local sponsor paying almost double the share of the project maintenance. The typical MMS tax to the local government sponsor for OCS sand and gravel will also double as a result of this policy change. This excessive and inequitable tax will become a serious and insurmountable burden for struggling local governments. It is clearly another unfunded mandate on state and local government, and it should be eliminated here and now.

I strongly urge the Committee to adopt the amendment, restore equity among Federal, state, and local governments, and eliminate this unfair tax.

Mrs. CUBIN. Next we will call on Mayor Oberndorf.

STATEMENT OF HON. MEYERA E. OBERNDORF, CITY OF VIRGINIA BEACH, VIRGINIA

Ms. OBERNDORF. Good afternoon, Madam Chairman and gentlemen. It is good to be here and have an opportunity to talk to you about the city of Virginia Beach's recent dealings with the Mineral Management Service, or MMS, under the Department of the Interior. We are very grateful to our Congressman, Mr. Owen Pickett, for introducing the legislation, H.R. 3972, which we believe will

help others from suffering the unfair treatment we feel we have had.

As you probably know, Virginia Beach is a beautiful resort city located only a few hours' ride from the Nation's Capitol, and it is the largest city in the Commonwealth. Having served as mayor for 10 years, I know firsthand how the well-being of our beaches is crucial to the City's economy.

The City has over six miles of commercial beach, from which the critical livelihood of many Virginia Beach citizens is earned. The City's financial health from tourism is critical because they are one of our largest employers. Over 2.5 million out-of-town visitors arrive in Virginia Beach each year. These visitors spend approximately $500 million in the City and created about 11,000 jobs.

Obviously, sandy beaches are an integral part of the City's coastal infrastructure, provide the first line of defense against storm waves, and form the basis for our continued economic vitality. For the past 25 years, the City, in conjunction with the Corps of Engineers, has been working on two of the region's highest priorities, the Resort Area Beach and Sandbridge Beach Erosion Control and Hurricane Protection Projects.

The Virginia Beach Resort Area project will protect and enhance six miles of commercial and residential beachfront, consisting of over $1 billion in flood-insured development, against a direct hit from a hurricane. The project protects hundreds of million dollars of City infrastructure, our tourism industry, and more than a thousand commercial and residential properties along the shore.

Once we have completed the construction of this erosion control and hurricane protection project, the authorization includes the periodic renourishment of the project beach for a 50-year period. The very basis for the project's performance estimates is founded on the premise that sand in the beach and the dune system and the seawall will act together to provide the protection that we so sorely need. Beach replenishment is a crucial component for this and the Sandbridge Beach project.

However, a contentious and outrageous issue has developed during an emergency beach restoration of Sandbridge Beach. This spring, the situation at Sandbridge has grown increasingly worse as the Nor'easters that have struck the East Coast have literally demolished the beach. We have lost 40 homes to the storms and more than 300,000 cubic yards of protected beach sand. As a result, the need to replenish the beach has become even more critical. This nourishment is currently under way, and the city of Virginia Beach is spending $8.1 million of its own money for the initial nourishment allowed under the congressionally authorized project.

The Department of the Interior became involved because the location of the site the Corps has dedicated to mine the sand to nourish the beach is beyond the 3-mile limit. The amended Outer Continental Shelf Lands Act authorized the Department of the Interior to assess fees for the extraction of minerals from the Continental Shelf.

Under law, a noncompetitive lease agreement must be signed between the City and the Minerals Management Service before the project can begin. This program is managed by the MMS, which in late 1997 finalized its policies regarding fee assessment.

In short, its policy would exempt federally funded beach replenishment projects from fees for sand minerals mined from the Shelf for such projects. However, under the new interpretation, locally funded beach replenishment projects are not exempt, regardless of Federal authorization or Federal participation.

As a result of this recent policy development, the city of Virginia Beach was assessed by MMS a fee for mining the sand used to construct the Federal project at Sandbridge solely because the City, not the Federal Government, fronted the cost of the construction. This was in spite of the fact that the Corps used approximately $2 million of its Federal dollars to design the project, acted as construction manager, and would consider this as the initial nourishment of this project authorized by the 1992 WRDA.

This was the first such assessment anywhere in the Nation; and we are hoping that, with the law that Congressman Pickett is seeking to have passed, that other shore communities will be relieved of this burden and will be able to replenish their beaches in order to keep not only a healthy City and State but also a Nation.

Thank you.

Mrs. CUBIN. Thank you very much.

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

Mrs. CUBIN. Ms. Hartgen.

STATEMENT OF CAROL HARTGEN, CHIEF, OFFICE OF INTERNATIONAL ACTIVITIES AND MARINE MINERALS, MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Ms. HARTGEN. Thank you, Madam Chairman.

Madam Chairman and members of the Subcommittee, thank you for the opportunity to testify on H.R. 3972. I am representing the Minerals Management Service and am Chief of the International Activities and Marine Minerals Division of MMS, which develops policy and guidance for the exploration and development of OCS marine hard minerals, including sand and gravel.

A copy of my written testimony has been submitted for the Record. I would also like to submit for the Record a copy of MMS' policy and guidelines for assessing fees for OCS resources used in shore protection and restoration projects.

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

Ms. HARTGEN. I would like to highlight the activities of the MMS sand and gravel program and discuss our authority under Public Law 103–426 to negotiate agreements with State and local governments for access to OCS sand, gravel, and shell, and assess a fee for use of these resources.

I would also like to discuss the reasons why we believe that reasonable fees should continue to be assessed for the use of OCS resources pursuant to the OCS Lands Act, Section 8(k)(2)(B).

MMS is primarily known as the agency that leases and regulates OCS oil and gas activities, but we also have a vibrant nonenergy minerals program that is currently focused on sand and gravel along the East Coast and the Gulf of Mexico.

MMS has cooperative partnerships with nine States along the Atlantic and Gulf of Mexico coast: New Jersey, Maryland, Delaware, Virginia, North Carolina, South Carolina, Florida, Alabama,

and Louisiana. Federal funds and matching contributions from the States in either moneys or in-kind services have and continue to identify OCS sand deposits for potential use in beach nourishment projects.

Environmental information is also being collected by private contract, providing the information base to make decisions on the potential use of the sand. These cooperative partnerships, with and at the request of these States, provide an excellent example of Federal and State agencies working together to gather information on marine mineral resources for which there is a growing need. It is these OCS sites being identified in this cooperative manner that are the subject of negotiated lease agreements with local governments.

Public Law 103–426, passed by Congress in 1994, authorized a negotiated agreement process in lieu of competitive bidding to facilitate the way in which OCS sand, gravel, and shell could be made available when these resources were needed for certain publicly beneficial projects like beach nourishment and wetlands restoration projects undertaken by Federal, State, or local government agencies.

In passing the amendment, Congress recognized that the competitive bidding process was impractical when OCS resources were needed for certain public works uses. Congress did not want governmental construction costs to become prohibitive as a result of bidding competition for the resources, nor did they want a government project sponsor or its contractor needing OCS resources to be unable to access OCS sand as a result of being outbid at a sale.

Congress also provided that the Secretary may assess a fee based on the value of the resources and the public interest served by developing the resources, except that no fee would be assessed against a Federal agency.

A negotiated agreement process provided the impetus for government project planners to consider the OCS as an alternative supply source.

Since 1995, MMS has completed one negotiated agreement with the Navy and three negotiated lease agreements with local governments in Florida, South Carolina and Virginia, conveying rights to approximately 4 million cubic yards of OCS sand and to support publicly beneficial shore protection projects.

In the most recent negotiated agreement with the city of Virginia Beach in Congressman Pickett's district, MMS assessed a fee of 18 cents a cubic yard, totaling $198,000 for 1.1 million cubic yards of sand. The fee was discounted 65 percent off the estimated value of the sand to reflect the public interest served by the project. We worked closely with the Norfolk District of the U.S. Army Corps of Engineers and the city of Virginia Beach officials on this project. This is the first agreement for which a fee for the use of OCS sand was collected and deposited in the United States Treasury. Use of OCS sand is now being planned for upcoming projects in Maryland, New Jersey, and Louisiana.

MMS prepared internal guidelines on how fees would be determined at the time of each negotiation. A special subcommittee of the Department's OCS policy committee reviewed and assisted MMS with the guidelines and found the approach for determining

fees acceptable and consistent with the OCS lands Act. The guidelines were shared with State and local governments, as well as Federal project sponsors, to help them with project planning and funding decisions. The MMS methodology for determining sand values is based on a balancing test, weighing the value of resources and the public interest.

Sand values are based on references to market values and provide for discounts to reflect public interest, reducing value by the same percentage amount, typically 65 percent, as the Federal share of project construction costs.

H.R. 3972 changes part of the 1994 amendment in 8(k)(2)(B) and would prohibit the Secretary of the Interior from charging fees to State and local government agencies. In short, it would eliminate entirely the Secretary's authority to assess fees under paragraph B, because authorization to negotiate agreements pertains only to governmental use of sand. Private or commercial requests are still addressed through the competitive bidding process.

The Department of the Interior believes that the Secretary should continue to be allowed to assess fees to States and local governments for the use of OCS sand and gravel and shell and that there are good reasons for doing so. Therefore, we do not support H.R. 3972, and the Office of Management and Budget advises that the bill has pay-go implications.

The legislative history of the 1994 amendments contains clear indications that Congress considered the issue of fees. In passing the amendment, Congress provided an alternative process for conveying rights to State and local entities but did not intend that the resources be given away.

The Department thought then, and continues to think now, that it makes sound economic and public policy to realize a financial return to the Treasury, both for private and government use of the resource. OCS sand, gravel, and shell are part of the Nation's endowment of valuable mineral resources.

In conclusion, we believe it is important to continue to provide the Secretary with the authority to assess fees. The fee will only be a small fraction of total project costs. However, it represents the government's commitment to provide a fair return to the public for the use of its public resources.

Thank you very much.

Mrs. CUBIN. Thank you very much.

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

Mrs. CUBIN. I will start the questioning.

Mr. Pickett, I was not a Member of Congress when Mr. Ortiz' bill to address OCS sand resources became law in 1994, but is it your understanding that the 103d Congress intended MMS to charge royalties or fees to State and local governments that seek to replenish beaches using this?

Mr. PICKETT. Madam Chair, it was not my understanding that this fee would be assessed to local governments and particularly would not be assessed in those cases where a project is an authorized Federal project that has been established as an authorized project by Federal law.

I think, in my mind, that it is counterproductive to extract this—they may call it a fee, but it is nothing more than a tax—from State and local governments when this is material that is placed on public property for use of all the citizens.

Mrs. CUBIN. It seems to me that it would be fair to refer to the fee as a rental, rather than a royalty, because the sand that is dredged from the OCS and placed on the beaches will ultimately go back to the shoals, anyway.

Mr. PICKETT. That is true. It is migrates all around. You might pay for some of it twice.

Mrs. CUBIN. I think you are correct in your understanding that communities in the West that are surrounded by public lands that are administered by the BLM and Forest Service can get free use permits for sand and gravel for public projects like road building and things like that.

Wyoming has not had a beach replenishment project for some 60 million years, and so I cannot relate to your problem there, but certainly I do understand that there should be equitable treatment for the coastal States, as public land States. We make that plea and cry many times when we are on the short end of what we consider to be policies that are not helpful to us, so certainly I think we need to grant that to you.

I do not really have any other questions for you, other than I do want you to know that I am supportive, and would ask you if you would like to join, unless either member has questions, to join the panel, if you would like to.

Mr. PICKETT. Madam Chairman, I really appreciate your support. I appreciate your being gracious and having me here today to speak in support of this bill.

I am on a conference committee on the defense authorization bill and we do have a meeting coming up in just a few moments, so I will ask if you will excuse me. It is not because of a lack of interest. I do want to be present for the conference committee meeting.

Mrs. CUBIN. Absolutely.

Mr. PICKETT. Thank you very much.

Mr. ROMERO-BARCELÓ. Madam Chairman, I would just like to make a couple of comments.

In the first place, coming from New York, I am very much aware for the need for beach replenishment and the need to have access to the minerals and the resources on the bottom of the ocean.

But in Puerto Rico, as well as Texas and the west coast of Florida, we are in an advantageous position because we have the crown lands, and the crown lands gave us a 3-mile league jurisdiction, which is 10.35 miles. So I am sure the Federal Government cannot be charging Texas or the west coast of Florida for sand extracted up to 10.35 miles from the shore, because that belongs to the State of Texas and the State of Florida.

That is another inequitable situation where the States have ocean lands. I just wanted to add that fact for those of you who might not be aware of it. So that is another argument to support your request.

Mr. PICKETT. I was not aware of that, and I appreciate you very much pointing that out.

Mrs. CUBIN. Thank you for being here. Please do good work on that conference committee. I know you will.

Mayor Oberndorf, I simply want you to know that I sympathize with your City's plight in having to deal on this issue with the Department of the Interior.

One thing that I see has happened since I have been here in Congress is that we find that the States, public land States, coastal States, have a lot more in common than we realized that we did. So learning about one another's issues and being sympathetic—Mr. Pickett has certainly always been very open to listen to the problems that we face in the West with having half of my State, for example, owned by the Federal Government, and there are problems.

I do not mean to sound like I think the land management agencies are all bad. They are not. But it is just trying to define what the roles should be and what the policies should be that sometimes we find ourselves in conflict on.

As I said earlier, I am very willing to work with Mr. Pickett to eliminate what I consider the new tax for State and local government projects. But I do want you to know that the much larger cost issue of the U.S. Corps of Engineers' funding for the actual dredging and other work is outside the jurisdiction of this Committee.

I have given my OK for the Pickett language to be included in the Water Resources Development Act reauthorization bill, which is pending in front of the Transportation Committee, so that will help move it along faster, rather than continuing to go through all the steps through this Committee.

Thank you for being here, and thank you for your testimony.

Ms. OBERNDORF. Thank you.

Mrs. CUBIN. I did just have a couple of questions for Ms. Hartgen of MMS.

Your testimony quotes former Member Gerry Studds' statement on the Ortiz bill, but I do not see a conflict with the Pickett bill and Mr. Studds' intent if MMS simply values State and local projects as fully in the public interest like you view Federal projects to be in the public interest. To me, I see it the same.

In other words, is beach replenishment on Padre Island National Seashore anymore in the public interest than the city of Virginia Beach's project? Just because the former Padre Island is Federal only, I cannot see why that is more in the public interest than the replenishment of the beach at Virginia Beach. I am guessing that far more of the public of the country visit Virginia Beach than they do Padre Island.

I just wonder if you could explain to me how that is fair or what the Minerals Management Service considers—what is the difference?

Ms. HARTGEN. Madam Chairman, I agree that both reflect the public interest. The issue of the fees for sand, because of the sand's location on the Outer Continental Shelf, involves—in line with the amendments to the Lands Act—an assessment of the fee.

The way the public interest is taken into consideration and is reflected in our fee guidelines, is through discontinuing the fee. The fee reflects the type of cost-sharing that the Federal Government engages in—in this case, the Army Corps of Engineers, on public interest projects where there is a Federal and State cost-sharing

for projects being conducted in the public interest. That is the reason, for example, that we discounted the Virginia Beach fee 65 percent.

Mrs. CUBIN. But the sand and gravel on Padre Island was zero percent. You can understand, I think there is a legitimate side here, but public interest is public interest. That is why we are here, to straighten that out. I understand your position on that.

You said, I think it was very near the end of your testimony, that this legislation had fatal implications. I think those were the two words that you used. I wonder if you could explain that to me a little more.

All right, it had pay-go implications, which could be fatal. That is right.

All right. I don't have any further questions, but I do thank you for your testimony.

Mr. Romero-Barceló?

Mr. ROMERO-BARCELÓ. No.

Mrs. CUBIN. Are there further questions?

Thank you very much for being here, and we will dismiss this panel.

I call on Mr. Culp, the Assistant Director of Minerals, Realty, and Resource Protection, the BLM.

Thank you for being here to testify on bills H.R. 3878 and H.R. 1467.

STATEMENT OF CARSON W. CULP, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. CULP. Thank you, Madam Chairman and members of the Committee. We appreciate this opportunity to testify today on H.R. 3878, a bill that would subject certain reserve mineral interests in Wyoming to the operation of the Mineral Leasing Act, and H.R. 1467, which would allow oil and gas operators in the Wayne National Forest to continue operations under their preexisting private leases, even after the mineral estate reverts to the United States.

We have worked closely with the Subcommittee, your staff, and stakeholders on both bills to reach consensus language in order to assist the industry and create win-win situations for all involved. We support H.R. 3878 and, while we oppose H.R. 1467 as introduced, we are still working with your staff and the Ohio Oil and Gas Association to find a compromise that will work for everyone. I am hopeful that the bill will be amended, as you discussed in your opening statement, so that we will not have to object to its passage.

To briefly address H.R. 3878, the bill would open two tracts of lands in Sublette County, Wyoming, to oil and gas leasing under the Mineral Leasing Act. It would provide that any party requiring a lease on the lands could also exercise the right reserved to the United States to enter these lands and occupy as much of the surface as is reasonably required for oil and gas exploration, development, and production.

H.R. 3878 would protect the surface owner against damage to crops or tangible improvements and the loss of surface uses as a result of oil and gas operational activities.

As you indicated, the bill also validates an existing lease that was mistakenly issued on one of these tracts. Without this legislation, the BLM would be forced to cancel the lease. The two tracts were transferred through the Public Land Sale Act of 1964. Under this Act, the mineral rights were reserved to the United States but withdrawn from the mineral leasing laws.

The BLM does not object to opening these tracts to leasing under the Mineral Leasing Act. Furthermore, recognizing that there is no objection from the patentee, we support the efforts to validate the lease we mistakenly issued in 1997.

Turning to H.R. 1467, we have been working with the State of Ohio and with the Committee to reach a workable solution for oil and gas operators in the Wayne National Forest. We believe that we can find an acceptable way to assist the operators, and we are continuing our discussions with them, the State, and the other stakeholders.

For instance, we would not oppose legislation that would authorize BLM to issue to these operators noncompetitive oil and gas production and reclamation contracts, basically subject to the same laws and regulations as applied to their private leases. However, unlike H.R. 1467, certain conditions would have to be spelled out in any legislation authorizing this action.

First, the legislation would have to prohibit the contractors from authorizing new and deeper completions for additional drillings. In addition, the legislation would have to assure the complete and timely reclamation of the former lease tract, in accordance with the regulations of BLM and the U.S. Forest Service. To provide this assurance, the operator would have to provide a Federal oil and gas bond.

However, I should mention that we were also discussing other possible ways to assure the full and timely reclamation. Our cooperative efforts with the Ohio Department of Natural Resources' Division of Oil and Gas have led us to consider another option to ensure full and timely reclamation of the lease tract. This option has three elements and would be void unless all three were met.

First, the Secretary would accept, in lieu of the bond, the assurance of the Ohio Department of Natural Resources' Division of Oil and Gas that the contractor has duly satisfied the bonding requirements of the State and, following inspection, the State does not oppose the waiver.

Second, the U.S. would be entitled to apply for and receive funding under the provisions of Section 1509.071 of the Ohio Revised Code so as to properly plug and restore oil and gas sites and lease tracts as necessary.

And, finally, for the last 2 years, no less than 20 percent of the severance tax revenue would have to be allocated to the States' Orphan Well Fund, and I understand that is the way it works currently.

As we stated, we are having serious discussions with the State, and I believe we are very close to reaching agreement. In fact, just before the hearing we saw letters from the State and the State oil and gas association to that effect. We will continue this process to try to reach an acceptable solution for the operators in the Wayne

National Forest, and I am confident that, as is the case with H.R. 3878, we can find a win-win situation here as well.

That concludes my oral testimony. I will ask that my full written statement be entered in the record and will be happy to answer any questions.

Mrs. CUBIN. Thank you very much. Certainly your full written statement will be entered in the Record.

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

Mrs. CUBIN. I also thank you for bringing us the good news today that BLM and I agree on this issue, and I know as time passes we are going to agree on even more and more issues that are related to oil and gas.

With respect to the Sublette County, Wyoming, withdrawal from mineral leasing issues, I am happy to know that the folks from the Bureau at the district, State, and headquarters level agree that allowing competitive bidding for oil and gas leases on the subject tracts makes good sense. It truly does.

Just last week the State of Wyoming announced that some of its severance taxes collected on various minerals in the last fiscal year, while our coal mining counties and oil producing counties suffered declines from depressed prices, Sublette County is still enjoying a boom from development of abundant natural gas resources. So I think H.R. 3878 should be a win-win story for the county, the State, and the Federal Treasury.

So I hope that as soon as this bill passes that the area will go up for bid, and then we and MMS can argue over how to collect royalties from that. This goes on and on. I appreciate your support of this.

As to Mr. Ney's bill, I am glad also that an apparent compromise has been fashioned suitable—that is suitable to the Bureau and the Ohio Department of Natural Resources. As you know, this Subcommittee has really tried to get your agency in many cases to work with the States, led by the Interstate Oil and Gas Compact Commission, to find economies in the post oil and gas lease issuance of the public lands minerals management.

I do not want to make too much of the draft language that the agency has negotiated, but I do consider it a step toward acknowledging the role for State regulatory agencies in making the oil patch work for all concerned.

And, yes, the operators on the Wayne National Forest are a unique lot, and I mean that in a most favorable way, such that normal BLM rules concerning financial guarantees for plugging and abandonment of oil wells is more than the lessees can handle. But the Ohio program has demonstrated to BLM's satisfaction, and must continue to do so do remain valid, that the existing wells pose little or no threat for improper abandonment.

Now if we can work together to find acceptable solutions to less unique circumstances, the operators in Wyoming and other public domain, we really will have made progress.

At this time, I ask unanimous consent to place into the Record letters from the Acting Chief of the Division of Oil and Gas for the Ohio Department of Natural Resources and from the Ohio Oil and Gas Association, each of whom support the negotiated agreement

of the DOI-drafted language, which I will offer as a substitute to H.R. 1467 at subsequent markup.

I think that will satisfy the reservations that it is my understanding you have with the legislation as it is drafted, is that correct?

Mr. CULP. Yes. The substitute language would still have to go through the regular clearance process, of course.

Mrs. CUBIN. Exactly, right. Then that certainly would be our intention.

I ask unanimous consent to enter these into the Record.

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

Mrs. CUBIN. Are there any questions by any of the other Members?

Mr. ROMERO-BARCELÓ. No.

Mrs. CUBIN. It certainly is nice to move hearing on three bills in such an expeditious manner. I do thank you, Mr. Culp, for your testimony and your cooperation in being here with us today.

The hearing record will be kept open for 10 days, and as I said earlier, your full testimony will be entered into the Record. Thank you very much.

Mr. CULP. Thank you, Madam Chairman.

Mrs. CUBIN. If there is no further business, I want to thank the members of the Subcommittee for being here, and the Subcommittee stands adjourned.

[Whereupon, at 2:50 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. MEYERA E. OBERNDORF, CITY OF VIRGINIA BEACH

Good morning Mr. Chairman and members of the Subcommittee. My name is Meyera Oberndorf, and I am the Mayor of the City of Virginia Beach. I appreciate this opportunity to testify before the Subcommittee to discuss the City's recent dealings with the Mineral Management Service (MMS) under the Department of the Interior. We are very appreciative of our local representative, Owen Pickett, a member of this Committee who has introduced H.R. 3972. We believe this legislation will help others from suffering unfairly as the City of Virginia Beach has in the hands of the MMS.

As you probably know, Virginia Beach is a beautiful resort city located only a few hours drive from the nation's capitol, and it is the largest City in the Commonwealth. Having served as Mayor for 10 years, I know first-hand how the well-being of our beaches is crucial to the City's economy. The City has over 6 miles of commercial beach front which is critical to the livelihood of many Virginia Beach residents and the City's financial health since tourism is our largest employer.

Over five million out-of-town visitors arrived in Virginia Beach last year. These visitors spent approximately $500 million in the City, and directly created about 11,000 jobs. In addition to our visitors, the second biggest employer for Virginia Beach is the U.S. Navy as the Naval Air Station (NAS) Oceana and three other military installations support the Norfolk naval complex. After three rounds of Base Realignment and Closure (BRAC), expansion of this megaport continues with an increase of as many as 6,000 sailors and family members in the next year with the transfer of F/A 18s from Cecil Field in Florida to Oceana. Our City's economic health directly impacts the quality of life enjoyed by the thousands of Naval personnel in Virginia Beach.

Sandy beaches are an integral part of the City's coastal infrastructure and provide the first line of defense against storm waves and form the basis for our continued economic vitality. For the past 25 years, the City, in conjunction with the Corps of Engineers, has been working to finish two of the region's highest priorities, the Resort Area Beach and the Sandbridge Beach Erosion Control and Hurricane Protection Projects.

The Virginia Beach Resort Area project will protect and enhance six miles of commercial and residential beachfront, consisting of over a billion dollars in flood insured development, against a direct hit from a hurricane. The project protects hundreds of millions of dollars of City infrastructure, our tourism industry and more than a thousand commercial and residential properties along the shore.

Once construction of this Beach Erosion Control and Hurricane Protection project is complete, the authorization includes the periodic renourishment of the project beach for a 50-year period. The very basis for the project's performance estimates is founded on the premise that the sand in the beach and dune system and the seawall will act together to provide the protection benefits. Beach replenishment is a crucial component for this and the Sandbridge project.

However, a contentious and outrageous issue has developed during an emergency beach restoration of Sandbridge Beach. This Spring, the situation at Sandbridge has grown increasingly worse as the Nor'easter's that have struck the east coast have literally demolished the beach. We have lost 40 homes to the storms, and more than 300,000 cubic yards of protective beach sand. As a result, the need to replenish the beach has become even more critical. This nourishment is currently underway, and the City of Virginia Beach is spending $8.1 million of its own money for the initial nourishment allowed under the Congressionally authorized project.

The Department of Interior became involved because the location of the site the Corps has designated to mine the sand for nourishing the beach is beyond the three mile limit. The amended Outer Continental Shelf Lands Act authorized the Department of the Interior to assess fees for the extraction of minerals from the continental shelf. Under law, a non-competitive lease agreement must be signed between the City and the Minerals Management Service (MMS) before the project can begin. This program is managed by the MMS, which in late 1997 finalized its policies regarding fee assessment.

In short, its policy would exempt federally funded beach replenishment projects from fees for sand minerals mined from the Shelf for such projects. However, under the new interpretation, locally funded beach replenishment projects are NOT exempt, regardless of Federal authorization or Federal participation.

As a result of this recent policy development, the City of Virginia Beach was assessed a fee by MMS for mining the sand used to construct the Federal project at Sandbridge solely because the City, not the Federal Government fronted the cost of the construction. This was in spite of the fact that the Corps used approximately $2 million of its Federal dollars to design the project, acted as construction man-

ager, and would consider this as the initial nourishment of this project authorized by the 1992 WRDA. This was the first such assessment anywhere in the nation. The purpose for establishing fees for mineral extraction from the continental shelf was to assure that the citizens were compensated for allowing the use of public resources by profit seeking endeavors. Clearly Congress did not intend for the Department of the Interior to assess fees to local governments who would use the mineral for a purely public purpose—flood protection.

In our case, a fee of $0.18 per cubic yard was assessed, and we were compelled to enter into a lease agreement with MMS before our emergency beach erosion project could go forward. Including this fee in our project finances limited us to contracting for only cubic yards of sand, paying the Department of Interior $198,000 in mineral fees to construct the Federal project. That fee accounts for an additional 40,000 cubic yards of sand that could have been placed on the beach at Sandbridge! In this time when the Administration is proposing to rely more heavily on local sponsors for the funding and execution of Federal flood protection projects, clearly the counterproductive nature of assessing these fees to local sponsors should be eliminated. The Department of the Interior has clearly overstepped its authority by assessing fees to local governments for mining beach replenishment sand in the furtherance of projects authorized by this Committee. We believe Mr. Pickett's bill will end this abusive policy for any other communities in the future who will mine in the Outer Continental Shelf to complete projects authorized by the WRDA. In that the City of Virginia Beach is the only locality in the country to have ever been compelled to pay the mining fee, we would hope that additional directive language be added to the bill for reimbursement to the City out of the MMS account, for the $198,000 that the City was forced to pay.

Mr. Chairman, I want to thank you again for the opportunity to speak with you today on beach protection and replenishment issues. We urge the adoption of H.R. 3972. Also, I would love to have you visit my city to look at the Federal-City partnership in action.

STATEMENT OF CAROL HARTGEN, CHIEF, OFFICE OF INTERNATIONAL ACTIVITIES AND MARINE MINERALS, MINERALS MANAGEMENT SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Madam Chairwoman and Members of the Subcommittee, thank you for the opportunity to testify on the Minerals Management Service's (MMS) sand and gravel program and on H.R. 3972, a bill to amend section 8(k)(2)(B) of the Outer Continental Shelf Lands Act (OCSLA) to prohibit the Secretary of the Interior from charging fees to State and local government agencies for certain uses of sand, gravel, and shell from the OCS.

THE MMS SAND AND GRAVEL PROGRAM

Although MMS is primarily known as the agency within the Federal Government that leases and regulates OCS oil and natural gas activities, the agency also has a vibrant non-energy minerals program. Currently, the program's major focus is on OCS sand and gravel, and MMS has cooperative partnerships with the States of New Jersey, Maryland, Delaware, Virginia, North and South Carolina, Florida, Alabama, and Louisiana to identify sand deposits in Federal waters suitable for beach nourishment. Environmental information on potential OCS sand borrow sites also is being collected by private contract, providing both the MMS, States, and localities with the information base necessary to make decisions on the possible use of these sand resources. These partnerships are a key strategy in ensuring environmental protection, safe operations, and issue resolution in marine mineral resource development and are an excellent example of Federal/State cooperation.

As you may be aware, the OCS contains abundant quantities of sand that could be used on projects in coastal States to forestall beach erosion, protect shoreline development, provide improved recreation and protect valuable wetlands resources. In 1994, Congress amended the OCS Lands Act (OCSLA) to help facilitate the use of OCS resources on these projects. The amendment, Public Law 103-426, authorized the use of non-competitive negotiated agreements for gaining access to the OCS sand, gravel, and shell resources when these resources are needed for certain public projects like beach and wetlands protection and restoration undertaken by Federal, or State, or local government agencies. Most requests for negotiated agreements have been/are expected to be for OCS sand, so even though the authority includes gravel and shell as well, the discussion below will in many cases simply reference sand.

Historically, sources of sand for projects has been the nearby State submerged lands. In some coastal areas, submerged State lands and onshore lands are becoming depleted or otherwise unsuitable. Access to OCS sand can provide suitable sand and a significant cost savings for States and local communities when compared to the price of sand from onshore sources. Additionally, removing sand from offshore and in particular from the OCS—may be the more environmentally preferable because of the limited physical impacts to the local environments. Using OCS sand can take some pressure off other alternative sources located on valuable and fragile beach, wetland or dune systems. Also, development of sand sources farther from the shore, (i.e., from the OCS) may also avoid adverse impacts from the creation of pits and burrows near the shore which can cause erosion by altering the local current and wave regimes.

When Congress amended section 8(k) of the OCS Lands Act in 1994, it provided the necessary impetus for Federal, State and local government project planners to consider the OCS as an alternative sand supply source. Since the new law was enacted, many coastal States, local governments, and other Federal agencies have approached MMS and asked how they can get access to OCS sand.

To date, MMS has completed one MOU agreement with the Navy and three negotiated agreements with local governments (in Florida, South Carolina, and Virginia), conveying rights to approximately 4 million cubic yards of OCS sand to support publicly-beneficial shore protection projects. For the most-recent project, MMS negotiated a non-competitive lease with the City of Virginia Beach, and assessed a fee of $0.18 per cubic yard (totaling $198,000 for 1.1 million cubic yards of sand). This fee was discounted 65 percent off the estimate of value to reflect the public interest served by the project. We worked closely with the Norfolk District of the U.S. Army Corps of Engineers (USACE) and City of Virginia Beach officials on this project. This is the first agreement for which a fee for use of OCS sand was collected. Use of OCS sand is now being planned for upcoming projects in Maryland, New Jersey, and Louisiana.

BACKGROUND ON PUBLIC LAW 103-426 AND SECTION 8(k)(2) OF THE OCSLA

Section 8(k) of the OCSLA addresses leasing of any OCS mineral other than oil, gas, and sulphur. The original wording of this section required that, in all cases, the Department use a competitive bonus bidding process for conveying the mineral rights to those resources. In 1994, section 8(k) was amended by Public Law 103-426. In general, the amendment authorizes the Secretary to negotiate agreements for use of OCS sand, gravel, and shell when these resources are requested for use in certain public projects like beach and wetlands protection and restoration undertaken by Federal, State, or local government agencies.

The new authority to negotiate agreements provided an alternative process for acquiring the rights to develop OCS sand because Congress determined that the competitive bidding process was impractical when OCS resources were needed for certain public works uses. Congress did not want governmental construction costs to become prohibitive as a result of bidding competition for the resources, nor did they want a government project sponsor, or its contractor, needing OCS resources to be foreclosed from access to sand as a result of being outbid at the sale.

The amendment also provided, in section 8(k)(2)(B), that "the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly ... against an an agency of the Federal Government." This valuation method allows the Secretary to determine an appropriate fee that would take into account both the value of the Federal minerals and the public benefits that could be realized from providing affordable access to OCS resources to support public projects. The "no fee" exemption for Federal agencies was included to prevent the transfer of funds from one Federal agency to another and to prevent local project sponsors from passing back to the Federal Government (e.g., through a cost-sharing agreement with the USACE) the expense of fees for use of the Federal sand paid under this law.

MMS ASSESSMENT OF FEES UNDER SECTION 8(k)(2)(B):

MMS prepared internal guidelines relating to fee assessments under section 8(k)(2)(B) of the OCSLA to use when negotiating specific agreements pursuant to that section of the Act. These guidelines were shared with State and local governments, as well as Federal project sponsors, to provide information about potential fees for sand, gravel, and shell resources and how the fees will be determined so that sponsors can compare alternative sources and forecast project funding needs.

The approach for determining fees outlined in the guidelines is based upon congressional direction that fees be based on a balancing test weighing the value of the resources and the public interest served. The MMS methodology provides for determination of sand values based on references to market values and provides for discounts to reflect public interest in the fee assessment, reducing the market-based estimate of value by the same percentage amount (typically 65 percent) used to represent the congressionally-mandated Federal share of costs of constructing the projects. This balancing of resource value with public interest considerations provides a discount for State and local governments, resulting in a reasonable fee for the resource.

The Department's OCS Policy Committee (Committee) reviewed the guidelines and found the approach for determining fees acceptable and consistent with the OCSLA. The Committee includes representatives from coastal States, local governments, the environmental community and industry and provides advice to the Secretary on a wide range of issues associated with OCS mineral development. The Committee recommended that the guidelines be made available to the public to enhance the timely dissemination of information and to assist governmental planners.

To date, each of the three local governments mentioned earlier who requested OCS sand also requested that the fee be waived. During the early stage of the program, MMS was able to waive the fee for two projects for reasons of fairness and equity. Specifically, for these cases, project planning and budget development was well underway prior to enactment of the 1994 amendment, and MMS was concerned that imposition of a fee could delay or prevent project construction. Since that time, however, coastal States have been informed about the requirements for accessing OCS sand and MMS's policy to assess fees consistent with the 1994 amendment.

COMMENTS ON H.R. 3972

H.R. 3972 proposes to change the 1994 amendment to the OCS Lands Act to prohibit the Secretary of the Interior from charging fees to State and local government agencies. In short, H.R. 3972 would eliminate entirely the Secretary's authority to assess fees under section 8(k)(2)(B) because authorization to negotiate agreements under this section of the law pertains only to use of OCS sand, gravel, and shell to support Federal, State, or local government sponsored projects. Non-governmental (private or commercial) requests for these OCS resources are still addressed through the competitive bidding provisions of section 8(k)(1).

The Department believes that the Secretary should be allowed to assess fees to States and local governments for the use of OCS sand, gravel, and shell resources and that there are good reasons for doing so. Therefore, we do not support H.R. 3972, and the Office of Management and Budget (OMB) advises that the bill has Pay-as-you-Go implications.

When Congress amended section 8(k) in 1994 to authorize negotiated agreements for governmental use of OCS resources, the legislative history of Public Law 103-426 contains clear indications that Congress considered the issue of fees. During House floor consideration of the pending legislation, Representative Gerry Studds, Chairman of the Committee on Merchant Marine and Fisheries stated the following:

> "The bill accomplishes two important things. First, it makes OCS hard minerals available for public projects without requiring ... a competitive lease sale. Under current law, these resources could only be made available to State and local governments through such a lease sale which is too costly and too cumbersome. **However, the minerals are not to be given away** (emphasis added). The bill authorizes fees to be charged based on the value of the resources and the public interest."

In part, the Department supported the 1994 amendment because it was sound economic and public policy to realize some financial return both when Federal sand, gravel and shell resources are leased competitively (under section 8(k)(1) for private or commercial use), or leased through the negotiated agreement authority under section 8(k)(2) for use in public projects. The Department is still of that opinion. In addition—

- The Department seeks to obtain "fair value" for the use of all Federal minerals consistent with mineral leasing law (onshore and offshore), and the public expects no less. OCS sand, gravel, and shell are part of the Nation's endowment of valuable mineral resources. Thus, sand from the OCS and the value associated with it belong to all States—not coastal States alone.
- As is true for private projects, public projects should accurately account for all costs—including sand value—and benefits so that informed decisions can be made. A reasonable fee for the resources, consistent with values seen in the general market, will help to ensure that the timing of investments in OCS sand

recovery is market-based and that the Nation receives a fair return for the development of these resources.

• Most coastal States have developed beach management programs for the purpose of defining their needs and raising funds to ensure the continued viability of this important revenue-generating asset. For example, tourism surcharges (e.g., hotel "bed taxes") have been used as a partial source for beach management funding and is justified because those most frequently using the beach are contributing directly to beach repair and maintenance. Bond issues and property taxes are also used to fund beach projects. It is reasonable to expect that some State and local tax revenues should fund the costs of protecting the beaches, including some payment for the use of Federal sand for project construction.

• With the fee exemption provided by H.R. 3972, nationally-owned sand resources would be provided to coastal States to support construction of shore protection and restoration projects, even if Congress has not approved Federal involvement and funding for project construction. For projects that do include Federal participation, congressional authorization requires sharing of the costs of construction with State and local project sponsors (usually at least 35 percent is the non-Federal share of construction costs). Thus, for cost-shared projects, use of OCS sand under H.R. 3972 means that the Federal Government would be absorbing a greater proportionate share of the project costs (through an in-kind contribution of the sand) than the congressionally-mandated Federal share.

Also, many publicly-sponsored beach projects can contain design components that provide incidental sand nourishment for privately-owned beachfront property. The USACE is prohibited from using Federal money to protect or nourish private property. Governmental project plans will account for any incidental components by requiring that private beachfront property owners provide public access or reimburse the local sponsor for their proportionate share of project costs (and the non-Federal cost share, including the MMS fee, would be increased accordingly). With the changes proposed by H.R. 3972, it would be virtually impossible for MMS to ensure that any private property owners pay for Federal sand that it receives as part of a government-sponsored project.

• In recent years, coastal States and localities needs for OCS sand for beach nourishment and coastal restoration have increased. MMS believes this trend will continue and even accelerate, as resources within State waters are depleted. Due to Federal budget limitations, we also are seeing a trend where State and local communities assume an increasing financial responsibility for projects to protect their beaches and tourism industry, and this is a trend supported by the Administration.

CONCLUSION

In conclusion, we believe that it is important to continue to provide the Secretary with the authority to assess a fee for OCS sand, gravel, and shell resources that are used by a State or locality for a beach protection or renourishment project. In most cases, this fee will represent only a small fraction of the total cost of that project. More importantly, however, the fee represents the Federal Government's commitment to provide a fair return to the Nation for the use of the public's resources.

Madam Chairwoman, this concludes my prepared remarks. However, I will be pleased to answer any questions Members of the Subcommittee may have.

STATEMENT OF CARSON W. (PETE) CULP, ASSISTANT DIRECTOR, MINERALS, REALTY & RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on H.R. 3878, a bill that would subject certain reserved mineral interests to the operation of the Mineral Leasing Act, and H.R. 1467, which would allow oil and gas operators in the Wayne National Forest to continue operations under their preexisting private leases upon the reversion of the mineral estate. The bills would both provide relief to individual oil and gas operators. The Bureau of Land Management (BLM) has worked closely with stakeholders concerning both bills to reach consensus language, and I am pleased to report that we have no objection to H.R. 3878. However, while we are willing to continue to work with stakeholders to reach a solution to the problems presented by the unique nature of mineral ownership patterns in the Wayne National Forest, we must oppose H.R. 1467 as currently drafted.

H.R. 3878

H.R. 3878 would open two tracts of withdrawn lands in Sublette County, Wyoming, to oil and gas leasing under the Mineral Leasing Act of 1920, as amended and supplemented. It would provide that any party acquiring a lease on the lands under this authority could also exercise the right reserved to the United States to enter the lands and occupy as much of the surface as is reasonably required for the conduct of oil and gas exploration, development, and production operations. The bill would protect the patentee against damage to crops or tangible improvements and the loss of surface uses as a result of oil and gas operational activities. Finally, H.R. 3878 would validate the existing lease to one of the tracts of land issued by the BLM in 1997.

The lands at issue were transferred through the Public Land Sale Act of 1964, Public Law 88–608, which authorized and directed the Secretary of the Interior to dispose of public lands which had been classified as meeting certain specified use categories (excluding lands chiefly valuable for grazing and raising forage crops). Upon patenting, the mineral rights in these lands were reserved to the United States, but were withdrawn from appropriation under the mineral leasing laws.

The surface of the lands was sold and patented, but has remained chiefly valuable for grazing. One of the two tracts was offered for competitive leasing in early 1997. Enron Corporation was the successful bidder at $165 per acre, and a lease was issued in 1997. However, because the lands were withdrawn from appropriation under the Mineral Leasing Act, the BLM must cancel the lease to comply with our current statutory mandates. H.R. 3878 will allow the lessee to keep the lease and permit the BLM to lease the other tract of land.

The BLM has worked cooperatively with the lessee and patentee on this issue. The patentees have stated in writing that they do not object to enactment of H.R. 3878, and they would permit the lands to be leased for oil and gas. We also discussed the matter on several occasions with representatives of the lessee, the Enron Corporation, and assisted the corporation in its efforts to retain its lease.

H.R. 1467

As with H.R. 3878, the BLM has worked cooperatively with the State of Ohio to reach a workable solution for oil and gas operations in the Wayne National Forest. The affected wells in the Wayne National Forest tend to be marginally economic and operators face financial hardship. This makes it difficult for them to meet the required posting of State, U.S. Forest Service (USFS), and BLM bonds. Local producers are extremely sensitive to any increase in operating costs, and absent some workable solution, many operators may have to cease operations.

Unfortunately, H.R. 1467 is not a workable solution. The bill purports to revive expired private leases issued by private lessors whose mineral reservations, defined by a set period of years, have expired. It would allow the drilling of new wells without compliance with Federal regulations for the protection of the environment and public safety and on terms negotiated by private parties who had no reason to insist on terms protective of the character of the forest. It would authorize new drilling and deeper completions after the minerals have reverted to the United States without a bond payable to the United States to assure reclamation of the forest. For these reasons, the BLM must oppose H.R. 1476. However, since we do not object to the intent of the proposed legislation, we will be happy to continue to work with the State of Ohio and this Committee to find a solution that addresses the concerns of the operators, the State of Ohio, and the BLM.

Background

In many respects, the operations are a living history of the oil and gas industry in this nation in the early days of the 20th century. In the late 1980's, the problems associated with mineral interests in lands containing oil and gas wells reverting from private to public ownership became apparent and the BLM has sought to minimize the impact of the reversions on the producers within the limits of its authority. While the BLM supports attempts to implement administrative or legislative measures to address the concerns of the oil and gas producers in the Wayne National Forest, we also have an obligation to ensure those measures do not compromise safety, environmental protection, production accountability, and royalty payments.

The USFS has been acquiring lands in southeastern Ohio for the Wayne National Forest for many years. Typically, these land purchases are subject to a reservation of the mineral estate by the vendor for a term of 25 to 40 years. Upon expiration of the term, the mineral rights revert to the United States. However, until that reversion takes place, the private owner of the mineral rights retains the authority to control mineral development, and many of the private owners lease the oil and gas rights to local operators who drill wells on the property before the minerals re-

vert. The private lessors, of course, had no rights to lease beyond the expiration of their mineral rights reservations and thus the mineral leases expire with the reservation. However, the producers in the Wayne National Forest apparently were under the mistaken impression that, after the mineral reservations expired, they could continue operating under existing leases and merely pay to the Federal government the royalties previously paid the private lessors. Had the leases been issued prior to the sale of the lands to the Forest Service, the Forest Service would have taken title to the minerals subject to outstanding leases, but that is not true when the leases are issued after the lessor has already conveyed its mineral rights, as here.

Due to the requirements of the Federal Oil and Gas Leasing Reform Act, the BLM could not offer noncompetitive leases to the producers after the mineral estate reverted to the United States. By law, we were required to offer the leases competitively. Many producers expressed concern that they could be outbid by others, creating a situation where one party owned the Federal lease and another party owned the well. In that case, the lessee and well owner would have to agree on an operating arrangement, or the well would have to be shut in.

In 1990, the BLM attempted to resolve the problem by offering an administrative remedy that hinged on drainage compensation agreements which allowed affected well owners to continue operating while paying appropriate royalties to the United States. The BLM executed seven such agreements with producers. However, the Department's Office of the Solicitor reviewed the agreements and determined that they violated the competitive leasing law. As a result, the BLM discontinued using such agreements to address the operator's concerns.

In response to the operators' concerns, Congress passed, as part of the Comprehensive National Energy Policy Act of 1992, authorization for the BLM to issue noncompetitive oil and gas leases to owners of "stripper" wells on reverting mineral interests. Section 2507 states:

> "(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing . . . the holder of the lease may elect to continue the lease as a noncompetitive lease under subsection (C)(1)."

Most of the eligible producers applied for Federal leases; however, they disagreed with the BLM's interpretation of the law. The producers contended that Section 2507 actually allowed continuation of their existing private leases, with no change in terms and conditions other than paying royalties to the United States. The local oil and gas association asserted that the increased costs associated with operating a Federal lease threatened the economic survival of affected wells. In October 1993, the Department's Office of the Solicitor affirmed the BLM's position that Section 2507 required the producers to obtain a noncompetitive Federal lease, and that decision was upheld by the Interior Board of Land Appeals.

Between the years 1990 and 2010, an estimated 51 parcels of mineral estate containing 83 wells will revert to Federal ownership in the Wayne National Forest. Twenty-one parcels containing 41 wells have reverted already. In the 5½ years since the Comprehensive National Energy Policy Act of 1992 was passed, the BLM Eastern States Office has received 19 applications for non-competitive Federal leases covering 38 wells. Of this total, 14 noncompetitive leases have been issued, while 2 applications were withdrawn, 2 were rejected, and one is still pending. Although the numbers reflect a relatively successful implementation of the Act, we are aware that a number of the original well owners sold their wells to producers with greater financial resources that were willing to accept Federal leases. They believe that these transfers were "involuntary" and are still seeking a legislative remedy.

The typical reverting interest well in the Wayne National Forest produces, on average, about one half barrel of oil per day or 2,000 cubic feet of gas (2 MCF) per day, far below what is commonly associated with "stripper" wells. Production at these volumes yields only $125 to $400 in annual royalties to the Federal Government. While most private leases have the standard royalty provisions of 12.5 percent for oil and gas, current Federal regulations allow for stripper oil wells on Federal leases to receive a royalty rate reduction as an incentive to avoid premature abandonment. Unfortunately, that has not proven to be sufficient inducement for operators to apply for Federal leases.

The BLM does not object to a legislative solution for the operators in the Wayne National Forest. However, we must ensure that the legislation does not hinder the BLM's authority to ensure that oil and gas operations on Federal lands are carried out in an environmentally sound fashion. Should this legislation pass, operators would not be required to post a Federal bond. Bonds provide the incentive to pay Federal royalties, comply with Federal operating requirements, and properly plug

and abandon the well when production ceases. Although the State of Ohio has its own bonding requirements, the proceeds of a forfeited bond goes into the Orphan Well Fund for use in accordance with State priorities, rather than to assure a particular landowner the reclaiming of its well. In order to ensure proper plugging and abandonment of the wells will occur, the bill should stipulate that the continuation of operations under the private lease is subject to a State agreement to address this. This agreement should provide specific assurances of funding for 100 percent reclamation of abandoned well sites and the plugging of abandoned wells in the Wayne National Forest.

H.R. 1467 is also retroactive and covers those elections made prior to enactment of this law. The BLM cannot support a provision which requires the agency to revisit, and possibly cancel, prior lease approvals. The clause should be removed.

The BLM will Continue to Work with the Committee and the State

Mr. Chairman, the BLM has and will continue to work with the State of Ohio to reach a workable solution for the operators in the Wayne National Forest. While we oppose H.R. 1467, we would not object to legislation authorizing the PLM to enter into production and reclamation contracts with existing operators in the Wayne National Forest, under which production could continue in accordance with prior lease terms, payment of royalties would be made to the United States, and the operator would have a contractual commitment to reclaim the sites in accordance with Ohio law. However, we could only support the waiver of our usual lease bonds (as mandated by the Federal Oil and Gas Leasing Reform Act) under the following conditions:

1. The State of Ohio Department of Natural Resources would screen applicants for waiver, verify their good standing with the State both in bonding and performance of reclamation obligations and declare that it does not object to the waiver;
2. Where there is a waiver, the State would agree to timely fund plugging and abandonment of wells not timely reclaimed by the operator in accordance with the landowner grant program and reasonable risk criteria;
3. The State would allocate no less than 20 percent of its oil and gas severance tax revenues to the Orphan Well Fund; and
4. Recognition that the State has the right to change its commitment of severance tax revenues and authorize the BLM to require a Federal bond from the production and reclamation contractors.

Finally, I would like to commend the State of Ohio's bonding program and commitment of its state tax revenues to orphan well plugging. We would not object to reliance on that program for the existing wells in the Wayne National Forest, provided that the legislation gave us the option to require Federal bonds should performance under the State program deteriorate. We believe that this innovative approach would serve the public interest in maximizing ultimate recovery from the wells while allowing the BLM to comply with its statutory and regulatory mandates.

Once again, thank you for the opportunity to testify today. I will be happy to respond to any questions.

I

105TH CONGRESS
2D SESSION

H. R. 3972

To amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging State and local government agencies for certain uses of the sand, gravel, and shell resources of the outer Continental Shelf.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1998

Mr. PICKETT introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging State and local government agencies for certain uses of the sand, gravel, and shell resources of the outer Continental Shelf.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT.

Section 8(k)(2)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(k)(2)(B)) is amended by striking "an agency of the Federal Government" and inserting "a Federal, State, or local government agency".

O

I

105TH CONGRESS
2D SESSION

H. R. 3878

To subject certain reserved mineral interests of the operation of the Mineral Leasing Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1998

Mrs. CUBIN introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To subject certain reserved mineral interests of the operation of the Mineral Leasing Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASING OF CERTAIN RESERVED MINERAL INTERESTS.

(a) APPLICATION OF MINERAL LEASING ACT.—Notwithstanding the provisions of section 4 of the 1964 Public Land Sale Act (P.L. 88–608, 78 Stat. 988), the Federal reserved mineral interests in lands conveyed under that Act by United States land patents No. 49–71–0059 and

No. 49–71–0065 shall be subject to the operation of the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(b) ENTRY.—Any person who acquires any lease under the Mineral Leasing Act for the interests referred to in subsection (a) may exercise the right to enter reserved to the United States and persons authorized by the United States in the patents conveying the lands described in subsection (a) by occupying so much of the surface thereof as may be required for all purposes reasonably incident to the exploration for, and extraction and removal of, the leased minerals by either of the following means:

(1) By securing the written consent or waiver of the patentee.

(2) In the absence of such consent or waiver, by posting a bond or other financial guarantee with the Secretary of the Interior in an amount sufficient to insure—

(A) the completion of reclamation pursuant to the Secretary's requirements under the Mineral Leasing Act, and

(B) the payment to the surface owner for—

(i) any damages to crops and tangible improvements of the surface owner that re-

sult from activities under the mineral lease, and

(ii) any permanent loss of income to the surface owner due to loss or impairment of grazing use, or of other uses of the land by the surface owner at the time of commencement of activities under the mineral lease.

(c) LANDS COVERED BY PATENT NO. 49–71–0065.—In the case of the lands in United States patent No. 49–71–0065, the preceding provisions of this section take effect January 1, 1997.

○

I

105TH CONGRESS
1ST SESSION

H.R. 1467

To provide for the continuance of oil and gas operations pursuant to certain existing leases in the Wayne National Forest.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1997

Mr. NEY introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To provide for the continuance of oil and gas operations pursuant to certain existing leases in the Wayne National Forest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELECTION TO CONTINUE OIL AND GAS OPERATIONS UNDER CERTAIN EXISTING LEASES.

In the case of the Wayne National Forest, an election under section 17(b)(3) of the Mineral Leasing Act (30 U.S.C. 226(b)(3)), including an election made before the date of enactment of this Act, shall be deemed to be an election to continue operations pursuant to the existing lease instead of an election to continue the lease as a non-

competitive lease under section 17(c)(1) of that Act, and in the case of any such election, the provisions of subparagraphs (C) and (D) of such section 17(b)(3) shall not apply. The preceding sentence shall not apply to any lands subject to an election made by a leaseholder under such section 17(b)(3) before the date of enactment of this Act if the lease holder notifies the Secretary of the Interior (within 6 months after the date of enactment of this Act) that the leaseholder intends such election to remain an election to continue the lease as a noncompetitive lease under section 17(c)(1) of that Act.

○

MMS Policy and Guidelines

Fees for Outer Continental Shelf Resources Used in Shore Protection and Restoration Projects

Minerals Management Service
U.S. Department of the Interior
October 1997

Fees for Outer Continental Shelf Resources Used in Shore Protection and Restoration Projects

Introduction: Large volumes of sand are needed to widen and nourish beaches, build protective dunes, and restore barrier islands which can protect landward wetlands. Publicly-sponsored shore protection and restoration projects generally are authorized by Congress and executed by a Federal agency, usually the U.S. Army Corps of Engineers (USACE), with State and local governments as project cosponsors and cost-sharing partners. Other Federal agencies (e.g., FEMA, the Navy) can also sponsor shore protection projects. In some cases, State and local governments (and occasionally, private communities) sponsor projects independently of the Federal Government.

A common source of sand for projects has been the nearby seabed in State-owned waters, but in some coastal areas, such sources are becoming depleted or otherwise unavailable. Use in a project of a State's own offshore sand typically will be the least expensive source because there is no purchase price for the sand, no expensive truck haulage, and dredging can be accomplished more efficiently because of the shorter distance from the sand source to the project site. Use of alternative sand sources likely will raise project costs.

Abundant sand resources are known to exist seaward of State-owned waters in the federally-managed Outer Continental Shelf (OCS), but the ocean is a challenging and costly environment in which to operate. Detailed exploration and characterization are needed to confirm that sufficient quantities of resources are available having sediment composition compatible with beaches to be nourished and which can be extracted in an affordable and environmentally-acceptable manner. Sand can be obtained from distinct deposits such as shoals, ridges, and buried channels, or as a byproduct of dredging associated with navigation projects. To help insure that sufficient quantities of sand continue to be available for publicly-beneficial projects, Congress enacted a law in October 1994 (P.L. 103-426; 43 U.S.C. 1337(k)(2)) that removed procedural obstacles for obtaining OCS sand and authorized negotiation of agreements for rights to use OCS sand, gravel, and shell for certain specified uses for a fee to be determined by the Secretary of the Interior. The Secretary has delegated to the Minerals Management Service (MMS) responsibility for managing OCS mineral resources. Now, State or local governments and other Federal agencies can negotiate directly with the MMS when OCS sand is needed for publicly-beneficial projects such as shore protection, beach and wetlands restoration, or Federally-funded or authorized construction projects. For all other uses, such as private use for commercial construction material, a competitive bidding process is still required under section 8(k)(1) of the law regulating leasing of mineral resources on the OCS (see next section below).

Although the new law modifies the process for acquiring rights to extract a mineral resource (negotiation instead of competitive bidding), it does not alter or diminish the Secretary's duties in terms of responsible resource management, including assessment of fees for removal of the resource.

An important objective of mineral leasing is to ensure that the public receives fair value for the use of public resources. OCS sand is part of the Nation's endowment of valuable mineral resources and the law seeks to ensure that benefits of their development should accrue to all the Nation. MMS's goal in assessing fees is to provide the Nation with a fair return for use of the OCS sand and some assurance that the resources are being allocated to their most valuable use.

Consistent with provisions of the new law, the MMS fee determination will balance resource value with other public benefits from use of OCS sand so that the assessments are fair and not so burdensome as to prevent an otherwise acceptable project. Assessing fees on this basis will help ensure that coastal communities around the country will be able to continue to protect and restore their coastal environments in the future. This is consistent with the Federal Government's commitment to cooperate with State and local governments in proper ecosystem management and protection of public trust assets.

Authority: Authority to manage minerals on the OCS is found in the OCS Lands Act (OCSLA) (43 U.S.C. 1331, et. seq.). DOI's jurisdiction for leasing and regulating the recovery of minerals extends to the subsoil and seabed of all submerged lands underlying waters seaward of State-owned waters to the limits of the outer Continental Shelf (except where this may be modified by international law or convention or affected by the Presidential Proclamation of March 10, 1983, regarding the Exclusive Economic Zone). Section 8(k) authorizes the Secretary to convey resource development rights to any mineral on the OCS other than oil, gas, and sulphur (43 U.S.C. 1337(k)).

The 1994 amendment to section 8(k) of the OCSLA (43 U.S.C. 1337(k)(2)) reaffirms the authority of the Secretary with respect to OCS sand, gravel and shell and expands this authority by allowing for negotiation of agreements for certain specified uses, in lieu of competitive cash bonus bidding. See Attachment 1. [Note that most requests for negotiated agreements will be for OCS sand, but for purposes of these guidelines, gravel and shell are included in any reference to sand].

Purpose: Shortly after the new law was passed, all coastal States and the USACE were notified in writing, and at meetings and public conferences, about the availability of OCS sand so that requirements for obtaining sand under the new law would be fully considered in project planning. The purpose of this paper is to provide both potential users of the resource and MMS with guidelines on assessing fees for OCS resources used for shore protection, beach restoration, and coastal wetlands restoration (under OCSLA section 8(k)(2)(A)(i)). For other negotiated agreements–i.e., when OCS sand is requested for use in any other Federally funded or authorized construction project (under OCSLA section 8(k)(2)(A)(ii))–fees will also be negotiated on a case-by-case basis. For competitive leasing under section 8(k)(1), e.g., private use for commercial aggregate, MMS will establish terms and conditions at the time of offering the resources for lease.

The MMS will use these guidelines in negotiating agreements authorized in section 8(k)(2) of the OCSLA. Specific resource value estimate and fractional reductions to recognize the public

interest served by promoting development of the resources are included in the guidelines, however, such figures are guidelines only and are not intended to limit or otherwise preclude the MMS from considering other information on resource value and other factors defining the public interest when negotiating specific agreements.

MMS will review these guidelines biennially and may modify them to reflect experience gained through actual practice and to respond to changing market and technological conditions. Adjustments may be made based on a review of current data and/or nationwide trends in sand prices, production costs and mineral rights payments.

Fees for OCS sand:

Background Section 8(k)(2)(B) of the new law provides discretion for establishing fees. Congress did not specify an amount for the fee, but stated that the Secretary [of the Interior] determines the fee based on the value of the sand and the public interest served by developing the OCS resource:

> *(2)(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against an agency of the Federal Government.*

Representative Gerry Studds, Chairman of the Committee on Merchant Marine and Fisheries, summed up the intent of the law regarding fees in this way:

> *The bill accomplishes two important things. First, it makes OCS hard minerals available for public projects without requiring that the State, local, or Federal agency seeking use of the resource participate in a competitive lease sale. Under current law, these resources could only be made available to State and local governments through such a lease sale, which is too costly and too cumbersome. However, the minerals are not to be given away. The bill authorizes fees to be charged based on the value of the resources and the public interest served in developing them.*

The subparagraph (2)(B) specifically provides that a fee may not be assessed directly or indirectly against a Federal agency. Therefore, when OCS sand is used for protection of Federally-owned land (e.g., for military bases; national parks, and refuges), a fee would not be assessed. This will avoid needless transfers of money between agencies, and there is no change in resource ownership when sand is transferred from the OCS to Federally-managed property. Additionally, the law provides that a Federal agency may not bear the indirect cost of any fee. This situation could arise for example if a State were to include the amount of any fee paid pursuant to the subparagraph (2)(B) as part of the State's portion of a cost sharing agreement with the Federal Government. Congress intended that no person, State, or local government entity be allowed to pass back to the Federal Government (e.g., through a cost-sharing agreement with the USACE) the expense of fees paid under this law.

Since the 1994 amendment, the MMS has received a number of requests for rights to use OCS sand primarily in support of government-sponsored beach and wetlands restoration projects. A fee was not assessed for the first two requests for OCS sand for shore protection projects sponsored by the USACE–in Duval County, FL (4/95) and Myrtle Beach, SC (6/96). For these two cases, project planning, design, and financing had been underway for many years and/or planned construction imminent before the new law was passed and MMS became involved. Another request to use OCS sand was for a shore restoration project at a Navy installation in Dam Neck, VA. Because the sand was conveyed to another Federal agency to protect Federal property, it was conveyed under an MOA (5/96) with no fee as provided by the new law.

Consistent with congressional intent, future requests for use of OCS sand will include fee assessments by MMS as part of the negotiated terms. An agreement will be negotiated with a project sponsor to authorize removal of a specified quantity of sand for an established fee during a time period designated as the current phase of project construction.

The new law provides that the Secretary *may* assess a fee. This affords discretion not to assess a fee on a case-specific basis. It is expected that this would occur only for limited circumstances for example, if the Secretary determines that there is a substantial public benefit from using the OCS sand in a project that is not reflected in the fee adjustments in the schedule outlined below. This could occur for example if OCS sand were needed for emergency disaster assistance operations. The precise cases (for which a fee would not be assessed) cannot be defined in advance because it requires judgement about what constitutes substantial public benefit based on the circumstances of each individual situation. However, consistent application of the fee guidelines is essential and MMS will avoid, wherever possible, any special treatment in the form of exceptions.

Explanation of terms: For purposes of these guidelines, discussion of the following terms is provided to explain the relationship between resource value and MMS's sand fee:

"Value of the Resource" — Ownership of OCS minerals is vested in the Federal Government to manage on behalf of the public. Most sales or leases of mineral development rights include requirements for some form of payment to compensate the resource owner for the removal of minerals from the property. Different types of payments include royalties, cash bonuses, rentals, severance taxes, work commitments, etc. These revenue generating payments attempt to garner all or a portion of the resource value for the mineral owner. For OCS sand used in governmental projects, Congress has provided for assessment of a fee (except against a Federal agency), that in part is based on the value of the sand, which will serve to compensate the public as resource owner for removal and use of OCS sand resources.

The amount of payments due the mineral owner typically is based on an assessment of the in place "value of the resource." The value of the resource in place is not the value of the mineral eventually discovered and produced, but the value of the right to explore, and if there is a discovery, develop and produce, subject to a wide array of constraints. This value can be ascertained by determining the expected mineral economic rent associated with the sand

deposit–the economic rent can be thought of as any return expected over that necessary to produce and supply the market. For OCS sand conveyed directly for use in a public works project, there is no commercial sales price on which to base a direct calculation of the mineral economic rent in order to derive resource value for a particular sand deposit. However, it is possible to derive an estimate of mineral economic rent and resource value by examining the terms of other mineral property transactions and identifying analogous resource payments currently prevailing for sand property transactions. Using a market valuation approach, MMS can rely directly on information from the plentiful examples of compensation being paid for sand development rights in other situations–i.e., to determine market-based estimates of the landowners' share of resource value.

"Fees for OCS Sand" — The new law authorizes assessment of fees for OCS sand which will be based in part on the *value of the resource* and the public interest served. Therefore, under the approach developed in these guidelines, assessment of fees first will require a determination of the in place resource value. But, by requiring that public interest served by the project be considered in the fee determination, Congress is allowing for a tradeoff of some resource value in the form of a financial return in order to promote development of OCS sand resources for publicly-beneficial shore protection and other public projects.

To support public works projects, like government-sponsored beach nourishment, the mineral rights conveyance will provide OCS sand for a single purpose, limited end use market–with no commercial market profit motive. Because the new negotiated agreement authority provides a noncompetitive process (for a one-time removal and noncommercial end use of OCS sand), there will be no up-front cash bonus bids, production royalty payments, rentals, or tax receipts from sale of the mineral. Instead any fees assessed under authority in the new law, would constitute the only payment made to compensate the public for its share of value of the sand removed from the OCS [but, note that the public would also realize "value" from any other benefits (e.g., storm damage reduction, recreation improvements) of using OCS sand in a project.]

The MMS sand fee will be the total money paid for the right to extract sand from the OCS and will be a lump sum assessment calculated by applying a per-unit charge to each cubic yard of sand authorized for removal. Although the fee may in part compensate the public for its "royalty interest" (as landowner) in the sand removed from the OCS, it is not the same as a royalty typically seen in mineral transactions which is paid as production occurs over the life of an operation.

Sample Schedule of Fee Estimates: For cost comparisons of potential sand sources and government budget purposes, project sponsors need to have information on and an idea about the potential amount of OCS sand fees early in their planning process. Therefore, MMS has developed a schedule that would provide guidance and advanced notification of how MMS may negotiate sand fees. The fee schedule is based on an estimated sand value with possible allowable reductions. This approach is recommended to comply with congressional direction about assessment of a fee which suggests that the fee be based on a balancing test weighing the

value of the sand with the public interests that will be served by developing the resource. The schedule of fees in Table 1 reflects both elements of the fee assessment as discussed below:

(1) *Estimated Value of OCS resources*: The estimated value of an OCS resource and the determination of an appropriate fee will be made by MMS at the time of negotiating an agreement. However, State and local governments may need an earlier idea of potential costs of using OCS resources in order to compare various alternatives and/or obtain funds. To assist in planning, MMS has developed a general estimate of value for the rights to develop OCS sand, gravel, and shell (see also response to question four in Attachment 2). For project planning purposes, a value of $0.50 per cubic yard could be assumed to apply across-the-board to all OCS deposits, for all regions. Any changes in the general estimate of value based on project-specific factors (e.g., location, costs, and competing resources) will be determined based on an assessment made at the time of negotiating any agreement.

When uses of low-unit-valued mineral materials (like sand) are for a short term and specified amount, payments are typically based on a simple, flat cents per cubic yard or ton. Unit-of-production payments are a fixed amount per unit of production and are more simple to administer and are typically used when mineral rents are expected to be small and/or mineral prices are relatively stable, like with short term sand and gravel contracts. For example, in granting rights to remove a specified, limited quantity of sand from onshore community pits on public lands, the Bureau of Land Management establishes per-unit values for the rights to remove material based on a generic appraisal of the area which can remain applicable for up to two years. On the other hand, payments based on a percent of gross or net sales price are commonly used for longer term contractual arrangements for the rights to develop a mineral deposit. They have the advantage of providing a mechanism for sharing of the risks and rewards over the life of an operation between the original mineral owner and the buyer.

(2) *Possible Public Interest Adjustments*: In determining an appropriate fee for use of these resources, Congress has directed that the public interest served by promoting development of the resource be considered. Because OCS sand is owned by the Nation, it is reasonable to forego some financial returns for the value of the sand because other benefits would be realized by the Nation from use of OCS sand in a project. MMS will consider adjustments to the *estimated value of OCS resources* described in paragraph (1) above which would in effect reflect a "Federal contribution" of sand value in recognition of the other public benefits to the Nation that could be realized from development of the OCS resource.

There is no easy method to quantify expected public benefits. The public interest which justifies construction of shore protection or restoration projects can include storm protection, protection from upland flooding, reduction of loss of land to property owners (which can reflect expected reductions in Federal outlays for disaster assistance and flood insurance), preservation of endangered and threatened ecosystems or species, and/or

maintaining a recreational ocean area. When Congress authorizes Federal participation in and funding for shore protection projects, the Federal interest is conditioned by the ownership of land or facilities adjacent to the shore by public entities, or from public access to a recreational resource, and the measure of national economic development benefits. Proposals for water projects typically undergo extensive analysis of expected public benefits and costs prior to congressional authorization.

For various types of project "purposes," Congress has provided for Federal cost sharing by establishing the percent of project construction costs for each category which appropriately should be borne by the Federal Government (see response to question five in Attachment 2). Therefore, when Congress and/or another Federal agency has made a determination about what types of projects provide national public benefit and what percent of costs will be borne by the Federal Government, MMS will consider this information as the preferred method for accounting for public interest in the fee determination when OCS sand is needed in a project. In other words, for determining what amount constitutes an appropriate adjustment (i.e., the percent reduction in estimated value), the MMS may use, when available, the level of Federal cost share assigned for project construction to represent the national public interest component of the fee assessment for any OCS sand used in the same project. [If Congress or a Federal agency modifies cost share percentages or the types of projects authorized for Federal cost sharing, MMS will revise the fee table to reflect the changes.]

Although MMS is proposing to rely on cost-sharing determinations applicable for Federally-sponsored projects, the law does not limit consideration of public interest in the sand fee determinations to only projects which receive Federal funding for construction. There may be projects needing OCS sand which do not get authorized for Federal sponsorship and funding. There also may be cases where a State and/or local government chooses to sponsor shore protection and restoration projects independently of the Federal Government and the public interest may be served by using OCS sand even if Congress has not provided for cost sharing for project construction. If OCS sand is requested for use in projects which do not have Federal cosponsorship or cost sharing, MMS may look at the specifics of the project to see if a public benefit adjustment is warranted in the fee determination. MMS would consider the same level of reductions shown in Table 1 for sand fee assessments when a sponsor demonstrates that the project will result in public benefits comparable to those identified for Federally-sponsored and funded projects.

Estimating Sand Fees Payable: The sample schedule in Table 1 will be used by MMS as guidelines when assessing fees in negotiating specific agreements.

The "Fees Payable" column in Table 1 reflects MMS's current estimate of OCS sand value ($0.50 per cubic yard) as modified by possible types of public interest adjustments. These adjustments (shown as percent reductions) reflect various categories of cost sharing established by Congress for construction of water resources projects. The percent reductions reflect the mandated Federal share. The precise cost share percentages applicable for a given project are

determined by the Federal agency sponsor during project planning (percentages may differ from those shown in the table depending on shore ownership and type of project for each separable element of the project). The cost share percentages assigned to the project would be readily available for application in MMS's fee determinations.

Authorized Federal cost shares for water resources projects can range from 50 to 100%, depending on the type of project and shore ownership. For example, the congressionally-determined Federal cost share is 65% for projects for hurricane and storm damage reduction; 75% for projects for wetlands and habitat protection and/or ecosystem restoration; and 50% for the incremental costs of placing on or near beaches sand dredged to construct or maintain Federal navigation projects. These cost share percent reductions may be used to represent public interest considerations in the fee assessment, are reflected in Table 1, items (a) - (c), and would result in fees for OCS sand in the range of $0.13 to $0.25 per cubic yard.

The inclusion of a case of a 100% reduction in Table 1, item (d), for projects or portions of projects protecting or restoring Federal property reflects congressional direction in OCSLA section 8(k)(2)(B) that no fee will be charged against a Federal agency.

For some shore protection and restoration projects, all or a portion of the OCS sand might be needed to nourish beachfront lands managed by State and local governmental units for the public (e.g., parks and conservation areas, historic landmarks). For such cases, MMS will consider reducing the estimated value by 50%, to $0.25 per cubic yard (for any applicable portion(s) of the project), to reflect an equal sharing in the public interest of protecting public property (see Table 1, item (e)). Although Federal participation in the costs of civil works construction for such projects is currently limited by budget constraints and agency policy, Congress has authorized cost sharing for such projects at 50% Federal, 50% non-Federal, so MMS may reflect in the fee assessment, the public interest from using OCS sand for improved recreation.

Unless it can be demonstrated otherwise, if a project or a portion of a project protects private undeveloped property or privately-owned shores like beach clubs and hotels (i.e., where public access is restricted), MMS will determine that there is no public interest from use of OCS sand and therefore the fee assessed for use of any OCS sand would be based on the full estimated value of the resource (e.g., $0.50 per cubic yard), with no reductions (see Table 1, item (f)). Thus, the fee for use of OCS sand, like the costs of constructing such projects, would be borne directly by those benefitting from the project.

Frequently asked questions: See Attachment 2.

Table 1
Sample Schedule of Fee Estimates
OCS sand, gravel and shell used for Shore Protection and Restoration Projects

Fee Assessment Elements:		Percent Reductions from Estimated Value	Fees Payable [$ per cubic yard]
(1) Estimated Value of OCS Resource		--	$0.50
(2) Types of Public Interest Adjustments [for projects or separable portions of projects]	examples:*	examples:*	
	(a) Benefits from hurricane and storm damage reduction.	-65%	$0.18
	(b) Benefits from wetlands and habitat protection/restoration and ecosystem restoration improvements.	-75%	$0.13
	(c) Benefits from use of OCS sand dredged from Federal navigation projects for beach nourishment.	-50%	$0.25
	(d) Benefits from protection/restoration of Federally-owned land.**	-100%	--
	(e) Benefits from protection/restoration of non-Federal governmental lands (parks, landmarks).	-50%	$0.25
	(f) Benefits from protection/restoration of private undeveloped lands or private developed lands without public access.	0	$0.50

* Note: exact percentages used for a particular project may differ depending on authorizing legislation, purpose and type of project (for each segment of the project) and shore ownership. Each request for OCS sand will be examined on a case-by-case basis. The percentages shown are for example only and are not intended to cover every situation. If Congress or the Federal agency sponsor modifies cost share percentages or the types of projects authorized for Federal cost sharing, MMS will revise this table accordingly.

**Note: Section 8(k)(2)(B) provides that no fee can be charged directly against a Federal agency, so for these cases the Table shows no fee. For protection or restoration of Federally-owned property, an agency of the Federal Government will sponsor the project, with no State or local government co-sponsorship or shared funding.

For Further Information Contact:

Carol Hartgen
Chief, Division of International Activities & Marine Minerals
Telephone: (703) 787-1300
E-mail: Carol.Hartgen@MMS.Gov

- or -

Ann Wiggin
Telephone: (703) 787-1293
E-mail: Ann.Wiggin@MMS.Gov

Minerals Management Service
381 Elden Street, MS 4030
Herndon, VA 22070

Attachment 1

Public Law 103-426
103d Congress

An Act

To authorize the Secretary of the Interior to negotiate agreements for the use of Outer Continental Shelf sand, gravel, and shell resources.

Oct. 31, 1994
[H.R. 3678]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS.

(a) SECTION 8 AMENDMENTS.—Section 8(k) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(k)) is amended—

(1) by inserting "(1)" after "(k)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Notwithstanding paragraph (1), the Secretary may negotiate with any person an agreement for the use of Outer Continental Shelf sand, gravel and shell resources—

"(i) for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

"(ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or part by or authorized by the Federal Government.

"(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against an agency of the Federal Government.

"(C) The Secretary may, through this paragraph and in consultation with the Secretary of Commerce, seek to facilitate projects in the coastal zone, as such term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), that promote the policy set forth in section 303 of that Act (16 U.S.C. 1452).

"(D) Any Federal agency which proposes to make use of sand, gravel and shell resources subject to the provisions of this Act shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources. The Secretary shall notify the Committee on Merchant Marine and Fisheries and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any proposed project for the use of those resources prior to the use of those resources.".

(b) SECTION 20 AMENDMENTS.—Section 20(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346(a)) is amended—

(1) in paragraph (l)—

(A) by inserting "or other lease" after "any oil and gas lease sale"; and

(B) by inserting "or other mineral" after "affected by oil and gas"; and,

(2) in paragraph (2), by inserting "In the case of an agreement under section 8(k)(2), each study required by paragraph (1) of this subsection shall be commenced not later than 6 months prior to commencing negotiations for such agreement or the entering into the memorandum of agreement as the case may be." after "scheduled before such date of enactment.".

Approved October 31, 1994.

LEGISLATIVE HISTORY—H.R. 3678:
HOUSE REPORTS: No 103-817, Pt. 1, (Comm. on Natural Resources).
CONGRESSIONAL RECORD, Vol. 140 (1994):
Oct. 3, considered and passed House
Oct. 6, considered and passed Senate.

Attachment 2

Frequently Asked Questions

Fees for Outer Continental Shelf Resources
Used in Shore Protection and Restoration Projects

1) What are the benefits or cost savings that project sponsors can realize from use of OCS sand?

Whether or not offshore sand is proposed for use in a shore protection project in a given location will depend upon a number of factors, which often relate to cost. Offshore sand is comparatively more costly to produce because investment in and operating the dredge can be much higher than the cost of mining onshore. Additionally, dredging costs can increase with distance from the shore because of increased transit time to and from the sand borrow site and the need for larger and more sophisticated dredging vessels. However, the transportation of sand from the seabed to the shore can be much shorter than from the nearest onshore source, so that when comparing delivered costs, offshore sand can be significantly more cost effective for some cases. Not only can use of offshore sand save coastal communities significant costs when compared to transporting sand from more distant land-based sources, but it may also be a more environmentally-preferable source.

Sand resources from offshore–and in particular from the OCS–may, in some respects, be more environmentally preferable to develop in terms of potential physical impacts to the local environment. When such benefits are expected, using offshore sand sources may be warranted even at higher delivered costs. It could take some pressure off valuable and fragile beach, wetland and dune systems as sources. In some cases, major damage has been done to the shores and beaches of the U.S. by removing sand from dunes, beaches, and rivers, both in terms of removing the natural protection from storms and contributing to sand supply deficits in the long run throughout the affected beach system. Development of sand sources farther from the shore, e.g., from the OCS, may also avoid adverse impacts from the creation of pits and burrows near the shore which can cause erosion by altering the local current and wave regime.

OCS sand also may be sought by State and local governments to avoid disputes between local coastal communities over rights to the nearby State-owned sand, or to conserve State-owned sand resources for other purposes.

2) Why is a fee assessed when the sand is a public good which can be used for a public benefit?

MMS is authorized to assess a fee for OCS sand under the OCSLA and by doing so is recognizing the value of OCS resources so that they are not exploited or wasted. OCS sand is part of the Nation's endowment of valuable mineral resources and citizens from all the 50 States should realize a return on those resources. The sand resources do not belong to adjacent coastal States, but to the whole Nation. When State-owned offshore sand is used in a project, there is typically no transfer of ownership–State sand is being moved onto State or local government-managed beaches.

When rights to develop federally-owned minerals are leased or sold, the government traditionally collects some form of royalty payment along with any cash bonus bids (when the minerals are leased competitively) to compensate the public for the value of the mineral rights. For example, OCS oil and gas is leased using competitive bidding with requirements for royalty payments typically at 12½ % or 16 2/3 % of the gross value of minerals produced.

Congress generally requires that Federally-sponsored shore protection projects contain some State or local dollar contributions. Shore protection and restoration bestows substantial local and regional economic benefits and in more recent years environmental benefit to some segments of society. These beneficiaries are expected to share in the cost of providing the benefits. In most cases the citizens of a coastal State derive the most economic benefit from its sandy beaches and should therefore pay for its preservation. It is therefore reasonable and fair for some State and local revenue from taxes, bond issues, or special assessments to be invested back into preserving beaches, including payment of MMS fees to provide some compensation to the Nation for any sand removed from the OCS and used in the project.

3) Why is a fee assessed when another Federal agency is a partner in the project?

Construction of some shore protection projects is authorized by Congress when National benefits can be demonstrated (usually hurricane and storm damage reduction or wetlands/habitat protection). These projects can have significant Federal involvement and can receive substantial Federal funding. Congress has in effect, through its authorizations of water projects (in biennial Water Resource Development acts) and appropriations (Energy and Water Resource Development acts), determined that approved projects provide National benefits and warrant Federal resources devoted to their construction (e.g., typically through the civil works program of the USACE).

Congressional authorization to conduct specific shore protection projects and share costs does not automatically imply authorization to use OCS sand resources, or that OCS resources will be supplied at no or reduced cost. The intent of Congress is that non-Federal sponsors share in part of the costs of shore protection projects. Likewise, with any fee assessed under the OCSLA, the non-Federal sponsor would be contributing to at least part of the value of the OCS sand used in the project (see also response to question 6).

4) How was the estimated sand value determined?

For use of OCS sand in shore protection projects, the mineral conveyance is for a single-purpose, one-time removal and noncommercial end use. Because there are no other financial terms, it constitutes the full public share of value of the sand removed.

The OCS sand value represents an estimate of the in-place value of the resource. The value of the resource in place is not the value in the lessee's stockpile, but its value in the ground, prior to severance from the ground. It was derived using a "market valuation approach"–a market-based estimate of value determined by reference to mineral rights payments (e.g., contract sales, royalties) applying elsewhere. Currently prevailing values can be observed in the market by examining recent terms of sales from sand and gravel production on Federal, State, Indian, and private lands. They may not directly reflect resource values specific to the geographic area of any given shore protection project and some may not represent complete financial terms of the sale. But, the sand and gravel transactions are plentiful and will give general indications of contract sales prices or royalty rates currently prevailing for rights to develop sand and gravel.

The mineral rights payments to landowners for sand and gravel around the country generally ranged from about $0.15 to $0.90 per cubic yard. Values around $0.50 per cubic yard were common, often reflecting the average of contract sales or royalty rates. Where higher rates were seen, $0.50 per cubic yard was typically at the lower end of the range. Thus, a resource value estimate of $0.50 would be consistent with values seen in the market, representing a moderate, fair estimate of value for use of OCS sand.

5) MMS may rely on existing Federal cost share mandates when available. Why are there different Federal project cost shares for different categories of projects?

The costs of shore protection projects are shared between Federal and non-Federal interests in accordance with: (1) provisions of water resource development and other laws, (2) the specific requirements of the acts authorizing the projects in some cases, and (3) administrative instructions. Legislative authorizations have defined general rules for cost sharing, or have prescribed percentages of costs required by non-Federal entities. Prescribed percentages were traditionally developed on the basis of analogous precedents or from a sense of equity. Congress has sought to maintain a reasonable balance between the responsibilities assumed by the Federal Government and those left with the states and other non-Federal entities. With congressional acceptance and approval of recommendations for projects proposed on such basis, these rules became established policy. Enactment of the Water Resources Development Act of 1986, produced the first comprehensive treatment of cost sharing, with formulas for all water resources purposes.

Under existing laws, Congress has authorized Federal participation (through the USACE) in the cost of restoring and protecting the shore to prevent storm and wave damage to Federal and public property and facilities (land and publicly owned facilities such as highways, buildings, parks, boardwalks), and developed private property and facilities. Public access is

a requirement for all approved projects. Benefits from prevention of damages to transportation facilities are considered as storm damage reduction benefits.

If a proposed shore protection and restoration project protects primarily undeveloped private property and/or is determined to be primarily recreational (i.e., does not provide sufficient National benefit from expected storm damage reduction or environmental enhancement); or when expected project costs would exceed National benefits, Federal funds generally will not be used for cost sharing of construction. Additionally, there is no Federal participation in the costs of projects or portions of projects which benefit privately-owned shores where the use of such shores is limited to private interests (e.g., projects must provide for public access and sufficient nearby parking). Although prevention of recreational land losses is a recognized incidental public benefit from projects constructed for other purposes, current Federal policy precludes civil works funding of separable recreation features at shore protection projects.

*6) **Can the MMS sand fee be counted as part of the State's or local sponsor's share of total project costs when another Federal agency is a project cosponsor and cost sharing partner in a congressionally-authorized shore protection project?***

No, the new law (under section 8(k)(2)(B)) specifically provides that the fee cannot be assessed directly or indirectly against a Federal agency. The language precluding indirect fees means that Congress does not intend that any person, State, or local government entity be allowed to pass back to the Federal Government (e.g., through a cost-sharing agreement with the USACE) the expense of fees paid under this law. It should be noted however, to account for expected public benefits from the shore protection project in the fee schedule, MMS has provided for the same percent reduction in OCS sand value as Congress has authorized to be the Federal share of the rest of project costs in a Federally-sponsored project. The amount of the fee reduction effectively constitutes a Federal in-kind contribution to the project and the non-Federal sponsor would be paying a reduced fee representing only what its share would have been if the value of sand were fully accounted for in total project costs under the terms of the project's cost-sharing agreement.

*7) **When should MMS be contacted?***

When a project sponsor is undertaking its sand search and considering using OCS sand, it should contact the MMS to plan for any studies and coordination that may be needed for a negotiated agreement. For cost comparisons and planning purposes, the sponsor can use the schedule of fee estimates presented in Table 1.

Any Federal agency proposing to use OCS resources also should contact the MMS. The OCSLA (43 U.S.C. 1334(h)) requires that any Federal agency who takes any action which has a direct and significant effect on the OCS or its development shall promptly notify the Secretary of the Interior. When a Federal agency proposes to use OCS sand, gravel, or shell resources under the 1994 amendment, a Memorandum of Agreement will be prepared concerning the potential use of the resources.

8) Who is responsible for paying the sand fee?

When offshore sand is used for governmental shore protection projects, the Federal agency and/or the local project sponsor contracts with dredging companies to remove and place the sand. The dredging company is paid for its service; it obtains no ownership rights to the sand–its profit is from the dredge contract bid, not from investment in the minerals. Instead, the State or local government receiving the sand for its beach is the entity accruing the benefit from access to the sand and is, for MMS's purpose, responsible for any fees to be paid when OCS sand is used instead of State-owned resources. MMS will negotiate an agreement with either an agency of the State or the local government serving as project sponsor. Whichever entity signs the agreement with MMS is the responsible party for paying the sand fee, even if this entity ultimately split the costs with other project participants.

9) When are fees payable to MMS?

The fee is part of the terms of the negotiated agreement. The fee amount due and payable to the MMS will be described in the document. The fee must be received by the MMS with the signed agreement before sand can be removed. Adjustments in the fee based on any MMS-approved changes in the amount of OCS sand removed will be made after final inspection when the exact amount of sand removed is confirmed.

10) Will these guidelines ever change?

Yes, MMS will review and possibly revise these guidelines every two years to ensure that the approach still reflects current conditions, and to determine whether any revisions are needed to ensure that the public receives a fair return for the mineral rights conveyed. For sand resources, a 2-year review cycle should be sufficient because data shows that the price of sand and prevailing mineral payments have remained relatively stable over time.

Attachment 3

RESOLUTION ON NEGOTIATED AGREEMENTS
Policy and Guidelines on Fees for OCS Resources
Used in Shore Protection and Restoration Projects

On this 29th day of OCTOBER 1997, IN CONSIDERATION of the duty of the Outer Continental Shelf Policy Committee to provide policy guidance to the Secretary of the Interior on issues related to management and development of mineral resources on the Outer Continental Shelf (OCS):

IT IS RESOLVED THAT:

WHEREAS, a substantial portion of the U.S. coastline is naturally migrating landward over time, and because beach nourishment often is the method used to forestall erosion, identification of large volumes of suitable sand sources has become a significant issue for many coastal States; and

WHEREAS, the OCS contains abundant quantities of sand which could be used to support governmental projects in coastal States to forestall erosion, protect shoreline development, provide improved recreation, and protect valuable wetlands resources; and

WHEREAS, the Congress, in enacting the 1994 amendment to the OCS Lands Act, has provided the Secretary with broad authority to negotiate agreements which will help facilitate the use of OCS sand, gravel, and shell resources in government-sponsored beach restoration, shore protection and wetlands restoration projects; and

WHEREAS, the 1994 amendment further authorizes the Secretary, in carrying out a negotiated agreement, to charge a fee for use of those resources based on an assessment of the value of the resource and the public interest served by promoting development of the resource; and

WHEREAS, the OCS Policy Committee has established a Subcommittee on OCS Hard Minerals whose purpose in part is to:

- provide support for the Secretary of the Interior for development of the principles used in negotiating agreements for the leasing, extraction and use of OCS hard minerals for private and public projects, and

- help develop policy and procedures for managing OCS hard mineral resources in consultation with Congress, coastal States, and private industry; and

WHEREAS, the Secretary of the Interior through the Minerals Management Service (MMS) requested, and the Subcommittee has so provided, assistance in the development of policy and guidelines for determining fees for OCS resources used under negotiated agreements; and

WHEREAS, the OCS Policy Committee has determined that the "Proposed Policy and Guidelines on Fees for OCS Resources Used in Shore Protection and Restoration Projects" is consistent with the 1994 amendment and provides an acceptable approach for determining fees which will balance resource value with the public interest served, so that fee assessments will provide a fair return to the Nation for use of OCS resources, but will not be so burdensome as to prevent use of these resources in otherwise acceptable projects;

BE IT THEREFORE RESOLVED THAT, the OCS Policy Committee endorses the use of a negotiated agreements process for providing access to OCS sand, gravel, and shell so that sufficient quantities of resources will be available for publicly-beneficial projects and help ensure that coastal communities around the country will be able to continue to protect and restore their coastal environments in the future.

AND BE IT FURTHER RESOLVED THAT, the OCS Policy Committee supports development of guidelines for implementing the 1994 amendment authorizing negotiated agreements, and urges MMS to adopt the "Proposed Policy and Guidelines on Fees" and make them available to the public as soon as possible in order to enhance the timely dissemination of information and assist Federal, State and local government planners in their decision making about use of OCS resources in planned future projects.

The Committee approved the Resolution on October 29, 1997--24 in favor, 2 opposed.

George V. Voinovich • *Governor*
Donald C. Anderson • *Director*

July 17, 1998

Mr. Bill Condit
Committee on Resources
Subcommittee on Energy & Mineral Resources
1626 Longworth House Office Building
Washington, D.C. 20515

REG: Draft Bill (Substitute to HR 1467)

Dear Mr. Condit:

I have reviewed the attached "Draft Bill" and discussed it with our field staff and representatives of the Ohio oil and gas trade associations.

The Division of Oil and Gas supports the bill as drafted. We have a good working relationship with BLM and the Forest Service providing for easy implementation upon passage of the bill.

If you have any questions or need additional assistance, please contact me at (614) 265-6893.

Sincerely,

Thomas G. Tugend, Acting Chief
Division of Oil and Gas

TGT:sly
attachment

4383 Fountain Square Drive, Bldg. A-3, Columbus, OH 43224-1362

DRAFT BILL

Operators of wells in the Wayne National Forest who meet the criteria of 30 USC Section 226(B) (3) (a) pursuant to private leases which were in effect on or after [the date of enactment of this legislation] may be issued a noncompetitive oil and gas production and reclamation contract, subject to the same laws and regulations which applied to the private lease.

Provided that:

(1) the contract shall not authorize new deeper completions or additional drilling; and

(2) the contractor shall provide a federal oil and gas bond to ensure complete and timely reclamation of the former lease tract in accordance with the regulations of the Bureau of Land Management and the Forest Service, unless the Secretary of the Interior accepts in lieu thereof assurances from the Ohio Department of Natural Resources , Division of Oil and Gas, that:

a) the contractor has duly satisfied the bonding requirements of the State of Ohio; and following inspection of operator performance, the Ohio Department of Natural Resources is not opposed to such waiver;

b) the United States of America is entitled to apply and receive funding under the provision of Sections 1509.071 of the Ohio Revised Code so as to properly plug and restore oil and gas sites and lease tracts;

c) for the last two years no less than 20% of State severance tax revenues has been allocated to the Orphan Well Fund.

Provided further, should the state adopt or amend provisions of law which reduce the oil and gas severance tax to the Orphan Well Program to an amount less than 20% of the total oil and gas severance tax, then the Secretary of Interior shall reserve the right to require federal oil and gas bonding.

Ohio Oil & Gas Association

1718 Columbus Rd., S.W. · P.O. Box 535 · Granville, Ohio 43023-0535
740-587-0444 · Fax: 740-587-0446 · E-Mail: ooga@nextek.net

July 17, 1998

The Honorable Barbara Cubin
Chair, Subcommittee on Energy & Mineral Resources
Committee on Resources
U.S. House of Representatives
1626 Longworth HOB
Washington, DC 20515

Re: Draft Bill, Substitute to H.R. 1467

Dear Congresswoman Cubin:

This Association writes in support of the draft substitute to H.R. 1467, sponsored by Congressman Robert W. Ney of Ohio.

The draft legislation will provide for the continuance of oil and gas operations pursuant to certain existing leases in the Wayne National Forest. Specifically, these are oil and gas leases originally taken under private terms and conditions for which mineral ownership has reverted to the federal government.

This bill will allow the oil and gas wells in question to operate under Ohio state bonding requirements pursuant to terms of a special contract between the operators, the state of Ohio, and the Bureau of Land Management (BLM). This scheme will take the place of federal bonding requirements. As such, this legislation will provide substantial regulatory relief to oil and gas operators in the Wayne National Forest, the great majority of which are operating marginal oil and gas properties and are currently suffering economic siege.

This Association supports the draft bill with the understanding that (1) the operator has a choice to either accept the contract devised by this legislation or continue operations under the regulatory scheme in place at this time; and (2) the BLM does not interpret this legislation in such a way as to adversely impact the existing rights that lessors currently enjoy on the lease blocks in question.

This bill is specifically limited to a small group of oil and gas properties in Ohio. However, it is this Association's hope that, in some small way, it demonstrates the benefits that would flow from transferring federal regulatory authority on federal leases down to the states. It is our opinion that the public's best interest is served by state regulation, the characteristics of which protect and speak to the unique nature of the individual states' geology, economics and production methods.

The Ohio Oil and Gas Association is a trade association representing over 1,300 oil and natural gas producers, contractors, allied industries, and professionals serving the industry across the state of Ohio.

Sincerely yours,

Thomas E. Stewart,
Executive Vice President

TES:jg
cc: Office of the Honorable Barbara Cubin, 1114 Longworth HOB, Washington, D.C.
Congressman Robert W. Ney
Bill Condit

○