

**H.R. 2187, TO AMEND TITLE 10,
U.S.C., REGARDING MINERAL
RECEIPTS COLLECTED FROM
NAVAL OIL SHALE RESERVES**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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H.R. 2187, TO AMEND TITLE 10, UNITED STATES CODE, TO MAKE RECEIPTS COLLECTED FROM MINERAL LEASING ACTIVITIES ON CERTAIN NAVAL OIL SHALE RESERVES AVAILABLE TO COVER ENVIRONMENTAL RESTORATION, WASTE MANAGEMENT, AND ENVIRONMENTAL COMPLIANCE COSTS INCURRED BY THE UNITED STATES WITH RESPECT TO THE RESERVES.

**Tuesday, June 26, 2001
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 10:45 a.m. in Room 1324, Longworth House Office Building, Hon. Barbara Cubin [Chairman of the Subcommittee] presiding.

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

Mrs. CUBIN. The legislative hearing by the Committee on Energy and Mineral Resources will come to order.

The Subcommittee is meeting today to hear testimony on H.R. 2187, to amend Title 10, U.S. Code to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.

Mrs. CUBIN. I would like at this point to apologize to the Committee for my tardiness. I was on the floor for the swearing in of the new member from Virginia and I sincerely apologize and especially to you, Chairman Hefley, for being so late.

As you know, under Committee rule 4(g) the Chairman and the ranking minority member can make opening statements. If any other members have opening statements they can be included in the hearing record under unanimous consent.

I will make my opening statement. At today's hearing the Subcommittee will take testimony on a small piece of legislation that has been too long in the making. Our colleague, Joel Hefley of

Colorado, and his delegation mates, worked years to effect a legislative transfer of management authority from the Department of Energy to the Department of Interior for lands within the Naval Oil Shale Reserves Numbered 1 and 3 in the Piceance Basin.

After much wrangling over jurisdiction and the like, Mr. Hefley persuaded the House to adopt an amendment to the National Defense Authorization Act for Fiscal Year 1998 which mandated this transfer. Moreover, that law specifically established a trust fund to be tapped in the future for environmental restoration activities, such as the clean-up of a spent oil shale tailings facility near Anvil Points, Colorado. The monies were to come from oil and gas lease receipts the Interior Department collected from an initial lease sale and subsequent royalties on natural gas production. After the Interior and Energy secretaries certify to Congress that number one, the environmental clean-up is completed, and number two, the DOE's infrastructure cost for well-drilling done prior to the transfer has been recovered, then the lease receipts remaining and those collected thereafter will be distributed in a normal manner; that is, as you all know, the State of Colorado will receive half of the gross receipts for educational purposes or other use governed by state law.

This was quite a fight to get non-westerners in Congress to understand that this is how public land mineral revenues are treated—by operation of law. And I commend Mr. Hefley for tirelessly pursuing this for his constituents and for all Coloradans.

Unfortunately, the trust fund established in 1998 in the act is not self-actuating and that is why we are here today. H.R. 2187 is designed to pull the trigger, as it were, on the mechanism established in the defense authorization act.

Since I am on the board of the NRA I think these are cute little things that my staff put in this statement.

Apparently the original provision merely loaded the chamber and cocked the hammer. This bill will amend Title 10 of the United States Code to authorize the BLM to reach into the trust fund which now has about \$8.5 million in it and which is replenishing at the rate of about \$1 million per year and use the funds to study and complete the clean-up needs.

I understand the administration supports to concept but will seek a tightening of the authority to allay fears that BLM could begin contract dirt-work before knowing all the costs for restoration of NOSR-3. So be it. I agree with the author of this bill and I think it is high time we set about doing the clean-up work for which the trust fund was established in the first place.

[The prepared statement of Mrs. Cubin follows:]

Statement of The Honorable Barbara Cubin, Chairman, Subcommittee on Energy and Mineral Resources

At today's hearing the Subcommittee will take testimony on a small piece of legislation that has been too long in the making. Our colleague, Joel Hefley of Colorado, and his delegation mates, worked years to effect a legislative transfer of management authority from the Department of Energy to the Department of the Interior for lands within the Naval Oil Shale Reserves Numbered 1 and 3 in the Piceance Basin.

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a trust fund to be tapped in the future for environmental restoration activities, such as the clean-up of a spent oil shale tailings facility near Anvil Points, Colorado. The monies were to come from oil and gas lease receipts the Interior Department collected from an initial lease sale and subsequent royalties on natural gas production. After the Interior and Energy Secretaries certify to Congress that: 1) the environmental clean-up is completed, and 2) the DOE's infrastructure costs for well-drilling done prior to the transfer has been recovered, then the lease receipts remaining and those collected thereafter will be distributed in the normal manner.

That is, the State of Colorado will receive half of the gross receipts for educational purposes or other use governed by State law. This was quite a fight to get non-westerners in Congress to understand that this is how public land mineral revenues are treated - by operation of law - and I commend Mr. Hefley for tirelessly pursuing this for his constituents and all Coloradans.

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I now recognize the ranking minority member, Mr. Kind, for his opening statement.

**STATEMENT OF HON. RON KIND, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WISCONSIN**

Mr. KIND. Thank you, Madam Chair. You will not be getting any potshots from me on this legislation today. I could not resist.

I want to thank Mr. Culp for your presence and your testimony here today and commend Mr. Hefley for the work that you have done, along with your colleagues in Colorado—Mr. Udall and I believe Mr. McInnis has been very active, too, in moving this legislation forward. I think it has been a good bipartisan effort by the delegation in Colorado.

Hopefully we will be able to achieve the stated purpose of what you are trying to do. I think there is still a little bit of work to do with OMB, with the administration side, but thank you again for your testimony and the work you have put in on the legislation. I look forward to the testimony.

Thank you, Madam Chair.

Mrs. CUBIN. Thank you, Mr. Kind.

The chair now recognizes the Honorable Joel Hefley, the Fifth District of Colorado, to tell us about his bill.

**STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO**

Mr. HEFLEY. Thank you, Madam Chairman. I will take a shot at it.

You do not need to apologize to me for your tardiness here. It worked perfectly because I could chair a mark-up down the hall and got that out of the way and I appreciate it way it worked. We were kind of scrambling there.

I do want to thank you for holding a hearing on this so soon after its introduction on June 20. It is my hope that with the passage

of this legislation we can begin work on NOSR Numbers 1 and 3 and never have to bother this Subcommittee again with this subject matter. Gosh, we have been at this a long time and it seems like far too long for the purpose of it.

I was author of the legislation, as you indicated, that transferred these two oil shale reserves from the Department of Energy to the Bureau of Land Management back in 1998. After a 10-year, 10-year debate on the issue, even the Clinton administration came to agree that there was little future in using oil shale to fuel battle-ships and that these two reserves could be more useful to the public not as a Navy property but as a BLM property managed for multiple use particularly and for oil and gas leasing.

The state agency charged with promoting such development estimated as much as \$125 million in oil and gas reserves could be generated by the two sites, to be split equally between Colorado and the Federal Government. The early returns seem to confirm this, as the first lease sale in the fall of 1999 generated \$7 million. That amount has since risen to about \$8.5 million. At the same time, it was acknowledged that clean-up work needed to be done on the two sites, particularly at Anvil Point on NOSR-3, which was the site of a Bureau of Mines experiment years before.

It was also acknowledged that a cost estimate for the clean-up could only come through negotiations. Strangely, whoever held the site seemed to feel it was an environmental hazard to all while whoever no longer had the site felt it was a matter of minimal danger, perhaps of no danger at all. Because of this it was agreed that the state Department of Public Health and the Environment could serve as a mediator between the two agencies and that the clean-up could be conducted to state standards.

All of this moved along until late 1999 when the BLM approached my office for help in funding the clean-up. An Interior solicitor had concluded that a specific authorization was needed to allow the BLM to access the leasing monies needed for the clean-up.

This was further complicated by the question of just who the proper authorizing Committee was. The transfer came about through the Defense authorization of 1998, an Armed Services bill, but House Resources is the normal authorizing Committee for the BLM. But Interior Appropriations has often handled such matters in the past under BLM standing authorization.

The bill before you, a Resources bill, will supply BLM with the authorization it needs to undertake the clean-up at Anvil Point and begin to realize the program first adopted in 1998. The authorization would be for 5 years, meaning the clean-up could be completed within that time. If it were completed earlier, the two secretaries could certify as much and the distribution of revenues could begin.

It is my understanding the administration has suggested an amendment to deal with some concerns they have about this legislation. I have looked at that amendment and the only problem I guess I have with it is that I want to see dirt moved and things begin to happen soon and this study that they are suggesting in the amendment will take upwards a year and the BLM will speak to that. It may be that they would have to do this, anyway. I just

hate anything that would slow the process up, but maybe this will not.

I do think it clarifies underlying law and the BLM assures me they should be able to accomplish this clean-up within these strictures.

About a year ago we were talking to Colorado BLM Director Ann Morgan about the problems surrounding the NOSR transfer. We thought we did this 3 years ago, we said. Her response was, "Welcome to public lands management." And unfortunately, I think she is right.

With that, I thank you again for holding this hearing and I ask the Committee's support of the bill.

[The prepared statement of Mr. Hefley follows:]

**Statement of The Honorable Joel Hefley, a Representative in Congress
from the State of Colorado**

Madame Chairwoman, I'd like to thank you for holding a hearing on this bill today, so soon after its introduction on June 20. It's my hope that, with passage of H.R. 2187, we can begin work on NOSRs 1 and 3 and never have to bother this subcommittee on this subject again.

Madame Chairwoman, three years ago, as part of the fiscal year 1998 defense authorization, we transferred Naval Oil Shale Reserves 1 and 3, located near Rifle, Colorado, from the Department of Energy to the Bureau of Land Management. That transfer completed—or so we thought—a 10-year effort to make that switch. By 1998, virtually everyone—including the Clinton administration—agreed that the NOSRs could be of better use to the nation if they were transferred to the Bureau of Land Management and their subsurface estates opened to oil and gas development. The Colorado Oil and Gas Association, the agency charged with promoting such development in the state, estimated as much as \$125 million in oil and gas revenues could be generated by the reserves in future, to be split equally between Colorado and the federal government. The first competitive lease sales at the site, in 1999, gave reason to believe these projections might be accurate. The sales generated a proffered bonus of \$7.5 million, a figure which has since grown to approximately \$8 million.

It was understood at the outset that before the oil and gas revenues could be shared, environmental remediation was needed at one point on NOSR 3—Anvil Points, the site of an old Bureau of Mines experiment. Since whoever held Anvil Points felt the site was an environmental hazard and whoever held it previously felt it was a site of minimal concern, a cleanup cost was never specified but the bill stated that BLM would first cleanup the site, drawing from the revenue stream generated by lease sales. The amount of the cleanup was to be determined through discussions between the departments of Energy and Interior, with mediation by the Colorado Department of Public Health and the Environment. The authorization was to run for five years or once the secretaries of Energy and Interior had certified Anvil Point was clean, whichever was earliest. At that time, revenue could then begin to be issued to the state and federal governments.

Or so we thought. In late 1999, the Bureau of Land Management approached my office for help in funding the cleanup. A solicitor's reading of the language in fiscal year 1998 had concluded that BLM needed a specific authorization to spend its own leasing receipts on the cleanup. The matter was further complicated by the question of just who held responsibility for supplying such authorization—the Armed Service Committee, under whose jurisdiction the transfer was made; House Resources, the nominal authorizing committee for the Bureau of Land Management; or Interior Appropriations, which often resolved such issues under the BLM's standing authorization. No resolution was reached during the 106th Congress.

My bill, H.R. 2187, would provide the authorization for the Secretary of Interior to access the NOSR 3 environmental trust fund to enable contract work agreed upon by the BLM and the state of Colorado to be performed for the next five fiscal years, limited by the funds available from leasing. If further work is necessary beyond 2006, a new authorization will be required.

While all these discussions have been going on, the BLM and the state of Colorado have conducted internal estimates of what needs to be done at the Anvil Points site. Four options—ranging from minimal remediation to a "worst-case" scenario involving complete removal of the tailings—were outlined with costs rang-

ing between \$3 million and \$12 million, with annual monitoring expenses of approximately \$30,000. It is realistic to believe the environmental cleanup can be done with the money on hand.

So that is where we are today. A year ago, someone mentioned to Colorado state BLM Director Ann Morgan that we thought we'd taken care of all this three years ago in the defense authorization. "Welcome to public lands management," she said. Unfortunately, I guess she's right.

Mrs. CUBIN. Thank you, Mr. Hefley.

The chair now recognizes Mr. Pete Culp and welcomes him in front of this Committee again. He is the assistant director of Minerals, Realty and Resource Protection for the Bureau of Land Management. Welcome. We recognize you to give your testimony.

STATEMENT OF PETE CULP, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, ACCOMPANIED BY CARLTON LANCE, LEAD, HAZARDOUS MATERIALS MANAGEMENT PROGRAM, COLORADO BLM

Mr. CULP. Thank you, Madam Chairman. I appreciate the opportunity to appear here today to discuss H.R. 2187, a bill to make available certain mineral leasing receipts for environmental restoration work at the Naval Oil Shale Reserve, known as NOSR-3 near Rifle in Garfield County, Colorado. I am accompanied by Mr. Carlton Lance, who is BLM Colorado's Hazardous Materials Program lead.

The department supports this legislation but, as Mr. Hefley indicated, we recommend that the bill be amended to establish a two-step process for access to money from the fund. For the first step we recommend that the bill be amended to grant us immediate access for up to \$1.5 million for completion of the additional analyses, site characterization, and geotechnical studies. On the completion of these studies we will be able to determine the ultimate clean-up that is necessary, the clean-up alternative, and a more precise estimate of the cost.

For the second step we would be required to submit the findings of the initial study to the Congress before obligating the remaining funds for the clean-up work. Specifically, the recommendation is the bill be amended to specify that 60 days after the findings have been submitted to Congress the secretary would then have access to the funds required for the clean-up without the need for further congressional action. However, should the total estimate exceed the available fund balance, BLM would be prohibited from taking any further action. And what this does is give the administration and the Congress an opportunity to consult on the cost and funding of the ultimate clean-up.

The administration believes that because the clean-up method remains uncertain, prudence dictates that the administration and Congress should be apprised of the potential cost before the clean-up begins.

It is language in existing law that transferred the NOSRs, particularly NOSR-3, from DOE to DOI in 1997 that requires the enactment of this legislation to provide us with access to the funds that are already in the Treasury.

We just note briefly that the NOSR is a 21,000-acre reserve that was originally established in 1924 under an executive order. It is in the Piceance Creek Basin of northwestern Colorado. It was originally created as a future fuel source for the Navy and this reserve and others were originally managed by the Department of Defense and then subsequently transferred to DOE.

Since the 1980's there has been development of oil and gas in NOSR-3 and that development, as has been noted, has generated \$8.5 million in the fund that is available now for environmental restoration. Future revenue growth is also projected.

The Congress did transfer the administrative responsibility for the NOSR to DOI and BLM in 1998 and specified that the receipts for sales, bonuses and royalties from natural gas be placed in a Treasury account, used first for the reimbursement of environmental restoration, then to repay the original costs of the Department of Energy for development of the NOSR and ultimately to be split under the Mineral Leasing Act between the Federal Government and the State of Colorado.

The shale pile that we are concerned about was built up over 40 years of experimental development of the oil shale. It consists of approximately 300,000 cubic yards of material. It is roughly 1,000 feet long and 350 feet high and it is located in a narrow ravine adjacent to West Sharrard Creek, a tributary of the Colorado River.

The Colorado Department of Public Health and the Environment, as Chairman Hefley noted, and a BLM contractor, the Dynamac Corporation, have conducted preliminary analyses of the site and have determined that the pile is a source of arsenic and other heavy metals that are leaching into surface and groundwater and has a large potential for future disruption. So with enactment of this legislation we will be able to move forward with cleaning up the pile and I will be pleased to answer any questions you have.

[The prepared statement of Mr. Culp follows:]

Statement of Pete Culp, Assistant Director, Minerals, Realty & Resource Protection, Bureau of Land Management

Madame Chairman and members of the Committee, I appreciate the opportunity to appear here today to discuss H.R. 2187, a bill to make available certain mineral leasing receipts for environmental restoration work at the Naval Oil Shale Reserve (NOSR) 3 near Rifle in Garfield County, Colorado. I am accompanied by Carlton Lance, BLM Colorado's Hazardous Materials Management Program lead.

The Department of the Interior supports this legislation, but recommends that the bill be amended to establish a two step process for access to monies from the fund. For the first step, we recommend that the bill be amended to grant BLM access to up to \$1.5 million from the fund for completion of the additional analysis, site characterization, and geotechnical studies. The completion of these studies is required to determine the ultimate cleanup necessary for the site. For the second step, the bill would require the Secretary to submit the findings of the study to the Congress before obligating funds for the cleanup work. Specifically, we recommend that the bill be amended to specify that sixty days after these findings have been submitted to Congress, the Secretary would then have access to the fund for the cleanup activities at NOSR 3 without need of any further Congressional action. However, should the total estimated cost exceed the available fund balance, BLM should be prohibited from taking any further action. This will give the Administration and Congress an opportunity to consult on the cost and funding of the proposed cleanup work. The Administration believes that, because the cleanup method remains uncertain, prudence dictates that the Administration and this Congress should be apprised of the potential costs before the cleanup work begins.

BLM wants to begin necessary on-the-ground environmental restoration activities at NOSR 3 as soon as possible, but cannot do so until this preliminary work is

completed. Due to language in existing law that transferred administration of NOSR 3 from the Department of Energy (DOE) to the Department of Interior (DOI) in 1997, enactment of legislation is necessary to provide BLM with access to existing funds in a Treasury account specifically designated for these environmental restoration purposes.

BACKGROUND

NOSR 3 is a 21,000-acre reserve created by executive order in 1924 and located in the southeastern portion of the Piceance Basin in northwestern Colorado. The site—like NOSR 1 which is also in Colorado and NOSR 2 in Utah—was originally created as a future source of fuel supplies for the U.S. Navy and to preserve the resource. The reserves were originally managed by the Department of Defense and were eventually transferred to DOE.

In the early 1980s, private oil and gas companies began to develop natural gas reserves in the surrounding areas and, in 1985, DOE initiated a natural gas drilling program in NOSR 3. In 2000, production from 76 wells on approximately 7,000 acres at NOSR 3 was roughly 8.7 million cubic feet of gas per day. Sold competitively on the open market in 2000, those sales generated approximately \$1 million in revenues for the United States. Future revenue growth at NOSR 3 is also expected—with 26 Applications for Permit to Drill (APDs) pending at the site and industry projections for 140 additional wells to be drilled within the next three years.

In addition to mineral resources, NOSR 3 contains substantial surface resources as well, including recreational, livestock grazing, watershed, paleontological, wildlife habitat and visual resources. It also includes natural habitats for several sensitive plants and animals.

TRANSFER OF NOSR 3 ADMINISTRATIVE AUTHORITY

Congress, in the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85), transferred administrative jurisdiction of NOSR 3 from DOE to DOI. Included in the legislation authorizing the transfer is language specifying that all receipts from sales, bonuses, and royalties be placed into a treasury account to be used for reimbursement of environmental restoration, waste management, and environmental compliance costs incurred by the United States. The 1998 measure specifies that enactment of additional legislation is necessary for the Federal Government to formally access the funds for the environmental cleanup activities. Furthermore, the 1998 Act also provides that no monies received from BLM leases may be shared with the State of Colorado until costs (including environmental restoration costs) incurred by the United States related to the site have been reimbursed. To date, approximately \$8.5 million in lease sales have been deposited into this special treasury account. The account continues to grow with additional lease royalties and future sales.

ENVIRONMENTAL CLEANUP ISSUES

The primary current environmental concern at the NOSR 3 site is a spent shale pile that was developed through 40 years of deposition from oil shale mining and processing activities. The pile consists of approximately 300,000 cubic yards of material, and is roughly 1,000 feet in length and 350 feet high. It is located in a narrow ravine adjacent to West Sharrard Creek—a tributary which flows to the Colorado River in less than two miles. The Colorado Department of Public Health and Environment (the primary environmental regulator for the state) and BLM's contractor, Dynamac, have conducted analyses of the site and have concluded that the pile is the source of arsenic and other heavy metals contamination leaching into surface and groundwater. The pile's constituents also have been determined to be hazardous through direct physical contact. In addition, there are potential questions regarding the physical stability of the pile due to its steep slope, lack of vegetation, and proximity to the West Sharrard Creek. According to the Colorado Department of Public Health and Environment, these findings are considered threats to human health and the environment. Ancillary facilities in the area, such as open adits, sheds, and gravel roads, also require remedial actions.

RESTORATION PROPOSALS

In 2000, BLM contracted with Dynamac Corporation to conduct an initial evaluation of the site and provide various restoration alternatives and cost scenarios. The following four alternatives were proposed and analyzed: 1) removal and disposal at an off-site Treatment Storage and Disposal Facility (TSDF); 2) removal and disposal

to an on-site location; 3) in-place stabilization; and 4) beneficial reuse. A future detailed analysis of these proposed alternatives will have to be completed in accordance with CERCLA and a preferred alternative selected before BLM can report its findings to Congress. If the cost of the preferred alternative does not exceed the balances available in the designated account, BLM will then access the necessary funds and proceed with work under the oversight of the State of Colorado. Preliminary costs for the various alternatives range from a high of \$19.8 million for removal to an off-site TSDF location, down to \$1 million either for in-place stabilization or beneficial reuse. Additional site characterization is necessary to provide conclusive estimates of the remediation work necessary at the site and their costs.

CONCLUSION

Enactment of legislation is necessary to allow BLM to proceed with the pressing environmental cleanup projects at the NOSR 3 site. In turn, completion of these necessary tasks will put the Federal Government and the State of Colorado one step closer to sharing in the benefits of the receipts from the development of natural gas at NOSR 3.

Madame Chairman, thank you for your consideration of this important legislation. I would be pleased to answer any questions that you or the other members of the Committee may have.

Mrs. CUBIN. Thank you very much.

I would like to start first by asking about the arsenic and other heavy metals that you say are leaching into the groundwater at Sharrard Creek. Do you or does the BLM know how much arsenic is being leached at this time? And does that pose any immediate environmental threat to the Colorado River?

Mr. CULP. We know that there is arsenic leaching. Our contractor determined that but we do not know the precise amount. The threat, I believe, is more in the nature of potential, particularly if the pile were to collapse or be impacted by heavy rains, that kind of thing.

Mrs. CUBIN. I do not mean to be too elementary but how big is this pile?

Mr. CULP. Well, it is about three football fields long and 350 feet high. It is—

Mrs. CUBIN. Oh, it is a big pile.

Mr. CULP. It is a big pile, yes, ma'am.

Mrs. CUBIN. There has been other big piles around here but not that big.

The BLM anticipates that there will be other environmental compliance activities and restorations and hazardous material clean-ups on NOSRs-1 and 3, in addition to this one. Do you have an estimate, just a ballpark figure, of what monies will be required to clean up those other sites?

Mr. CULP. We do. There is some other work to roads. There are old transformers, battery stations, et cetera that will need to be cleaned up and that estimate is about \$750,000. That will be included in the clean-up process.

Mrs. CUBIN. The last question I have. The national Defense Authorization Act of 1998 provided that Colorado be able to share in the royalties after the secretaries of Interior and Energy jointly certified certain things that we have spoken of earlier. Do you have any idea when Colorado is going to be able to start sharing in those royalties?

Mr. CULP. Not precisely, Madam Chairman, although we do have a rough projection that ultimately the reserve could generate as

much as \$100 to 120 million of revenue from oil and gas so that the ultimate revenues to the Federal Government, even after the clean-up and the repayment of DOE's investment costs, would be substantial both for the Federal Government and the state.

Mrs. CUBIN. For you, Mr. Hefley, I have had leg counsel draft a substitute to your bill which appears to satisfy the OMB in that another study would be done before committing to the Anvil Points clean-up. If such a study can be done within, say, 6 months or a reasonable time like that, do you think you would be able to support that substitute, or do we need to talk behind closed doors later?

Mr. HEFLEY. Madam Chairman, the sooner the better. The BLM seems to feel, and they can speak for themselves, seem to feel that it will take up to a year and that a year is a good term and I have no basis to argue with that but I would encourage them, if we get started on this thing, to complete this study as soon as possible so that we could move forward with it. It has hung on there too long and I will let them speak for themselves about the timing but I would not object to your substitute amendment because I think that we need everybody on board as we move forward and I think that does it.

Mrs. CUBIN. Did you want to respond to that, Mr. Culp, to the 6 months?

Mr. CULP. Well, I would just say we will move as quickly as we can. It may take, as the Chairman said, approximately a year to finish the study phase.

Mrs. CUBIN. Well, we want you to have all the time you need so it can be done right.

Mr. CULP. If we can finish it quicker, we will.

Mrs. CUBIN. Thank you.

The chair now recognizes Mr. Kind.

Mr. KIND. Thank you.

Mr. Culp, I understand further studies are being recommended or required for the clean-up but do you have a preliminary cost estimate right now, what the clean-up is going to entail?

Mr. CULP. Actually, we had an initial study done by the Dynamac Corporation and they looked at a range of clean-up alternatives, ranging from a beneficial reuse of the pile, which does not seem feasible, to shipment to an off-site facility some distance away, a facility that is authorized to take that kind of material. The cost estimates between those two are from \$1 million to \$19 million.

At the moment we believe that the much more feasible alternative is in the middle and would be the development of a disposal site that is within the NOSR and reasonably close to where the pile is now but in an environmentally safer place. Roughly in the vicinity of \$6 million for that alternative.

Mr. KIND. And I understand there is roughly \$8.5 million from lease receipts that are sitting in reserve right now that would be applied?

Mr. CULP. That is correct.

Mr. KIND. Is there any containment being done right now on the tailings pile to ensure there will not be any run-off or leakage into the Colorado River?

Mr. CULP. Carlton, can you help on that? This is Carlton Lance, our environmental protection specialist.

Mr. LANCE. No, there is currently not at this point in time. The pile is at an angle of repose—very, very steep, and not vegetated. It is exposed to all kinds of precipitation and run-off, which is carrying small particles from the pile into the adjacent West Sharrard Creek, which is less than half the distance from you to me.

Mr. KIND. And there have been some positive tests for arsenic in the groundwater?

Mr. LANCE. Arsenic and other heavy metals. And, as Mr. Culp also said, another primary concern of the State of Colorado is the proximity of this pile to the West Sharrard Creek. It is very close, like I said, half the distance between you and me right now. And the West Sharrard Creek is starting to meander into the shale pile, which is causing the shale pile to sluff off into the creek and eventually end up in the Colorado River.

Mr. KIND. Who created the tailings pile to begin with? If I understand this right, you inherited this from the Department of Energy, who inherited it from the Department of Defense. Who created the tailings pile to begin with?

Mr. CULP. It was created during the experimental work to develop oil shale by contractors who, at the time, were primarily working for the Bureau of Mines.

Mr. KIND. There were private contractors involved?

Mr. CULP. Yes.

Mr. KIND. Okay. It is also my understanding that BLM awarded a competitive lease to the highest bidder, Barrett Resources, who paid a bonus of \$7.5 million but as part of the sale, Barrett now acquires ownership of DOE infrastructure. What type of infrastructure are we talking about?

Mr. CULP. Mr. Kind, DOE actually drilled the original gas wells in the reserve, so it is the wells, it is the pipelines within the field, the tanks, et cetera.

Mr. KIND. Okay.

Mr. Hefley, have you had any conversations with our appropriators in regards to this legislation? Have you gotten any feedback from the Appropriations Committee and how they feel about this?

Mr. HEFLEY. No, I have not. In reality, I do not think they have to appropriate this. I think that is already done by the lease process that we had here. But we do need an ability to access those funds and that is what this bill would do.

Mr. KIND. Concern about any points of order being raised in light of setting up this separate reserve for this stated purpose? Is there potential for a point of order to be invoked?

Mr. HEFLEY. It is possible but I have heard of no one who wants to do that.

Mr. KIND. Okay.

Mr. HEFLEY. We have had a checkered history with oil shale in Colorado and I do not know, Barbara, is you have gotten into it in Wyoming, as well, but I can remember when Mr. Tancredo and I served in the legislature. My gosh, there was going to be an oil shale boom.

I remember before that, Tom, I looked at a ranch out there very near this place to buy years ago, over 30 years ago, and they said

oh, there is going to be this great oil shale boom. In fact, we built highways to the Western Slope based on the fact that we need those highways because of the oil shale boom.

So it has been kind of a boom and bust experience over the years. At first, no one paid much attention. It is kind of like with the gold mining, silver mining, and other things we had in Colorado. You did not pay much attention to the slag piles. You just kind of shoved them out there where it was convenient.

Now we are much more environmentally sensitive to those kinds of things and the arsenic and the heavy metals in the Colorado River, the river that supplies not only for Colorado communities like Grand Junction but all the way to Los Angeles, you want to minimize the run-off from these kinds of things if you can.

So this is something I think that desperately needs to be cleaned up. There are a lot of slag piles in Colorado that need to be cleaned up, as a matter of fact, from various mining operations where we just simply were not very environmentally conscious at that time.

Mr. KIND. Thank you.

Thank you, Madam Chair.

Mrs. CUBIN. The chair now recognizes Mr. Tancredo.

Mr. TANCREDO. Thank you, Madam Chairman.

I understand, Mr. Culp, that industry has shown a lot of interest in some of the unleased lands within NOSR-1 and -3 and that the BLM has done some preliminary studies on those properties. Could you tell me when you expect the plan to be completed and when the lands can be made available for leasing?

Mr. CULP. Yes, I can. We are in the early stages of a new land use planning process for the area under the Federal Land Policy and Management Act that we need to complete to do additional leasing and we expect that within approximately two to 3 years there will be more leasing.

Mr. TANCREDO. Thank you. I have no other questions, Madam Chairman.

Mrs. CUBIN. Mrs. Napolitano was here first.

Mrs. NAPOLITANO. Thank you, Madam Chair.

It is with great interest that I am listening to you gentlemen talk about the removal of a contaminated site in Colorado because I have been working on a bipartisan basis to try to remove the uranium contaminated pile in Moab.

That kind of brings to mind your discussion or your statements that the site has been owned and operated by Interior, prior, Defense, and prior, Bureau of Mines. Were there any private owners that were involved in this mining operation?

Mr. CULP. There were private contractors that—

Mrs. NAPOLITANO. Owners.

Mr. CULP. I do not believe there were private owners.

Mrs. NAPOLITANO. And the total removal cost over the 5 years will be approximately about—what was the figure?

Mr. CULP. The most likely alternative we think is about \$6 million.

Mrs. NAPOLITANO. 6. Now does that include the transportation? I am assuming you are moving this pile onto a nonleaching site, a rock bottom or something to that effect. Am I correct?

Mr. CULP. That is correct.

Mrs. NAPOLITANO. The cost would be more involving the actual transportation, if I remember correctly because we have been through this from the other end. Is that fair enough, that amount of money that you are talking about? Because if you are talking about a pile that is exceedingly large—what did you say?—three football fields and 350 feet—to be able to move it, is the site already found?

Mr. CULP. We are looking at alternatives and we believe there will be a suitable site within the reserve.

Mrs. NAPOLITANO. Right within the reserve?

Mr. CULP. Within the reserve. You are absolutely correct that the distance that you have to move the material is—

Mrs. NAPOLITANO. Is the cost.

Mr. CULP. Is the primary cost-determining factor.

Mrs. NAPOLITANO. That is why I am questioning the amount that you have indicated might suffice. But this is going to be enough for it to be done properly?

Mr. CULP. To illustrate how sensitive it is to distance, the upper cost estimate that came out of our study, which was close to \$20 million, looked at a location that was 250 miles away?

Mr. LANCE. Yes, outside the State of Colorado. The vast majority of that is transportation costs and that was to go to a TSDF facility.

Mrs. NAPOLITANO. That is why I am asking have you found the site and how proximate to—

Mr. LANCE. We are looking at a site, a potential site right now within about two to two and a half miles away from the pile where it currently—

Mrs. NAPOLITANO. But it has not been determined.

Mr. LANCE. With that type of transportation, the cost would be minimal. And the area that we are looking at is a 60-acre tract of land with a pile on it 15 feet high for 60 acres that would suffice for disposal.

Mrs. NAPOLITANO. The next question I have, and it is more of a statement, is I am looking at information given to us by our staff that DOE owned the wells. Am I correct? So the output was their own? I am talking about they owned the wells outright?

Mr. CULP. They did own the wells, yes, when they were first put in in the 1980's.

Mrs. NAPOLITANO. It says the agency appeared to be losing money because the appropriated dollars to contract drilling and production operations exceeded receipts from the sale of gas. And that is a very important point to me because we have been discussing with gas operators that the Federal agency should go into the royalties in kind, if you will, and that, to me, is very salient, what you are saying here. We have not operated at a profit before. Do you have any comment on that?

Mr. CULP. Well again, that was DOE's operation during that period. I could just say that overall, our revenues for managing oil and gas on Federal lands are about 20 times what we—this is on a national basis now—about 20 times what it costs us to administer the program, so it is a—

Mrs. NAPOLITANO. A losing proposition?

Mr. CULP. A revenue positive proposition.

Mrs. NAPOLITANO. Oh, positive.

Mr. CULP. For the government, yes.

Mrs. NAPOLITANO. Interesting.

I am just very glad that you are taking a very active role, Congressman Hefley, on this issue because to a lot of us, it is important that we be able to address contaminated sites. They are possible time bombs when it comes to rains or other types of activity that will disseminate that to nearby areas and affect not only people but other areas that are so sensitive. Thank you.

Mrs. CUBIN. And I thank Ms. Napolitano. Your district drinks some water from the Colorado River, as well, a lot farther down the pike but still.

We do not have any other questions. I would like to thank the panel for their testimony and look forward to moving this bill, making the changes that are necessary that are suitable to you and to the administration so we can get some dirt moved and start the clean-up. I know that is what everyone has in mind.

So the Subcommittee on Minerals and Energy Resources is officially adjourned. Thank you.

[Whereupon, at 11:20 a.m., the Subcommittee was adjourned.]

[A letter submitted for the record by Jane E. Norton, Executive Director, Colorado Department of Public Health and Environment, follows:]

STATE OF COLORADO

Bill Owens, Governor
Jane E. Norton, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

June 25, 2001

The Honorable Joel Hefley
House of Representatives
Washington D.C. 20001

Dear Congressmen Hefley:

Subject: Colorado Department of Public Health and Environment's Support of H.R. 2187

The Colorado Department of Public Health and Environment (the Department), the agency responsible for overseeing hazardous and solid waste management, environmental restoration and environmental compliance in the State of Colorado, writes to each of you in full support of H.R. 2187.

In Colorado, passage of this bill would provide needed funding to the Department of Interior to assist in the reduction of human health and environmental risks that currently exist at the Naval Oil Shale Reserve, Anvil Points Facility (APF) in Rifle, Colorado. The U.S. Department of Interior, Bureau of Land Management (BLM) currently retains ownership of the site. In addition to oil and gas exploration and recovery, APF is also used for recreational purposes. It is anticipated that the land will remain open to the public for recreational uses in the future. However, there are currently no restrictions in the legal deed or other property transfer documentation that restricts other land uses such as residential or commercial at the site.

Numerous environmental investigations of the site have been performed in the past to determine if APF, and in particular the waste shale pile, which contains 360,000 to 400,000 tons of waste shale, is releasing hazardous waste or hazardous constituents to the environment. The investigations concluded that numerous inorganic elements exist in the waste shale pile at concentrations significantly above background soil and ground water concentrations. The Department has used this information to evaluate the potential risk posed by the waste pile on human health and the environment. The Department concluded that the concentration of arsenic in the waste shale pile poses a significant risk to human health and the environment due to its non-carcinogenic and carcinogenic health effects. Currently, there are no known human health receptors to the groundwater or the surface water in the immediate area. However, since there are currently no institutional controls or restrictions on the property, the Department must consider direct exposure of the soils, groundwater and surface water to the public.

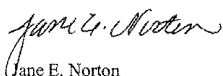
Congressmen Hefley
House of Representatives
June 25, 2001
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The Department has also concluded that due to the close proximity of the waste shale pile with West Sharrard Gulch, the pile has a significant potential to leach and/or erode into this tributary of the Colorado River. Pollutants from the shale pile continue to impact the groundwater and gulch surface water and, with time, may reduce the quality of water in the Colorado River. In addition, the catastrophic failure or large-scale erosion of the waste shale pile into West Sharrard Gulch would be unacceptable as sediments may contaminate the Colorado River downstream. Not only are the Colorado River habitat to fish and other wildlife, it also provides potable water to cities downstream.

Because of the concerns identified above, the Department has requested the BLM to explore remedial options to secure the shale waste pile. The Department believes that a number of acceptable remediation alternatives may be selected to close the waste shale pile in an appropriate manner. These remedial alternatives range from in place stabilization of the shale pile to complete removal and disposal of the pile at a more suitable location.

I appreciate your efforts in sponsoring this important bill. Although not specifically included in HR 2187, the Department anticipates that the Department of Interior would closely coordinate with State environmental regulators on all activities relating to environmental restoration, waste management and environmental compliance.

Sincerely,



Jane E. Norton
Executive Director
Colorado Department of Public Health
and Environment

cc: The Honorable Scott McInnis
The Honorable Mark Udall
John Swartout, Governor's Office of Policy
Stephannie Finley, Legislative Liaison
Doug Benevento, Director, Environmental Programs