S. HRG. 110–386

OVERSIGHT OF THE OIL, GAS, AND MINERAL REVENUE PROGRAMS MANAGED BY THE DEPARTMENT OF THE INTERIOR

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SPECIAL HEARING

FEBRUARY 26, 2008—WASHINGTON, DC

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OVERSIGHT OF THE OIL, GAS, AND MINERAL REVENUE PROGRAMS MANAGED BY THE DEPARTMENT OF THE INTERIOR

TUESDAY, FEBRUARY 26, 2008

U.S. SENATE,
SUBCOMMITTEE ON DEPARTMENT OF THE INTERIOR,
ENVIRONMENT, AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:28 a.m., in room SD–124, Dirksen Senate Office Building, Hon. Dianne Feinstein (chairman) presiding.

Present: Senators Feinstein, Bennett, Craig, and Allard.

OPENING STATEMENT OF SENATOR DIANNE FEINSTEIN

Senator FEINSTEIN. I want to begin by thanking the ranking member for his cooperation in being able to begin this hearing early on. We have a number—as many as five—stacked votes, which will begin sometime after 10 o'clock, which will make holding the hearing extraordinarily difficult.

So thank you very much Senator Allard for allowing us to move this up to 9:30.

Senator ALLARD. You're welcome. I appreciate you recognizing a problem and addressing it quickly.

Senator FEINSTEIN. Thank you, thank you. Mr. Secretary, we'd both like to thank you for your cooperation in making this extra effort in being here a half-hour early. I know other members may be coming along and I hope they can come along shortly, so that we can conclude this in about 45 minutes, if possible.

The Minerals Management Service is responsible for managing the Federal Government's oil and gas royalty programs on public lands and waters. Last year, MMS collected $11.4 billion in royalties and rents associated with 29,000 onshore and offshore oil and gas leases.

Of that amount, $2.5 billion was distributed to State and tribal governments, while the Federal share was used to fund the Land and Water Conservation Fund, the Historic Preservation Fund, and the Reclamation Fund, in addition to general government operations.

Mr. Allred, we've asked you to address three specific subjects this morning in your testimony.

First, we'd like you to update the committee on the status of your negotiations with the oil companies holding leases issued in 1998

and 1999 for which MMS is not collecting royalties due to the United States. This is potentially, as you well know, a $10 billion loss to the taxpayer. We need to know what the Department is doing to make the Treasury whole.

Second, we've asked you to address the ongoing litigation between Kerr-McGee, which is now Anadarko Oil, and the Interior Department over the legality of price thresholds for all 1996 to 2000 leases. We're aware of the recent District Court decision that went against the government, but the Committee is eager to hear the status of the case and the Department's outlook on its final outcome. As I understand, this is another potential loss of $21 billion should this judgment be sustained.

Finally, we've asked you to speak to the findings and recommendations contained in a December 17 report from the Royalty Policy Committee concerning mineral revenue collection on Federal lands. As you know, this report was authored by our former colleagues, Senator Bob Kerrey and Jake Garn, who co-chaired the Special Committee that investigated and reported on nearly every aspect of Federal performance in carrying out its oversight and revenue collection duties. We do have the 100 recommendations that the report made. I've read them, so I am somewhat aware of what they have proposed.

I also see we're joined by Mr. Lufti—Excuse me, Luthi—I want to thank you for making the effort. I know you came in on a plane, and I really appreciate you're being here. So thank you very much.

Mr. LUTHI. Thank you, Senator. It's my pleasure to be here.

Senator FEINSTEIN. You're welcome. And now, I'll turn to the ranking member Senator Allard, for any opening statement you may have.

OPENING STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Well, thank you, Chairwoman Feinstein, for your leadership. I want to thank the witnesses, along with the Chairwoman, for adjusting your schedule to meet our change in schedule here. What have we got? Oh, okay, we're getting some feedback. All right. Now that we've got that taken care of.

So I know you had to adjust your schedules, so Mr. Luthi and Mr. Allred, I welcome you both to the committee hearing.

I am very excited to have the opportunity to work again, as the ranking member on the Interior Appropriations Subcommittee. This subcommittee deals directly with the enormous number of critical issues that affect my home state of Colorado. I recognize that during election, your politics can frequently slow the pace of getting things done around here, but I remain optimistic that we can accomplish a lot by working together in a bipartisan fashion which has always been the tradition in this committee.

I believe the public, which values its public land so highly, deserves nothing less than our best efforts to do so. Since this will be my last year in the Senate, I will not have the opportunity to hold the gavel on this subcommittee. But, Senator Feinstein, you've been an excellent chairman to work with——

Senator FEINSTEIN. Thank you.

Senator ALLARD [continuing]. And I always appreciate your willingness to reach across the aisle. I'm generally thankful to finish

my tenure here with such a thoughtful and able person at the helm.

Today we examine the Oil, Gas, and Mineral Revenue programs managed by the Department of the Interior, most particularly those overseen by the Minerals Management Service (MMS). The MMS is a comparatively small agency within the Department of the Interior, with only about 1,600 people. However, it is also one of the most important.

Not only does it manage all offshore leasing in Federal waters, but last year the agency collected and dispersed over $11 billion to the U.S. Treasury, States, and Tribes. The amounts collected by MMS for the Federal Treasury are second only to the Internal Revenue Service. Most of the employees that are responsible for these activities are located in my State of Colorado in Denver.

Given the enormous amount of royalties that MMS is responsible for collecting and distributing to the States and the Treasury, it is critical that the agency operates as efficiently as possible. The American people must feel certain that the amount owed by oil and gas companies for operating on our public lands and in the outer continental shelf is paid in full.

In recent months, the MMS has been involved in a number of complex legal and regulatory issues that concern many of us here in Congress. Briefly, these included leases that were issued pursuant to the Deep Water Royal Relief Act during the Clinton administration in 1998 and 1999, which should not contain any price thresholds.

The absence of thresholds means that even though oil prices are approaching $100 per barrel, companies with these leases are paying no royalties to the Federal Government. While there were legislative efforts to force companies with these leases to modify them to include thresholds, I did not support this approach. I believe in the sanctity of contract.

I also feared the possibility of lengthy litigation that would jeopardize our entire offshore oil/gas program at a time when we need to promote additional domestic production to become less reliant on foreign sources of energy.

I believe that my fears concerning the legality of legislating on the 1998/1999 leases were borne out. Indeed, last October, a Federal District Court sided with Kerr-McGee Company and held that the MMS had no authority to include any price thresholds in leases issued pursuant to the Deep Water Royalty Relief Act.

Since the act covers leases in deep water from 1996 to 2000, if the *Kerr-McGee* case stands, then the government will lose not only royalty income from the 1998/1999 leases, but also those from the 1996, 1997, and 2000 years. The most recent estimates we have from the Department of the Interior indicate that this could cost the Treasury in excess of $21 billion.

The *Kerr-McGee* case is currently on appeal to the Fifth Circuit Court. It is my hope that the lower court decision is reversed. I believe that it was the intent of Congress to allow price thresholds to be included in leases under the Deep Water Royalty Relief Act. However, if the case is reversed, I still believe that the 1998/1999 leases pose a separate question about the sanctity of contract and whether the Federal Government honors its agreements.

Legislation that would coerce companies to modify these leases will only lead to more litigation and potentially chase investment in oil and gas production to other places in the world.

Let me conclude my remarks by applauding your decision, Mr. Allred, to recommend to Secretary Kempthorne that he appoint an independent, bipartisan panel to examine MMS's Mineral Revenue Management Program and issue a report.

I think this was an important response, not only to the issues raised by the 1998/1999 lease, but also to address concerns raised by the Inspector General concerning whether the Department's royalty programs were adequate to assure the public that it was collecting all the royalties that were due.

The panel included former Senators Bob Kerrey and Jake Garn and several other distinguished members. The report contains over 100 recommendations, so we will not be able to get to all of them at this hearing. But I'll be interested in asking you some questions about the report and how the Department intends to implement these recommendations to ensure that the Royalty Management plan is run as effectively as possible.

Thank you, Madam Chairman. This concludes my opening statement.

Senator FEINSTEIN. Thank you very much, Senator, and let me just say, I'm sorry about the retirement. I will certainly miss you but we have some time left on the year, fortunately. So, that's a good thing.

Senator ALLARD. Well, thank you, Madam Chairman. I'm looking forward to working with you and other members.

Senator FEINSTEIN. Thank you. I want to note that Senator Craig and Senator Bennett have joined us. Do either of you have an opening statement?

STATEMENT OF SENATOR LARRY CRAIG

Senator CRAIG. Madam Chair, I'll be brief. I appreciate having Steve and his colleagues with us.

Let me be brief, but let me be blunt. I'm going at 10 o'clock to a hearing in Energy to deal with SPRO. Are we putting too much oil in, is it too expensive? Should we or should we not be? A lot of that oil is royalty in kind oil. Oil companies pay it in lieu of royalty into the SPRO, and so we are gaining some advantage there.

You know, I'm a little frustrated that we continue to pick around the edges of an issue that was created in another administration. In a presidential year, I could be very, very political about it, but I won't be, because there was intent at the time to get us out into the deep water and to give companies the incentive to go there. Now, we're worried because we're not filling our pockets.

What we ought to be worried about is a good inventory—and I'm going to challenge this committee to look at that this year—of the rest of offshore. Our greatest oil reserves today are not in SPRO. They're out at our Continental Shelf that we're not even beginning to look at and/or think about tapping. Now, that doesn't mean that we don't get it right at Minerals Management. We need to get it right, and make sure that we appropriately handle the assets of the public's in this country—in this case, the citizens of our country.

But the courts are going to solve this in part, if they can, and we ought to be advancing the greater cause of oil independence by finding out what the inventory offshore is, and where we can and can't go, and should or should not go, and give incentives to get there, instead of doing what I think we've attempted to do in the last—it really hasn't got us anywhere.

We talk about money lost. We ought to talk about money and independence we can create by effectively managing and getting offshore. We need an inventory, we need it modern, we need to know where the oil is, and we ought to be after it.

Thank you.

Senator FEINSTEIN. You're welcome. Senator Bennett, do you have a comment?

Senator BENNETT. Yes, Madam Chairman. I know we have a vote coming, and so I will not make an opening statement and I will submit my questions for the record. But I do want to take the opportunity to put on the record, in my statement, our concern about the Oil Shale Proposal.

Oil shale is potentially very important to the State of Utah, as it is to Colorado and Wyoming. There's more oil in the oil shale in those three States than there is in Saudi Arabia. So we're obviously paying very close attention to that, and my questions will focus on that, which I will submit for the record.

Senator FEINSTEIN. Thank you very much, Senator Bennett.

Now, we will turn to our panelists, Secretary Allred and Mr. Luthi. If I may, could I ask you to summarize your comments and confine them to 5 minutes? I think we really would like to engage in a dialogue, and that will perhaps give us some time to do so.

So, thank you, and we'll proceed. Secretary Allred?

STATEMENT OF C. STEPHEN ALLRED, ASSISTANT SECRETARY FOR LANDS AND MINERALS MANAGEMENT, MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

1998/1999 LEASES—KERR-MC GEE

Mr. ALLRED. Thank you, Madam Chairman, Senator Allard, Senator Craig, and Senator Bennett. It's a pleasure to be here and to talk about these issues.

I think we have come a long way in the last year.

When I first came into the Department of the Interior, the Minerals Management Service was under heavy fire for a number of items. Looking back, I think wrongly so. I'll tell you why as we go forward.

First of all, let me talk a little bit about the 1998/1999 leases, as you've requested, and the *Kerr-McGee* litigation. The 1998/1999 lease issue, at this point in time, is a subset of the *Kerr-McGee,* because it involves the same real questions about authority within the Department, under the Deep Water Royalty Relief Act.

Essentially, that case—and I'm not an attorney, so I'm not going to get into details—but that case involves two sections, one of which gave the Department authority to condition leases with price thresholds, and a second provision, which provided for mandatory royalty relief.

The court has found at the district level that the first did not apply to the second. We think that is wrong. We intend, within the

Department, to go forward in challenging that decision. As you indicated, the Department of Justice has filed a notice of appeal. So, we will be proceeding as the Department of Justice thinks best in that process.

As you also indicated, the monies that are involved are about $9 billion as of our last evaluation of what may be involved in the 1998/1999 lease issue. Going forward about $1.5 billion of that is already foregone.

Senator FEINSTEIN. I beg your pardon. Was already?

Mr. ALLRED. Foregone.

Senator FEINSTEIN. Foregone?

Mr. ALLRED. About $19 to $20 million in additional foregone revenues, if the——

Senator FEINSTEIN. Billion.

Mr. ALLRED. Billion, excuse me.

Senator FEINSTEIN. You said million.

Mr. ALLRED. Billion, excuse me. In the 1995 through 2000 leases that the *Kerr-McGee* case stands, as the District Court has indicated.

In the 1998/1999 leases, I and MMS had discussed issues and our desire to negotiate price thresholds on that. Six companies came forward and did agree to that. The rest did not. I think there's little chance of any additional movement until the *Kerr-McGee* case is resolved.

I want to point out, though, that beyond that period of time, there is no question about the Department's legal authority to impose price thresholds. In every case since 2000, leases have been conditioned if there was royalty relief with price threshold information. The last sale that comes up in March, one of those sales has mandatory relief and one does not. In the case that does not, we did not offer royalty relief.

ROYALTY POLICY SUBCOMMITTEE

Now, if I could talk a little bit about the Royalty Policy Subcommittee report. One of the concerns I indicated as I took office 1½ years ago, was that there was not a real objective look at what was going on through Minerals Management Service. I, as many, was very concerned about the reports that were coming out. So I undertook my own review of Minerals Management Service, and traveled to the various offices, and got to know the processes.

After I did that, I did not feel there was a significant fatal flaw in the programs of the Minerals Management Service, and that the royalties that were due to the United States were being collected. However, as with any complex operation—and that is a very complex operation—there were numerous areas that could be improved. So I suggested to the Secretary, as you indicated—or Senator Allard indicated—that we put together a committee that had two purposes.

One of them was to give an in-depth look, probably the most in-depth look of the processes of any agency, certainly that I'm familiar with. Second, we needed, if there was not a problem, to help restore the credibility of the Minerals Management Service in the eyes of the public.

I think that what came out was very successful in meeting those objectives. First of all, they found a lot of reasons for improvement. Most of those can be implemented by the Minerals Management Service, and Director Luthi is here to tell you how he is going forward doing that. But also, it did not find any serious—what I'll call fatal flaws. In fact, it was very encouraging in things like the RIK Program, and found that it was a very innovative, very progressive program that they encouraged.

Now, there are some things that they've identified that need to be done to improve the program, but I think it pretty well justifies my early conclusions that it is a good operation. As with any, it can be improved, but it is a good operation, and it's going forward, and I think that it's, as they indicate, collecting the revenues that are due to the United States.

We might just quickly touch on what we asked the subcommittee to do. We asked them to look at the procedures and processes, and make sure that MMS was collecting the amounts that were due. We asked them to look at the audit and compliance program and to make recommendations as to what should be done with regard to improve that. We asked them to look specifically at the royalty in kind.

The people who were on the committee, Senator Bob Kerrey and Senator Jake Garn, did an excellent job. I just can't tell you how much I appreciate the time and effort they put in at no cost to the U.S. Government to do this.

But there were some other very helpful people. Cynthia Lummis, who is the former Wyoming State Treasurer, and probably Wyoming is one of the largest recipients of royalty money, also participated in many of the royalty audit programs that we conduct. Perry Shirley, who's with the Navajo Nation had certainly good insight into the monies that are being paid to the Indian Royalty Program.

Of most importance, I think, was Robert Wenzel. This was a very excellent opportunity for us to look at how other agencies do this stuff. Robert Wenzel was the highest ranking career official in the Internal Revenue Service from 1998 to 2003, when he retired. As you can imagine, his insight into this program—because it is to some extent similar to what the IRS does—was very valuable.

We had Dr. Mario Reyes, who is an academic, so we brought that side of the view here. Dr. David Deal, because this was a subcommittee of an established committee and there had to be a committee member on it. He also has had much background in oil and in the royalty programs.

Those were the five, and I think we were very lucky to have that quality of people on it. I really appreciate, again, the tremendous effort. They were meeting very frequently, many hours, and did an excellent job.

What I would like to do now, if we could, is to turn to Mr. Luthi, and to talk about how we are going about implementing the 100 recommendations that you referred to.

Senator FEINSTEIN. Thank you very much, Mr. Secretary.

[The statement follows:]

PREPARED STATEMENT OF C. STEPHEN ALLRED

Madame Chairman and members of the committee, we appreciate the opportunity to testify today. This Committee has been instrumental in shaping our domestic energy program, particularly with regard to the sound development of our domestic oil and gas resources on the Outer Continental Shelf (OCS) and the management of mineral revenues from the OCS and from onshore Federal and Indian lands.

Today's testimony will focus on three areas:

1. The OCS leases that were issued in 1998 and 1999 without price thresholds.
2. The recent District Court decision in the *Kerr-McGee* litigation.
3. The recently issued report from the Subcommittee on Royalty Management and our subsequent implementation efforts.

The Department of the Interior and its agencies serve the public through careful stewardship of our Nation's natural resources. The Department also plays a vital role in domestic energy development: Approximately one third of all energy produced in the United States comes from resources managed by the Interior Department. The Department, through MMS, is also responsible for managing and providing the American people with an accurate and transparent accounting of the revenue this production generates. For example, since 1982 MMS has distributed approximately $176.6 billion to Federal, State, and Indian accounts and special funds, including the following:

—$107.8 billion to the U.S. Treasury and other Federal agencies;
—$22.6 billion to the Land and Water Conservation Fund;
—$22.3 billion to States;
—$14.7 billion to the Reclamation Fund;
—$5.7 billion for American Indian Tribes and allottees; and
—$3.5 billion for the Natural Historic Preservation Fund.

1998–1999 OCS LEASES WITHOUT PRICE THRESHOLDS FOR ROYALTY RELIEF

The Deep Water Royalty Relief Act of 1995 (DWRRA) required deep water leases issued from 1996–2000 to include a royalty incentive that allowed companies to produce a set volume of oil and gas before they began paying royalties. Price thresholds, which limit royalty relief when oil and gas prices are high, were included in leases issued in 1996, 1997 and 2000. However, they were not included in leases issued in 1998 and 1999.

A recent Federal District Court decision has called into question MMS's authority to establish price thresholds under the authority of the DWRRA. In the *Kerr-McGee* case, the District Court for the Western District of Louisiana ruled that MMS did not have the authority to apply price thresholds to the royalty relief provided in the deepwater leases issued in 1996–2000. On December 21, 2007, the Department of Justice filed a timely notice of appeal with the 5th Circuit Court of Appeals to protect the interests of the United States in the *Kerr-McGee* litigation. The 1998–1999 lease issue and the question of price thresholds is a sub-issue of the larger *Kerr-McGee* case.

The question of whether the Department has the authority to include price thresholds in royalty relief provisions for leases issues after 2000 is not at issue in the *Kerr-McGee* litigation. All leases issued after 2000 that include royalty relief also include price thresholds, and there is no dispute that MMS has the authority to condition this relief on the prices of oil and gas.

In an attempt to address the missing price thresholds in the OCS oil and gas leases issued during 1998 and 1999, early in my tenure as Assistant Secretary, I met with several oil companies. As a result of those meetings, voluntary agreements were reached with six companies, each of which has been paying royalties consistent with the terms of the agreement. We remain open and willing to discuss agreements with the remaining companies that hold leases issued without price thresholds.

If the District Court's decision in *Kerr-McGee* is not reversed, whether the leases issued in 1998–1999 contain price thresholds becomes moot. While we have had at least preliminary discussions with all companies holding leases issued in 1998–1999, I do not believe that any additional lessees will agree to price thresholds until they see the outcome of the *Kerr-McGee* case.

ROYALTY POLICY COMMITTEE REPORT

As you know, we recently received a report that contains recommendations developed by the Royalty Policy Committee's Subcommittee on Royalty Management. I would like to discuss how the subcommittee came to be established, its composition, and areas of responsibility. Director Luthi will address the current status of our efforts to implement the recommendations contained in the report.

On March 22, 2007, upon my recommendation, Secretary Kempthorne appointed the Subcommittee on Royalty Management ("the Subcommittee") to conduct an independent examination of MMS's minerals revenue management program. As you are aware, reports from the Department's Office of Inspector General and others questioned whether the Department's royalty programs were adequate to assure that the public received the royalties that Congress had intended. While I had concluded at the time that there were not major problems in the royalty program, I felt there were many opportunities to improve those operations. As a result, the Secretary determined that a fully independent examination of the program was warranted, both to restore credibility to this important revenue-generating program, and to focus on the improvements that were needed.

Specifically, we asked the Subcommittee to review:

—the extent to which existing procedures and processes for reporting and accounting for Federal and Indian mineral revenues are sufficient to ensure MMS receives the correct amount;

—MMS's audit, compliance and enforcement procedures and processes to determine if they are adequate to ensure mineral companies are complying with existing statutes, lease terms, and regulations as they pertain to payment of royalties; and

—the operations of the Royalty in Kind Program to ensure that adequate policies, procedures, and controls are in place to ensure the decisions to take Federal oil and gas royalties in kind result in net benefits to the Federal government.

Subsequently, the Subcommittee was also asked to review procedures promulgated by the Department in response to the lack of price thresholds in Gulf of Mexico leases from 1998 and 1999 sales to ensure that future leases include price thresholds.

The panel, which was organized as a Subcommittee of the Royalty Policy Committee (RPC), a Federal Advisory Committee Act (FACA) body that advises the Secretary on matters related to mineral revenues, was comprised of seven distinguished members:

—Former U.S. Senator and Nebraska Governor Bob Kerrey and former U.S. Senator Jake Garn, of Utah;

—Cynthia Lummis, a former Wyoming official who served as State Treasurer, and as a member of the Wyoming House and Senate, concentrating on natural resource and taxation issues;

—Perry Shirley, Assistant Director of the Navajo Nation's Minerals Department, who serves as the Principal Investigator responsible for administering a Cooperative Agreement between the Navajo Nation and the Minerals Management Service;

—Robert Wenzel, the highest ranking career official in the Internal Revenue Service from 1998 to 2003, whose responsibilities included the day-to-day operation and strategic management of the United States tax administration system;

—Dr. Mario Reyes, Associate Dean for Administrative Affairs and Director of Business Economics Programs in the College of Business and Economics at the University of Idaho; and

—David Deal, who serves as the vice-chair of the full Royalty Policy Committee.

To ensure independence, the subcommittee staff came primarily from the Department's Office of Policy Analysis, but also included Bureau of Land Management staff and an independent staff member, Loretta Beaumont, who was selected by the co-chairs. MMS played no role in the subcommittee's work beyond responding to requests for information.

I want to express my deep appreciation to each member of the subcommittee and staff for their hard work in the preparation and completion of this thorough report.

The subcommittee issued its report on December 17, 2007, as a public document and in a public meeting on January 17, 2008, the RPC voted to accept the subcommittee's report. By letter dated January 25, 2008, the RPC Chairman transmitted the report to the Secretary.

The subcommittee concluded that MMS is an effective steward of the Minerals Revenue Management Program, and that MMS employees are genuinely concerned with fostering continued program improvements. The subcommittee members unanimously agreed that MMS is the Federal agency best suited to fulfill the stewardship responsibilities for Federal and Indian leases. However, as we expected, the report identified many areas that warranted management attention to ensure public confidence.

The report contains 110 recommendations, including 35 recommendations related to Collections and Production Accountability; 30 regarding the Royalty in Kind (RIK) Program; 27 on Audits Compliance and Enforcement; 10 related to Coordination, Communication, and Information Sharing among MMS, the Bureau of Land

Management (BLM) and the Bureau of Indian Affairs (BIA); and 5 on OCS Royalty Relief (See Attachment #1). At least three of the recommendations would require legislative action. Notably, the Report concluded, "the advantages of including an RIK approach among MMS asset management options are clear and MMS's process for evaluating the feasibility of RIK versus Royalty in Value (RIV) appears to be rigorous and effective. Nevertheless, in order to ensure the program's successful operation, a number of challenges must be addressed."

The report's recommendations span the responsibilities of all three Departmental Bureaus involved in royalty management—MMS, BLM, and BIA (See Attachment #2). Of the 110 recommendations, MMS is solely responsible for 73 and BLM is solely responsible for 15. The remaining 22 recommendations require coordination among the Bureaus. We are in the process of establishing a Production Coordination Committee with representatives from the BLM, MMS, and BIA whose task will be not only to coordinate and implement the cross cutting recommendations contained in the subcommittee's report, but to also provide on-going coordination of issues related to the management of Federal and Indian mineral leases as suggested by one of the recommendations contained in the Report.

IMPLEMENTATION OF SUBCOMMITTEE RECOMMENDATIONS

In a memorandum dated January 14, 2008, Secretary Kempthorne asked the Department to review the report, develop an action plan, and begin implementing the subcommittee's recommendations. I am pleased to report that as of February 11, 2008, 16 of the 110 recommendations are already complete (See Attachment #3). Of the remaining 94 recommendations, 29 are underway. We have developed a Joint Action Plan to address all of the report's recommendations.

The plan identifies by recommendation the responsible Bureau, estimated timeframes for completion, and status. Points of contact are designated within each Bureau to monitor implementation and report on progress on a monthly basis. Many of the recommendations require further evaluation, and to that end, teams are being formed to determine appropriate actions and schedules. Likewise, many recommendations will need to be explored further through consultations with State and Tribal officials, and other organizations before they can be adequately implemented. We have developed a tracking system and have been and will continue to hold regular meetings to assess progress on the implementation of each action item.

Examples of the major focus areas contained in our Joint Action Plan include the following:

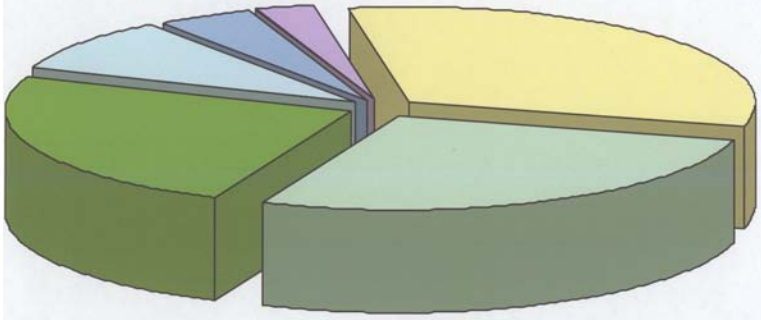
—Ensuring collection of sufficient data to make certain that royalties are being paid on the correct volume of oil and gas from Federal and Indian lands.
—Improving the coordination, collaboration, communication, and information sharing between BLM, MMS, and BIA.
—Requiring more reporting of data electronically and ensuring that bureaus have easy access to each other's systems.
—Implementing a risk-based compliance strategy and determining the extent to which a more flexible approach to audits, similar to that used by the IRS, is feasible.
—Ensuring the RIK program has the right personnel with the right skills to get the job done.
—Ensuring that all staff receive ethics training, including training focusing on public-private sector interactions.
—Ensuring that we have sufficient staff to support the Department's onshore and offshore royalty management activities.

Secretary Kempthorne and I are grateful to the subcommittee for the time and energy it devoted in its review. The Department is committed to working with our stakeholders to implement the recommendations contained in the report. We agree with the statement of the subcommittee that implementing the recommendations in this report will greatly strengthen the management of the program, will restore public confidence, and will ensure maximum value for the U.S. taxpayer.

CONCLUSION

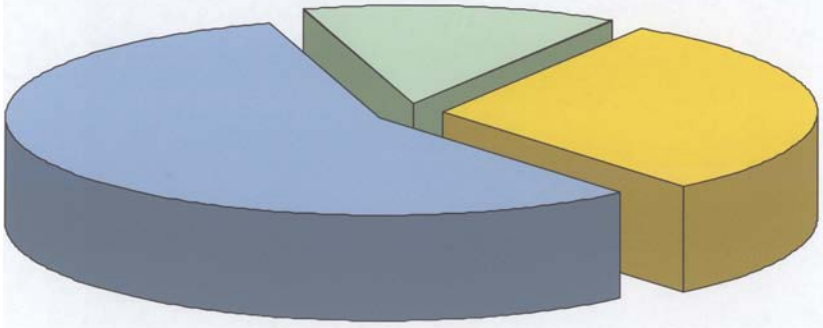
I am pleased with the results of our efforts thus far, but recognize that there is much more work to be done. MMS will continue to review and improve its royalty program. I have every confidence that MMS will successfully implement the Subcommittee on Royalty Management's recommendations which will assist MMS in ensuring that the American people receive a fair return from the important public resources the Department manages. I welcome your input on all of these initiatives, and we look forward to working with you.

Attachment #1
Royalty Policy Committee Report
Recommendations by Category

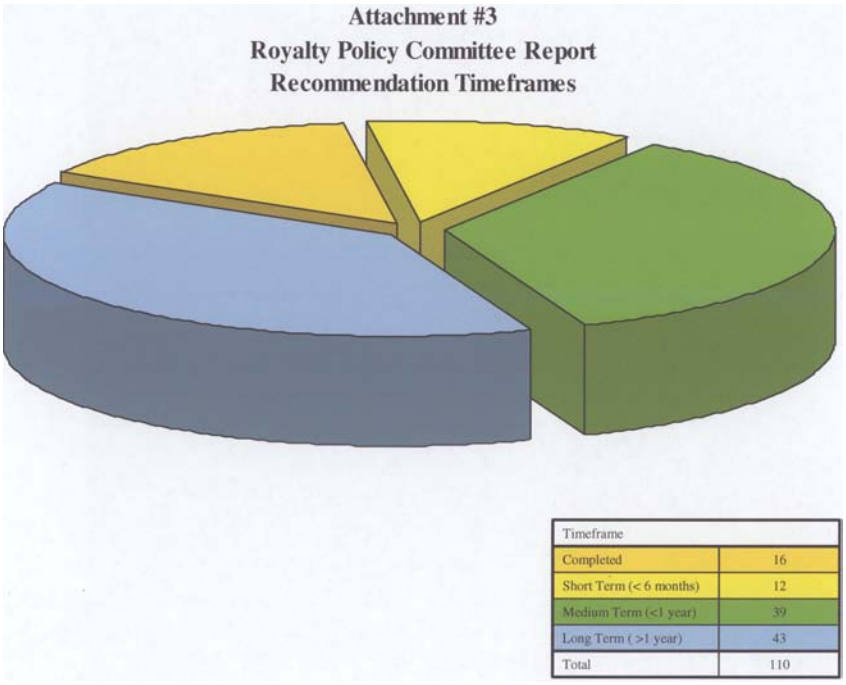


Recommendations by Category	
Collections and Production Accountability	35
Royalty In Kind	30
Audits, Compliance and Enforcement	27
Coordination, Communication, and Information Sharing	10
OCS Royalty Relief and Ethics	5
Legislative	3
Total	110

Attachment #2
Royalty Policy Committee Report
Recommendations by Bureau



Recommendations by Bureau	
MMS	73
BLM	15
Multi-Bureau Recommendations (MMS, BLM & BIA)	22
Total	110



Senator FEINSTEIN. Mr. Luthi, I know you made an effort to be here under trying circumstances. I want you to know it is very much appreciated. I think the subcommittee knows Mr. Luthi is the Director of the Minerals Management Service, so we're very pleased to have you here. Thank you.

STATEMENT OF RANDALL LUTHI, DIRECTOR, MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Mr. LUTHI. Thank you, Madam Chairman, and Senator Allard, and Senator Bennett. I am a native of Wyoming, an old legislator from Wyoming, and it's nice to have neighbors. I think—we'll see before the morning is over. I appreciate the opportunity to be here.

I've just passed the 7-month mark as the Director of MMS. You have your eyes opened as to what you read in the press. My predecessor, Johnnie Burton, was also from Wyoming. I knew her to some degree. I wished her well, and frankly, wished she was still Director of MMS.

Senator FEINSTEIN. That means the honeymoon is over.

Mr. LUTHI. The honeymoon is over, I fear. But one of the first things I did was try and get out and visit our people in the field. We have several regional offices, district offices, and I've just about completed that. In fact, last week I was in our Farmington, New Mexico office, which serves the Indian country very well in the Four Corners area.

ROYALTY POLICY SUBCOMMITTEE REPORT

I agree with the report that this subcommittee came up with. I believe we have the best people we can find to work on royalty

management. I believe they're dedicated to it. I believe they want to do the right thing. That's what I've found, and that's what I'm here to do, to try and make sure that they have the tools to do the right thing.

As you have mentioned, we do collect a lot of money. I think whenever you collect money, there is always the scrutiny that, "Maybe you could collect more money." As I said, I'm a legislator. I know what it's like when that check comes from the Federal Government. We always want to have more. But there's always ways we can improve the way we collect money, the way to improve the way we do business.

To get to the report's recommendations, as you've mentioned there are over 100. In fact, there are 110 recommendations. Most of them involve MMS, but they also involve the Bureau of Land Management and the Bureau of Indian Affairs, as well.

As of February 11, 16 of the 110 recommendations are already complete. That's a good start. But frankly, as you might guess, Madam Chairman, those are the easy ones. Those are the ones that we largely had underway while the report was ongoing, and therefore, we were able to wrap them up in a hurry.

Right now, 29 are currently in the process of being implemented. Those are ones that are requiring coordination between BLM and MMS. When you're in an agency for awhile, we get somewhat in our stove-piped bureaucracy, and that's one thing the subcommittee did so well to point out, "You have to open up. Make sure those communication lines are open between the various state agencies."

For example, the BLM gives us information about a lease. Based on that information is how we collect the royalties. The same is true of information from the BIA. We collect the money and we distribute the money. Often, particularly on the area of Indian allotees, we may have a lease that may have 30 or 40 different recipients, based upon the age of the lease and what's been done within that particular lease, to make sure we give that money to. We need to get it to them accurately, and we need to get them to them as quickly as possible.

What we've done is developed a Joint Action Plan. It involves all three Bureaus. The heads of all three Bureaus are involved, because we want to make sure this is completed upon our watch and we feel strongly about it. We have points of contact within every Bureau. We are monitoring it on a monthly basis, and we believe that we are going to be able to proceed and implement many of those evaluations.

Some of those recommendations, of course, we're going to talk about. Will they work? How do we make them work? A few of them could involve legislation. In that case, we wanted to take time and make sure we work closely with the Members of Congress to see if that's a good idea from your point, as well.

We've developed a tracking system. I've had two meetings on this since February 11, and it's interesting. It's exciting. I'd say it's exciting to have people call in or be at the meetings and say, "This is what we've got done. This is how we're going to do it. This is what we can do."

Basically, the recommendations focused in on a few areas, and I think they make sense, and it's to assure the accuracy of the proc-

ess, assure the communications of the process. It also asks to bring us into the modern world of technology. A lot of our reports have been, and some still are, largely on paper, and only on paper. In some instance, we've been collecting checks, which is almost unheard of in today's world, with electronic transfer of funds available now.

So what we will do is eventually—and we're almost there in many areas—have a better electronic system that, as reports come in, they will be better identified, if there could be errors, and we can deal directly with the companies, possibly as an electronic method. That's one of the things that they recommended.

The other area was the RIK, which we are moving to assure that we're getting the value that's necessary for that oil and gas, and that we're doing that program as efficiently as possible.

Just to sum up, Madam Chairman, RIK's actually been a very positive thing. We actually bring more money in than we do when we collect money from the Royalty in Value Program. But it's also a program that we need to keep an eye on, because it's a little different for government to be in that business.

With that, as the Assistant Secretary just nudged me, and reminded me that old politicians seldom can keep their comments under 5 minutes. But I am available for questions and would be glad to answer them.

Senator FEINSTEIN. Well, thank you very much, and you both did very well. It's appreciated.

1998/1999 LEASES

Mr. Allred, you will recall that I proposed legislation last year that would have required all companies that hold oil and gas leases without the requirement to pay royalties to either start paying voluntarily or be blocked from future leases.

I came within one vote of having that passed on the Appropriations Committee. You testified to this subcommittee last year that the Interior Department was opposed to that requirement. You told us that you were in the process of negotiating with the 39 companies, and that you'd already gotten six holding the 1998/1999 Deep Water leases to voluntarily pay royalties.

You have, in your opening comments, mentioned that no others have come forward and you didn't believe, or you don't believe, that others will come forward until the litigation is settled.

You indicated that you estimate that about $1.3 billion has been lost—or foregone, as you put it—by the end of 2007, and that that figure could grow to $10 billion by the time the leases expire.

Now, you also, I think—and this is what I wanted to clear up—mentioned that the *Kerr-McGee* or the *Anadarko* suit does not really go to your ability to charge royalties, if I understood you correctly. That some $20 billion is at stake in this case. You've mentioned that the intent to file an appeal has been made. This Senator believes that it is extraordinarily important that that appeal be carried out.

I also believe that the American people believe that royalty payments are appropriate, considering the nature of the waters and the lands. I guess what I want you to know is that I intend to per-

severe, and hopefully you do, as well. If I don't win this year, there will be next year. If I don't win next year, there'll be the year after.

ROYALTY POLICY SUBCOMMITTEE RECOMMENDATIONS

But I think that this is, to the extent that I've seen it, one of the largest sources of revenue for the Federal Government at a time when all these programs are really stressed for dollars. Now, my question really goes to asking you your Department's response on one of the recommendations of the Kerrey-Garn Commission, and that concerns the 30 percent of offshore natural gas royalties paid at the wellhead, 70 percent paid at the gas plant. MMS relies on the gas plant's efficiency data to determine these royalties. But the report recommends that MMS should establish a prioritized gas plant compliance review or audit schedule to examine gas plant efficiency. Will you follow that recommendation?

Mr. ALLRED. Madam Chairman, yes, we do. As you can imagine, the gas plants handle a lot more material than just that which we produce—these are gas plants on lines that handle all of the gas within the United States.

But it is our intention—and Mr. Luthi perhaps can talk more about it—to try to do that. That also relates to our Risk-Based Audit Program that we're implementing.

Senator FEINSTEIN. So the answer is "yes."

Mr. ALLRED. Yes. The answer is "yes."

Senator FEINSTEIN. All right. Let me go on. The report states on page 20 that, "MMS and BLM do not consistently request gas analysis reports to verify Btu values that are reported by oil and gas operators."

If these Bureaus are not verifying production, how can we be sure that the operators are paying the royalties that are due? What do you intend to do about it?

Mr. ALLRED. Madam Chairman, again, I'll refer to what Director Luthi is doing. But when we talk about the production, it's not of the quantity. It is of the quality of the gas. We need to do more of that. This is just one of the examples of where we need to fill in the kinds of things that we audit.

Senator FEINSTEIN. So if we follow up next year, you will have progress.

AUTOMATED BILLING

The report also says, on page 25, that "MMS computer systems are unable to automatically import volume statements from Federal onshore and offshore Gulf of Mexico gas producers."

Why is MMS still using manual data reporting with all the room for error that that includes?

Mr. ALLRED. Madam Chairman, I wish we had all of our systems up to what I think is state of the art. We're trying to get there, but it is a long process. As you have, I'm sure, observed in several budget requests, it requires dollars to do that. This committee has given us resources to do that, and we're trying to do that as quickly as possible.

With regard to this specific implementation of this specific recommendation, it's our intent to try to do all of these.

Senator FEINSTEIN. All right. Let me make clear that you have never made a request for funds of this subcommittee to carry out this mission. I've just been informed by the chief clerk. So I view it as an extraordinarily important mission.

Mr. ALLRED. Madam Chairman, we have both money in the 2008 and the 2009 request. It's characterized as to upgrade, for example, our ability to——

Senator ALLARD. Madam Chairman, may I add to this discussion at this point?

Senator FEINSTEIN. Certainly, go ahead.

Senator ALLARD. We have information that in the 2007/2009 budget, there was $1.7 million.

Senator FEINSTEIN. The majority says that's not right.

Senator ALLARD. Oh, it's not enough.

Senator FEINSTEIN. So what we need to do——

Senator ALLARD. It's not enough.

Senator FEINSTEIN. Or it's not enough.

Senator ALLARD. Oh, it's not enough. Okay.

Senator FEINSTEIN. Well, then I think we need to perhaps work together to try to get a fixed amount. If there is—because this should be a priority.

Mr. ALLRED. Yes, we agree.

Senator FEINSTEIN. If you agree, both sides will work with you to try to get it done, so that funding is adequate, to the extent we can.

Mr. ALLRED. Madam Chairman, we would appreciate that. I have a copy, which I'll be glad to give you, of what's in the 2008 and the 2009 budget request.

Senator FEINSTEIN. But is it true that this is the first time that you've asked for that money?

Mr. ALLRED. No. Madam Chairman, in the 2008 increases, there's $1.4 million for interactive payment reconciliation of billing, which is part of what you're talking about. There is $940,000 for adjustment line monitoring initiative, which again is part of what you're talking about. Now, that is not sufficient to do everything we ought to be doing.

In the 2009 budget request, there are increases of $1.7 million for the improved automated interest billing, and $2 million to implement compliance and audit recommendations of this case, the OIG, but those are also some of the recommendations that were in the subcommittee report.

Senator FEINSTEIN. So is it fair to say you have $3.7 million now, on hand, to carry this out?

Mr. ALLRED. Madam Chairman, in the 2009 request it's an increase of $3.7 million.

Senator FEINSTEIN. Well, if——

Mr. ALLRED. In the 2008 increases that you've given us, it's about $2.3 million for improved MRM systems.

Senator FEINSTEIN. So the money on hand is how much?

Mr. ALLRED. In the 2008 approved budget, it would be about $203 million—$2.3 million, excuse me.

Senator FEINSTEIN. $2.3 million?

Mr. ALLRED. $2.3 million.

Senator FEINSTEIN. Okay. All right. So we know where we are. Thank you very much. Senator Allard?

LEASE SALES

Senator ALLARD. You bet. Thank you, Madam Chairman. I want to follow up a little bit on the 1998/1999 leases, and I admire your tenacity, Madam Chairman, on this issue. But I do want to get one thing cleared up.

I'm told that in the bid, in October 3, 2007, on the Gulf of Mexico lease sale, that there were a number of companies that participated that would not be able to participate if we had the 1998/1999 group of companies embargoed, so they couldn't bid on future sales.

In that sale alone, the Government received $2.9 billion in high bids. I know that you testified at previous hearings of the potential loss to the Government if a producer were to challenge the statute and the Court were to enjoin future leases.

My question to you, do you have an estimate of what the Government could lose in reduced bonuses if the companies subject to the lease bar were not able to participate in future lease sales?

Mr. ALLRED. Mr. Chairman, Senator Allard, I don't have an estimate of that, but it would be a large amount of money. Even in the Chukchi sale, we were surprised by what the bonus bids here just last week. We estimated originally that it might be about less than $100 million and it ended up being two point——

Senator FEINSTEIN. Six.

Senator ALLARD. Six.

Mr. Allred [continuing]. $2.6 billion, just in the bonus bids.

Senator ALLARD. Can you get us some kind of an estimate for the subcommittee?

Mr. ALLRED. Sir, we will try. We'll get you an estimate. I don't know how good it will be.

Senator FEINSTEIN. The names of the companies, please.

Senator ALLARD. Yeah, that's the next question I was going to have. If we could have the names of the companies, of the six companies that are participating in the sale, I think would be helpful on that.

Senator FEINSTEIN. Yes. But the six companies that you refer to here——

Senator ALLARD. Yeah. Well——

Senator Feinstein [continuing]. That won't bid, I would be curious——

Senator ALLARD. Oh, okay. Yeah. Okay. That's another six companies.

Senator FEINSTEIN. Yes.

[The information follows:]

LOSSES FROM BARRING COMPANIES

Although there is considerable uncertainty in trying to predict bidder behavior, as evidenced by the unexpectedly large bonus bids received in recent lease sales, the government's losses from barring certain companies from bidding in future sales could be substantial. If realized, the proportional losses would likely vary through time and across OCS regions.

The composition of the barred companies will change over the next few years as leases expire upon reaching the end of their 10-year primary terms in 2008 and 2009. A recent count identified 44 companies, as listed on the original enclosure, which could be subject to being barred. We estimate this number would be reduced

to about 28 companies by the time all of the 1998 and 1999 leases reach the end of their primary terms, around the beginning of fiscal year 2010, leaving only leases in development or in production still active.

We analyzed the results of central Gulf of Mexico Sale 205, held in October, 2007, under two scenarios to obtain a future baseline. The first scenario assumed that the 44 companies noted above were barred from bidding, while the second scenario assumed that the reduced set of 28 companies was barred. In both cases, we stipulated that: (1) bidding by other companies would not have changed in the presence of certain companies being barred, (2) in the case of a multiple bid tract with the high bid submitted by a barred company, the revised hypothetical high bid would be the next highest bid submitted by a non-barred company, and (3) in the case of a joint high bid involving one or more barred companies, the high winning bid would have remained the same as long as the barred companies' share of the joint bid was less than 50 percent; otherwise, the bid would not have been made.

We found that under these assumptions, the sum of the resulting high bids in Sale 205 would have fallen by 51.5 percent if the 44 companies had been barred and by 29.6 percent if the identified reduced set of 28 companies had been barred. We then applied the proportional losses in high bids for the 44 company case to the next three Gulf of Mexico sales beginning with the western Gulf of Mexico sale in August, 2008, and applied the proportional losses in high bids for the 28 company case to the subsequent six Gulf of Mexico sales ending with the western Gulf of Mexico sale in August, 2012.

We previously estimated for the President's budget that absent any Congressional action to bar companies, the sum of the high bids in these nine sales would amount to $2.7 billion. Our analysis showed that in the presence of Congressional action barring certain companies from bidding in future sales, the sum of the high bids would be reduced by $1.1 billion, equal to 40 percent.

In contrast, barring the same set of companies from offshore sales in Alaska would appear to have a far more modest effect on bidding results. For example, in the Chukchi sale 193, which had high bids of $2.6 billion, the direct losses from barring the same set of 44 companies would only have been $30 million, or slightly more than one percent of the high bids.

It is reasonable to think that the effects on bonus bids from barring companies could be even greater than estimated here. For one thing, the remaining bidders may well lower their bids in the expectation of less competition. For another, when we analyze the four Gulf of Mexico sales held prior to Sale 205 in the scenario where 44 companies are barred, the results show losses of about 60 percent, instead of losses around 50 percent (actually, 51.5 percent) that we found in Sale 205. Finally, the specification of the 28 company case reflects a limited assessment of leases that will be held beyond their primary terms—more leases will likely be held, but their identity and the lease owners cannot be currently determined. So, for those reasons, we believe the $1 billion loss over the next 5 years calculated here is a conservative estimate of the adverse fiscal effects from Congressional restrictions on bidding and competition in future OCS sales.

STATUS OF 1998/1999 ROYALTY RATE RELIEF NEGOTIATIONS

COMPANIES WITH SIGNED AGREEMENTS [1]

BP Exploration & Production Inc.; Conoco Phillips & Burlington Resources Offshore, Inc.; Marathon; ShelI; Walter Hydrocarbons; and Walter Oil & Gas.

COMPANIES WITHOUT SIGNED AGREEMENTS [2]

Anadarko-Kerr-McGee Oil & Gas; ATP Oil & Gas Corporation; BHP Billiton; Callon Petroleum Operating Company; Challenger Minerals Inc.; Chevron U.S.A./ Union Oil; Cobalt International Energy, L.P.; Devon Energy Production Company; El Paso E&P Company, L.P.; Energy Partners, Ltd; Energy Resource Technology; Energy XXI GOM, LLC; Eni Petroleum; EOG Resources, Inc.; Explore Louisiana LLC; Exxon Mobil Corporation; HE&D Offshore, L.P.; Hess Corporation; LLOG Exploration Offshore; Maersk Oil Gulf of Mexico Two LLC; Mariner Energy, Inc.; Marubeni Oil & Gas (USA) Inc.; Maxus (U.S.) Exploration; MitEnergy Upstream LLC; Murphy Exploration & Production; Newfield; Nexen Petroleum Offshore; Nippon Oil Exploration; Noble Drilling Exploration; Noble Energy, Inc.; OXY USA Inc.; PALACE EXPLORATION; Petrobras America Inc.; Plains Exploration & Production; Red Willow Offshore, LLC; Repsol E&P USA Inc.; Samson Offshore Com-

[1] Agreement signed December 2006.
[2] List of companies holding interests in subject leases as of January 2008.

pany; Statoil/Hydro; Stephens Production Company, LLC; Tana Exploration Company LLC; Teikoku Oil (North America) Co., Ltd.; TOTAL E&P USA, INC.; W&T Offshore, Inc.; and Woodside Energy (USA) Inc.

KERR-MC GEE LITIGATION

Senator ALLARD. Okay, very good. All right. That'd be good.

All right, now, while this case is being appealed, and this is the—I'm going to go to the *Kerr-McGee* litigation now—while this case is being appealed is there anything the Department can do to encourage more companies to participate to the table and pay royalties on the 1998/1999 leases?

Mr. ALLRED. Mr. Chairman, Senator Allard, there are in-force contracts that we have written, and we are doing that against those companies who did sign contracts that might be affected by the *Kerr-McGee*.

But in the case of the 1998/1999 lease issue, when those contracts were signed, they did not include that provision. So we have little ability to enforce against anyone with that issue. We continue to talk with these people, but it's not very serious. They're not serious about it until such time as, I think, as this issue is resolved by both the Courts and, to some extent, by Congress.

Senator ALLARD. So on the *Kerr-McGee* litigation, the companies that are holding leases in 1996, 1997, and 2000, what is happening to them? Have they indicated they're not going to continue to pay?

Mr. ALLRED. Madam Chairman, Senator Allard, for the most part, they are paying. The ones that are involved in the specific litigation, that have challenged the rulings—and that's just a few of them—I don't believe are paying, but we are enforcing against them.

Now, we probably won't be able to resolve that until the underlying case is resolved.

Senator ALLARD. Okay. As you know, there have been legislative efforts to force those oil companies to negotiate their contracts. Can you give us a better idea of what the impact of any future legislators would likely have on those, while the *Kerr-McGee* case remains on appeal?

Mr. ALLRED. Madam Chairman, Senator Allard, we're not opposed to congressional action at all. As I cautioned the committee, and have done so with others, is we have to be careful that there are not unintended consequences to what we do. I think we have to be good business partners. There are some contract sanctity questions that are extremely important.

Because if we don't, they will be litigated. If these sales are in any way impeded, then you face the loss to the Federal Treasury of not only the royalty revenues, but also the bonus bids, which is huge. More importantly, if we don't go forward, you'll see a big impact upon our energy security.

Senator ALLARD. Now, you still have to make a final decision whether you're going to appeal this decision. Is that correct?

Mr. ALLRED. Senator Allard, I believe we have to appeal it. The Department of Justice has filed a Notice of Appeal. The Department of the Interior can't make that final decision. It's made by the Solicitor General of the Department of Justice. I think they clearly understand the need to appeal this.

Senator ALLARD. Okay. So let's just suppose that there is an effort to appeal, and then the United States loses that appeal. What sort of congressional remedies do you see in this particular case? Are there any remedies that the Government can take? This is on *Kerr-McGee* litigation.

Mr. ALLRED. Senator, probably—I'm not sure I could identify a path forward, because I don't know what the Courts are going to say and I would not expect that the Courts are going to be black or white. They're going to have some dictum that will give us guidance as to what could be done or could not be done.

As much as I dislike being in this hiatus, as you can probably tell, I don't like not being able to do things. I'm not sure that we know what to do until the Courts finally make a decision. What I'm hoping, obviously, is the Courts say that those two provisions have to be read together, in which case the contracts that we signed are enforceable.

Senator ALLARD. Okay. Now, I want to wrap this up, Madam Chairman. On the 1998/1999 leases, those six companies we had there, can you share those names of those companies with us that had those contracts?

Mr. ALLRED. Yes. Madam Chairman, Senator, the companies that signed were BP Exploration and Production, Conoco Phillips and Burlington Resources Offshore, Marathon, Shell, Walter Hydrocarbons, and Walter Oil & Gas.

Then, I also have—I won't read them—but I also have the list of all of the companies that did not sign, and many of those companies are current bidders in these offshore leases.

Senator ALLARD. We'd appreciate if you'd share that.

Senator FEINSTEIN. Yes. We could have a list sent to the subcommittee——

Senator ALLARD. Yeah.

Senator Feinstein [continuing]. Of all that. That would be——

Senator ALLARD. Yeah.

[The information follows:]

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[1] Agreement signed December 2006.
[2] List of companies holding interests in subject leases as of January 2008.

pany LLC; Teikoku Oil (North America) Co., Ltd.; TOTAL E&P USA, INC.; W&T Offshore, Inc.; and Woodside Energy (USA) Inc.

Senator FEINSTEIN. Thank you very much, Senator. The rollcall vote has just begun. It will go on for 20 minutes. I think we should give Senator Bennett an opportunity, and then wrap this up in, say, about——

Senator BENNETT. I will——

Senator Feinstein [continuing]. 10 minutes.

PROCESSING FEE

Senator BENNETT. I will be very quick, Madam Chairman. You know, the 2009 budget calls for a $4,150 processing fee for each new oil and gas drilling permit application. That sounds fairly benign, except that the BLM already passes on to the industry the costs of archeological surveys, wildlife studies, and preparing third-party NEPA documents.

So this is an additional cost on—not a new cost in a vacuum, but an additional cost on a pile of costs that are already there. The budget request directs that the $4,150 fee go into "service charges, deposits, and forfeitures account."

My question is how these funds are going to be used. Will they be used to increase staff to meet the workloads? In which case, I think some people will say, "Well, as big a problem as it is to get things moving more rapidly, we're willing to pay it." Or will they simply go to the General Fund of the Treasury?

Mr. ALLRED. If I could, Madam Chairman, Senator Bennett, if I could just ask the question of my budget people. I'm not familiar with that.

Senator BENNETT. You can supply that for the record, if you don't have it currently here.

Mr. ALLRED. Okay. Just a quick note she passed me, is they do support the processing of the APDs, and I know that within the BLM's budget there are some increases in the leasing program.

Senator BENNETT. You understand how strongly we hope that that is where it goes. Thank you, Madam Chairman.

Mr. ALLRED. I might say that we'll shortly deliver to you a progress report on the pilot offices, and very happily, I think it shows a lot of progress.

ROYALTY POLICY SUBCOMMITTEE TRUST FUND

Senator FEINSTEIN. Thank you very much. If I may quickly, the report, as you know, has two recommendations that are of particular interest, because they would require legislative action.

One of those is to establish a trust fund for royalty and rental receipts, which could earn interest to help offset the cost of the Royalty Program. Would you support that Mr. Allred?

Mr. ALLRED. Madam Chairman, I would say that that's something that we've got to look at. There are a number of these items that we've really got to look to see what the impact of it is. Not only of the Department of the Interior and MMS, but——

Senator FEINSTEIN. Could you do so——

Mr. ALLRED. We will do so.

DEBT COLLECTION IMPROVEMENT ACT

Senator Feinstein [continuing]. And let us know on that point? The other one would be the compliance with the Debt Collection Improvement Act of 1996. Apparently, the Inspector General reported in 2006 that MMS was not in compliance with the act, because the agency failed to identify delinquent receivables to the Treasury in a timely manner.

That's of great concern to me. So I would like some assurances that the agency is now in compliance with the Law in this regard.

Mr. LUTHI. Madam Chairman, if I might—and I apologize for sitting here probably more silent than I should, but I wanted to take advantage of the honeymoon.

We are in compliance. If memory serves me correctly, that's a pretty short timeframe when once we know the debt has not been paid and when we report it, too. I believe it's 90 days. And that's one of the things that we have improved through the automated process, is being able to identify those earlier and turn those over to the Department of the Treasury.

The 2006 report? I will verify this, but my memory is, since I've looked into this, is we are compliant with that.

Senator FEINSTEIN. If you would, it is the Inspector General's report of 2006. If you would please respond to us in writing, I would appreciate that very much.

Mr. LUTHI. Absolutely, Madam Chairman.

[The information follows:]

CLOSURE OF AUDIT RECOMMENDATIONS

As of June 30, 2007, the Minerals Management Service (MMS) has implemented Noncompliance C, relating to Debt Referral to Treasury to close an audit recommendation. This item relates to the fiscal year 2006 and fiscal year 2005 audits of the MMS financial statements conducted by KPMG and coordinated by the Office of the Inspector General (OIG).

A summary of the finding, recommendation, and the MMS implementation follow:

NONCOMPLIANCE C, FINDING: DEBT COLLECTION IMPROVEMENT ACT OF 1996

The MMS did not properly identify delinquent receivables for referral to the U.S. Department of the Treasury (Treasury) for collection or offset in a timely manner.

RECOMMENDATION

Establish a process to ensure eligible receivables are referred to the Treasury in a timely manner.

IMPLEMENTATION OF RECOMMENDATION

To address the recommendation, the MMS established a process described as follows:

—The MMS started mailing Statements of Account (SOA) to all payors. These SOAs listed all open items (royalties, payments, invoices) that were on record for the payor and instructed the payors to cooperate with MMS to clear these open items. SOAs were mailed in April 2006, October 2006, February 2007, and June 2007. The plan is to try to send out SOAs three-four times a year and eventually make them available on-line so that industry could view open items daily.

—MRM Financial Services employees have been notified each time SOAs will be issued, are given regular progress reports, can see daily statistics in the system, and have performance standards that reflect the need to reduce open balances. By attempting to become current with open items, fewer open items are becoming old enough to have to be referred to Treasury.

—Part of the SOA effort is a daily status report that is available to all employees. Employees were informed of the new reports, have requested and received addi-

tional reports to help them in their work, and they use these reports daily to track their progress. These reports provide a great deal of data including the open items by each employee along with the open items greater than 120 days old and 180 days old. Employees have been repeatedly reminded of the need to reduce open items and refer all debt to Treasury that can not be resolved.

—Debt Collection steps were streamlined in order to meet the 180 day deadline. Timelines were shortened—the demand to payor letters now go out 15 or 35 days after the receipt of a royalty document or creation of an invoice, respectively; Federal demands to lessees happens 15 days after that; thus the referral to Office of Enforcement (OE) is done early enough to allow OE time to make the referral to Treasury.

—The MMS continually monitors the progress of this effort and makes adjustments as needed. A recent adjustment was a change to have Supervisors and Managers of Financial Management (FM) certify that debt is ready for referral to Treasury, which eliminated the need for the OE to do several verifications on their own. Since OE is the group that does the actual referral to Treasury, this change speeds up their process and thus helps meet the 180 day timeframe.

Senator FEINSTEIN. Thank you. Senator, do you have any other questions?

Senator ALLARD. I have one request, I guess, Madam Chairman. We've run out of time here. I have a number of questions I'd like to pursue, and I'd like to submit those——

Senator FEINSTEIN. In writing.

Senator Allard [contining]. In writing.

Senator FEINSTEIN. I will, as well. Good.

Senator ALLARD. You will, too. Okay. Then, the time expected back in response in that, ordinarily in this subcommittee, is that—what time do we give those to respond back? Ten days?

Senator FEINSTEIN. Maximum 3 weeks. That's a lot of time.

Senator ALLARD. Yeah. I was thinking, the other subcommittee had 10, but 3 weeks is, I would think, would be enough for you.

Mr. ALLRED. It's a pleasure to be here.

Mr. LUTHI. Steve and I thought about sitting here and asking each other questions, since you're leaving. We think we could answer them, but we probably won't.

ADDITIONAL COMMITTEE QUESTIONS

Senator FEINSTEIN. In any event, we will submit some questions to you in writing. Once again, let me say thank you very much for making the effort this morning. It really is appreciated. Thank you.

[The following questions were not asked at the hearing, but were subcommittee to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

1998–1999 DEEPWATER OCS LEASES

Question. It is disappointing that all but six of the companies holding leases without price thresholds have declined to pay royalties to the United States for the privilege of drilling for oil and gas in U.S. waters. I believe these companies are fully aware that their profits are costing the United States $10 billion and that they should come forward on a voluntary basis. Since the companies are not volunteering to do the right thing, I am considering a provision for the 2009 appropriation that will bar companies holding the 1998–1999 leases from bidding on future lease sales unless they pay royalties.

Mr. Allred you have stated that there likely would be litigation brought by these companies that could result in a temporary court-ordered injunction against lease sales. I find this scenario to be somewhat implausible. This would be like killing the goose that laid the golden egg.

Has the Department considered the possibility that preventing those companies from bidding on future leases might not make litigation more likely and might bring them to the table instead?

Answer. While the proposal could cause some companies to come to the table, it would only take one company to file a lawsuit. We believe there would be such a challenge.

Question. Wouldn't it be in a company's own best long-term interest to pay the royalties on the 1998–1999 leases instead of losing out on the chance for future leases?

Answer. Companies may choose to challenge the provision in court, and if they prevail, they would be able to retain the money and acquire new leases.

Question. The Kerrey-Garn mineral revenue collection report included the recommendation that, "The Department of the Interior should continue its efforts to pursue voluntary royalty payment agreements with holders of the 1998 and 1999 leases without price thresholds." Mr. Allred, you have testified that the lease-holding companies are waiting for the outcome of the *Kerr-McGee* case. You further testified that the Department expects the District Court decision to be overturned.

How many companies do you expect to begin paying royalties voluntarily when the court rules as you expect it to?

Answer. We remain open to discussing resolution of this issue with the companies that hold Deep Water Royalty Relief Act leases from sales held in 1998 and 1999. Given the impact that the District Court's ruling on *Kerr-McGee* could have on the ability of the government to impose price thresholds for leases from 1996 through 2000, it is not surprising that companies are waiting to see how this is resolved before continuing any negotiations on the 1998 and 1999 leases. Indeed, if this ruling stands the price-threshold issue for the 1998/1999 leases becomes moot. It seems doubtful that any additional lessees will agree to price thresholds until the *Kerr-McGee* case is finally resolved.

Question. Are you prepared to sign agreements with those companies promptly after the *Kerr-McGee* case is decided?

Answer. We are prepared to sign agreements with any company that is willing to do so.

ROYALTY REVENUE REPORT

Question. I would like to follow up on some of recommendations from the Kerrey-Garn Report.

As you mentioned earlier, the MMS budgets in 2008 and 2009 included requests for funds to modernize and automate the bureau's reporting and verification systems. I support this effort and want assurances that the Department is getting these systems in place and online expeditiously.

Does the 2009 budget request include all of the funding necessary to complete these systems?

Answer. Funding requested in the fiscal year 2009 budget request addresses two modules of the Minerals Revenue Management Support System (MRMSS), which supports MRM collection and compliance business processes. The budget request includes $1.7 million to fully fund enhancements related the Automated Interest Billing module. It also provides $2.0 million to fully fund development and implement a risk-based automated compliance tool and add four FTE in the audit program.

Implemented in fiscal year 2002, the MRMSS will continue to require ongoing enhancements and upgrades throughout its life cycle to expand capabilities as technologies change, ensure its greatest efficiency, and address new and changing business requirements.

Question. Will you please provide for the record a table that shows the expected annual costs to develop and implement these systems? Please include any past costs and future cost estimates.

Answer. As stated above, the MRMSS is a comprehensive information technology solution that supports all MRM collection, disbursement, and compliance business processes. The table below is included in the MRMSS capital planning report which is mandated by the Office of Management and Budget to track large information technology investments. MRMSS fiscal year costs from inception through fiscal year 2007 are actuals; fiscal year 2008 through 2013 costs represent estimates and include funding for the two modules requested in fiscal year 2009.

MINERALS REVENUE MANAGEMENT SUPPORT SYSTEM—SYSTEM DEVELOPMENT LIFECYCLE COSTS BY FISCAL YEAR

[In millions of dollars]

	Fiscal year								Total
	1999–2006	2007	2008	2009	2010 [1]	2011	2012	2013	
Planning	.....	.....	.....	.....	.....	.....	.....	.....	.....
Acquisition	54.014	0.75	1.87	2.8	.....	.....	.....	.....	59.434
Operations & Maintenance	45.875	15.138	15.138	18.19	18.79	18.19	18.79	18.19	168.301
Total	99.889	15.888	17.008	20.99	18.79	18.19	18.79	18.19	227.735

[1] Estimates for fiscal year 2010 and beyond are for planning purposes only and do not represent budget decisions.

Question. Would you please tell me specifically what you plan to do to enable the Minerals Management Service and the Bureau of Land Management to consistently verify production reported by operators?

Answer. MMS and BLM plan to ensure the accuracy and completeness of production data by:

—Eliminating the inventory of missing Oil and Gas Operating Report (OGOR) exceptions by the end of 2008,

—Improving timeliness by making 95 percent of production data available within 3 months of the production month (an improvement from 5 months) by the end of 2009,

—Reconciling well data maintained by MMS to well data maintained by BLM,

—Moving from error correction to error prevention by increasing the number of edits or checks, placed at our electronic reporting service provider, that reject inaccurate reports submitted by companies before the reports even get to MMS,

—Increasing use of Orders and Notices of Non-compliance (NONC's) to enforce compliance,

—Exploring the possibility of the use of technology for reporting of production (i.e. remote data acquisition), and

—Continually improving communication between MMS and BLM.

These steps will enable MMS and BLM to have accurate and timely data that can be used to conduct inspections or conduct other compliance verification steps.

Question. The Kerrey-Garn report also recommended that: "The Department of the Interior should continue to explore legislative options, which could address the loss of royalties without violating legitimately signed contracts." You have had almost a year to study my provision, which I intend to reintroduce this year, and develop other legislative proposals as substitutes or amendments to mine.

How would you propose to change my amendment so that ensures royalties are collected without violating legitimately signed contracts?

Answer. Under your proposed amendment, companies holding DWRRA leases without price thresholds that do not renegotiate the terms of their signed lease would not be able to participate in new lease sales 1 year after the enactment of this provision. This would give lessees an incentive to litigate. If both the lessees and the government were forced to devote considerable time and resources to protracted litigation to resolve lessees' challenges to a new statutory provision, it could frustrate the goals of increasing domestic energy supply and raising additional revenue to the U.S. Treasury from new leasing activity. Any legislative proposal that is developed should mitigate these potential problems.

The report recommends that the onshore RIK program be discontinued. The Department has been vigorously promoting the RIK program for the past several years.

Question. How would discontinuation of the onshore RIK program impact the Department's ability to collect royalties that are due to the United States?

Answer. The RPC only recommended discontinuing the onshore RIK oil program. MMS does not believe this will have any impact on the Department's ability to collect royalties that are due to the Government. In fact, MMS discontinued the onshore oil RIK program effective April 1, 2006. Existence of both the royalty-in-value (RIV) and RIK options presents the MMS with a unique opportunity to actively manage the royalty asset stream and optimize the efficiency and effectiveness of its royalty management process. The use of RIK is simply an alternate method of collecting royalties and MMS forfeits no rights or collection authority if RIK were no longer employed.

Question. What is the agency's response to the recommendation to discontinue the onshore RIK program?

Answer. As indicated above, MMS discontinued the onshore RIK oil program with the last production taken in kind at the end of March 2006. While we believe this program met our revenue objectives during the period it operated, it was determined that switching the onshore RIK oil program to RIV (cash) collection at that time was advantageous due primarily to decreasing oil production levels and not performance of the RIK oil program. The ability to change our mode of collection between RIK and RIV as market conditions change—thereby ensuring a better return for the public—is a core feature of the MMS asset management program.

Question. The report includes 110 recommendations for mineral revenue collection improvements. I recognize that the Department will need time to implement all of them, but I need to know that you are actively addressing the recommendations. I ask that you send quarterly progress reports to the Appropriations Committee so that we may monitor agency progress. In the short-term, it is important to know if the Department disagrees with any of the recommendations.

Will you please provide for the record a list of recommendations that the Department either or opposes or about which it has serious reservations?

Answer. We are unable at this time to provide you a list of recommendations that the Department opposes or has serious reservations regarding implementation. The Department has developed a working draft of a joint Action Plan to implement the Report's recommendations. The plan identifies the responsible Bureau, estimated timeframes for completion and status for each of the remaining 94 recommendations. The plan identifies the need for any intermediate tasks such as studies to determine the feasibility of implementing a particular recommendation. The appropriate subject matter experts will be assigned to conduct these feasibility studies. Once this important analysis work is completed, we will inform you if we have serious reservations about implementing any of the remaining recommendations.

Question. The Subcommittee on Royalty Management report from Senators Kerrey and Garn states "that the MMS is an effective steward of the Minerals Revenue Management program and that MMS employees are genuinely concerned with fostering continued program improvements".

Can you tell us about some of these improvements that MMS has made over the years?

Answer. MRM achieved several key program improvements over the years, including:

—Reengineered business processes and computer systems, resulting in several improvements and efficiencies. One significant result of reengineering was reducing the 6-year compliance cycle to a 3-year cycle. More timely audits correspond with ultimate recipients receiving assurance sooner that all revenues due are paid. During this period, MRM focused primarily on revenue coverage—conducting compliance reviews on companies with the highest volumes. MMS is now in the process of expanding to a more dynamic risk-based compliance approach to include coverage of a greater number of companies and properties.

—Revised oil and gas valuation rules to provide greater certainty and reduce administrative costs to both lessors and lessees, making Federal leases more attractive for development and leasing. Amended valuation rules include: Indian Gas Valuation Rule, published 1999; Federal Oil Valuation Rule, published in 2004; Federal Gas Valuation Rule, published in 2005; and Indian Oil Valuation Rule, published in 2007. These rules promoted greater use of market index prices for determining value and clarified what costs could, and could not be taken as deductions.

—Implemented comprehensive Audit Quality Improvement Action Plan to improve MRM's compliance and audit activities and related internal controls. Following implementation in 2005, an independent CPA firm issued MRM a clean opinion regarding MRM audit functions, with no material weaknesses and no reportable conditions.

—Redirected and retrained staff resources to build a fully-operational Royalty In Kind (RIK) program, resulting in reduced administrative costs, reduced disputes on royalty valuation and, we believe, increased revenues to the Treasury, states, and special purpose funds.

—Increased electronic reporting of royalty and production report lines significantly—from 79.9 percent electronic at the beginning of fiscal year 2002 to 97 percent electronic by the end of fiscal year 2007—by publishing regulations requiring electronic reporting and working closely with companies to assist them in making the transition from paper to electronic reporting. Over the same time period, we noted a substantial increase in royalty reporting accuracy—from 86 percent accurate in fiscal year 2002 to 96.3 percent accurate in fiscal year 2007.

Accurate reporting increases our timeliness in disbursing funds to State, Tribal, and U.S. Treasury recipients, and we have seen a corresponding increase in disbursement timeliness—from 80 percent timely in fiscal year 2002 to 96.3 percent timely in fiscal year 2007. Timeliness is defined by statute as disbursing funds by the last business day of the month following the month when MMS receives the payment and reporting.

—Established a dedicated Project Management Office (PMO) to ensure the appropriate establishment and tracking of MRM project schedules and to facilitate management oversight of the projects. MRM has proactively pursued the development of critical project management expertise and now has 10 certified Project Management Professionals (PMPs).

—Initiated and completed a Statistical Reporting Project designed to improve the quality and integrity of the MRM external reporting process related to revenues and disbursements. It is essential that MRM provide the Congress and other external customers with mineral lease and revenue statistics that are meaningful and responsive to their needs. The timely and accurate collection and reporting of this statistical information is mission critical and bears directly on the public image of our program.

—Implemented improvements and updated procedures for MRM's Alternative Dispute Resolution (ADR). The ADR Act of 1990 and RSFA provide the authority for MMS to negotiate settlements of mineral revenue payments without going through extensive and costly adjudication and litigation processes. The MRM effectively utilizes ADR to resolve certain past period disputes as well as enter into agreements defining methodologies to be used to calculate and pay future royalty payments. Benefits include reduced time necessary to resolve disputes, avoidance of costly litigation, increased certainty both for past and future royalty payments, and a proper return to the Government for its mineral assets.

—MRM completed an Enterprise-Wide Risk Management initiative in fiscal year 2005 and implemented a follow-up action plan to mitigate risks and enhance internal controls. As part of this initiative, MRM evaluated its processes against the control elements and risk principles of the Council on Sponsoring Organizations of the Treadway Committee, a recognized, leading authority in the internal control and risk management field. Additionally, in response to the annual OMB Circular A–123 requirements, Management's Responsibility for Internal Controls and the CFO Councils Implementation Guide, MRM began in fiscal year 2005 to conduct ongoing program-wide evaluations of the internal controls over operations and financial reporting. Based on the results of these evaluations, MMS provided reasonable assurance that the internal controls over program operations were suitably designed and operating effectively as of September 30, 2007. No material weaknesses were found in the design or operation of the internal controls over program operations or financial reporting. During fiscal year 2008, MRM will continue these evaluations and implement changes identified in updated DOI guidance.

—Consistently received clean audit opinions on the annual Chief Financial Officers audit of MRM custodial statements, performed by an independent auditor(KPMG) under contract to the Office of the Inspector General. It should be noted that in fiscal year 2007, the MMS received a clean audit opinion. Furthermore, KPMG reviewed MMS's progress in OMB Circular A–123 compliance and found that MMS had a robust system of internal controls and that MMS provided reasonable assurance that the internal controls over financial reporting were suitably designed and operating effectively.

Question. Can you tell us whether any of these improvements have led to the collection of additional revenues, or addressed ethical issues surrounding employees who work directly with the oil/gas companies?

Answer. We believe the Royalty In Kind (RIK) program has resulted in increased revenues. Cumulatively, for fiscal year 2004 through fiscal year 2006, RIK estimated net return has been $87 million. In 2006, sales of royalty oil and gas through MMS's RIK program are estimated to have increased net return to the government by $31.1 million above what would have been received if the government had taken the oil and gas royalties in value, or as cash payments (RIV). The 2006 result of $31.1 million is a combined total of the following:

—$26.2 million increased RIK incremental net revenue (additional revenues that would not have been generated under RIV),

—$2.6 million incremental time value of money benefit (positive time value of money by collecting RIK revenues within 25 days rather than 30 days for in-value royalties), and

—$2.3 million cost avoidance by collecting offshore oil and gas royalties in kind (RIK) rather than in value (RIV).

Results for fiscal year 2007 will be available in early summer 2008.

In addition, our audit and compliance review business processes have resulted in additional revenues. The total amount collected from audits and compliance reviews for fiscal year 2005–2007 was $373.2 million. However, it is important to note that MMS expects to see a general and gradual decline in compliance collections year to year as companies increase their voluntary compliance. This is not a reflection of reduced rigor of the compliance program, but rather an indication that the deterrent effect is working. Some of the major reasons for improved compliance are as follows: clearer regulations; Royalty in Kind providing greater up-front price certainty; and more effective compliance strategies based on the new risk-based compliance approach (using both audits and compliance reviews).

MMS policy requires that all employees receive Ethics Training on an annual basis. The training is presented in various formats to include written materials and on-line instruction. During 2007 the Associate Director for Administration and Budget along with the MMS Ethics Staff and representatives from the Procurement and Information Technology functions provided on-site, instructor led training at all of MMS' primary geographic locations. The training included topics such as: Executive Order 12731; Federal Criminal Ethics Laws; Gifts from Outside Sources; Outside Work and Activity; Working with Contractors; Post Employment Restrictions; and Impartiality Guidelines.

The MMS Training Plan for 2008 includes the review of the recently published Ethics Guide for Department of the Interior Employees. The Ethics Guide is presented in the format of a 4 inch by 6 inch in color, glossy print, tabbed, pocket guide which is to be used as a convenient reference for employees when performing their day to day assignments. In addition, a separate training session is being planned for the employees of the Royalty in Kind Division. This Ethics training will specifically address the RIK Program by providing a greater focus on issues that are the most critical to their unique function. These topics will include key topics such as: interactions between the public and private sector, use of official and/or proprietary data, prohibitions concerning the use of public office for private gain and the receipt of gifts from prohibited sources. The RIK staff will be asked to provide real life examples of the ethical dilemmas which they most often face. These examples will be used to develop case scenarios to be included as integral part of the training presented to the RIK Team.

Question. Throughout the Subcommittee on Royalty Management's report it is stated that as a revenue generator for the U.S. Treasury the MMS should be given the resources needed to carry out an effective royalty management program. One of the Subcommittee's recommendations is to study the feasibility of setting up a "trust fund" within the Treasury to fund DOI activities.

Do you see any advantages to this funding approach?

Answer. We believe this type of funding approach could have advantages and disadvantages, so we would need to evaluate it further before taking a position. As the RPC Subcommittee report indicates, this change would require legislation. We will work with other relevant Federal agencies and offices in evaluating these options before we make any decision as to how to address this recommendation.

Question. Do you believe that the MMS currently has adequate resources to effectively collect all the royalties that are owed?

Answer. We do believe that MMS largely has the resources necessary to ensure that the agency can effectively collect the royalties that are owed to the Government. To address additional needs that have been identified, the fiscal year 2009 Budget proposes $3.7 million in targeted program increases to facilitate the shift toward a risk-based compliance program and to fully automate the interest billing process.

However, it is also important to recognize that MMS has taken a variety of steps to improve the efficiency and effectiveness of its royalty collections program in recent years. MMS has gained efficiencies through:

—Revised valuation regulations for Indian gas, Federal oil, and most recently Indian oil. These revisions simplified the complexities of determining the value of production, thereby reducing the workload associated with auditing the payment of royalties.

—The growth of the Royalty-in-Kind program since 2001 has reduced the compliance workload because significant volumes of production are now taken in kind and sold by MMS. (Hence, most valuation and allowance issues associated with royalty payments are not a factor.)

—Reengineered compliance processes and more efficient methods to augment the traditional audit approach enabling us to provide broader coverage with fewer resources. The Office of Inspector General concluded in their report that "Compliance reviews can serve a useful role as part of the Minerals Management

Service's Compliance and Asset Management Program. Compliance reviews are a legitimate tool for evaluating the reasonableness of company-reported royalties and allow a broader coverage of royalties while requiring fewer resources than audits."

We believe these improvements have allowed MMS to conduct an effective royalty program through the years within its available resources. MMS was able to confirm reasonable compliance for 71 percent of the 2002 mineral revenues in fiscal year 2005, 72 percent of the 2003 mineral revenues in fiscal year 2006, and 65 percent of the mineral revenues in fiscal year 2007. The MMS believes that these levels of coverage constitute a significant level of compliance coverage over the lease universe and substantially reduces risks of underpayment and nonpayment.

Moving forward, in fiscal year 2007 and 2008, MRM is developing a more dynamic risk-based compliance approach as part of the MMS's strategic business planning initiative (and consistent with the OIG recommendations). This approach will provide coverage of a greater number of companies and leases. As recommended in the final report of the RPC Subcommittee on Royalty Management, MMS is also exploring whether a more flexible approach to audits is feasible. In particular, MMS will explore different enforcement approaches ranging from compliance checks to limited- or full-scope field audits similar to the approach used by the IRS. This analysis will help inform our assessments of future resource needs.

With the fiscal year 2009 request, MMS anticipates beginning implementation of the risk-based approach that will improve our capabilities in identifying when audits or compliance reviews of leases or companies are warranted and whether additional resources are required. Increasing the audit staff in fiscal year 2009 will provide the initial necessary manpower to perform increased company and lease audits, focusing primarily toward onshore Federal properties, where most of the higher risk companies and leases exist, while maintaining appropriate revenue coverage levels. We anticipate using the results of the risk-based strategy each year and will identify and request additional resources as needed.

Question. The subcommittee report recognizes many advantages associated with Royalty in Kind (RIK) collection compared to the Royalty in value approach. Under RIK the government takes its royalty in the form of oil rather than in cash. It also stated that "MMS should immediately take steps to ensure that the RIK program has sufficient personnel depth to maintain an expanding trading operation and to ensure that RIK staff have a solid understanding of ethics guidelines".

Can you tell us what the major advantages of the Royalty in Kind program are compared to the traditional Royalty in Value approach?

Answer. The benefits of the RIK program include conflict avoidance, increased certainty and decreased administrative costs for the public and industry, earlier receipt of royalty revenues, and potential revenue enhancement for the Treasury. In addition to intangible benefits like conflict avoidance, MMS outlines three separate areas of quantifiable benefit as outlined in the RIK Annual Report to Congress:

—*Administrative Savings*.—MMS performs an annual comprehensive comparative analysis between administering the RIK and RIV programs. The costs associated with administering the RIV program are typically higher than those costs related with the RIK program. Royalties taken in kind are sold under explicit commercial contract terms. These standard industry contracts provide a level of transparency in the valuation and transportation of royalty oil and gas which, we believe, lead to a more efficient process with decreased audit costs.

—*Time Value of Money*.—Revenue Collection Time (RCT) is a measure of the number of days after each production month that MMS takes to collect outstanding receivables for each month of production. Payments in the RIK program are received on average 5 and 10 days before the end of the month following production for gas and oil respectively.

Conversely, RIV payments are due at the end of the month following the month of production. The difference in Revenue Collection Time between RIK and RIV provides a time value of money component for payments received in the RIK program. Because these payments are received five to ten days earlier than they would have otherwise been received in the RIV program, a time value of money is calculated on RIK payments using the number of days for which early payment was made at an annual interest rate of three percent.

—*Revenue Performance*.—The RIK program can leverage its position in many markets to realize higher royalty revenue than MMS would expect to earn through RIV. These higher revenues come from more favorable natural gas processing contracts, and, to a lesser extent, transportation contracts, as well as increased competition, and aggregated production. RIK has a well-defined process using economic modeling to measure and record overall RIK revenue performance.

Question. Have you been able to quantify whether the government has gotten a better return when using the RIK approach versus Royalty in Value? If so, how much additional money has MMS collected by virtue of using RIK?

Answer. MMS began formally calculating RIK revenue "uplift"—the incremental revenue benefits we believe are achieved through the RIK program—beginning with fiscal year 2004. The results, using the three categories detailed above are summarized in this table:

Category	Fiscal year			Total
	2004	2005	2006	
Admin. Savings	$1,600,000	$3,740,000	$2,300,000	$7,640,000
Time Value of Money	892,875	1,528,550	2,633,470	5,054,895
Revenue Perf.	17,242,415	30,790,483	26,254,845	74,287,743
Total	19,735,290	36,059,033	31,188,315	86,982,638

The fiscal year 2007 calculations are being prepared at this time. They will be released in the next Annual Report to Congress due early summer 2008 this spring.

Question. Please tell us what steps are being taken to implement the Report's recommendation regarding the RIK trading operation and ethics guidelines?

Answer. Vacancy announcements are in process for oil and gas asset managers as well as back office personnel in order to ensure sufficient depth. A tentative offer has been issued to a prospective Gas Front Office Manager with extensive industry experience. RIK will develop and implement a Personnel Plan to address flexibility in hiring, compensation, and specialized ethics training by July 2008. To date, RIK has had success attracting personnel with industry expertise.

1998–1999 OIL/GAS LEASES/KERR-MC GEE CASE

Question. With respect to the status of the 1998 and 1999 leases without price thresholds, the Department has signed agreements with six of the oil companies.

Can you tell us who these companies are and what portion of production from all the 1998–1999 leases that they represent?

Answer. The six companies that have signed agreements are British Petroleum (BP), Conoco Phillips, Marathon, Shell, Walter Oil & Gas and Walter Hydrocarbon Inc. In an attempt to address the missing price thresholds, we remain open to negotiating with companies to obtain agreements to apply price thresholds to the deep water leases issued in 1998–1999. We are focused on obtaining the much larger royalty amounts to be realized from future production, estimated to range between $5.3 billion to $7.8 billion. To date our progress has included agreements reached with six companies and they have been paying royalties consistent with the terms of the agreements. These agreements represent approximately 12 percent of the future production from all 1998–1999 leases.

Question. Have they been paying the royalties as agreed?

Answer. All six companies with signed agreements have continued to pay royalties consistent with the terms of the agreement.

Question. Is there any indication that the *Kerr-McGee* case will change their decision on whether to continue to pay?

Answer. If there is a final non-appealable judgment in which the court finds price thresholds are illegal, then the companies have the right to terminate the agreements.

KERR-MC GEE CASE

Question. Last October, in the *Kerr-McGee* litigation, the district court held that price thresholds are not permitted in any leases under the Deepwater Royalty Relief Act (DWRRA).

While this case is being appealed, is there really anything that the Department can do to encourage more companies to come to the table and pay royalties on the 1998–1999 leases?

Answer. While we remain open and willing to discuss agreements with the remaining companies holding DWRRA leases without price thresholds, we do not believe that any additional lessees will agree to price thresholds until they see the outcome of the *Kerr-McGee* case.

Question. What is happening with respect to royalty collection from companies holding leases from 1996, 1997, and 2000? Have any of them indicated that they will not continue to pay?

Answer. Companies holding 1996, 1997 and 2000 DWRRA leases have either been paying royalties consistent with the terms of their lease or have appealed orders to make such payments. The recent Federal District ruling in the *Kerr-McGee* case has called into question MMS's authority to establish price thresholds under the authority of the DWRRA. If the ruling is upheld, companies holding 1996, 1997 and 2000 DWRRA leases would be entitled to recoup prior year payments and would not be required to make future payments.

Question. As you know, there have been legislative efforts to force the oil companies with these leases to renegotiate their contracts. Can you give us a better idea of what the impact of any future legislative efforts like these would have while the *Kerr-McGee* case remains on appeal?

Answer. If *Kerr-McGee* is successful in their lawsuit, we estimate that the total royalties at stake could range from about $23 billion to $32 billion. The legislation to address this situation that was passed by the House had a high potential for causing litigation by modifying existing contracts. We believe that efforts to recoup these moneys should not jeopardize our nation's energy security or the future revenues from upcoming OCS sales. Applying fixes that could result in litigation could easily cost the United States billions over the next decade and result in reduced annual production levels. We still remain committed to the sanctity of our contracts; companies need to know that the United States negotiates in good faith. We are also still committed to working with Congress to try to resolve this issue as long as any effort to recoup royalties is fully thought through and protects the integrity of the government and energy security for the American people.

Question. If the *Kerr-McGee* case is upheld on appeal, what is the potential loss to the Treasury?

Answer. Our original estimate, reported by GAO, was $60 billion. Since that time we have updated that work and have reported the updated estimates to Congress in two installments.

The first installment applied only to those DWRRA leases sold in 1998 and 1999, and was reported in June 2007. This work indicates that the future royalty potential, as of January 1, 2007, from the 1998–1999 DWRRA leases ranges from $5.3 billion to $7.8 billion.

The second installment, reported in February 2008, applied only to those DWRRA leases sold in 1996, 1997, and 2000. This work indicates that the future royalty potential, as of October 1, 2007, from the 1996, 1997, and 2000 DWRRA leases ranges from $15.7 billion to $21.2 billion.

Looking backward, as of the end of fiscal year 2007, we estimate that $1.37 billion would have been paid on DWRRA leases issued in 1998 and 1999 had price thresholds been in place. In addition, over $1.1 billion in royalties have already been paid on DWRRA leases issued in 1996, 1997, and 2000. For all Deep Water Royalty Relief leases from these 5 years, we estimate the total amount at risk to be $23 billion to $32 billion.

Question. Do you have any recommendations for what Congress should do if the government loses the case on appeal?

Answer. Recent legislative proposals we have seen would have given lessees an incentive to litigate. If both the lessees and the government were forced to devote considerable time and resources to protracted litigation to resolve lessees' challenges to a new statutory provision, it could frustrate the goals of increasing domestic energy supply and raising additional revenue to the U.S. Treasury from new leasing activity. Any legislative proposal that is developed should mitigate these potential problems.

Question. As you know, the Inspector General (IG) issued a memorandum to you in September that accompanied an investigation he had done with respect to the royalty collection program. It raised a number of troubling issues.

The IG indicated that the MMS does not have an adequate computer system to accurately calculate interest owed by the oil companies on underpaid or late royalty payments. Is this the case?

Answer. No. The MMS system is capable of accurately calculating interest owed by oil companies. However, before invoices are finalized, automated draft invoices are manually verified and updated based on unique exceptions not programmed into the MRMSS system. This is a cumbersome, time-consuming process.

Question. If so, what is the Department doing to remedy this situation?

Answer. In fiscal year 2007, MMS redirected staff to reduce interest billing backlogs, and implemented performance tuning of the interest billing module to increase processing capacity. The interest backlog was eliminated as of 09/30/07. As part of the President's fiscal year 2009 budget request, MMS is requesting funding to provide for enhancements to more fully automate the interest billing module within MRM's Support System to significantly reduce manual intervention requirements

and greatly increase processing efficiencies. This initiative will fund the final phase of an improvement initiative begun within base funding in fiscal year 2007, with the objective of transitioning from an extremely labor intensive process to a highly effective and efficient business process.

Question. The IG has stated that with respect to official and even proprietary information submitted by the oil companies that there were "vague policies and rules and poor overall document control".

Is this true? If so, what is the Department doing to put better controls in place?

Answer. No. The Minerals Revenue Management (MRM) has issued numerous guidance and policy memos to all MRM employees and contractor staff for how to handle and protect proprietary information. These guidance memos clearly stated that proprietary information must be protected from unauthorized disclosure and provided specific instructions for handling proprietary and confidential business information obtained from oil, gas, and solid minerals companies. Some of the more pertinent memos are listed below:

—June 14, 1989, Memo from the Associate Director for Royalty Management titled, "Protection of Privileged and Proprietary or Confidential Information."

—October 7, 1991, Memo from the Associate Director for Royalty Management titled, "Physical Security Over Proprietary Data."

—October 30, 1991, Memo from the Associate Director for Royalty Management titled, "Guidance and Procedures for Handling Requests for RMP Information and Records."

—February 24, 1993, Memo from the Associate Director for Royalty Management titled, "Priority Processing of Freedom of Information Act Requests."

—February 27, 1995, Memo from the Associate Director for Royalty Management titled, "Guidance and Procedures for Handling Requests for Royalty Management Program Proprietary Data/Records."

—August 22, 2007, Memo from the Associate Director for Minerals Revenue Management titled, "Updated Guidance and Procedures for Handling Requests for Minerals Revenue Management Proprietary and Other Information/Data/Records."

The most recent memorandum codified new controls that proprietary data sent to an external recipient be encrypted.

In addition, we have required mandatory annual Freedom of Information Act (FOIA) training since 1995. The FOIA training includes guidance on how to process FOIA requests and how to handle and protect proprietary information. The FOIA training has been provided via a Computer Based Training Module for the past several years and is required and available for all employees and contractor staff. Also, in 2004, MRM developed and presented to all Compliance and Asset Management staff and State and Tribal audit staff training titled, "Safeguarding Proprietary Data."

Additional guidance was included in published documents such as the "Guide to Royalty Information" first published August 17, 1998, and last updated September 24, 2001, and Attachment D to the Tripartite Memorandum of Understanding titled, "Treatment of Proprietary/Confidential Data," dated August 15, 1991.

More recently, the MRM FOIA staff provided handouts and made a presentation titled, "Proprietary Data Guidance," to the State and Tribal auditors at the MMS/State and Tribal National meeting on September 11, 2007. The MRM FOIA staff is also developing formal classroom FOIA and Proprietary Data training to be presented to all MRM and contractor staff later this fiscal year.

Question. The IG stated in his memo to you of September, 2007 that "we discovered a number of other significant issues worthy of separate investigation, including ethics lapses, program mismanagement and process failures." I recognize that you can't comment on the specific aspects of any ongoing investigations by the IG, but this is a very disturbing statement.

The IG's statement suggests very wide ranging problems within the royalty collection program. Do you think this is a fair characterization?

Answer. No, we do not believe this to be a fair characterization of the Minerals Revenue Management Program. MMS has been the subject in recent years of numerous reviews, audits and investigations conducted by the DOI Office of Inspector General, the Government Accountability Office, Congressional Committees and our own internal reviews. To provide greater assurance on the integrity of financial operations and the accuracy of financial data, MMS undergoes annual Financial Statement audits, including a thorough review of mineral revenue custodial accounts. For the past 5 years, as part of this annual CFO audit, MMS consistently has received a clean audit opinion from the Office of Inspector General's contracted independent auditing firm.

To date, the various audits, investigations and reviews have made recommendations to strengthen procedures, improve training, and enhance tracking and documentation. We have taken these recommendations seriously and have developed corrective action plans to address every recommendation.

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The MRM also utilizes 3 proactive internal evaluation tools to ensure (1) internal controls and related policies and procedures are properly designed to address risk and provide reasonable assurance of the effectiveness and efficiency of program activities and operations; (2) reliable, complete, and timely data is maintained; (3) compliance with applicable laws, regulations and standards; and (4) programs and resources are protected from fraud, waste, and mismanagement. The first tool is Internal Quality Control Reviews to evaluate audits performed on Federal, State, and Tribal lands to determine compliance with Government Auditing Standards and MRM policies and procedures. In 2005, an independent CPA firm issued MRM a clean opinion regarding MRM audit functions, with no material weaknesses and no reportable conditions. The second tool is Alternative Internal Control Reviews to evaluate internal controls over program offices, operations, and financial reporting. MRM submits a 3-year plan to the Department identifying planned reviews and a risk based component inventory. Finally, OMB Circular A–123, Management's Responsibility for Internal Control, evaluates MRM's overall risks, internal controls, and documentation over program offices and financial reporting processes to facilitate accurate and timely assurance statements to the Department. In fiscal year 2007, KPMG, the DOI OIG's independent auditor examined MMS's progress in OMB Circular A–123 compliance and found that MMS had an adequate system of internal controls and that MMS provided reasonable assurance that the internal controls over financial reporting were suitably designed and operating effectively.

The December 17, 2007, Royalty Management Subcommittee Report on "Mineral Revenue Collection from Federal and Indian Lands and the Outer Continental Shelf" concluded that the Minerals Management Service is an effective steward of the Minerals Revenue Management Program and that MMS employees are generally concerned with fostering continued program improvements. The Subcommittee members unanimously agreed that MMS is the best agency suited to fulfill the stewardship responsibilities for Federal and Indian leases.

In reference to the statement regarding ethical lapses, it is important to note that MMS first contacted the Office of Inspector General and requested that they look into some of these issues 2 years ago when MMS management first became aware of concerns. We temporarily reassigned some employees pending the outcome of the IG investigation. In the meantime we strengthened many of our internal controls and processes. We strengthened our ethics training to ensure our employees fully understand their ethical responsibilities as federal employees.

Question. Do you believe the recommendations that you are implementing with respect to the Kerrey/Garn report will effectively deal with this criticism by the IG?

Answer. Yes. Many of the recommendations in the Kerrey/Garn report are similar to recommendations made by the Office of the Inspector General. We agree with the statement of Senators Kerrey and Garn that implementing the recommendations in their report will greatly strengthen the management of the program, will restore public confidence, and will ensure maximum value for the U.S. taxpayer.

NAVAL OIL SHALE RESERVE

Question. I have a parochial matter I hope that you could address and that involves the Naval Oil Shale Reserve (NOSR) in Colorado. The President's budget request contains a proposal to cancel $24.7 million of the balances in the Naval Oil Shale Reserve Site Restoration Fund account that exceed the estimated funding needed to cover site cleanup costs. Obviously, I oppose this. In my view, those funds belong to the State of Colorado.

This account is growing, and royalties are not being paid to the State of Colorado only because of the failure of the Department of the Interior to certify the clean up of the site. I believe that everyone acknowledges that there are sufficient funds in the account to do this. If I have any say about it, this proposal will not be a part of this year's Interior bill and instead Colorado's rightful share of these funds should be given to the State, not put in the Federal Treasury.

I have been working with Secretary Kempthorne to have this certification issued as soon as possible so that Colorado can start collecting its fair share of the royalties being generated at NO SR. Can I get your assurance that the Department will con-

tinue working with me on this issue so that we can get it resolved as soon as possible?

Answer. You have our assurance to continue to work with you and the rest of the Colorado delegation. On January 23, 2008, the Colorado Department of Public Health and Environment provided its concurrence with the BLM's 100 percent Design Report for the clean-up at the Anvil Point Facility. This is a major milestone that allows the BLM to begin working toward awarding a clean-up contract by early June. Once the Department has obligated funds for the cleanup contract, one of a number of steps that has to be completed to comply with the law, we can begin to work toward certification.

ADMINISTRATIVE FEES ON ONSHORE LEASES

Question. I The fiscal year 2008 Interior bill authorized the Bureau of Land Management to charge a fee this year of $4,000 on Applications for Permits to Drill. It is my understanding that the Administration is proposing an amendment to the Energy Policy Act of 2005 that would authorize the Department to issue a rule making these fees permanent and also to raise them. This concerns me if it creates a disincentive for increased domestic production and does not take into account differences in the costs of production in different states.

In Colorado, the costs of production are very high. Will this rule take into account the differences among the states in terms of the cost of production when setting fees?

Answer. At this time, we do not anticipate the rule taking into account the differences among the states in terms of the cost of production when setting the fee. The proposal is for a cost recovery fee that takes into account the BLM's cost to process an application for permit to drill (APD). If it is determined that the costs for processing an APD vary from state to state, then the final cost recovery fee may, likewise, vary from state to state. The proposed interim fee represents a very small fraction of the development and production costs for any new well, and as such, we do not believe it will be a disincentive to producers interested in developing new wells.

Question. Won't charging higher fees upfront to process these applications hurt smaller producers?

Answer. The proposed fee represents a small fraction of the development and production costs for any new well, and the fee is proportional. Small producers will request fewer APDs and will therefore pay less in fees than larger producers submitting many APDs. The fee may also encourage operators to do more pre-planning before submitting an APD, to ensure that their submitted applications are those that have a greater degree of probability of being drilled. This, in turn, reduces the BLM APD workload, which should help to ensure that all APDs can be processed in a more timely manner.

Question. How long will it take the BLM to issue this rulemaking?

Answer. At the latest, we expect to release the final rulemaking by the end of calendar year 2009. To avert any shortfall in funding for APD processing, in the event that the cost recovery rulemaking has not been implemented for all of fiscal year 2009, the legislation submitted by the administration will impose, by statute, an interim fee of $4,150, to ensure the estimated $34.0 million in fees are collected.

Question. How much in fees does the agency plan to collect if it is implemented?

Answer. As noted in the preceding response, we estimate that we will collect $34 million in fiscal year 2009, either solely through cost recoveries, or through some combination of cost recoveries and a statutory interim processing fee.

Question. In the last two Interior bills language was considered but never passed, that would bar companies that hold OCS leases issued in 1998–1999 that are not subject to price thresholds from bidding in future leases sales. I am told that if that provision became law, there would be some companies that bid in the October 3, 2007 Gulf of Mexico lease sale would not be able to participate in future lease sales. In that sale alone, the government received $2.9 billion in high bids. I know Secretary Allred has testified at previous hearings of the potential loss to the government if a producer were to challenge the statute and a court were to enjoin future leases.

My question today is does the MMS have an estimate of what the government could lose in reduced bonuses if the companies subject to the leasing bar were not able to participate in future lease sales?

Answer. Although there is considerable uncertainty in trying to predict bidder behavior, as evidenced by the unexpectedly large bonus bids received in recent lease sales, the government's losses from barring certain companies from bidding in fu-

ture sales could be substantial. If realized, the proportional losses would likely vary through time and across OCS regions.

The composition of the barred companies will change over the next few years as leases expire upon reaching the end of their 10-year primary terms in 2008 and 2009. A recent count identified 44 companies that could be subject to being barred. We estimate this number would be reduced to about 28 companies by the time all of the 1998 and 1999 leases reach the end of their primary terms, around the beginning of fiscal year 2010, leaving only leases in development or in production still active.

We analyzed the results of central Gulf of Mexico Sale 205, held in October, 2007, under two scenarios to obtain a future baseline. The first scenario assumed that the 44 companies noted above were barred from bidding, while the second scenario assumed that the reduced set of 28 companies was barred. In both cases, we stipulated that (1) bidding by other companies would not have changed in the presence of certain companies being barred, (2) in the case of a multiple bid tract with the high bid submitted by a barred company, the revised hypothetical high bid would be the next highest bid submitted by a non-barred company, and (3) in the case of a joint high bid involving one or more barred companies, the high winning bid would have remained the same as long as the barred companies' share of the joint bid was less than 50 percent; otherwise, the bid would not have been made.

We found that under these assumptions, the sum of the resulting high bids in Sale 205 would have fallen by 5 1.5 percent if the 44 companies had been barred and by 29.6 percent if the identified reduced set of 28 companies had been barred. We then applied the proportional losses in high bids for the 44 company case to the next three Gulf of Mexico sales beginning with the western Gulf of Mexico sale in August 2008, and applied the proportional losses in high bids for the 28 company case to the subsequent six Gulf of Mexico sales ending with the western Gulf of Mexico sale in August 2012.

We previously estimated for the President's budget that absent any Congressional action to bar companies, the sum of the high bids in these 9 sales would amount to $2.7 billion. Our analysis showed that in the presence of Congressional action barring certain companies from bidding in future sales, the sum of the high bids would be reduced by $1.1 billion, equal to 40 percent.

In contrast, barring the same set of companies from offshore sales in Alaska would appear to have a far more modest effect on bidding results. For example, in the Chukchi sale 193, which had high bids of $2.6 billion, the direct losses from barring the same set of 44 companies would only have been $30 million, or slightly more than one percent of the high bids.

It is reasonable to think that the effects on bonus bids from barring companies could be even greater than estimated here. For one thing, the remaining bidders may well lower their bids in the expectation of less competition. For another, when we analyze the four Gulf of Mexico sales held prior to Sale 205 in the scenario where 44 companies are barred, the results show losses of about 60 percent, instead of losses around 50 percent (actually, 5 1.5 percent) that we found in Sale 205. Finally, the specification of the 28 company case reflects a limited assessment of leases that will be held beyond their primary terms—more leases will likely be held, but their identity and the lease owners cannot be currently determined. So, for those reasons, we believe the one billion dollar loss over the next 5 years calculated here is a conservative estimate of the adverse fiscal effects from Congressional restrictions on bidding and competition in future OCS sales.

CONCLUSION OF HEARING

Senator FEINSTEIN. The hearing is recessed. Thank you.

[Whereupon, at 10:19 a.m., Tuesday, February 26, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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