United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 15 2016

The Honorable Louie Gohmert
Chairman, House Natural Resources
Subcommittee on Oversight and Investigations
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the written questions submitted following the June 24, 2015, hearing titled "GAO Report Documents BLM's Chronic Mismanagement of Wind and Solar Reclamation Bonds."

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Debbie Dingell
Ranking Member

Committee on Natural Resources
Subcommittee on Oversight and Investigations
1324 Longworth House Office Building
Wednesday, June 24, 2015
10:30am

Oversight Hearing on

"GAO Report Documents BLM's Chronic Mismanagement of Wind and Solar Reclamation Bonds"

Questions from Chairman Louie Gohmert (TX-01) for Mr. Steven A. Ellis, Deputy Director for Operations, Bureau of Land Management

1. The Department of the Interior's Office of Inspector General (OIG) issued a report in June 2012 on BLM's renewable energy program. The OIG's 2012 report "found that BLM [was] poised for a massive expansion of wind and solar projects" and that "BLM ha[d] taken aggressive action to increase its processing of renewable energy rights-of-way (ROW) grants." The OIG noted that "BLM's focus on increasing the number of renewable energy projects . . . exposed some weaknesses in financial accountability and resource protection including obligations to protect the Government's financial interests by collecting rental revenues, managing the bond process, and by appropriate monitoring and enforcing ROW requirements." In light of these findings, the OIG made nine recommendations, including three that specifically addressed bonding:
    - Issue an updated wind IM that clearly requires bonds on all projects.
    - Reassess the minimum bond amounts for wind projects as well as methods for determining the bond amount, including expanding the use of a bond review team.
    - Track and manage bond information on all renewable energy projects, including the amount of the bond, when BLM requested and received the bond, contact information for the bonded party, the type of bond, and when the bond requires updating.

Despite these recommendations – with which BLM substantially concurred – the Government Accountability Office issued a report in June 2015 that found many of the same problems documented by the OIG three years before were still ongoing. **Please explain in**

detail how BLM implemented the OIG's 2012 recommendations, including any policy or management changes that were made, and explain how the deficiencies identified by the OIG were not corrected over the past three years.

Response:

The 2012 OIG report included nine recommendations that focused on wind energy rental and bonding issues, including recommendations to develop a monitoring and enforcement policy, and develop competitive leasing regulations. The four bonding recommendations focused on: (1) clearly requiring a bond on all [wind] projects; (2) tracking and managing bond information; (3) developing and implementing procedures to ensure that bonding is considered when assigning authorizations; and (4) reassessing minimum bond amounts. These recommendations were addressed by Instruction Memorandum (IM) 2013-034 and an internal review of minimum bond amounts. IM 2013-034 was issued in December 2012 and specifically requires a bond for each solar or wind authorization prior to the issuance of a Notice to Proceed or approval for ground disturbing activities. The IM also requires each BLM office to track and manage bond information in its data recordation systems and establishes clear policy requirements for the processing of bonds when assigning a grant from one holder to another.

In addition to IM 2013-034, the BLM completed a review of recently bonded projects and their reclamation cost estimates to determine if current minimum bond amounts were adequate. The BLM determined that updating the minimum bond amount and establishing a solar minimum bond amount were appropriate and included them in the Proposed Rule on Competitive Solar and Wind Energy Leasing that was published in September 2014. That rulemaking process is ongoing.

Recommendations that were recently made by GAO in report GAO-15-520 do not reiterate the OIG recommendations, but provide more detailed recommendations to further improve the BLM's bonding program, such as entering information into BLM's data recordation systems within 10 days, establishing data standards for the Bond and Surety System, and developing an automatic notification to BLM staff for bond adequacy reviews. In response

to the GAO's recommendations, the BLM released IM 2015-138 in August 2015, which provides additional bonding requirements for the proper review, handling, and processing of bonds for solar and wind energy projects to help ensure the environmentally responsible development and operation of projects on the public lands. Each GAO recommendation has been implemented or is in the process of being implemented.

2. After reviewing the OIG's report in 2012, BLM asserted that it would make sure (1) its bonding policies and procedures were followed; (2) that BLM staff understood the policies BLM had in place; and (3) that bond information was accurately and promptly entered into the computer system. Based on the GAO's 2015 report, it appears that BLM has made no progress in these areas. **Please provide the name(s) and title(s) of the BLM official(s) who was/were responsible for implementing the OIG's recommendations and describe any steps BLM has taken to hold such official(s) accountable.**

   Response:

   The BLM has made progress in ensuring that its bonding policies and procedures are being followed for renewable energy bonding across the bureau. Those efforts have been led by the BLM Assistant Director, Energy, Minerals and Realty Management and involve other members of our leadership team. As noted above, the BLM issued a series of instruction memoranda to address immediate concerns and has initiated a rulemaking process to establish and implement permanent standards. To ensure full conformance with these policies, the BLM has initiated a field office review of all solar and wind energy authorizations that require bonds. This review will ensure that reclamation cost estimates are up to date and that adequate bonds have been provided to protect the government's interests.

3. BLM points to the September 2014 proposed rule for bonding as a cure-all for the myriad deficiencies with the wind and solar bond program. However, BLM has many policies in place currently that it simply chooses not to follow (e.g., periodic bond reviews). **Please describe how BLM will ensure compliance with the new regulation, when it has continually and demonstrably failed to ensure compliance with existing policy.**

Response:

The BLM has made significant progress in ensuring compliance with bonding policies and procedures. The BLM initiated an annual bond certification process for wind energy authorizations in 2011, and expanded this certification program for all solar and wind authorizations in December 2012, with the issuance of IM 2013-034. This policy further clarified that bonds were required for all solar and wind energy right-of-way authorizations prior to the issuance of a Notice to Proceed, or the start of land disturbing activities approved by the right-of-way authorization. Bonds are not required for pending applications, for authorizations prior to construction, or for expired authorizations. The BLM will continue to implement the policy that directs periodic reviews of bonds for required solar and wind authorizations and ensure that the Bond and Surety System for tracking bonds is updated on a regular basis as part of an ongoing certification program outlined in IM 2013-034. The aforementioned field office review will further ensure policy conformance.

4. The proposed rule does not include a periodic bond adequacy review requirement – not even a generic requirement that would allow flexibility in establishing specific review periods. Given that fully half of all wind and solar project rights-of-way are past due for review under BLM's current policy, **please explain BLM's rationale for omitting a periodic bond adequacy review requirement from the new rule.**

Response:

The BLM is currently working on the Final Rule, which will address periodic bond adequacy reviews based on comments received during the public review period. The Final Rule is expected to be published before the end of the year. The BLM already has initiated a field office review of all solar and wind energy authorizations that require bonds. This review will ensure that reclamation cost estimates are up to date and that adequate bonds have been provided to protect the government's interests.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 1 1 2016

The Honorable Rob Bishop
Chairman
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Environmental Safety and Enforcement to questions submitted following the Committee's September 15, 2015, oversight field hearing on "The Impacts of Federal Policies on Energy Production and Economic Growth in the Gulf."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Raúl M. Grijalva
Ranking Member

Committee on Natural Resources
Louisiana Supreme Court
New Orleans, Louisiana
September 15, 2015
9:00 AM

Oversight field hearing on:

"The Impacts of Federal Policies on Energy Production and Economic Growth in the Gulf"

Questions from Chairman Bishop for Lars Herbst, Regional Director, Bureau of Safety and Environmental Enforcement

Q1. The Committee is concerned that this extremely technical and prescriptive rule was written without a complete understanding of modern drilling practices. As a result, there are multiple provisions in the draft rule that many in the industry would argue are technically flawed and would actually make drilling operations offshore less safe. In-depth conversations and workshops with industry experts in this very technical field are necessary to create a rule that meets everyone's goal of a safer offshore environment, while also maintaining the ability to efficiently produce oil and natural gas.

Response: BSEE disagrees with the assertion that the Well Control Rule is flawed. The proposed rule contains a variety of prescriptive and performance-based requirements and adopts ten current industry standards that pertain to well control. The rule was also drafted to address recommendations from numerous investigations and reports issued following the *Deepwater Horizon* disaster by the following entities:

- Department of the Interior (DOI)/Department of Homeland Security (DHS) Joint Investigation Team (JIT)
- National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling
- Chief Counsel for National Commission
- National Academy of Engineering
- BSEE Blowout Preventer (BOP) Forum

- Ocean Energy Safety Advisory Committee
- Chemical Safety Board

Additionally, the rule addresses issues arising out of recent blowouts in the Gulf of Mexico and other "near miss" events and incorporates many provisions that have been longstanding Gulf of Mexico policy. The Bureau has engaged industry, non-governmental organizations, and other stakeholders throughout the rulemaking process and has provided opportunities for those entities to voice questions, concerns, and other input. The Bureau is currently working to address industry's questions and concerns and giving careful consideration to comments that could improve the quality of the rule.

Q1a. Who wrote the Well Control Rule? And what were the qualifications and experience of these people? Please list BSEE staff and outside consultants who contributed to the writing of the rule, as well as their relevant experience.

Response: Subject matter experts from the entire organization – some having more than thirty years of industry related experience – helped draft the proposed rule, including staff from the program offices as well as the field offices. To supplement BSEE's in-house expertise, BSEE held a public workshop, listening sessions, and over 50 meetings with industry, trade associations, regulators, and other stakeholders to obtain technical input. The proposed rule is also informed by the several investigations conducted after *Deepwater Horizon*, which utilized the expertise of many acclaimed engineers, scientists, and other highly-qualified professionals.

Q1b. When and how do you plan to further engage industry technical experts in order to correct technical flaws and create a rule that meets the intended goal of a safer offshore environment?

Response: BSEE disagrees that the proposed regulation is flawed. As mentioned in the hearing, BSEE held follow-up meetings for two days with entities that

submitted comments during the comment period to obtain additional clarification on comments that addressed specific provisions of the rule. These meetings were held on September 15 and 16. Additionally, stakeholders will have the opportunity for further engagement during listening sessions that will be held after the rule is sent to the Office of Management and Budget for interagency review under E.O. 12866.

Q1c. What is the Bureau's rationale for including additional provisions beyond API 53 pertaining to Blowout Prevention Equipment Systems?

Response: The API process results in the development of baseline performance standards based on the consensus process. This process often requires compromises to address domestic and international technical and legal issues from various sectors of the industry. BSEE staff members attended many of these meetings and discussions and were able to identify the provisions that potentially did not provide a sufficient level of safety for United States offshore operations. For the proposed rule, BSEE requested comments on these supplemental requirements and will consider any data or recommendations provided by industry or third parties.

Q2. In the hearing you mentioned that if companies commented on the rule, they were invited back for meetings with appropriate BSEE staff. Has BSEE reached out to all companies that have submitted comments? What is BSEE's plan to continue to engage industry on these technical matters? When will the next round of meetings take place? Has BSEE considered holding workshops to gain further information and technical expertise in a setting that allows sufficient time and discussion to help improve the rule before it is finalized?

Response: Bureau staff are working to finalize the rule based on comments submitted during the comment period. BSEE staff members have worked to ensure broad stakeholder engagement throughout the drafting process. As mentioned in the hearing, BSEE held additional follow-up meetings with parties that had

commented on the rule to provide Bureau staff with clarification on these comments. However, not all commenters participated in follow-up meetings, as a majority of comments submitted were very clear and required no further explanation or clarification. We do not feel that further engagement is required at this time based on the input that BSEE received during the drafting process, the public comment period, and the follow-up meetings with commenters.

Q3. In many comments submitted, companies stated the proposed rule contains provisions, specifically in regards to drilling margins as mentioned by Mr. Leimkuhler during the hearing that could potentially undermine the safety mission through unintended consequences. Do you believe the proposed rule contains such provisions and what evaluations have been conducted by BSEE's technical staff to ensure safe operating procedures?

Response: The Bureau does not agree that the proposed rule undermines safety. The language related to drilling margins is based on recommendations arising out of the various investigations and reports that followed the *Deepwater Horizon* tragedy. The Bureau received a multitude of comments on the sections of the rule that pertain to safe drilling margins and is examining those comments. Specific comments related to drilling margins are being reviewed carefully by BSEE technical staff and other options for maintaining safe drilling margins are being evaluated.

Q4. The comment period for the Well Control rule closed in July. What is the timing for the Department moving forward? When do you anticipate it will be finalized? Is there a deadline either internally or externally by which the Department must meet?

Response: The Bureau is giving thoughtful consideration to all input that was received during the comment period. BSEE is moving forward with the rule in a timely manner and, once this process is completed, will proceed to issuance of the rule.

Q5. A study commissioned by the American Petroleum Institute and referenced in their public comments on the well control rule estimated that the rule will cost approximately $32 billion which is significantly higher than the $883 million cost estimated by BSEE. Can you please explain how BSEE staff arrived at that figure and why it is so profoundly different than the independent analysis conducted by Blade Energy Partners and Quest Offshore?

Response: BSEE arrived at its cost estimate by employing a careful section-by-section analysis of the rule to identify provisions that would result in compliance costs outside of those already incurred by industry in conforming to the latest industry standards. BSEE disagrees with many of the key assumptions made in the American Petroleum Institute (API) study, which are the foundation for the higher cost estimate of that report. Specifically, the API cost study accounts for lost drilling activity due to the effects of the regulations pertaining to drilling margins, which is the major cost-driver in the API study. The BSEE economic analysis does not account for decreases in drilling activity due to the uncertainty associated with predicting industry's activities and advancements in technical capabilities and the ability of operators to apply for alternative compliance. The API study also does not include in its analysis the many benefits of the rule, including reduced fatalities, reductions in the likelihood of oil spills, and the significant cost savings arising out of reduced testing of equipment.

Q6. There are some who suggest that some of the equipment requirements in the draft rule will require sizeable changes to existing infrastructure with little to no impact on increasing the efficacy or ability for that equipment to operate effectively. As Murphy Oil Company noted in their comments, "the lack of availability of upgrade equipment and the time estimated to manufacture and install the same will result in a shutdown of the majority of the Gulf of Mexico rig fleet for a substantial period of time." How do you respond to those assertions?

Response: The implementation periods for various aspects of the rule are being analyzed based on the comments received. The proposed rule employs a phased

implementation schedule that delays the effective dates of certain requirements. By phasing in certain requirements over time, the rule will not have the effect of shutting down the Gulf of Mexico rig fleet.

Questions from Rep. Fleming for Lars Herbst, Regional Director, Bureau of Safety and Environmental Enforcement

Q1. When discussing BSEE's engagement and how BSEE can put forward regulations that don't cause a reduction in production, you stated, "if we can accomplish the same objective by another means which industry has brought up I think there will be flexibility." How is BSEE pursuing these alternatives and the flexibility you mentioned during the hearing?

Response: Each comment is analyzed to determine if the suggestion provides an equal or better level of safety than the proposed rule language. If it does, the rule may be modified. Furthermore, alternative compliance is allowed under the alternative compliance section of the existing rules, and would continue to be allowed under the proposed rule.

Q2. When discussing the drilling margin issue you mentioned that BSEE often incorporates industry standards as part of BSEE regulations. How have you fully taken into account industry standards (such as API 92-L)?

Response: BSEE is taking API 92 L into consideration; however, this standard was drafted after the proposed rule went out. We are reviewing comments related to the drilling margin issue and considering whether or not the rule should require compliance with an industry standard or allow for performance-based assessment.

Q3. During the hearing Mr. Leimkuhler identified examples of the proposed rulemaking that may make drilling operations less safe by diverging from industry standards, such as the requirement for a 5-year demonstration of the blowout preventer. Are you taking into account real-world feedback on safety implications of your proposals? Are you willing to modify the rule

to account for this feedback?

Response: BSEE is taking into consideration all feedback received pursuant to the rulemaking process. The five-year inspection of the blowout preventer is currently contained within API Standard 53. In this case, we proposed to adopt an industry recommended standard. The comments received during the comment period as well as the input received from BSEE's various outreach activities constitute "real-world feedback". BSEE is considering input from all sources and will modify the rule in response to comments where doing so will improve the quality of the rule.

Questions from Rep. Garret Graves for Lars Herbst, Regional Director, Bureau of Safety and Environmental Enforcement

Q1. BSEE is proposing new requirements for accumulator volumes, beyond those of industry standards, which will require additions to and reconfiguration of the BOP. Accommodating these new requirements will add to the complexity of the BOP system and could have an impact on the safety and functionality of the BOP. Has BSEE looked at the safety implications that might result from this increased accumulator volume on the other safety mechanisms contained within the BOP? If so, please provide the analysis? If not, please explain why not?

Response: This section did receive considerable comment. BSEE is still in the deliberative stages of the rulemaking process and evaluating the comments received to ensure that safety-critical functions have proper accumulator volumes to ensure actuation.

Q2. How did BSEE come to the decision that the proposed rule's quinquennial inspection scheme will produce a result superior to that which will result from adherence to a sequential

application of the periodic maintenance and inspection requirements of API 53? Can BSEE point to any safety data that supports its decision?

Response: BSEE believes that the proposed language will result in a comprehensive and traceable inspection scheme. The lack of an industry-wide database related to equipment reliability has made assessing the effectiveness of current inspection schemes difficult. BSEE will review the information and data received during the comment period before making any decisions.

Q3. In the well control rule, BSEE Approved Verification Organizations (BAVOs) will be charged with interpretation of the BSEE regulations, such industry standards as are incorporated by reference, and recognized engineering practices. However, no indication is given as to how BSEE would provide the BAVOs with the guidance and oversight necessary for rendering such interpretations. Just as there is a need for consistency among BSEE Regional and District offices, there will be a need for consistency among BAVOs. How does BSEE plan to ensure there is a transparent system for provision of interpretations as needed?

Response: BSEE has initiated a formal process for issuing interpretations on regulations that will help to ensure consistent application of the requirements across the agency, industry, and third-party verification organizations. BSEE will also certify that BSEE-approved verification organizations (BAVO) have previous experience with BSEE requirements and procedures as well as the technical expertise to perform verifications based on the regulations as written.

Continued Engagement

Q4. During the hearing I asked you why interested parties were only provided a total of three months (initial two months with a one month extension) to comment on a proposal that BSEE took several years to write and you explained that that decision was outside your call but that BSEE is still working with industry. You also mentioned that with the proposed provisions

outside of the codification of industry standards that BSEE is "continuing to work with those commenters". As I also stated at the hearing I'm very concerned that this rule is done right which is why I am particularly concerned that this technical engagement continues and I asked BSEE to commit to public meetings so we can get this rule right. Please explain how BSEE will continue its engagement with industry through the end of the year.

Response: BSEE staff are working to finalize the rule and to address the over 5,000 pages of comments submitted during the comment period. BSEE staff have worked to ensure broad stakeholder engagement throughout the drafting and comment process. The Bureau conducted over fifty meetings with various companies, trade associations, regulators, and other stakeholders during the open comment period as part of the process of moving from proposed to final rule. The Bureau also met with organizations after the closure of the comment period in those cases where the Bureau required clarification of the written comments that were submitted within the comment period. Those discussions were restricted to the substance of those timely-submitted comments. We do not feel that additional technical engagement is required at this time, based on the input that BSEE received during the drafting process and in the public comment period. The Bureau is currently working to address industry's questions and concerns and giving careful consideration to comments that could improve the quality of the rule.

Our current regulations do not account for the more than 160 recommendations that the Bureau received following the tragic events of the *Deepwater Horizon* disaster or reflect lessons learned from other loss of well control events that occurred thereafter. It took several years for the studies and investigations to be concluded. The proposed Well Control Rule incorporates the findings of those studies and investigations.

<u>BSEE Regional Office Expertise</u>

Q5. To what extent have you and your staff been involved in the development of new regulations by BSEE headquarters and to what extent were you involved in the development of the proposed Well Control Rule?

Response: We utilize the collective experience of all of our BSEE subject matter experts, regardless of their location, for any new rule or regulation that is being developed and finalized. GOM Regional Office staff have been thoroughly involved throughout the entire process, including drafting the rule, reviewing technical comments from industry, and meeting with commenters at BSEE Headquarters in Washington, DC.

Q6. Please describe the amount of input that headquarters requested from the Gulf Region on offshore regulatory matters, and please describe if and how much this has changed since 2010.

Response: BSEE regulations are developed by subject matter experts throughout the Bureau, regardless of their being in a regional or headquarters location. We utilize the collective expertise of a range of experts to develop regulations. Subject matter teams were specifically engaged to assess the technical comments that were received. The GOM Regional Office was thoroughly involved in drafting the proposed rule and was a part of the subject matter expert team assembled to review technical comments from industry. Content development and participation in each rule is different based on the topic and expertise needed for each individual rule.

Q7. Is it safer for drilling decisions to be made by the drilling personnel on the rig or offshore facility or by onshore based personnel?

Response: All urgent decisions related to safety should be made by qualified competent personnel on the rig. However, real-time monitoring can elevate safety by having a "second set of eyes" to catch something that one person may miss. The proposed rule would not change current industry or operator practices regarding decision-making.

Questions from Rep. Westerman for Lars Herbst, Regional Director, Bureau of Safety and Environmental Enforcement

Q1. BSEE's pending well control regulation has been under consideration within the Department of Interior for over 4 years. The scope of this federal rule has expanded over the years from a focus on blowout preventer systems to the broader issue of well control. In the agency's own words, this regulation represents "one of the most substantial rulemakings in the history of the BSEE and its predecessor organizations." Given the extremely technical nature of this regulation, there is a limited number of industry experts who fully understand the consequences and feasibility of many provisions included in the rulemaking.

Q1a. Who did the Bureau consult with during the drafting of this rule?

Response: We utilize the collective experience of our BSEE subject matter experts – which includes engineers with over thirty years of industry experience – for any new rule or regulation that is being developed and finalized. BSEE also held over fifty meetings with external stakeholders including technical experts, industry groups, academia, and the members of the regulated industry. The rule also incorporates technical recommendations from numerous investigations and reports issued following the Deepwater Horizon incident including:

- Department of the Interior (DOI)/Department of Homeland Security (DHS) Joint Investigation Team (JIT)
- National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling
- Chief Counsel for National Commission
- National Academy of Engineering
- BSEE Blowout Preventer (BOP) Forum
- Ocean Energy Safety Advisory Committee
- Chemical Safety Board

Q1b. More specifically, within BSEE, who was tasked with writing the technical provisions of this rule?

Response: The rule was developed by BSEE subject matter experts throughout the Bureau from both regional and headquarters locations. We utilize the collective expertise of a range of experts to develop regulations. Subject matter teams were specifically reengaged for assessment of technical comments that were received.

Q1c. Were outside consultants and/or drilling engineers familiar with the latest technologies and drilling processes involved in drafting the rule?

Response: The Bureau has engaged extensively with external stakeholders and technical experts, beginning as early as 2012 with the blowout preventer public workshop. Additional sessions were held following that workshop with members of the regulated community, including the American Petroleum Institute and many of its members. Since then, engagement has continued with numerous meetings (over 50) with industry, academia, and other technical experts prior to publishing the rule. More recently, additional meetings were held after the closure of the comment period in cases where the Bureau required clarification of the written comments that were submitted within the comment period. Those discussions were restricted to the substance of those timely-submitted comments. Since we have held many meetings and a public workshop in the past four years, we do not feel that there have been any time constraints placed on our stakeholder engagement.

Q1d. I am concerned that a regulation this technical – with significant safety, production, and cost impacts – may not have been exposed to the level of engineering expertise necessary to draft the best possible, and technically feasible, rule.

Response: The provisions in the rule have been fully discussed and carefully considered. We utilize the collective experience of our BSEE subject matter experts – which includes engineers with over thirty years of industry experience – for any new rule or regulation that is being developed and finalized. BSEE also held over fifty meetings with external stakeholders including technical experts, industry groups, academia, and the members of the regulated industry. The rule also incorporates technical recommendations from numerous investigations and reports issued following the Deepwater Horizon incident including:

- Department of the Interior (DOI)/Department of Homeland Security (DHS) Joint Investigation Team (JIT)
- National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling
- Chief Counsel for National Commission
- National Academy of Engineering
- BSEE Blowout Preventer (BOP) Forum
- Ocean Energy Safety Advisory Committee
- Chemical Safety Board

Q2. During the hearing you stated that BSEE is trying to push the bar as it relates to the provisions in the proposed rule beyond API Standard 53. What analysis did BSEE use to determine when and how the bar should be raised above API 53? The API uses an open and transparent process to set industry standards following the requirements of the American National Standards Institute (ANSI). Did BSEE use a similar process when determining the rule's proposed requirements above and beyond API 53? Please explain how BSEE determined these requirements.

Response: Differences between the proposed rule and API 53 can be attributed to specific recommendations arising from the *Deepwater Horizon* investigations and analyses. The proposed Well Control Rule represents an effort by the Bureau to codify the recommendations of the several investigative bodies commissioned to determine the causes of the Macondo blowout. In contrast, the API employs a

consensus process that results in the development of minimally acceptable performance standards. This process often requires compromises to address domestic and international technical and legal issues from various sectors of the industry. BSEE staff members attended many of these meetings and discussions and were able to identify the provisions of API 53 that potentially did not provide a sufficient level of safety for US OCS operations. In the proposed rule, BSEE requested comments on these supplemental requirements and is considering the data and recommendations provided by industry or third parties.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 4 2016

The Honorable John Barrasso
Chairman
Senate Committee on Indian Affairs
Washington, DC 20510

Dear Chairman Barrasso:

Enclosed are responses prepared by the Assistant Secretary- Indian Affairs in response to questions received following the July 15, 2015, hearing before your Committee regarding "Juvenile Justice in Indian Country: Challenges and Promising Strategies."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure
cc: The Honorable Jon Tester
Vice Chairman

Questions for the Record
Mr. Darren Cruzan
United States Senate Committee on Indian Affairs
Oversight Hearing
"Juvenile Justice in Indian Country: Challenges and Promising Strategies."
July 15, 2015

Questions for the Record Submitted by Senator Al Franken:

Improving services is critical to addressing the needs of Indian youth in the juvenile justice system. But the need for assistance continues after a young person is released from the system.

1) What follow-up services are currently available for Tribal Youth leaving the juvenile justice system?

Response: The primary behavioral health services available in most AI/AN communities for youth once they exit the juvenile justice system are provided by either the Indian Health Service, Tribal, or Urban Indian health programs. Also, we understand that our partners at the Department of Justice (DOJ) also provide a number of services related to tribal youth in the juvenile justice system. The DOJ Office of Justice Programs (OJP) provides reentry services for juveniles who return to tribal communities.

For example, from FY 2009-2014, OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded the Tribal Green Reentry Initiative, which provided demonstration grants to incorporate green technologies and environmentally sustainable activities in programs designed to help detained and reentering tribal youth successfully reintegrate into their communities and to prevent future juvenile justice system involvement among at-risk youth. DOJ released an independent evaluation of this initiative in December 2014, with many valuable lessons for future reentry programming.

In addition, there are other, non-federal resources that focus on cultural identity, family and community engagement and cultural support for youth.. Some tribes are fortunate to have OJJDP support Boys and Girls Clubs in the community, which provide an excellent resource for after-school and weekend pro-social activities and support. The Department has a fruitful partnership with Boys and Girls Clubs in Indian country. Youth may also seek out school sports, but they run on a seasonal basis and are time-limited. Some tribes have established Culture Clubs that are run by community volunteers who work with youth in the areas of traditional dance and drum groups. Religious groups also may sponsor youth activities on groups and serve as a support resource.

Despite all of these options, however, resources remain scarce in Indian communities in many cases.

2) How is the Bureau of Indian Affairs helping tribes provide resources for these youth?

Response: The BIA/Office of Justice Services has begun, in the past year, to work with several tribes in the area of strategic planning to prepare for and create improved continuum of care options for youth. The impasse that tribes often encounter is a lack of planning and collaboration to secure funding resources that support youth leadership, youth engagement, youth trauma reduction and youth safe haven options.

The approach that we (BIA-OJS) are taking in working with tribes is to first assist them with identifying their overall continuum of need in their community, which includes youth and families, and then set a strategy for what the continuum of care needs to be to meet the need. This helps the tribe to identify current strengths and resources that they previously may have overlooked or had not known of due to lack of local communication and/or collaboration. Once the strategic plan is in place we can then begin looking for federal funding resources that will best match the need and assist the tribe with making the necessary contacts within these agencies on an individual basis or via federal resource roundtable meetings. These efforts assist the tribes in being able to illustrate in detail what their needs are and the progress that they have made to date that positions the tribe for deciding to apply for funding.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 6 2016

The Honorable John Barrasso
Chairman
Senate Committee on Indian Affairs
Washington, DC 20510

Dear Chairman Barrasso:

Enclosed are responses prepared by the Assistant Secretary- Indian Affairs in response to questions received following the July 08, 2015, hearing before your Committee regarding "A Path Forward: Trust Modernization & Reform for Indian Lands."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure
cc: The Honorable Jon Tester
Vice Chairman

Oversight Hearing on "A Path Forward: Trust Modernization & Reform for Indian Lands."
July, 08, 2015
Questions for the Record

1. **How much of the $1.9 billion dollars allotted for Land Buy-Back Program has been spent?**

The $1.9 billion Consolidation Fund has various components, summarized as follows:

Acquiring Fractional Interests (minimum available for purchase payments)	$1,555,000,000
Implementation Costs (not to exceed 15 percent)	$285,000,000
Scholarship Fund (maximum available, depending on interests sold)	$60,000,000
Total	$1,900,000,000

The Land Buy-Back Program for Tribal Nations (Buy-Back Program) has paid nearly $728 million (47 percent of $1.555 billion) to landowners as of December 4, 2015. In addition, the Program has spent approximately $38 million (13 percent of $285 million) in implementation costs and has transferred nearly $30 million (50 percent of $60 million) in sales proceeds to the Cobell Education Scholarship Fund, and.

2. **How many acres have been restored?**

The Buy-Back Program has restored – in trust – the equivalent of approximately 1.5 million acres of land to tribal nations.

3. **How many interests in land have been consolidated?**

The Buy-Back Program has purchased approximately 400,000 interests.

4. **What steps are being taken to increase the number of interests in land being consolidated?**

The Buy-Back Program is a voluntary program, and that principle guides our outreach efforts. We work closely with tribal governments to give landowners every opportunity to learn about the Program before implementation, and have the resources to make informed decisions about their land. If landowners choose not to sell, we also refer to them information to enhance their financial awareness and planning. This information is shared throughout our materials, such as our Status Report, and online at: https://www.doi.gov/buybackprogram/landowners/informeddecisionmaking.

The Outreach phase of the Buy-Back Program includes planning, sharing information, and consulting with tribal leaders to ensure the maximum engagement with potential landowners. The phase also involves addressing questions and concerns landowners may have regarding

the sale of their fractional interests or regarding issues that might arise as a consequence of the sale.

Outreach to tribes involves providing assistance with the selection of priority tracts, sharing information on land and landowners, and developing customized reports for tribes. *Outreach to individuals* is accomplished through distributing mailings, updating the Program website, fielding calls at the Trust Beneficiary Call Center (TBCC), hosting and attending outreach events, developing and disseminating outreach materials (e.g., posters, videos, brochures), and assisting in locating individuals whose whereabouts are unknown.

The Program has thus far has made offers to more than 68,000 unique individuals; more than 31,000 of these people have accepted offers. The Program has mailed more than 220,000 individual postcards to landowners and fielded nearly 75,000 calls to the TBCC. The Program has documented approximately 17,000 willing sellers and has earned more than 250 million media impressions through efforts in the press.

With respect to tribes, the Program has agreements with 27 tribes. Each agreement is unique in time, scope and responsibilities, based on the expressed interests of the tribe. The agreements outline coordinated strategies to facilitate education about the Buy-Back Program to landowners. Through these agreements, tribes have additionally completed more than 4,000 notary actions, 9,500 mailings, 900 media activities, and 370 outreach events.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 7 2016

The Hon. John Barrasso
Chairman
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Managment to the questions for the record submitted following the April 30, 2015, oversight hearing entitled "*Bureau of Land Management's Final Hydraulic Fracturing Rule.*"

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Ron Wyden, Ranking Member
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining

U.S. Senate Committee on Energy and Natural Resources
April 30, 2015 Hearing: BLM Hydraulic Fracturing Rule
Questions for the Record Submitted to the Honorable Neil Kornze

Questions from Senator John Barrasso

Question 1: The Bureau of Land Management's final rule on hydraulic fracturing says that: "The BLM believes that there will be no financial impacts to the states as a result of this rule." It goes on to say that: "the BLM does not believe that production from Federal lands will be reduced as a result of this rule. Therefore, a Federalism assessment is not required." At the hearing, I asked you: (1) whether BLM relied on any empirical data to show that a rule of this significance would not reduce oil and gas production on federal lands; and (2) if BLM did not rely on empirical data, what is the basis for BLM's finding that the rule will not reduce oil and gas production on federal lands?

In response, you indicated that you would provide a written answer to this question. I look forward to your answer.

Response:

Consistent with applicable legal requirements, the Bureau of Land Management (BLM) published a Regulatory Impact Analysis (RIA) for the hydraulic fracturing rule on March 26, 2015, concurrent with the rule. The RIA compares the industry's costs of compliance with the requirements of the final rule, with the costs for drilling and hydraulic fracturing operations in the absence of the final rule. The cost estimates in the RIA were developed after consulting the available literature and conferring with BLM's petroleum engineers and other knowledgeable professionals, and after considering the public comments on economic impacts and costs that were submitted as part of the rulemaking process, including those comments that were submitted to the Office of Management and Budget.

Based on that information, the RIA concluded that the rule will increase costs an average of $11,400 per hydraulically fractured well, or between 0.13 percent and 0.21 percent of the total cost of drilling and fracturing a typical oil and gas well. In those cases where fluid volumes exceed a certain threshold, we estimate that the compliance with the storage tank requirement could cost an operator $74,400 (representing approximately 0.8 to 1.4 percent of the cost of drilling a well). Through our analysis we estimate that this is only a small subset of total operations. These operations are those where the volumes of recovered fluids are expected to be very high and typically occur in states (Arkansas, Louisiana, Mississippi, Ohio, Oklahoma, and Pennsylvania) which represent only about 0.8% of estimated hydraulic fracturing activities on Federal and Indian land.

Given that the RIA estimates such a small relative increase in costs, we do not believe the rule will have a notable impact on oil and gas production from Federal lands. Business decisions like when and where to drill or hydraulically fracture a well are primarily driven by market factors and resource considerations, including commodity prices, geology, location relative to demand centers, availability of transportation infrastructure, and other critical factors. For example, in the Fort Berthold Indian Reservation, where the BLM serves as the permitting agency, oil production soared more than five-fold between 2008 and 2014--a faster increase than occurred on private lands. Overall, natural gas production on Federal and tribal lands in North Dakota is up over 200 percent, consistent with the statewide trend over that same period. These increases are due to the location of the Bakken shale and the favorable economics associated with developing that resource. In contrast, over the same period, some of the rural western fields where most of the Federal onshore production is located, are no longer economic under current prices because of their location relative to existing markets. The BLM has seen a decrease in production from those fields, tracking trends on state and private lands.

Question 2: BLM has not issued a final environmental impact statement (EIS) for an oil and gas production project in Wyoming since 2008. Currently, there are nine EISs for oil and gas production projects in Wyoming pending with BLM. Some of the EISs have been pending with BLM for more than 8 years. During the hearing, you said that "about half of those [project proposals] came in in the last two years." Of these nine, you indicated that BLM would issue two to three final EISs in Wyoming this year.

A. **Would you please provide the date that each of the nine projects were first proposed to BLM?**

B. **Would you please provide the date (month/year) when we can expect BLM to issue the final EIS for each of the nine projects?**

Response:

Currently, there are eight oil and gas Environmental Impact Statements (EISs) being prepared by BLM Wyoming, which are listed below. The LaBarge Platform Development Project EIS, included as one of the nine EISs previously referenced, was recently withdrawn by project proponents, who cited the inability to meet general conformity requirements for ozone.

All of the projects listed below are large in scope and scale, each involving thousands of wells. This scale makes the analysis of these projects complex and sensitive to oil and gas prices, which have been cited by project proponents as a factor in their requests for delays in processing. This scale also means that air quality standards and the associated modeling and mitigation efforts are a critical component of the review process. For example, some of the projects are located in areas that are in non-attainment for ozone, which requires additional analysis under the Clean Air Act. Another factor affecting

review timelines is applicant-initiated changes in the plans of development (PODs) for the projects. These requested changes to PODs can require the BLM to restart the NEPA process because the proposed changes significantly alter the impact analysis. In the last two years, three PODs for these projects (Black Forest, Hiawatha, and Bird Canyon) have received substantial revisions, which have impacted timelines.

I also wish to take the opportunity to clarify my statement at the hearing. Upon further review, I did not have completely accurate information about these projects at the hearing. While the BLM received initial applications for most of the projects a number of years ago, several of the projects have undergone significant changes, which effectively required BLM to initiate analytical processes anew. I also should have said we are on track to issue two to three draft or final EISs in the coming year.

1. **Continental Divide – Creston Natural Gas Project EIS (Rawlins Field Office)**
    a. The Notice of Intent (NOI) to prepare an EIS was published in March 2006.
    b. Following publication of the NOI the POD underwent a number of significant revisions that increased the size of the project.
        - Air quality modeling was completed collaboratively with the Wyoming Department of Environmental Quality in January 2012.
    c. The Draft Environmental Impact Statement (DEIS) was released in December 2012.
    d. Comments received on the DEIS raised serious questions about the adequacy of the existing air quality modeling. As a result, an additional Air Quality Technical Support Document for the project was completed in 2014.
    e. Publication of the Final Environmental Impact Statement (FEIS) is anticipated for late 2015. Prior to finalization of the FEIS, the BLM has to confirm that the project is consistent with the recently approved land use plans for the Greater Sage Grouse, and that it complies with the Environmental Protection Agency's recently revised ozone standard.

2. **Black Fork EIS (Formerly Moxa Arch Area Infill) (Kemmerer Field Office)**
    a. The NOI to prepare an EIS was published in October 2005.
        - The Draft EIS was released in October 2007.
        - Anadarko Petroleum Corporation took over the project in December 2013, which resulted in the project being renamed. Anadarko also developed and submitted a new Plan of Development (POD) for the project in October 2014. The POD is still undergoing refinement based on discussions between the proponent and the BLM.
    b. Once the revisions to the new POD are complete, a new NOI will be issued and a project schedule will be developed.

3. **Hiawatha Field Project EIS (Rock Springs Field Office)**
    a. The NOI to prepare an EIS was published in September 2006.

b. A DEIS was made available for administrative and Cooperating Agency review in 2007. This review identified concerns with the air emissions inventory used for the air quality modeling. These concerns resulted in the Project's air quality analysis protocol being revised to make it consistent with the one use for the Black Fork Project (formerly Moxa Arch).
c. In late-2014, the proponent revised the POD, which required the BLM to revisit the analysis in the administrative draft EIS and restructure some of the alternatives being analyzed. That work is in process.
d. The DEIS is anticipated to be published in mid-2016.

4. **Normally-Pressured Lance Natural Gas Development Project EIS (Pinedale Field Office)**
   a. The NOI to prepare an EIS was published in April 2011.
   b. The applicant submitted a revised POD to BLM in June 2011.
   c. Because the project is located in a non-attainment area, air quality general conformity requirements must be completed before the DEIS can be finalized. Those efforts are in process and are anticipated to be completed soon, at which point the BLM will be in a position to develop a schedule for completion of the DEIS.

5. **Moneta Divide Natural Gas and Oil Development Project EIS (formerly GMI) (Lander Field Office)**
   a. An NOI was published in 2008.
   b. Following publication of the NOI, the applicant made substantial revisions to the POD--changes that resulted in, among other things, the inclusion of adjacent lands.
   c. Due to the size and magnitude of the revised project, the proposal was determined to require additional public notice and scoping.
   d. The NOI for the new proposal was published in January 2013.
   e. The DEIS is anticipated to be published in early 2016.

6. **Bird Canyon Field Infill Project EIS (Rock Springs Field Office)**
   a. The NOI to prepare an EIS was published May 2014.
   b. The DEIS is anticipated to be published late-2015.

7. **Converse County Oil and Gas Project EIS**: Casper Field Office
   a. The NOI to prepare an EIS was published in May 2014 and a POD was submitted in August 2014.
   b. The DEIS is anticipated to be published in mid-2016.

8. **Greater Crossbow Oil and Gas Project EIS**: Buffalo Field Office
   a. A POD was submitted to BLM in June 2014.
   b. The NOI is currently under review and is anticipated to be published in late 2015.

Question 3: On April 17, 2015, the Secretary of the Interior issued an advanced notice of proposed rulemaking for the purpose of seeking public comment on potential updates to BLM rules governing oil and gas royalty rates, rental payments, lease sale minimum bids, civil penalty caps and financial assurances.

I am concerned that any proposal to raise royalty rates and other fees will put federal lands at an even greater competitive disadvantage with state and private lands—and, as a consequence, Wyoming and other public land states at a greater disadvantage with other areas of the country.
In 2011, DOI commissioned a study which found that higher royalty rates for federal lands in Wyoming "will deteriorate their competitive position in the market, which is rather weak as it is."

On March 14, 2012, then BLM Director, Bob Abbey, testified before the Senate that there has been "a shift [in oil and gas production] to private lands in the East and to the South where there are fewer amounts of Federal mineral estate."

According to the Energy Information Administration (EIA), federal onshore natural gas production has decreased by 22 percent since 2009. EIA has found that federal onshore natural gas production makes up a smaller percentage of total U.S. gas production than it has in at least 11 years. EIA has also found that federal onshore oil production makes up a smaller percentage of total U.S. oil production than it has in nine years. While these numbers reflect new production on state and private lands, they also show that federal lands are becoming less competitive with state and private lands.

Please explain, in detail, how raising the royalty rates on onshore oil and gas production on federal lands will not further reduce their competitive position relative to state and private lands. In your answer, please address the additional regulatory burdens, including those associated with the National Environmental Policy Act, which apply to oil and gas production on federal lands but not oil and gas production on state and private lands.

Response:

On April 21, 2015, the BLM published an Advanced Notice of Proposed Rulemaking (ANPR) to seek public comment on potential updates to BLM rules governing oil and gas royalty rates, rental payments, lease sale minimum bids, civil penalty caps and financial assurances. With regard to royalty rates, the ANPR sought comment on potential changes that would provide the BLM with the procedural flexibility to change the royalty rate in response to market conditions, similar to procedures currently in place for offshore oil and gas leases. The BLM extended the comment period to June 19, 2015, and received a total of over 82,000 comments, which are still under agency review.

Currently, the royalty rate for competitive oil and gas leases on public lands is fixed at 12.5 percent. As explained in the ANPR, many states and private landowners assess

higher rates to oil and gas developed from their lands. With respect to the State of Wyoming, the State specifies a higher royalty rate on production from State lands than the BLM does for Federal lands for competitively issued parcels – 16.6 percent for State parcels obtained as part of competitive leases sales versus 12.5 percent for Federal parcels. Both Wyoming and the BLM charge a royalty rate of 12.5 percent for parcels that are obtained non-competitively. Any increase in the royalty rate assigned to Federal leases could increase revenue to the U.S. Treasury, as well as revenue to the individual states, given that the Federal Government shares royalty revenues with its state partners. In the lower 48 states, that revenue sharing is roughly a 50/50 split. Higher royalty rates could also have the effect of reducing the relative competitiveness of federal oil and gas leases, which could reduce the amount of oil and gas development and ultimately revenue. Before raising rates, BLM would carefully consider the impact on oil and gas development and seek input from the public including affected entities.

Evaluating whether an increase in royalty rate is appropriate is consistent with the BLM's obligation to ensure that the public receives a fair return on its resources while balancing economic, environmental, and other considerations, including requirements under the National Environmental Policy Act and other statutes. For example, the Federal Land Policy and Management Act of 1976 (FLPMA) directs the BLM to manage the public lands using the principles of multiple use and sustained yield and to take any action necessary to prevent unnecessary or undue degradation—an obligation that does not exist for state and private lands.

Potential changes to BLM's regulations would also respond to concerns expressed by the Government Accountability Office (GAO) and Interior's Office of Inspector General that the BLM's existing rules lack flexibility and could be causing the United States to forego significant revenue to the detriment of taxpayers.

With respect to the competitive position of Federal lands relative to state and private lands; as explained above, oil and gas investment decisions are principally driven by market factors and resource considerations, including commodity prices, geology, location relative to demand centers, and availability of transportation infrastructure, among many considerations. This is why, generally speaking, production trends on BLM-managed public lands have tracked broader state-wide trends despite the current difference in royalty rates applicable to Federal versus state and private minerals.

<u>Question 4</u>: I understand there are significant delays in obtaining sundry notices and rights-of-way (ROWs) for natural gas gathering lines on federal lands from BLM.

In February 2015, I asked Secretary Jewell to provide detailed information about pending requests for sundry notices and ROWs for natural gas gathering lines on federal land.

In response, the Secretary explained that BLM "lacks capability to query for details of each sundry notice" and BLM, with respect to requests for ROWs, "does not distinguish between requests for oil or gas, gathering or transport, lines."

A. What is the total number of requests for ROWs pending at BLM?

As of August 7, 2015, the total number of right-of-way (ROW) applications pending with the BLM is 867.

B. What is the total number of requests for ROWs pending at each BLM Field Office?

The table below shows the number of pending ROWs at each BLM field office. The data was collected from the BLM's bureau-wide digital land records system, LR2000, and is current as of August 7, 2015.

BLM PENDING O&G ROW PIPELINE APPLICATIONS (LR2000)	
BLM Field Office	**Pending Pipeline Applications**
AZ Total	**6**
Kingman Field Office	3
Safford Field Office	1
Yuma Field Office	2
CA Total	**69**
Bakersfield Field Office	65
Barstow Field Office	2
Needles Field Office	1
PalmSprings/S.Coast Field Office	1
CO Total	**33**
Colorado River Valley Field Office	10
Grand Junction Field Office	3
Little Snake Field Office	1
Northwest District Office	1
Royal Gorge Field Office	2
Tres Rios Field Office	3
White River Field Office	13
ES Total	**3**
Milwaukee Field Office	3
ID Total	**1**
Jarbidge Field Office	1
MT Total	**12**
Havre Field Office	2
Miles City Field Office	4
North Dakota Field Office	4

BLM PENDING O&G ROW PIPELINE APPLICATIONS (LR2000)	
BLM Field Office	**Pending Pipeline Applications**
South Dakota Field Office	2
NM Total	**587**
Carlsbad Field Office	275
State Office*	1
Farmington Field Office	300
Las Cruces District Office	2
Roswell Field Office	7
Taos Field Office	2

NV Total	**15**
State Office*	7
Las Vegas Field Office	2
Sierra Front Field Office	2
Stillwater Field Office	1
Tuscarora Field Office	1
Winnemucca District Office	1
Winnemucca Field Office	1
OR Total	**2**
Prineville Deschutes Field Office	1
Spokane Wenatchee Field Office	1
UT Total	**28**
Fillmore Field Office	1
Moab Field Office	2
Monticello Field Office	1
Price Field Office	2
Richfield Field Office	2
Vernal Field Office	20
WY Total	**111**
Casper Field Office	11
Cody Field Office	1
Kemmerer Field Office	8
Lander Field Office	1
Newcastle Field Office	2
Pinedale Field Office	29
Rawlins Field Office	31
Rock Springs Field Office	26
Worland Field Office	2
BLM Total	**867**

*Note: Applications pending in a state office.

C. When were each of the pending requests for ROWs first submitted to BLM?

The table below shows the date each pending ROW was submitted to a BLM field office. The data was collected from the BLM's bureau-wide digital land records system, LR2000, and is current as of August 7, 2015, to the extent such information is available. It should be noted that information is manually entered into the LR2000, and therefore there is always the potential for data entry errors.

State and Field Office	Serial Number	Date Received
ARIZONA		
Kingman Field Office	AZA 035936	05/06/2011
	AZA 036782	05/18/2015
	AZA 036783	05/18/2015
Kingman Field Office Total	**3**	
Safford Field Office	AZA 032511	07/29/2003
Safford Field Office Total	**1**	
Yuma Field Office	AZA 033088	03/24/2005
	AZA 035790	09/27/2011
Yuma Field Office Total	**2**	
AZ TOTAL	**6**	
CALIFORNIA		
Bakersfield Field Office	CACA 015634A	02/10/2010
	CACA 030806A	02/19/2010
	CACA 051668	02/19/2010
	CACA 051669	02/19/2010
	CACA 051670	02/19/2010
	CACA 051678	02/25/2010
	CAS 0033318A	02/25/2010
	CACA 051690	03/04/2010
	CACA 051691	03/04/2010
	CACA 051692	03/04/2010
	CACA 051693	03/04/2010
	CACA 051694	03/04/2010
	CACA 051695	03/04/2010
	CACA 051815	04/16/2010
	CACA 051816	04/16/2010
	CACA 051818	04/16/2010
	CACA 051819	04/16/2010
	CACA 051820	04/16/2010
	CACA 051822	04/16/2010
	CACA 051823	04/16/2010
	CACA 051834	04/20/2010
	CACA 051900	04/30/2010
	CACA 051901	04/30/2010
	CACA 051902	04/30/2010
	CACA 051903	04/30/2010
	CACA 051904	04/30/2010
	CACA 051906	04/30/2010
	CACA 051907	04/30/2010
	CACA 051908	04/30/2010
	CACA 051909	04/30/2010
	CACA 051910	04/30/2010

State and Field Office	Serial Number	Date Received
	CACA 051911	04/30/2010
	CACA 051912	04/30/2010
	CACA 051913	04/30/2010
	CACA 051914	04/30/2010
	CACA 051915	04/30/2010
	CACA 051916	04/30/2010
	CACA 051917	04/30/2010
	CACA 051918	04/30/2010
	CACA 051919	04/30/2010
	CACA 051920	04/30/2010
	CACA 051921	04/30/2010
	CACA 051922	04/30/2010
	CACA 051923	04/30/2010
	CACA 051924	04/30/2010
	CACA 051925	04/30/2010
	CACA 051926	04/30/2010
	CACA 051927	04/30/2010
	CACA 051928	04/30/2010
	CACA 051929	04/30/2010
	CACA 051930	04/30/2010
	CACA 051931	04/30/2010
	CACA 051932	04/30/2010
	CACA 051933	04/30/2010
	CACA 051934	04/30/2010
	CACA 051935	04/30/2010
	CACA 051936	04/30/2010
	CACA 051937	04/30/2010
	CACA 051938	04/30/2010
	CACA 051939	04/30/2010
	CACA 051940	04/30/2010
	CACA 051941	04/30/2010
	CACA 051942	04/30/2010
	CACA 051989	04/30/2010
	CACA 054624	05/14/2013
Bakersfield Field Office Total	**65**	
Barstow Field Office	CACA 049138	06/18/2007
	CACA 054469	03/12/2013
Barstow Field Office Total	**2**	
Needles Field Office	CACA 053550	01/31/2012
Needles Field Office Total	**1**	

Palm Springs/S Coast Field Office	CACA 051203	07/15/2009
Palm Springs/S Coast Field Office Total	**1**	
CA TOTAL	**69**	
COLORADO		
Colorado River Valley Field Office	COC 071059	04/10/2007
	COC 076335	04/18/2013
	COC 076339	09/23/2013
	COC 076339T	09/23/2013
	COC 076552	02/05/2014
	COC 076553	02/05/2014
	COC 076833	11/06/2014
	COC 077059	02/05/2015
	COC 077107	03/24/2015
	COC 077155	04/29/2015
Colorado River Valley Field Office Total	**10**	
Grand Junction Field Office	COC 074659	09/21/2010
	COC 03517501	02/15/2011
	COC 077238	10/23/2014
Grand Junction Field Office Total	**3**	
Little Snake Field Office	COC 076721	09/22/2014
Little Snake Field Office Total	**1**	
Northwest District Office	COC 076044	02/06/2013
Northwest District Office Total	**1**	
Royal Gorge Field Office	COC 076865	10/27/2014
	COC 076866	10/27/2014
Royal Gorge Field Office Total	**2**	
Tres Rios Field Office	COC 068759	05/16/2005
	COC 069363	07/13/2005
	COC 070301	06/10/2006
Tres Rios Field Office Total	**3**	

White River Field Office	COC 077227	11/30/2006
	COC 074630	08/12/2009
	COC 074470	04/12/2010
	COC 074753	04/12/2010
	COC 076298	04/24/2012
	COC 075627	08/24/2012
	COC 076577	05/07/2014
	COC 076583	06/02/2014
	COC 077001	08/06/2014
	COC 076768	08/20/2014
	COC 077167	10/31/2014
	COC 077078	12/09/2014
	COC 077136	03/02/2015
White River Field Office Total	**13**	
CO TOTAL	**33**	
EASTERN STATES		
Milwaukee Field Office	ILES 057973	10/28/2013
	VAES 058078	01/26/2015
	WVES 058077	01/26/2015
Milwaukee Field Office Total	**3**	
ES TOTAL	**3**	
IDAHO		
Jarbidge Field Office	IDI 037927	03/05/2015
Jarbidge Field Office Total	**1**	
ID TOTAL	**1**	
MONTANA/DAKOTAS		
Havre Field Office	MTM 108271	05/04/2015
	MTM 108269	06/01/2015
Havre Field Office Total	**2**	
Miles City Field Office	MTM 098191	03/20/2008
	MTM 098482	08/05/2008
	MTM 098695	10/20/2008
	MTM 103484	07/06/2011
Miles City Field Office Total	**4**	
North Dakota Field Office	NDM 107833	09/05/2014
	NDM 107834	09/05/2014
	NDM 107871	10/06/2014
	NDM 108240	05/11/2015
North Dakota Field Office Total	**5**	
South Dakota Field Office	SDM 099292	06/18/2009
	SDM 107311	01/02/2014
South Dakota Field Office Total	**2**	
MT TOTAL	**12**	

NEW MEXICO		
Carlsbad Field Office	NMNM 0070225A	08/10/1959
	NMLM 084516	10/24/2002
	NMLM 109818	05/08/2003
	NMLM 110720	09/15/2003
	NMNM 011312	04/21/2004
	NMNM 130171	06/01/2004
	NMNM 113327	06/20/2005
	NMNM 117709	01/27/2007
	NMNM 117847	02/14/2007
	NMNM 118415	05/15/2007
	NMNM 120726	05/29/2008
	NMNM 121687	11/17/2008
	NMNM 122236	02/26/2009
	NMNM 123454	07/08/2009
	NMNM 124583	11/16/2009
	NMNM 124183	12/10/2009
	NMNM 124691	03/19/2010
	NMNM 124038A	05/18/2010
	NMNM 12477401	07/06/2010
	NMNM 125478	09/03/2010
	NMNM 125523	09/20/2010
	NMNM 126328	03/08/2011
	NMNM 126477	04/12/2011
	NMNM 126589	05/05/2011
	NMNM 126836	05/10/2011
	NMNM 126693	05/17/2011
	NMNM 126884	07/06/2011
	NMNM 127334	09/14/2011
	NMNM 127735	10/13/2011
	NMNM 127977	01/17/2012
	NMNM 12562401	01/23/2012
	NMNM 127954	01/24/2012
	NMNM 128732	06/18/2012
	NMNM 128761	07/02/2012
	NMNM 128932	08/07/2012
	NMNM 128823	10/04/2012
	NMNM 129454	11/14/2012
	NMNM 129896	01/07/2013
	NMNM 129931	01/29/2013
	NMNM 130301	04/15/2013
	NMNM 131086	06/06/2013
	NMNM 131505	06/11/2013
	NMNM 130735	06/13/2013
	NMNM 131561	07/29/2013

	NMNM 131144	07/31/2013
	NMNM 131295	08/20/2013
	NMNM 131292	09/12/2013
	NMNM 131390	09/24/2013
	NMNM 131400	10/21/2013
	NMNM 131499	10/31/2013
	NMNM 131610	11/12/2013
	NMNM 131612	11/12/2013
	NMNM 132002	11/25/2013
	NMNM 131822	12/05/2013
	NMNM 131803	12/13/2013
	NMNM 131763	12/17/2013
	NMNM 131841	12/30/2013
	NMNM 131820	01/07/2014
	NMNM 131834	01/08/2014
	NMNM 132174	02/20/2014
	NMNM 132196	02/20/2014
	NMNM 132252	02/26/2014
	NMNM 132301	03/10/2014
	NMNM 094320A	03/12/2014
	NMNM 132302	03/13/2014
	NMNM 132376	03/23/2014
	NMNM 132375	03/25/2014
	NMNM 132491	04/04/2014
	NMNM 132556	04/17/2014
	NMNM 132644	04/17/2014
	NMNM 132606	04/21/2014
	NMNM 132607	04/21/2014
	NMNM 132654	04/23/2014
	NMNM 132596	04/24/2014
	NMNM 132603	04/24/2014
	NMNM 132605	04/24/2014
	NMNM 132551	04/25/2014
	NMNM 132667	04/29/2014
	NMNM 132585	04/30/2014
	NMNM 132694	05/05/2014
	NMNM 132718	05/05/2014
	NMNM 132534	05/07/2014
	NMNM 132919	05/27/2014
	NMNM 132697	05/29/2014
	NMNM 132775	05/29/2014
	NMNM 132711	06/06/2014
	NMNM 132901	06/09/2014
	NMNM 132777	06/12/2014
	NMNM 133288	06/23/2014

	NMNM 132961	06/30/2014
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	NMNM 133108	07/15/2014
	NMNM 133085	07/16/2014
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	NMNM 133093	07/28/2014
	NMNM 133143	07/28/2014
	NMNM 133144	07/28/2014
	NMNM 133771	07/29/2014
	NMNM 133770	08/04/2014
	NMNM 133199	08/07/2014
	NMNM 133207	08/07/2014
	NMNM 133216	08/07/2014
	NMNM 133308	08/12/2014
	NMNM 133282	08/19/2014
	NMNM 133171	08/22/2014
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	NMNM 133366	09/09/2014
	NMNM 133651	09/09/2014
	NMNM 133360	09/12/2014
	NMNM 133462	09/13/2014
	NMNM 133313	09/15/2014
	NMNM 133386	09/15/2014
	NMNM 133387	09/15/2014
	NMNM 133582	09/18/2014
	NMNM 133385	09/24/2014
	NMNM 133707	09/25/2014
	NMNM 133737	09/25/2014
	NMNM 133836	09/25/2014
	NMNM 133435	09/29/2014
	NMNM 133580	09/29/2014
	NMNM 133523	10/07/2014
	NMNM 133780	10/07/2014
	NMNM 133822	10/09/2014
	NMNM 133527	10/14/2014
	NMNM 133601	10/15/2014
	NMNM 133637	10/15/2014
	NMNM 134103	10/15/2014
	NMNM 133641	10/20/2014
	NMNM 133653	10/20/2014

	NMNM 133792	10/20/2014
	NMNM 134062	10/22/2014
	NMNM 134167	10/22/2014
	NMNM 133696	10/24/2014
	NMNM 134006	10/27/2014
	NMNM 133657	10/28/2014
	NMNM 133788	10/28/2014
	NMNM 133789	10/28/2014
	NMNM 133944	10/28/2014
	NMNM 133947	10/28/2014
	NMNM 134260	10/28/2014
	NMNM 133629	10/30/2014
	NMNM 133632	10/30/2014
	NMNM 133633	10/30/2014
	NMNM 133643	11/03/2014
	NMNM 133662	11/03/2014
	NMNM 133666	11/03/2014
	NMNM 134061	11/03/2014
	NMNM 133675	11/04/2014
	NMNM 133640	11/06/2014
	NMNM 133684	11/10/2014
	NMNM 133628	11/13/2014
	NMNM 134090	11/14/2014
	NMNM 133718	11/17/2014
	NMNM 134198	11/17/2014
	NMNM 133626	11/18/2014
	NMNM 133791	11/23/2014
	NMNM 133794	11/25/2014
	NMNM 134299	11/25/2014
	NMNM 133786	12/01/2014
	NMNM 133787	12/01/2014
	NMNM 133739	12/02/2014
	NMNM 133746	12/02/2014
	NMNM 133817	12/02/2014
	NMNM 134101	12/05/2014
	NMNM 133880	12/08/2014
	NMNM 133882	12/10/2014
	NMNM 134266	12/12/2014
	NMNM 133863	12/15/2014
	NMNM 133876	12/16/2014
	NMNM 133883	12/17/2014
	NMNM 133998	12/24/2014
	NMNM 133936	01/06/2015
	NMNM 134082	01/07/2015
	NMNM 133120	01/08/2015

	NMNM 133931	01/08/2015
	NMNM 133018	01/12/2015
	NMNM 133917	01/12/2015
	NMNM 133953	01/12/2015
	NMNM 134009	01/12/2015
	NMNM 134024	01/12/2015
	NMNM 134025	01/12/2015
	NMNM 134007	01/13/2015
	NMNM 134255	01/14/2015
	NMNM 134023	01/22/2015
	NMNM 133973	01/26/2015
	NMNM 134067	01/27/2015
	NMNM 134069	01/27/2015
	NMNM 134070	01/27/2015
	NMNM 134115	01/27/2015
	NMNM 134015	01/29/2015
	NMNM 134119	02/03/2015
	NMNM 134193	02/03/2015
	NMNM 134091	02/04/2015
	NMNM 134114	02/09/2015
	NMNM 134145	02/19/2015
	NMNM 134139	02/20/2015
	NMNM 134150	02/20/2015
	NMNM 134194	02/23/2015
	NMNM 134200	02/24/2015
	NMNM 134256	03/04/2015
	NMNM 134244	03/10/2015
	NMNM 134261	03/10/2015
	NMNM 134437	03/10/2015
	NMNM 133634	03/12/2015
	NMNM 134300	03/20/2015
	NMNM 134307	03/23/2015
	NMNM 134311	03/24/2015
	NMNM 134337	03/24/2015
	NMNM 134339	03/26/2015
	NMNM 134369	03/30/2015
	NMNM 134357	04/01/2015
	NMNM 134366	04/02/2015
	NMNM 134377	04/08/2015
	NMNM 134382	04/09/2015
	NMNM 134396	04/13/2015
	NMNM 134399	04/14/2015
	NMNM 134412	04/16/2015
	NMNM 134413	04/16/2015
	NMNM 134414	04/16/2015

	NMNM 134415	04/16/2015
	NMNM 134416	04/16/2015
	NMNM 134418	04/16/2015
	NMNM 134421	04/16/2015
	NMNM 134422	04/16/2015
	NMNM 134423	04/17/2015
	NMNM 134428	04/21/2015
	NMNM 134459	04/24/2015
	NMNM 134499	05/08/2015
	NMNM 134500	05/08/2015
	NMNM 134503	05/08/2015
	NMNM 134524	05/13/2015
	NMNM 134526	05/13/2015
	NMNM 134548	05/19/2015
	NMNM 134550	05/19/2015
	NMNM 134561	05/20/2015
	NMNM 134597	05/22/2015
	NMNM 134606	06/01/2015
	NMNM 134624	06/04/2015
	NMNM 134630	06/08/2015
	NMNM 134632	06/08/2015
	NMNM 134634	06/08/2015
	NMNM 134636	06/08/2015
	NMNM 134637	06/08/2015
	NMNM 134647	06/11/2015
	NMNM 134648	06/11/2015
	NMNM 134658	06/15/2015
	NMNM 134662	06/17/2015
	NMNM 134663	06/17/2015
	NMNM 134667	06/17/2015
	NMNM 134668	06/17/2015
	NMNM 134669	06/17/2015
	NMNM 134670	06/17/2015
	NMNM 134678	06/19/2015
	NMNM 134688	06/22/2015
	NMNM 134690	06/22/2015
	NMNM 134691	06/22/2015
	NMNM 134701	06/24/2015
	NMNM 134725	06/29/2015
	NMNM 134726	06/30/2015
	NMNM 134748	07/06/2015
	NMNM 134750	07/06/2015
	NMNM 134751	07/06/2015
	NMNM 134794	07/06/2015
	NMNM 134795	07/06/2015

	NMNM 134797	07/08/2015
	NMNM 134790	07/10/2015
	NMNM 134845	07/20/2015
	NMNM 134922	07/22/2015
	NMNM 134930	07/24/2015
	NMNM 134945	07/30/2015
Carlsbad Field Office Total	**275**	
New Mexico State Office	NMNM 128389	04/18/2012
New Mexico State Office Total	**1**	
Farmington Field Office	NMNM 088300	06/22/1992
	NMNM 095124	06/30/1995
	NMNM 101936	01/14/1999
	NMNM 107825	04/11/2002
	NMNM 109525	02/06/2003
	NMNM 110038	07/31/2003
	NMNM 111572	02/19/2004
	NMNM 113740	05/26/2005
	NMNM 113807	07/18/2005
	NMNM 114844	09/22/2005
	NMNM 114885	09/26/2005
	NMNM 114918	10/04/2005
	NMNM 115060	10/18/2005
	NMNM 115078	10/20/2005
	NMNM 115482	01/20/2006
	NMNM 115673	02/15/2006
	NMNM 115681	02/15/2006
	NMNM 115902	03/24/2006
	NMNM 115931	03/30/2006
	NMNM 115950	04/03/2006
	NMNM 116140	04/27/2006
	NMNM 116193	04/28/2006
	NMNM 116217	05/01/2006
	NMNM 116221	05/01/2006
	NMNM 116222	05/01/2006
	NMNM 116974	05/26/2006
	NMNM 116478	06/27/2006
	NMNM 116499	07/06/2006
	NMNM 116637	07/19/2006
	NMNM 116640	07/19/2006
	NMNM 116642	07/19/2006
	NMNM 116697	07/28/2006
	NMNM 116867	08/28/2006
	NMNM 116849	08/29/2006
	NMNM 116894	09/06/2006

	NMNM 116963	09/21/2006
	NMNM 117301	11/15/2006
	NMNM 117392	12/01/2006
	NMNM 117448	12/15/2006
	NMNM 117449	12/15/2006
	NMNM 117754	02/07/2007
	NMNM 117787	02/12/2007
	NMNM 117790	02/12/2007
	NMNM 117889	03/02/2007
	NMNM 118069	04/04/2007
	NMNM 118306	05/02/2007
	NMNM 118307	05/02/2007
	NMNM 118331	05/09/2007
	NMNM 118339	05/11/2007
	NMNM 118498	06/18/2007
	NMNM 118597	07/09/2007
	NMNM 118598	07/09/2007
	NMNM 118651	07/16/2007
	NMNM 118989	07/26/2007
	NMNM 118878	07/27/2007
	NMNM 118948	08/03/2007
	NMNM 119171	09/19/2007
	NMNM 119194	09/25/2007
	NMNM 118932	09/28/2007
	NMNM 119427	11/05/2007
	NMNM 119431	11/05/2007
	NMNM 11946001	11/13/2007
	NMNM 119508	11/28/2007
	NMNM 119509	11/28/2007
	NMNM 119535	12/03/2007
	NMNM 119880	01/23/2008
	NMNM 119882	01/23/2008
	NMNM 119886	01/23/2008
	NMNM 119971	02/07/2008
	NMNM 119973	02/07/2008
	NMNM 119977	02/07/2008
	NMNM 120004	02/12/2008
	NMNM 12006801	02/25/2008
	NMNM 120087	03/03/2008
	NMNM 120238	03/24/2008
	NMNM 120249	03/31/2008
	NMNM 120289	04/07/2008
	NMNM 120428	04/21/2008
	NMNM 120429	04/21/2008
	NMNM 120546	04/30/2008

	NMNM 120573	05/07/2008
	NMNM 120601	05/13/2008
	NMNM 120599	05/14/2008
	NMNM 120989	07/16/2008
	NMNM 121217	08/04/2008
	NMNM 121208	08/26/2008
	NMNM 121214	08/26/2008
	NMNM 121589	10/23/2008
	NMNM 122018	01/27/2009
	NMNM 122083	01/30/2009
	NMNM 122092	02/05/2009
	NMNM 122121	02/06/2009
	NMNM 122122	02/06/2009
	NMNM 122125	02/06/2009
	NMNM 122126	02/06/2009
	NMNM 117775	02/08/2009
	NMNM 122130	02/09/2009
	NMNM 122131	02/09/2009
	NMNM 122132	02/09/2009
	NMNM 122107	02/11/2009
	NMNM 122164	02/17/2009
	NMNM 122167	02/17/2009
	NMNM 122170	02/20/2009
	NMNM 122288	03/17/2009
	NMNM 122331	03/20/2009
	NMNM 122333	03/20/2009
	NMNM 122334	03/20/2009
	NMNM 122335	03/20/2009
	NMNM 122429	04/08/2009
	NMNM 123103	04/30/2009
	NMNM 123226	05/11/2009
	NMNM 123248	05/15/2009
	NMNM 123242	05/19/2009
	NMNM 123354	06/11/2009
	NMNM 123985	09/29/2009
	NMNM 124048	09/30/2009
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	NMNM 124176	12/30/2009
	NMNM 124359	02/10/2010
	NMNM 126150	05/04/2010
	NMNM 124971	06/03/2010
	NMNM 125042	06/23/2010
	NMNM 125046	06/28/2010
	NMNM 125121	07/08/2010
	NMNM 125302	07/21/2010

	NMNM 125342	08/02/2010
	NMNM 125447	08/30/2010
	NMNM 125681	10/18/2010
	NMNM 125816	11/05/2010
	NMNM 125892	12/02/2010
	NMNM 125894	12/02/2010
	NMNM 126021	01/06/2011
	NMNM 126022	01/06/2011
	NMNM 126023	01/06/2011
	NMNM 126263	02/24/2011
	NMNM 126536	04/14/2011
	NMNM 126539	04/14/2011
	NMNM 126540	04/14/2011
	NMNM 126542	04/14/2011
	NMNM 126531	04/21/2011
	NMNM 126753	06/03/2011
	NMNM 126745	06/07/2011
	NMNM 126748	06/07/2011
	NMNM 126858	06/23/2011
	NMNM 126867	06/30/2011
	NMNM 127013	07/20/2011
	NMNM 127021	07/20/2011
	NMNM 127182	08/20/2011
	NMNM 127320	09/15/2011
	NMNM 127321	09/15/2011
	NMNM 127363	09/29/2011
	NMNM 127500	10/25/2011
	NMNM 127583	11/09/2011
	NMNM 127584	11/09/2011
	NMNM 127588	11/09/2011
	NMNM 127622	11/18/2011
	NMNM 127780	11/22/2011
	NMNM 127982	01/10/2012
	NMNM 127983	01/10/2012
	NMNM 127990	01/27/2012
	NMNM 127991	01/27/2012
	NMNM 128037	02/02/2012
	NMNM 12803701	02/02/2012
	NMNM 12803901	02/02/2012
	NMNM 128168	03/01/2012
	NMNM 128538	05/04/2012
	NMNM 128780	06/28/2012
	NMNM 128968	08/09/2012
	NMNM 129055	08/29/2012
	NMNM 129207	09/12/2012

	NMNM 129206	09/14/2012
	NMNM 129204	09/21/2012
	NMNM 129202	10/03/2012
	NMNM 129345	10/15/2012
	NMNM 129635	10/31/2012
	NMNM 129643	11/05/2012
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	NMNM 129644	11/09/2012
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	NMNM 129676	11/28/2012
	NMNM 129666	12/12/2012
	NMNM 129856	01/02/2013
	NMNM 129865	01/09/2013
	NMNM 129874	01/14/2013
	NMNM 129877	01/15/2013
	NMNM 129925	02/05/2013
	NMNM 129926	02/05/2013
	NMNM 129964	02/12/2013
	NMNM 129966	02/12/2013
	NMNM 129977	02/13/2013
	NMNM 129981	02/13/2013
	NMNM 130019	02/19/2013
	NMNM 130037	02/22/2013
	NMNM 130110	03/05/2013
	NMNM 130163	03/13/2013
	NMNM 130164	03/13/2013
	NMNM 130201	03/21/2013
	NMNM 130467	04/24/2013
	NMNM 130468	04/24/2013
	NMNM 130470	05/01/2013
	NMNM 130685	06/13/2013
	NMNM 130819	07/08/2013
	NMNM 130917	07/15/2013
	NMNM 130937	07/19/2013
	NMNM 131289	09/05/2013
	NMNM 131694	12/03/2013
	NMNM 131954	01/23/2014
	NMNM 131935	01/24/2014
	NMNM 132010	02/12/2014
	NMNM 132014	02/12/2014
	NMNM 132017	02/12/2014
	NMNM 132020	02/12/2014
	NMNM 132188	03/03/2014
	NMNM 132190	03/05/2014

	NMNM 132231	03/10/2014
	NMNM 132232	03/10/2014
	NMNM 132233	03/10/2014
	NMNM 132370	04/04/2014
	NMNM 132433	04/04/2014
	NMNM 132440	04/04/2014
	NMNM 132447	04/04/2014
	NMNM 132571	05/15/2014
	NMNM 132600	05/22/2014
	NMNM 132730	05/22/2014
	NMNM 132680	06/02/2014
	NMNM 132685	06/02/2014
	NMNM 132765	06/04/2014
	NMNM 132735	06/17/2014
	NMNM 132827	06/30/2014
	NMNM 132842	06/30/2014
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	NMNM 132874	06/30/2014
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	NMNM 132881	07/03/2014
	NMNM 132967	07/16/2014
	NMNM 133049	07/28/2014
	NMNM 133050	07/28/2014
	NMNM 133052	07/31/2014
	NMNM 133055	07/31/2014
	NMNM 133097	07/31/2014
	NMNM 133101	08/06/2014
	NMNM 133220	08/20/2014
	NMNM 133223	08/21/2014
	NMNM 133233	08/21/2014
	NMNM 133249	08/21/2014
	NMNM 133252	08/21/2014
	NMNM 133328	09/11/2014
	NMNM 133410	09/29/2014
	NMNM 133411	09/29/2014
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	NMNM 133413	09/29/2014
	NMNM 133415	09/29/2014
	NMNM 133417	09/30/2014
	NMNM 133420	10/02/2014
	NMNM 133433	10/02/2014
	NMNM 133554	10/03/2014
	NMNM 133540	10/10/2014

	NMNM 133515	10/15/2014
	NMNM 133519	10/15/2014
	NMNM 133796	12/12/2014
	NMNM 133825	12/19/2014
	NMNM 133888	01/06/2015
	NMNM 133893	01/06/2015
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	NMNM 133915	01/08/2015
	NMNM 133987	01/16/2015
	NMNM 133974	01/20/2015
	NMNM 134207	02/03/2015
	NMNM 134217	02/19/2015
	NMNM 134220	02/19/2015
	NMNM 134223	02/19/2015
	NMNM 134276	03/05/2015
	NMNM 134282	03/05/2015
	NMNM 134287	03/05/2015
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	NMNM 134306	03/16/2015
	NMNM 134308	03/16/2015
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	NMNM 134309	03/23/2015
	NMNM 134371	03/25/2015
	NMNM 134346	03/27/2015
	NMNM 134454	04/07/2015
	NMNM 134467	04/10/2015
	NMNM 134451	04/13/2015
	NMNM 134577	04/21/2015
	NMNM 134578	05/13/2015
	NMNM 134582	05/13/2015
	NMNM 134596	05/26/2015
	NMNM 134685	06/08/2015
	NMNM 134695	06/11/2015
	NMNM 134765	06/29/2015
	NMNM 134719	07/02/2015
	NMNM 134955	07/27/2015
Farmington Field Office Total	**300**	
Las Cruces District Office	NMNM 131777	NMNM 131777
	NMNM 134401	NMNM 134401
Las Cruces District Office Total	**2**	

Roswell Field Office	NMNM 120114	03/10/2008
	NMNM 124445	02/26/2010
	NMNM 125090	07/07/2010
	NMNM 133609	11/14/2014
	NMNM 133615	11/14/2014
	NMNM 133926	01/15/2015
	NMNM 134758	07/06/2015
Roswell Field Office Total	**2**	
Taos Field Office	NMNM 128556	02/07/2012
	NMNM 133382	09/30/2014
Taos Field Office Total	**2**	
NM TOTAL	**587**	
NEVADA		
Nevada State Office	NVN 091207	05/31/2012
	NVN 093938	04/08/2015
	NVN 093979	04/30/2015
	NVN 09397901	04/30/2015
	NVN 093981	04/30/2015
	NVN 093983	04/30/2015
	NVN 093998	04/30/2015
State Office Total	**7**	
Las Vegas Field Office	NVN 048332	04/08/1988
	NVN 082066	05/23/2006
Las Vegas Field Office Total	**2**	
Sierra Front Field Office	NVN 084728	02/14/2008
	NVN 093884	03/05/2015
Sierra Front Field Office Total	**2**	
Stillwater Field Office	NVN 006344001	02/05/2014
Stillwater Field Office Total	**1**	
Tuscarora Field Office	NVN 092738	10/17/2013
Tuscarora Field Office Total	**1**	
Winnemucca District Office	NVN 094010	04/27/2015
Winnemucca District Office Total	**1**	
Winnemucca Field Office	NVN 084527	12/26/2007
Winnemucca Field Office Total	**1**	
NV TOTAL	**15**	
OREGON		
Prineville Deschutes Field Office	OROR 064443	06/26/2007
Prineville Deschutes Field	**1**	

Office Total		
Spokane Wenatchee Field Office	WAOR 052141	06/23/1995
Spokane Wenatchee Field Office Total	**1**	
OR TOTAL	**2**	
	UTAH	
Fillmore Field Office	UTU 090095	09/06/2013
Fillmore Field Office Total	**1**	
Moab Field Office	UTU 088288	08/06/2010
	UTU 090680	07/22/2014
Moab Field Office Total	**2**	
Monticello Field Office	UTU 091275	06/15/2015
Monticello Field Office Total	**1**	
Price Field Office	UTU 091003	11/12/2014
	UTU 091010	11/24/2014
Price Field Office Total	**2**	
Richfield Field Office	UTU 090169	11/07/2013
	UTU 090255	01/09/2014
Richfield Field Office Total	**2**	
Vernal Field Office	UTU 087897	09/17/2009
	UTU 089094	05/18/2012
	UTU 089449	12/03/2012
	UTU 089452	12/03/2012
	UTU 090045	04/17/2013
	UTU 090063	07/16/2013
	UTU 090065	07/16/2013
	UTU 090068	07/16/2013
	UTU 090071	07/16/2013
	UTU 090073	07/16/2013
	UTU 090077	07/16/2013
	UTU 090831	07/16/2014
	UTU 090838	07/22/2014
	UTU 091164	01/16/2015
	UTU 091167	01/16/2015
	UTU 091235	02/04/2015
	UTU 091240	02/11/2015
	UTU 091279	06/25/2015
	UTU 091285	07/16/2015
	UTU 091286	07/16/2015
Vernal Field Office Total	**20**	
UT TOTAL	**28**	

WYOMING		
Casper Field Office	WYW 181474	07/02/1920
	WYW 118960	05/22/1990
	WYW 164156	07/21/2005
	WYW 181575	06/21/2007
	WYW 179847	09/29/2010
	WYW 180419	08/24/2011
	WYW 26653001	12/17/2012
	WYW 184326	03/10/2015
	WYW 184336	03/10/2015
	WYW 184338	03/10/2015
	WYW 184339	03/10/2015
Casper Field Office Total	**11**	
Cody Field Office	WYW 165784	05/08/2006
Cody Field Office Total	**1**	
Kemmerer Field Office	WYW 170987	10/20/2006
	WYW 170998	10/27/2006
	WYW 171067	04/05/2007
	WYW 171080	05/02/2007
	WYW 171148	10/29/2007
	WYW 171164	01/22/2008
	WYW 171285	10/13/2009
	WYW 171480	07/29/2015
Kemmerer Field Office Total	**8**	
Lander Field Office	WYW 168290	02/19/2013
Lander Field Office Total	**1**	
Newcastle Field Office	WYW 182443	07/26/2013
	WYW 170158	02/18/2015
Newcastle Field Office Total	**2**	
Pinedale Field Office	WYW 175307	10/08/2007
	WYW 175522	10/29/2008
	WYW 175537	11/14/2008
	WYW 175540	11/14/2008
	WYW 175541	11/24/2008
	WYW 175542	11/24/2008
	WYW 176916	03/30/2009
	WYW 176961	07/29/2009
	WYW 176963	08/06/2009
	WYW 176964	08/06/2009
	WYW 176965	08/11/2009
	WYW 176966	08/11/2009
	WYW 176967	08/11/2009
	WYW 176975	08/24/2009
	WYW 176976	08/24/2009
	WYW 181679	05/20/2014

	WYW	183494	03/31/2015
	WYW	183495	03/31/2015
	WYW	183497	03/31/2015
	WYW	183482	04/01/2015
	WYW	183503	06/22/2015
	WYW	183510	07/07/2015
	WYW	183511	07/16/2015
	WYW	183512	07/16/2015
	WYW	183513	07/16/2015
	WYW	183514	07/16/2015
	WYW	183518	07/30/2015
	WYW	183519	07/31/2015
	WYW	183520	07/31/2015
Pinedale Field Office Total	**29**		
Rawlins Field Office	WYW	166307	05/20/2009
	WYW	182426	07/18/2011
	WYW	183664	04/02/2012
	WYW	181254	06/27/2012
	WYW	181461	08/10/2012
	WYW	182667	09/18/2013
	WYW	182928	12/23/2013
	WYW	183857	03/27/2014
	WYW	183715	04/14/2014
	WYW	183716	04/14/2014
	WYW	183717	04/14/2014
	WYW	183718	04/14/2014
	WYW	183719	04/14/2014
	WYW	183727	06/24/2014
	WYW	183728	06/24/2014
	WYW	182665	09/16/2014
	WYW	184314	04/13/2015
	WYW	184321	04/15/2015
	WYW	184325	04/15/2015
	WYW	184333	04/24/2015
	WYW	184344	05/01/2015
	WYW	184431	05/12/2015
	WYW	184432	05/12/2015
	WYW	184451	05/26/2015
	WYW	184452	05/26/2015
	WYW	184480	06/08/2015
	WYW	184487	06/10/2015
	WYW	184488	06/10/2015
	WYW	184510	07/06/2015
	WYW	184525	07/22/2015
	WYW	184576	08/03/2015

Rawlins Field Office Total	**31**		
Rock Springs Field Office	WYW	163790	09/02/2005
	WYW	167539	10/01/2007
	WYW	167631	07/24/2008
	WYW	167799	06/03/2011
	WYW	167841	11/18/2011
	WYW	167857	04/12/2012
	WYW	167859	04/27/2012
	WYW	167867	06/11/2012
	WYW	167873	07/18/2012
	WYW	167874	07/18/2012
	WYW	167887	10/02/2012
	WYW	167899	11/15/2012
	WYW	167908	02/28/2013
	WYW	167909	03/13/2013
	WYW	167915	03/15/2013
	WYW	167918	04/11/2013
	WYW	167919	04/11/2013
	WYW	183364	04/03/2014
	WYW	183687	06/03/2014
	WYW	184470	06/08/2015
	WYW	184482	06/22/2015
	WYW	184500	06/26/2015
	WYW	184499	07/06/2015
	WYW	184527	07/23/2015
	WYW	184529	07/24/2015
	WYW	184530	07/24/2015
Rock Springs Field Office Total	**31**		
Worland Field Office	WYW	162898	08/02/2005
	WYW	165321	05/29/2014
Worland Field Office Total	**2**		
WY TOTAL	**111**		
BLM TOTAL	**867**		

Question 5: Secretary Jewell has stated that BLM will propose a new rule for flaring and venting of natural gas on federal lands and Indian lands shortly.

Does BLM plan to conduct a federalism assessment on the impacts of the proposed rule to states pursuant to Executive Order 13132? If not, why not?

Response:

Executive Order 13132 requires preparation of a federalism assessment if a rule would have a substantial direct effect on the states, or the relationship between the national

government and the states, or on the distribution of power and responsibilities among the levels of government. At this time, the BLM has not yet issued a proposed rule for flaring and venting of natural gas from leases administered by the BLM, including leases on public lands and Indian lands. Thus, we have not yet made a final determination regarding whether preparation of a federalism assessment would be required for this rule.

Questions from Senator Lisa Murkowski

Question 1: The Montana BLM office already oversees the North Dakota mineral activities, and Washington state and Oregon activities are managed out of the Portland office. E&E reported March 13, 2015 that there is speculation of a merger of the New Mexico and Arizona BLM offices. Is consolidation of the state offices part of a larger policy vision for the future organizational structure of the BLM, and if so, what impacts and results does the BLM anticipate from such a shift?

Response:

The BLM remains committed to directing our budget to areas where we can make the greatest positive impact for the nation.

Declining budgets and sequestration have eroded the BLM's ability to deliver the services and programs that the public expects from us. Because of increasing pressure on the BLM's budget, the agency's staffing level has dropped by 1,300 positions or 12 percent over the past five years. Not only has the BLM's budget declined in real dollar terms, but fixed costs have also increased substantially, further reducing the BLM's purchasing power. This serious decline in agency resources and personnel has come at the same time that public interest in and public use of our nation's public lands is increasing. As a result, the BLM must always be looking for ways to use our budget and personnel more efficiently.

As part of our responsibility to align our remaining budget and personnel resources to maximize our efforts, the BLM is always looking at potential efficiencies, which can include structural realignments. The BLM explored the possibility of combining its Arizona and New Mexico state offices to better serve the public in the southwest by directing more resources to the district and field office level. After listening carefully to feedback from partners and stakeholders, the BLM has decided not to move forward with a merger of these two state offices.

Question 2: You stated during the hearing that significant consultations with States and Tribes occurred in the development of the rule. Did BLM consult with the State of Alaska, the Alaska Oil and Gas Conservation Commission, Alaska Native Village or Regional Corporations or tribal councils? Please list the entities in Alaska with whom the BLM consulted in the development of this rule.

Response:

During the four years spent developing the hydraulic fracturing rule, the BLM consulted with many states with significant oil and gas operations and benefited from their experience and expertise. In Alaska, the BLM consulted with the Alaska Oil and Gas Conservation Commission and Alaska Department of Environmental Conservation. In addition, during the rulemaking process, the BLM paid particular attention to the State of

Alaska's regulations addressing interwell communications, or "frack hits." (20 AAC 25.283, *Hydraulic Fracturing,* published in August 2014)

Tribal consultation was a similarly critical component of this rulemaking effort, and the Department remains committed to making sure tribal leaders play a significant role as the BLM and tribes work together to develop resources on public and Indian lands in a safe and responsible way. For the rulemaking effort, the BLM initiated government-to-government consultation with tribes on the proposed rule and offered to hold follow-up consultation meetings with any tribe that desired to have an individual meeting. Many subsequent meetings were held with individual tribes. In January 2012, the BLM held four regional tribal consultation meetings, to which over 175 tribal entities were invited. These group meetings were followed by individual consultation meetings, with the latter involving local BLM authorized officers and management, including State Directors in recognition of established local relationships.

In June 2012, the BLM held additional regional consultation meetings in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. Eighty-one tribal members representing 27 tribes attended the meetings. In these sessions, the BLM and tribal representatives engaged in substantive discussions of the proposed hydraulic fracturing rule. A variety of issues were discussed, including but not limited to the applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management, among others. Additional individual consultations with tribal representatives have taken place since that time. Consultation meetings were also held at the National Congress of American Indian Conference in Lincoln, Nebraska, on June 18, 2012, and at New Town, North Dakota on July 13, 2012. Although the BLM did not have a specific tribal consultation session in the State of Alaska, the BLM undertook a robust tribal consultation process for the rule.

Questions from Senator Jeff Flake

Question 1: On Friday, April 24, BLM Deputy Director Steve Ellis held a congressional briefing on a proposal to merge the Arizona and New Mexico state BLM offices. Can you provide an update on the status of that decision making process? That is, when does BLM plan to make a decision?

Response:

After listening carefully to feedback from partners and stakeholders, the BLM has decided not to move forward with a merger of these two State Offices. The BLM is maintaining both the Arizona and New Mexico State Offices and both State Director positions.

Question 2: If BLM decides to move forward with merging the offices, what sort of notice and consultation is the Bureau required to engage in with Congress before finalizing its decision?

Response:

After listening carefully to feedback from partners and stakeholders, the BLM has decided not to move forward with a merger of these two State Offices. The BLM is maintaining both the Arizona and New Mexico State Offices and both State Director positions.

Question 3: What type of outreach has the BLM conducted with interested stakeholders in Arizona and New Mexico?

Response:

After listening carefully to feedback from partners and stakeholders, the BLM has decided not to move forward with a merger of these two State Offices. The BLM is maintaining both the Arizona and New Mexico State Offices and both State Director positions..

Question 4: During the briefing, Deputy Secretary Ellis made frequent references to the joint offices in Oregon and Washington, as well as Montana and the Dakotas. Please provide information on the average length of time it takes those offices to process permits, environmental analyses, and other approvals before and after those officer mergers were completed.

Response:

BLM Deputy Director, Operations, Steve Ellis made references to Montana and the Dakotas and Oregon and Washington offices to illustrate that the BLM has experience of effectively managing across state boundaries. These multi-state organizations have been

in place in one form or another since the early days of the BLM, before the passage of the National Environmental Policy Act of 1969 or the Federal Land Policy and Management Act of 1976. Because of this, before and after processing times are unavailable.

Question 5: Please provide information on the cost savings that were realized from prior BLM office mergers (e.g., Oregon-Washington, Montana-Dakotas), and whether those cost savings were retained by those new regional offices or used elsewhere in the Bureau.

Response:

These multi-state organizations have been in place in one form or another since the early days of the BLM, before the passage of the National Environmental Policy Act of 1969 or the Federal Land Policy and Management Act of 1976. Because of this, before and after costs are unavailable.

Questions from Senator Mazie K. Hirono

Question 1: BLM MOU with FracFocus

At the time that the Bureau of Land Management published the final rule on hydraulic fracturing on public lands the agency indicated that it was entering into a MOU with the managers of FracFocus to clear up concerns and recommendations by the Department of Energy's Science Advisory Board relating to functionality and accessibility of data.

Can you explain in more detail the specifics of the MOU? Does it address all recommendations and actions in the Department of Energy's FracFocus 2.0 report or only a portion of those?

Response:

The BLM is working closely with the Ground Water Protection Council (GWPC) to finalize a Memorandum of Understanding (MOU) that will ensure that industry's disclosures of chemicals used in the hydraulic fracturing process can be easily searched and downloaded from the GWPC's publicly available database, FracFocus. The BLM is also collaborating with the Department of Energy (DOE) and will address the DOE's FracFocus report recommendations in the MOU.

Question 2: Environmental Impacts of Fracking

***The New Yorker* recently ran a lengthy piece that discussed the linkage between oil and gas development and the frequency of earthquake activity in Oklahoma. It noted that "Until 2008, Oklahoma experienced an average of one to two earthquakes of 3.0 magnitude or greater each year. In 2014, there were five hundred and eighty-five, nearly triple the rate of California. Including smaller earthquakes in the count, there were more than five thousand."**

The article goes on to say, "Disposal wells trigger earthquakes when they are dug too deep, near or into basement rock, or when the wells impinge on a fault line." The research geologist from the United States Geological Survey that was interviewed for the article said, when discussing the linkage, "Scientifically, it's really quite clear." Do you agree with the USGS geologist that oil and gas exploration has contributed to increased seismic activity? Do you believe that additional steps should be taken to limit hydraulic fracturing or better regulate the placement of disposal wells, which house wastewater from hydraulic fracturing, in areas known to trigger earthquakes?

Response:

The USGS report[i] you referenced summarized the issue of induced seismicity as follows:

> Although enhanced oil recovery and hydraulic fracturing have been implicated in some recent seismicity, studies indicate that the majority of the increase in

seismicity is induced by the deep disposal of fluids produced by oil and gas production (wastewater disposal). Hydraulic fracturing does not play a key role in the increase in that 1) hydraulic fracturing does not typically induce felt earthquakes; 2) in Oklahoma, the location of the largest increase in seismicity, spent hydraulic fracturing fluid does not represent a large percentage of the fluids comprising disposed wastewater; and 3) oil produced from many fields with large volumes of produced water did not involve any hydraulic fracturing.

Disposal wells are principally regulated by the U.S. Environmental Protection Agency and the states or tribes. A proposal to locate a disposal well on surface managed by BLM requires BLM's approval. The USGS report does suggest that attention to the siting of disposal wells is prudent.

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[1] Myths and Facts on Wastewater Injection, Hydraulic Fracturing, Enhanced Oil Recovery, and Induced Seismicity, Justin L. Rubinstein and Alireza Babaie Mahani, Seismological Research Letters Volume 86, Number 4 July/August 2015, https://profile.usgs.gov/myscience/upload_folder/ci2015Jun1012005755600Induced_EQs_Review.pdf

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 7 2016

The Hon. John Barrasso
Chairman
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record concerning S. 2031, submitted following the October 1, 2015, legislative hearing.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Ron Wyden, Ranking Member
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
October 1, 2015 Hearing: S. 2031
Questions for the Record Submitted to Ms. Amanda Leiter

Questions from Senator Ron Wyden

Question 1:
I understand that the environmental footprint, including greenhouse gas emissions, of U.S. soda ash production is dramatically lower than synthetic production in countries like China. In analyzing the proper royalty rate, how has the Administration factored in the environmental advantages of U.S. production?"

Response:
The Bureau of Land Management (BLM) is mandated by section 102(a)(9) of the Federal Land Policy and Management Act of 1976 (FLPMA) to receive fair market value (FMV) for the development of Federal mineral resources. In the case of sodium leasing, royalty rates were determined by studying royalty rates for leases on comparable private land. While the Department of the Interior (Department) and the BLM conduct extensive environmental reviews when required by statute or regulation, a comparison of the environmental impacts of production of soda ash from Federal lands versus the impacts of synthetic production from other countries is not relevant to the statutorily-required FMV determination.

Question 2:
How does the Administration propose that U.S. soda ash production avoid being undercut by China's subsidies, through the value-added tax rebate or currency manipulation, for synthetic production?

Response:
The BLM is mandated by FLPMA to manage the development of mineral resources located on public lands in a manner that protects the quality of historical, ecological, and environmental resources, while also receiving fair market value for those mineral resources. The BLM does not consider matters of international taxes and currency when authorizing or determining what royalties to charge on production of soda ash from Federal land.

Questions from Senator Elizabeth Warren

Question 1:
The BLM does not support the royalty reductions of S. 2031 on the grounds that the legislation fails to ensure a "fair return to the U.S. taxpayer." As you note, if the two percent rate under this bill had been imposed during FY 2014 – a year in which Congress had already established reduced royalty rates – it would have cost taxpayers an additional $21 million.

Soda ash is far from the only resource that the federal government fails to receive a fair return on, however. After hardrock mining companies pay next-to-nothing to obtain rights to public land, they can mine on these lands without paying any royalties. Companies that drill onshore for oil and gas do have to pay royalties, but the 12.5% rate is substantially lower than rates charged by most states and private landowners. When it

comes to coal, one analysis found that companies were so successful in exploiting loopholes that in practice, they only paid a 4.9 percent rate. I understand that the Department has already solicited public input on several of these issues.

Do you believe U.S. taxpayers are currently receiving a fair return on hardrock mining, coal mining, and onshore oil and gas drilling conducted on federal land?

Response:
Regarding the hardrock mining program, the President's FY 2016 budget includes a legislative proposal to reform hardrock mining by instituting a leasing process under the Mineral Leasing Act of 1920 for certain minerals, including gold, silver, zinc, copper, uranium, and molybdenum. If enacted, subject to valid existing rights, mining for these metals on Federal lands would be governed by the new leasing process and be subject to annual rental payments and a royalty rate that provides a fair return for the taxpayer.

Regarding the Federal coal program, the BLM recently hosted a series of five listening sessions across the country, in part to discuss how best to carry out its responsibility to ensure that taxpayers receive a fair return on the coal resources managed by the BLM. This discussion was initiated in response to Secretary Jewell's call for "an honest and open conversation about modernizing the Federal coal program." The BLM is currently reviewing the public comments submitted as part of this discussion to determine whether policy changes are necessary to ensure a fair return for Federal coal resources.

Finally, regarding the Federal oil and gas program, in April 2015, the BLM issued an advanced notice of proposed rulemaking (ANPR) to seek public comment on potential updates to BLM regulations governing oil and gas royalty rates and rental payments, as well as other financial considerations. Among other things, the ANPR sought comment on potential changes that would provide the BLM with the flexibility to update the royalty rate in response to market conditions. The BLM received over 82,000 public comments in response to the ANPR. Those comments are currently undergoing internal agency review.

All of these efforts have the same aim: to evaluate the need to change existing policies and regulations to ensure a fair return for Federal resources, while also balancing economic, environmental, and other considerations, as required by applicable laws.

Question 2:
What other resources, if any, is the federal government failing to secure a fair return on?

Response:
As noted in the response above, the Department is taking steps through both the budgetary and regulatory processes to ensure that the public receives a fair return for its onshore mineral resources.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 8 2016

The Honorable Dan Sullivan
Chairman
Subcommittee on Fisheries, Water, and Wildlife
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Subcommittee's September 29, 2015, briefing on "Improving the Endangered Species Act: Perspectives from the Fish and Wildlife Service and State Governors."

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Sheldon Whitehouse
Ranking Member

Senate Committee on Environment and Public Works
Subcommittee on Fisheries, Water, and Wildlife
Briefing entitled, "Improving the Endangered Species Act: Perspectives from the Fish and Wildlife Service and State Governors"
Questions for the Record for Director Dan Ashe
September 29, 2015

Chairman Inhofe:

1. Would you consider any portion of the Service's Notice of Proposed Rulemaking from May an attempt to repeal the ESA?

Response: No, the Fish and Wildlife Service (Service) sees these proposed revisions as improving implementation of the Endangered Species Act (ESA). We are committed to implementing the ESA for the American people to accomplish its purpose of conserving threatened and endangered species and protecting the ecosystems upon which they depend. . When Congress enacted the ESA, it recognized the value of species to the Nation, the fact that various species have been rendered extinct and others are in danger of or threatened with extinction, and the importance of conserving imperiled species and the habitats they depend upon for survival. Since that time, the pace and extent of environmental change has placed us in the midst of an extinction crisis, which threatens the continued existence of our Nation's biological wealth. To address these growing challenges, it is imperative we have an effective, collaborative approach to conserving imperiled species. In implementing the ESA, the Service adheres rigorously to the congressional requirement that implementation of the law be based on the best available science. The proposed revisions to the regulations concerning petitions, published on May 21, 2015, are intended to improve the content and specificity of petitions that the Service receives, including the scientific content, which will enhance the efficiency and effectiveness of the petition process as a tool for species conservation. Our proposed revisions are designed to assist petitioners in improving the quality of petitions through expanded requirements for complete information on status, trends, and information on degree of threats; and, in doing so, better focus the Service's energies on petitions that merit further analysis.

2. On Monday, the Service published a recovery plan for the Bull Trout. That species was listed under the Endangered Species Act in 1999. Why did the recovery plan take 16 years to publish? How can we make this process more efficient to ensure a focus on recovery of species, not just listing?

Response: The Service recognizes that the time required to finalize this recovery plan—16 years—is longer when we would like. The Service is committed to developing and implementing processes to streamline and facilitate recovery planning and implementation. However, in this case, the timeframe is largely due to inherent complexities in the coordination of bull trout recovery due to its broad range, which spans five states and the jurisdictions of numerous Federal, state, Tribal, and local land managers. It is important to note that that the absence of a published recovery plan did

not mean no efforts were underway to recover the bull trout; the Service has worked closely with partners to implement recovery actions while the recovery plan was being developed and finalized.

On November 1, 1999, the bull trout (*Salvelinus confluentus*) was listed as threatened within its range in the contiguous United States. In 2002, a draft recovery plan with 24 units was completed that addressed bull trout populations within the Columbia, Saint Mary-Belly, and Klamath Rivers. This was followed in 2004 with the development of an additional draft recovery plan with three recovery units, which covered the coastal and Puget Sound drainages in western Washington and the Jarbidge River in Nevada. Although the 2002 and 2004 draft recovery plans were not finalized, they served to identify recovery actions across the range of the species and provided the framework for the Service, partner agencies, and local working groups to implement numerous recovery actions in advance of a final plan being published.

Subsequently, the primary focus of the Service shifted for several years toward completion of a 5-year status review (completed in 2008) and designation of critical habitat (critical habitat rules published in 2004 and 2005, with a revised rule published in 2010). The analyses supporting these status review and critical habitat efforts led to a reconsideration of recovery unit structure, modifying the 27 recovery units used in the original draft recovery plans to comprise 6 larger recovery units (Coastal, Klamath, Columbia Headwaters, Upper Snake, Mid-Columbia, and St. Mary).

Beginning in 2010, the Service and partners engaged in recovery plan development based on this new recovery unit structure and following a new recovery planning approach. The revised draft recovery plan was published in September 2014 for public review. After extensive coordination with stakeholders, drafts of the six Recovery Unit Implementation Plans (RUIPs) were published for public review in June 2015. The final recovery plan and six separate stand-alone RUIPs were published in September 2015.

As previously mentioned, the Service is developing and implementing processes to streamline and facilitate recovery planning and implementation. These efforts include developing a species status assessment using a framework that can be used for the listing process as well as recovery planning and implementation. This approach will allow the Service to develop and update recovery plans more quickly.

3. What actions will the Service take in light of the court action on LPC?

Response: On September 1, 2015, Judge Junell, U.S. District Court, Western District of Texas, issued a ruling vacating the FWS final listing rule for the lesser prairie-chicken. The Service is considering our options in conjunction with our legal counsel. As a first step, on September 29, 2015, the Department of Justice and the Service filed in the U.S. District Court (Western District of Texas) a Motion to Amend the Judgment. Judge Junell held a hearing on November 12, 2015, on the Motion to Amend the Judgment and ordered the parties to enter into mediation by January 14, 2016.

4. Do you believe that the Service is too quick to make determinations and should first show more confidence in letting state and local conservation demonstrate results?

Response: The Service strongly supports local and state conservation efforts, and to the best of our ability, with available resources, we seek to work with state and local governments and private citizens to encourage conservation efforts that help stabilize species that are at risk but not yet on the ESA list . A current example of such an effort is our work across many states and Canada and Mexico to restore habitat to reverse a precipitous decline in monarch butterfly populations. This butterfly is not protected by the ESA in any way (i.e., it is not listed), and we are working to encourage and support local, state, and individual conservation efforts that can help keep the monarch off the endangered species list.

However, the Service must comply with the ESA requirements when conducting listing determinations. The ESA sets forth clear timelines for making listing determinations and requires that all listing determinations be made on the best information available at the time that the decision is made. For example, if the Service is petitioned to list a species, then there is a statutory timeframe for responding to the petition. As such, FWS, by statute, cannot wait beyond the timeframe that the statute allows to make a decision, even if such waiting would allow them to collect more information concerning the status of the species or conservation efforts.

Since 2011, our listing determinations have focused on species that are on the candidate list. These are species that the Service has already determined warrant listing, and most of them were on the candidate list for many years. In the case of the lesser prairie-chicken, the species had been a candidate for listing under the ESA since 1998, and the threats on the landscape have persisted and intensified. For more than a decade we worked closely with the five range states of Oklahoma, New Mexico, Texas, Kansas, and Colorado on conservation efforts for the species, including through the States' Service-endorsed Lesser Prairie-Chicken Range-wide Conservation Plan (RWP). The RWP represented a landmark conservation effort that is meant to address threats not covered or addressed by other conservation efforts across the five state range, such as oil and gas development and wind energy development.

5. Is the Service willing to let state and local conservation efforts work now rather than attempting to reimpose a listing that the courts invalidated?

Response: The Service greatly appreciates the efforts of our Federal and state partners, as well as industry and private landowners to conserve the lesser prairie-chicken and its habitat. We endorse the states' voluntary conservation plan for the lesser prairie-chicken, because we believe that full implementation of the plan will contribute to conservation of the species. We also support other voluntary conservation efforts such as the Natural Resources Conservation Service's Lesser Prairie-Chicken Initiative. The Government, however, has filed a motion to amend the judgment in the U.S. District Court, because the lesser prairie-chicken still warrants listing due to its low population, fragmented habitat, and threats that continue to exist.

6. On September 4, 2015 the U.S. Court of Appeals for the Fifth Circuit reversed convictions of CITGO Petroleum Corporation (US. v. Citgo Petroleum Coro), and in doing so placed potentially significant limits on the scope of strict criminal liability under the 1918 Migratory Bird Treaty Act for unintended killing of migratory birds. As you know, the Service is currently working on a Programmatic Environmental Impact Statement to issue an incidental take permit program for over 1,000 species of migratory birds and one of the targets of that, as issued by the Notice of Intent, is oil and gas. Has this court decision influenced the premise under which the Service claims the MBTA gives them the authority to create this program?

Response: No. We disagree with the Fifth Circuit's holding in CITGO. Other circuit courts have affirmed the government's interpretation of the MBTA. We anticipate that our future rulemaking efforts will allow us to revisit the issue within the Fifth Circuit.

7. When can we expect a draft PEIS on an incidental take program for the MBTA?

Response: In the most recent update to the Unified Regulatory Agenda, we projected that the draft PEIS and proposed rule would be published in June 2016. We are working as quickly as possible to meet this deadline, though may revise that date in the next publication of the agenda in spring.

8. There is current an interim 4(d) rule in place for "threatened" listing of the northern long eared bat. When you estimate you will issue the final rule to be issued?

Response: We intend to publish the final 4(d) rule in early 2016.

9. As you know, loss of habitat is not the main threat to the NLEB's existence, rather a fungal disease known as White Nose Syndrome. The current interim 4(d) rule has special allowances for the forestry industry, but not other industries, such as oil and gas. Are you considering expanding the rule?

Response: Due to the complexity of this issue, the volume of comments, and the limited time between proposing the 4(d) rule and the date that the final listing rule was required to be published, we decided to publish an interim 4(d) rule. This approach allowed incidental take exemptions to be in place when we listed the northern long-eared bat as a threatened species, and allowed us to solicit additional public comment (including from industries such as oil and gas), which we are fully considering as we prepare a final 4(d) rule.

10. In your opinion, what is the biggest problem with the ESA, and what action should Congress take to address that problem? (For all panelists)

Response: The conservation and recovery of listed species takes time and resources. The pace and extent of environmental change is accelerating, and it is threatening the continued existence of more and more of our Nation's species and ecosystems. To

achieve conservation and recovery of species on the brink of extinction, effective, collaborative approaches to conservation are needed, as are resources to fund projects and partnerships that pilot recovery actions and lead by example. The best way for Congress to support better outcomes under the ESA is to appropriate requested funds for efficient implementation of the ESA and, more broadly, for conservation programs across the Federal government, which can help prevent the need for listing in the first place. Congress can support the Administration's budget request for FY 2016, which includes increases in ESA recovery, consultation, and listing accounts. By providing requested funding, Congress would be supporting recovery actions to enable the delisting or downlisting of some species, timely consultations by the Service, and a reduction in the backlog of listing actions. Additionally, this problem can be reduced by investing in Federal conservation programs within and outside the Service that reduce threats to species and their habitats, which can help prevent species from needing to be listed. The Congress can provide sufficient funding to support conservation across the Service, where all programs contribute to the conservation of imperiled species. For example, landscape-level conservation and data gained through applied science inform conservation actions on the ground. The declines of many listed species happened over decades; however, we do not have the luxury of time to reverse those declines. We must act quickly and effectively to prevent further extinctions by relying upon the best available science and working in partnership to conserve species and achieve recovery of listed species.

11. What affect do overly litigious environmental organizations have on your agency and your ability to focus your energy on species conservation and recovery?

Response: The Service is a litigation target for many groups, challenged frequently by industry, environmental organizations, states, tribes, and individual citizens. ESA-related litigation, particularly regarding our responsibilities for reviewing petitions to add or remove species from the lists of threatened and endangered species, making listing determinations, and designating critical habitat, is not a recent occurrence; such litigation has been a fact of life for the Service for nearly twenty-five years. Most of that litigation has challenged the pace and priorities of the Service in addressing a backlog of listing actions.

Most recently, as a result of three "mega-petitions" that overwhelmed the listing capacity of the Service and led to missed deadlines for petition findings for many species, the Service, through the Department of Justice, entered into mediation that ultimately led to the 2011 Multidistrict Litigation (MDL) settlement agreements.

The MDL settlements have accomplished our objectives of making our listing activities more certain and predictable, and allowing the Service to focus more of our limited resources on actions that provide the most conservation benefit to the species that are most in need of help. The MDL settlement committed the Service to nothing more than to make the listing determinations required by the ESA for 251 species on a workable schedule. The settlements did not commit the Service to add these species to the list; rather, they committed the Service to make a determination by date certain as to whether

listing was still warranted and, if so, to publish a proposed rule to initiate the rulemaking process of adding a species to the list.

The MDL settlement agreement has served to reduce deadline litigation. Through the agreement, the plaintiffs have agreed to substantially limit or eliminate their deadline litigation. Again, this allows the Service to use our objective, biologically-based priority system to establish our work priorities, rather than have our priorities overridden by litigation seeking to advance plaintiff's priorities.

Between 2008 and 2010, the Service was engaged in litigation for missed deadlines on petition findings for approximately 895 species. Since the MDL Agreements were approved and the Service made its work plan public, the Service has seen an almost 96 percent reduction in species subject to lawsuits filed for missed deadlines on petition findings. Of the species subject to those lawsuits, more than 40 percent are the result of lawsuits brought by industry plaintiffs.

The MDL provides predictability for stakeholders and local communities. Prior to the settlement agreements, stakeholders were in limbo while species were on the candidate list, unsure when the Service might pursue a listing determination on a candidate species. The settlements have allowed the Service to establish and make available to the public a multi-year schedule for listing determinations on our candidate species. Stakeholders know in advance, in some cases years in advance, when we will be reviewing these candidates to determine whether a listing proposal is still warranted.

The MDL settlements have served to encourage proactive conservation efforts by landowners, industry groups, local communities, and government agencies. Proactive conservation efforts can make an ESA listing no longer necessary, as was the case with the greater sage-grouse across 11 states, the New England cottontail in the northeast, the Sonoran desert tortoise in Arizona, and the dunes sagebrush lizard in Texas and New Mexico. Candidate Conservation Agreements with Assurances (CCAAs) can also be developed and permitted to provide regulatory assurances to participating landowners in the event that listing is still warranted. Conservation efforts developed by stakeholders may also be rolled into Habitat Conservation Plans that provide predictability and ESA compliance for landowners, industry groups, or local communities if the species is listed.

12. Would you agree that ranchers have been an important and cooperative partner in relation to habitat and species conservation, particularly when we consider the sage grouse?

Response: Yes, we agree that ranchers have been and continue to be an important and cooperative partner in habitat and species conservation, regardless of whether a species is listed or not. Through efforts such as the Natural Resources Conservation Service (NRCS) -led Sage Grouse Initiative, ranchers have restored or conserved millions of acres of key wildlife habitat. The sage grouse, for example, is an integral component of the sagebrush steppe ecosystem, which is the foundation for our Western heritage.

Abundant wildlife is central to the American experience, and protecting our open landscapes and wild places protects both species and the American way of life.

For species under consideration for listing under the ESA, as was the greater sage-grouse, voluntary conservation tools such as Candidate Conservation Agreements with Assurances (CCAAs), Candidate Conservation Agreements (CCAs), and conservation easements are valuable programs to engage ranchers, other private landowners, states, Federal agencies and other conservation partners in projects and actions to conserve species and their habitat before listing. CCAAs and CCAs on over 1.5 million acres of private and public land in Oregon and Wyoming include specific conservation measures that have and will continue to effectively reduce threats to the sage-grouse and its sagebrush habitat. These conservation measures, such as prescribed burning, removing invasive species, and restoration of riparian areas, not only improve habitat for sage-grouse but they also improve rangeland health that is important to rancher's livelihoods. Conservation easements with private landholders, including ranchers, have been used in numerous other situations to conserve listed species, at-risk species, and their habitat, such as with the Dakota skipper in North and South Dakota and Minnesota and the Arctic grayling in Montana.

The Service, through all of its various programs and tools, actively partners with ranchers and other landowners to achieve meaningful conservation. The Partners for Fish and Wildlife (PFW) works with ranchers across the greater sage-grouse range providing both financial and technical assistance for projects that benefit the sagebrush ecosystem and the species that depend upon it. For example, the Keating Valley project in Oregon has treated more than 4,000 acres to control invasive grasses and establish native perennial bunch grass, installed riparian pasture fences to protect brood-rearing habitat in Utah, and in the Central Valley of Montana, implemented a multi-year grazing plan on more than 45,000 acres. In partnership with other Federal agencies, such as the NRCS's Sage-Grouse Initiative, ranchers' efforts are improving rangeland health by controlling invasive species and re-vegetating former rangeland with sagebrush and perennial grasses. NRCS conservation easements for sage-grouse habitat are helping private landowners preserve their property and bestow it to the next generation. These are just some of the many outstanding examples of significant contributions for conservation made by the ranching community from around the country.

13. Increasingly, we are hearing from project developers that ESA Section 7 consultations are being derailed due to a disagreement between FWS and the U.S. Army Corps over the scope of consultation for linear project such as pipelines. Notwithstanding that the Corps has no jurisdiction under the Clean Water Act to impose permit conditions on upland areas, FWS is demanding that the Corps consult on those areas and identifying upland conservation measures for the Corps to impose as special conditions on permits for those projects. The result has been a refusal by both agencies to complete the consultation process, leaving project developers caught in the middle. While we recognize that the ESA requires FWS to consider cumulative impacts during consultation:

a. Do you agree that Section 7 consultation is intended to identify conservation measures for an agency to incorporate into its proposed activity?

Response: The purpose of consultation under section 7(a)(2) of the ESA is for Federal agencies, "in consultation with and with the assistance of the Secretary," to insure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. The ESA and its implementing regulations contemplate that the FWS may assist Federal agencies with identifying conservation measures for an agency to incorporate into its proposed activity. For example, the FWS may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat (50 CFR 402.13 (b)).

b. If so, how does consultation on areas outside of the Corps' jurisdiction, where the Corps has no authority to impose conservation measures, meet the purposes of Section 7?

Response: When an agency consults with the FWS, the consultation must consider the direct and indirect effects of the federal action (including effects of any interrelated or interdependent actions) in its determination of whether the action is likely to jeopardize the continued existence of the species or destroy or adversely modify designated critical habitat. The analysis of effects addresses all of the effects of the federal action, not just those that fall within the jurisdiction of the federal action agency.

c. What statutory basis is there to require the Corps to consult over impacts that clearly are outside of its jurisdiction?

Response: Section 7(a)(2) of the ESA requires that Federal agencies, "in consultation with and with the assistance of the Secretary," ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat. Our interagency regulations governing Section 7 consultations establish that consultations must consider the direct and indirect effects of the federal action on listed species or designated critical habitat, together with the effects of any interrelated or interdependent activities. The analysis of effects addresses all of the effects of the federal action, not just those within the agency's jurisdiction.

d. How is FWS going to resolve this issue within the bounds of the ESA, and what is the timetable for addressing this problem?

Response: The FWS and Corps are working together to establish standard operating procedures where the effects of the Corps' actions on listed species and critical habitat extend outside of the Corps' jurisdiction. The FWS and Corps have tentatively agreed on a consultation process for such circumstances, which is consistent with our respective laws, regulations and policies, and expect to cement that agreement early in the new year.

14. The listing of the NLEB has highlighted the difficulties for FWS with listed species with large ranges. FWS Headquarters has allowed each of its field offices to develop its own guidance for the species, resulting in a patchwork of requirements and restrictions among neighboring states. That inconsistency undermines FWS's listing decision and makes reliable project planning impossible.

a. How does FWS intend to resolve this issue?

Response: The FWS has strived to ensure that conservation of the NLEB is being implementing consistently across its range. In support if this, our Northeast, Midwest-Great Lakes, and Southeast Regions, where the NLEB primarily occurs, coordinate with Field Office staff weekly. Staff in FWS regional offices also coordinate regularly, and senior FWS staff (Assistant Regional Directors) meet every two weeks to discuss issues such as consistency. As a result, the FWS has largely addressed this issue.

b. What steps is FWS Headquarters taking to ensure consistency in the ESA consultation process?

Response: Senior FWS headquarters staff meets with appropriate Assistant Regional Directors at least every two weeks to help ensure consistency. In addition, Headquarters staff coordinate with counterparts in regional and field offices on a regular basis to discuss issues such as ensuring consistency.

c. Given that the Service is considering the listing of other species with similarly large ranges in the coming years (Monarch butterfly, rusty-patched bumble bee, little brown bat, tri-colored bat), what steps will the agency take going forward to prevent similar problems?

Response: The FWS learned a number of lessons as a result of the listing of the NLEB. If in the future the FWS lists other species with large ranges that encompass several FWS regions and many states, we will establish coordination and communication protocols based upon the lessons learned from the NLEB listing.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240
JAN 2 1 2016

The Honorable Lisa Murkowski
Chairman
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Bureau of Safety and Environmental Enforcement to questions submitted following the Committee's December 1, 2015, oversight hearing on "the Well Control Rule and other regulations related to offshore oil and gas production."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell
Ranking Member

U.S. Senate Committee on Energy and Natural Resources
December 1, 2015 Hearing: The Well Control Rule
and Other Regulations Related to Offshore Oil and Gas Production
Questions for the Record Submitted to Mr. Brian Salerno

Questions from Chairman Lisa Murkowski

Question 1: BSEE's proposed regulation states: "Based on information provided by industry, all new drilling rigs are already being built, pursuant to the same industry standards BSEE now proposes to adopt (including API Standard 53), and many have already been retrofitted to comply with these industry standards."

Please provide additional information about these new drilling rigs that are being developed.

a) How many are being built and how many of those will meet the standards BSEE proposes to adopt?

Response: Although BSEE does not know the exact number of rigs being built, it is our understanding that all rigs currently under construction and destined for Gulf of Mexico projects are being built to comply with API Standard 53, which contains the industry consensus standards concerning engineering and operating practices regarding blowout preventer (BOP) reliability and use. The proposed rule adopts API Standard 53 in full, except for the section that allows an operator to "opt out" of compliance by performing a risk assessment. Thus, rigs currently being built must comply with API Standard 53 in order to comply with the regulations, as proposed.

b) How many have already been retrofitted?

Response: While it is difficult to ascertain the number of rigs that have been retrofitted thus far, it is our understanding that industry is retrofitting all rigs to comply with API Standard 53, which the proposed rule incorporates. However, BSEE does not track or monitor drilling rig retrofitting and does not know how many rigs have already been retrofitted.

c) Will additional upgrades be required to comply with BSEE regulations? If so, how much would they cost?

Response: If a rig is built or retrofitted to comply with API Standard 53, and the operator does not exercise the "opt out" provision in the standard, the rigs will meet the requirements of the BSEE regulation, as proposed. The well control rule has not yet been finalized, so BSEE cannot comment on any deviations between the final rule and industry standards, or whether additional upgrades will be required to comply with the final rule.

Question from Senator Maria Cantwell

Question 1: At the hearing there was much discussion about the balance of performance-based regulations that allow more compliance flexibility but can make enforcement a challenge versus prescriptive regulations that are easier to enforce but can stifle innovation and even lead to unintended safety consequences. Please explain how your agency is currently balancing flexibility and specificity as it applies to the Well Control Rule. What issues associated with Well Control are more amenable to performance-based standards and what are best kept very clear-cut? You mentioned during the hearing and in response to a question from Senator Cantwell that BSEE received requests for clarification on the Safety and Environmental Management Rule, a performance-based rule, suggesting that the right balance may not have been achieved and that more specificity may have been useful in that case. Can you please explain further?

Response: BSEE currently balances flexibility and specificity as it applies to the Well Control Rule by setting out both prescriptive and performance-based requirements while also maintaining provisions that allow for alternative compliance. Well control is a

complex aspect of offshore drilling that involves a multitude of processes, operations, and equipment. BSEE addresses this complexity by employing multiple approaches to regulation including specifying prescriptive requirements, promulgating performance-based regulations, and establishing baseline requirements or minimum standards of performance. Also, many of the industry standards, such as API Standard 53, that are incorporated by reference, contain both prescriptive and performance-based criteria.

Alternative compliance is another way in which BSEE balances flexibility with specificity. The current regulations have a provision that allows OCS lessees and operators to obtain approval to use any alternate procedures or equipment that "provide a level of safety and environmental protection that equals or surpasses current BSEE requirements" (30 C.F.R. § 250.141). In addition to this general provision for alternative compliance, the proposed rule incorporates several provisions that reinforce the ability of operators to apply for an alternative means of compliance with the regulations:

- Proposed § 250.701 – Expressly allows use of alternate procedures or equipment (for all Subpart G requirements), if approved under § 250.141 and discussed in the Application for Permit to Drill (APD)/Application for Permit to Modify (APM)
- Proposed § 250.702 – Allows operators to apply for departures, under existing § 250.142, from the Subpart G well control requirements, provided the departure is discussed in the APD/APM
- Proposed § 250.720(a)(2) – Allows for the use of alternative procedures or barriers (instead of the specifically required barriers) to secure a well, if approved by the District Manager under § 250.141
- Proposed § 250.730(d)(1)-(2) – Allows operators to use BOPs manufactured under a different quality assurance program than API Spec. Q1, provided that the operator requests and BSEE approves such an alternative

The proposed rule also emphasizes that operators may apply for alternatives to compliance with the section of API Standard 53 for blowout preventer (BOP) shearing of drill pipe under 30 C.F.R. § 250.141.

The Safety and Environmental Management Systems (SEMS) Rule is a non-traditional, performance-based rule.[1] Following the issuance of this performance-based rule, many in industry raised concerns about the lack of specific guidance on how to comply with the requirement. In fact, industry issued a compliance-based checklist for its members to use to satisfy SEMS obligations. BSEE has been working with industry to move away from this compliance-driven document toward the use of more performance-based approaches to reinforce the concept that safety must be managed continually and measured in terms of outcomes.

[1] 30 C.F.R. § 250.1900 *et seq.*

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 27 2016

The Honorable Ron Johnson
Chairman, Committee on Homeland Security and Government Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the November 5, 2015, oversight hearing before your Subcommittee on Regulatory Affairs and Federal Management on "Agency Progress in Retrospective Review of Existing Regulations".

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure
cc: The Honorable Thomas Carper, Ranking Member
Committee on Homeland Security and Government Affairs

Post-Hearing Questions for the Record
Submitted to Ms. Elizabeth Klein
From Senator James Lankford

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

Senator Lankford

On Consulting with the Small Business Community and State Regulators

1. In your testimony, you stated that Interior "had not at this point engaged specifically to the small business community" but stated that this was an area of improvement for the Department. What actions does the Department intend to take to better engage this community?

   DOI Response: The Department continues to work towards our goal of increasing public interest and engagement in the process of improving our regulations. We value the unique perspective that small businesses can provide into our regulatory activities and we continue to work towards improving small business participation through our Public Engagement Plan. Through our ongoing public outreach efforts, we hope to build upon the feedback we receive from small businesses during the implementation of regulations.

   Although our outreach has not been directed to any specific groups, we are continually exploring avenues to target the small business community in our outreach efforts, while ensuring that we value comments from all sources and do not weigh one source over another. We welcome engagement with the small business community and we look forward to working with them and this Committee to strengthen our outreach efforts.

2. How could your department better leverage the insights and resources of the Small Business Administration's (SBA) Office of Advocacy?

   DOI Response: The Department benefits from the input of other federal agencies, including the Small Business Administration, during the inter-agency review process. Specifically, when the Department proposes significant regulatory actions, these regulations are initially submitted for review to the Office of Information and Regulatory Affairs (OIRA) pursuant to EO 12866. OIRA facilitates inter-agency dialogue by obtaining feedback from other federal agencies, including the Small Business Administration Office of Advocacy. The Department then has the opportunity to evaluate and respond to other agencies feedback, which often leads to further clarification and refinement.

3. How could your department better consult with state regulators to ensure that regulations do not conflict with or duplicate state requirements?

DOI Response: DOI bureaus regularly work closely with state regulators, both informally and to discharge the agency's outreach responsibilities under the Unfunded Mandates Reform Act and EO 13132 – Federalism. Those affected by both state and Federal regulations also have opportunities to present their views during proposed rule comment periods, during OIRA's EO 12866 review process, and during the normal course of business interactions. While we have not received any specific comments on this issue during our outreach on retrospective review, we would be happy to receive any new information or suggestions and we will continue to seek opportunities to better coordinate with state regulators.

On Defining the Universe of Retrospective Reviews

4. Retrospective reviews are not clearly defined in existing executive orders. For example, Executive Order 13563 merely directs agencies to "facilitate the periodic review of existing significant regulations..." Executive Order 13610 directs agencies to prioritize initiatives that will produce monetary savings, reductions in paperwork, reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. In the absence of a clear directive as to what constitutes a retrospective review as mandated by executive orders, how does your agency define the term?

   DOI Response: It is our view that EOs 13563 and 13610 provide agencies with appropriate discretion to prioritize which rules necessitate retrospective review. As noted in our testimony, not all rules are appropriate for retrospective review, and review for the sake of review may not be the best use of limited resources. At the Department, we seek to identify rules for retrospective review that further our mission. With limited resources, it is important to prioritize the regulations we select for review.

   a. A couple of Interior's retrospective reviews focus on administrative matters streamlining and updating. For example, a project on the "Enterprise Forms System" was cited as an ongoing retrospective review. The proposal was summarized as a "consolidate[ion of] all DOI forms electronically in a way that they can be pre-populated and completed online." Would this be better characterized as a platform update than a retrospective review analysis?

      DOI Response: We would categorize a successful retrospective review effort as any action that reviews and improves an existing requirement to reach a better result for those affected. The Enterprise Forms System is a good example of a retrospective review initiative meeting the requirements set out in EO 13563. As we reported in our most recent report to OIRA, we anticipate savings of approximately 30,000 hours from this initiative. The effort will make the forms more accessible, save time and money, increase consistency, and decrease the potential for human error. We view these results as consistent with the intent of retrospective review.

On Regulatory Flexibility Act Review and other Statutorily-Required Reviews

5. In 2014, in assessing retrospective review processes for Administrative Conference of the United States, Professor Joseph Aldy of Harvard's Kennedy School found that after reviewing 25 rules identified in agency reports on their progress implementing retrospective review, only 14 explicitly referenced retrospective review in the rule-making.[1] He posited that this suggested that some of the rules promulgated under the retrospective review process may have been already in progress, perhaps under existing statutory review authorities. How has your agency made the distinction between reviews in response to Executive Order 13563 and other efforts already underway or responses to new mandates?

   DOI Response: The Department does not draw a distinction between improvements in regulations obtained as a result of a specific retrospective review effort versus improvements gleaned from feedback through the ordinary course of regulatory implementation. In fact, the retrospective review initiative can serve to help the agency focus and sharpen reform efforts even if a reform were already at some stage of development outside of the EO-driven process. The Department utilizes all opportunities to improve regulations for the benefit of the regulated public. We have identified some actions for retrospective review that would have been done in the normal course of our business and routinely seek opportunities to improve our regulations, even without requirements to retrospectively review our regulations.

6. The Regulatory Flexibility Act (RFA) Section 610 requires that rules with a significant economic impact on a substantial number of small entities be reviewed within ten years of promulgation, but in the past the Government Accountability Office (GAO) has found that not all agencies interpret the requirement consistently.[2] In addition, other statutes mandate retrospective review of certain regulations. How have initiatives in response to the President's Executive Order 13563 aligned with other retrospective review initiatives, such as those undertaken under RFA Section 610 or other specific statutory review requirements?

   DOI Response: Whether initiated in conformity with an EO, statutory mandate, or through feedback gleaned from the implementation of a regulation, retrospective review initiatives require the Department to coordinate throughout the Department and across the Federal government, in order to ensure efficient regulatory review and to efficiently manage resources and regulate in a way that is smart, efficient, effective and not more burdensome than necessary to meet our goals.

   a. Please describe the rigor of Section 610 reviews. For example, is cost-benefit analysis typically conducted in the course of these reviews at your agency?

      DOI Response: Generally cost-benefit analysis is conducted at the time the Department is promulgating a rule. If the Department determines a cost benefit

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[1] Joseph Aldy for the Administrative Conference of the United States. Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy 48 (November 17, 2014).

[2] U.S. GOV'T ACCOUNTABILITY OFFICE, REGULATORY FLEXIBILITY ACT: AGENCIES' INTERPRETATIONS OF REVIEW REQUIREMENTS VARY WIDELY, GAO/GGD-99-55, 11 (Apr. 2, 1999)

analysis is necessary, whether through a retrospective review or otherwise, we would conduct the cost-benefit analysis during the process of promulgating the revision.

b. What lessons has the agency learned from conducting additional reviews consistent with other statutory mandates that have facilitated this retrospective review initiative?

DOI Response: We have learned that it is best to prioritize retrospective regulatory reviews on the basis of the potential to achieve significant quantifiable monetary savings or reductions in paperwork burdens, as well as those that reduce unjustified burdens or otherwise simplify requirements imposed on businesses, including small businesses. Some rules may be on the books for many years and do not warrant agency time and resources to conduct a retrospective review. Other rules may require updating more frequently. It makes more sense to focus on revising rules that would most benefit the public and small businesses.

On Quantifying Cost Savings

7. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that agencies quantified cost savings in the progress updates for 38 of the 246 completed analyses in their scope, half of which were related to information collection burdens.[3] Why are cost savings not consistently quantified?

DOI Response: Cost savings are not always quantified because data may not be available, data collection must be made consistent with existing resources and not all of the actions have discernible cost savings. Many actions are intended to clarify and simplify regulations to improve compliance, as well as increasing the effectiveness and efficiency of implementation. Cost savings are more likely to be available for information collection burdens because those numbers are available as part of the information collection process.

a. When costs savings were quantified, GAO found that agencies most often attributed those savings to reduced information collection burdens. What other cost savings have resulted from these retrospective reviews?

DOI Response: It is likely that agencies most often attributed savings to reduced information collection burdens because information collection burdens are always quantified. Regulatory actions do not necessarily have quantified impacts, particularly when a rule clarifies language or otherwise improves the effectiveness and efficiency of implementation. Even when impacts are not quantifiable, however, costs and benefits may still be realized.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS, GAO-14-268 (Apr. 11, 2014)

b. What are the challenges in quantifying the results of these reviews and how could we do better at reporting that progress?

DOI Response: Where a retrospective review action involves a rulemaking, results are quantified in accordance with OMB Circular A-4. Circular A-4 directs agencies to quantify all potential incremental benefits and costs to the extent feasible. For actions that are intended to clarify regulations or otherwise improve implementation, it may only be possible to describe the impacts in qualitative terms.

On Record of Results of Reviews

8. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that more than 90 percent of the retrospective review analyses they examined ended in a determination to revise, clarify, or eliminate regulatory text.[4] Would you attribute this success to how your agencies prioritized the regulations you reviewed or simply that a lot of regulations currently on the books are ripe for updates?

DOI Response: The 90 percent figure cited by the April 2014 GAO report can most likely be attributed to the process used by agencies to prioritize regulations for review. DOI, for example, selects rules for regulatory review that we believe may justify the review, such as our recent final rule that revised and updated regulations governing the process for Federal acknowledgement of Indian tribes. Regulations selected for retrospective review should be based upon an agency's judgment, based on public feedback, agency analysis, or other contributing factors, of the best candidates for review. In order to do this DOI relies on four general factors: (1) is the rule obsolete due to changes in the law or practice; (2) is the rule duplicative or incompatible with other rules; (3) has the rule been reviewed in the last 10 years; or (4) is the rule considered overly burdensome or unnecessarily restrictive based upon public or internal comments. We believe that using this filter allows us to better target those rules most in need of review; a complete review of all regulations would be much less efficient.

a. How many of these reviews could be considered low-hanging fruit? Should we expect this level of success going forward?

DOI Response: It is difficult to forecast the percentage of retrospective reviews that would lead to revisions, clarifications or the elimination of text as reported by GAO; however, selecting appropriate candidates for retrospective review increases the chances retrospective review will produce a high rate of alternations of existing regulations.

On Rigor and Scope of Retrospective Review

[4] GAO-14-268

9. In his analysis of retrospective reviews for Mercatus, Mr. Randall Lutter notes, "Very few retrospective analyses of extant federal regulations provide sufficient information to evaluate whether benefits outweighed costs. The overwhelming majority of retrospective analyses that Harrington, the OMB, and Simpson reviewed provide information only about costs, about a key but incomplete measure of benefits… or about both costs and a poor proxy for benefits…"[5] Do your retrospective review analyses attempt to quantify costs, or benefits, or both?

DOI Response: Our retrospective review analyses quantify both costs and benefits, to the extent they are reasonably and economically obtainable, and in accordance with the procedures in OMB Circular A-4.

a. Does your office have the capacity to collect data to conduct effective retrospective reviews that include cost-benefit analysis? If not, why not?

DOI Response: DOI performs an evaluation of costs and benefits as part of the rulemaking process when revising a rule on its retrospective review report. When prioritizing which rules are good candidates for a retrospective review, we have a general sense that the benefits of the revisions will exceed the costs, though the quantifiable impacts may not be determined until the proposed rule is developed.

b. Would it be beneficial for your agency to have your retrospective review obligations delegated to a specialized office charged with doing just that?

DOI Response: Executive Orders 13563 and 13610 direct OIRA to coordinate retrospective review among federal agencies. While OIRA currently coordinates regulatory activities under EO 12866, it is important that the office that coordinates retrospective review is centrally involved in the coordination of the Administration's regulatory agenda, rather than an outside organization that may not have sufficient knowledge of the Department's mission and corresponding priorities.

10. In his analysis of retrospective reviews for Mercatus, Mr. Lutter notes, "The focus on retrospective analysis and review of regulations, as opposed to regulatory programs more broadly, may be too narrow." The 2015 OECD Regulatory Policy Outlook stated that "OECD countries could be more strategic and systemic in their evaluation efforts by conducting comprehensive reviews that assess the cumulative impact of laws and regulations in a sector as a whole, with a particular focus on the policy outcomes."[6] Our proposed legislation, S. 1817 The Smarter Regs Act of 2015, directs OMB to encourage and assist agencies to "streamline and coordinate the assessment of major rules with similar or related regulatory objectives" for just this purpose. When contemplating which rules to review, have

[5] Randall Lutter, Working Paper: The Role of Retrospective Analysis and Review in Regulatory Policy, MERCATUS CTR. NO. 12-14 (Apr. 2012).

[6] *OECD Regulatory Policy Outlook 2015* (The Organization for Economic Co-operation and Development, 2015) available at http://www.oecd.org/governance/regulatory-policy/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm.

you ever considered conducting simultaneous reviews on related rules or rules that affect a certain sector of industry?

DOI Response: This past year, we focused on regulations that would promote the trust relationship between Indian tribes and the Federal government. We have been able to make improvements that will benefit Native Americans and tribes, including revising regulations governing the process for Federal acknowledgement of Indian tribes and updating and making less burdensome regulations on obtaining rights-of-way across Indian lands. We are also reviewing regulations for grants to tribally controlled colleges, the Housing Improvement Program, the Indian Child Welfare Act, forestry activity on Indian land, and tribal energy resource agreements.

a. Have you ever considered a large retrospective review on a regulatory framework?

   DOI Response: As noted, over the past year, we have focused our retrospective review efforts on regulations that promote the trust relationship between Indian tribes and the Federal government.

b. What barriers exist to this type of review?

   DOI Response: The Department has directed our limited resources toward prioritizing retrospective review efforts on mission objectives and areas that we expect will achieve the best results. Where warranted, DOI will consider a wholesale review of regulations that impact a particular sector but it is important that the additional time and financial resources will be reasonably expected to lead to substantive improvements of rules that may be outmoded, ineffective, insufficient, or excessively burdensome.

c. How have you worked with interagency partners as you have reviewed existing regulations?

   DOI Response: Many of the actions on the Department's retrospective review report have been deemed by OIRA to be significant under EO 12866. Significant regulatory actions are reviewed by interagency partners as part of OIRA's procedures under EO 12866. We also note that there are several actions on our retrospective review report that are being jointly issued by the Fish and Wildlife Service and National Marine Fisheries Service to improve the implementation of the Endangered Species Act. These actions include regulations on incidental take statements, designating critical habitat, defining "destruction or adverse modification of critical habitat", petitions to list or delist species under ESA, and the process for consultation for projects that are intended to restore habitats when the effect of the project will be beneficial.

11. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*[7], GAO recommended that OIRA work with the agencies to improve how retrospective reviews could be used to inform progress towards agency priority goals under the GPRA Modernization Act of 2010.[8] This included actions such as (1) identifying whether a regulation contributes to an agency priority goal as one criterion for prioritizing reviews, and (2) by including in the scope of retrospective reviews the regulations that collectively contribute to an agency priority goal. What actions has your agency taken to better align retrospective reviews with GPRAMA agency priority goals?

    DOI Response: The Department continues to ensure candidates for retrospective review align with Departmental priorities in order to efficiently manage our resources. For example, our recent final rule revised and updated regulations governing the process for Federal acknowledgement of Indian tribes. This final rule not only promotes a more transparent, timely and consistent process, but furthered the Department's goal of promoting the trust relationship between Indian tribes and the Federal government.

On Planning for Review

12. OMB Memorandum M-11-19 directed agencies to design and write future regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses. ACUS recommendation 2014-5 suggested that agencies, when appropriate, establish a framework for reassessing the regulation in the future and should consider including portions of the framework in the rule's preamble. On November 3, 2015, the GW Regulatory Studies Center issued *Learning from Experience: Retrospective Review of Regulations in 2014*[9], which reviewed 22 significant and economically significant rules and found that none of them included a plan to conduct retrospective review of the rule after implementation. How has your agency responded to that OIRA directive and what have you learned through those efforts?

    a. What actions does your agency plan to take to ensure that planning for future reviews is part of the procedures for drafting new regulations?

        DOI Response: We are evaluating appropriate mechanisms to incorporate future evaluations of effectiveness. For example, when the Bureau of Safety and Environmental Enforcement proposed its Well Control rule, the agency asked for public comment on the development of a probabilistic risk assessment methodology that might assist the agency in evaluating the potential effectiveness of any given requirement and asked for comment on how a data collection program to support such

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[7] GAO-14-268

[8] GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).

[9] Sofie E. Miller, *Learning From Experience: Retrospective Review of Regulations in 2014* (The George Washington University Regulatory Studies Center, Working Paper, 2015), *available at* http://regulatorystudies.columbian.gwu.edu/learning-experience-retrospective-review-regulations-2014.

an assessment could be developed. We are evaluating potential options to incorporate review procedures where appropriate.

13. The Department of Transportation (DOT) maintains a plan on its website to ensure that all regulations are reviewed every ten years. Each DOT agency divides its rules into 10 different groups, and analyzes one group each year. They request public comment on the timing of the reviews through the Regulatory Agenda (for example, if a particular rule should be reviewed earlier and why). Would something like this be viable at your agency?

    DOI Response: Regulations selected for retrospective review should be based upon an agency's judgment, informed by significant outreach, of the best candidates for review. Our approach has been to integrate retrospective review into the culture of DOI and to identify candidates that are most likely to improve the regulatory process and further the mission and policy priorities of DOI. We acknowledge that some current regulations are decades old and have not kept pace with existing practices, and the Department's retrospective review reports have tracked progress in revising several of such regulations. We are continuing to evaluate our process of identifying opportunities for retrospective review, using an approach that is best suited to the structure and diverse missions within the Department.

    a. How do you ensure that cyclical reviews are apparent to your stakeholders to give them an opportunity to comment?

        DOI Response: As noted in our testimony, we are working to foster greater public participation and an open exchange of ideas through the publishing of our Public Engagement Plan in December 2014. We have found that our most effective tool in obtaining feedback from stakeholders is through our direct interactions with stakeholders when conducting regulatory activities. Our bureau staffs work closely with the regulated community and receive frequent feedback on what works or does not work. We also maintain a retrospective review website and an email address that is available at all times for public comment.

Reporting Outcomes of Retrospective Review

14. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO recommended that OIRA work with agencies to improve the reporting of retrospective review outcomes, including providing more comprehensive information about completed reviews.[10] What actions has your agency taken to ensure that retrospective review reporting is more accessible and transparent?

    DOI Response: We have published Federal Register notices asking for public comment, our retrospective review plan and reports are available to the public, we maintain a website

[10] GAO-14-268

devoted to retrospective review, and we maintain an email address (regsreview@ios.doi.gov) that the public may use anytime to comment.

Senator Heitkamp

1. A critical component of retrospective review is ensuring that the public has the opportunity to provide feedback on whether regulations are in fact achieving their intended objective. However, all too often we hear from the general public, small business, and other regulated entities, that they feel disconnected from the rulemaking process, or that their voices are not being heard.

    a. Could each of you address how your agencies engage the public and seek feedback outside of the general notices published in the Federal Register?

    DOI Response: The Department continues to work towards our goal of increasing public interest and engagement in the process of improving our regulations. As noted in our testimony, we are working to foster greater public participation and an open exchange of ideas through the publishing of our Public Engagement Plan in December 2014. We have found that our most effective tool in obtaining feedback from stakeholders is through our direct interactions with stakeholders when conducting regulatory activities. Our bureau staffs work closely with the regulated community and receive frequent feedback on what works or does not work. Specifically, as it applies to Indian tribes, our commitment to formal consultation has proven to be a very effective tool. We also maintain a retrospective review website and an email address that is available at all times for public comment.

    b. Do you find that the Federal Register is still the most effective means of providing notice and receiving useful feedback to help identify public concerns?

    DOI Response: Although we find the Federal Register to be a necessary, useful and central location to provide the public with notice of agency rules and activities, and provides the key tool where anyone, not just particular, well-positioned stakeholders, can interact with the rulemaking process, generally the feedback we receive from our direct interactions with small businesses, tribes, and other stakeholders as we work with them in implementing regulations is at least as important, and often provides more direct suggestions for improvement.

2. When examining retrospective review, we often discuss cost benefit analysis to determine whether or not a rule is achieving its stated objective. However, part of this information collection requires the solicitation of data from regulated entities.

a. Do you find that current retrospective reviews are stymied by the strict requirements of the Paperwork Reduction Act?

DOI Response: We apply cost-benefit analysis to rules under development, consistent with the procedures in OMB Circular A-4. It is typically not necessary to conduct a detailed analysis of a regulation in order to reach a general conclusion that the benefits of revising it would exceed the costs. The Paperwork Reduction Act (PRA) typically is not a limiting factor in collecting general information from the public, as is often done through notifications in the Federal Register or other types of more-focused outreach. To the extent the PRA applies to more targeted collections of information, it is important that any data collected from regulated entities as part of a retrospective review has practical utility and comports with other parameters set forth in the PRA and its implementing regulations.

b. Would we see an increased effectiveness of the retrospective review process if we were to exempt retrospective review activities from the Paperwork Reduction Act?

DOI Response: We obtain most input for retrospective review from our regular interaction with those who are affected by our regulations. We have also published Federal Register notices requesting comment on retrospective review. These efforts have not triggered the requirements of the Paperwork Reduction Act. Any subsequent revision of rules would be conducted consistent with all applicable laws, regulations, and Executive Orders.

3. During our subcommittee's maiden hearing, we invited witness from diverse backgrounds to discuss the Federal government's regulatory framework. I took the opportunity to discuss retrospective review with that panel as well. One thing I heard from both witnesses was that there needs to be a dedicated funding stream in support of retrospective review activities.

a. Based on current expectations of the President, as outlined in Executive Order 13563, are resources being dedicated to retrospective review at the detriment of the mission objectives of the agency?

DOI Response: DOI has focused its retrospective review efforts on Departmental priorities to make the best use of our limited resources.

b. What resources do your agencies need to effectively and efficiently carry out retrospective review while maintaining overall operational awareness?

DOI Response: DOI has tried to be as effective and efficient as possible in doing retrospective review, as we believe it is part of our mission. We will continue to do this and appreciate the subcommittee's recognition that this is important.

4. In a previous hearing, Mr. Neil Eisner, a Senior Fellow at the Administrative Conference of the United States, advocated strengthening the culture of review within the Federal agencies. In his opinion there is a focus, especially among senior officials, on creating something new rather than fixing something old.

   a. What actions are taken within each of your agencies to ensure that the workforce buys into the reality that ensuring the effectiveness of existing regulations is just as important as ensuring new rulemaking is of the highest caliber?

   DOI Response: Through our Plan for Retrospective Regulatory Review, we have conveyed across the Department the importance of EO 13563, which calls for "periodic review of existing regulations". As noted in our testimony, the Department has made retrospective review an explicit and permanent part of our planning process. Each Department bureau and office is asked to identify at least one regulation for review each year. In considering regulations for review, we ask them to consider if a rule (1) is obsolete due to changes in the law or practice; (2) is duplicative or incompatible with other rules; (3) has been reviewed in the last 10 years; or (4) is considered burdensome or unnecessarily restrictive based upon public or internal comments. In addition, significant effort is focused on ensuring the effectiveness of existing regulations. The vast majority of rulemaking efforts at DOI generally involve amending existing regulations. Our most valuable input is from small businesses, tribes, and others who tell us what is or isn't working with our existing regulations.

5. Understanding that good retrospective review often require examination of highly technical subject matter, it is important that agencies have a highly skilled and specialized work force to conduct retrospective reviews in an effective manner.

   a. Having completed a number of retrospective reviews up to this point, what are some the challenges you have found as it relate to workforce, in completing retrospective review effectively?

DOI Response: The greatest challenge is in making the best use of our employee resources. The employees who conduct retrospective review are also responsible for other program duties and for developing other regulations that are also critical to mission goals.

b. Do you think the Federal Governments could do more to able to attract [sic]

DOI Response: We seek the most highly skilled and specialized employees that we can hire. These employees develop new regulations and are also responsible for conducting retrospective review of existing regulations. We seek to maximize their effectiveness by prioritizing retrospective review efforts on mission objectives and areas that we expect will achieve the best results.

c. Do you have dedicated staff focused on reviewing existing rules?

DOI Response: No. The DOI staff that does retrospective review is the same staff that develops new regulations that also support our mission. They also have other responsibilities related to their program and area of expertise.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 2 8 2016

The Hon. Dan Sullivan
Chairman
Committee on Environment and Public Works
Subcommittee on Fisheries, Water and Wildlife
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the August 17, 2015, field hearing on "*Federal Land Management Practices and Mitigation Requirements.*"

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Sheldon Whitehouse, Ranking Member
Committee on Environment and Public Works,
Subcommittee on Fisheries, Water, and Wildlife
The Honorable Lisa Murkowski, Chairman
Committee on Energy and Natural Resources
The Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources

Joint Field Hearing before the
U.S. Senate Committee on Energy and Natural Resources and the Committee on Environment and Public Works' Subcommittee on Fisheries, Water and Wildlife
August 17, 2015: Federal Mitigation Requirements

Questions for the Record
Submitted by Chairman Lisa Murkowski
to Mr. Ted Murphy

Question 1: What interagency coordination occurs between the Bureau of Land Management (BLM) and the U.S. Army Corps of Engineers (USACE or the Corps), and USACE and the Environmental Protection Agency (EPA)? Are there ways to improve that coordination?

Answer: The U.S. Army Corps of Engineers and the Environmental Protection Agency are just two of the many agencies the BLM works with in considering the development of projects on public lands. During the permitting process, proposals with site-specific wetland criteria trigger the initiation of Section 404 with the USACE and EPA. In addition to its role in wetlands, the EPA contributes to the management of water disposal and injection wells. The EPA is also a central cooperator when conducting air and water analysis and modeling in large programmatic NEPA documents. The BLM and the USACE have taken steps to improve coordination on permitting oil and gas projects in the National Petroleum Reserve-Alaska (NPR-A). The USACE and the BLM have had several meetings to explore ways to improve communication during consideration of future projects.

Question 2: The Federal Lands Policy Management Act, or as many call it – FLPMA – requires in Title II a "systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;" and requires the BLM to "consider the relative scarcity of the values…and realization of those values." Do you consider current policies in the Department of Interior (DOI) and BLM to equally value those integrated resources?

Answer: As part of the BLM's land use planning process, the BLM considers each of those values, legal considerations, and the long-term public interest when determining how to manage the public lands. Based on these factors, the BLM identifies a balance of appropriate uses of the public lands to meet its multiple use and sustained yield mission.

Question 3: In your testimony, you indicated that FLPMA does provide the BLM/DOI with the authority to borrow principles and regulatory framework from the Clean Water Act regarding the following mitigation priorities laid out in Secretary Jewell's Secretarial Order 3330: avoid potential environmental impacts; where impacts cannot be avoided, require projects to minimize impacts to the extent practicable; where projects cannot be avoided, DOI should seek offset or compensation. Please provide a legal opinion, which explains the legal premise for borrowing these regulations and principles.

Answer: The mitigation hierarchy as described in your question is a concept that is fundamental to nearly all mitigation of natural resource impacts, whether conducted by the USACE, DOI, or other agencies. The hierarchy has been identified by the White House Council on Environmental Quality as expressed in National Environmental Policy Act regulations[1] and has long been considered a best practice among mitigation practitioners. The mitigation hierarchy identifies a general preference to first avoid and minimize those resource impacts that are capable of being avoided and minimized in order to reduce the need to rely on compensatory mitigation. The BLM has ample discretion to apply mitigation through its authorities in FLPMA – most broadly through FLPMA's fundamental direction to manage public lands for multiple use and sustained yield. The BLM anticipates publishing final guidance on the use of mitigation under FLPMA early in calendar year 2016. In the case of the NPR-A, the Naval Petroleum Reserves Production Act also provides authority, as does Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), and section 28 of the Mineral Leasing Act. These authorities are discussed in some detail in Appendix D to the Record of Decision for the Greater Mooses Tooth 1 project.[2]

<u>Question 4</u>: You noted in your testimony that the program folks responsible for draft plans, guidance and policy as well as those with the authority to sign off on those plans, guidance and policy have taken Alaska National Interests Lands Conservation Act (ANILCA) training. In light of the testimony we received about ANILCA requiring Areas of Critical Environmental Concern (ACECs) larger than 5,000 acres to first get Congressional authority:

a) Can you please explain why the State of Alaska repeatedly spends an inordinate amount of time providing BLM with the exact same ANILCA-related/driven comments in public comment period after public comment period?

Answer: The BLM receives many comments during the public comment process on any proposed plan or amendment. While the State of Alaska has raised concerns with the agency's compliance with certain provisions of ANICLA, the BLM maintains that our land use planning process in Alaska is compliant with all applicable laws, including ANILCA.

b) Would you commit to request that Bud Cribley send all of his field managers and those drafting large plans or policies in the state (even those without authority to implement/sign off on the plans) to the ANILCA training, and request the same of relevant Washington, DC folks?

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[1] 40 CFR 1508.20

[2] https://eplanning.blm.gov/epl-front-office/projects/nepa/37035/54639/59351/MASTER_GMT1ROD.Ver17_signed__2.13.15.pdf

Answer: At this time, all personnel assigned to BLM Alaska are encouraged to attend ANILCA training within two years of reporting to Alaska. It is also encouraged for relevant National BLM office personnel. We are interested in working with your office on expanding opportunities for ANILCA training, including the possibility of holding a training here in Washington DC.

Question 5: Regarding Greater Mooses Tooth 1 (GMT1):

a) Why did the mitigation plan take so long to develop, and how exactly was the $8,000,000 payment developed?

Answer: The GMT1 project EIS was the first authorization of oil and gas production on Federal land within the NPR-A and as a result, required time and effort to determine the most responsible path forward for allowing development to occur while also fulfilling our obligations to protect subsistence and other resources as directed by FLPMA, the National Petroleum Reserve Production Act (NPRPA), ANILCA, and other laws. The BLM worked closely with the State of Alaska, local Alaska Native villages and corporations, Federal partners such as the USACE, and other stakeholders through a public process to determine potential impacts to subsistence and other resources as part of this project authorization. To offset identified impacts that could not be fully mitigated by avoidance and minimization measures, ConocoPhillips agreed to contribute $8 million dollars to BLM to establish a compensatory mitigation fund to provide for the development and implementation of a landscape-level regional mitigation strategy (RMS) and to finance mitigation projects as identified by that strategy. The final GMT1 approval also requires a public stakeholder process to develop the RMS that will determine how to best allocate these funds and set clear expectations for future projects. This upfront analysis will speed the consideration of future development projects in the NPR-A.

b) We understand that BLM intends to use part of the $8,000,000 to develop its landscape-level Regional Mitigation Strategy.

i. Do you think it is appropriate for a private party to bear the burden of paying for BLM to develop this strategy? If yes, why?

Answer: The Regional Mitigation Strategy will determine how best to allocate compensatory mitigation funds to address the impacts to subsistence and other resources that will be impacted by the GMT1 project. The impacts that the BLM seeks to mitigate are the direct result of the economic pursuits of a private party, and the BLM believes that it is reasonable to assign these costs to the private developer rather than to the American taxpayer. By developing a Regional Mitigation Strategy to assess impacts and mitigation opportunities through a stakeholder driven process, the BLM will also be able

to better and more rapidly respond to future permit applications from those private parties and at the same time reduce the risk of litigation.

ii. **Your testimony notes that the interim mitigation policy prescribes procedures for a landscape approach to mitigation, and that the policy has been released "on a trial basis."**

- **Is this $8M being spent in part on the "trial run" of a program, which has not been subjected to a robust public comment period?**

Answer: The BLM has decades of experience implementing mitigation to offset impacts from development as part of the public environmental review for a given development project, as was the case for GMT1. However, the BLM has lacked uniform and consistent guidance regarding how to best determine and apply mitigation to projects, which is the focus of the interim policy you identify. The BLM decided to release that policy in interim form in order to allow for input from our field offices and from the public. The BLM is in the last stages of finalizing that policy. In terms of public comment on the interim policy, please see the responses to Questions 6 and 7 below.

- **Your testimony also notes that the Secretarial Order 3330 "builds on and expands" concepts from the interim policy. Does this mean that the project proponents for GMT1 should expect in a matter of months or a year, the BLM will require additional mitigation measures or monies to be taken as you continue building on and expanding your mitigation policy?**

Answer: Secretarial Order 3330 and the BLM's interim mitigation policy address concepts that broadly apply to mitigation—including principles of additionality, durability, and transparency —without prescribing the amount of mitigation that might be required for any given project. In general, the BLM will continue to identify appropriate mitigation measures by evaluating the specific impacts of each project proposal, in consideration of applicable BLM land use plans and in compliance with NEPA.

With the approval of the GMT1 project on February 13, 2015, the BLM's NEPA analysis and decision-making for that project is complete. Accordingly, no additional mitigation measures will be required for impacts addressed in that decision.

Question 6: You indicated in your testimony that the Draft Regional Mitigation Manual did receive public comment. Please clarify exactly what that public comment was

comprised of, and note whether a formal Administrative Procedure Act rulemaking public comment and consultation process occurred.

Answer: While a public review and comment process is not required for the development of agency guidance such as the BLM mitigation policy, the BLM took the extraordinary step of publishing the interim draft policy and making it available on our public website. As a result, the BLM received feedback from a variety of stakeholders, including both industry and environmental groups. That feedback is being carefully considered as the BLM writes its final policy.

a) **A number of individuals sent a letter directed to Secretary Jewell and Director Kornze outlining major legal, jurisdictional, policy, and implementation concerns related to the draft mitigation manual in March of 2014. Do [you] expect concerns raised by the public regarding this important draft manual will be responded to by the Director, the Secretary or their delegees?**

Answer: The BLM has received extensive public feedback on our interim policy. Each concern raised to us in letters sent to DOI and BLM is being thoroughly considered and in some cases may result in changes that will be reflected in our final policy.

Question 7: Given that public comment, coordination and collaboration are so fundamental to FLPMA, what is the BLM's process for determining whether policy or guidance rises to the level of requiring formal public comment and coordination under rulemaking regulations verses administrative, unilateral formulation of instructions or guidance, etc.?

Answer: In determining whether notice and comment rulemaking procedures are necessary for a given policy, the BLM, with counsel from the Department of the Interior's Office of the Solicitor, carefully considers the requirements of section 553 of the Administrative Procedure Act (APA). Further guidance can be found in the Final Bulletin for Agency Good Guidance Practices which establishes policies and procedures for the development, issuance, and use of "significant guidance documents" by Executive Branch departments and agencies, including the requirements for providing an opportunity for public comment.

United States Department of the Interior

OFFICE OF THE SECRETARY
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JAN 2 8 2016

The Hon. Lisa Murkowski
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Committee on Energy and Natural Resources
United States Senate
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a) Why did the mitigation plan take so long to develop, and how exactly was the $8,000,000 payment developed?

Answer: The GMT1 project EIS was the first authorization of oil and gas production on Federal land within the NPR-A and as a result, required time and effort to determine the most responsible path forward for allowing development to occur while also fulfilling our obligations to protect subsistence and other resources as directed by FLPMA, the National Petroleum Reserve Production Act (NPRPA), ANILCA, and other laws. The BLM worked closely with the State of Alaska, local Alaska Native villages and corporations, Federal partners such as the USACE, and other stakeholders through a public process to determine potential impacts to subsistence and other resources as part of this project authorization. To offset identified impacts that could not be fully mitigated by avoidance and minimization measures, ConocoPhillips agreed to contribute $8 million dollars to BLM to establish a compensatory mitigation fund to provide for the development and implementation of a landscape-level regional mitigation strategy (RMS) and to finance mitigation projects as identified by that strategy. The final GMT1 approval also requires a public stakeholder process to develop the RMS that will determine how to best allocate these funds and set clear expectations for future projects. This upfront analysis will speed the consideration of future development projects in the NPR-A.

b) We understand that BLM intends to use part of the $8,000,000 to develop its landscape-level Regional Mitigation Strategy.

i. Do you think it is appropriate for a private party to bear the burden of paying for BLM to develop this strategy? If yes, why?

Answer: The Regional Mitigation Strategy will determine how best to allocate compensatory mitigation funds to address the impacts to subsistence and other resources that will be impacted by the GMT1 project. The impacts that the BLM seeks to mitigate are the direct result of the economic pursuits of a private party, and the BLM believes that it is reasonable to assign these costs to the private developer rather than to the American taxpayer. By developing a Regional Mitigation Strategy to assess impacts and mitigation opportunities through a stakeholder driven process, the BLM will also be able

to better and more rapidly respond to future permit applications from those private parties and at the same time reduce the risk of litigation.

ii. **Your testimony notes that the interim mitigation policy prescribes procedures for a landscape approach to mitigation, and that the policy has been released "on a trial basis."**

- **Is this $8M being spent in part on the "trial run" of a program, which has not been subjected to a robust public comment period?**

Answer: The BLM has decades of experience implementing mitigation to offset impacts from development as part of the public environmental review for a given development project, as was the case for GMT1. However, the BLM has lacked uniform and consistent guidance regarding how to best determine and apply mitigation to projects, which is the focus of the interim policy you identify. The BLM decided to release that policy in interim form in order to allow for input from our field offices and from the public. The BLM is in the last stages of finalizing that policy. In terms of public comment on the interim policy, please see the responses to Questions 6 and 7 below.

- **Your testimony also notes that the Secretarial Order 3330 "builds on and expands" concepts from the interim policy. Does this mean that the project proponents for GMT1 should expect in a matter of months or a year, the BLM will require additional mitigation measures or monies to be taken as you continue building on and expanding your mitigation policy?**

Answer: Secretarial Order 3330 and the BLM's interim mitigation policy address concepts that broadly apply to mitigation—including principles of additionality, durability, and transparency —without prescribing the amount of mitigation that might be required for any given project. In general, the BLM will continue to identify appropriate mitigation measures by evaluating the specific impacts of each project proposal, in consideration of applicable BLM land use plans and in compliance with NEPA.

With the approval of the GMT1 project on February 13, 2015, the BLM's NEPA analysis and decision-making for that project is complete. Accordingly, no additional mitigation measures will be required for impacts addressed in that decision.

<u>Question 6</u>: You indicated in your testimony that the Draft Regional Mitigation Manual did receive public comment. Please clarify exactly what that public comment was

comprised of, and note whether a formal Administrative Procedure Act rulemaking public comment and consultation process occurred.

Answer: While a public review and comment process is not required for the development of agency guidance such as the BLM mitigation policy, the BLM took the extraordinary step of publishing the interim draft policy and making it available on our public website. As a result, the BLM received feedback from a variety of stakeholders, including both industry and environmental groups. That feedback is being carefully considered as the BLM writes its final policy.

a) **A number of individuals sent a letter directed to Secretary Jewell and Director Kornze outlining major legal, jurisdictional, policy, and implementation concerns related to the draft mitigation manual in March of 2014. Do [you] expect concerns raised by the public regarding this important draft manual will be responded to by the Director, the Secretary or their delegees?**

Answer: The BLM has received extensive public feedback on our interim policy. Each concern raised to us in letters sent to DOI and BLM is being thoroughly considered and in some cases may result in changes that will be reflected in our final policy.

Question 7: Given that public comment, coordination and collaboration are so fundamental to FLPMA, what is the BLM's process for determining whether policy or guidance rises to the level of requiring formal public comment and coordination under rulemaking regulations verses administrative, unilateral formulation of instructions or guidance, etc.?

Answer: In determining whether notice and comment rulemaking procedures are necessary for a given policy, the BLM, with counsel from the Department of the Interior's Office of the Solicitor, carefully considers the requirements of section 553 of the Administrative Procedure Act (APA). Further guidance can be found in the Final Bulletin for Agency Good Guidance Practices which establishes policies and procedures for the development, issuance, and use of "significant guidance documents" by Executive Branch departments and agencies, including the requirements for providing an opportunity for public comment.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB - 1 2016

The Honorable John Barrasso
Chairman
Senate Committee on Indian Affairs
Washington, DC 20510

Dear Chairman Barrasso:

Enclosed are responses prepared by the Assistant Secretary- Indian Affairs in response to questions received following the May 13, 2015, hearing before your Committee regarding "Bureau of Indian Education: Examining Organizational Challenges in Transforming Educational Opportunities for Indian Children."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure
cc: The Honorable Jon Tester
Vice Chairman

Questions for the Record
Dr. Charles Roessel
United States Senate Committee on Indian Affairs
Oversight Hearing
"Bureau of Indian Education: Examining Organizational Challenges in Transforming Educational Opportunities for Indian Children."
May 13, 2015

Submitted by Senator Mike Crapo

1. Funding:
The Department of the Interior has requested lower funding for the Indian School Equalization Program (ISEP) to provide funds for the Education Turnaround Pilot Program. These funds are used for Student Improvement Grants, which are temporary programs and do not provide long term funding to selected schools.

How can real educational reforms be achieved when funding for student improvement relies on temporary arrangements?

RESPONSE: On December 18, 2016, Public Law 114-113, the Consolidated Appropriations Act, 2016, was enacted. . The FY 2016 budget request included funding proposals for investments in education that will yield long-term benefits, and those proposals were funded under the enacted Consolidated Appropriations Act These benefits include focusing on improving instruction, improving teachers through national board certification, bringing Internet connectivity into all Bureau of Indian Education (BIE) schools, increased funding for tribal grant support costs, and assisting tribes with the development of tribal education departments. The increased funding for operations and maintenance will assist the BIE in improving conditions of BIE facilities.

2. Funding:

ISEP funding has steadily decreased over the past 3 years and BIE schools have to look toward short-term grants and pilot programs to provide basic educational services for their students.

How will the BIE provide Native students with world-class education when schools barely have the resources to hire teachers or provide modern learning environments?

RESPONSE: The funding for school operations has gradually increased since the sequestration of Fiscal Year 2013. In FY 2013, school operations was funded at $493,700,867, in FY 2014 it was funded at $518,318,000, and in FY 2015 it was funded at $536,897,000. However, the FY 2015 base funding for school operations, the Indian School Equalization Program (ISEP), at $386,565,000 is still lower than the FY 2012 funding at $390,706,867 due to the FY 2013 sequestration and the FY 2014 adjustment for the Education Turnaround Pilot Program. The FY 2016 budget of $391,837,000 restores ISEP funding to an amount greater than the pre-sequestration FY 2012 funding.

3. Organization and Structure:

The proposed organizational model as outlined by the BIE takes the agency from a "direct provider of education" and makes it into an "innovative organization that will serve as a capacity-builder and service-provider." The reorganization activity seems counter to this mission statement.

For example, the Shoshone-Bannock Tribe was one of around 25 schools under one Associate Deputy Director. Under the reorganization, that same person has responsibility for approximately 90 schools. How does this reorganization actually further the goal of providing world-class education, and how does the reorganization work to provide better communication and coordination with BIE schools when more schools are overseen by the same number of personnel?

RESPONSE: The Department of the Interior's (Department's) proposed Education Resource Centers scales up a best practice. Previously, when Director Roessel was the Associate Deputy Director for Navajo Schools, as a part of a Navajo pilot project for BIE-operated Navajo schools, he clarified roles and responsibilities within the field to enable specialization and avoid the "jack of all trades" approach. In addition, he restructured six separate Education Line Offices into one school district, established school improvement teams (made up of school improvement specialists) and established school clusters organized around strengths and weaknesses.

As a result, the percentage of BIE-operated Navajo schools that made "adequate yearly progress" (AYP) increased from 29 percent to 55 percent. Because this approach improved outcomes for students attending BIE operated Navajo schools, the Department seeks to apply this approach to the entire BIE school system. A key part of the restructuring will be clarifying the roles of everyone involved in delivering a world-class education to students. The proposed changes will result in better support to each tribe so it is better able to address student outcomes. These changes in the field will be supported by clearer central accountability through the Chief Academic Officer and the Chief Performance Officer who will be dedicated to the improvement of educational performance and operations.

4. Reorganization:
Regarding the overall structural reforms, I have heard concerns that tribes in Idaho and in neighboring states have been assigned to an Associate Deputy Director based out of Minneapolis, Minnesota. Previously, Idaho tribes had agency resources closer to home at an office in Montana.

How does moving resources further away from tribes the agency serves help BIE students?

RESPONSE: We considered two major factors in planning the 15 Education Resource Centers (ERCs): (1) proximity to schools served, and (2) needs of the schools. Proximity was based on the school's distance to the ERCs, the number of students per school, and the number of schools per

ERC. At that time, school needs included their adequate yearly progress[1] (AYP status, special education, and other student data, and distance from other schools and the number of tribes per ERC. The reorganization supports a ratio of ERC staff to BIE-funded schools as follows: (1) Associate Deputy Director (ADD)-Bureau Operated Schools; one Full Time Employee (FTE) to one school; (2) ADD Tribally Controlled Schools: one FTE to one school; and (3) ADD Navajo Schools: one FTE to three schools. The reorganization will locate several ERCs in new locations closer to schools to more effectively serve all BIE students. The ERCs will be staffed by employees who are currently in Albuquerque. The focus of reform is looking at the total BIE structure being closer to the schools and not just a line office with no services.

Submitted by Senator Tom Udall

1. I understand that the Navajo Nation is interested in being a Tribal Education Agency for the entire Nation. Wouldn't this result in some of the Navajo autonomous school boards losing their autonomy?

RESPONSE: The United States has a government-to-government relationship with the Navajo Nation and a deep respect for principles of tribal self-governance. In Part B of Title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.), the various legislative and technical amendments since 1978, and the annual appropriations process, Congress has repeatedly stated that it is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with, and responsibility to, the Indian people for the education of Indian children and for the operation and financial support of the Bureau of Indian Affairs-funded school system to work in full cooperation with tribes. Tribal nations and the United States share the same goal: to provide education of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children.

The tribally operated schools on the Navajo Reservation operate as autonomous schools only by authorization of the Navajo Nation. The Navajo Nation has the authority, under existing tribal legislation, to withdraw the authorization, and through the tribal authority provided through Part B of Title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.), as amended. The Navajo Nation, in its interactions with individual schools, must consider the well-being of all its students and community members, particularly when the autonomous school boards are not providing the sound governance required for a school to be a success, and are not providing the high-quality academic programs and services that students need to be successful in the 21st century.

The enactment and implementation of Title V of Public Law 100-297 in 1988 was an important milestone in the tribal control of Bureau-funded schools. But the success of the schools controlled by tribal organizations has been limited and has not met the full expectations of both Public Law 93-638, the Indian Self-Determination and Education Assistance Act, which allows a tribe to perform federal functions under contract to the Federal Government and receive funding for that role, and Public Law 100-297, the Tribally Controlled Grant Schools Act, which allows a tribe to take over the responsibilities for the operation of a school under what is called a P.L. 100-297

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[1]The term, adequate yearly progress was deleted by P.L. 114-95, the Every Student Succeeds Act, signed into law, December 10, 2015.

grant. Many tribes have limited input in the operation and control of their schools after they approve a tribal organization, independent of the tribe, to operate a school. One outcome is that tribal organizations have not coordinated well with neighboring schools on standards, procedures, policies, curricula, and instructional programs. Lack of coordination produces inequities and has a negative impact on students who may move between schools during the academic year.

We defer to the Navajo Nation on the organization of education on the Navajo Reservation. That said, we seek to provide options to tribal nations to improve education. The desire of the Navajo Nation, as well as other tribes, to function as a Tribal Education Department is an important step in the Navajo Nation assuming greater control of the 66 Bureau-funded schools on or near the Navajo Reservation. The Navajo Nation is exploring various options to strengthen oversight, governance, and control of its schools. Although the final decision has not been made by the Navajo Nation on the oversight, governance, and control of its schools, the Bureau is comfortable with, and will support, the Navajo Nation's decision based on the stated policy of the Education Amendments of 1978, as amended.

The Bureau believes that greater coordination in the operation of its schools will strengthen the capacity of tribes to operate education programs and high-performing schools. It will also improve student performance, improve the quality of the instructional program, and develop an education system with uniform standards, policies, and procedures that better meet the needs of students and tribal communities. Tribal control of schools will allow tribes to implement innovative programs and curricula for their students, including an emphasis on their history, language, and culture. As a result, tribal communities are likely to be more invested in their schools.

a. How will BIE manage this conflict as you make decisions on how to move forward with the proposed reorganization?

RESPONSE: The future of Navajo education is a matter for the Navajo Nation to decide. The United States has not had a good historical record when it has used paternalistic approaches directed by federal entities, whether Congress or the Executive Branch. The question of how the Navajo Nation will operate its school system should be debated within the Navajo Nation. The BIE's role is to support whatever decision is made by the tribal government, provided that it is consistent with the law. The BIE Director and his senior managers hosted a tribal consultation session on April 27, 2015, which was open to the public, and have had formal and informal meetings, seven stakeholder conference calls, and eight webinars to provide information to the Navajo Nation, tribal and education department leaders, community members, and both tribally operated and BIE school board members and school staff. These activities were to collect information and input on the restructuring of BIE, including the feasibility of tribes operating all of the Bureau-funded schools on their reservations, and the strengthening of tribal departments of education. Through these efforts, the BIE has sought to become more supportive of educational endeavors on the Navajo Reservation.

In addition, BIE has provided the Navajo Nation $400,000 through a feasibility grant and a "Sovereignty in Indian Education" (SIE) Enhancement initiative. These funds allowed the Navajo Nation to hold numerous listening sessions with school boards, school staff, and community members to determine the feasibility of operating the Navajo Bureau-funded schools, and other considerations to strengthen the Navajo Nation Department of Education and update tribal

education codes, policies, and procedures.

b. Do you have an opinion from the Department's Solicitor's office on the authority of the BIE to enter into its current restructuring? Is there any conflict between PL-297 and the proposed changes to increase tribal authority?

RESPONSE: The answer to the first question is "yes." The Department's Office of the Solicitor has reviewed the restructuring proposal and opined that the Tribally Controlled Schools Act does not prevent the restructuring. The Act envisions tribal governments as authorizing bodies and informed partners in the management of tribally controlled schools when not directly operating tribal schools themselves. The answer to the second question is "no."

The Solicitor's office has been actively involved with BIE's restructuring planning and implementation process, and with BIE's outreach to tribes to discuss the restructuring of the Bureau, including the transformation of the BIE from a direct service provider and school operator to a technical assistance provider to tribally operated schools.

2. I have great respect for the tradition of Tribal Consultation, and its importance for respecting tribal sovereignty. I understand you are using a range of tools to garner reaction from tribes for the BIE reorganization plan.

a. What changes have you made to the proposed reorganization plan based on consultation received from tribal leaders?

RESPONSE: Both the development and implementation of the BIE reorganization have evolved as tribal consultation has proceeded. In response to concerns in the Great Plains, for example, the reorganization was modified to establish an Education Resource Center (ERC) in Kyle, South Dakota and create an Education Program Administrator at Pine Ridge to oversee Cheyenne Eagle Butte, Flandreau, and Pine Ridge schools. In several areas, a smaller-scale support center was included as part of the proposed reorganization plan. An additional change came following input from the tribes in Oklahoma during the tribal consultation sessions in April and May of 2014.

In addition, during the tribal consultations, we heard that most of the tribal nations in Oklahoma are interested in programs supporting Native youth attending public schools (there are only three BIE-funded schools in that state). Because of this concern, we have proposed to transform the only regional office in Oklahoma to a national "Johnson O'Malley (JOM) Center." The new JOM Center will provide support and technical assistance to all tribes receiving JOM funds.

b. My constituents tell me they want to hear more about how the BIE expects this new reorganization "to be better able to provide more resources and support to Indian students at the local level." How will you be doing that?

RESPONSE: Our reorganization is designed with the best interests of the student and the success of their schools in mind. The 15 Education Resource Centers (ERCs) will address a key recommendation of the Blueprint for Reform to provide improved technical assistance and more comprehensive services to schools. The ERCs will be geographically positioned close to schools and staffed with School Solutions Teams to provide customized support to meet the unique needs

of each school. Instead of issuing mandates to schools, these teams will ensure that principals and teachers have the resources and support they need to operate high achieving schools. The ERCs will leverage expertise from other parts of the organization, including school operations, to offer a variety of technical skill supports in the field. With support from BIE Education Program Enhancement funds, the ERCs will assist schools in their improvement efforts by making available to schools data-supported "best practice" models in professional development, curriculum development, instruction, intervention strategies, school leadership, and tribal education support.

c. I understand that part of the proposed restructuring will be the closing of line offices. How have all tribes been notified of these closures?

RESPONSE: The BIE is transforming the current 22 Education Line Offices reporting to the Associate Deputy Directors into 15 Education Resource Centers (ERCs), four facility support centers, three technical support centers, and one National Johnson O'Malley Center. The ERCs address a key recommendation of the Blueprint for Reform to provide improved technical assistance and more comprehensive services to schools. The ERCs will be geographically positioned close to schools and staffed with School Solutions Teams to provide customized support to meet the unique needs of each school. Instead of issuing mandates to schools, these teams will ensure that principals and teachers possess the resources and support they need to operate high achieving schools. The ERCs will leverage expertise from other parts of the organization, including school operations, to offer a variety of technical skill supports in the field. With support from BIE Education Program Enhancement funds, the ERCs will assist schools in their improvement efforts by making available to schools data-supported "best practice" models in professional development, curriculum development, instruction, intervention strategies, school leadership, and tribal education support.Information on the transformation is shared during Tribal Consultation meetings, during monthly stakeholder calls, through webinars in partnership with the National Indian Education Association and the National Congress of American Indians, and through individual meetings with tribal leaders, tribal councils and tribal community members. Information on these consultation sessions can be found at the following link on the bie.edu website: http://www.bie.edu/cs/groups/xbie/documents/document/idc1-031687.pdf.

3. Understandably, tribes are concerned about the financial impact of operating schools previously run by the BIE.

a. Currently, what are the per pupil costs at BIE operated and BIE grant schools, and what is the breakdown of contributing factors for those costs?

RESPONSE: The BIE does not have access to cost information from all schools. However, most BIE-appropriated and Department of Education funds received by the BIE are distributed to BIE-funded schools by formulas based on student count variables or characteristics of each school. For School Year 2015-2016, the average Indian School Equalization Program (ISEP) funding was $9,280 per student; the average BIE-appropriated dollars per student, including ISEP, was $15,386; and the average for all funds was $20,153. The $20,153 per student was not adjusted for the funding generated by the residential students.

b. When tribes agree to take control of their schools now run by BIE, how can they compensate for the lack of resources and staff, insufficient infrastructure

(buildings, technology, and broadband) and needed wraparound services to achieve academic excellence?

RESPONSE: Since most BIE-appropriated and Department of Education funds received by the BIE are distributed to BIE-funded schools by formulas based on student count variables or characteristics of each individual school, individual schools would receive the same dollar amount per program regardless of whether they were BIE-operated or tribally operated. In either case, the school determines the number and type of staff needed based on available funds. When a school transfers from BIE-operated to tribally operated, the school receives the same dollar amount for facilities, operations, and maintenance, and has the same eligibility for facilities repair funds. However, a school gains more flexibility and will be more accountable to the community, giving the school the opportunity to better serve the community.

BIE funds the broadcast and Internet broadband for all of its schools from funds appropriated for Education Information Technology (IT) services, and the broadband at individual schools expands as school needs change and funds become available. The funding increase provided in FY 2016 will increase the broadband and hardware to better meet the needs for 21st century schools, especially in remote locations where broadband access benefits are not available to the local community except at BIE-funded schools.

The BIE will continue to work with other Federal, State, and private agencies to establish wraparound services at all BIE-funded schools. BIE continues to work with the Indian Health Service to increase the availability of health care services at or near BIE- funded schools.

c. What resources will BIE make available to them, and will it be sufficient and sustainable?

RESPONSE: BIE routinely provides technical assistance as tribes seek to convert to tribal control. Moreover, the BIE Sovereignty in Indian Education (SIE) Enhancement Initiative and the Tribal Education Department (TED) grants provide funding to build the capacity of Tribal Education Departments. On August 5, 2014, the BIE awarded $1 million to five tribes under the SIE: Gila River Indian Community, Navajo Nation, Tohono O'odham Nation, Standing Rock Sioux Tribe, and the Turtle Mountain Band of Chippewa Indians. In November 2015, the BIE awarded ten tribes under the TED Grant: Pueblo of Acoma, Santa Clara Pueblo, Navajo Nation, Hopi Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, Mississippi Band of Choctaw Indians, Sault Ste. Marie Tribe of Chippewa Indians, Muscogee Creek Nation Tribe, and Leech Lake Band of Ojibwe. These funds are intended to support tribes to build the capacity of their educational departments. The Oglala Sioux Tribe opted not to accept the SIE awards and were provided a full year to resubmit a new budget narrative. Unfortunately, the Tribe never resubmitted and funds were reallocated to fund technical assistance programs for Education Line Offices being contracted by five tribes. . These grants were announced for second-year funding in August 2015.

In addition to providing grants to tribes, the BIE is taking the necessary steps to ensure that employees are trained in how to provide technical assistance. BIE is working across the agency to ensure that BIE will be a capacity-builder and service-provider to tribes. Monthly BIE calls provide an opportunity for updates with stakeholders and offer an open forum for questions and

answers. There are also BIE training webinars announced by newsletter and mass emails through standard BIE communications protocols.

4. What is the risk of New Mexico staff losing their jobs if they are not able to relocate or retrain for the new roles?

RESPONSE: Employees are the lifeblood of any institution. It is BIE's intention to work with current employees to ensure that they have a place within the new BIE. Every effort will be made to ensure a smooth transition. The BIE has sought to provide all BIE staff with webinars on developing resumes and a walkthrough of how to apply for positions on USA Jobs, which are specific to job announcements. In addition, job announcements are shared across the BIE, and managers are encouraged to share the job listings with staff. New positions are being advertised and individuals are encouraged to submit applications for these positions. Training and professional development go hand in hand in the BIE and employees will be provided necessary training through webinars.

a. If fully implemented, is it true that Albuquerque would be at risk for losing 35 jobs?

RESPONSE: No. Currently, the Albuquerque Regional Office supports a staffing level of 44 positions and includes the following functions: (1) Associate Deputy Director West; (2) Albuquerque Education Line Office; (3) Division of Performance and Accountability; and (4) School Operations staff.

Under the proposed reorganization, the Albuquerque regional office will undergo several changes, but it will continue to support 44 positions, covering a variety of important functions:

1. An Office of the Associate Deputy Director for BIE-Operated Schools and an Education Resource Center (ERC) reporting to the Associate Deputy Director;
2. An Office of the Associate Deputy Director for Tribally Controlled Schools (3 positions) and an ERC reporting to the ADD; and
3. Staff supporting the Division of School Operations.

The most significant change will be within the Division of Performance and Accountability (DPA), for which the following changes are proposed:

1. The reassignment of the Associate Deputy Director for DPA to Washington, DC;
2. The reassignment of a majority of the DPA staff to ERCs around the country; and
3. The reassignment of DPA's data unit to Washington, DC.

b. What is the potential economic impact to New Mexico of fully implementing the proposed BIE reorganization plan?

RESPONSE: The number of federal jobs will remain the same and we anticipate that Indian education in New Mexico will improve. This will produce a more successful workforce in the State. While we cannot quantify with certainty the overall economic impact, we believe that it will

be positive.

5. Thank you for your assistance with getting the Pine Hill Elementary School (Bldg. 803) prepared for occupancy. I understand that significant problems on the campus remain, including connecting all of the buildings to the fire alarm system and fencing the campus to protect it from uninvited guests.

> **a. Do I have your commitment that BIE will continue to work with the Pine Hill schools to address the security and life safety features needed to create the appropriate learning environment for the students and staff?**

RESPONSE: The Bureau of Indian Affairs Southwest Region Facilities Manager confirmed that building 803 and the campus-wide fire alarm system are complete. Yes, we are committed to working with the Ramah community in addressing other identified security and life-safety issues.

Submitted by Senator Al Franken

From 2007 to 2012, the Mille Lacs Band of Ojibwe operated its Pine Grove School as a charter school, but then outside assistance for the school ended. Without Pine Grove, children in the Band's Lake Lena community must be bused to the Band's Nay Ah Shing School 80 miles away or lose access to culturally appropriate education.

Last year's appropriations bill included language allowing BIE to waive the prohibition on funding satellite schools in limited circumstances. The Band has requested such a waiver so it can reopen Pine Grove as a satellite of the BIE-supported Nay Ah Shing School. And the Band would like to see this waiver approved in time for about two dozen kids in Lake Lena to start classes at Pine Grove in the 2015-2016 school year.

Can you assure me that BIE will review the Mille Lacs Band's waiver request in a timely manner?

RESPONSE: The BIE director traveled to meet with Mille Lacs Band of Ojibwe Indians Chief Executive Melanie Benjamin and agreed to the new satellite school. The BIE has worked with Pine Grove to identify students who are eligible for the Indian School Equalization Program (ISEP) funding but, as of this writing, the students listed by Pine Grove do not meet the ISEP eligibility requirements and are not eligible for ISEP funds. The BIE continues to work with Pine Grove to identify eligible students who will generate funds for Nay Ah Shing to provide education services to the Pine Grove students.