



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC - 1 2016

The Honorable Doug Lamborn
Chairman, Subcommittee on Energy
and Mineral Resources
Committee on Natural Resources
Washington, D.C. 20515

Dear Chairman Lamborn:

Enclosed are responses prepared by the Office of Surface Mining, Reclamation and Enforcement to questions received by Director Pizarchik following his appearance before your Subcommittee on March 23, 2016.

Thank you for providing OSMRE with the opportunity to respond to these questions.

Sincerely,

Christopher P. Salotti
Legislative Counsel

cc: The Honorable Alan Lowenthal
Ranking Member

Questions from Rep. Mooney

The Consolidated Appropriations Act of 2016, P.L. 114-113, enacted on Dec. 18, 2015 included report language requiring the Office of Surface Mining (OSM) to reengage with states in a meaningful way before finalizing any Stream Protection Rule (SPR) by: (1) providing the states with all technical reports, data, analyses, comments received, and drafts relative to the environmental reviews, draft and final environmental impacts statements; and (2) meeting with any state upon request.

- 1. In the March 2, 2016, budget hearing before the House Interior Appropriations Subcommittee, Secretary Sally Jewell testified that Department of the Interior “would comply with the [SPR] report language.” However, the very next day before the same Subcommittee, you completely negated your boss’s promise and testified that you would not comply with the specific requirements of the report language. You also wrote to the states clarifying that you would not comply with those requirements. Who has the final say on whether or not OSM will comply with its obligations, you or the Secretary?**

Response: There is no discrepancy between the Secretary’s testimony and the Director’s testimony. Both the Department and the Office of Surface Mining Reclamation and Enforcement (OSMRE) are committed to complying with the Consolidated Appropriations Act of 2016 and we have taken numerous steps to do so.

All documents and information upon which we directly relied in developing the proposed rule and supporting documents were cited in the proposed rule and the supporting documents, which we made available to the public on July 16, 2015. We provided the list of documents to the states on March 24, 2016. We posted reference materials related to the proposed SPR, the draft environmental impact statement (EIS) and the draft regulatory impact analysis (RIA) to the website www.regulations.gov under Docket Identification Number OSM-2010-0021, with the exception of reference materials protected by copyright law. We also offered assistance through our librarian to states in obtaining copyright-protected materials. We invited states to participate in technical meetings and teleconferences held in each OSMRE region on April 14 and 21, 2016, to provide states with an opportunity to discuss the technical reference documents with our technical personnel. Seven states (Arkansas, Kentucky, Louisiana, Ohio, Pennsylvania, Virginia, and Wyoming) accepted our invitation.

- 2. In your response to the states and testimony before this Subcommittee and the House Interior Appropriations Subcommittee, you explained that you have furnished a “bibliography” of sources cited in the proposed rule and draft Environmental Impact Statement (EIS) that amounts to a list of footnotes already present in the published documents. To be clear, the requirements of the National Environmental Policy Act (NEPA) and the appropriations report language call for draft chapters and technical reports used to develop the draft EIS. Offering the**

states a chance to comment on an already completed draft product does not comply with NEPA or the appropriations report language. When will the draft chapters of the EIS and the technical reports on which those drafts rely be made available to the states for review and comment?

Response: The rulemaking process, which began with an Advance Notice of Proposed Rulemaking, included stakeholder outreach meetings, nine public scoping meetings, and two public comment periods on the scoping for the draft environmental impact statement (DEIS). The scoping process generated over 20,500 comments, including input from the states. A number of state agencies, including state SMCRA regulatory authorities, participated as cooperating agencies in the early development of the DEIS for the Stream Protection Rule. These states provided meaningful input and comments that were used to prepare the DEIS. In addition, the DEIS was made available to all cooperating agencies and the public for review and input during the public comment period. The public comment period was extended to provide interested parties, including the states, more time to review and comment on the DEIS.

OSMRE conducted six public hearings in Colorado, Kentucky, Missouri, Pennsylvania, Virginia, and West Virginia during the public comment period. Ultimately, OSMRE received over 94,000 comments, including hundreds of pages of comments from state SMCRA regulatory authorities, on the DEIS and the proposed Stream Protection Rule. On October 7, 2015, OSMRE also sent letters to all former cooperating state agencies in an effort to re-engage with them in the development of the final EIS. None of the state agencies accepted our offer to re-engage.

All documents and information upon which we directly relied in developing the proposed rule and supporting documents were cited in the proposed rule and the supporting documents, which we made available to the public on July 16, 2015. We provided the list of documents to the states on March 24, 2016. We posted reference materials related to the proposed SPR, the draft EIS and the draft RIA to the website www.regulations.gov under Docket Identification Number OSM-2010-0021, with the exception of reference materials protected by copyright law. We also offered assistance through our librarian to those states that requested help in obtaining copyright-protected materials. We invited states to participate in technical meetings and teleconferences held in each OSMRE region on April 14 and 21, 2016, to provide states with an opportunity to discuss the technical reference documents with our technical personnel. Seven states (Arkansas, Kentucky, Louisiana, Ohio, Pennsylvania, Virginia, and Wyoming) accepted our invitation.

- 3. The appropriations report obligates OSM to meet with states individually at the request of each state, not collectively at your request. Secretary Jewell said OSM would meet this requirement. In your testimony, and in your communications to the states, you offered to meet with states for a brief time during an Interstate Mining Compact Commission meeting in April. Such a brief meeting, conducted collectively with the states, does not meet the requirements of the appropriations report and cannot begin to offer the time necessary to adequately hear and address each state's particular concerns. Will you meet with the states individually as the report language requires and as your boss Secretary Jewell said you would do?**

Response: We have continued to engage in discussions with the state SMCRA regulatory authorities to better understand their comments regarding the proposed SPR. In addition to meetings with the state SMCRA regulatory authorities in conjunction with Interstate Mining Compact Commission meetings, Assistant Secretary Janice Schneider, and/or OSMRE officials have met or held teleconferences with states as listed below.

- Wyoming on October 27, 2015; November 20, 2015; and January 8, 2016;
- Ohio and Maryland on December 2, 2015;
- Oklahoma on December 3, 2015;
- Indiana and Pennsylvania on December 10, 2015;
- Virginia on December 11, 2015;
- Illinois on December 16, 2015;
- North Dakota, Utah and Montana on December 17, 2015;
- Alaska on January 14, 2016;
- West Virginia on February 10, 2016;
- Colorado on April 11-14, 2016;
- North Dakota on May 2-4, 2016; and
- Alaska on May 18-22, 2016.

We invited states to participate in technical meetings and teleconferences held in each region on April 14 and 21, 2016, to provide states with an opportunity to discuss the technical reference documents with our technical personnel. Seven states (Arkansas, Kentucky, Louisiana, Ohio, Pennsylvania, Virginia, and Wyoming) accepted our invitation.

4. **OSM's analysis of the rule states that it is based on "hypothetical, model mines." OSM took almost 7 years to develop this rule at a cost closing in on \$10 million. Did you ever consider basing your assessment by applying the proposed changes to actual operating mines in different mining regions to determine the feasibility of the proposed changes, potential costs, and impact on the recoverable coal reserves?**
- a. **If you did, can you provide a list of those mines, their location and the results of the agency's analysis?**
- b. **If not, why not?**

Response: Coal mining operations vary from region to region, within a region, and within a mining type in a given region. In addition, the number of active mines is expected to change over time. Therefore, the precise location and operating characteristics of future mines cannot be forecast based on publicly available data. Instead, the draft RIA relies on a "model mine" analysis developed by Morgan Worldwide, Inc., which provides results that are extrapolated to the universe of mines affected by the proposed rule.

The "model mine" analysis uses data from existing mines and permits, topographic data from the U.S. Geological Survey and actual stream data, which is then modeled to represent each coal producing region, and thus allow a comparison of the potential effects of the rule across different

regions of the county. These model mines were developed to be representative of the locations where coal mining occurs, the types of mining operations expected to be seen under baseline conditions, the production rates at various mines throughout the coal-producing regions of the United States, and how mining operations might change in response to the proposed rule.

The model mine analysis is consistent with economic principles and was peer-reviewed by John Grubb, Adjunct Professor of the Mining Engineering Department at the Colorado School of Mines, and Raja Ramani, Professor emeritus of the Mining Engineering Department at the Pennsylvania State University.

- 5. OSM has found in its own oversight reports that 90% of mines nationwide have no offsite impacts, and in many states 100% of mines have no offsite impacts. With this being the case, why does OSM see the need to add more regulatory burdens, especially those that overlap and conflict with other state and federal programs regulating water quality?**

Response: OSMRE inspections and other oversight activities in primacy states, including the annual evaluation reports, focus on the success of state regulatory authorities in achieving compliance with the approved regulatory program for the state. Directive REG-8, which establishes policy and procedures for the evaluation of state regulatory programs, specifies that the offsite impacts identified in annual evaluation reports do not include impacts from mining and reclamation that are not regulated or controlled by the state program. In other words, the annual evaluation reports generally do not identify or discuss situations in which the existing regulations provide inadequate protection.

Directive REG-8 provides discretionary authority for evaluations of impacts that are not prohibited by the regulatory program, but that authority may be exercised only if both OSMRE and the state agree to do so and if the impacts are not characterized as offsite impacts. Historically, that discretionary authority has not been exercised. The findings in the annual evaluation reports do not address the need for the proposed rule because the proposed rule would address adverse impacts that historically have been allowed to occur under the existing regulations and which are not captured by the annual evaluation reports. For example, many state programs do not address elevated conductivity and increased selenium levels in streams as a result of mining and reclamation operations. The existing regulations do not specifically mention these parameters, in large part because the adverse impacts on aquatic life were not known when OSMRE adopted the existing hydrology regulations under SMCRA. Accordingly, we do not view the findings in the annual evaluation reports and the explanation of the purpose of the proposed rule in the rule's preamble as contradictory. The proposed SPR would not overlap or conflict with other state and federal programs regulating water quality. Instead, it would complement those programs and promote cooperation among all agencies with a role in protecting water quality and coordinating permitting processes.

- 6. Even if OSM were mirroring the requirements of federal law exactly, I fail to see the need for two agencies requiring the exact same thing. If you intend to defer to Clean Water Act (CWA) authorities with respect to water quality provisions in the**

proposed rule, why does the rule contain extensive new water monitoring and sampling requirements of your own? Couldn't OSM simply defer to state CWA authorities for this information?

Response: The Clean Water Act is not as comprehensive as SMCRA with respect to protection of the hydrologic balance. For instance, the CWA does not regulate groundwater or require the collection of baseline data before mining, but this information is critical to evaluating permit applications and surface coal mining and reclamation operations under SMCRA.

Typically, the CWA monitoring requirements are limited to point-source discharges. SMCRA requires that permit applications include baseline information on geology, groundwater, surface water, and stream biology so that the potential impacts of mining can be assessed before the permit application is approved and so that impacts that occur during mining and reclamation can be readily identified and evaluated by comparison with the baseline data. SMCRA also requires monitoring of the quality and quantity of both surface water and groundwater during and after mining and reclamation. Our rules also require monitoring sites located upgradient and downgradient of the mine site to better determine the impacts of mining and reclamation. Therefore, deferral to state CWA authorities would not achieve the same results as the proposed SPR.

The proposed SPR does not overlap or conflict with other state and federal programs that are responsible for regulating water quality. Rather, it complements those programs and promotes cooperation to protect water quality and coordinate permitting processes.

The proposed rule focuses on predicting mining impacts with a view toward preventing material damage to the hydrologic balance. It adheres to Ben Franklin's logic that "an ounce of prevention is worth a pound of cure" because of the hefty expenses associated with long-term treatment of discharges and restoration of streams that are impaired by coal mining.

- 7. Congress directly addressed water quality and stream use in the CWA, implemented by EPA, the Army Corps of Engineers, and states for the past 40 plus years. The CWA ensures that water quality standards are developed using the best available science and with public involvement, that discharges to waters meet strict standards, and that permit issuers have the flexibility needed to ensure that water quality goals are met. Can you explain what your proposed rule will accomplish that is not possible under CWA programs and why your agency believes it has greater expertise than the agencies regulating water quality under the CWA?**

Response: The proposed rule would not overlap or supersede the work of other agencies in regulating water quality. To the contrary, if adopted, it would harmonize implementation of both SMCRA and the CWA by encouraging coordination of permitting and enforcement activities and by relying upon existing CWA quality standards, effluent limitations, and designated uses of surface waters to the extent possible. However, the CWA does not expressly require protection of the hydrologic balance and prevention of material damage to the hydrologic balance outside the permit area, both of which are requirements of SMCRA. In addition, nothing in the CWA

regulates groundwater and CWA quality standards and effluent limitations do not exist for all parameters that could adversely impact the hydrologic balance.

The proposed SPR would fill these regulatory gaps. OSMRE is closely coordinating with both the Environmental Protection Agency (EPA) and the U.S. Army Corp of Engineers (USACE) in the development of both the proposed and final rules. In addition, Section 501(a)(B) of SMCRA requires that OSMRE obtain the concurrence of the Administrator of the EPA with respect to all regulations that relate to air or water quality standards promulgated under the authority of the Clean Air Act or the CWA. Section 515(f) of SMCRA also requires written concurrence from the USACE Chief of Engineers for regulations concerning the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste refuse piles, dams, and embankments.

8. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires OSM to work with other federal agencies and state regulatory agencies to minimize duplication.

a. Did OSM review its proposal to see if it did minimize duplication with other federal and state laws and programs?

Response: Yes. OSMRE endeavored to minimize duplication with other federal and state laws and programs. However, our consultation on the proposed rule with the EPA, U.S. Fish and Wildlife Service (FWS), and USACE resulted in some duplication to ensure consistency with the CWA and other federal laws and programs.

b. What outreach did OSM perform with other federal and state agencies in advance of publishing the proposal to assure that it minimized duplication?

Response: State regulatory authorities have had numerous opportunities to participate in the rulemaking process, which began with an Advance Notice of Proposed Rulemaking published on November 30, 2009 (74 FR 62664-64668). We subsequently held 15 stakeholder outreach meetings on the proposed rulemaking, including meetings with states. We also published two notices of intent on April 30 and June 18, 2010, explaining the scoping process that we intended to conduct for preparation of a draft environmental impact statement (DEIS) for the proposed SPR. We received 20,571 comments, including comments from state regulatory authorities, in response to the two scoping notices.

A number of state agencies, including state SMCRA regulatory authorities, participated as cooperating agencies in the early development of the DEIS for the SPR. These state agencies were engaged by OSMRE and provided meaningful input and comments that were used to prepare the DEIS. In addition, the DEIS was made available for all cooperating agencies and the public to review and provide input on during the public comment period. In an effort to further accommodate requests from stakeholders and the states, the public comment period was extended to provide interested parties more time to review and comment on the DEIS. In addition, OSMRE also met with the EPA, FWS, and USACE in advance of publishing the

proposed rule to receive their input.

OSMRE is consulting with the FWS on the final rule in accordance with Section 7 of the Endangered Species Act. Additionally, the rulemaking process has included and will continue to include opportunity for all interested federal agencies to provide comment through the interagency review process administered by the Office of Management and Budget.

c. Can you provide us with that analysis and record of performing such outreach?

Response: In late 2010 and early 2011, OSMRE provided state and federal cooperating agencies the opportunity to review and comment on Chapters 2 through 4 of the first working draft of the DEIS that had been developed by OSMRE's consultant.

In October 2010, OSMRE hosted a conference call with the cooperating agencies to discuss their comments on draft Chapter 2. A similar conference call was held in January 2011, to discuss comments received on Chapters 3 and 4, with particular emphasis on Chapter 4. OSMRE met with the state SMCRA regulatory authority cooperating agencies on April 27, 2015, to discuss how their comments on the preliminary drafts were used in preparation of the DEIS and the overall structure of the proposed rule and the analysis of impacts.

We have also continued to engage with the states to better understand their feedback on the proposed SPR. OSMRE also met with federal agencies regarding the primary elements of the proposed rule prior to publication in the Federal Register. Briefings were held with the USACE on September 4, 2014, the FWS on September 8, 2014, and the EPA on October 7, 2014. Additional briefings were held with the EPA and the USACE on April 17, 2015. We have continued to work closely with these federal agencies on their comments as we evaluate the public comments to develop the final rule. Further, OSMRE and the FWS have had an ongoing dialog on the proposed rule and ESA consultation.

9. **The proposed SPR includes a provision that would nullify an operator's permit automatically if OSM later decides that the permit is in any way based on "inaccurate baseline data." This would allow OSM to revoke a permit without any recourse by the operator. This result offends common notions of notice and due process.**

a. What provision of SMCRA gives OSM the authority to retroactively nullify a permit in this way?

Response: The premise of the proposed rule is that a permit that was issued on the basis of substantially inaccurate baseline information submitted by the applicant should be invalidated because the regulatory authority findings approving the permit application were based upon inaccurate data and thus have no sound scientific basis, which means that there is no assurance that the operation will not result in environmental harm. The proposed rule would implement section 102(a) of SMCRA, which provides that one of the purposes of the Act is to establish a nationwide program to protect society and the environment from the adverse effects of surface

coal mining operations. We have received many comments on this proposed rule, especially the due process aspects, which we are considering as we develop the final rule.

b. And, since the US Court of Appeals ruled long ago that OSM has no power to veto state permits, where exactly in SMCRA does OSM find the authority to revoke a state permit a primacy state?

Response: The proposed rule would not allow OSMRE to retroactively nullify a permit unless OSMRE issued the permit. We received numerous comments on this provision, which we are considering as we develop the final rule.

10. States are not subject to or required to go through a Section 7 consultation, as they are not federal agencies. Nevertheless, you propose to give the U.S. Fish and Wildlife Service (FWS) veto authority for all SMCRA permits issued by a state if FWS has any issue whatsoever with permit's fish and wildlife protection and enhancement plan under SMCRA. Permitting under SMCRA is the exclusive jurisdiction of the states, and it is a fundamental violation of SMCRA for OSM to hand over its primary purpose to FWS. What in SMCRA authorizes delegating to FWS such veto authority? Please explain.

Response: In relevant part, the proposed rule specifies that the regulatory authority may not approve a permit application until the FWS provides written documentation that all issues related to protection of threatened or endangered species and designated critical habitat under the Endangered Species Act have been resolved. Nothing in the proposed rule would extend this provision to situations in which no threatened or endangered species or designated critical habitat are present in the proposed permit or adjacent areas. Nor would the proposed rule extend this provision to all aspects of the fish and wildlife protection and enhancement plan. States may not be subject to the Section 7 consultation requirements of the Endangered Species Act, but all federal rulemakings are, which means that the rule that we ultimately adopt must provide an appropriate level of protection for designated critical habitat and species listed or proposed for listing as threatened or endangered under the Endangered Species Act. Furthermore, all persons, including states, are prohibited from unauthorized take of species listed as threatened or endangered under the ESA.

11. On March 15, 2016, FWS Director, Dan Ashe, and Assistant Director, Gary Frazer, testified before the House Appropriations Subcommittee on the Interior, Environment, and Related Agencies that FWS had not read OSM's proposed SPR and that they were not aware of FWS being given veto authority over SMCRA permits. They did, however, say that FWS does play a role in assisting OSM in compliance with the Endangered Species Act (ESA).

a. Can you further explain FWS's role in assisting OSM with compliance of the ESA?

Response: Section 7 of the ESA requires that OSMRE consult with the FWS on rulemakings

that may affect threatened or endangered species, species proposed for listing, or designated or proposed critical habitat. In 1996, pursuant to this requirement, we worked with FWS to develop a programmatic biological opinion that resulted in an incidental take statement to cover the permitting and conduct of surface coal mining operations. We worked with FWS in the development of protection and enhancement plans for the Indiana bat and black-sided dace, two species listed under the Endangered Species Act. We coordinate and, when necessary, consult with the FWS when processing permit applications for lands for which we are the regulatory authority and when processing mining plans under 30 CFR Part 746 for leased federal coal. We are currently consulting with FWS and developing a biological opinion for the Stream Protection Rule.

b. What coordination did you or your staff have with FWS on the proposed SPR with respect to provisions related to ESA and protection and enhancement plans under SMCRA? Please list by name and title all members of your staff who had contact with FWS on the proposal, during its formulation or during the formal interagency review process.

Response: During preparation of the proposed rule, it was determined that the SPR rulemaking may affect threatened or endangered species or designated critical habitat, and thus is subject to Section 7 of the Endangered Species Act. Therefore, OSM has been consulting and communicating with the FWS on a regular basis as part of the rulemaking process.

c. Please provide all meeting minutes, interoffice communications, phone logs, emails, letters and faxes between FWS and OSM related to the proposed Stream Protection Rule covering the time both before and after the formal regulatory process and publication of the proposal.

Response: As indicated in the response to the previous question, OSMRE is coordinating closely with FWS as part of this ongoing rulemaking and will continue this communication as it works toward finalizing the rule.

d. Please provide copies of all comments directed to FWS regarding the proposal whether made during the formal rulemaking process or in any informal process, including prior to the publication of the proposal.

Response: We did not receive comments directed to the FWS during the rule development process. The comments that we received were directed to the Department of the Interior, OSMRE, or employees thereof. However, as indicated in the response to the previous questions, OSMRE is coordinating closely with FWS as part of this ongoing rulemaking and will continue this communication as it works toward finalizing the rule.

e. How are you planning on coordinating with FWS on the SPR going forward both with respect to its finalization as well as its implementation?

Response: Please see the response to question 11a. We do not anticipate any significant changes following publication of the final Stream Protection Rule.



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DEC 09 2016

The Honorable Doug Lamborn
Chairman, House Natural Resources
Subcommittee on Energy and Mineral Resources
House of Representatives
Washington, D.C. 20515

Dear Chairman Lamborn:

Enclosed are responses prepared by the Bureau of Land Management to questions received following the appearance of Amanda Leiter, Deputy Assistant Secretary for Land and Minerals Management, before your Subcommittee on April 27, 2016.

Thank you for providing the Department the opportunity to respond to these questions.

Sincerely,

Legislative Counsel
Office of Congressional
and Legislative Affairs

cc: The Honorable Alan Lowenthal
Ranking Member

**House Natural Resources Subcommittee
on Energy and Mineral Resources
Hearing on Methane Emissions Regulation
April 27, 2016**

Questions from Chairman Lamborn:

- 1. What is the average time it takes for the BLM to approve or deny an application for permit to drill today in key areas of production, such as the Bakken, including all “stops” and “slowdowns”? Has the BLM conducted any analysis into how much the newly proposed requirements will increase permit processing time, or decrease it? The BLM estimates a decrease in permit processing time; what particular aspects of the rule does the BLM consider to be “streamlining” the bureaucratic process, thereby allowing staff to work through the large existing backlogs and approve new permits more quickly? In FY 2015, what was the average timeframe for each BLM field office to process a Right-of-Way (ROW) application from submission to approval or rejection? Please include all “stops” and “slowdowns” when calculating total permitting time.**

Response: The average processing time for an application to drill (APD) is currently 220 days. In the proposed rule, the BLM considered how the proposed requirements would affect paperwork time for operators and review times for the BLM. Overall, the BLM believes that changes in the proposed rule will reduce administrative burdens and help speed processing times.

The BLM estimated that the waste minimization plan required by the proposed Methane and Waste Prevention rule would take the operator about 2 hours to prepare. The BLM staff time to review the waste minimization plans is expected to be less than half of that time.

However, the BLM projects considerable time savings from proposed changes that would sharply reduce the number of Sundry Notices that operators need to file to obtain approval to flare royalty free. Currently, NTL-4A requires submission and approval of a Sundry Notice to request royalty free flaring in all cases. The proposed rule would allow royalty free flaring of wells not connected to a pipeline below certain limits. The BLM’s analysis indicated that nearly 80 percent of current flaring falls below the proposed rule’s flaring limit and therefore would not require the submission of a Sundry Notice by the operator, nor BLM’s review and approval.

To further help reduce the review time for Applications for Permit to Drill (APDs), the BLM is updating its well database management system, the Automated Fluids Minerals Support System 2 (AFMSS2). The BLM began rolling out the first phases of the new system in October 2015. By year’s end, the BLM intends to shift to 100 percent electronic filing (or “e-filing”) of oil and gas drilling permit applications. This system, which comprehensively follows Onshore Oil and Gas Order No. 1 for drilling permit information, enables operators to submit their application electronically. The new e-filing system automatically flags missing or incomplete information in an application, reducing a primary source of delay in the current process. It also allows operators to track their permits through the entire review process, and by standardizing workflows, it will enable the BLM to shift work among offices in response to demands. The new drilling permit application module was developed as part of the BLM’s broader update to its Automated Fluid Minerals Support System, and it was the first component to be deployed. Once the system is

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fully functional, the BLM anticipates that 90 percent of permit decisions will occur within 115 days of submission, where the BLM is the sole surface management agency.

The following table shows the number of pipeline ROWs permitted in FY 2015 by field office, and the approximate length of time it took the relevant field office to process those ROWs. There are a variety of potential factors that may extend the time period for permitting ROWs, including that:

- the corresponding APD has not yet been processed;
- the ROW applications are incomplete;
- the ROW grant is pending consultation/concurrence from another surface management agency;
- major resource concerns are present, and the BLM is either awaiting completions of surveys or resolution of an identified impact in order to remain in compliance with laws such as the Endangered Species Act or cultural issues under the National Historic Preservation Act;
- a high volume of applications is submitted in a short period of time; or
- the proponent has notified the BLM that the project is on hold (but has not withdrawn the application), and the proponent subsequently requests to move forward with completion of the project.

FY 2015 Pipeline ROW Grants Processing Times per Field Office

BLM Field Office	Permitted within 60 days	Permitted within 60-180 days	Permitted within 180-365 days	Permitted within 1-2 years	Permitted within 2-4 years	Permitted over 4 years	Total
ARIZONA	0	0	0	0	1	0	1
Tucson	0	0	0	0	1	0	1
CALIFORNIA	0	1	0	0	0	0	1
Bakersfield	0	1	0	0	0	0	1
COLORADO	0	35	0	2	1	0	38
Grand Junction	0	0	0	0	0	0	0
Little Snake	0	35	0	0	0	0	35

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White River	0	0	0	2	1	0	3
EASTERN STATES							
Milwaukee	0	0	0	1	0	0	1
MONTANA							
Havre Field	1	1	0	0	0	0	2
Miles City	1	2	0	0	0	0	3
North Dakota	0	0	0	0	1	0	1
NEW MEXICO							
Carlsbad	7	20	104	36	0	0	167
Farmington	0	15	20	30	2	0	67
Roswell	0	7	0	0	0	0	7
NEVADA							
Las Vegas	0	0	1	0	0	0	1
Sierra Front	0	0	1	0	0	0	1
Tuscarora	0	0	0	1	0	0	1
OREGON							
Vale/Baker	0	0	0	0	0	0	0
UTAH							
Price	0	0	1	0	0	0	1

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Richfield	0	0	0	1	0	0	1
Vernal	0	1	3	0	0	0	4
WYOMING							
	27	43	4	4	7	1	86
Buffalo	0	2	0	0	0	0	2
Casper	0	0	1	1	0	0	2
Lander	0	2	0	0	0	0	2
Pinedale	25	22	0	0	0	0	47
Rawlins	1	11	2	3	0	1	18
Rock Springs	1	6	1	0	7	0	15
Grand Total							
	36	125	134	75	12	1	383

- 2. Director Kornze recently acknowledged permitting delays for issuing ROWs when testifying before this Committee. How many staff are currently dedicated to permitting ROWs and how many additional staff has the BLM hired to focus on permitting ROWs? Please provide these hiring figures on a fiscal year and regional basis starting FY2010.**

Response: The key BLM staff dedicated to the processing of pipeline ROWs are Realty Specialists. In addition to oil and gas pipeline ROW permitting, Realty Specialists process other types of ROW grants, such as ROWs for communication sites, electrical transmission lines, and county/city/state projects, as well as land acquisitions, sales and land exchanges. Land Law Examiners, Legal Instruments Examiners, Realty Technicians and Compliance Technicians are also integral components of a Field Office ROW team, but these job series are cross-disciplinary, and not specific to ROW permitting.

Since 2010, the BLM has employed and hired the following number of Realty Specialists as compiled in January of each year. Those hired fill both existing and new vacancies and are available to work on ROW permitting:

- | | |
|--------------|-------|
| Employed | Hired |
| • 2010 – 272 | 12 |

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- 2011 – 265 9
- 2012 – 261 8
- 2013 – 267 5
- 2014 – 266 7
- 2015 – 247 9
- 2016 – 254 15

- 3. BLM only has jurisdiction to regulate the “waste of gas” under the Mineral Leasing Act. Yet, in the cost benefit analysis, the BLM claims monetary benefits for global emissions reductions known as the “social cost of methane.” Given that the BLM does not have authority to regulate air quality, how does BLM justify claiming such monetary benefits when it does not have statute authority to regulate air quality?**

Response: The benefits to air quality are considered “ancillary” or “co-benefits” of the rule (a “favorable impact of the alternative under consideration that is typically unrelated or secondary to the purpose of the action”). OMB Circular A-4 requires agencies to include these benefits when quantifying the effects of a regulatory action in a Regulatory Impact Analysis.

- 4. Does BLM have a policy that would allow more streamlined permitting of gathering line systems which would allow the capture and transportation to a consumer [of] gas which would otherwise be vented or flared?**

Response: It should be noted that the BLM’s processing of ROWs is often not the sole or even primary factor leading to flaring delay in construction of pipelines or gas processing facilities. Other federal, state and tribal agencies’ workload, statutes, and policies also create challenges that complicate the approval of ROWs and other actions that may be needed to construct a pipeline or gas processing facility. For example, surface land owners may delay or block a pipeline project that crosses both public and private lands, even where the federal portion of the ROW is complete.

However, the BLM recognizes the importance of timely approvals and continues to review policies related to processing of oil and gas ROWs. Relevant field offices are taking several steps to decrease permitting times, including coordinating aspects of the ROW and corresponding APD reviews so that they occur concurrently rather than consecutively; working with project proponents to minimize disturbance; using Categorical Exclusions where appropriate in the National Environmental Policy Act (NEPA) process to streamline reviews; encouraging proponents to develop Master Development Plans and Master Leasing Plans to help streamline permitting, as well as Master Agreements, which are negotiated with a single applicant for processing and monitoring multiple applications covering facilities within a specific geographic area; encouraging unitization to help streamline permitting by avoiding the need for ROWs; and working closely with proponents to determine priority projects.

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- a. Has BLM considered implementing such a policy to aid with the capture and transport of produced gas?**

Response: The BLM is implementing the procedures above on a case-by-case basis. The BLM Washington Office is further analyzing steps BLM field offices are using to address ROW backlogs for possible BLM-wide implementation.

- b. Did BLM evaluate in any way the impacts or benefits that improving or streamlining permitting for natural gas gathering lines would have on reducing emissions? If so, please provide any statistical analysis to the Committee. If not, why did the BLM exclude this gas capture method from the proposed rule?**

Response: The BLM did not propose or analyze the impacts of requirements related to the permitting of natural gas gathering lines. This rulemaking updates the existing requirements contained in NTL-4A, which are related to royalty or compensation for oil and gas lost from production operations. This rulemaking does not address the separate existing regulations related to ROW approvals, permit reviews, planning, and many other aspects of the BLM's operations.

- c. Is BLM prevented from implementing such a policy through existing statute authority?**

Response: Subject to resource availability and consistent with its statutory responsibilities, the BLM continuously aims to improve its operations and shorten response times across all of its activities. As discussed above, relevant field offices are already taking steps to speed ROW processing, and the BLM continues to evaluate opportunities for additional actions.

- d. Is BLM aware of other options to capture and transport natural gas to market that are not currently in use?**

Response: Alternative capture technologies such as liquid natural gas recovery, compressed natural gas recovery, and electrical co-generation are viable technologies to reduce flare volumes that are beginning to find broader acceptance and application on the wellsite. The BLM also recognizes that there are challenges with these capture methods, particularly in times of low gas prices. These challenges vary from region to region based on factors such as weather and the extent of installed supporting infrastructure.

- 5. BLM is moving forward with a venting and flaring rule that includes air quality regulations that clearly exceed its jurisdiction, since EPA and states have Clean Air Act authority. Do you agree that EPA has exclusive federal jurisdiction over air quality and emissions regulations under the Clean Air Act (CAA)?**

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Response: As the BLM explained in the preamble to the proposed rule, its authority to issue the proposal derives from various statutes applicable to onshore federal land and minerals and Indian tribal and allotted lands and minerals, principally the Mineral Leasing Act (MLA), the Mineral Leasing Act for Acquired Lands of 1947, the Federal Oil and Gas Royalty Management Act, the Federal Land Policy and Management Act of 1976 (FLPMA), the Indian Mineral Leasing Act of 1938, the Indian Mineral Development Act of 1982, and the Act of March 3, 1909. In addition to the BLM's responsibility under the MLA to minimize waste of public mineral resources, it also has obligations under various provisions of the MLA and FLPMA to manage the environmental impacts of federal and Indian oil and gas production. The EPA and the BLM have distinct statutory authorities and missions that may, in some cases, result in overlapping policy goals. This rule would not infringe on the EPA's prerogative to regulate air quality through source-specific performance standards and cooperation with State partners. Nor does the EPA's authority infringe on or otherwise restrict the BLM's mandate to prevent waste from and manage the environmental impacts of activities on public lands using public resources. The Clean Air Act does not displace other Federal agencies' congressionally-granted authority to address environmental and climate change concerns. Congress may grant agencies overlapping spheres of authority, and such agencies merely have a responsibility to coordinate with each other.

- 6. Several provisions in the proposal rule are the same or similar to what EPA recently proposed in its New Source Performance Standards (NSPS OOOOa). EPA has not yet responded to public comments on NPS OOOOa and finalized their rule. How does BLM justify proposing and relying on another agency's proposed regulations that are still subject to review and potential revision?**

Response: The EPA issued the final NSPS OOOOa rules in May 2016, and the BLM has carefully developed the final Methane and Waste Prevention Rule to take the NSPS OOOOa final regulations into account, align the rules to the maximum extent possible, and avoid conflict or unnecessary compliance burdens.

- 7. Production from oil and natural gas wells decline over time along with overall emissions. How does the BLM justify imposing higher standards on existing sources with lower production and lower emissions than EPA imposes on new wells with higher production and emissions?**

Response: In the final rule, the BLM has stressed coordination with any EPA regulations as much as practical. In this manner, the BLM is not imposing higher standards on existing wells, as it allows, in many circumstances, using EPA rules on existing sources and deems such usage as compliance with the BLM standards in the final rule.

- 8. Many of the BLM's claimed economic benefits are highly uncertain and for certain provisions the costs exceed the benefits, even by BLM's analysis. BLM puts the cost of the proposed rule at \$117 million to \$174 million, yet third-party analysis puts the**

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cost as high as \$1.26 billion. Has BLM conducted any analysis of potential lost economic output and federal and state tax revenue losses caused by the proposed rule? If so, please provide such data to the Committee.

Response: The BLM prepared a Regulatory Impact Analysis (RIA) for the proposed rule, received and reviewed public comments on that proposal, and issued a final rule with a revised RIA. The final rule docket, including the RIA, is available online at <https://www.regulations.gov/document?D=BLM-2016-0001-9126>. The BLM estimates that the final rule will result in net benefits of \$46 – \$199 million per year. That estimate includes costs of \$114 – 279 million per year (with capital costs annualized using a 7% discount rate) and benefits ranging from \$209 – \$403 million per year (including cost savings to the industry of about \$20 – \$157 million per year and monetized value of the methane reductions to be \$189 – \$247 million per year).¹ The BLM does not expect that the rule will significantly impact employment or the price, supply, or distribution of energy. The RIA examines the impacts on royalties and estimated a net royalty increase of \$3 – \$13 million per year.

When reviewing the public comments submitted in response to the proposal, the BLM examined ways to reduce the burden on the affected entities. For example, the BLM revised the requirements designed to reduce the flaring of associated gas to include a performance-based approach. Whereas the proposal would have required the operator to take action to limit gas flaring from each individual lease, the final rule offers greater flexibility and economic efficiency by allowing the operator to direct resources to wells or operations where it might achieve flaring reductions at the lowest marginal cost across all of that operator's flaring wells in a county or a State.

- 9. BLM claims a benefit of between \$125 million and \$188 million from the rule, yet uses a natural gas price that has not been achieved in several years. Using today's natural gas prices and realistic scenarios results in an environmental benefit of only \$90 million. BLM also shows no acknowledgement that oil and natural gas industry is experiencing a severe decline. How can a rule that delivers \$1.26 billion in cost and only \$90 million in benefits not result in less production on federal and tribal lands and hence, less revenue to the treasury? How does BLM plan to make up for that loss of revenue?**

Response: The statement that "BLM claims a benefit of between \$125 million and \$188 million from the rule," is not consistent with the preamble or Regulatory Impact Analysis (RIA) for the proposed rule. The BLM estimated a range of \$255-\$384 million in annual benefits for the proposal. The intent of the rule is to reduce waste of natural gas, which would increase royalties to States, tribes and American taxpayers. In fact, the BLM estimates that this rule will increase

¹ The highs and lows of the benefits and costs do not occur during the same years; therefore, the net benefit ranges presented here do not calculate simply as the range of benefits minus the range of costs presented previously.

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annual royalty revenues between \$3 million and \$13 million. This rule is expected to be in place for many years, and therefore the BLM based its price assumptions on the 2015 U.S. Energy Information Administration's (EIA) price forecasts. The BLM adjusted those price assumptions in the final RIA based on the 2016 EIA forecasts, which have been adjusted relative to the 2015 EIA forecasts to reflect recent market conditions and other updated information.

10. The proposed rule establishes a limit on the average rate of gas which may be flared of 1,800 mcf per producing well on a lease per month. What data did the BLM use to decide upon this rate?

Response: Please see 81 Fed. Reg. 6639-6640 for an explanation of the basis for the proposed flaring limit. The BLM believed this limit of 1,800 Mcf per month per well, averaged over all producing wells on a lease could conserve 74 percent of the gas flared and would effectively maximize flaring reductions while minimizing the number of affected leases. As discussed in the preamble, the BLM analyzed production, venting, and flaring data reported by operators to the Office of Natural Resources Revenue (ONRR) during FY 2014 on a lease-month basis. This data was combined with BLM data on the number of wells on a lease or unit to produce average monthly flaring rates per well. The results were sorted from low to high and cutoffs were identified showing the number of leases/volumes flared that would exceed presumed thresholds. The BLM requested and received many comments on this proposed limit, which the BLM carefully considered in developing the final rule.

- a. One of the justifications that the BLM has set forth for proposing this rule is to ensure that taxpayers receive their proper royalty return for production on federal lands. Does the BLM have an economic analysis which examines current flaring rates, the cost of establishing such a rates in the regulations, and the impacts that these have on lowering overall oil and natural gas production, thereby reducing royalties being paid for oil and gas production on federal lands?**

Response: In its 2010 report², the GAO estimated that 28 Bcf of natural gas was flared from onshore federal leases in 2008. For the proposal, the BLM consulted the data that operators had reported to ONRR since that time. It indicates that gas flaring increased by 134 percent from 2009 to 2013. The total volumes of federal and Indian gas reported to have been flared were 19 Bcf in 2009, 16 Bcf in 2010, 23 Bcf in 2011, 32 Bcf in 2012, and 44 Bcf in 2013. The vast majority of this flaring is occurring on leases with oil wells that have associated gas production. To reduce flaring, the BLM proposed to phase in a flaring limit on gas from these wells. The BLM estimated that the proposed requirement could pose costs ranging from \$32 - \$68 million

² Government Accountability Office (2010). Federal oil and gas leases: Opportunities exist to capture vented and flared natural gas, which would increase royalty payments and reduce greenhouse gases (GAO-11-34). October 2010. Available on the web at <http://www.gao.gov/new.items/d1134.pdf>.

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per year, but that operators could receive cost savings of \$40 - \$58 million per year from the sale of additional natural gas and natural gas liquids. The BLM also estimated a net royalty increase associated with the flaring provisions of the proposed requirements, ranging from \$4 to \$5 million per year.

- i. Could the proposed rule, through lowered production, actually result in fewer royalties being paid for oil and gas production on federal lands?**

Response: Considering all of the provisions in the proposed rule, the BLM estimated a net royalty increase ranging from \$9 to \$11 million per year (inclusive of the royalty impacts associated solely with the flaring provisions described above). On the whole, the BLM expected an increase of natural gas and natural gas liquids production that would have otherwise been wasted, and a deferral of some oil production.

- 1. Does BLM have a responsibility to manage BLM lands to ensure the best return for the taxpayer?**

Response: The BLM's multiple-use mission, set forth in the Federal Land Policy and Management Act of 1976, mandates that we manage public land resources for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while protecting a wide array of natural, cultural, and historical resources. The BLM oil and gas program has, and takes seriously, its responsibility to ensure that oil and gas development is conducted in an environmentally responsible manner, that the production volumes reported and royalties paid accurately reflect the produced amounts, and that American taxpayers earn a fair return for the use of their public resources.

- 2. Does this rule ensure the best return for the taxpayer? Please submit to the Committee any economic analysis conducted by the BLM that assesses potential impacts on royalty collections as a result of proposed venting and flaring regulations.**

Response: The BLM believes that the final rule ensures the best return for the taxpayer. As with the proposed rule, the BLM estimates that the final rule will increase royalty payments, and that additional volumes of natural gas and natural gas liquids will be brought to market instead of being wasted. The economic analysis supporting these conclusions is contained in the BLM's Regulatory Impact Analysis for the final rule, which is available at <https://www.regulations.gov/document?D=BLM-2016-0001-9126>.

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Questions from Rep. Gosar:

- 1. What scientific information does BLM have (that EPA did not have 6 months ago) to justify the different requirements for new wells and existing well unloading practices?**

Response: The BLM understands there is no one-size-fits-all approach to reducing or eliminating the loss of gas during liquids unloading activities. The BLM proposed standards for new wells, so that operators could make the necessary investments when a well is constructed. It is often less costly to make investments up front rather than retrofitting an existing facility. The BLM has received comments on the approach outlined in the proposed rule and has considered them carefully in developing the final rule.

- 2. Why is it going to take EPA one year using an Information Collection Request to collect the data from those being regulated in order to develop regulations for existing sources? Does BLM have this same information to regulate existing sources? Please submit to the Committee any data collection results or analysis the BLM has conducted on existing sources on federal lands.**

Response: The BLM used readily available data (production, flaring, venting, emissions factors) from the EPA and ONRR for the analysis with which the proposed rule was developed. The BLM's Regulatory Impact Analysis documents the data and analysis and is available at <https://www.regulations.gov/document?D=BLM-2016-0001-9126>.

- 3. How many air experts are currently employed by the BLM?**

Response: The BLM employs 13 Air Specialists with one additional vacant position.

- 4. Ms. Leiter stated at this hearing that methane emissions have increased and cited EPA data to support her statement. According to this data, have methane emissions increased?**

Response: According the latest EPA Inventory of U.S. Greenhouse Gas Emissions and Sinks (1990-2013), methane emissions in the natural gas sector increased from 2012 to 2013 and methane emissions in the petroleum sector increased each year from 2010 to 2013. The report is available at <https://www3.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2015-Chapter-Executive-Summary.pdf>.

- 5. Are the social cost of methane benefits cited in the preamble and proposed rule, captured by the similar EPA NSPS OOOOa regulatory conditions used in the rule?**

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Response: For the proposed rule, the BLM considered scenarios where the EPA NSPS Subpart OOOOa rule was included in the baseline and where it was not included in the baseline. Since Subpart OOOOa is now final, the BLM has included it in the baseline for the final analysis.

6. What actual actions is BLM taking to reduce the time it takes to approve Right Of Ways? Please provide an explanation and BLMs path forward for the delayed ROWs discussed in the hearing?

Response: It is worth noting that the BLM's processing of ROWs is often not the sole or even primary factor leading to delays in permitting for pipelines and gas processing facilities. Other federal, state and tribal agencies' workload, statutes, and policies create challenges that complicate the approval of ROWs and other actions that may be needed to construct a pipeline or gas processing facility. For example, surface land owners may delay or block a pipeline project that crosses both public and private lands, even where the federal portion of the ROW is complete.

Nevertheless, the BLM recognizes the importance of timely approvals and continues to review policies related to processing of oil and gas ROWs. Relevant field offices are taking several steps to decrease permitting times, including coordinating aspects of the ROW and corresponding APD reviews so that they occur concurrently rather than consecutively; working with project proponents to minimize disturbance; using Categorical Exclusions in the NEPA process to streamline reviews; encouraging proponents to develop Master Development Plans and Master Leasing Plans to help streamline permitting, as well as Master Agreements, which are negotiated with a single applicant for processing and monitoring multiple applications covering facilities within a specific geographic area; encouraging unitization to help streamline permitting by avoiding the need for ROWs; and working closely with proponents to determine priority projects.

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Questions from Rep. Lowenthal for Deputy Assistant Secretary Amanda Leiter

- 1. Ms. Leiter, during the hearing you seemed to indicate that sole air emission authority rested with the Environmental Protection Agency. However, isn't it the case that there is a different regulatory environment for air emissions offshore?**

Response: Yes, I was referring to onshore operations. The EPA does not have sole jurisdiction over air emissions from oil and gas facilities offshore. In the Gulf of Mexico, west of 87.5 longitude and off North Slope Borough, Alaska (roughly the US section of the Arctic Ocean), the Bureau of Ocean Energy Management (BOEM) has authority to regulate emissions from all facilities. This relates to the approximately 3,000 oil and gas platforms in the Gulf and any expected development in the Arctic. It should be noted that this only includes the Outer Continental Shelf (federal waters) and not state submerged lands (state waters), which generally go out three miles from the shoreline. In lieu of an air permit, BOEM reviews emissions as part of its review of exploration and development plans. Violations are observed, investigated and fines are levied by the Bureau of Safety and Environmental Enforcement.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 09 2016

The Honorable Cynthia Lummis
Chairman, House Oversight and Government Reform
Subcommittee on Interior
House of Representatives
Washington, D.C. 20515

Dear Chairman Lummis:

Enclosed are responses prepared by the Bureau of Land Management to questions received following the appearance of Neil Kornze, Director, before your Subcommittee on March 23, 2016.

Thank you for providing the Department the opportunity to respond to these questions.

Sincerely,

Legislative Counsel
Office of Congressional
and Legislative Affairs

cc: The Honorable Brenda Lawrence
Ranking Member

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March 23, 2016**

Questions from Chairman Lummis

- 1. Recently, there has been an increase in protests against oil and gas leasing from environmental groups, such as the 'Keep-it-in-the-Ground' movement. What is the policy of BLM on making federal land available for energy development? Does BLM policy support slowing or eliminating leasing land for oil and gas development?**

Response: The BLM continues to support the development of conventional energy resources from BLM-managed lands while also working to expand and diversify the nation's energy portfolio. In terms of making lands available for such development, the BLM follows its well established leasing process, which starts with a land use planning decision.

The BLM's Resource Management Plans (RMPs) establish the foundation for the BLM's land management decisions. They contain general resource allocations and other decisions that reflect the BLM's effort to balance the many resources and competing uses within a given planning area. The RMPs consider and address major resource conflicts, such as balancing important wildlife habitat needs with energy development.

For purposes of oil and gas leasing, lands within a planning area are identified as fitting in one of three categories: lands open under standard lease terms, lands open with restrictions, and lands closed to leasing. Many of the lands closed to leasing consist of areas with special designations and other unique and environmentally sensitive areas, such as habitat for special status species. Once allocation decisions have been made, the public may then nominate, through an Expression of Interest (EOI), a particular parcel for consideration at a subsequent oil and gas lease.

When assembling a lease sale, the BLM looks primarily at the EOIs received in order to determine which parcels might be offered at a sale. When a lease sale is assembled, applicable statutes, such as the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act, as well as the BLM's leasing regulations, policies, and land use plans, require a careful evaluation of parcels identified for potential inclusion in the sale. The decision whether to include any particular parcel in a lease sale is within the BLM's discretion.

In Fiscal Year (FY) 2015, the BLM offered over 4 million acres for sale. Of those, industry bid on just over 600,000 acres, or roughly 15 percent of the total acres offered, even though much of the acreage offered was based on industry-submitted EOIs.

- 2. The increase in protests and BLM's desire to accommodate protestors has caused great delays in holding lease sale auctions. How does BLM decide when to cancel or postpone a lease sale auction? When does BLM plan to hold its next lease sale auction?**

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Response: The BLM develops the Lease Sale Schedule for a given year as a planning tool, usually over a year in advance of when the identified sales will actually be held. The sale dates are tentative and are used primarily for initial scheduling purposes. The BLM may postpone a specific lease sale for several reasons, including but not limited to: (1) lack of parcel nominations (EOIs) by industry; (2) lack of available parcels (e.g., the necessary environmental analyses has not been completed, or the required consent from a surface management agency is pending); and (3) other unforeseen and unpredictable circumstances, such as the severe blizzard that forced BLM Wyoming to delay a February 2016 sale. It should be noted that the parcels that BLM Wyoming would have offered in February 2016 were ultimately offered at its May 2016 sale.

After a BLM State Office tentatively schedules a lease sale, further steps occur before the sale can be held. If no EOIs are received, the BLM postpones the lease sale. If EOIs are submitted, a Draft Environmental Assessment (EA) is posted for a 30-day public comment period. Based on information in the Draft EA, the BLM may proceed or postpone the lease sale, depending on whether significant environmental impacts are identified. Per BLM Leasing Reform Policy, the applicable BLM State Office posts the Notice of Competitive Lease Sale on the applicable State Office website at least 90 days before the lease sale is held. The 30-day formal public protest period starts with the posting of the Notice of Competitive Lease Sale. After the public protest period ends, the BLM can move ahead with those parcels deemed available for the lease sale, even if some protests remain unresolved on the day of the sale, the BLM can nevertheless proceed with sale.

In Calendar Year 2016, the BLM has held competitive oil and gas lease sales in the following states:

- Utah, February 16
- Nevada, March 8
- Eastern States, March 17
- New Mexico, April 20
- Wyoming, May 3 (included parcels from postponed February 2016 sale)
- Montana, May 4
- Colorado, May 12
- Utah, May 17
- Nevada, June 14
- Montana, July 12
- Idaho, July 27
- Wyoming, August 2
- New Mexico, September 1
- Eastern States, September 20
- Wyoming, November 1

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The next lease sale is scheduled for December 8, 2016, to be held by the Colorado and Montana State Offices. That sale will be online following the success of the BLM Eastern States online lease sale earlier this fall.

- 3. In addition to delays in purchasing a lease, there is still great uncertainty for companies in whether they will actually be able to develop on the leased land because of BLM's delay in approving projects. There is a backlog of projects that have been waiting for NEPA approvals. What plans do you have to reduce the backlog of projects waiting for NEPA analysis, and to reduce permitting times from the current average of 227 days to the 30 days required by law?**

Response: To help reduce the review time for Applications for Permit to Drill (APDs), the BLM is updating its well database management system. That update is called the Automated Fluids Minerals Support System 2 (AFMSS2). This system, which comprehensively follows Onshore Oil and Gas Order No. 1 for drilling permit information, enables operators to electronically submit their application. The rollout of the new system was completed in phases, starting in October 2015. By the end of 2016, the BLM intends to shift to 100 percent electronic filing (or "e-filing") of oil and gas drilling permit applications. The new e-filing system automatically flags missing or incomplete information in an application, reducing one of the primary sources of delay in the current process. It also allows operators to track their permits through the entire review process, and by standardizing workflows, it will enable the BLM to shift work among offices in response to demands.

The new drilling permit application module was developed as part of the BLM's broader update to its Automated Fluid Minerals Support System, and was the first component to be deployed. Once fully functional, the BLM anticipates that 90 percent of permit decisions will occur within 115 days of submission, in cases where the BLM is the sole surface management agency. The new system is already in use in all BLM Field Offices and the current average permit processing time is 94 days for the 135 applications that have been processed using the new system. The 2015 average number of days for the BLM to process a permit was 220 days. The experience with these applications suggests that the new system will achieve the anticipated processing time reductions.

The review and approval of an APD package is a complex and challenging process requiring an interdisciplinary team effort, often working across agency lines. Some of the more complex analysis or field development may trigger the need for an Environmental Impact Statement, which lengthens the review time for APDs. The BLM uses the new AFMSS2 system to help manage the permit complexity and provide stronger analysis to withstand protests, appeals and litigation.

To address the demand in the more active permitting offices, the BLM has shifted staffing and resources toward these offices to process the influx of APDs. The Bakken play is an example of this shift in resources. By adding staff and periodically using strike teams, the

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BLM North Dakota Field Office was able to increase its permit approvals by 250 percent from FY 11 to FY 15. The new AFMSS2 system adds additional program flexibility to address the needs of the BLM's most active offices in that it enables staff from other BLM offices to remotely review APDs, rather than physically relocating to that office.

- 4. Lately, there have been many cases where protestors have caused disruptions at lease sale auctions. What is the policy of BLM in dealing with protestors at these auctions when they become disruptive? How does BLM ensure that it can still carry out its responsibilities to hold these auctions when these situations occur?**

Response: On August 30, 2016, the BLM issued a direct final procedural rule that amends its oil and gas leasing regulations to give it the flexibility to conduct online lease sales. These regulatory changes were made consistent with the authority provided by Congress as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2015, which amended the Mineral Leasing Act to allow the BLM to conduct online lease sales. Prior to that amendment, the Mineral Leasing Act authorized Federal onshore oil and gas lease sales only by oral auctions. This rule and the legislative changes that preceded it were based on the results of a successful online auction pilot conducted by the BLM in Colorado in 2009. Based on the results of that pilot, the BLM estimates that internet-based auctions could increase participation and increase aggregate lease sale revenues by about \$2 million a year. The BLM's Eastern States Office held the first auction under this new authority on Sept. 20, 2016. It was a success as all 14 parcels were sold. BLM expects to conduct additional online sales throughout 2016 and hopes ultimately to conduct all lease sales online.

- 5. Recently, an activist won the lease for more than 1,500 acres of land in Utah with no intention of using the land for energy development, yet she paid the \$1,600 fee to obtain the lease. What action does BLM intend to take in this situation and in other cases where activists win leases with no intention of using the land for royalty-producing development? Does BLM anticipate revenue loss from oil and gas royalties that otherwise would have been produced on the leased land?**

Response: The BLM sent a letter on April 15, 2016, to this particular individual who expressed interest in two non-competitive leases from the Utah February 2016 lease sale. The BLM's letter explained the obligations a lessee undertakes when committing to a lease, including the reasonable diligence requirements in developing and producing leased resources. In addition, the letter requested that the individual clarify her intentions with respect to the leases and public statements she made about not developing the resources. The BLM reviewed the additional information provided by the individual to determine whether or not she was eligible for issuance of an oil and gas lease under the MLA. Based on that review, on October 19 the BLM denied the two non-competitive oil and gas lease offers submitted by the individual. The basis for the denial was the MLA's diligent development requirement and the fact that on several occasions the individual who had bid on the leases indicated that her company has no intention of developing the two leases in

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question. The individual has appealed the BLM's denial to the Interior Board of Land Appeals.

- 6. Some say that BLM has offered adequate acreage to meet market demand, but there is an estimated 10 million acre backlog. Clearly, BLM is not meeting market demand. Does BLM have any plans to address this large backlog of acreage that industry is interested in leasing?**

Response: As noted above, in FY 2015 the BLM offered 4,017,062 acres for leasing but industry bid on only 624,976 acres or 15.56% of the land the BLM offered. Those sales generated \$142.9 million in bonus bids and rental fees for the U.S. Treasury and the states where the leases are located. This contributed to the more than \$3 billion the BLM has generated in lease sale bonus bids between 1988 and today. Last year's sales also continued a longstanding trend of the BLM offering more lands for oil and gas leasing than industry actually bids on. Since 1988, industry has only acquired 34 percent of the acreage offered by the BLM, even though much of the acreage offered is based on industry EOIs. Moreover, while industry has 32 million acres currently under lease – an area roughly the size of the state of Alabama – industry has only developed 12 million of those acres (40 percent) for production.

- a. If you do not have data on this backlog or dispute this number, will you please provide us information on acreage offered, sold, protested, deferred and issued by state?**

Response: This data is available on the BLM's website (see link below). Please note that the 10 million acres represents the EOIs that BLM received in 2015 but does not represent a "backlog" because not all of these acres are appropriate for leasing. Oftentimes, the BLM receives EOIs for areas that are not open to leasing based on current land use plans or areas that are not Federal mineral estate, and the BLM does not hold title. In addition, some states have speculators that nominate lands that rarely get purchased at the relevant lease sale. The BLM is working with industry to understand which EOIs are of real interest and therefore are a high priority for industry.

http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION/energy/oil_gas_statistics/data_sets.Par.40656.File.dat/EOI%20Acres%202006-2013.pdf

- 7. The text of the BLM Permit Processing Improvement Act of 2014 has been law for almost two years now. The Committee has heard concerns that BLM has proportionately reduced the funding for some project offices by this amount. Is this true?**

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March 23, 2016**

Response: The BLM Permit Processing Improvement Act of 2014 was incorporated into PL 113-291, the 2015 National Defense Authorization Act (2015 NDAA), and was enacted on December 19, 2014. From a funding perspective this Act did two things. First, it extended the rental revenue funding, which was set to expire at the end of the 10-year pilot period. While this funding source has been declining in recent years, its authorized uses allow the BLM to co-locate and fund partner agency personnel (Fish and Wildlife Service, Environmental Protection Agency, and Forest Service) to support the permit review and approval process in the Project Offices, which results in faster permitting and streamlining of the associated environmental reviews. Second, the 2015 NDAA increased to \$9,500 the APD fee (to be indexed for inflation) to fund BLM APD processing costs beginning in FY 2016. This fee increase was also accompanied by a change in the way these funds are allocated.

Prior to enactment of the 2015 NDAA, Congress appropriated \$32.5 million annually for APD processing, which was offset by APD fee collections. The \$32.5 million was based on a \$6,500 APD fee and the assumption the BLM would receive 5,000 APD submissions annually. This appropriated funding was “guaranteed” in the sense that the BLM would receive this funding amount no matter how many APDs were actually received.

Under the 2015 NDAA, by contrast, budget authority is only generated when the new APD fee is collected, and there is no appropriated funding backstop to ensure a base level of funding for the oil and gas program. Additionally, the 2015 NDAA only permanently appropriates 85 percent of the new fee amount for fiscal years 2016 through 2019, and that fee revenue is currently subject to budget sequestration.

This shift in funding approaches for APD processing in the 2015 NDAA may prove challenging going forward since the BLM has seen dramatic declines in industry APD submissions. This decline is consistent with current market conditions, as reduced prices decrease drilling interest. Based on current price projections, the BLM anticipates only receiving 1,600 APDs this year instead of 5,000, which will result in a corresponding drop in funding available to process new and existing APDs. This number of APDs would generate only about \$12 million for the processing of oil and gas use authorizations, which is \$20 million below FY 2015 appropriated levels.

Since low oil and gas commodity prices are forecasted to continue into FY 2017, this funding trend is anticipated to continue. This reduction cannot be absorbed by the BLM’s oil and gas program in FY 2016 or 2017 without significant staffing reductions. As a result, the BLM is currently evaluating various options to address this situation and would welcome the opportunity to work with Congress on this issue. If it is not addressed, this new funding model will have serious consequences for all oil and gas field offices, including the project offices.

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- a. **How many employees has BLM hired since this became law? Can you provide us with the exact field offices where the hiring of both the inspectors and other positions has taken place?**

Response: The BLM has hired 55 employees since enactment of the 2015 NDAA. Please see Attachment 1 for a detailed breakdown of this data.

8. **On February 1st of each year, you are required to report to Congress on the allocation of funds to each field office for the previous fiscal year and on the accomplishments of each field office relating to the coordination and processing of oil and gas use authorizations. Have you done this yet? If not, when do you plan to do so?**

Response: The draft report is currently under review.

9. **As the Department of the Interior has concluded that a Programmatic Environmental Impact Statement (PEIS) for the coal leasing program is necessary, does the Department plan to conduct other major modifications to the coal program while this review and analysis is being conducted, such as royalty and valuation changes? If so, what would these actions be and when would they occur?**

Response: At this time, the BLM has no plans for major modifications to the coal program during the PEIS process. Analysis of information received during the scoping period for the PEIS is currently underway, so it is premature to speculate on the outcome of that analysis.

10. **You have indicated that a number of coal project leases that have received records of decision will be grandfathered and allowed to move forward under the current PEIS. Can you confirm that the Administration is committed to allowing these lease sales to move forward as planned?**

Response: The Administration is committed to processing to completion coal lease applications that received a final record of decision or decision record prior to the Secretarial Order. As evidence of this commitment the BLM held the first such coal lease sale on April 14, 2016, for a coal tract in Alabama (81 FR 13417). The BLM is actively processing other tracts with similar final decisions.

11. **Does the Department have any data on the economic impact of the PEIS moratorium?**

Response: The Interior Department does not anticipate that the pause will significantly alter current production. Under the pause, companies may continue to mine the large reserves of undeveloped coal already under lease. Based on current production levels, coal companies now have approximately 20 years of recoverable coal reserves under lease on federal lands. This estimate may be conservative as Energy Information Administration

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analyses and other market trends show continuing declines in demand for coal. Many current lease applications with the BLM are on hold at the companies' request due to reductions in market demand for coal. Given the abundance of coal reserves under lease, the declining demand for coal, and the accommodations that will be made for emergency circumstances, the pause should have no material impact on current coal production, nor on the nation's ability to meet its power generation needs.

12. Is the Department of the Interior evaluating the regulation of methane emissions from coal leases?

Response: The Department issued an Advance Notice of Proposed Rulemaking (ANPR) on April 29, 2014, (79 FR 23923) titled Waste Mine Methane Capture, Use, Sale, or Destruction. The BLM received comments from 27 entities that represent the mining industry, government entities, other interest groups, and commercial methane development concerns. The comments cover a broad range of legal, technical and safety issues. Preliminary analysis of the comments indicates that there is a wide range of opinion. At the time of the announcement of Secretarial Order 3338, the Department also noted that BLM will issue guidance in the near term that, among other things: “[f]acilitates the capture of waste mine methane by providing that new or readjusted leases would authorize the coal lessee to capture and sell waste mine methane (if the authorization would not conflict with pre-existing oil and gas lease interests).” Work on this guidance is underway.

House Natural Resources
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Questions from Rep. Palmer

1. What are the estimated reserves on federal lands for oil, natural gas, coal, and timber?

Response: The U.S. Geological Survey measures technically recoverable resources – those resources that are producible using existing technology. The most recent estimate for technically recoverable oil and gas from federal lands was completed as part of a multi-bureau effort involving the BLM, USGS, and others. Information related to that inventory can be found at http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/EPCA_III/EPCA_III_faq.print.html.

With regard to coal, USGS is currently tasked with calculating both resources and reserves in the major coal fields and basins throughout the United States, and a current emphasis is on calculating coal resource and reserve estimates under federal lands. The bureau is currently in year 2 of a second five-year phase of assessment activities concentrating on the Greater Green River Basin and the Rocky Mountains region. Although two assessment studies in the Greater Green River Basin are nearing completion, resource and reserve numbers for coal under federal lands is not available at this time. However, the first five-year phase of USGS's assessment project on the Powder River Basin can be found at <https://pubs.er.usgs.gov/publication/pp1809>. This basin is the most significant coal basin the U.S. with regard to federal reserves.

Timber resource estimates would be carried out by the U.S. Forest Service in the U.S. Department of Agriculture.

Attachment 1

Bureau of Land Management
Oil & Gas Positions Hired by Location (Since December 19, 2014)
As of April 22, 2016

BLM State	Duty Station	Position Title	Amount
Colorado	Silt	Petroleum Engineer	2
		Land Law Examiner	2
		Geologist	1
Montana	Dickinson (North Dakota)	Natural Resources Specialist	3
		Petroleum Engineering Technician	6
		Petroleum Engineer	1
	Great Falls	Petroleum Engineer	1
	Miles City	Natural Resources Specialist	1
New Mexico	Carlsbad	Environmental Protection Specialist	4
		Natural Resources Specialist	6
		Petroleum Engineering Technician	3
		Petroleum Engineer	4
		Legal Instruments Examiner	2
		Geologist	2
	Farmington	Natural Resources Specialist	3
		Petroleum Engineer	2
	Hobbs	Petroleum Engineering Technician	1
Wyoming	Casper	Environmental Protection Specialist	1
		Natural Resources Specialist	2
		Petroleum Engineering Technician	2
		Geologist	1
	Newcastle	Natural Resources Specialist	1
		Land Law Examiner	1
	Buffalo	Petroleum Engineering Technician	3

TOTAL: 55



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 16 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 Department of the Interior to questions submitted following the Subcommittee's September 21, 2016, oversight hearing on "Reviewing the Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy."

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

**U.S. Senate Committee on Environment and Public Works
Subcommittee on Fisheries, Water and Wildlife
September 21, 2016**

**Oversight Hearing: “Reviewing the Proposed Revisions to the U.S. Fish and Wildlife
Service Mitigation Policy.”**

Questions for the Record Submitted to Mr. Michael Bean

Chairman Inhofe:

Question 1:

The Presidential Memorandum directs the agencies to implement mitigation policies consistent with existing authority. The Service’s Mitigation Policy and subsequently issued Compensatory Mitigation Policy adopt a “net conservation gain” or, at a minimum, “no net loss” standard, while the ESA requires mitigation to the “maximum extent practicable.” Does the existing requirement to mitigate to the “maximum extent practicable” limit the application of the newly proposed “net conservation gain/no net loss” and, if so, how?

Response: Yes. The statutory standard in the ESA for the mitigation requirements for issuance of a section 10(a)(1)(B) permit is controlling, and the Service could not require a mitigation program to achieve a net conservation gain as a condition for issuance of this type of permit. It is not uncommon, however, for applicants to voluntarily develop mitigation programs that will achieve a net conservation gain for the species in the long run.

Question 2:

In the context of the Service’s proposed mitigation policies, how does the Service define “at-risk” species?

Response: The Service’s proposed Compensatory Mitigation Policy (81 FR 61058, September 2, 2016) defines at-risk species as, “candidate species and other unlisted species that are declining and are at risk of becoming a candidate for listing under the Endangered Species Act. This may include, but is not limited to, State listed species, species identified by States as species of greatest conservation need, or species with State heritage ranks of G1 or G2.” Candidate species are defined as those plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the ESA, but for which development of a proposed listing regulation is precluded by other higher priority listing activities.

Question 3:

The Service’s proposed mitigation policies apply to threatened, endangered and “at-risk” species while the protections of the ESA apply only to listed species. What authority does the Service rely upon in extending the protections of the ESA to “at-risk” species?

Response: The Service is not extending the protections of the ESA to “at risk” species. We do, however, use our various authorities, such as the Fish and Wildlife Coordination Act, to assist

landowners and other partners in early, proactive conservation efforts for “at risk” species so that their status can be stabilized or improved so that protection under the ESA will not be necessary.

Question 4:

The Service admits in its Compensatory Mitigation Policy that its authority to require compensatory mitigation under the ESA is limited but states that it is “recommending” the use of compensatory mitigation pursuant to the Fish and Wildlife Coordination Act and the National Environmental Policy Act. Can you please provide a citation to the specific provisions in both of those statutes that the Service relies upon for such authority?

Response:

Under the Fish and Wildlife Coordination Act 16 USC 662:

(a) CONSULTATIONS BETWEEN AGENCIES

“Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development”.

Congress also included language in the National Environmental Protection Act, Section 101(b)(6):

“In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.”

Question 5:

The Compensatory Mitigation Policy states that “The conservation banking model is generally perceived as successful at achieving effective conservation outcomes, and when used in conjunction with section 7 consultations and section 10 habitat conservation plans, has achieved notable regulatory efficiencies.” Can you please provide specific examples that support this statement? In addition, can you please identify the factor(s) employed by the Service to determine whether a conservation bank is a “success” or “failure.”

Response: Nationwide, there are 140 Service-approved conservation banks, protecting over 175,000 acres of habitat. We say that conservation banks result in regulatory efficiencies

because each conservation bank is set up in advance of the impacts, and provides compensation for multiple projects. As a result, when Service biologists review proposed compensation associated with a biological opinion or habitat conservation plan, they do not need to perform the due diligence screening of a mitigation site, because it has already been done. This provides more timely decisions and greater predictability to project proponents, reduces the Service's workload, and reduces the time needed to complete environmental reviews. The Service's workload is further reduced because the biologists do not need to track the success of multiple mitigation sites, as each bank produces one monitoring report which will cover all of the projects that purchased credits at that bank.

Success of a conservation bank is determined through monitoring the ecological and administrative performance (i.e., does it meet the ecological performance standards established for that bank, and is the endowment funded, conservation easement recorded, etc.), and long-term stewardship (i.e., is the site being managed per the associated management plan, over time) of the bank.

Question 6:

The draft Compensatory Mitigation Policy states that "compensatory mitigation" or "compensation" includes any measure that would "rectify, reduce or compensate for an impact to an affected resource." Can you please explain how the terms "rectify" and "reduce" in this context differs from the terms "avoid" and "minimize"?

Response: The Compensatory Mitigation Policy retains our 1981 adoption of the Council on Environmental Quality (CEQ) definition of mitigation, which encompasses all measures to avoid, minimize, rectify, reduce over time through management, and compensate for impacts. The term "avoid" means, in this context, to simply not cause any damage to habitat or species in the path of development or other relevant activity. "Minimize" means to lessen the impacts of an activity as much as is practicable. The term "rectify" means "to correct," which implies that harmful effects will be corrected, such as through replanting vegetation on a disturbed site. "Reduce" means to lessen the impacts to some degree, such as through the use of sediment curtains.

Question 7:

The Service admits that its "authority to require a "net gain" in the status of listed or at-risk species has little or no application under the ESA." Despite this admission, the Service states that it can "recommend the use of mitigation, and in particular compensatory mitigation, to offset the adverse impacts of actions under the ESA." Does the Service admit that it cannot require an applicant for a Section 10 permit to a "net gain" or "no net loss" standard as a condition of approval?

Response: Yes. The statutory standard for the mitigation requirements for issuance of a section 10(a)(1)(B) permit (i.e. "the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking") is controlling, and the Service could not separately require a mitigation program to achieve a net conservation gain (or no net loss in some circumstances) as a condition of permit issuance. However, "no net loss" may, in some circumstances, be accomplished under this statutory standard, and it is not uncommon for applicants to voluntarily

develop mitigation programs that will achieve a net conservation gain for the species in the long run.

Subcommittee Chairman Sullivan:

Question 8:

Congress granted authority to the Service for the management of trust resources under the ESA, Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and Marine Mammal Protection Act. Although Congress has conferred some authority over non-trust resources under other statutes, this authority is limited to particular roles or projects. [For example, although the Fish and Wildlife Coordination Act requires the Service to consult regarding unlisted fish, wildlife, and their habitats, 16 U.S.C. §§ 661-667e, the Service's consultation obligation only relates to water-related projects developed by federal agencies.] In the Draft Policy, the Service asserts that it may recommend or require mitigation for impacts to a broad variety of species and their habitats, including: 1) trust resources, which include migratory birds, federally listed endangered and threatened species, certain marine mammals, and inter-jurisdictional fish; and 2) resources that contribute broadly to ecological functions that sustain species, which include birds, fishes, mammals, all other classes of wild animals, all types of aquatic and land vegetation upon which wildlife is dependent, wetlands and other waters of the United States, the ecosystems upon which listed species depend, and the human environment. See 81 Fed. Reg. at 12,383-84. This second category could capture the entire natural environment in the United States.

- Please explain the statutory authority for the Service to recommend or to require mitigation of impacts to species other than federal trust fish and wildlife resources.
- How does the Service asserting authority over non trust resources traditionally managed by states not conflict with the "broad trustee and police powers" that states enjoy over wildlife and other natural resources within their jurisdiction?

Response: There are limited circumstances under which the Service may require mitigation, even to protect Federal trust species. However, in some cases, the Service has authority to provide recommendations, technical assistance and to act as a partner in the conservation of fish and wildlife species, including, but not limited to, those expressly identified as Federal trust wildlife resources. The Service achieves its mission under numerous statutes, some of which involve conservation of non-trust wildlife, as the question notes. For example, the Fish and Wildlife Coordination Act (FWCA) provides the Service authority to make mitigation recommendations whenever a Federal entity proposes or authorizes the modification of a waterbody. Recommendations under FWCA can cover resources as the statute defines, but in practice, Service recommendations are likely to focus on linkages of effects to trust resources, as prioritized by Service field and regional offices.

The Service's final revised agency-wide mitigation policy (81 FR 83440, November 21, 2016)(Policy) applies to the resources as listed or described within the Service's various mitigation authorities. The language used within those authorities to describe the covered resources determines the scope of Service recommendations made under each authority. In the Policy, we note that the Service has traditionally described its trust resources as migratory birds,

federally-listed endangered and threatened species, certain marine mammals, and inter-jurisdictional fish. Our engagement in mitigation processes is likely to focus on those trust resources, but where provided by Congress under certain authorities, the Service's recommendations are not strictly limited to covering only trust resources. This Policy does not establish new authority. We respect the role of States and their role in conserving fish and wildlife.

Question 9:

The Service has decided to prepare NEPA Environmental Assessments for both its revised Mitigation Policy and its ESA Compensatory Mitigation Policy. For policies with such significant impacts, why hasn't the Service chosen to prepare a more thorough Environmental Impact Statement? Wouldn't that be an appropriate way to evaluate these wide-reaching policies? Is the Service going to give the public an opportunity to review and comment on the NEPA assessments?

Response: We analyzed the Policy in accordance with the criteria of NEPA, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46). Issuance of policies, directives, regulations, and guidelines are actions that may generally be categorically excluded under NEPA (43 CFR 46.210(i)). Based on comments received, we determined that a categorical exclusion can apply to the Policy. Nevertheless, the Service chose to prepare an environmental assessment (EA) out of an abundance of caution and to inform decision makers and the public regarding the possible effects of the policy revisions. In our EA, we determined that implementation of the Policy would not significantly affect the quality of the human environment, and as a result, an Environmental Impact Statement was not warranted. The EA is available as a supporting document to the Policy within the docket at <http://www.regulations.gov>.

We are currently preparing an EA on the draft final Compensatory Mitigation Policy. Upon completion of the EA, we will determine if an Environmental Impact Statement is warranted.

Question 10:

How will the Service avoid situations where redundant mitigation is required under its requirements and other programs like Section 404 of the Clean Water Act?

Response: The Service does not anticipate redundant mitigation being required. The Service routinely coordinates with other agencies on mitigation site approvals for projects that affect multiple resources under the jurisdiction of different agencies. For example, joint conservation/mitigation banks are approved by the Service, U.S. Army Corps of Engineers and Environmental Protection Agency to provide mitigation under ESA and the Clean Water Act. This practice of "joint banking" began so that project applicants would not have to mitigate twice for a single project, streamlining both projects and conservation efforts. The Service will continue working collaboratively with other agencies for all types of mitigation projects, to further this purpose.

Question 11:

How is the FWS working with the Natural Resources Investment Center (NRIC) in the creation of these policies? If these policies are finalized, will this office be permanent?

Response: The Service's draft and final policies were coordinated with interested bureaus and offices within DOI, including the NRIC. The NRIC is not within the U.S. Fish and Wildlife Service. The NRIC was established independently, and our mitigation policies will not affect its continued existence.

Senator Barrasso:

Question 12:

Mr. Bean, we have discussed mitigation before, in an earlier hearing before the Senate Committee on Energy and Natural Resources in March. During that time, we discussed the concept of "irreplaceable natural resources" at length. To date, I do not believe the Department has yet clearly defined "irreplaceable", instead opting to provide a description of a potentially qualifying resource. In response to my question about the definition of the term, you indicated that "...in some rare cases a mineral resource might indeed be determined, through a public process and consistent with our legal authority, to be an irreplaceable natural resource." I remain concerned that this description will give agencies unfettered discretion to create a hierarchy of conservation objectives that places public input in direct conflict with sound science. Please describe the role you believe public process should have in the determination of the type and quality of a resource in question.

Response: The U.S. Fish and Wildlife Service uses the term "irreplaceable resources" to describe habitats with particular qualities that are required for the survival of Federally-protected species or species that otherwise fall within the jurisdiction of United States conservation statutes, and which, once destroyed or damaged, cannot be replaced or restored on a time scale meaningful to people living today. The role of public input on the determination of whether or not a public resource is irreplaceable depends upon the provisions of the Federal statute under which conservation of it is authorized. This term is included in the Service's 1981 mitigation policy, and it has been applied in this manner.

Examples of habitats that the Service has considered irreplaceable include Colorado peatlands (or fens) and Hawaiian coral reefs that are centuries or even thousands of years old, structurally complex, and species-rich. In most Colorado peatlands, for instance, peat accumulates at a rate of less than one foot per thousand years and thus, such habitats cannot be restored to their former condition except on a scale of centuries or millennia. For similar reasons, structurally complex, species-rich coral reefs in Hawaii cannot, as a practical matter, be replaced or restored on a time scale meaningful to people living today.

It is important to note that in our revised Policy, we have used the term "irreplaceable" only in association with the term "habitat." For a resource, mineral or otherwise, to be considered an irreplaceable habitat, it would need to first meet the definition of habitat, as defined in our Policy. Minerals or other substances, by themselves, will not typically meet this definition.

Question 13:

The issue of the agency's statutory authority to implement the draft mitigation policy in the future is critical. Is it the Department's view that current statute gives the Fish and Wildlife Service the explicit authority to approve or disapprove of a project under another agency's jurisdiction? If so, does that not then give the agency unfettered authority to interject in any project, regardless of legitimacy of the objection, if pressed to do so by an outside group? If not, then where does the Service purport that authority rests?

Response: The Service implements and enforces Federal conservation laws passed by Congress, as enacted. The Policy does not create or assume new authority for making mitigation recommendations. In addition, the Policy does not exceed existing statutory or regulatory authority to engage in mitigation processes for the purpose of making mitigation recommendations, and in limited cases, specifying mitigation requirements. The authorities and processes of different agencies may limit or provide discretion regarding the level of mitigation for a project. The Policy is not controlling upon other agencies.

The Policy provides a common framework for identifying mitigation measures. It does not create authorities for requiring mitigation measures to be implemented. The authorities for reviewing projects and providing mitigation recommendations or requirements derive from the underlying statutes and regulations. On a case-by-case basis, the Service may recommend the "no action" alternative when appropriate and practicable means of avoiding significant impacts to high-value habitats and associated species are not available. These recommendations will be linked to avoiding impacts to high-value habitats. Also, we note that the Policy does not indicate avoidance of all high-value habitats is required. The Policy provides guidance to Service staff for making a recommendation to avoid all high-value habitats or to adopt a "no action" alternative in certain circumstances.

Question 14:

Given the public comment period on the general draft mitigation policy closed at the beginning of May, what is the status of the policy? How much progress has the Service made in reviewing the public comments gathered during that time?

Response: The Service published the final Policy on November 21, 2016. It fully considered all public comments received in developing a final Policy.

Question 15:

Does the Service intend to comply with the one-year deadline for publication of a final policy as required in the Presidential Memorandum on Mitigation?

Response: The Service did not meet the November 3 deadline; the Policy was published on November 21.

Question 16:

Given that the public comment period for the draft compensatory mitigation policy does not elapse until October, does the Service intend to finalize a rule before the end of the year?

Response: The Service intends to finalize the proposed Compensatory Mitigation Policy in December 2016 or January 2017.

Question 17:

Mr. Bean, I have lingering concerns about how the Department, and other agencies outside Interior's purview, will determine the concept of "durability" under the draft policies. At what level (within the Department) will the assessment of durability be made and what criteria will be used?

Response: The Service will recommend or require (as appropriate) that mitigation measures are durable, and at a minimum, maintain their intended purpose for as long as impacts of the action persist on the landscape. The Service will recommend or require (as appropriate) that implementation assurances, including financial and real estate, be in place when necessary to assure the development, maintenance, and long-term viability of the mitigation measure. Project review and preparation of recommendations or requirements that ensure durability will most commonly occur at the Service's Field Office level, through existing procedures for engaging project proponents and agencies.

Question 18:

Is the process by which the determination of the duration of an impact, or the associated mitigation, a one-time occurrence or is it an ongoing process that continues after a disturbance/mitigation activity has concluded?

Response: The determination of measures necessary to ensure the durability of mitigation is made at the time of project authorization and finalization of a mitigation plan. The evaluation of whether the durability of mitigation has been maintained as planned will continue. If there is any loss of durability, appropriate recommendations or follow-up actions for correcting the loss will be consistent with applicable law.

Question 19:

We discussed the concept of durability following the hearing in the Energy and Natural Resources Committee in March. You indicated both that the Department has the ability to assess and reassess durability during the "duration" of the impacts. Is there a point at which the relationship between the ecological situation (which may be related or unrelated to the impacts) and the disturbance requiring mitigation elapses? If so, what is the time frame; 5 years, 20 years, 50 years?

Response: There may be a point at which the relationship between the ecological situation and the disturbance requiring mitigation does elapse. However, the variability in the projects and associated impacts, geography, and environmental conditions are so broad, that it is not possible within a national policy to specify a time frame that is defensibly applicable in each subsequent action covered by the policy. Development of recommendations that would ensure durability of mitigation measures will occur on a case-by-case basis, as is current practice.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 19 2016

The Hon. Louie Gohmert
Chairman
Committee on Natural Resources
Subcommittee on Oversight and Investigations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the July 7, 2016, oversight hearing entitled "*State Perspectives on BLM's Draft Planning 2.0 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 Debbie Dingell, Ranking Member
Committee on Natural Resources
Subcommittee on Oversight and Investigations

Committee on Natural Resources
Subcommittee on Oversight and Investigations
Hearing on BLM's Draft Planning 2.0 Rule
July 7, 2016

Questions from Rep. Polis

1. Mr. Lyons, in your view, how does Planning 2.0 increase the transparency of the BLM land use planning process? How does Planning 2.0 help to ensure that the draft RMP more closely meets the expectations of stakeholders? There is no doubt that local input and concerns are highly important when planning for BLM-managed lands. Would the BLM's proposed rule take away these special participation opportunities from States and local governments?

Response: The rule increases the transparency of the land use planning process by establishing more frequent check-ins with stakeholders. These frequent check-ins provide stakeholders the opportunity to review preliminary documents before they are formalized and provides the BLM an opportunity to engage in ongoing dialogue with stakeholders to better understand their needs, concerns, and expectations. By working closely with stakeholders throughout the duration of the planning process, the BLM will be better able to respond to stakeholders.

2. Mr. Lyons, help the committee to understand how 'landscape level' planning allows land managers to better tackle pressing natural resource concerns at an appropriate scale?

Response: The rule provides for an open and transparent process; supports assessment and management at appropriate scales; supports the use of the best available scientific information in planning; and applies principles of adaptive management. Key to this process is developing land use plans at a scale that is based on resource management concerns and the issues being addressed. We saw this with sage grouse, whose range covers 11 states and requires a coordinated, comprehensive, science based conservation strategy as we developed leading to a "not warranted" decision by the US Fish and Wildlife Service. Similarly, dealing with invasive species like cheatgrass across a larger landscape is essential for reducing the risk of rangeland fire across the Great Basin where it constitutes a significant threat to ranchers and rural communities.

3. Mr. Lyons, the agency has certainly received a lot of feedback from stakeholders on the proposal; what is the agency's plan for incorporating that feedback to help ensure that the final rule works best for local governments, the public, the agency itself, and the natural resources the agency manages?

Response: The BLM received over 400 unique comments from members of the public, state and local governments, other federal agencies, and tribal governments. We analyzed those comments and considered all suggestions made. As part of the rulemaking effort, we will

Committee on Natural Resources
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July 7, 2016

publish a response to all substantive comments, along with the rationale for why we did or did not incorporate suggested changes.

4. Mr. Lyons, we know that things like wildlife, rivers and people do not just stop at state and field office boundaries but migrate or otherwise span political boundaries. I'm glad to hear that the BLM is seriously thinking about common sense ways to plan for use and conservation of our public lands rather than rely on political boundaries. Can these planning "landscapes" be either larger or smaller areas as needed?

Response: The rule permits BLM land managers to determine the most appropriate planning area given the issues and resources that are affected. That is the most efficacious way of developing plans and involving all jurisdictions that may be affected by management decisions on that landscape. Through an open and transparent process, using the best available scientific information, and informed by a robust planning assessment, the BLM can determine the most appropriate planning area for any given set of management issues. While appropriate planning areas may be larger or smaller than the typical field-office boundary, in considering the resources needed to conduct effective land use planning, it is likely that the BLM will more often conduct planning at a field office or larger scale.

5. How will local expertise and input be integrated into landscape level planning?

Response: Under the rule, the BLM would add several new opportunities for the interested citizens and stakeholders to engage with the BLM during the planning process, including development of a (1) planning assessment; (2) preliminary statement of purpose and need; (3) preliminary range of alternatives; (4) preliminary rationale for alternatives; and (5) preliminary basis for analysis. At each of these stages, individuals with local expertise would be invited to provide input either as a cooperating agency (if an eligible governmental entity) or through public involvement opportunities during these stages of the planning process.

6. Can you discuss some of the ways that this landscape level planning would benefit the public lands?

Response: The BLM manages a diverse range of natural resources, which occur at an equally diverse range of scales, and it collaborates with a diversity of partners, stakeholders and communities who work at different scales. For these reasons, the BLM planning process must enable consideration of issues and opportunities at multiple scales and across traditional management boundaries. Some of the management concerns that may benefit from a landscape

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approach to decision making include those that cross traditional administrative boundaries, such as wildfire, wildlife, water resources, energy development, and transmission.

7. And how it would provide for more meaningful input from stakeholders invested in the management of public lands?

Response: The rule increases opportunities for meaningful public involvement in several ways. First, during the planning assessment, the BLM must gather and consider public input before initiating formal planning. This provides local citizens and stakeholders with the opportunity to engage at the very beginning of the planning process – before issues are identified or alternatives are considered. The rule also establishes new opportunities for stakeholders to review preliminary planning documents prior to the formal public comment period for a draft plan or draft amendment. These new steps afford the public additional opportunities to track the BLM planning process as it develops and would provide them with more time to review preliminary documents before drafts are issued. The BLM believes that these new opportunities will promote meaningful involvement in the planning process by increasing the transparency of the process.

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Questions from Rep. Dingell

1. The Bureau of Land Management's Planning 2.0 initiative is an impressive undertaking. The proposed regulations will affect every facet of BLM land use planning and management. The U.S. Forest Service promulgated a similar rule in 2012, analyzing the many, significant environmental, economic and effects of the rule in more than 1300 pages of environmental impact statements under the National Environmental Policy Act. How did the BLM decide that its equally-expansive rule was excluded from review under NEPA? Would alternative analysis under NEPA have helped contribute to stronger proposed and final regulations?

Response: As described in the preliminary categorical exclusion documentation for the proposed rule, the Department of the Interior categorical exclusion at 43 C.F.R. § 46.210 is applicable to this action. The existing planning rule is entirely procedural in character and the amendment of this rule is entirely procedural. The amendment does not develop or amend any land use plans; any future revisions, plans or amendments will be subject to NEPA analysis, including appropriate public involvement, before any decision affecting the management of the public lands is made. Further, there are no extraordinary circumstances that would preclude the use of a categorical exclusion. For this reason, the BLM's reliance upon the DOI categorical exclusion is appropriate. The BLM planning regulations are distinguishable from the 2012 Forest Service planning rule, and the U.S. Department of Agriculture and the Department of the Interior have different categorical exclusions.

2. In promulgating its similar planning rule, the Forest Service also heeded direction in the Endangered Species Act to manage public lands and resources in a manner that contributes to conservation and recovery of threatened and endangered species and specifically referenced the ESA in its rule, and even consulted with the Fish and Wildlife Service and the National Marine Fisheries Service on the potential of its regulation to support listed species conservation. By comparison, neither the BLM's proposed rule nor the agency's description of it even mentions the ESA. How does the agency intend to improve the final regulation to ensure that it achieves Congressional mandates in the ESA to protect and recover listed plants and animals?

Response: While not specifically addressed in the rule, the BLM must comply with the Endangered Species Act, including Section 7 consultation requirements for actions that may affect a federally-listed species or designated critical habitat. Additionally, the BLM planning regulations establish the procedures for developing and amending resource management plans

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and do not approve any land use plans or plan amendment or authorize any particular projects. The BLM will continue to comply with the ESA when it completes future individual planning efforts and will continue to address listed species during these future planning efforts. For example, under the procedures for plan development and amendment in the proposed rule, during future planning, the BLM would identify areas of potential importance through the identification of potential Areas of Critical Environmental Concern (ACECs) and other means such as habitat for federally-listed threatened and endangered species.

3. Was there anything else you wanted to say or respond to from the hearing?

Planning 2.0 was developed to respond to concerns and criticisms of the existing planning process (which had not been revised for nearly three decades); to respond to state, local, and other stakeholder and public concerns; and to make the BLM planning process more efficient, cost-effective, and relevant to the issues affecting public land management today. The rule will allow the BLM to react more quickly to amend land use plans to better address local needs and changing land and resource conditions and ensure that the BLM can meet its mandate to manage the public lands on the basis of multiple-use and sustained yield, through a more open, transparent, and inclusive planning process.

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Questions from Chairman Gohmert

1. Every state has a state forest action plan (FAP) which was publicly vetted, is regularly updated and which provides guidance for all ownerships. These plans can be viewed for any state at *forestactionplans.org*. (FAPs, which include assessments and strategies, were mandated per the Farm Bill.) Since these plans provide guidance for vegetation management – including riparian areas, fuels priorities, forest insects and disease and fire management across all ownerships, it would appear that they should be foundational documents in BLM's planning process. Why are state forest action plans not specifically mentioned as primary base documents in BLM's 2.0 planning process?

Do you consider input from state government officials with primary authority for activities and guidance across all boundaries to have the same weight as comments from an individual or small NGO?

Response: While state forest action plans are not specifically mentioned in the proposed rule, they represent an example of the types of documents that may be gathered and reviewed during the planning assessment. The plan assessment process will enhance opportunities for state and local input by setting the stage for the planning process as well as enhancing the ability of local governments and other interests to gather information to help them in their own planning processes.

The existing, proposed, and final rule include provisions for the special relationship and involvement of cooperating agencies and coordination with other Federal agencies, State and local governments and Indian Tribes. Specifically under the proposed rule, to the maximum extent practical and consistent with FLPMA and other federal laws, BLM Land Use Plans must be consistent with those of local, State, Federal, and Tribal governments.

2. During the hearing, Representative Labrador asked if states other than Idaho have requested the withdrawal or substantive rewriting of the proposed rule. To this you replied, "We have heard from a number of States who are concerned about the rule. [..]" Afterward, Mr. Labrador asked you, "and have they specifically made request to just start the process over?"

To this you replied, "I would have to check on the specifics, Congressman." Please provide a list of the states below that requested withdrawal or re-writing of the rule. Specifically include information about what each state requested and their reasoning for the request.

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Response: The state of Alaska requested that the BLM revise the proposed rule and allow for an additional public review and comment period on that revision. Alaska expressed support for the goals of increased public involvement, efficiency, clarity, and transparency, but expressed concern that the proposed rule would create delays in the planning process. Alaska expressed additional concern that the planning rule would not address issues unique to their state and may further complicate issues related to subsistence, economic development, and implementation of other federal laws including the Alaska National Interest Lands Conservation Act (ANILCA).

The states of Idaho and New Mexico requested that the BLM withdraw the proposed rule, contending that BLM did not sufficiently consult with state governments.

The state of Nevada requested that the BLM amend the proposed rule to address its concerns that the proposed rule reduced transparency, diminished the role of coordination with state and local governments, and should have allowed for more input from western states.

The state of Utah requested that the BLM withdraw the proposed rule for analysis under NEPA, or amend the proposed rule where necessary to address concerns regarding coordination of land management with state and local governments and to ensure the role of cooperating agencies in planning.

The state of Wyoming requested that the BLM withdraw the proposed rule because many of the goals the BLM expressed are accomplishable under existing regulations and suggested that the BLM better clarify the opportunities for cooperation, coordination, and public involvement in the planning process.

3. During the hearing, Chairman Gohmert asked about state's primacy over allocation and administration of water resources within their respective borders. Mr. Gohmert asked, "[.] the BLM proposals here indicate the agency may [..] add provisions to its RMPs to increase agency involvement in water management. Specifically, what aspects of water management allocation would BLM incorporate into the future in new or amended RMP's" To this you replied, "[.] I am actually not aware of that," and, "I am going to have to do a little homework and try to understand where the impression came from." Please provide information about what aspects of water management allocation BLM would incorporate into new or amended RMPs.

Response: The rule does not indicate or imply that BLM will increase its involvement in water management and does not discuss water management allocations. The rule does incorporate language from FLPMA to identify general management objectives in the planning regulations, specifically that the BLM manage public lands, "to protect the quality of [...]water resource[s]."

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The preamble to the proposed rule provided both surface water and groundwater as examples of water resources for establishing baseline conditions in the planning area as part of Section 1610.4 - Planning Assessment, but it does not increase agency involvement in water resource management.

4. Please provide specific information about the pilot program for BLM 2.0, including information about where it was implemented, any guidelines used to assess its outcome, involvement of state and local governments in the pilot program, and information about state and local government reactions to the pilot program pilot program.

Response: The BLM has applied some principles of Planning 2.0 in several new plan revision efforts, particularly the principle of early and frequent public involvement and planning at appropriate scales. These new planning revisions currently underway include the Eastern Colorado RMP, the Missoula RMP, and the Northwestern California Integrated RMP. The response to these planning efforts has been extremely supportive. Local governments and the public have expressed strong support for the upfront engagement of the public during the planning assessment phase.

5. How is it appropriate for the BLM to employ a NEPA Categorical Exclusion process for a proposed rule that is controversial and contrary to the Congressional intent and language of FLPMA? Why is BLM using a CatEx for a rule affecting over 245 million acres of land and 700 million acres of subsurface mineral estate when the BLM requires a higher level of NEPA review for much smaller projects, such as a one-acre telecommunications site?

Response: As described in the categorical exclusion documentation for the rule, the existing and final planning rules are entirely procedural in character. The BLM believes the categorical exclusion is the proper form of NEPA compliance for this action under 43 CFR 46.210(i). As discussed in the documentation, The actual planning decisions reached through the planning process are themselves subject to compliance with NEPA's analytical requirements as well as with the statute's public involvement elements. For this reason, the BLM's reliance upon this categorical exclusion is appropriate.

6. Has at least one public hearing been held in each state where the proposed rules would apply? How has your process consistent with Executive Order 13563 which states that "regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas."

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Response: Formal public hearings were not conducted in each state where the rule would apply. The rule complies with Executive Order 13563. With respect to public participation, the BLM launched the Planning 2.0 initiative in May 2014 by seeking public input on how the land use planning process could be improved. The BLM developed a website for the initiative (www.blm.gov/plan2) and issued a national press release with information on how to provide input to the agency. The BLM held public listening sessions in Denver, Colorado (October 1, 2014) and Sacramento, California (October 7, 2014). Both meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet via livestream. The goals of these meetings were to share information about the Planning 2.0 initiative with interested members of the public, to provide a forum for dialogue about the initiative, and to receive input from the public on how best to achieve the goals of the initiative. Prior to issuing the proposed rule, the BLM conducted outreach to BLM partners. Outreach included multiple briefings provided to the Federal Advisory Committee Act chartered RACs; a briefing for State Governor representatives coordinated through the Western Governors Association; a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies; multiple briefings for other Federal agencies; a webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

Following publication of the proposed rule, the BLM held one public meeting in Denver, Colorado (March 2016) and two webinar meetings. All meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet or through webinar access. The goal of these meetings was to share information about the proposed rule and answer questions from the public as they prepared their response to comments. During the comment period on the proposed rule, the BLM also held a webinar for interested local government representatives coordinated through the National Association of Counties. The BLM also held meetings with other interested parties upon request.

7. Section 202(c)(9) of the Federal Land Policy Management Act (FLPMA) requires meaningful coordination with counties. County Leaders represent all of their constituents and must have continued government to government communications as the FLPMA Section 202(c)(9) coordination statute provides. Section 202(c)(9) provides counties with meaningful involvement with BLM as it prepares and conducts significant federal actions, such as changing land use plans. Why does the proposed rule relegate counties to the same stature and status as any non-government entity (NGO) instead of maintaining their status under FLPMA?

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Response: FLPMA requires that the BLM keep apprised of State, local and tribal land use plans and assist in resolving, to the extent practical and consistent with Federal law, inconsistencies between Federal and non-Federal government plans (see 43 U.S.C. 1712(c)(9)). The provisions in the rule that address coordination and consistency afford state, local, and tribal governments the opportunity to coordinate with the BLM in the development of resource management plans, with the goal of increasing consistency between Federal, state, local, and tribal land use plans.

State, local, and tribal governments that have special expertise or jurisdiction by law (see 40 CFR §1501.6 and 43 CFR §46.230) are also invited to partner with the BLM in developing resource management plans as cooperating agencies. In most cases, formal cooperating agencies have access to preliminary and deliberative draft documents that are not routinely made available to the public.

Under existing rules, State and local governments that do not participate as cooperating agencies may review planning documents when they are made available to the general public with the draft resource management plan. The rule provides additional opportunities to these State and local governments to review planning documents including: (1) the planning assessment report; (2) the preliminary statement of purpose and need; (3) the preliminary range of alternatives; (4) the preliminary rationale for alternatives; (5) the preliminary basis for analysis.

8. How can the BLM institute “landscape level planning” but avoid “one size fits all” solutions that do not work due to variables on the landscape?

Response: Although the BLM currently uses the field office as the default planning area, in practice the BLM plans at the most appropriate and relevant scale for the resource and management issues being addressed in an individual planning effort. The intent of the final planning rule is to ensure that the BLM avoids a “one size fits all” approach by considering all relevant scales in its planning process, rather than defaulting to a field office scale. The BLM would continue to consider impacts on local conditions and local economies, as well as impacts at regional and national scales during individual planning efforts. The BLM believes it is appropriate and necessary for a deciding official to consider all relevant scales and information before rendering a decision.

9. Logically, land management decisions should be made at the level closest to the lands being managed. Will this rule create the scenario where the BLM Director becomes the deciding official and the planning activity becomes removed from the local area to be undertaken by a project team of Washington D.C. bureaucrats responsible only to the Director?

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Response: The BLM will continue to select line-officers who are highly qualified for any given decision-making process. The BLM takes seriously the responsibility of a line-officer to make well-informed decisions and consider the impacts such decisions have on the public and the public lands. The BLM's commitment to qualified and well-informed decision-making will not change under the proposed planning rule.

10. The current BLM rules contain a definition of "consistent," that the "Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in Section 1615.2 of this title." Why is this definition being removed?

Response: The rule removes the definition of the term consistent because the definition is unnecessary as it is commonly used terminology. Section 1610.3-2 of the rule describes the requirements for consistency and would require that RMPs be consistent with State and local plans to the extent practical and consistent with Federal laws, including the FLPMA.

11. The current rule emphasizes that the impact of BLM land use decisions "on local economies, uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests shall be considered." Why is the proposed rule written to erode the importance of protecting local economies and uses on nearby non-Federal lands and shift the focus to the "impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at appropriate scales."

Response: Consideration of resource, environmental, ecological, social and economic conditions is consistent with the principles of multiple use and sustained yield and therefore consistent with the Federal Land Policy and Management Act. Multiple use, as defined in the Federal Land Policy and Management Act, includes "the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." Consistent with FLPMA, the BLM must seek to understand the present and future needs of the American people, and the assessment of resource, environmental, ecological, social and economic conditions is an important tool to help the BLM understand the present and future needs of the American people at the local, regional, or national scale. The rule requires that all values associated with the management of public lands (i.e., environmental, ecological, social and economic) be considered, as appropriate, through the planning process.

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12. Section 1610.3-2 (b) (4) (ii) of the proposed rule, Consistency Review: (Page 9705 of the Federal Register Notice) is proposed to read that “The Director will consider the Governor(s)’ comments in rendering a final decision. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor’s appeal. The BLM will notify the public of this decision and make the written decision available to the public.” In Planning 2.0, the BLM proposes to eliminate existing rule language requiring the BLM Director to accept the recommendations of the Governor(s) if the BLM Director determines that the recommendations “provide for a reasonable balance between the national interest and the State’s interest.” Why is the BLM no longer seeking to reach a reasonable balance between the national interests and state or local interests?

Response: The rule states that the BLM Director will consider the Governor(s)’ appeal and the consistency requirements of this section of the rule in rendering a decision. The proposed change would reflect that the BLM Director must consider many factors when rendering a decision, including whether the Governor(s)’ recommendations are consistent with Federal laws and regulations applicable to public lands, such as FLPMA.

13. The BLM proposes, in the planning assessment, to no longer consider “the estimated sustained levels of the various goods, services and uses that may be attained.” Instead, the BLM proposes to identify “the various goods and services that people obtain from the planning area, including ecological services.” Why is the BLM proposing to change the original purpose and intent of this section to measure the impact of BLM decisions against the objectively quantifiable value of tangible goods and services, such as minerals or timber; that could be lost as a result of the decision and instead throw in the concept of ecological services, which cannot be objectively or accurately quantified for comparison?

Response: Goods and services include a range of values and human uses of the resources provided by and derived from management of the public lands. However, determining the value of these goods and services is difficult and affected by many factors including markets, the state of the economy, and other variables. Benefits resulting from proper management of ecosystems, such as flood control from intact wetlands and carbon sequestration from healthy forests are referred to as “ecological services”. Some commodities sold in markets, for example, forest products resulting from timber production, are more easily valued. Others, such as wetlands protection and carbon sequestration, are not commonly valued in the marketplace but do provide tangible benefits and valuable services (e.g., flood control); they provide nonmarket values. The BLM does have guidance based on established practices for estimating non-market values for ecosystem goods and services for the purposes of comparison. The language included in the rule

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is simply intended to ensure that all goods and services derived from the proper management of public land resources are identified in the planning process, beginning with the planning assessment.

14. Why is the BLM proposing to remove from the Planning Assessment a requirement for the BLM to analyze “specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes?”

Response: The BLM did propose removing this provision of the plan assessment because at that early stage in the planning process, the BLM usually does not have sufficient information to identify “requirements and constraints” related to consistency, as the BLM would not yet have developed management alternatives for the area. Under the final rule, the BLM would require that as part of the planning assessment for an individual planning effort, the BLM identify relevant national, regional or local policies, guidance strategies or plans; in response to public comment, the final rule includes language identifying that constraints for achieving consistency would be addressed as planning issues during the scoping process.

15. Section 1610.4-4 of the existing rule directs the BLM Field Manager to analyze the management situation. The manager is to keep multiple use principles in mind as alternatives are formed. As part of the AMS process, the manager is to consider the degree of local dependence on resources from public lands. The proposed rules do away with the Analysis of the Management Situation and replace this step with the Planning Assessment. However, in the Planning Assessment, the focus of the assessment shifts from the concept of multiple use and resource development on public lands to preserving “ecological services”. How is this shift in focus consistent with Congressional intent when FLPMA came into effect in 1976?

Response: In the planning assessment process in the rule, rather than consider the “degree of local dependence on resources from public lands” (from existing § 1610.4(g)), the BLM would instead consider “the degree of local, regional, national, or international importance of these goods, services, and uses” (from proposed § 1610.4(d)(7)(i)). “Resources” would be replaced with “goods, services, and uses” to provide a more precise explanation of what the BLM considers with regard to those resources. The BLM believes that the use of more precise terminology in the regulations will improve understanding of this provision. The BLM does not intend for this change to change the meaning of this provision. The language in the rule is

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simply intended to ensure that all goods and services derived from the proper management of public lands and resources are identified and considered in the planning process.

16. During one of the recent webinars associated with the planning rules; a question was posed whether one has to be a U.S. citizen to comment on the proposed rules. The answer was no; that anyone could comment. During a recent RMP process in Utah, there were approximately 68,000 comments received by the BLM; with approximately 11,000 of those comments being from outside of the country. Is the BLM willing to include provisions in the proposed rule to somehow give greater credence to the views of local elected officials and stakeholders over the views of those with no direct connection to the land other than responding to a request to submit a form letter on behalf of a special interest group?

Response: Under the rule, and consistent with the previous planning rule, local, state, tribal, and federal governments are afforded special consideration not afforded to other general members of the public such as foreign nationals. Specifically under the rule, to the maximum extent practical and consistent with FLPMA and other federal laws, BLM Resource Management Plans must be consistent with those of local, state, federal and tribal governments.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 19 2016

The Hon. Louie Gohmert
Chairman
Committee on Natural Resources
Subcommittee on Oversight and Investigations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the July 14, 2016, oversight hearing entitled "*The Status of Ivanpah and Other Federal Loan-Guaranteed Solar Energy Projects on Bureau of Land Management 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 Debbie Dingell, Ranking Member
Committee on Natural Resources
Subcommittee on Oversight and Investigations

Questions from Chairman Gohmert

- 1) **How does the department define a renewable energy project?**

Response: The Department of the Interior defines renewable energy projects as those that produce energy from solar, wind, waves, geothermal, biofuels, or hydropower.

- 2) **It has been reported that the Ivanpah plant, due to its natural gas consumption, surpasses state emissions limitations that would allow it to be considered a renewable energy source. Does the Department track emissions data from the Ivanpah plant?**

Response: Among the Bureau of Land Management's (BLM's) terms and conditions for the right-of-way grant, the Ivanpah Solar Electric Generating System (Ivanpah Project) must comply with the California Energy Commission (CEC) License and Conditions of Certification. As a result, the BLM coordinates with the CEC on issues related to compliance with the CEC's conditions of approval for the project.

In California, the CEC set the contribution of nonrenewable fuel to renewable energy facilities at a maximum of five percent of the total annual electricity output. Consistent with that practice, the Ivanpah Project is currently approved by the CEC to use natural gas as a supplement to the solar energy generated by the project. The natural gas is used for plant start-up and operations during temporary events that disrupt renewable generation, such as cloud cover. Originally, the level of nonrenewable fuel generation had been set at two percent. In September 2014, the Ivanpah Project received approval from the CEC to increase natural gas usage to five percent in order to optimize operations and maximize solar power production.

- 3) **When Ivanpah was planned and permitted, was the Department aware of the possibility that Ivanpah would function more accurately as a hybrid plant than an actual renewable facility?**

Response: As explained above, the CEC allows for up to five percent of a renewable energy facility's total annual electricity output to come from nonrenewable fuel while still qualifying for the State's renewable portfolio standard. The Ivanpah Project was approved by the CEC to use natural gas as a supplement to the solar energy generated by the project during plant start-up and temporary events that disrupt renewable generation. Originally, the authorized level was two percent; however, in 2014 it was increased to five percent as outlined above.

- 4) **Does the quantity of natural gas being used breach any sort of agreement with BLM, or were the operators free to run facility as they choose once Interior signed off?**

Response: The quantity of natural gas used by the Ivanpah Project is not inconsistent with any terms and conditions of the right-of-way grant. As explained above, the quantity of natural gas authorized for use is a condition of the CEC approval.

- 5) **Now that the country is aware that Ivanpah is dependent on natural gas, do you still consider this a renewable energy project?**

Response: The Ivanpah Project continues to comply with the terms and conditions of its right-of-way grant. The project generates approximately 940,000 megawatt-hours of solar energy annually.

- 6) **With what you now know with regard to not only the emissions, but the disturbances to tortoises and the deaths of migratory birds would this project still be permitted by the department?**

Response: The BLM and the U.S. Fish and Wildlife Service have confirmed that the impacts from the Ivanpah project on desert tortoises were adequately analyzed and addressed. Based on available data, we are not seeing unanticipated impacts on desert tortoise from this particular project, and it is in compliance with the required air quality permits.

The regulations under the Migratory Bird Treaty Act do not expressly address the incidental take of migratory birds by otherwise lawful activities. In instances such as these, the U.S. Fish and Wildlife Service seeks to work proactively with project proponents to reduce the take of migratory birds through project siting and other best management practices.

- 7) **What is the department doing to investigate the reported bird deaths related to the solar facilities on BLM property? Are you independently investigating these deaths or relying on the solar operators or their paid contractors?**

Response: According to the U.S. Fish and Wildlife Service, there is an open investigation of the Ivanpah Project for possible violations of the Migratory Bird Treaty Act. The operators have been notified and are cooperating with the ongoing investigation. We are unable to provide detailed information at this time because it is an open law enforcement investigation.

- 8) **Ivanpah is located on 3,500 acres of tortoise habitat. Your revised biological opinion states that tortoises moved outside of their home ranges would likely attempt to return to the area from which they were moved, making it difficult to remove them from the potential adverse effects associated with project construction. How many tortoises are moved, and how many attempt to return to their home each year? Do you track them? If so, how?**

Response: According to the U.S. Fish and Wildlife Service, a total of 175 desert tortoises were cleared from the project site. 103 of these desert tortoises were translocated to adjacent habitat, typically within 500 meters of where they were found and safely within their “home” areas. The remaining 72 individuals, which were too young to translocate, were raised in captivity for five years to improve their post-translocation survival.

The project construction site was fenced to keep translocated and other tortoises from migrating to the site. A small number of tortoises temporarily walked along the outside of the fence line following translocation. Translocated tortoises were fitted with transmitters when they were released and are monitored through the use of telemetry data. This monitoring has shown that animals settle into normal behavioral patterns within one year after translocation.

- 9) **Biologists have stated that moving tortoises from their habitats can stress the animals to the point where they become ill or die. Transporting them also exposes them to illness and disease. How many tortoises have died as a result of this type of harassment with respect to solar facilities on BLM property?**

Response: The best science available to the U.S. Fish and Wildlife Service indicates that translocation, when implemented under the Service’s specified conditions, does not cause elevated mortality in desert tortoises. As stated in testimony, ongoing monitoring of the desert tortoises translocated from the Ivanpah Project construction site and the Fort Irwin expansion has shown that they are not experiencing a higher mortality rate compared to control populations of tortoises in the area that have not been affected by the translocation.

- 10) **In light of all that we know about tortoise habits and vulnerabilities, is it still reasonable to estimate that only 1 adult tortoise per operation year will die on the 3,500 acres that Ivanpah occupies?**

Response: The most recent U.S. Fish and Wildlife Service Biological Opinion for the Ivanpah Project states that: “If 3 desert tortoises, larger than 160 millimeters, are killed or injured in any 12-month period (or a total of 9 over the life of the project) as a result of any construction, operation, maintenance, decommissioning, or restoration activities covered by this biological opinion, the Bureau must re-initiate consultation, pursuant to the implementing regulations for section 7(a)(2) of the Endangered Species Act at 50 Code of Federal Regulations 402.16, on the proposed action.” The proponent is responsible for continuous monitoring of desert tortoise mortality and for reporting this take to the BLM.

Questions from Rep. Dingell

- 1) You stated that BLM has collected approximately \$7.6 million in land rental fees and MW fees from Ivanpah. I want to clarify that this number does *not* include payments Ivanpah has made to pay back its loan from the Department of Energy. Is this correct?**

Response: That is correct. To date, the project has paid over \$7.6 million in acreage rent and MW capacity fees to the BLM consistent with the terms and conditions of its right-of-way grant. This amount is separate from any payments the Ivanpah Project has made to the U.S. Department of Energy (DOE) as part of the Loan Guarantee Program.

- 2) Do you know how much Ivanpah has paid back on its loan thus far?**

Response: The DOE is responsible for the Loan Guarantee Program, including the tracking of payments due under that program.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 28 2016

The Honorable Louie Gohmert
Chairman
Subcommittee on Oversight and Investigations
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Gohmert:

Enclosed are responses to follow-up questions received by the Department on August 3, 2016, related to the Subcommittee on Oversight and Investigations' oversight hearing held May 24, 2016.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

for

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
1334 Longworth House Office Building
Tuesday, May 24, 2016
2:00pm

Oversight Hearing on

“Investigating the Culture of Corruption at the Department of the Interior”

Questions from Chairman Louie Gohmert (TX-01) for Mr. Edward Keable, Deputy Solicitor for General Law, Office of the Solicitor, U.S. Department of Interior

- 1. You stated that you had a meeting scheduled the day after the hearing with OGIS to discuss the FOIA issues and you agreed to provide information about that meeting. Please provide about the purpose and goals of that meeting. Please describe discussions held during the meeting, and the outcome of the meeting.**

Response: OGIS Deputy Director Nikki Gramian and I met telephonically on May 25, 2016. The purpose of the meeting was to address concerns Ms. Gramian had raised with me about the responsiveness of the Department of the Interior’s (DOI) FOIA Appeals Office to OGIS and the anticipated length of time for finalizing the appeals. During the meeting, I explained that the FOIA Appeals Office had recently undergone staffing challenges that I was working with the FOIA Appeals Officer to address. I explained that I expected OGIS’s concerns regarding responsiveness to be resolved by that effort. DOI did address the FOIA Appeals Office staffing and that did help to resolve OGIS’s concerns. I had a follow-up conversation with Ms. Gramian on or about October 19, 2016, to confirm that she was getting the information she subsequently sought from the FOIA Appeals Office and she confirmed that she was pleased with their responsiveness.

- 2. What day did you decide to schedule that meeting?**

Response: Beginning on May 19, 2016, OGIS Deputy Director Nikki Gramian and I had an email exchange discussing an opportunity to meet telephonically. We settled on a meeting time of May 25, 2016, on May 23, 2016.

- 3. Please provide, as you agreed to do in the hearing, written responses from your Department to OGIS.**

Response: As indicated in the prior answers, OGIS and I discussed the issues raised and I believe that we have addressed those issues. No written response to the incoming letter was sent to OGIS.

4. Please provide detailed information about ethics training programs and requirements now in effect at DOI.

Response: The DOI Ethics training program meets and exceeds the Office of Government Ethics (OGE) requirements. OGE requires all financial disclosure filers (OGE Form 278e and 450) to receive annual ethics training and all new employees to receive ethics orientation training. DOI provides annual ethics training, ethics orientation training, and specific ethics topic training on-line, in-person and via webinars on a regular basis.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 30 2016



The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Chaffetz:

Enclosed are responses to follow-up questions from the oversight hearing on September 22, 2016, before the House Committee on Oversight and Government Reform.

Thank you for giving us the opportunity to respond to you on these matters.

Sincerely,

for

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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosure

Questions for Mr. Michael Reynolds
Deputy Director for Operations
National Park Service

Questions from Chairman Jason Chaffetz

September 22, 2016, Full Committee Hearing: *“Examining Misconduct and Mismanagement at the National Park Service”*

1. On August 24th of this year, park management announced it was implementing a new process for obtaining commercial Fiery Furnace permits at Arches National Park.

a) Can you explain the issue with the previous process for obtaining these permits?

Response: The number of visitors allowed in “Fiery Furnace” each day is limited to 125. These 125 visitors are each issued a permit. This limit is in place in order to protect resources, retain natural conditions, and ensure a safe and high-quality visitor experience. Beginning in 2008, the National Park Service (NPS) began issuing Commercial Use Authorizations (CUAs) to allow commercial guides to lead day hikes in Arches (these CUAs cover Fiery Furnace, as well as 23 other trails throughout the park). While the total limit remained at 125, the park allocated 25 of these permits to commercial operators. The NPS cannot, however, limit the number of operators who are issued CUAs for guided hiking. With the park’s increasing popularity, the number of guided-hiking CUA holders has quickly ballooned, from 7 in 2009 to 88 today. With 88 operators vying for only 25 Fiery Furnace hiker permits each day, the “first-come, first-served” model became untenable. The primary issue was a lack of fairness. CUA holders regularly complained about the process. Some CUA holders had begun illegally camping out overnight in the park, in efforts to be the first in the door each morning. And heated arguments ensued between CUA holders about their spots in line.

b) Since the process that was announced on August 24th involved companies selecting “a number out of a hat/box/etc” to “determine the order in which permits will be issued to those companies present” as you describe in your email, do you see how that could create a problem for these small tour companies trying to plan accordingly for their customers?

Response: Yes, while the lottery system that the park developed did increase the fairness of the allocation system, and did resolve the problems of fighting for spots in line and illegally camping out overnight, there remained a lack of predictability for operators, which impacted their ability to plan for this particular service offering in the long term. To some extent, this unpredictability is inherent in a situation where 88 operators are competing for 25 daily hiker slots. In an effort to afford some advanced planning, the

lottery system does allocate commercial hiker slots 7 days in advance of the scheduled hikes.

2. **On September 12, 2016, just two and a half weeks after announcing the new process for obtaining permits for Fiery Furnace in Arches National Park, the Superintendent of the Southeast Utah Group, Kate Cannon, announced the park would be terminating permits for Fiery Furnace as of January 2017. Then, on September 21st, this committee learned the park will “hit the pause button” on that decision.**

- a) **When was the decision made to terminate the Fiery Furnace area as part of the Commercial Use Authorizations? Was it before or after the decision to implement the new process announced at the end of August?**

Response: The decision to remove Fiery Furnace as a part of the Commercial Use Authorizations for guided hiking in Arches was made before the new lottery process was implemented. The decision was made as part of an overall strategy for better managing visitor use in Fiery Furnace. However, given that commercial use in Fiery Furnace was authorized through the life of the existing CUA agreements (until December 31, 2016), a process was still needed to improve the allocation of permits for the remainder of the year. Hence, the separate decision to develop the lottery system.

- b) **Why did park management only allow two weeks to test out their new permit process before terminating the program in its entirety?**

Response: See the response to 2a above. The new lottery process was still needed to improve the allocation of permits and address the issues outlined in the response to 1a during the three months when commercial guiding would continue under Commercial Use Authorizations in place for 2016.

- c) **In the announcement to terminate the program, Superintendent Cannon states the decision was made to better provide for the protection of park resources and values and to continue to provide a quality experience for park visitors. Can you please list some of the dangers to park resources brought about by the Fiery Furnace tour guide permit process?**

Response: The decision to no longer include Fiery Furnace in the CUAs for guided hiking in Arches was made as part of an integrated planning effort for better managing visitor use in Fiery Furnace. The NPS determined that the best way to provide for the protection of park resources and values, while continuing to provide a quality visitor experience, would be to mark the route, provide consistent pre-hike orientation, and reduce the size of hiking groups. In conjunction with those changes, the NPS determined that commercially guided hikes were no longer needed in order to protect resources and values and provide for a quality visitor experience in Fiery Furnace.

- d) **Can you explain how terminating a tour guide program where visitors could seek out services from a permitted tour guide will help improve the quality experience for park visitors?**

Response: The NPS determined that the new management practices outlined in the response to 2c above would better provide for the protection of park resources and values, while continuing to provide a quality experience for park visitors. In this decision, the NPS recognized that commercial tour guides provided quality visitor experiences, but determined that eliminating commercial tours would not adversely impact visitors' ability to have a quality experience. Park Ranger-led tours will continue to be offered to visitors seeking guidance and interpretation. And the implementation of route-marking and reduced group size can make unguided tours safer and more enjoyable. Moreover, reallocating the 25 commercial hiking slots to the general public will also make the Fiery Furnace more accessible to visitors with lower disposable incomes. While commercial guides typically charged upwards of \$80 per client, Ranger-led tours cost only \$16 per adult (\$8 per child) and individual permits cost only \$6 per adult (\$3 per child).

- e) **What type of community or park input was gathered before the unilateral decision to terminate the program was made?**

Response: The decision was made by an interdivisional team, with representatives across park management and front-line staff. The team also gathered input from prior park management and planning documents, and considered comments the park has received from visitors and CUA holders in recent years. CUA holders are regularly included in discussions on managing visitor use, through an annual meeting and informal phone and email communication. Many of these discussions with commercial operators highlighted the need for improved visitor use management in the Fiery Furnace.

- f) **Can you guarantee that the Park Service will gather and consider from all stakeholders that could be affected by this decision.**

Response: Yes, the NPS will continue to include public and stakeholder input as part of its management decision-making processes.

3. **According to the testimony of Brian Healy, Fisheries Program Manager at Grand Canyon National Park, harassment at Grand Canyon was not limited to the River District. In fact, he officially reported harassment and a hostile work environment faced by himself and his employees in other areas of the park.**

- a) **Has NPS initiated an investigation into a hostile work environment at Grand Canyon National Park?**
b) **Who will be handling this investigation?**

Response: The NPS takes seriously allegations and reports of harassment and/or a hostile work environment. In response to concerns surfaced by Mr. Healy earlier this spring, the NPS initiated a third party investigation (by an independent contractor) of

specific circumstances on the North Rim of Grand Canyon National Park. The NPS is fully engaged in addressing the issues identified.

c) Are there additional investigations into harassment or hostile work environments at Grand Canyon National Park?

Response: There are several other allegations that surfaced this summer that are under investigation at Grand Canyon NP. Those investigations are being conducted by third party investigators who have no prior affiliation with the NPS. There may be additional investigations as the situation develops. The NPS is fully engaged in addressing the issues identified in all of the investigations thus far, in a comprehensive and timely manner.

d) Once this investigation is complete, will those who reported the hostile work environment or harassment be notified of its findings? What is the policy of NPS in sharing these findings with those who reported the incidents that initiated such an investigation?

Response: The NPS is committed to improving our communication and feedback with employees who bring forward reports of hostile work environment and/or harassment. Legal limitations set by the Privacy Act often prohibit the NPS from disclosing the investigations and any specific actions managers have taken to address employee misconduct. However, NPS management will follow up with the employees who reported hostile work environment and/or harassment and discuss the findings to the extent allowed by the Privacy Act. The NPS also follows the National Park Service Manager's/Supervisor's Guide to Understanding, Preventing, and Reporting Harassment when assessing the proper follow-up with those who reported the incidents.

e) If complete, please provide any final report or findings from any investigations into harassment or hostile work environment at Grand Canyon National Park.

Response: As administrative investigation reports are completed, the NPS will provide confidential and redacted copies of those reports to the Committee as requested.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 30 2016

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

Dear Chairman Murkowski:

Enclosed are responses to questions received by the Bureau of Land Management following the September 22, 2016, hearing before the Senate Committee on Energy and Natural Resources regarding pending legislation.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

CS 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
September 22, 2016 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Neil Kornze**

Questions from Chairman Lisa Murkowski

Question 1: You maintained in your testimony that scheduled sales in the Chukchi and Beaufort planning areas in 2016 and 2017 respectively, were cancelled due to a lack of industry interest and market conditions. What specific information did you receive from industry that provides the basis for your statement? When did you receive such information? Please provide a list of documents that support your contention.

Response: Prior to moving forward with an OCS oil and gas lease sale, the Bureau of Ocean Energy Management (BOEM) issues a Call for Information and Nominations (Call). A Call is designed to provide BOEM with information about interest in OCS oil and gas leasing by requesting that industry identify specific blocks in a Program Area that appear promising for oil and gas exploration and development.

Relevant to the lease sale in the Chukchi Sea Planning Area (Sale 237), originally scheduled for 2016, a 45-day Call was published in the Federal Register on September 26, 2013, with a closing date of November 18, 2013. See <https://www.federalregister.gov/documents/2013/09/27/2013-23670/outer-continental-shelf-ocs-alaska-ocs-region-chukchi-sea-planning-area-proposed-oil-and-gas-lease>. The Call deadline was extended to accept information and nominations until December 3, 2013, due to the government shutdown that occurred in early October, 2013. In response to the Call, BOEM received no nominations from industry.

Relevant to the lease sale in the Beaufort Sea Planning Area (Sale 242), originally scheduled for 2017, a 45-day Call was published in the Federal Register on July 25, 2014, with a closing date of September 12, 2014. See <http://www.boem.gov/79-FR-44060/>. In response to the Call, BOEM received one nomination of interest from ConocoPhillips Company on September 11, 2014. After analyzing the single nomination, BOEM determined that there was no competitive interest in the Call area. The detailed information for the nomination is considered to be proprietary information and will be provided to Chairman Murkowski separately upon request.

Question 2: Do you agree that under ANILCA the Native Village of Shishmaref has the right to gain a transportation route across the Bering Land Bridge National Preserve?

Response: The Department is aware of the proposed relocation of the village of Shishmaref, and understands that the National Park Service's Bering Land Bridge National Preserve superintendent has been in communication with village representatives on this important matter. When the relocation occurs there will be a need for gravel/rock material. It remains to be determined what the best options are for obtaining these materials. One option would be to build a road from a new village site to Ear Mountain, which would cross approximately six miles of Bering Land Bridge National Preserve. Another option would be to obtain rock from an existing or new quarry and barge it to the new village. There is an operating quarry at Nome that may be the best and least

U.S. Senate Committee on Energy and Natural Resources
September 22, 2016 Hearing: Pending Legislation
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expensive alternative. The various alternatives will need to be investigated as the village relocation project progresses. If it is determined that the best option for obtaining rock for the village relocation is construction of a road to Ear Mountain and development of a quarry there, the NPS will work with Shishmaref and others on the ANILCA Title 11 requirements for that project.

Question 3: Concerning the Fortymile Mining District in Alaska:

- a. How, specifically, can mining operators engage with BLM, especially in light of BLM's pattern of inconsistencies and failed commitments to these operators, to ensure fair, reasonable, and permitted access and use, particularly when they have business and land use operations for which they must plan?

Response: The BLM is collaborating with partners, and stakeholders to develop well-defined and transparent criteria in order to provide a quantitative means to assess reclamation success. Once developed, the criteria will help to reconcile conflicting interpretations of the regulations and clarify expectations between the BLM and miners. The BLM has met with the Fortymile Mining District and the Alaska Miners Association (AMA) on numerous occasions to discuss the development of these criteria and to listen to their associated concerns. Staff have provided presentations at the AMA Convention in Fairbanks, the AMA Federal Oversight Committee, to the Fortymile Mining District in Chicken, and to BLM Alaska's Resource Advisory Committee. Each presentation included opportunities for stakeholders to provide input and feedback.

In the summer 2015, the BLM implemented the Jack Wade Creek Demonstration project in the Fortymile Wild and Scenic River Corridor to test new reclamation techniques for placer mined streams in Alaska. As part of this project, the BLM held a workshop to discuss reclamation evaluations and view the demonstration project in Chicken, Alaska. One of the successes from the workshop is that one of the area miners has asked the BLM to help develop another demonstration project in 2016 on his mine site. The BLM has committed funding and staff time to work with that miner to help him employ new reclamation techniques and to otherwise assist in his reclamation activities. This demonstration project is a great example of how the BLM is employing a collaborative approach to ensure placer miners will have the opportunity to carry on this historic activity for years to come.

Another opportunity for engagement with the BLM is through BLM-Alaska's Resource Advisory Council (RAC). The RAC is a 15-member advisory panel which provides advice and recommendations on resource and land management issues to the BLM. BLM-Alaska's RAC has diverse representation that includes a board member from the Fortymile Mining District. Through the advice of the RAC, BLM Alaska has established a placer mining subcommittee which has representatives from the AMA, Fortymile Miners, the State of Alaska, other placer miners and the conservation community to help facilitate engagement with placer miners on ensuring federal regulations are met and do

**U.S. Senate Committee on Energy and Natural Resources
September 22, 2016 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Neil Kornze**

not create an undue burden on the placer miner. The BLM held the first meeting of the subcommittee on July 27, 2016, in Tok, Alaska, which was attended by several local placer miners. Additional meetings to engage the subcommittee to assist in refining our processes and identify areas we can improve efficiency are planned for the spring.

The BLM will continue to work closely with all stakeholders on land management issues to both ensure applicable requirements are met and that placer mining continues to be viable in Alaska.

- b. What is your agency chain of command? Is it true that the State Director has no authority over field offices? Does Headquarters have authority over State offices?

Response: The BLM Director has authority, given to him by the Secretary of the Interior, over all BLM programs. The BLM State Directors have been delegated the authority by the BLM Director to oversee all the BLM offices and programs within their respective states.

Questions from Senator John Barrasso

Question 1: Senator Murkowski and Senator Flake have both proposed modest amendments to the Act with the desire to increase local input, and hopefully buy-in, from the public in the areas surrounding a potential monument designation. Given the Department's ongoing campaign to increase conservation partnerships and other collaborative efforts, does the Department believe that the President, as an elected official, should be able to proceed with processes like monument designations, regardless of potential public outcry and opposition?

Response: Used by presidents of both parties for more than 100 years, the authority granted to the President by Antiquities Act is one of the most important tools a president has to preserve and protect critical natural, historical, and scientific resources on Federal lands for future generations. It is a tool that this President has not used lightly or invoked without serious consideration of the impacts on current and future generations. The Administration has consistently invited public comment from national, state, local and Tribal stakeholders at meetings in local communities. However, requiring the formal approval of Governors and legislatures or additional formal processes prior to designation would limit the flexibility of the President to respond to impending threats to resources, and the ability of the President to recognize, protect and preserve areas of incredible importance to the Nation's heritage.

Question 2: Does the BLM or Department of Interior have a formalized notification process to inform state, local, and federal officials when considering or designating a monument?

Response: Designation of monuments under the Antiquities Act is a presidential, not Departmental, action. When examining whether to recommend particular monuments for

U.S. Senate Committee on Energy and Natural Resources
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Presidential action, the Department engages in consultation with national, state, local, and tribal stakeholders, in keeping with the President's commitment.

Question 3: Given the Park Service's significant deferred maintenance backlog, coupled with the fact that the agency manages most monuments post-designation, is the agency consulted about the size, scope, or scale of a prospective monument prior to designation? Does the agency have the ability to recommend changes to a proposed designation?

Response: Designation of monument, including its size and scope, under the Antiquities Act is a presidential, not Departmental, action. The President may request recommendations from the Secretary of the Interior, and the National Park Service (NPS) may provide input for the responses to those requests. This input can include NPS recommendations as to size, scope, or other issues.

The NPS is mindful of the deferred maintenance backlog and the contribution that new national monuments may have to it. To minimize the impact, the NPS pursues partnerships and philanthropic support to help staff and maintain new national monuments. For instance, with Katahdin Woods and Waters National Monument, the donor of the monument lands also donated \$20 million to help support the new monument and pledged to assist with raising another \$20 million. In the case of the Stonewall National Monument, the NPS and New York City signed a cooperative management agreement in which the City agreed to continue to provide daily maintenance of Christopher Park, the federally owned portion of the monument. The NPS is also considering partnerships with lesbian, gay, bisexual, and transgender groups to aid in interpretation of the site and with the Christopher Park Alliance, the group that has historically installed and maintained the landscaping in Christopher Park. Finally, with respect to the Belmont-Paul Women's Equality National Monument, NPS received a \$1 million donation to upgrade the ventilation system and address other maintenance issues. The site is also managed in cooperation with the National Woman's Party.

Question 4: In 2016 alone, the President has designated or expanded monuments to the tune of more than 285 million acres. That's a land mass of Texas, Louisiana, Oklahoma, and Arkansas, plus a few thousand acres. Following Senator Murkowski and Senator Gardner's line of questioning, how many more monuments does the President intend to designate in the final days of this administration?

Response: Designation of monuments under the Antiquities Act is a presidential, not Departmental, action. When examining whether to recommend particular monuments for Presidential action, the Department engages in consultation with national, state, local, and tribal stakeholders, in keeping with the President's commitment.

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Question 5: While not the subject of the hearing today, please provide an update on the BLM's process to develop mitigation policy, in compliance with the larger Department of Interior policy, as a result of the Presidential Memorandum on mitigation.

Response: The BLM's final mitigation policy is comprised of both a Manual and a more detailed Handbook. The BLM released these documents on December 23, 2016.

Questions from Senator Ron Wyden

Question 1: Director Kornze, I know the BLM and the Forest Service have been working together on a 5-year administrative mineral withdrawal of this same area, but during the 600-plus comments that we heard at your public meetings, almost all asked for either a 20 year or a permanent withdrawal. Is this something your agency is considering? Will you support either a 20-year or a permanent withdrawal? If not, what needs to happen to have you work with us and Oregonians to make either of those a possibility?

Response: On September 30, 2016, the U.S. Forest Service and the BLM published in the Federal Register a notice announcing an amended proposal for a 20-year withdrawal in southwestern Oregon. The public comment period for the 20-year withdrawal proposal closed on December 29, 2016. The BLM made a recommendation in support of the proposed withdrawal, which was signed by the Assistant Secretary for Land and Minerals Management on December 30, 2016.

Question 2: The BLM recently closed the comment period for a 5-year administrative mineral withdrawal for the same area that is identified in my bill, the Southwestern Oregon Watershed and Salmon Protection Act of 2015. Of course, an administrative withdrawal would expire after 5 years, while my bill would ensure permanent withdrawal and protections for this important ecosystem. Based on the comments you received during the comment period, is the local community and the state supportive of the withdrawal? Can you give examples of support demonstrated?

Response: The BLM received over 20,000 comments on the proposed agency withdrawal. A majority of these comments were in support of the withdrawal. The BLM received comments from members of the public, state and local agencies and elected representatives. The amended application would increase the duration of the withdrawal from 5- to 20-years, and would specify that the agencies themselves are requesting the withdrawal in order to protect certain resource values. The comment period for the amended application closed on December 29, 2016.

Question 3: What makes the Baldface Creek and Rough and Ready Creek, and the surrounding lands, an important place to protect and an unsuitable place for mining?

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Questions for the Record Submitted to the Honorable Neil Kornze

Response: Rough and Ready Creek and Baldface Creek are listed as eligible for National Wild and Scenic River designation by the U.S. Forest Service. This area is also home to a high concentration of rare plants. It is also a popular recreation destination due to its forested trails and scenic views.

Questions from Senator Jeff Flake

Question 1: Roughly half of the land within the boundaries of the proposed Grand Canyon Watershed National Monument falls under the BLM. What actions, if any, has the Department taken in regard to a possible designation of a new national monument in Arizona?

Response: Designation of monuments under the Antiquities Act is a presidential, not Departmental, action. The BLM is aware of continued interest in the protection of land surrounding Grand Canyon National Park, however, BLM has not taken any formal actions related to a possible designation by the President.

Question 2: Secretary Jewell has participated in public meetings about a proposed new national monument in Utah. Are you aware of any plans by the department to conduct public meetings about a possible new national monument in Arizona?

Response: The BLM is not aware of current plans by the Department for public meetings regarding a new national monument in Arizona.

Question 3: In a hearing last February, Secretary Jewell told me that when examining whether to recommend a new monument “the Department engages in consultation with national, state, local, and tribal stakeholders.” What should Arizona stakeholders expect that consultation with the Department to look like?

Response: The Administration consistently strives to take into account the interests and concerns of national, state, local, and tribal stakeholders, and invites public comment from these stakeholders, including at meetings in local communities. In fact, Administration officials, including from the Department, have attended many community meetings across the nation, and have heard from stakeholders interested in protecting the places that they care about. These officials have also heard from stakeholders concerned with the potential impacts of any such designation. Arizona stakeholders, as well as other interested stakeholders, should expect that their public comments will be considered prior to any decision by the President to invoke his authority under the Antiquities Act.

Question 4: In your written testimony you imply that S.2380 would “allow[] unlimited profit-generating activities on covered lands”. Does the Department view 43 CFR 2920 and 2030 as “allowing unlimited profit-generating activities”?

U.S. Senate Committee on Energy and Natural Resources
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Response: The 43 CFR 2920 authorizes the issuance of commercial, residential, industrial, and agricultural leases, permits, and easements under certain conditions, and 43 CFR 2930 authorizes permits for recreation. The cited regulations do not limit the amount of profit that can be generated by lessees from activities authorized on the lease. However, the regulations require that the authorized activities conform to BLM plans, policy, objectives and resource management programs as well as the payment of fair market value for all such profit-generating uses of the public lands.

Question 5: In your written testimony you state that S.2380 would “open[] covered lands to virtually any residential, agricultural, industrial, or commercial use.” The Recreation and Public Purposes Act as amended by S.2380 would allow a “pilot program to authorize commercial recreation concessions” (emphasis added). Please explain how the Department interprets residential, agriculture, or industrial uses to fall under a recreation concession.

Response: S. 2380 states that “any activity defined as permissible under parts 2920 and 2930 of title 43, Code of Federal Regulations, shall be permissible” with respect to land covered by an agreement under the bill.

Question 6: Please identify the number of commercial recreation concessions that the BLM allows to operate on BLM land and indicate whether the all the revenue from these concessions are used on the same lands which generated the revenues.

Response: The BLM currently manages 18 commercial leases authorizing commercial recreation activities on public lands. Commercial lease holders pay fair market value for the use of the public lands, and commercial lease revenues collected by the BLM are deposited in the General Fund of the U.S. Treasury. None of the revenue is retained or used for the management of the lands on which it is generated. Because commercial lease holders pay fair market value for the leases, the BLM places no additional restrictions on the revenues they generate.

Questions from Senator Steve Daines

Question 1: There is significant concern among many sportsmen groups about national monuments being managed for preservation, rather than for the multiple uses identified in the Federal Land Policy & Management Act (FLPMA). As you know, national monument proclamations typically include implied, rather than explicit, language permitting hunting and fishing. Many sportsmen groups are concerned federal agencies could prohibit hunting and fishing in certain monuments because these uses are not explicitly permitted in proclamations. It’s my understanding the Bureau of Land Management follows manuals for national monuments that describe permitted uses, including hunting and fishing. However, management plans for monuments managed by the National Park Service appear to be more site specific and often do

U.S. Senate Committee on Energy and Natural Resources
September 22, 2016 Hearing: Pending Legislation
Questions for the Record Submitted to the Honorable Neil Kornze

not allow hunting. Do you support including explicit language in all monument management plans to allow hunting and fishing in monument proclamations where these activities are appropriate?

Response: The BLM supports hunting and fishing on public lands, including national monuments, where appropriate. The BLM manages national monuments under its jurisdiction according to the Federal Land Policy and Management Act of 1976, including the principles of multiple use and sustained yield, consistent with the authority that designated each national monument (either a presidential proclamation issued under the Antiquities Act of 1906 or an individual Act of Congress). Discretionary uses on national monuments do not need to be explicitly included in a national monument proclamation to be allowed. Many historic uses on national monuments – including hunting and fishing – continue as they did before monument designation, unless specifically limited by law, regulation, policy, or by specific language in a proclamation. The BLM acknowledges and respects the State's role in setting hunting and fishing regulations and works closely with them on the management of fish and wildlife on public lands, including national monuments.

Question 2: Many proposed national monument areas include robust big game populations, including elk and mule deer, and are appropriate for hunting. Active habitat management projects such as thinning, water development, prescribed fire and timber harvest can benefit wildlife in these areas. Water developments such as wildlife water guzzlers are especially critical for proposed monuments in the arid southwest. Do you support authorizing habitat management projects in monument management plans, where needed?

Response: The BLM supports habitat management projects on public lands, including national monuments, where appropriate.