

**Testimony to the Subcommittee on Energy and Mineral Resources
Implementation of Title III, Oil and Gas Provisions, of the Energy
Policy Act 2005**

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Chairman Jim Costa, Ranking Member Steven Pearce and members of the Committee, thank you for inviting me to address this committee and for the opportunity to express my experience and views on the Implementation of Title III, Oil and Gas Provisions, of the Energy Policy Act 2005.

My name is Oscar Simpson and I am the former President of the New Mexico Wildlife Federation, a sportsmen and conservation organization that was founded in 1914 by Aldo Leopold. I am the Conservation Policy Chair for the New Mexico Wildlife Federation and work for the National Wildlife Federation representing the hunters and anglers of New Mexico. The National Wildlife Federation is the largest mainstream conservation organization in the United States representing approximately 4 million members and supporters in the US and nearly 25,000 members and supporters in New Mexico. I am a native New Mexican and an avid sportsman who has hunted and fished for the majority of my 59 years. I have had the good fortune to recreate in many areas throughout the western United States enjoying our public lands majestic landscapes and abundant wildlife. From 1980 to 1998, I was involved in public land and wildlife policy on a volunteer basis. My primary focus during this time was on public land management and its effects on hunting and fishing, so I feel especially fortunate to sit before you today and share some of my personal experiences.

I also have over 30 years of professional experience with water resource management and regulation. I worked in the private sector for eight years and for the State of New Mexico for 17 years. As a state employee I dealt with the regulation of oil and gas development for four years and then with public water supplies for 14 years. For the past nine years, I have primarily dealt with federal and state management of water, habitat and wildlife resources and impacts from oil & gas development.

I am here today with a simple message, the Energy Policy Act of 2005 is nothing short of an assault on our western culture and way of life. Hunting and angling is a treasured recreation activity handed down through the generations and a way of life in the West. I want sportsmen to be able to pass our treasured legacy on public lands down to the next generation. The impacts from this law have affected hunters and anglers from all walks of life. It has diminished the quality and quantity of our hunting experiences in the Rocky

Mountain West. We have been locked out of the decision making process and denied our birthright. .

Not only is hunting and angling a key aspect of Rocky Mountain culture, it is a key aspect of our economy. According to the Sonoran Institute there are over 38 million hunters and anglers in the United States, generating \$70 billion to the economy per year. In New Mexico, a combined 351,000 hunters and anglers generated \$14 million in fees alone in 2000.

I have seen with my own eyes that energy development in the Rocky Mountain West can affect fish and wildlife habitat and hunting and angling opportunities in profound ways. While we sportsman are pragmatic in our approach and realize that energy development is a legitimate use of public lands, we also believe that it should occur in a manner that minimizes habitat fragmentation and water quality degradation. Every oil and gas project on public lands should specifically be designed to avoid and minimize impacts to fish and wildlife habitat and water resources.

According to the Department of the Interior's January, 2003 Energy Policy and Conservation Act ("EPCA") study, 85 percent of federally owned oil resources and 88 percent of federally owned gas resources in the Rocky Mountain states are available for exploration and drilling. Over the past seven years there has been an exponential rate of oil & gas development on these land in the Rocky Mountain West. In 2004, the BLM issued a record number of 6,130 drilling permits on BLM lands. Unfortunately administrative streamlining and Congressional legislation have forced the federal Bureau of Land Management (BLM) to promote oil & gas development of our public lands with little regard for that development's impact on water, wildlife and the ecosystem. In short, the Bush administration has clearly elevated oil and gas development as the dominant use on our public lands and I have witnessed it first hand.

In my experience, the effect of oil and gas development on wildlife and habitat are severe and wide-ranging, and are not limited to the direct areas that are disturbed for various phases of oil and gas development (drill pads, roads, pipelines, power lines, compressor stations, road traffic, etc).

For instance, the Pinedale Anticline in Wyoming and the Powder River Basin in Montana and Wyoming are case studies that directly highlight the damage that misguided oil and gas development causes for wildlife. For example, a multi-year study in the Pinedale Anticline has documented a 46% decline in mule deer use of prime habitats during the first four years of gas development. Since 2002, the mule deer population in the Anticline has fallen from 5,228 to only 2,818 in 2005, in other words this much beloved game species has declined by half in just three years. The study found no evidence of a similar decline in the nearby "control area" on the Wind River Front, where no drilling is occurring. This study clearly shows what those of us who see the on the ground impacts of oil and gas on a daily basis have known for a long time, when oil and gas development is done without specific regard for wildlife conservation, it leads to direct detrimental impacts on game and fish species (Sawyer, et al. 2006).

A BLM commissioned study which analyzed the potential impacts of coalbed methane development on sage grouse in the Powder River Basin of Montana and Wyoming, found that areas where methane wells are being drilled did not have the same strong population growth recorded elsewhere in the basin. The study found bird populations in 2005 were at only 12% of what they were in 2000. Populations that were outside the area impacted by development were closer to 70% of their previous numbers (Naugle, et al. 2006).

Oftentimes I hear the argument that the impacts of oil and gas to wildlife are minimal because there is a small surface area that is directly disturbed by development. However, it is well documented that the damage to wildlife habitat from oil and gas development extends well beyond the areas where wells, roads and other supporting facilities are placed. Oil and gas development leads to substantial fragmentation of wildlife habitat, which in turn leads to avoidance of large areas of the affected landscape due to behavioral responses of wildlife and game species. This results in a significant reduction of viable habitat and the chance of survival for wildlife.

According to the Wyoming Game and Fish Department (WGFD), “As densities of wells, roads, and facilities increase, the effectiveness of adjacent habitats can decrease until most animals no longer use the habitat.” WGFD also notes that while “direct loss or removal of habitat is always a concern,” there are additional problems because “oil and gas developments are typically configured as point and linear disturbances scattered throughout broader areas.” WGFD specifically discusses how an apparently low percentage of direct disturbance on the land can cause substantial problems for wildlife; the report states:

“Collectively, the amount of disturbance may encompass just 5-10% of the land. However, avoidance and stress responses by wildlife extend the influence of each well pad, road, and facility to surrounding habitats.”

The damage caused by such oil and gas drilling is dramatic: studies have shown that road densities of two miles per square mile causes a 50% reduction in elk populations, while six miles of roads per square mile drives almost 100% of the elk from the area (Lyon 1983).

Pronghorn are even more sensitive to disturbance. The BLM stated in 1999 Draft EIS for development of the Pinedale Anticline that pronghorn are adversely affected at road densities of one mile per square mile (BLM 1999).

The National Wildlife Federation is not opposed to energy development on public lands, however, we expect our public lands to be developed in a responsible manner that embraces multiple use, and minimizes the impacts of oil and gas development to the other uses of these lands. The BLM can avoid or at least limit the damage from oil and gas development by controlling the amount of development (and resulting surface

disturbance and destruction) that occurs and by requiring that oil and gas operators develop federal resources with maximum efforts to minimize damage.

In regards to Title III of the Energy Policy Act of 2005, sportsmen in our organization have expressed concern over its impacts to wildlife and the western way of life. We support the following changes to oil and gas permitting and implementation.

- Congress should require that development occur with the smallest footprint possible and with the minimum effect to fish and wildlife resources. Congress should mandate the use of Best Management Practices such as directional drilling, well clustering, no surface occupancy standards, maximizing spacing between wells and well clusters, phased development, and restoration of sites impacted by energy development including eradication of invasive species.
- Where state wildlife agencies have adopted policies or guidelines with respect to energy development in sensitive wildlife habitats, BLM should make these requirements a mandatory minimum level of protection. In addition, Congress should require the Forest Service and BLM to maintain viable populations of native wildlife in natural patterns of abundance and distribution.
- The practice of federal agencies waiving permit stipulations has contributed to the public controversy over oil and gas leasing and to the perception that environmental concerns are less important than extraction of energy. Existing fish and wildlife stipulations must be upheld. If changes are proposed, they should take place with public scrutiny and environmental review. Congress should enact a requirement that energy company and federal agency proposals to waive protective measures for fish and wildlife are conditioned on public involvement and environmental analyses. In addition, BLM and the Forest Service should place sensitive fish and wildlife habitats under irrevocable no surface occupancy stipulations.
- Too many areas that are of vital importance to fish, wildlife, and water resources are leased for energy development. Congress should mandate that BLM and the Forest Service develop agency-specific policy directives that prohibit new leasing in fragile but unprotected areas, such as proposed Wilderness areas, national conservation areas, National Forest roadless areas, BLM areas of critical environmental concern, eligible wild and scenic river areas, and state designated fisheries of significance (for example, blue ribbon/gold medal trout streams). Lands in these categories have special fish, wildlife, hunting, and angling resource values that are incompatible with oil and gas development.
- BLM routinely diverts biologists away from their primary duties to assist in processing drilling permits. In addition, funding intended for wildlife conservation programs is diverted toward energy development programs. The result is that crucial fish and wildlife management activities and monitoring of energy development impacts on fish and wildlife are falling behind with

potentially deleterious effects on hunting and angling. Congress should prohibit the diversion of inspection and monitoring funding for permitting and leasing activities.

Instruction Memorandum No. 2003-234, issued by this Administration, required BLM staff to review all existing lease stipulations to determine if they were still “necessary and effective” and directed that, if “lease stipulations are no longer necessary or effective, the BLM must consider granting waivers, exceptions, or modifications.” Now, the agency should be directed to undertake a review on a similar scale to add lease stipulations and strictly limit opportunities for waiver, exceptions and modification, and also to add conditions of approval (COAs) for drilling permits, that will protect wildlife habitat and other natural resources.

I have briefly highlighted how the BLM should manage energy development and protect our wildlife and public lands. Unless Congress takes immediate legislative action to reform the oil and gas provisions of Title III of the Energy Policy Act of 2005 nothing will change. Other witnesses will follow that will recommend specific changes for your consideration.

Citations:

Naugle, David E., K. Doherty and B. Walker. “Sage-Grouse Winter Habitat Selection and Energy Development in the Powder River Basin: Completion Report.” Wildlife Biology Program, College of Forestry and Conservation, University of Montana, Missoula, Montana (2006). Available on-line at: http://www.voiceforthewild.org/SageGrouseStudies/Winter_habitat_report.pdf

Sawyer, H., R. Nielson, F. Lindzey, and L. McDonald. "Winter habitat selection of mule deer before and during development of a natural gas field." *Journal of Wildlife Management* 70(2006):396-403. Available online at: http://www.west-inc.com/reports/big_game/Sawyer%20et%20al%202006.pdf

Bureau of Land Management. 1999. Draft EIS for the Pinedale Anticline Oil and Gas Exploration and Development Project, Sublette County, WY. U.S. Department of the Interior, Bureau of Land Management, Pinedale Field Office, Pinedale, WY.

Lyon, L.J. 1983. Road density models describing habitat effectiveness for elk. *Journal of Forestry* 81: 592-596.

New Mexico Department of Game and Fish, Conservation Services Division. 2005. Habitat Fragmentation and the Effects of Roads on Wildlife and Habitats. This document is available on NMGF’s website at: http://www.wildlife.state.nm.us/conservation/habitat_handbook/EffectsofRoads.htm

Wyoming Game and Fish Department. 2004. Minimum Recommendations for Development of Oil and Gas Resources Within Crucial and Important Wildlife Habitats

on BLM Lands. This document is available on WGFD's website at:
<http://gf.state.wy.us/habitat/index.asp>.

Backcountry Bounty: Hunters, Anglers and Prosperity in the American West, 2006. See
www.sonoran.org/programs/socioeconomics/backcountry_bounty.html.

Summary of best management practices recommendations:

- Directional drilling to permit oil and gas development while reducing surface impacts to important areas;
- Closed loop drilling to protect water and soil from toxic chemicals;
- Clustered development based upon best available technology to minimize surface area development and impacts, and to reduce noise and dust caused by traffic to and from drill sites;
- Use of existing roads to the maximum degree possible and minimization of the length and environmental impact of new roads constructed to service well locations;
- Formally consult with State divisions of wildlife and other agencies before setting the number of active drill pads within an area to identify important fish and wildlife habitats;
- Maximize surface spacing and minimize surface disturbance and habitat fragmentation;
- Shorten the duration of ongoing disturbance by prohibiting intermittent drilling;
- Require interim reclamation and immediate, complete post-drilling restoration of land, including rigorous control of noxious weeds, such that any land not in use or needed for ongoing operations will be reclaimed;
- Require operators to apply best available control technology to reduce noise, water and air pollutants;
- Ensure that wildlife corridors are left undeveloped to allow for wildlife movement;
- Increase bonding to a level and form that is sufficient to cover all reclamation.
- Designating areas off limits to future oil and gas leasing pursuant to BLM or Forest Service land use plans.