STATEMENT OF HENRI BISSON, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, AND WALTER CRUICKSHANK, DEPUTY DIRECTOR, MINERALS MANAGEMENT SERVICE, BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES ON H.R. 2337, THE ENERGY POLICY REFORM AND REVITALIZATION ACT OF 2007.

MAY 23, 2007

Thank you for the opportunity to appear before you today to discuss H.R. 2337, the proposed "Energy Policy Reform and Revitalization Act of 2007. This bill focuses on four major areas: amendments to the Energy Policy Act of 2005 (EPAct); changes in the way we collect revenues and ensure compliance from development on public lands; encouragement of more alternative energy development and efficiency; and climate change and its impact on federal lands.

H.R. 2337 was introduced on May 16, 2007. The Administration is still reviewing its provisions and their impact on current efforts to increase domestic production of energy on our public lands and decrease our dependence on foreign sources of energy. We therefore are unable to provide the Committee with an Administration position on this legislation at this time. We would like to discuss some of the major provisions of the bill that affect the programs of the Department of the Interior. Before we do that, however, we believe it is important for the Committee to understand some of the very dynamic activities that are currently ongoing with regard to energy development, environmental conservation, and climate change on public lands.

As you know, an imbalance exists between our energy consumption and domestic energy production. We are looking at ways to reduce the amount of energy we use and increase the amount we produce. Last year, in the State of the Union Address, President Bush declared his continuing intention to secure America's energy future through diversification of resources and advanced technologies, which includes promoting dependable, affordable, and environmentally-responsible domestic energy production.

In passing the EPAct, Congress made clear that it shares the President's goal of providing access to reliable domestic energy supplies that are crucial to the economic health and security of every American household and business. The President's State of the Union proposals build upon the incentives and streamlined procedures for Federal resource agencies to cooperate in meeting this challenge set forth in EPAct. Currently, the Department of the Interior is doing its part in implementing these incentives. The Administration is committed to working with Congress on important energy legislation. However, we believe Congress must be careful in considering new energy legislation not to undo the positive steps it took in enacting the EPAct.

The United States continues to face an energy challenge with high prices and increasing dependence on foreign supplies. Our security, economy, and our quality of life are dependent on energy. As this Committee knows well, there is no single solution. Achieving energy security will require diligence on both the supply and demand sides of the energy equation. Oil and gas will continue to be vital to the American economy. According to the Energy Information Administration (EIA), over the next 20 years Americans' demand for energy is expected to grow 25 percent. Even with more renewable energy production expected, oil and natural gas are projected to account for a majority of energy use through 2030 without any policy changes. This projection incorporates continued gains in energy efficiency and movement away from energy-intensive manufacturing to less energy intensive service industries.

Onshore Oil and Gas Resources

Lands managed by the Department of the Interior produce one-third of all domestic coal, oil and natural gas. Demand for natural gas is expected to increase 50 percent over the next 20 years and oil consumption 30 percent. Much of the oil and gas that American consumers and businesses depend upon comes from foreign sources. This is a huge drain on the Nation's economy. For many reasons, the Nation is looking more and more at domestic resources from public lands.

The Bureau of Land Management (BLM) is the steward of 258 million surface acres of public lands and 700 million acres of subsurface mineral estate and manages them in accordance with the 1976 Federal Land Policy and Management Act. Of the 700 million-acre Federal mineral estate we manage, only about 42 million acres, or six percent, are leased. Of that, 12.3 million acres, less than two percent of the Federal mineral estate, are in producing status. As of 2006, the BLM had just over 48,000 leases, totaling approximately 42 million acres. In 1984, the BLM managed over 115,000 leases, totaling about 131 million acres. In comparison, there were almost two-and-a-half times as many leases in effect in 1984, and three times as many acres under lease. Leasing decisions are not arbitrary, but are based upon land use plans where decisions are made on availability of areas for leasing and the protection required. Before deciding to offer lands, BLM does additional environmental review and considers new information or circumstances. Where other important uses or resources exist, BLM may protect the resources and lease the land using a variety of tools and stipulations. Or, the BLM may decide not to lease the land.

In 2008, public lands will generate an estimated $4.5 billion in revenues, mostly from energy development. Approximately 44 percent of these receipts are provided directly to States and counties to support roads, schools, and other community needs. These activities also contribute to a more secure and reliable energy future for our country, providing a mix of both renewable and conventional energy supplies from the public lands. The Phase II study conducted under Energy Policy Conservation Act of 2000, and reauthorized in the Energy Policy Act of 2005, found that Federal lands in the 11 basins

studied contain 187 trillion cubic feet (mean estimated) of undeveloped natural gas, enough to meet current domestic consumption for 8.5 years.

Healthy Lands Initiative

A high priority of Secretary Kempthorne is the Healthy Lands Initiative, which was included in the President's FY 2008 budget request. As activities on public lands increase, we are seeing growing conflicts among recreation users, energy developers, hunters, ranchers, and others all competing to protect, access, and use these public lands. Through the Healthy Lands Initiative, the BLM will join with the U.S. Geological Survey and the U.S. Fish and Wildlife Service to identify, restore, and mitigate the potential impacts of increased energy production in wildlife-energy interface areas and increase available habitat for specific species, including sage grouse.

Land health is being affected by pressures such as community expansion, wildfires, demands for energy resources, ever-expanding recreation uses, and weed invasion. These pressures often interact among themselves to affect large landscapes and ecosystems, particularly those in the growing wildlife-energy interface.

A different management approach is urgently needed to meet these challenges. The Healthy Lands Initiative is intended to go beyond the ongoing reclamation and mitigation activities required of developers of energy resources operating on our public lands. Taking aggressive steps now will help avoid the need for future restrictions on uses of public land that would directly affect the Nation's economy and quality of life.

Under current laws, regulations, and permits, the BLM requires oil and gas operators to plug all wells and reclaim all areas disturbed by development when wells are no longer capable of producing in paying quantities. As a result, remediation, reclamation, and restoration of the surface and downhole impacts are largely borne by the oil and gas industry. The Healthy Lands Initiative in the 2008 budget request will allow the BLM to expand restoration and mitigation activities into areas where previously the land was heavily impacted by historic oil and gas activities and invasion of undesirable species. It will also provide nearby habitat for wildlife that may look for alternative locations away energy development.

Offshore Oil and Gas Resources

The Federal Outer Continental Shelf (OCS) covers 1.76 billion acres and is a major source of crude oil and natural gas for the domestic market. In fact, according to the Energy Information Administration, if the Federal OCS were treated as a separate country, it would rank among the top five nations in the world in terms of the amount of crude oil and second in natural gas it supplies for annual U.S. consumption.

Since 1982, the Minerals Management Service (MMS) has overseen OCS production of 11 billion barrels of oil and more than 116 trillion cubic feet of natural gas.

Since 1982, the number of active OCS leases has increased by 172 percent and oil production is 52 percent greater, in spite of the drop in production from the 2004-2005 hurricane seasons. According to MMS's calculations, within the next 5 years, offshore production will likely account for more than 40 percent of oil and 20 percent of natural gas production in the U.S., primarily due to deep water discoveries in the Gulf of Mexico.

Our analysis indicates that implementing the new OCS 5-Year Program will result in a mean estimate of an additional 10 billion barrels of oil and 45 trillion cubic feet of gas over a 40-year time span, and $170 billion, in today's dollars, of net benefits for the nation. As offshore production increases, we will continue to coordinate closely with resource management agencies to ensure that this development is done responsibly.

As part of the OCS inventory requirements of the Energy Policy Act of 2005 (EPAct), MMS completed an assessment of the potential quantities of undiscovered technically recoverable oil and gas resources that may be present on the OCS. According to this assessment, the OCS is thought to contain (at the mean level) 86 billion barrels of oil and 420 trillion cubic feet of natural gas. For comparison, the most recent resource assessment estimates from the United States Geological Survey's National Oil and Gas Assessment indicate that the total mean, undiscovered technically recoverable resources for onshore and State owned waters offshore are approximately 46 billion barrels of oil and 627 trillion cubic feet of natural gas (at mean levels).

To support increased production offshore, MMS's Proposed Final 5-Year OCS Oil and Gas Leasing Program for 2007-2012 proposes a total of 21 lease sales. The Proposed Final Program was presented to the President and Congress on April 30, 2007. After 60-days the Secretary will approve the Program to take effect on July 1, 2007.

Renewable and Alternative Energy

In his State of the Union Message on January 23, 2007, President Bush asked Congress and America's scientists, farmers, industry leaders, and entrepreneurs to join him in pursuing the goal of reducing U.S. gasoline usage by 20 percent in the next ten years – Twenty in Ten. One key component of the strategy to meet this goal is to increase the supply of renewable and alternative fuels. There is no single solution, but the Administration believes that renewable and other alternative sources are integral components of our Nation's energy future.

The EPAct encourages the development of renewable energy resources as part of an overall strategy to develop a diverse portfolio of domestic energy supplies for our future. The quantity of domestic renewable energy produced on Federal lands is small in comparison to conventional resources. However, the growing cost of conventional energy resources and the need to diversify our energy portfolio has spurred an increased interest in renewable energy development on federal lands both onshore and offshore.

Geothermal: A significant portion of the existing and future geothermal resources in the United States are on Federal lands. The BLM currently manages 354 geothermal leases, 55 of which are producing and generate over 1,250 MW of electrical power (enough to power 1.2 million homes). In addition, the BLM manages a small number of direct-use leases, which provide an alternative source of energy for greenhouses, fish farms, and other commercial facilities. Demand for both electrical power and direct-use from Federal geothermal resources is increasing. Since 2001, the BLM has processed more than 200 geothermal lease applications, compared to 20 lease applications received from 1997-2001. Geothermal energy generates over $12 million in Federal revenues each year.

The BLM and Forest Service signed an Interagency Memorandum of Understanding (MOU) in April 2006 in accordance with section 225 of the EPAct. The MOU sets the foundation for increasing the collaborative approach between the agencies. The BLM and Forest Service have decided to prepare a Programmatic Environmental Impact Statement for Geothermal Development to assist in geothermal leasing and permitting on BLM public lands and National Forest lands. A draft of the Programmatic EIS is tentatively scheduled for release in December 2007.

The U.S. Geological Survey is also conducting a national geothermal assessment scheduled to be complete at the end of September 2008.

Wind Energy: Section 211 of the EPAct provides a sense of the Congress that the Secretary of the Interior should seek to approve at least 10,000 MW of non-hydropower renewable energy projects on BLM-managed public lands by the year 2015. There are 330 MW of installed wind energy projects on public lands, and another 599 MW proposed or recently approved, creating the potential to power nearly 300,000 homes. Responding to increasing demand for wind power, the BLM has granted over 100 authorizations associated with wind energy in the last five years, compared with fewer than five issued between 1997 and 2001.

A programmatic Environmental Impact Statement (EIS) relating to the authorization of wind energy projects was completed in 2005. This EIS amended 52 BLM land use plans and provides the foundation for environmental analysis of future wind proposals on BLM lands. The BLM has identified 20.6 million acres of public land in the West with wind energy potential. Because wind energy facilities require only small amounts of land, actual development will involve just a fraction of that acreage.

In 2006, the BLM updated internal policy that implemented Best Management Practices and other mitigation measures for wind energy projects to avoid impacts to sage-grouse, raptors, bats and migratory birds, and to minimize habitat fragmentation, ground disturbance, and noise. These measures, combined with advances in technology, are allowing increased capacity to generate wind energy on public lands while conserving other important resource values.

Solar: Recognizing the recent technological advances in the production of solar energy, the BLM updated policy guidance for processing applications for solar energy projects on public lands. The latest policy guidance directs BLM field offices to provide adequate resources to review and process applications for solar energy projects in a timely manner. The guidance also requires the BLM to address solar development when revising or updating land use plans for areas shown to have potential for commercial solar energy development.

The policy requires appropriate stipulations in authorizations to mitigate environmental impacts of projects, as well as bonding to ensure compliance and site reclamation. The guidance also describes the level of environmental review required before an authorization can be issued. The development and use of solar energy has significant potential in the Western states. The BLM is prepared to respond to industry interest in this renewable energy resource.

Biomass: Biomass from the public lands managed by the BLM is predominantly woody debris, the by-product of hazardous fuels removal projects undertaken to reduce the risk of wildland fire and projects to improve forest and rangeland health. Since implementation of its biomass strategy, the BLM increased its biomass offering from 30,000 tons in FY 04 to 122,000 tons in FY 06.

BLM has undertaken biomass demonstration projects across the West, including Alaska, California, Colorado, Idaho, and Oregon, in which local field offices are working with nearby communities and entrepreneurs to develop strategies for using biomass to generate energy. In 2006 in Lakeview, Oregon, the BLM, the Forest Service, and 20 others representing local government, business, and non-profit organizations signed a Declaration of Cooperation in support of a 10-15 MW Biomass Energy Facility with the potential to supply electricity to more than 14,000 homes. The proposed Biomass Energy Facility is expected to be operational in 2008.

In Central Oregon, the BLM and Forest Service have committed to offering 80,000 tons of woody biomass material annually to the Confederated Tribes of Warm Springs. In addition, the proposal will treat 10,000 acres per year of forest and grasslands hazardous fuels for the next ten years. The Tribe will use the agencies' long-term commitment to provide biomass material to expand its existing energy facility near Warm Springs, Oregon.

Section 210 of the Energy Policy Act authorizes Federal grants for biomass use. BLM assisted the Forest Service with reviews and selections of Forest Service Biomass Grants in FY 2006 and 2007. Eighteen small enterprises received $4.2 million in grants to develop innovative uses for wood biomass as sources of renewable energy and new products in 2006, and 26 small businesses and community groups received grants totaling $6.2 million in 2007. The grant recipients were selected based on their capacity to increase biomass use on Forest Service land; however, 14 of them have the potential to also increase biomass use on BLM lands. Together with the non-federal matches required

by the grant program, a total of approximately $12 million will be spent on these biomass projects in FY 2007.

MMS's Alternative Energy Program. The Administration first proposed legislation to establish an OCS alternative energy program in June 2002. After careful analysis of the mechanisms that were currently in place to handle requests for innovative, non-traditional energy-related projects on the Federal offshore lands, it became clear that—with limited exceptions—there existed no clear authority within the Federal government to comprehensively review, permit, and provide appropriate regulatory oversight for such projects. This meant that the vast majority of OCS alternate energy-related projects that were, or might be, contemplated by the private sector had no clearly defined permitting process. There was no single agency with an overarching role to coordinate that process.

Section 388 of the EPAct amended the OCS Lands Act, and granted the Department discretionary authority to grant leases, easements or rights-of-way for activities on the OCS that produce or support production, transportation, or transmission of energy from sources other than oil and gas. Simply put, the new authorities under EPAct give the Department the ability to manage the future development of promising new ocean energy sources in the OCS such as wind, wave, and ocean current. Additionally, the Department now has the authority to grant leases, easements, or rights-of-way for other OCS activities that make alternate use of existing OCS facilities.

The MMS is working diligently to develop a regulatory program to authorize offshore alternative energy proposals. The MMS is developing regulations to implement the new EPAct authority and expects to publish a proposed rule in fall of 2007 and a final rule in early 2008.

Interest in OCS-based alternative energy development in the United States is growing, particularly in the Northeast and along the west coast. Many of these coastal states have put in place renewable energy portfolio standards (RPS) requiring utilities to substantially increase their reliance on renewable energy sources. For example, in the Northeast, New York has set a goal for public utilities to achieve a 25% share by 2013, one of the most aggressive targets in the country. In the Pacific West, Oregon has instituted a plan that calls for renewable energy to account for a 25% share, approximately 1,600 megawatts (MW) by 2025, while California has codified a renewable energy target of 20%, approximately 5,500 MW, by 2010. To put this into perspective, according to the Edison Electric Institute, based on 2005 average annual usage by U.S. residential customers, one megawatt of electricity powered roughly 790 homes. The OCS can provide clean sources of energy and has a role in helping states and the Federal Government meet their renewable energy targets.

Government resource estimates and industry interest indicate that the OCS has the potential to provide several significant sources of alternative energy. According to estimates provided to the MMS by the Department of Energy (DOE), the potential offshore wind resource, excluding Alaska and Hawaii, is 2,500 gigawatts (GW), ocean waves 240 GW, ocean tides 7.5 GW, and ocean currents 2.5 GW. Since the enactment of

EPAct, the MMS has spoken to several companies and become aware of dozens of potential development proposals involving offshore wind off the east coast from Virginia, north to Massachusetts, and wave energy development offshore Northern California and Oregon.

Several coastal states (i.e., New Jersey, California, Washington, and Oregon) have approached MMS about partnering to efficiently evaluate and offer prospective OCS areas for lease for renewable energy projects. To promote such cooperation and coordination, the MMS proposes to establish federal/state task forces — a concept that has been used successfully in MMS's Marine Minerals Program — and to begin assessing potential development and environmental implications.

Climate Change and the Department of the Interior

Perhaps no subject relevant to managers of public lands and waters is as complex and multi-faceted as climate change. A changing climate may affect precipitation patterns, types and distribution of vegetation, incidence and severity of storms, the habits and habitat of wildlife, fire frequency, sea levels, and disease trajectories.

Interior manages one in every five acres of the U.S. land mass. We operate dams and irrigation facilities that provide water to farmers who generate nearly two-thirds of the Nation's produce. We manage leases from which one-third of the Nation's domestic energy supplies are produced. The lands and waters we manage account for significant contributions to alternative energies such as biomass, geothermal, solar, and wind power. Our presence along the Coast is significant, with extensive areas of shoreline managed by parks and refuges. Interior's U.S. Geological Survey plays an important role in generating earth science information and analysis. The Department also has a special role working with the State of Alaska and rural and Native Alaskan populations in maintaining fish and wildlife to support subsistence harvests.

To coordinate and focus our efforts on climate change, Secretary Kempthorne convened a Climate Change Task Force. The Task Force comprises three subcommittees. The first, on legal and policy issues, is reviewing current practices for considering climate change effects in land-use planning and other formal procedures and decisions. That subcommittee is also reviewing relevant court decisions, Administration policies, and practices of other agencies. The second subcommittee focuses on land and water management. It is cataloguing the types of impacts relevant to Interior managed lands and waters; evaluating current and prospective options for addressing the effects of climate change, including examining our role in carbon sequestration; and evaluating the management of Interior's facilities and fleet to identify opportunities for energy conservation and a broadening of the mix of energy resources we use.

The third subcommittee, chaired by USGS scientist Tom Armstrong, will focus on climate change science issues specifically relevant to Interior's responsibilities. The subcommittee will explore whether modeling might be developed at regional scales to better project more location specific changes to the landscapes we manage. They will

evaluate information needs and whether new types and greater extent of monitoring might strengthen our understanding of on-the-ground trends in water availability and timing of flows, vegetative patterns, movement of species and so on.

Interior is also developing ways to cost-effectively broaden the portfolio of energy sources we use in our operations, and increase energy efficiency in Interior's facilities and vehicle fleet. Interior manages approximately 145,000 facilities, more than any other agency except the Department of Defense. With many diverse facilities, Interior has opportunities to showcase for the Nation energy conservation strategies. Already, use of renewable energy accounts for nearly 15 percent of the Department's energy use. With that percent, we outperform much of the Nation.

Over the past 15 years, we've developed some 867 on-site renewable energy projects that include solar thermal projects, geothermal heat pumps, photovoltaic and wind projects. Interior's consumption of petroleum based products in vehicles has declined 15 percent since 1999. We've achieved these reductions by reducing the size of the motor vehicle fleet, right sizing vehicles to meet mission requirements, and using alternative fuels. In fact, over 2,400 alternative fuel vehicles are part of Interior's motor vehicle fleet.

The Proposed Energy Policy and Revitalization Act of 2007

We appreciate the opportunity to review and comment on H.R. 2337. We hope to provide a more comprehensive statement of views on the bill in the near future. There are provisions in this bill that, if enacted, we believe will unnecessarily impede development of domestic energy resources on public lands. This is of great concern to us. As was mentioned above, the demand for energy in the U.S. is increasing. We believe that federal lands both onshore and offshore hold huge potential for meeting that demand in an environmentally sound manner.

Section 101 – Cost Recovery

Section 101 would repeal the Permit Processing Improvement Fund created by the EPAct, repeal the cost recovery prohibition in section 365(i) of EPAct and substitute an APD cost recovery fee as the source of funding for the pilot office project established by EPAct. We strongly support the EPACT repealer proposed in the President's FY 2008 Budget request. However, H.R. 2337 does not outline a source of funding for the interim period between elimination of the Permit Processing Improvement Fund and the implementation of the final cost recovery rule. The Department plans to submit a legislative proposal to the Committee on this issue before the Committee marks up this bill that will address this deficit. Establishment of an interim fee is critical to ensure that the pilot offices can proceed without interruption to the overall purposes of the pilot program and without disruption to the employees BLM has already hired to carry out its implementation.

Section 104 – Oil Shale and Tar Sands Leasing

Section 104 would amend the EPAct to extend certain timelines for the development of a program for oil shale and tar sands leasing. Although Section 369 of EPAct, as currently

drafted, does not require the Secretary to conduct commercial lease sales for oil shale or tar sands, it does require that BLM put in place a framework for future commercial oil shale leasing and establishes certain deadlines for steps in this process. It also requires the Secretary to consult with Governors, representatives of local governments, and affected Indian tribes to determine the level of support and interest in developing these resources before any future commercial development is authorized. We believe this is a reasonable approach.

The EPAct declares that oil shale and tar sands are a "strategically important domestic resource." Section 369's first requirement calls for initiating a research and development program to develop the technology. This R&D leasing program is already underway. We understand that developing the technology necessary to safely produce this resource is the first order of business.

The EPAct then calls for the development of a programmatic EIS (PEIS) for a broad region encompassing portions of the States of Colorado, Utah, and Wyoming. This PEIS is the first tier environmental study needed to amend the land use plans for areas where oil shale and tar sands resources are present to provide the opportunity for leasing federal land for commercial oil shale and tar sands development if appropriate. Prior to development, additional NEPA analysis will be completed on a site-specific basis. This PEIS is underway with all three states as "cooperating agencies" with each fully involved in the entire development of the document. Each State has a representative assigned to work with BLM on the PEIS. Under this process, no leasing is envisioned until 2010 at the earliest. If leasing does occur by then, no production is expected until 2017.

The EPAct also calls for preparation of "final" regulations for a leasing program. This rulemaking process is an entirely public process in which all three affected states are key players. Prior to any commercial leasing, the Act requires the Secretary to consult with the Governor of each State, and with representatives of local governments, and affected tribes. If the Secretary finds that sufficient support and interest in commercial oil shale leasing exists then he "may" conduct a lease sale.

Prior to any commercial leasing, the Secretary will complete environmental studies and land use planning and put in place regulations for administering a leasing program. If leasing occurs, before construction of a commercial oil shale production facility, Federal and State permitting will be required including a full EIS on the "Plan for Development."

Section 105 – Categorical Exclusions

Section 105 of H.R. 2337 would amend the EPAct by eliminating section 390 which provides for the categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) of certain activities related to oil and gas leasing, subject to a rebuttable presumption. This authority has eliminated redundant documentation and reviews without sacrificing any environmental safeguards on the ground. It is important to understand that when the BLM approves a permit using a categorical exclusion that relies on a prior NEPA analysis, it must apply the same conditions of approval that were prescribed in the decision record for the prior NEPA document.

In addition, the use of categorical exclusions does not eliminate the application of other environmental laws, regulations, environmental best management practices, endangered species consultation or mitigation, protection of sensitive wildlife species such as sage grouse, or any other protective measures that the BLM may find necessary. Nor does it change the duty to consult with the State Historic Preservation Officer, concerned tribes, or such state agencies with which the BLM cooperates, such as a state's fish and game department.

Categorical exclusions under the EPAct are only used if previous oil and gas activity of the same character occurred in the same area within five years or a recent NEPA document has analyzed the activity, such as drilling, as a foreseeable one. When a categorical exclusion (CX) is used, BLM field staffs continue to conduct field exams, inspections, and enforcement for every Application for Permit to Drill (APD) or right-of-way application filed by the oil and gas industry. A Washington Office Instruction Memorandum 247-2005 issued on September 30, 2005, and extended to September 30, 2007, provides detailed instructions to the BLM Field Offices in the use of Section 390 CXs including:

> ***"Field Offices shall*** *maintain a structured, multi- or interdisciplinary permit review and approval process, conduct onsite exams for 100 percent of proposed well and road locations, and shall apply appropriate mitigation and BMPs to all permitted actions, in accordance with existing land use plans, full field development EIS, and other pertinent NEPA documents, even when actions are approved through the use of Section 390 CXs."*
> ***"Field Offices must*** *apply the same or better mitigating measures considered in the parent NEPA documents to all actions approved under any CX. Additionally, BMPs are to be applied as necessary to reduce impacts to any authorization issued, regardless of the NEPA analysis or exclusion used."*

Section 106 – Best Management Practices

Section 106 of H.R. 2337 would require the Secretary to amend the best management practices guidelines for oil and gas development on Federal lands, to require public review and comment prior to waiving any stipulation of an oil and gas lease; and create an incentive for oil and gas operators to adopt best management practices by providing expedited permit review for any operator that commits to adhering to those practices without seeking waiver of such stipulations. Enactment of this provision would impair the on-the-ground discretion of field staff to tailor appropriate and beneficial Best Management Practices (BMP) and to adjust them appropriately as conditions warrant.

We agree that appropriate environmental BMPs should be used in all oil and gas operations, however not all BMPs are appropriate in all situations. For example, stipulations that require specific actions related to wildlife protection might prove unnecessary or protection might be achieved better through an alternate action. While it might be appropriate to consult with a state's fish and game department before granting a waiver, requiring public comment and review before the BLM may change mitigation

measures is overly burdensome and inefficient. Many environmental BMPs are more suitable for Field Office consideration on a case-by-case basis, and their applicability should be based upon their effectiveness and site specific factors.

Section 201 -- Royalty In-Kind

Section 201 would limit the royalty-in-kind (RIK) program solely to the purpose of filling the Strategic Petroleum Reserve. We have serious concerns with this limitation. This provision fails to recognize the benefits of the RIK program and will result in losses to the Treasury. The performance of the RIK program has significantly lowered administrative costs and, we believe, increased receipts to the Treasury. MMS estimates that during Fiscal Year 2006, the RIK Program generated an estimated $28.8 million in additional revenue for the U.S. Treasury, based on measurements against benchmarks under the RIV system. The program's measurement of the comparative costs of RIK and RIV (cash royalties) indicates that, for FY 2006, RIK administrative costs were approximately 30 percent less than those for RIV activities. This efficiency gain translates to a cost avoidance of $2.3 million.

Historically, most Federal oil and gas royalties have been collected as a cash payment, known as royalty in-value. However, in recent years MMS has developed a royalty in-kind (RIK) program in which title to the royalty commodity is taken at or near the producing lease; competitive sales are transacted; and resulting revenues are collected from RIK purchasers and disbursed to Federal and state recipients per statutory authorities. Based on the success of several years of pilot projects, MMS concluded that the RIK program would be a viable tool to manage royalty assets along with royalty in-value. In fact, some states are now developing their own RIK programs for their oil royalties, modeled on ours. MMS systematically analyzes the relative RIK/Royalty in Value(RIV) economics and determines for which properties royalties will be collected through RIK.

As of the end of FY 2006, none of the pending administrative appeals of mineral royalty management decisions were RIK-related. The number of appeals is a direct measurement of the potential for litigation and additional costs. While RIV requires at least three years to audit royalty payments and close the business cycle, under RIK the business cycle was closed in 180 days for 85 percent of the delivery points in FY 2006. For RIK transactions, MMS checks that the correct volumes are received. This is relatively easy to do. Once the product is in the custody and control of the federal government, it does not require auditing for value, sales contracts and deductions. Because this process is so transparent, it minimizes opportunities for fraud and manipulation. The RIK program has grown over the last four years. In Fiscal Year 2006, 72 percent of the Gulf of Mexico (GOM) oil and 45 percent of the GOM gas was taken in-kind. In Fiscal Year 2006, the RIK program collected over $4 billion in royalties (approximately one-third of all mineral receipts). The Department's experience has shown that RIK and the traditional in-value (cash payment) should be used in tandem as a portfolio approach, providing the government flexibility to optimize the revenues based on market conditions. Because RIK simplifies the determination of the "fair" royalty

value due to the taxpayer, RIK has been highlighted by the Department as an innovation to traditional royalty collections.

The MMS offers RIK production for sale in the open marketplace, allowing any company that has met prequalification requirements to participate. The MMS also issues sales awards on a competitive basis, yielding the highest benefits obtainable. MMS's portfolio of counterparties includes major producers, independent producers, refiners, utilities, industrial end-users, distributors, mid-stream marketers, and financial institutions. MMS also has a Small Refiner Program to aid eligible small refiners in accessing crude oil supplies. Today, MMS's RIK program has earned a reputation for being a reliable business partner and a dependable supply source for natural gas and crude oil.

Section 202 -- Audit and Compliance

Section 202 of H.R. 2337 would require the Secretary to conduct at least 550 audits of oil and gas leases a year by Fiscal Year 2009. The section by section analysis of the bill states that the requirement to conduct at least 550 audits annually is included because the Department's Inspector General has found that the MMS has excessively relied on compliance reviews rather than audits.

The Inspector General, in his December 2006 report on MMS's Compliance Review Process found that compliance reviews should only be used in conjunction with audits, in the context of a well-designed, risk-based compliance strategy. He made no recommendation with regard to an appropriate number of audits. In fact, in testimony before this Committee on February 17, 2007, the Inspector General noted that "[W]ith few exceptions, MMS agreed with our recommendations; most notably, MMS agreed to revise its performance measures and to develop and pilot a risk-based compliance strategy for its compliance review process; and, as promised, MMS has now provided us with an Action Plan for implementing all of these changes." From Fiscal Year 2003 through Fiscal Year 2005, for every dollar spent on compliance reviews, MMS has collected $3.27. For every dollar spent on audits, MMS has collected $2.06.

Since 1982, the MMS has distributed approximately $165 billion to Federal, State, and Indian accounts and special funds, including approximately:

- $101.1 billion to the General Fund of the U.S. Treasury;
- $20.4 billion to 38 states;
- $5.2 billion to the Department's Office of Trust Funds Management on behalf of 41 Indian tribes and 30,000 individual Indian mineral owners; and
- $38.2 billion to the Land and Water Conservation Fund, the National Historic Preservation Fund, and the Reclamation Fund.

MMS's mineral revenue processes and procedures are complex and involve implementing myriad statutory authorities and regulations, as well as a complex set of case law from over 50 years of administrative and judicial decisions on Federal royalty matters. MMS carries out these responsibilities under ongoing oversight by Congress, the Government Accountability Office (GAO) and the Department's Office of Inspector General. In the past five years, as part of its annual CFO audit, MMS consistently has received clean audit opinions from the Office of the Inspector General's contracted independent auditing firm.

The MMS compliance and enforcement programs have generated an annual average of more than $125 million for each of the last 24 years. In other words, MMS has collected a total of more than $3 billion dollars in additional mineral revenues since program inception in 1982.In FY 2006, about 2,600 companies reported and paid royalties totaling $12.6 billion from approximately 27,800 producing Federal and Indian leases. MMS pursues interest owed on late payments as required by law. In addition to assessing interest on late and/or under payments, the government pays interest on overpayments. Since 2001, MMS has issued interest bills and collected $23 million on Federal oil and gas underpayments and has paid approximately $10 million in interest on overpayments.

MMS's audit and compliance program assesses whether royalty payments are correct. The types of questions that arise during compliance activities include whether the company reported and paid its royalty on the right volume, royalty rate and value, and whether the company correctly calculated allowable transportation and processing costs. Findings of underpayments are followed by collection of the payment plus interest. Enforcement proceedings range from alternative dispute resolution to orders to pay and penalty actions.

The MMS audit and compliance strategy focuses on high-dollar properties along with other risked-based areas. The current compliance strategy uses a combination of targeted and random audits, compliance reviews, and royalty-in-kind property reconciliations. The current MMS compliance strategy utilizes compliance reviews to complement traditional audits and accomplish a broader coverage of the mineral revenue universe. The Office of the Inspector General's audit of MMS compliance reviews concluded that compliance reviews can serve as a useful tool as part of the compliance program and are a legitimate tool for evaluating the reasonableness of company-reported data.

The MMS recently implemented an aggressive compliance initiative aimed at shortening the compliance cycle and increasing the percentage of revenues being reviewed and/or audited within three years of the royalty due date. In Fiscal Year 2006, MMS completed 144 audits and assured reasonable compliance on $5.8 billion in Federal and Indian mineral lease revenues, 72.5 percent of total offshore and onshore royalties paid for Calendar Year 2003.

MMS has authority to use civil penalties in situations where routine compliance efforts have been unsuccessful. During the last five years MMS has collected over $23 million in civil penalties resulting from enforcement actions by the Minerals Revenue

Management program (MRM). So far in Fiscal Year 2007, MRM has issued over $2 million in civil penalty notices that are now in the administrative process. When combined with other MMS enforcement actions during the same five year period, MMS collected a total of $52.4 million.

MMS does not work alone in its efforts to ensure the proper collection of royalties; MMS collaborates with eleven States and seven Indian Tribes on our compliance and audit activities.

Sections 202 and 205 of the FOGRMA authorize the Secretary of the Interior to enter into cooperative agreements with Indian tribes and delegated agreements with states to conduct audits. The tribes audit their leases and the states audit Federal leases located within state borders, plus offshore Federal leases located within a zone extending three miles beyond the seaward boundary of a coastal states' waters (known as the "8(g) zone").

Appropriated funding for States and Tribes participating in the Section 202 and Section 205 programs was around $9.1 million in FY 2006 and remains level for FY 2007. The MMS analyzed cost, workload, and risk data to apply "best business case" criteria to the funding of this program. The mineral revenues at risk and number of producing leases are used to establish funding allocations among States and Tribes. Other factors, such as program effectiveness and anticipated increases and decreases in revenue activity, are also considered. From our analysis it was apparent that some states were significantly over-funded or under-funded in comparison to others. MMS designed a business case to correct such inequities while maintaining overall program funding.

The MMS had several briefings on this methodology with the Congressional delegations representing impacted states, the Department of the Interior's Office of the Inspector General and the Government Accountability Office. During these briefings, the majority of participants seemed satisfied that our methodology was fair and reasonable.

Section 224 – Due Diligence Fee/Healthy Lands

Section 224 would impose a $1 per acre fee on non-producing Federal onshore oil, gas, and coal leases. The fee would be used "to repair damage to Federal lands and resources caused by oil and gas development, in accordance with the documents submitted by the President with the budget submission for fiscal year 2008 relating to the Healthy Lands Initiative."

We are pleased to note the mutual interest in some of the goals of the Secretary's Healthy Lands Initiative contained in the President's FY 2008 Budget request. It is important, however, to note that the Initiative is not a narrowly tailored mechanism aimed at oil and gas development. Land health is being affected by pressures such as community expansion, wildfires, unprecedented demands for energy resources, ever-expanding recreation uses, and weed invasion. These pressures often interact among themselves to

affect large landscapes and ecosystems, particularly those in the growing wildlife-energy interface.

We would like to work with the Committee on refining the concepts behind this section.

Conclusion

Mr. Chairman, this concludes the Department's testimony. Thank you again for the opportunity to come before the Committee today to discuss some of Interior's energy and climate change program initiatives. We will continue with our review of H.R. 2337, and look forward to sharing our views on the bill with the Committee in the near future and to working with you and your staff to address any concerns as the process moves forward.