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Implementation of the Federal Onshore
Oil and Gas Leasing Reform Act of 1987

Statement of
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Before the
Subcommittee on Mining and
Natural Resources
Committee on Interior and Insular Affairs
House of Representatives



Dear Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work to date on the Federal Onshore Oil and Gas Leasing Reform Act of 1987. At your and Senator Bumpers' request, we

- are drafting a report on the extent to which oil and gas issues are addressed in land use plans prepared by the U.S. Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM);
- have reviewed and commented on the Forest Service's proposed regulations to implement its increased responsibilities for oil and gas leasing on its lands; and
- have issued a report on BLM's implementation of the act's requirement to offer competitively at oral auction all federal lands available for oil and gas leasing.¹

To summarize the results of our work so far, we have found that BLM and the Forest Service often make key oil and gas leasing and development decisions without the benefit of adequate information concerning potential environmental impacts. While both agencies are in the process of improving this information, both continue to approve leasing and development before such information becomes available.

Several of the provisions of the Forest Service's proposed regulations reflect its recognition and concern that the environmental impacts of oil and gas activities have not been adequately addressed in the land use planning process. Public

¹Mineral Revenues: Implementation of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (GAO/RCED-89-108, May 8, 1989).

comments on and reaction to these provisions have contributed to delaying the Service's final regulations.

On the other hand, BLM has done a good job of implementing the act's requirements aimed at increasing the percentage of land leased competitively and thereby per-acre revenues. However, opportunities may exist to further increase the amount of federal acreage leased competitively, as well as revenues.

BACKGROUND

Federal laws encourage domestic production of oil and gas as well as preservation of other resources that may be affected by that development. BLM and the Forest Service are required to manage their lands under the principles of multiple use² and sustained yield³ to ensure that resources are used in the combination that best meets demands, yet are protected and preserved for future generations. To accomplish these goals, BLM and the Forest Service are required to develop land use plans that identify how resources will be managed and, to the extent possible, balance the competing demands of environmental preservation and mineral development.

The Reform Act increased Forest Service responsibilities for oil and gas leasing on its lands. The act authorizes the Forest

²The multiple-use principle requires management of public lands and their various resource values, such as fish and wildlife, range, recreation, timber, and watershed, so that they are used in the combination that will best meet the present and future needs of the public.

³The sustained-yield principle requires the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of various renewable resources of public lands, consistent with multiple use.

Service to approve leasing on its public domain lands⁴ and requires it to set bonding requirements and designate surface use stipulations⁵ that are applicable to all its lands.

The Reform Act also significantly changed the way onshore federal lands are leased for oil and gas development. BLM is now required to offer competitively at oral auction all federal lands, including Forest Service lands, available for leasing. The minimum bonus bid amount is \$2 per acre, plus payment of a \$75 administrative fee. Lands not leased at auction are available for noncompetitive leasing the following day for payment of a \$75 administrative fee.

INFORMATION ON THE ENVIRONMENTAL IMPACTS
OF OIL AND GAS ACTIVITIES IS LACKING

Both BLM and the Forest Service have determined that they must prepare an environmental study before issuing oil and gas leases because certain developmental rights are conveyed to the lessee. Similarly, both agencies have determined that all environmental requirements must be satisfied before approving a permit to drill because allowed surface and subsurface activities may disturb the environment.

Our examination of 82 land use plans and related

⁴The Mineral Leasing Act for Acquired Lands provides similar approval authority for the Forest Service's acquired lands.

⁵For our purposes, stipulations are defined as restrictions attached to leases or drilling permits to mitigate adverse environmental impacts.

environmental impact statements⁶ covering BLM and Forest Service lands having high oil and gas potential showed that 75 either did not identify and/or only partially addressed 1 or more of 5 elements we believe are essential to assess the environmental impacts of oil and gas activities.⁷ Despite shortcomings in their land use plans, both agencies rely heavily on them to support oil and gas leasing and development decisions.

All four BLM resource area offices and four Forest Service offices that we visited relied solely, or in part, on their land use plans when issuing leases and approving drilling permits. If the land use plans do not contain adequate information to make informed leasing and development decisions, the agencies may use other environmental studies to supplement their plans. Three of the Forest Service offices relied solely on their plans; however, none of these three plans met our criteria for addressing all five essential elements. At the four BLM resource area offices and one Forest Service office that used other existing environmental studies to supplement their plans, we found that, when taken together with the land use plans, only one BLM resource area met our criteria for addressing all five essential elements.

BLM and the Forest Service recognize the importance of improving information on the environmental impacts of oil and gas

⁶Environmental impact statements (EIS), required by the National Environmental Policy Act of 1969 (NEPA), are prepared as part of the agencies' land use planning process. At the four BLM resource area offices and four Forest Service offices that we visited, we also reviewed other environmental studies used in conjunction with the land use plans to support oil and gas leasing and development decisions.

⁷The elements are (1) oil and gas potential, (2) reasonably foreseeable development scenario(s), (3) indirect impacts, (4) cumulative impacts, and (5) lease stipulations. These elements and the criteria we used to determine the extent to which each was addressed were derived from regulations and guidance implementing NEPA and through discussions with BLM and Forest Service officials.

activities and have begun to do so. However, one BLM and two Forest Service offices that we visited continued to approve drilling permits before environmental studies they identified as needed had been completed. Three of the four BLM offices and three of the four Forest Service offices also were approving some drilling permits without attaching all the required stipulations.

FOREST SERVICE DEVELOPMENT OF REGULATIONS

The Forest Service published proposed regulations in January 1989 to implement its responsibilities under the Reform Act, and to ensure compliance with environmental requirements. We reviewed the Forest Service's proposed regulations and briefed your office and the Forest Service on our concerns. As of our last briefing with the Forest Service on August 31, 1989, the agency had not formulated final positions on a number of our concerns about the proposed regulations and to date has not issued its final regulations.

Our primary concerns with the Forest Service's proposed regulations relate to (1) the bonding requirements for leases on Forest Service lands, (2) a proposed standard lease stipulation that could preclude development of some leases, and (3) a proposal to determine which lands should be available for leasing.

Bonding Requirements

Two issues regarding bonding requirements for Forest Service lands must be resolved--the Forest Service and BLM must confer on the scope of the bonding requirements for Forest Service lands, and sufficient bond amounts must be determined. We believe that until these issues are resolved, bonding requirements for Forest Service lands will not be complete nor adequate to fulfill its increased oil and gas leasing responsibilities.

Responsibility for Bonds

Until the Forest Service issues its final regulations implementing the Reform Act, BLM is responsible for bonding oil and gas leases on federal lands. Its bonding covers three risks: (1) subsurface environmental impacts, (2) surface environmental impacts, and (3) nonpayment of royalties. The Forest Service's proposed regulations reflect the Reform Act's requirement that the Secretary of Agriculture be responsible for bonding to cover reclamation of surface disturbances on Forest Service lands. However, the act and the proposed regulations are silent about bonding to cover costs of abandonment that occur below the surface, such as cement plugging of wells, and about bonding to guarantee royalty payments. Therefore, we recommend that the Forest Service confer with BLM in order to establish clear responsibilities for bonding to cover subsurface environmental impacts and nonpayment of royalties on Forest Service lands.

Sufficient bond amounts

The Forest Service's proposed regulations would require a lessee or lease operator to post bond in an amount sufficient to cover all costs of reclamation. This proposal differs from BLM's standard requirements that specify minimum bond amounts, depending on whether a bond is for a single lease, for statewide coverage, or nationwide coverage. These requirements have been and continue to be used on Forest Service lands, pending promulgation of the Forest Service's final regulations, and generally are not intended to cover the total estimated costs of reclamation.

Public comments on the proposed regulations noted that increasing bond amounts to cover the full cost of reclamation could prevent less capitalized operators from developing Forest Service leases. In addition, officials from BLM, the oil and gas industry, and four oil- and gas-producing states that have bonding practices

similar to BLM's told us that they believe that BLM's minimum bond amounts have been adequate to ensure reclamation. However, not all available evidence supports their position. For example, in 1985 BLM published proposed regulations to increase its minimum bond amounts, stating it had expended funds above the bond amounts on certain leases that had not been properly abandoned and reclaimed. BLM estimated that it costs between \$250,000 and \$1 million to reclaim an average of 10 leases annually. However, BLM subsequently decided not to increase its bond amounts, noting that the oil and gas industry strongly opposed the increases because they contended that larger bonds would be difficult to obtain. In addition, two oil- and gas-producing states protect against the possibility that bond amounts for state leases are inadequate by also having industry-financed reclamation contingency funds.

Given the uncertainty of what adequate bond amounts should be, and the possibility that amounts larger than BLM's current requirements may seriously impede oil and gas leasing, we recommend that the Forest Service study the need for and availability of larger bond amounts before issuing bonding regulations. While we recognize that the Forest Service needs to issue final regulations to implement other responsibilities under the Reform Act, we recommend that it remove bonding from the current rulemaking and propose a new bonding regulation after completing an appropriate study.

Standard Lease Stipulation

The Forest Service's regulations propose a standard stipulation that would be attached to all existing and future leases on Forest Service lands. This stipulation would allow the Forest Service to deny development of leases after they have been issued if warranted by subsequent environmental analysis. This stipulation stems from a 1988 circuit court ruling that a lease conveys certain rights, requiring either that an adequate EIS be

prepared before the lease is issued or that the right to deny development of the lease be reserved.⁸

However, we believe that this standard lease stipulation introduces uncertainty into the leasing system. This uncertainty may lower bonus bids on Forest Service leases because bidders may be less likely to risk investing in leases if they know that development may subsequently be denied. Compounding this problem, the proposed regulations contain no provision for refunding amounts invested in a lease if development is subsequently denied. Companies with existing leases may choose to initiate legal action to establish that their development rights have been taken and to seek a refund of their investments. Therefore, we recommend that the Forest Service improve its information on the environmental impacts of oil and gas leasing and development on its lands so that informed decisions can be made before a lease is issued thereby negating the need to deny subsequent development.

Suitability Determinations

The Forest Service's proposed regulations would establish a process, separate from its land use planning process, to determine which of its lands are suitable for oil and gas leasing. This proposed process, known as suitability determination, would identify lands with high potential for oil and gas leasing, then determine if leasing those lands is consistent with their respective land use plans. Forest Service officials believe that suitability determinations are warranted because amending existing land use plans that do not adequately address the environmental and other impacts of oil and gas leasing could be costly and time-consuming.

⁸Connor v. Burford (848 F2d 1441, 9th Circuit, 1988)

However, segregating oil and gas leasing decisions from the normal land use planning and environmental studies process may not be consistent with existing Forest Service regulations. These regulations require that mineral development be addressed as part of multiple-use planning for Forest Service lands. In addition, the proposed regulations do not specify what the suitability determination process would entail, nor has the Forest Service clarified the extent to which this process would be needed or how much it would cost. Therefore, unless the Forest Service can ensure that its proposed suitability determination process is consistent with its regulations and would be cheaper and faster than using existing land use planning procedures, we recommend that it use its existing planning process, rather than establishing a new one, to determine which lands should be available for leasing.

BLM's IMPLEMENTATION OF THE ACT

The act authorized BLM to conduct lease sales to test procedures while regulations were being developed. Overall, BLM implemented the Reform Act well, including conducting test sales and issuing, within the legislatively required time frame, final regulations that conform with the act. The results of BLM's test sales showed substantial increases in the percentage of land leased competitively as well as in per-acre revenues. Still, less than half of the land leased through the test sales was leased competitively. We believe that opportunities may exist to increase even further the amount of federal acreage leased competitively, thereby increasing federal and state revenues.

Under the Reform Act, potential lessees have incentives to wait until after an auction to acquire noncompetitively issued leases, which have a longer term (10 years) than competitive leases (5 years) and do not require the payment of a bonus bid. In addition, although the Reform Act requires oral auctions, no empirical evidence exists to prove whether the government is likely

to receive greater revenues from sealed or oral bidding. In our May 1989 report, we recommended that the Congress consider authorizing Interior to conduct additional oil and gas lease test sales specifically to evaluate the effects of (1) identical lease terms and minimum bonus bids for all leases and (2) sealed bidding to auction all leases.

Finally, BLM has retained a lease sale procedure in its regulations that, if used, may reduce competition and revenues. Under this procedure, BLM allows bidders to nominate leases from the list of available leases to be presented at the auction. Unnominated leases become available the day following the auction for noncompetitive leasing. On the basis of test sale results, we believe that nominations did not identify all leases for which there was competitive interest and caused the government to forego additional bonus revenues. Accordingly, our May 1989 report recommended that Interior delete the nomination option from its regulations.

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Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or members of the Subcommittee may have.