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Washington, DC 20548

March 28, 2007

The Honorable Nick J. Rahall II
Chairman, Committee on Natural Resources
House of Representatives

Subject: *Posthearing Questions: Major Management Challenges at the Department of the Interior*

Dear Mr. Chairman:

On February 16, 2007, I testified at the Committee's oversight hearing on "*Reports, Audits, and Investigations by the Government Accountability Office and the Office of Inspector General Regarding the Department of the Interior.*"¹ This letter responds to your February 26, 2007 request, in which members of the Committee asked additional questions about GAO's past reports. To answer these questions, we relied primarily on a number of GAO reports, as well as our body of knowledge in these areas. We prepared this letter during March 2007 in accordance with generally accepted government auditing standards. Because this letter was primarily based on previously issued reports, we did not seek agency comments on a draft of this letter. Our responses to the questions follow.

1. Based on GAO's reports and audits, what are the fiscal costs resulting from mismanagement of programs and the revenue losses associated with the failure to collect fair market value for the use and development of resources under the jurisdiction of the Department of the Interior? What priorities should Congress pursue to address these problems?

Past GAO reports have identified a number of areas in which the Department of the Interior (Interior) has not collected all revenue authorized. The most significant source of forgone revenue owing to mismanagement is the department's implementation of the Outer Continental Shelf Deep Water Royalty Relief Act enacted in 1995—amounting to at least \$1 billion—because of the failure to include price thresholds in leases issued in 1998 and 1999. All other sources of potential lost revenue from Interior programs that we have reported on pale in comparison with this amount. We have also identified revenue that the department could collect should the Congress choose to give it additional authority in certain programs.

¹GAO, *Department of the Interior: Major Management Challenges*, [GAO-07-502T](#) (Washington, D.C.: Feb. 16, 2007).

Oil and gas revenue. While precise estimates remain elusive at this time, as we testified, our work to date shows that royalty relief under the Outer Continental Shelf Deep Water Royalty Relief Act will likely cost billions of dollars in forgone royalty revenue; at least \$1 billion has already been lost.² In October 2004, the Minerals Management Service (MMS) estimated that forgone royalties on deep water leases issued under the act from 1996 through 2000 could be as high as \$80 billion in total. However, there is much uncertainty in these estimates because of ongoing legal challenges and other factors that make it unclear how many leases will ultimately receive royalty relief and of the inherent complexity in forecasting future royalties. We are currently assessing MMS's estimate in light of changing oil and gas prices, revised estimates of future oil and gas production, and other factors. At the completion of our work we hope to provide a discussion of some of the alternative ways to address the forgone revenue.

Oil and gas permit fees. Should the Congress choose to provide Interior with new legislative authority, additional revenues could be collected to process applications for oil and gas permits. In June 2005, we recommended that the Bureau of Land Management (BLM) use its authority and move forward with its plans to establish a fee structure that would recover its costs for processing applications for oil and gas permits.³ In response to our recommendation, BLM issued a proposed regulation in July 2005 that included a \$1,600 fee for processing oil and gas permits.⁴ However, the Energy Policy Act of 2005, which was enacted 2 months after our report was issued, prohibited Interior from initiating the new fee. In its fiscal year 2008 budget request, Interior has proposed that the Energy Policy Act be amended to allow the new fee to move forward. Interior estimates that the new fee would generate \$21 million in additional revenue for fiscal year 2008.

Air tour revenue. In May 2006, we reported that Interior's National Park Service was not collecting all the required fees from companies conducting air tours over three highly visited national park units that are authorized to collect fees.⁵ Since it began collecting this fee in 1994, the Park Service has collected about \$19 million at the three park units. However, we identified almost \$2 million in fees that had not been collected. The Park Service was not collecting all the required fees because of (1) an inability to verify the number of air tours conducted over the three park units and, therefore, to enforce compliance and (2) confusion resulting from differing geographic applicability of two laws governing air tours in or around park units.

We also reported that the Park Service could collect additional revenues if the Congress expanded the authority to charge air tour fees from the current three park

²GAO, *Oil and Gas Royalties: Royalty Relief Will Likely Cost the Government Billions, but the Final Costs Have Yet to Be Determined*, [GAO-07-369T](#) (Washington, D.C.: Jan. 18, 2007)

³GAO, *Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities*, [GAO-05-418](#) (Washington, D.C.: June 17, 2005).

⁴70 *Fed. Reg.* 41532, 41542 (July 19, 2005).

⁵GAO, *National Parks Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance*, [GAO-06-468](#) (Washington, D.C.: May 11, 2006).

units to an additional 83 units with air tours.⁶ While the three park units account for about one-half of all the air tour activity, expanding the fee would enable the Park Service to collect additional revenue to help develop and monitor air tour management plans. Depending on the number of additional park units included in an expansion of the air tour fee authority, the Park Service could potentially collect approximately an additional \$1 million to \$4 million annually.

Grazing revenue. In September 2005, we reported that the grazing fee BLM and the U.S. Department of Agriculture's Forest Service charge, which was \$1.43 per animal unit month (AUM) in 2004,⁷ is established by formula and is generally much lower than the fees charged by other federal agencies, states, and private ranchers.⁸ Other federal agencies, states, and private ranchers generally establish fees to obtain the fair market value of the forage and, as a result, charged fees ranging from \$0.29 to \$112 per AUM in fiscal year 2004, depending on the location, range condition, and accompanying in-kind service. The formula used to calculate the BLM and the Forest Service grazing fee incorporates rancher's ability to pay; therefore, the current purpose of the fee is not primarily to capture the fair market value of the forage or to recover the agencies' expenditures. As a result, BLM's and the Forest Service's grazing receipts fell short of their expenditures on grazing in fiscal year 2004 by almost \$115 million. We reported that if the purpose of the grazing fees was to recover expenditures, the agencies' grazing fees would have been about \$7.64 and \$12.26 per AUM, respectively. Alternatively, if the purpose of the fees was to gain fair market value, the agencies' fees would vary depending on the market. As I stated in my testimony, were BLM to implement approaches other agencies use to set grazing fees, it could help close the gap between expenditures and receipts, and more closely align its fees with market prices. We recognize, however, that the purpose and the amount of BLM's grazing fee are ultimately for the Congress to decide.

Royalties from hardrock mining. As we reported in June 2005, the General Mining Act of 1872 encouraged development of the West by allowing individuals to stake claims and obtain rights to gold, silver, copper, and other valuable hardrock mineral deposits on land belonging to the United States.⁹ The law, however, does not authorize the collection of royalties. Since 1872, thousands of claimants and operators have extracted billions of dollars of hardrock minerals from federal lands without being required to pay royalties on any hardrock minerals extracted. A February 2007 Congressional Budget Office report stated that \$35 million in revenue could be generated over a 5-year period should the Congress authorize an 8-percent royalty on the net proceeds from all future production of hardrock minerals from

⁶GAO-06-468.

⁷An AUM is the amount of forage that a cow and her calf can eat in 1 month.

⁸GAO, *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, GAO-05-869 (Washington, D.C.: Sept. 30, 2005).

⁹GAO, *Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs*, GAO-05-377 (Washington, D.C.: June 20, 2005).

federal lands.¹⁰ The report also notes that if the 8-percent royalty was applied to gross proceeds, it would generate additional revenue and be less costly to administer.

2. As you cited in your 2005 report entitled, "Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities," BLM staff do not have the necessary resources to perform the required environmental inspections. The Bush Administration's FY 2008 budget proposal will increase the number of Applications for Permits to Drill (APDs) processed by nearly 55 percent from 7,736 to nearly 12,000 in 2008. While it is important that the Bush Administration focus its efforts to meet the Nation's growing demand for energy, it must be mindful of the vast growth and environmental effects that this will have on the "Evolving West." What effect will this continued increase in permit approvals have on the surrounding communities and environment? Is there a "tipping point?" And, if so, at what point do you think the Administration's emphasis on oil and gas development will become excessive?

In June 2005, we reported that the increased permitting activity between 1999 and 2004 had occurred at the expense of environmental mitigation activities owing to a lack of resources available to conduct mitigation activities.¹¹ The effect of a continued increase in permit approvals on surrounding communities and the environment will depend on (1) the environmental stipulations in the leases, (2) the conditions of approval in the permits, and (3) BLM's level of monitoring and enforcement of the lease stipulations and permit conditions. If BLM is required to process even more permits without receiving any additional resources, it is likely that the agency's ability to perform the necessary environmental mitigation activities would continue to be eroded.

Before the Energy Policy Act was enacted in August 2005, BLM had the authority to assess and charge fees to cover its expenses for processing oil and gas permits. The revenues from such fees would have enabled BLM to supplement its program resources. As I noted in my response to Question 1, we had recommended, and BLM had begun to establish, a fee structure to recover its costs for processing applications for oil and gas permits, but the Energy Policy Act prohibited Interior from initiating the new fee. Nevertheless, Interior has continued to express interest in initiating such a fee and has proposed that the Energy Policy Act be amended to allow the fee to move forward. Authorizing such a fee to cover BLM's expenses for processing permits could presumably free bureau staff up to carry out environmental mitigation responsibilities, should the agency choose to use the resources for this purpose.

The extent to which federal lands should be used for oil and gas exploration and development and the environmental effects that will be tolerated are policy decisions

¹⁰Congressional Budget Office, *Budget Options* (Washington, D.C.: Feb. 2007). The Congressional Budget Office's estimate assumes that the states in which mining takes place would receive 10 percent of the royalty receipts, and that there would be no surge in patenting activity before royalties were imposed; such a surge could boost immediate patenting receipts and diminish future royalties.

¹¹[GAO-05-418](#).

that are up to the Congress and the administration to make. Balancing the competing demands for the use of these lands is an ongoing challenge for the Congress and the agencies that manage them.

3a. As you will recall, GAO found that the Fish and Wildlife Service (FWS) had very poor records characterizing the environmental threat of oil and gas activities on refuge lands. To your knowledge, has the Service completed a comprehensive assessment of the cumulative environmental impacts of oil and gas development on refuges?

FWS has taken some steps to identify a possible approach to developing and maintaining data on the effects of oil and gas activities on refuge resources, although it has not identified funding to support this effort. It is not clear whether the agency will conduct a comprehensive assessment of the cumulative environmental impacts of oil and gas development on refuges once it gathers these data.

3b. GAO also found that the Fish and Wildlife Service did not have any inventory of oil and gas infrastructure on refuges and was unable to estimate future reclamation costs. Has the Service completed this inventory and compiled a list and cost estimate for outstanding reclamation needs?

Collecting data on the nature and extent of oil and gas activities on refuge lands is part of the effort described in response to Question 3a. Because the data have not yet been collected under this effort, FWS cannot comprehensively identify needed reclamation or associated costs.

3c. Has the Fish and Wildlife Service developed consistent system-wide policies and permit procedures, including revised fees for oil and gas activities and infrastructure on refuges, and revised the agency's Refuge Manual accordingly? And, do we have any estimates of the amount of revenue the United States could be collecting, but is not, due to the agency's failure to act?

FWS has drafted a handbook for the management of oil and gas activities on wildlife refuges, although it has not yet been made final or public. Therefore, it is not clear what FWS's policies or procedures will be. We have not examined what revenue is available to FWS through fees for oil and gas activities and infrastructure on refuges. It is important to note that FWS only has the authority to retain money paid for damages to refuge lands in Louisiana and Texas. The money is to be used to make damage assessments, mitigate or restore damages, and monitor and study recovery of the resources. As of the August 2003 issuance of our report, fees had only been collected in Louisiana.¹² To address this inconsistency, FWS officials told us they are drafting guidance to clarify how these regions should apply their authority to collect and retain fees. Furthermore, Congress would need to provide FWS with the authority to retain money paid for damages for refuge lands beyond Louisiana and Texas.

¹²GAO, *National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands*, [GAO-03-517](#) (Washington, D.C.: Aug. 28, 2003).

3d. GAO reported that the Service has adequate authority to regulate outstanding mineral rights on refuges and recommended that the Service work with the Solicitor's office to determine the Service's existing authority to issue permits and set reasonable conditions. Did the Service ever follow through on this recommendation?

According to FWS officials, the agency has consulted with Interior's Office of the Solicitor, which has concurred with the discussion of FWS's authority in the draft oil and gas handbook mentioned in the response to Question 3c. However, it is not clear what the official FWS position is concerning the agency's authority because the handbook is not yet public.

4a. As 2006 drew to a close approximately 100 lawsuits were filed by Indian tribes against the United States for an accounting of their tribal trust funds because the 109th Congress adjourned without extending the statute of limitations for such claims as it has since 2001. In the past the GAO has encouraged the United States to explore the settlement of these claims before they erupted into litigation. Does the GAO still support the settlement concept? Does the GAO have any opinion whether Congress should re-extend the statute of limitations to avoid litigation?

While we have long recommended consideration of a legislated process for settlement of claims before litigation is filed, we do not have a position on legislated settlement of the existing lawsuits or extension of the statute of limitations for tribal trust fund claims. From 1992 through 1997, we monitored and reported on various aspects of Interior's planning, execution, and reporting of results for its tribal trust fund account reconciliation project, which was statutorily required beginning in 1987. Between 1992 and 1996, we reported that, although Interior had made a massive attempt to reconcile tribal accounts during its reconciliation project, missing records and systems limitations made full reconciliation impossible. Accordingly, as early as 1992, we recommended to Interior that it consider alternatives to account reconciliation including, if other options were unsuccessful, seeking a legislated settlement process. Since 1997, many tribes have initiated lawsuits with claims related to account balances.

4b. The GAO's recent (December 2006) report on the Office of the Special Trustee (OST) indicates that the OST uses contractors extensively, but reports from Indian Country indicate that the OST has not made much of an effort to make contracting opportunities available to Indian tribes. In light of the overall federal policy of tribal self-determination, do you agree that there should be some effort to use Native American businesses to the greatest extent possible?

We are not in a position to offer an opinion on this issue because our December 2006 report did not examine OST's efforts to make contracting opportunities available to Indian tribes.¹³ However, we found that OST's largest contractor in fiscal years 2004

¹³GAO, *Indian Issues: The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about Its Future Remain*, [GAO-07-104](#) (Washington, D.C.: Dec. 8, 2006).

and 2005 was Chickasaw Nation Industries, an Indian-owned 8(a) small business. OST used an indefinite delivery, indefinite quantity contract with Chickasaw Nation Industries that allowed OST to award contract task orders quickly because there is no requirement for competition. OST's second largest contractor in fiscal years 2004 and 2005 was SEI Investments—which is not an Indian-owned 8(a) small business—for the operation and maintenance of OST's trust fund accounting system, a modified off-the-shelf version of SEI's commercial trust accounting system. More than 150 large financial and investment institutions use SEI's trust management systems.

4c. No one thought that the Office of the Special Trustee would exist in 2007. It was supposed to be a temporary position. Should Congress set a specific date for the termination of that office as a number of Indian tribes have requested?

We believe the requirements in the American Indian Trust Fund Management Reform Act of 1994 are sufficient for establishing a termination date for OST.¹⁴ The act directed OST to develop a comprehensive strategic plan with a timetable for implementing identified trust fund management reforms and a date when OST will be terminated. However, we found that OST had not established a timetable or a date for OST's termination, and we recommended that the Secretary of the Interior direct the Special Trustee to provide the Congress with a timetable for completing trust fund management reforms. In response, Interior stated that it expects to have a timetable by late June 2007 for implementing the remaining trust reforms including a date for the proposed termination or eventual disposition of OST.

The Congress, in its review of Interior's timetable, may disagree with the duration of the trust reforms and choose an alternative completion and termination date. OST plans to complete almost all of its key trust fund management reforms by November 2007. OST told us that after November 2007 it will still need to verify the data in the Bureau of Indian Affairs's trust asset and accountability management system for (1) Indian lands with recurring income for which the land and leasing records in the management system matched with the information in the legacy realty system and (2) Indian lands without recurring income.

4d. Over the last few years the Office of the Special Trustee has taken authorities and programs away from the Bureau of Indian Affairs as well as millions of valuable resources. This was never intended by Congress when OST was established. Did your studies show what the Department of the Interior plans to do with all these activities when they finally shut down the Office of the Special Trustee? Did you receive any assurances that the administration will continue these programs or can this build-up of OST be a precursor to terminating these responsibilities?

Regarding the first part of the question, neither the Secretary of the Interior nor the Special Trustee has stated what will be done when the trust reforms are completed. Accordingly, we recommended that the Secretary provide the Congress with a plan for future trust operations, including, if the decision is made to terminate OST, a

¹⁴GAO-07-104.

determination of where these operations will reside.¹⁵ The American Indian Trust Fund Management Reform Act of 1994 states that the Special Trustee, in providing the Congress with a 30-day notice of completion, may recommend the continuation, or permanent establishment, of OST if the Special Trustee concludes that continuation or permanent establishment is necessary to efficiently discharge the Secretary's trust responsibilities.

Regarding the second part of your question, the Special Trustee for American Indians shares your concern that OST's trust fund management responsibilities must continue into the future whether or not OST itself is terminated. OST has made a significant investment in developing an integrated trust management system to better ensure that ownership of lease and other income is accurately identified and paid into appropriate trust accounts. Taxpayer funds would be wasted if these programs were terminated without another capable organization identified to fulfill the Secretary's trust fund responsibilities.

5. I understand that most of the properties listed in your report regarding financial assurances for hardrock mining were in bankruptcy. In some instances, the discrepancy in the bond amount and the actual amount of money required for reclamation were due to the fact that reclamation conditions were exacerbated as a result of the bankruptcy (insufficient funds to run water pumps, etc.). In other words, the bond would have been adequate had the company remained solvent. Would legislation such as the Good Samaritan legislation introduced in the 109th Congress by Congressman Duncan, H.R. 5404, which provides limited liability to private parties willing to assume reclamation (and contribute money or in kind services), help the federal government in reclaiming these properties?

Having adequate financial assurances to pay reclamation costs for BLM land disturbed by hardrock operations is critical to ensuring that the land is reclaimed if operators fail to complete reclamation as required. Financial assurances must be based on sound reclamation plans and current cost estimates so that BLM can be confident that financial assurances will fully cover reclamation costs. However, in our June 2005 report, we found that BLM did not have a process for ensuring that adequate assurances were in place.¹⁶ As a result, we reported that 48 hardrock operations in seven states had ceased and had not been reclaimed by operators, as required, leaving BLM with about \$56.4 million in unfunded reclamation costs. Reclamation costs were not paid by the operators in these cases because some of the operators had outdated reclamation plans or cost estimates, while other operators had no financial assurances at all.

Our work on hardrock mining was completed nearly a year before the Good Samaritan legislation was introduced. Consequently, we did not evaluate the legislation's applicability to the problems that we found with financial assurances for hardrock mining operations. However, the recommendations in our report are intended to help BLM avoid being left with unfunded reclamation costs in the future. Specifically, we recommended that BLM state office directors establish an action

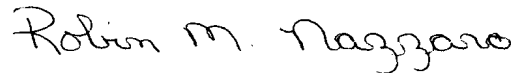
¹⁵ [GAO-07-104](#).

¹⁶ [GAO-05-377](#).

plan for ensuring that operators of hardrock operations have required financial assurances and that the financial assurances are based on sound reclamation plans and current cost estimates, so that they are adequate to pay all of the estimated costs of required reclamation if operators fail to complete the reclamation. If properly implemented, this should help BLM reduce or eliminate instances where financial assurances are underestimated or based on unsound reclamation plans. While the agency has taken steps to implement these recommendations, we have not fully evaluated the impact of its actions.

We are sending copies of this report to the Chairman and Ranking Minority Members with jurisdiction over the Department of the Interior and the Honorable Dirk Kempthorne, Secretary of the Interior. We will make copies available to others upon request, and the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you have any questions, please contact me on (202) 512-3841 or at nazzaror@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,



Robin M. Nazzaro
Director, Natural Resources
and Environment

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