

**Statement for the Record
United States Department of the Interior**

Senate Committee on Energy and Natural Resources

**S. 15, Protecting States' Rights to Promote American Energy Security Act,
S. 1218, Nexus of Energy and Water for Sustainability Act of 2015,
S. 1230, Memoranda of Understanding with State Oil & Gas Programs,
S.1310, Deficit Reduction Through Fair Oil Royalties Act
S. 1311, The Oil Spill Deterrent Act,
S. 1340, Coal Oversight and Leasing Reform Act of 2015,
S. 1407, Public Land Renewable Energy Development Act of 2015**

June 9, 2015

Introduction

The following is the Department of the Interior's Statement for the Record on seven bills pertaining to energy accountability and reform: S. 15, the Protecting States' Rights to Promote American Energy Security Act; S. 1218, the Nexus of Energy and Water for Sustainability Act of 2015; S. 1230, a bill to require Memoranda of Understanding with State Oil & Gas Programs; S. 1310 the Deficit Reduction Through Fair Oil Royalties Act; S. 1311, the Oil Spill Deterrent Act; S. 1340, the Coal Oversight and Leasing Reform Act of 2015; and S. 1407, the Public Land Renewable Energy Development Act of 2015.

This statement is being submitted in response to the third hearing convened by the Committee, with very short notice, that addressed a large number of significant bills. The following statement represents an initial review and analysis of the legislation; however, the Administration may identify additional concerns with the bills.

Background

The Department's mission affects the lives of all Americans. Interior stewards 20 percent of the Nation's lands, oversees the responsible development of 21 percent of U.S. energy supplies, is the largest supplier and manager of water in the 17 western States, maintains relationships with 566 federally recognized Tribes, and provides services to more than two million American Indian and Alaska Native peoples. In 2013, Interior's programs contributed an estimated \$360 billion to the U.S. economy and supported more than two million jobs in activities including outdoor recreation and tourism, energy development, grazing, and timber harvesting.

The Department protects and enables development of America's shared natural resources to supply the energy that powers the Nation's future. The Department's efforts are critical to ensure all development – energy, timber, forage, and non-energy minerals – is managed safely, smartly, and in compliance with the highest scientific and environmental standards. As a steward of lands, water, wildlife, and cultural heritage, Interior strives to ensure the sustainability of these assets to support the American economy, communities, and the wellbeing of the planet.

To encourage these resource stewardship and development objectives, Interior is shifting from a reactive, project-by-project resource planning approach to a more predictable and effective management of its lands and resources. The goal is to provide greater certainty for project developers when it comes to permitting and better outcomes for conservation through more effective and efficient project planning. This approach to smart development is being incorporated into all of Interior's energy and natural resource planning and is an important part of the plan to accomplish President Obama's all-of-the-above energy strategy. Interior's focus on powering America's energy future supports an all-inclusive approach – one that responsibly balances the development of conventional and renewable resources on the Nation's public lands.

Oil & Gas – Secretary Jewell has made it clear that as we expand and diversify our nation's energy portfolio, the development of conventional energy resources from BLM-managed lands will continue to play a critical role in meeting our energy needs and fueling our economy. Facilitating the safe and efficient development of these resources is one of the BLM's many responsibilities and part of the Administration's broad energy strategy, outlined in the President's *Blueprint for a Secure Energy Future*. Environmentally responsible development of these resources will improve economic conditions by increasing supplies for consumers and reducing our nation's reliance on oil imports, while also protecting our federal lands and the environment. As part of this effort, the Department is working with various agencies in support of Executive Order 13604 to improve the performance of Federal permitting and review of infrastructure projects by increasing transparency and predictability of infrastructure permitting and reviews.

In recent years, the BLM has overseen a significant increase in oil production, while also supporting continued natural gas production. Oil production from the Federal and Indian lands for which the BLM has permitting and oversight responsibility rose twelve percent in 2014 from the previous year and is now up 81 percent since 2008 – from 113 million barrels in 2008 to 205 million barrels today. By comparison, nationwide oil production over the same period increased 73 percent. The BLM is proud to be a leader in this area and of its efforts to make public lands available for oil and gas development in excess of industry demand.

Coal – The BLM is responsible for coal leasing on approximately 570 million acres of the 700 million acres of mineral estate that is managed by the BLM for the American people. Although only a fraction of these acres are actually leased for coal development, they comprise an outsized portion of domestic coal production, with roughly 40 percent of the coal produced in the United States in recent years coming from Federal lease tracts. The BLM works to ensure that the development of coal resources is done in an environmentally sound manner and that American taxpayers receive fair market value (FMV) for those resources. The BLM's coal program manages approximately 310 active leases covering 475,692 acres.

During the last decade, Federal coal leases produced 4.56 billion tons of coal with an approximate market value of \$55.4 billion, generating \$6 billion in royalty payments that were split between the states and the U.S. Treasury. During the same period, 46 Federal coal lease sales were held, covering 71,165 acres and containing 5.3 billion tons of recoverable coal. Approximately \$4.5 billion in bonus bids were collected for these 46 leases.

The Department is focused on addressing concerns about the Federal coal program raised by the Government Accountability Office (GAO) in a December 2013 report, the Department's Office of Inspector General (OIG) in a June 2013 report, Members of Congress, and others. The BLM recently published new guidance based on recommendations from the GAO and OIG regarding procedures for coal lease sale valuations and the inspection and enforcement of coal leases, permits, and licenses. Given the significant revenues at stake within the Federal coal program, we appreciate the Congressional focus on these critical issues and look forward to a continued and robust dialogue.

Renewable Energy –Facilitating the responsible development of renewable energy resources on public lands is a cornerstone of the Administration's broad energy strategy. Due in large part to effective collaboration among the Federal agencies, the BLM successfully accomplished the Energy Policy Act of 2005's (EPAct) goal of authorizing over 10,000 megawatts (MWs) of renewable energy on public lands – three years ahead of schedule.

Since 2009, The BLM has approved significant utility-scale renewable energy generation and transmission projects, including 32 utility-scale solar facilities, 11 wind farms, and 12 geothermal plants, with associated transmission corridors and infrastructure to connect with established power grids. If fully built, these projects will provide more than 14,000 megawatts of power, or enough electricity to power nearly 5 million homes, and will provide over 20,000 construction and operations jobs. Further, in support of the President's Climate Action Plan to ensure America's continued leadership in clean energy, the BLM is continuing to work to reach 20,000 MWs of permitted renewable energy capacity on public lands by 2020.

Renewable energy projects authorized by the BLM constitute a major contribution not only to the nation's energy grid, but also to the national economy. Projects on public lands have already garnered an estimated \$8.6 billion in total capital investments, and the potential for approved projects pending construction is estimated at \$28 billion. Through efficient and environmentally-responsible permitting, the BLM is helping to bring tens of billions of dollars in investments to the United States economy.

The BLM is furthering these contributions by moving from an application-by-application approach for solar energy projects to a competitive leasing process in designated development areas called Solar Energy Zones (SEZs). In October 2012, the Department finalized the Western Solar Plan, a Solar Energy Programmatic Environmental Impact Statement that identified 17 SEZs and established a blueprint for fast track utility-scale solar energy permitting with access to existing or planned transmission infrastructure. On June 1, 2015, three projects within the Dry Lake SEZ in Nevada were approved and were the first to benefit from this streamlined permitting process. Using the expedited review process made available by the Western Solar Plan, reviews of these three projects were completed in less than 10 months; this is less than half the amount of time it took to review and approve projects under the previous system. The Western Solar Plan also provides the foundation for the BLM's current rulemaking process to implement competitive solar and wind energy leasing within designated areas.

In authorizing existing projects, reviewing proposed projects, and developing a competitive leasing rule, the BLM has focused on managing renewable energy development in an accelerated but environmentally sound and responsible manner to ensure the protection of landscapes, wildlife habitats, and other natural and cultural resources. This “smart from the start” approach is consistent with the Administration’s goal of authorizing environmentally sound and sustainable geothermal, wind, and solar energy projects on public lands. The BLM achieves these goals through close working relationships with local communities, state regulators, private industry, key stakeholders, and other Federal agencies.

Energy Revenue – The Department of the Interior manages the public lands and federal waters that provide resources critical to the Nation’s energy security; is responsible for collecting and distributing revenue from energy development; and ensures that the American taxpayer receives a fair return for development of those federal resources. Authorities to assess and collect penalties for violation of lease terms, permit conditions, regulations and orders are principally provided, for onshore production in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), and for offshore production in the Outer Continental Shelf Lands Act of 1953 (OCSLA). FOGRMA and OCSLA cover a broad array of violations, including oil spills.

Energy and Water – The Department recognizes the importance of the energy-water nexus and supports a closer level of communication and coordination between the Department of the Interior, Department of Energy and the broader federal community. The Department of the Interior appreciates the Committee’s leadership on the energy-water nexus issue. Energy and water issues intersect across a range of Interior activities, including hydropower generation, energy development, electricity generation, and water treatment, distribution, and conservation. Interior has a variety of programs that address the energy-water nexus, including USGS monitoring systems and research programs (including the National Water Census), Reclamation Basin Studies, and WaterSMART Grants. Understanding the value of interagency coordination, Interior has partnered with the Department of Energy and the Department of the Army (working with the U.S. Army Corps of Engineers) to recently renew the 2010 Memorandum of Understanding (MOU) to collaboratively address a host of energy-water nexus issues related to hydropower. By coordinating efforts, the signatory agencies have completed a number of projects that promote sustainable hydropower development, including hydropower resource assessments, unit-dispatch optimization systems, climate change studies, integrated basin-scale opportunity assessments, and funding opportunities to demonstrate new small hydropower technologies.

The Department is committed to integrating energy and water policies to promote the sustainable use of all resources, including incorporating water conservation criteria and the water/energy nexus into the Department’s planning efforts. On May 20, 2015, the Department announced that Reclamation will make \$24 million in WaterSMART Water and Energy Efficiency Grants available to 50 new and ongoing projects in the Western United States for activities such as conserving and using water more efficiently, increasing the use of renewable energy, improving energy efficiency, encouraging water markets, and carrying out activities to address climate-related impacts on water. Reclamation also announced that it will make \$23 million for seven water reclamation and reuse projects in California, and nearly \$2 million for seven water reclamation and reuse feasibility studies in California and Texas. These announcements support

the President's Climate Action Plan by providing tools for states and water users to create water supply resilience to meet future water and energy demands in the face of a changing climate.

Water and Energy Efficiency Grants and Basin Studies are part of the Department's WaterSMART Program. WaterSMART Grants provide cost-shared funding to States, tribes, and other entities with water or power delivery authority for water efficiency improvements, with additional consideration given to proposals that include energy savings as a part of planned water efficiency improvements. Water management improvements that incorporate renewable energy sources are also prioritized for WaterSMART Grant funding. These grants directly address the energy-water nexus and provide a concrete means of implementing on-the-ground solutions to energy-water issues. The FY 2014 Water and Energy Efficiency Grant projects are expected to conserve more than 67,000 acre-feet of water annually and 22.9 million kilowatt-hours of electricity — enough water for more than 250,000 people and enough electricity for more than 2,000 households.

In addition to long-standing USGS efforts in water supply and availability and in energy resource assessments and research, several of which are highlighted in the recently published USGS Circular 1407, "The Water-Energy Nexus—An Earth Science Perspective," and which provide an essential foundation for understanding issues related to the energy-water nexus, the USGS participates in a number of interagency efforts. The USGS has been working with the Energy Information Administration (EIA) since 2010 to improve estimates of water withdrawals and consumptive use associated with cooling water at thermoelectric generating plants across the Nation. Cooling water for such plants is the largest sector of water withdrawals in the United States, at 49% of all water withdrawals nationwide, according to USGS Circular 1344, Estimated Use of Water in the United States in 2005. A recent USGS report, Methods for Estimating Water Consumption for Thermoelectric Power Plants in the United States (Scientific Investigations Report 2013-5188), documents the model that the USGS developed with the assistance of the EIA for estimating electric generating plant water withdrawals and consumptive use, which are currently not consistently reported. This ground-breaking model, which incorporates the heat budget of each of the approximately 1,300 thermoelectric generating plants that rely on water for cooling, can be used both to estimate current and historical water use and to forecast future water use with different plant configurations and cooling water technologies.

In addition to the efforts above, the FY 2016 President's Budget requests an additional \$1.5 million for the USGS to provide water use grants to States that will increase availability and quality of water use data – including data related to water used for energy. These grants would provide financial resources, through State water resources agencies, to improve the availability and quality of water use data that they collect and would integrate those data with the USGS Water Census. Funding provided to States through these grants would be targeted at improvements to water use data collection and integration that will be of the greatest benefit to a national assessment of water availability and use. As the energy sector is a primary user of water, increased availability of water use information related to energy will be an important part of this effort.

In mid-April 2014, the USGS released an expanded and updated version of the USGS oil, gas, and geothermal Produced Waters Database and Map Viewer; the revised database contains

nearly 100,000 new samples from conventional and unconventional well types, including geothermal. The availability of more samples and more types of analyses will help farmers determine the quality of local produced water available for possible remediation and reuse, will enable local and national resource managers to track the composition of trace elements, and will help industry plan for waste-water injection and recycling.

Although industry interest in coalbed natural gas development has declined in recent years as development of shale gas resources elsewhere has grown, the Powder River Basin in northern Wyoming and southern Montana experienced a rapid expansion in the development of coalbed natural gas between 2002 and 2011. During this period, about 90 billion liters of water were produced annually in the Wyoming portion of the Basin as part of the extraction process. Produced waters from this development are moderately saline and have high proportions of sodium relative to calcium and magnesium, thus rendering the waters unsuitable for irrigation without treatment. USGS studies have examined the environmental impacts of different disposal options. Results indicated that infiltration impoundments had the potential to contaminate underlying fresh groundwater supplies, but that with specific treatment the produced waters could be used in subsurface drip irrigation operations that minimized potential for groundwater contamination and provided beneficial use of the waters to enhance agricultural production in this semiarid region.

Other Departmental programs and activities relate directly to the energy-water nexus, including hydropower development, water treatment and desalination, pumping and water delivery, BLM energy permitting, and USGS research on energy resources and induced seismicity. We are happy to provide the Committee with additional information on these programs as needed.

S. 15, Protecting States' Rights to Promote American Energy Security Act

S. 15 amends the Mineral Leasing Act to prohibit the Department of the Interior from enforcing Federal regulations regarding hydraulic fracturing activities on any land in any state that has existing regulations on hydraulic fracturing. This deferral to state authority would occur regardless of the quality or comprehensiveness of the state rules, even if the rules are less protective or otherwise in conflict with Federal guidelines.

Analysis

The Department strongly opposes S. 15 as it would prevent the BLM from ensuring that hydraulic fracturing activities on public lands operate under consistent standards that provide an appropriate level of environmental protection. The increasing use of hydraulic fracturing on BLM lands, and the deployment of new drilling technologies, has necessitated that the BLM update its framework for managing the extraction of fluid minerals from the Federal and Indian mineral estate. The BLM's recently issued hydraulic fracturing rule – which becomes effective on June 24, 2015 – is the culmination of four years of work by the BLM that began in November 2010 when it held its first public forum on this topic. Since that time, the BLM has published two proposed rules and held numerous meetings with the public and state officials, as well as many tribal consultations and meetings. Informed by the experience of its experts and the technical expertise and concerns of state regulators, tribes, industry, and the public, the BLM's

hydraulic fracturing rule strengthens existing oversight procedures for hydraulic fracturing on lands where the BLM has permitting responsibilities and provides all stakeholders with additional assurance that operations are being carried out safely and responsibly.

The BLM has established and maintained regulations governing oil and gas operations on public lands for decades, and has worked successfully with operators, tribes and state governments to avoid duplication and delay in the enforcement and monitoring of these regulations. The implementation of the hydraulic fracturing rule will continue this longstanding practice while also ensuring the BLM satisfies its obligations to ensure federal standards are met. The BLM remains committed to working with states to ensure safe, responsible, and environmentally sound domestic oil and gas production, and recognizes the efforts of states that currently have hydraulic fracturing regulations.

Included in the final rule is a variance process that allows for the application of state and tribal standards on public lands where those standards meet or exceed those proposed by the rule. In addition, the BLM continues to reach out to states to establish new or build upon existing formal agreements regarding implementation of federal and state oil and gas rules. These agreements will leverage the strengths of existing partnerships, reduce duplication of efforts for agencies and operators, and implement the final rule as consistently as possible with state regulations, while fulfilling the Secretary's responsibilities mandated by statute as steward for the public lands and trustee for Indian lands. The BLM State Offices are meeting regularly with their state counterparts and have undertaken state-by-state comparisons of regulatory requirements in order to identify opportunities for variances and to establish Memorandums of Understanding (MOUs) that will realize efficiencies and allow for successful implementation of the rule. The BLM is in active discussions with: the North Dakota Industrial Commission; the Wyoming Oil and Gas Commission; and the states of Alaska, California, Colorado, New Mexico, Nevada, and Utah. The BLM also recently discussed the rule with state representatives at the Interstate Oil and Gas Compact Commission's meeting in Salt Lake City the week of May 18, 2015.

S. 1218, Nexus of Energy and Water for Sustainability Act of 2015

S. 1218, Nexus of Energy and Water for Sustainability Act of 2015 would create a Committee or Subcommittee on Energy-Water Nexus for Sustainability under the National Science and Technology Council (NSTC), co-chaired by the Secretary of Energy and Secretary of the Interior and require the Office of Management and Budget to submit a crosscut budget report on research, development and demonstration activities to advance energy-water nexus related science and technologies. The Department of the Interior shares the Committee's goals to promote coordination between Federal agencies as it relates to the energy-water nexus. We note that the Department is already working on the energy-water nexus through several interagency bodies and federal processes- for example through the Natural Drought Resilience Partnership and the Build America Initiative. The Department also has a number of existing programs that address many of these energy-water nexus issues, and that many of the activities called for in S. 1218 are within the scope of existing authorities available to the Department of the Interior, and the Administration as a whole. Some of the existing programs are summarized below.

Section 3 of S. 1218 requires the Director of the Office of Science and Technology Policy to establish either a Committee or Subcommittee on the Nexus of Energy and Water for

Sustainability under the NSTC, co-chaired by the Secretary of Energy and Secretary of the Interior. The Committee or Subcommittee is directed to: (1) serve as a forum for developing common federal goals and plans on energy-water nexus research, development, and demonstration activities; (2) issue a strategic plan on energy-water nexus research, development, and demonstration activities priorities and objectives, (3) promote coordination of the activities of federal departments and agencies on energy-water nexus research, development, and demonstration activities; (4) coordinate and develop capabilities and methodologies for data collection, management, and dissemination of information related to energy-water nexus research, development, and demonstration activities from and to other federal departments and agencies; and (5) promote information exchange between federal departments and agencies. Reclamation, USGS, and the Army Corps of Engineers recently identified common research priorities in water resources infrastructure resilience, threatened and endangered species, and measuring and monitoring for knowledge extraction.

Section 4 of S. 1218 requires the Director of the Office of Management and Budget to submit to Congress a report that includes an interagency budget crosscut that displays at the program, project, and activity level for each of the Federal agencies that carry out or support basic and applied research, development, and demonstration activities to advance the energy-water nexus related science and technologies in the President's budget request, expenditures and obligations for the prior fiscal year, and estimated expenditures and obligations for the current fiscal year.

The Department appreciates the Committee's leadership and the opportunity to strengthen capabilities to address the energy-water nexus. Given the breadth and many facets of this issue, we support close collaboration with the DOE and other Federal agencies. Moving forward, we would like to continue working with the Committee to ensure sufficient interagency collaboration and information sharing to support sound decision-making, leverage resources, and reduce duplication. The Administration believes this can be done through more effective and efficient collaboration and program management utilizing existing authorities.

If enacted, it is the Department's view that the committee or subcommittee created under S. 1218 should focus its attention on key vulnerabilities where there is an appropriate federal role and capability to have a positive impact. It is the Department's view that that focus should be on data gaps associated with water use and availability. We appreciate that the Committee narrowed the focus of S. 1218 to focus on energy-water nexus research, development and demonstration activities, and we look forward to working with you to ensure adequate coordination.

Water availability, severe drought, and long-term climate trends have always posed a significant risk to energy development and electric generation. This is one of the broad, systemic risks at the core of the energy-water nexus. Decreased water availability, prolonged drought, and more pronounced climate trends could increase that risk and require the use of accelerated adaptation strategies.

The Department supports the type of coordination and data exchange encouraged under S. 1218 and is already undertaking a number of steps to do so as discussed in the testimony above. Such

efforts could help close existing gaps, increasing our understanding of water supply availability to benefit water and energy decision makers.

While S. 1218 allows for the coordination of federal activities, the Department would like to stress the importance of providing the scientific community with autonomy to design and execute studies. Finally, States play the key role in allocating and administering water, and they must be a partner in energy-water efforts. S. 1218 does not address the important relationships with states and the private sector, where significant work on energy-water nexus projects is accomplished.

The Department shares the Committee's goals to promote coordination between Federal agencies as it relates to the energy-water nexus. We appreciate the leadership of this Committee in engaging Federal agencies. The Department has numerous programs in place that encourage coordination not only within the Federal Government, but as public-private partnerships. These and other existing authorities can provide more effective and efficient collaboration and program management related to energy-water nexus challenges and opportunities. The Federal Government has a role in providing leadership and tools to address the challenges of imbalance between supply and demand. Sustainable water supplies and energy use are important parts of a stable economic base, employment continuity, and smart growth.

S. 1230, Memoranda of Understanding with State Oil & Gas Programs

S. 1230 directs the Secretary of the Interior to establish a program in which the BLM Director, at the request of a State Governor, would establish a Memorandum of Understanding (MOU) with that state to develop rules and processes for certain oil and gas inspection activities on Federal lands. These activities would include the measurement of oil and gas production, inspection of meters or other measurement methodologies, and other operational activities deemed appropriate by the Secretary. To be eligible for such an MOU with the BLM, the Secretary must determine the state's oil and gas program is sufficient to fulfill the oversight and enforcement responsibilities of the BLM.

Analysis

The BLM has a longstanding practice of working in partnership with state governments and other partners to enhance public lands and carry out its multiple-use mission. In the oil and gas context, we have memorialized this practice in MOUs with state governments, including CA, CO, MT and WY, which date back as far as 1990. These MOUs recognize the interests, expertise, and jurisdictional responsibilities of both the BLM and our state partners and typically outline respective authorities, roles, and responsibilities. The existing MOUs address issues such as well spacing, surface operations, and data sharing.

In recent years, we have been actively engaged in discussions with State Governors and their respective oil and gas officials to seek ways to further increase efficiencies by developing updates to or establishing new MOUs that will facilitate the efficient oversight of oil and gas operations in those states. The goal of these MOUs is to provide for an effective and coordinated oil and gas application and permitting/approval process. We are in active discussions and have

been meeting regularly with: the North Dakota Industrial Commission; the Wyoming Oil and Gas Commission; and the states of Alaska, California, Colorado, New Mexico, Nevada, and Utah. With respect to the recent hydraulic fracturing rule, these discussions have involved state-by-state comparisons of regulatory requirements in order to identify opportunities for variances and to establish MOUs that will realize efficiencies and allow for the successful implementation of the rule.

That said, the BLM cannot support S. 1230's proposed delegation of the BLM's stewardship responsibilities to state officials. While it is common practice for the BLM to enter into an MOU with states to help achieve better coordination among their respective oil and gas programs, such agreements do not revoke or modify the BLM's obligation to make certain final decisions concerning oil and gas operations on Federal and Indian lands. The BLM regulates oil and gas operations on Federal lands, and on Indian lands held in trust by the Federal government, pursuant to the requirements of several statutes, including the Mineral Leasing Act, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act, the Indian Mineral Leasing Act, and the Indian Mineral Development Act.

To ensure the various BLM obligations established by these statutes are met the state-run program envisioned by the bill would still require Federal oversight to ensure Federal responsibilities, including the Secretary's trust responsibilities to the tribes, are being met consistently from state-to-state. The necessary oversight could, instead of creating efficiencies, create an additional layer in the administration of oil and gas operations on public lands. This would result in potential duplication of efforts and additional costs to the taxpayer. S. 123 is silent in regards to how such a state program would be funded.

The highest priority of the BLM oil and gas program is ensuring that the operations it authorizes on public and tribal lands are safe and environmentally responsible. We have established and maintained regulations governing oil and gas operations on public lands for decades, and have worked successfully with operators and in partnership with tribes and state governments to avoid duplication and delay in the enforcement and monitoring of these regulations. The BLM continues to advocate for further coordination with its state partners to maximize efficiency in oil and gas operations on public lands, but does not agree that a legislative remedy is necessary to accomplish our common goals. Instead, the agency believes the best and most efficient results can be achieved by BLM state and field offices working directly with their partners at the state government level to ensure the applicable Federal standards and statutory requirements are met. Ideally the state and Federal partners enter into agreements as appropriate to address the operational activities in the field to ensure that BLM and state oversight responsibilities are met as efficiently as possible.

With respect to the bill's direction that consistent rules be established, it should be noted that the BLM's existing regulatory framework governing oil and gas operations on the lands and mineral resources it manages is robust and longstanding. The BLM's rules were developed consistent with the applicable statutes and have been periodically updated based on BLM's extensive experience in this area. These rules govern operations in over 30 states and were designed to support responsible development using a consistent set of standards across all of the lands managed by the BLM. S. 1230 would create a significant administrative burden as both state and

federal regulations would likely require an extensive overhaul and revisions to achieve that objective; a process that would take a substantial amount of time.

1310, Deficit Reduction Through Fair Oil Royalties Act

In the previous decade, the Minerals Management Service (MMS), the bureau in the Department then charged with managing energy development on the Outer Continental Shelf, discovered that leases issued in the four offshore lease sales held in 1998 and 1999 did not include price thresholds to cut off royalty relief mandated by section 304 of the 1995 Deepwater Royalty Relief Act (DWRRA). (Consistent with the MMS interpretation of the DWRRA, price thresholds were included in the leases issued in the lease sales held in 1996, 1997, and 2000.) The Department subsequently entered into negotiations with the holders of the 1998 and 1999 leases to amend their leases to include price thresholds on royalty relief and successfully came to agreements with several companies. In the meantime, however, several lessees sued to challenge the legality of the royalty relief price thresholds included in the 1996, 1997, and 2000-issued leases, arguing that the price thresholds did not apply to the mandated royalty relief volumes in the DWRRA. Both the prior Administration and the current Administration disagreed with this interpretation of the DWRRA. Unfortunately, the lessees prevailed in district court, and the price thresholds included in the leases were declared legally invalid. The district court opinion was upheld by the 5th Circuit Court of Appeals, and in 2009, this Administration appealed that decision to the Supreme Court, which declined to hear the case.

As a result of the court's decision, successfully negotiated agreements were voided and ongoing administrative attempts to negotiate to amend those leases that did not include price thresholds have been precluded.

S. 1310 would prohibit the acquisition of new oil or natural gas leases or any interest in existing leases in the Gulf of Mexico by certain persons unless they meet certain conditions. Specifically, it would disallow acquisition by parties that did not agree to renegotiation of existing leases issued between 1996 and 2000 subject to congressionally mandated royalty relief under the 1995 DWRRA. The bill seeks to encourage holders of DWRRA leases to renegotiate their leases to incorporate the price thresholds that the courts had found invalid.

The Administration continues to pursue actions to ensure a better return to taxpayers from oil and gas development both onshore and offshore in a way that ensures a level playing field in the sale and development of public resources. We note that the FY 2016 President's Budget contains a package of administrative and legislative oil and gas management reforms that would encourage diligent development of Federal energy resources as well as provide a fair return to the taxpayer. These royalty and other reforms are estimated to generate \$2.5 billion in savings to the Treasury over 10 years. The Administration is working to implement the administrative components of this package where it has the flexibility to do so. We would like to work with the sponsor and the Committee on the legislative components of this package.

S. 1311, the Oil Spill Deterrent Act

S. 1311 amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Outer Continental Shelf Lands Act of 1953 (OCSLA), providing increased penalty authority

intended to deter oil spills. The Department supports the goal of deterring oil spills, and would like to work with the Committee in furtherance of this goal.

Analysis

Penalties Authorized by the Federal Oil and Gas Royalty Management Act

Section 109 of FOGPMA authorizes the Department of the Interior to issue civil penalties when companies fail to comply with applicable rules, regulations and lease terms. Codified in 30 U.S.C. 1719, the authority includes escalated civil penalties for companies that fail to take corrective action, and those that knowingly or willfully violate applicable regulations or laws.

As drafted, the maximum penalty increases provided in Section 2 of S. 1311 would apply to the entire range of violations covered by 30 U.S.C. 1719, the majority of which have no association with drilling or oil spills. While the Department supports to increased administrative flexibility to issue tougher penalties for violations, it is worth noting that the legislation as drafted could have unintended outcomes. For example, the Department notes that increasing the civil penalty amount for failure to take corrective action from \$5,000 to \$100,000, would leave FOGPMA, as amended, with a penalty scheme that authorizes smaller maximum civil penalties (\$10,000 and \$25,000 respectively) for more egregious knowing or willful violations.

The Department supports increasing the maximum civil penalties for all violations in order to provide more realistic deterrent benefits while maintaining the Secretary's discretion to levy civil penalties below the maximum, if appropriate.

Penalties Authorized by the Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act of 1953 (OCSLA) authorizes the Department of the Interior to issue civil penalties of up to \$20,000 per day when companies fail to comply with applicable regulations or laws or with any term of a lease or permit issued pursuant to OCSLA. OCSLA also directs the Secretary of the Interior to adjust the maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index prepared by the U.S. Department of Labor. Through these periodic adjustments, the current maximum civil penalty is \$40,000 per day. Section 3 of S. 1311 substantially increases the maximum penalty from \$20,000 per day to \$250,000 per day for violations and authorizes the Secretary to increase the maximum, after notice and an opportunity for public comment.

While the proposed changes to OCSLA may be broader than necessary to address oil spills, the new authority would authorize increased civil penalties for the entire range of violations covered by 43 U.S.C. 1350. The Department supports increasing the maximum civil penalties for all violations in order to provide more realistic deterrent benefits while maintaining the Secretary's discretion to levy civil penalties below the maximum, if appropriate.

S. 1340, Coal Oversight and Leasing Reform Act of 2015

S. 1340 would amend the Mineral Leasing Act to establish a new Federal coal leasing program and make various changes to current coal leasing practices. These changes include new requirements to be used in the determination of fair market value for coal leases, increased

royalty and rental rates, and shorter lease terms. The bill also imposes a moratorium on new leases until the new program has been fully implemented.

The Department appreciates the work of the sponsor on these issues. We have recently undertaken a major effort to strengthen the management of coal production on public lands by issuing updates to our Coal Evaluation Manual and Handbook. Additionally, the BLM will be further engaging with stakeholders and the public to discuss how the BLM can best carry out its responsibility to manage coal production on public lands, and help to ensure that taxpayers receive a fair return from the development of these public land resources. Consistent with these efforts, we would like to continue discussions with the sponsor and the Committee on how best to continue these program improvements.

Federal Coal Leasing Program

S. 1340 (Sec. 10) establishes a new Federal coal leasing program. As currently written, the leasing program would require the Secretary to establish and approve a 5-year leasing plan. The leasing program would have to ensure FMV and maximize both competition for leases and a fair return to the U.S. taxpayer. S. 1340 directs the Secretary to solicit comments from Federal and state agencies and the public, and establishes a timeframe for government officials to review and comment before publication of the leasing plan. The bill provides that the Secretary can only lease those parcels that are included in an approved 5-year leasing plan. The bill also would require the Department to issue regulations to implement the new lease program within 180 days of enactment, and to publish the first leasing plan within 270 days of enactment.

The Department supports the goal of improving the BLM's management of the Federal coal program, but notes that it is important to assess fully the effects of the proposals included in Section 10 on the program's efficiency and ultimately the return to the U.S. taxpayer. We are committed to working closely with the sponsor and the Committee on any legislative changes that are needed to strengthen the management of coal production on public lands.

Lease Terms & Lease Modifications

S. 1340 (Sec. 12) reduces the primary term of a lease from 20 years to 10 years; the diligent development period from 10 years to five years; the renewal terms of a lease from 10 years to five years, and the period for advanced royalty payments from 20 years to 10 years. S. 1340 (Sec. 9) reduces the maximum size of a lease modification from 960 acres to 160 acres, requires a FMV determination for lease modifications (Sec. 7), and specifies that lease modifications cannot result in a decrease in revenue (Sec. 8). Lease modifications were limited to 160 acres prior to the Energy Policy Act of 2005, and S. 1340 would reinstate that limit. We are open to further discussion and analysis of these issues.

Revenues

S. 1340 raises the minimum royalty rate for coal and onshore oil and gas production from 12.5 percent to 18.75 percent (Sec. 13), and the rental rate for coal leases from \$3 per acre per year to no less than \$100 per acre per year (Sec. 11). S. 1340 (Sec. 2) also repeals the option for five equal deferred bonus payments. With respect to oil and gas, the Department notes that it has issued an Advanced BLM Notice of Proposed Rulemaking asking the public for input on potential changes to the BLM's royalty rate regulations. The comment period on that notice closes on

June 19, 2015. The Department is interested in working with the sponsor and the Committee to determine the appropriate royalty, rental rates, and other related revenues, and plans to engage stakeholders further on this topic in the very near future.

Fair Market Value

S. 1340 (Sec. 5) includes new requirements to determine FMV. The bill requires that the export potential of coal be considered in the FMV determination, and that the Secretary is not to accept any bids for a lease that is less than FMV. Finally, S. 1340 requires the GAO to complete an audit two years after enactment to determine whether the Secretary has complied with the FMV determination requirements.

The Department shares the goal of S. 1340 to capture FMV of leased coal, and the BLM has recently made improvements to its presale estimate process. In December 2014, the BLM published a new Coal Evaluation Manual and a new Coal Evaluation Handbook following the recommendations of GAO and OIG audits. The Coal Manual and Handbook enhance the evaluation process, while ensuring there is adequate and appropriate accounting for coal exports, with a consistent application throughout the BLM. There is also greater transparency, including an independent third-party review of each coal evaluation by the Department's Office of Valuation Services. Taken together, these enhancements will result in more thorough and better-documented coal evaluations for the benefit of the taxpayer. Finally, existing BLM rules provide that the BLM will reject bids that are less than the presale estimated FMV.

Inspection & Enforcement

S. 1340 (Sec. 14) requires the development of new regulations to ensure consistent and effective inspection and enforcement by providing additional national oversight of state inspections; standardizing the BLM inspection and enforcement practices; requiring that inspections and enforcement data be stored in a central database; and requiring periodic unannounced inspections. S. 1340 (Sec. 15) also provides the BLM with the authority to assess civil penalties of up to \$100,000 per incident per day. The Department supports establishing the authority to assess civil penalties per incident per day which would provide a useful tool to encourage compliance with applicable coal statutes and regulations. We are interested in working with the sponsor and the Committee to further develop potential improvements to the BLM's inspection and enforcement program.

Additional Provisions

Other proposals in S. 1340, include: a confidentiality requirement for consultants (Sec. 3); the requirement for licensees to provide an assertion of accuracy for data developed for exploration licenses (Sec. 4); and the requirement to make coal lease data publicly available (Sec. 6). In each instance, these issues have been addressed by existing BLM or Office of Natural Resources Revenue (ONRR) rules, policies, and guidance, including the recently updated Evaluation Handbook and Manual. While the BLM and ONRR have already addressed these issues administratively, BLM is interested in working with the sponsor and the Committee to provide greater transparency regarding its management of the Federal coal program.

S. 1407, Public Land Renewable Energy Development Act

S. 1407 seeks to expedite the development of geothermal, wind, and solar energy projects on Federal lands managed by the Departments of the Interior and Agriculture by designating priority and other variance development areas in Bureau of Land Management (BLM) Resource Management Plans (RMPs), and establishing interagency coordination procedures. The bill also reestablishes a special account for processing geothermal energy authorizations, establishes a royalty system for wind and solar energy authorizations, and creates a conservation fund to address impacts of wind and solar energy development on public lands. The bill's provisions are directed toward public lands that have not been excluded from geothermal, solar or wind energy development through BLM RMPs or Federal law. This statement addresses the provisions relevant to the Department.

The Department and the BLM are committed to responsibly mobilizing the tremendous renewable energy resources available on public lands, and share the Committee's interest in identifying efficiencies in the development of those resources that are consistent with our multiple use and sustained yield mandate under the Federal Lands Policy and Management Act, environmental protection, and public involvement in agency decision-making. The Department supports the goals of S. 1407, and is already utilizing administrative authorities to implement the Western Solar Plan and to expand wind and geothermal development opportunities on public lands where appropriate. We are pleased to continue to work with the Committee and the sponsor to further harness the vast renewable resources on public lands while continuing to ensure a fair return to U.S. taxpayers.

Analysis

Land Use Planning, Environmental Review, & Permit Coordination

S. 1407 (Title II, Sec. 202) requires that within five years BLM update existing land use plans to establish priority and other "variance" areas for geothermal and wind energy development. The bill acknowledges that the BLM completed a wind energy programmatic EIS and land use planning effort in 2005, completed a geothermal programmatic EIS and land use planning effort in 2008, and completed a solar energy programmatic EIS and land use planning in 2012. The BLM's wind energy land use plan identified exclusion areas but did not identify priority or variance areas for wind development. The geothermal planning effort involved both BLM public lands and National Forest System lands that were available and open for geothermal leasing, however, did not designate priority or variance areas for geothermal development. Finally, the BLM's solar energy planning effort designated exclusion lands as well as priority and variance areas for development.

The Department shares goals similar to those advanced by Section 202 and, through its existing authorities, is currently developing a competitive leasing program for solar and wind energy projects on public lands. As part of the Western Solar Plan, the BLM recently completed a successful competitive leasing auction in the Dry Lake SEZ in Nevada, which resulted in \$5.8 million in high bids. Building on the success of the Dry Lake auction, the BLM published a Proposed Rule for a competitive leasing program for wind and solar in September 2014 and expects to publish a Final Rule before the end of the year. This rule will give additional detail to the competitive leasing program for the solar and wind energy programs. The land use planning

requirements as outlined by S. 1407 would require significant time and resources and substantial public involvement if applicable to all BLM lands throughout the West. We would like to work with the sponsor and the Committee on coordinating the Department's existing efforts with those identified in the bill.

S. 1407 (Title II, Sec. 203) directs that in some cases additional review under the National Environmental Policy Act (NEPA) may not be required for renewable energy projects. It is the BLM's responsibility to complete an appropriate analysis of these types of activities before they are undertaken. The BLM believes analysis under NEPA allows for the reasoned consideration of the environmental effects of renewable energy projects and provides opportunity to consider alternatives with less adverse impacts on communities and the environment. Failure to complete an adequate NEPA review reduces transparency in agency decision-making and would impact our ability to identify relevant and useful information for consideration by the public and by the BLM as a decision-maker.

S. 1407 (Title II, Sec. 204) establishes a program to improve renewable energy permit coordination that is similar to the process BLM used to establish oil and gas permitting offices under the provisions of the EAct of 2005. Combined with increased overall funding, this process has helped to focus and coordinate resources to improve permitting for oil and gas development. Following this model, the BLM has already established renewable energy coordination offices in several state and field offices that have a significant renewable energy workload. While we support the general concept to expedite interagency coordination, it may be more advantageous to utilize existing renewable energy coordination offices and establish an interagency renewable energy team in those additional states with the highest expected renewable energy workload. The BLM should have the flexibility to adjust these offices in the future to adapt to emerging renewable energy workloads across the West. The BLM would like to work with the sponsor and Committee to discuss how best to achieve these goals.

Revenue & Enforcement

The Department also shares the goal of S. 1407 to capture the fair market value of leased projects as part of its commitment to ensure an appropriate return to U.S. taxpayers. While the BLM currently ensures a fair return to the public from solar and wind energy authorizations through an annual acreage rent and MW capacity fee, the agency is also supportive of efforts which could improve and simplify how that return is captured.

S. 1407 (Title I, Sec 101) amends the EAct of 2005 to reestablish the geothermal special account, which expired in 2010, through Fiscal Year 2020 to provide funds for the processing of geothermal leases and use authorizations. Under current law, 50 percent of geothermal revenues are directed to the state in which the project is located, with the remaining funds divided evenly between the county in which the project is located and the Treasury. Under S. 1407, the states would continue to receive 50 percent of geothermal revenues; while the BLM would receive an amount subject to appropriation and without fiscal year limitation from the total directed to the Treasury. The BLM estimates the proposed special account would shift approximately \$4 million per year from the general Treasury to supplement discretionary appropriations that currently total roughly \$7 million annually. The Department has generally proposed funding geothermal program operations through a combination of cost recovery fees and the regular appropriations

process. We have concerns about the redirection of Federal receipts traditionally deposited in the Treasury toward this special-purpose account. We look forward to working with this Committee and the Interior appropriations committees in evaluating appropriate funding options for the geothermal leasing program.

S. 1407 (Title II, Section 212) provides for the allocation of all revenues from solar and wind energy authorizations to states (25 percent), counties (25 percent), a new Renewable Energy Resource Conservation Fund (35 percent and increasing after 15 years), and the U.S. Treasury (15 percent and decreasing after 15 years). Under the bill, funds deposited in the U.S. Treasury are to be directed to the BLM or other Federal or state agencies to assist in the processing of renewable energy permits for 15 years, after which the 15 percent is decreased incrementally each year and redirected to the new Conservation Fund. Currently all such revenues from solar and wind energy authorizations on public lands go to the U.S. Treasury. As written, the bill would limit expenditure of funds from the Renewable Energy Conservation Fund to fish and wildlife habitat issues, and access related to fishing, hunting and other forms of outdoor recreation.

The S. 1407 (Title II, Section 213) directs the Secretary of the Interior, in consultation with the Secretary of Agriculture, to establish royalties based on a percentage of the gross proceeds from the sale of MW production. The Department is concerned, however, that the royalty system would not provide a fair return from projects during periods without electric generation. We recommend the Committee consider additional language that would provide for a revenue collection system covering all phases of project development and operation, and also provide some guidelines on the appropriate range of royalty. The Department also wants to note that the current fee structure encourages a limited footprint; by implementing a similar structure for royalties, this key benefit could be reflected in the royalty system. The Department is glad to work with the sponsor and the Committee on exploring appropriate measures to ensure fair return to taxpayers from solar and wind projects' use of public lands.

S. 1407 (Title II, Section 214) would require the development of a comprehensive inspection, collection, fiscal, and production accounting and auditing system by the BLM and Department's Office of Natural Resources Revenue. Replacing the existing annual acreage and MW capacity fee with the system necessary to accurately determine royalties would require the Department to collect, track, and audit significantly different types of information from what is currently collected. The Department would need additional time and resources to develop a robust royalty auditing system capable of ensuring a fair return. The Department looks forward to working with the sponsor and the Committee to determine the best way to meet the revenue capturing objectives of the legislation without creating significant new administrative costs and burdens for the Department.

S. 1407 (Title II, Section 217) would require the Department to carry out a study of mitigation banking on Federal lands. Under Secretary's Order 3330, the Department has been working to update its policies and program direction with regard to landscape-level mitigation. While we believe that mitigation banking is an important tool for offsetting the unavoidable impacts of certain developments on the natural and cultural resources on public lands, we believe a separate study on mitigation banking would be duplicative of ongoing efforts to improve and expand

opportunities for mitigation at this time, including mitigation banking, the establishment of credit exchanges, and other tools being developed by states, private partners, and the Federal agencies. We would prefer to incorporate this review into our ongoing mitigation efforts.

Finally, S. 1407 (Title II, Section 218) of the bill would revoke the rental fee exemptions provided under the Rural Electrification Act (REA) for solar and wind projects with a capacity of 20 MWs or more. While the BLM has not yet approved any eligible projects under the REA, future projects may qualify for rental exemptions under existing authorities. The BLM supports the removal of the rental fee exemption as provided under S. 1407.

Conclusion

Thank you for inviting the Department to submit its views on S. 15, S. 1218, S. 1230, S. 1310, S. 1311, S. 1340, and S. 1407. The Department of the Interior is committed to supporting the responsible supply of energy for our nation.