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**Before the
House Natural Resources Committee,
Subcommittee on Energy and Mineral Resources**

**Testimony on the “Impacts to Onshore Jobs, Revenue, and Energy: Review and Status of
Sec. 390 Categorical Exclusions of the Energy Policy Act of 2005”**

September 9, 2011

Mr. Chairman and Members of the Committee—thank you for the opportunity to appear before you today. Section 390 Categorical Exclusions (CX) are important tools for encouraging domestic energy production, thereby creating jobs, growing federal revenue and spurring American economic activity.

Western Energy Alliance (formerly the Independent Petroleum Association of Mountain States IPAMS) represents 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. Alliance members are small businesses and independent producers that operate on public lands in the West.

Our members are proud to produce 27% of America’s natural gas and 14% of its oil production while disturbing only 0.07% of public lands. Our *Blueprint for Western Energy Prosperity* finds that by 2020 we could produce as much oil and natural gas in the West as the U.S. currently imports from Russia, Iraq, Kuwait, Saudi Arabia, Venezuela, Algeria, Nigeria, and Colombia combined, while creating an additional 70,000 jobs and \$3.5 billion in government revenue. We hope to achieve that potential if government red tape doesn’t stand in the way.

Oil and natural gas development has a small and temporary impact on the land, and operators comply with thousands of very detailed regulatory requirements under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, National Historic Preservation Act, Occupational Safety & Health Act, Emergency Planning and Community Right to Know Act, Environmental Response, Compensation & Liability Act, and Toxic Substances Control Act, to name a few, as well as state and local regulations and numerous Bureau of Land Management (BLM) policies and procedures.

With the Energy Policy Act of 2005, Congress intended “to ensure jobs for our future with secure, affordable, and reliable energy.” Section 390 CXs are an important part of achieving those goals by encouraging domestic oil and natural gas development in very limited ways. By eliminating the requirement for redundant environmental analysis in five specific circumstances in which the environmental impact is minimal, and/or in which oil and gas development was analyzed previously in a NEPA document, Congress hoped to create jobs and increase government revenue while encouraging domestic production. Companies must still comply with all other regulations when a CX is used.

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Almost all the criticism directed at CXs has been about missing a layer of environmental analysis, no matter how redundant, as if oil and gas development is not highly and aggressively constrained and regulated. Despite the limited scope of Section 390 CXs and their success in reducing environmental impact, CXs have been under attack from day one. That criticism would be highly appropriate if CXs absolved companies from all environmental compliance, but they do not – they merely remove a redundant layer of National Environmental Policy Act (NEPA) analysis in specific situations where the impact is minimal or where environmental analysis has already been done.

A 2009 Government Accountability Office report (*Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development Under Section 390 of the Act*, GAO-09-872, September 2009) found that BLM regularly did not use CXs in many situations, even to the point that five BLM field offices simply refused to use them at all. However, GAO didn't highlight that breach of the law, or the impact on jobs, the economy and government revenue. Rather, GAO highlighted a very few examples where BLM incorrectly used a CX. While GAO recognized they were unintentional errors from implementing a new program that are easily corrected administratively, there was no systematic look at all the energy development and job creation prevented from the government's refusal to use CXs.

Where's the criticism of the government's failure to use CXs which discourages energy development? While there's coordinated outrage from the environmental lobby about the fact that one layer of redundant analysis has been removed, where's the loud response about the fact that government reluctance to utilize a legal tool has prevented economic activity and job creation? History has shown again and again that wealthy societies are best able to protect the environment, and poor countries are the ones with the most devastating environmental conditions. The best way to ensure we continue to improve our environment is to grow the economy and create high-paying jobs. American development of oil and natural gas is a proven path to that prosperity.

Developing oil and natural gas from federal lands is a very time consuming and expensive process compared to development on state and private lands. The normal regulatory requirements mentioned above are augmented with a lengthy federal bureaucratic process and requirements under the NEPA. NEPA requires detailed analysis of environmental impacts at several stages of the process – the land use planning process, leasing, seismic exploration, project planning, and permitting. NEPA analysis for large projects can take seven years, and even small projects of a few wells can be held up for a few years by analysis.

Furthermore, permitting times are extremely long for drilling federal wells. While states take about a month on average to process and approve a drilling permit, the federal government routinely takes six months to two years, depending on the field office. Timely permitting enables rigs to keep running, thus enabling companies to execute efficient development programs and create jobs. And each rig running creates about 125 jobs. When companies cannot get federal permits in a timely manner, they must move onto state and private lands or

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lay down rigs and send jobs elsewhere. Either way, the federal government has denied itself considerable royalty revenue.

CXs are a means to eliminate redundant analysis in certain circumstances. By using CXs, BLM can approve permits in a more timely manner, putting more people to work and creating government revenue. A recent analysis by SWCA, a respected environmental consulting firm that regularly conducts NEPA and other analysis for the federal government, finds that delays from just six oil and natural gas projects are preventing the creation of over 30,600 jobs, \$2.6 billion in labor earnings and \$157 in annual royalty and tax revenue in Wyoming alone.

However, this Interior Department has slowed development of oil and natural gas, and last year issued BLM Instruction Memorandum 2010-118 that rewrote the criteria for Section 390 CXs, rendering them virtually ineffective. Fortunately, Judge Nancy Freudenthal in Wyoming Federal District Court overturned the policy in our successful lawsuit. Western Energy Alliance is hopeful that as a result of her imposition of a nationwide injunction of IM 2010-118, BLM will again use CXs more effectively, thereby creating more jobs and economic growth.

The use of CXs doesn't mean less protection for the environment – it just means less redundant analysis and bureaucratic process. In fact, effective use of CXs can enable BLM and Forest Service staff to spend less time behind a desk pushing paper and more time in the field monitoring and inspecting. According to a study from the Western Organization of Resource Councils (WORC), an environmental advocacy group, the number of environmental inspections performed by BLM generally increased over the last decade until 2006 to 2008, when inspections more than doubled. It's no coincidence that the dramatic increase in BLM inspections corresponded with full implementation of CXs in 2006. Furthermore, CXs only remove the need for a redundant layer of NEPA analysis. They do not remove any other regulatory requirements or tools like BMPs and voluntary measures to protect natural resource values.

In conclusion, we can use limited, balanced tools like CXs to develop American oil and natural gas on public lands, or we can continue to make it more difficult for producers to operate on federal lands and forego economic activity and job creation. Thank you for the opportunity to testify today.

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