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Oversight hearing on

"State Lands vs. Federal Lands and Oil and Gas Production:

What State Regulators are doing right"

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Mr. Chairman and Members of the Committee:

My name is Gregory S. Bell, and I am the Lieutenant Governor of the great State of Utah. Utah is fortunate to be endowed both with vast mineral wealth and with high-value renewable resources. Governor Gary R. Herbert has placed a special emphasis on energy development in Utah, including it as one of four cornerstones for economic prosperity in his administration: Energy, Education, Economic Development, and Self-Determination.

In order to further hone the State's focus on advancing energy development, in 2011 Governor Herbert created an Office of Energy Development, which focuses on economic development and job creation through energy resource development. This office provides tremendous value by developing beneficial energy policy, managing intelligent incentives, and coordinating responsible energy development with producers. However, the State of Utah essentially has its hands tied in implementing good energy policy because nearly 70% of the State's land is federally owned.

While day-to-day interactions with local branches of these federal land management agencies are friendly and, for the most part, productive, national policies are beyond the control of local administrators. From Utah's perspective, increasingly national political considerations are unduly influencing land use decisions that are more effectively addressed locally. Utah believes that those closest to, and whose lives are most directly impacted by, public lands are better situated to make decisions regarding the use and enjoyment of those public lands. In our experience, when land and energy policies are determined within the political jockeying in Washington, D.C., the outcomes for local communities are almost invariably negative.

As an example, consider the recent decision by the Department of the Interior to apply sequestration cuts to mineral lease royalty payments. This move subverts the common understanding of what royalties are – dedicated revenues collected by the federal government in trust for us, but certainly not federal spending. This decision will be devastating to the rural

municipal governments accustomed to receiving these royalties, many of which are already struggling to provide adequate social services and infrastructure.

Unfortunately we witness the same tendencies when it comes to the leasing and issuing permits for energy development on federal land, a series of processes and timelines that can run to a decade or more. In many cases Utah and other states have demonstrated different approaches to achieving the same environmental and social goals, approaches that are often more efficient because they are tailored to the state's specific problems, and in the context of its unique geology, flora and fauna.

Today, I will provide three examples which demonstrate how Utah gets it right when it comes to land management and environmental regulation. I will start by discussing Utah's approach to addressing air quality concerns in its leading oil and gas producing region, and will then move on to the management of the greater sage grouse, and the regulation of hydraulic fracturing.

Air Quality in the Uintah Basin

In Utah's Uintah Basin, the State's leading oil and gas producing region, it has become apparent that the local airshed is subject to a unique winter ozone problem. Whereas federal regulators' understanding of ozone has been derived from years of studying summer ozone problems in dense urban areas like Los Angeles and Dallas, Utah's ozone is not only in a different time of year, but it's in sparsely-settled rural area.

Ozone is an oxidant harmful to human health and the environment and is formed in the atmosphere from precursor emissions of oxides of nitrogen and organic gases under intense sunlight, usually in the summertime. The Uintah Basin's ozone is unique because it is highest in the winter when there is highly reflective snow on the ground in combination with pollution-trapping weather patterns. The Basin's unique ozone problem can only be solved through local research to identify effective and appropriate solutions.

The State of Utah's Department of Environmental Quality estimates that in 2016 the Basin area will go into "non-attainment status" with regard to ozone, thereby triggering a mandatory – and onerous – regulatory approach by the EPA. Certainly there are contributing emissions associated with oil and gas production, but studies so far have pointed toward climate and weather as primary drivers. EPA's non-attainment-triggered rules, which have the potential to wreak significant damage on energy development prospects in the Basin, could very well do so, without creating any real benefit to air quality.

As mentioned above, one of the major roadblocks to successfully solving the air quality issue in the Basin is the lack of flexibility the Environmental Protection Agency may use in approaching the problem. The Clean Air Act is so prescriptive that a designation of non-attainment in this

area could potentially impede, rather than accelerate, the move toward cleaner air. EPA has jurisdiction over 75% of the Basin's land base (tribal/reservation lands), but is unable to cooperatively manage the airshed with the state. Optimally, state and federal agencies would cooperatively manage the airshed in a unified way, with consistent regulations, consistent trading programs, and shared monitoring information. We believe this is a mutually beneficial and common sense goal. Yet the legal framework inhibits this solution.

Given the gravity of the air quality issue both for human health and industry, Governor Herbert has made air quality in the Basin a priority and has directed State agencies to take the lead in a coordinated effort to improve air quality. State agencies organized a massive cooperative research effort supported by the BLM, the EPA, the NOAA, the Western Energy Alliance, the local Special Service District, and a number of university research groups. Together these groups have conducted intensive winter studies over the course of the last three years. The State is also leading out on policy implementation through stakeholder meetings, which parallel the scientific research. The State is ensuring that growth in oil and gas production does not adversely affect air pollution in the Basin and is developing sound strategies to reduce emissions from existing equipment.

The State can lead by example, but it cannot solve the Basin's air quality problem alone. Air quality regulation in the Basin is complicated because EPA, not the state, has jurisdiction on tribal lands in the Basin (Ute Indian Reservation and surrounding Indian allotments referred to as "Indian Country"). Approximately 80 percent of the Basin's air emissions originate on "Indian Country." The EPA does not have the resources to operate an "Indian County" air program as the state is prepared to do, so mitigation efforts across jurisdictions in the Basin are not consistent. It is very difficult for the EPA to work jointly with state regulators to develop solutions for the Basin because legal structures limit their ability to collaborate with other agencies. However, a prescriptive EPA approach in the Basin would set national precedents that would be counterproductive both from a federal and state perspective.

There are many options for ozone mitigation available, but it is critical to let the science lead us to solutions which are effective and appropriate for the Basin. Needless top-down, rigid controls could seriously harm the economy for the Utes and other Basin residents--with no commensurate benefit to air quality. In summary, it is clear that a cooperative effort between the state and federal government, along with local stakeholders, is what is needed to address this unique air quality problem – not a one-size-fits-all band-aid from Washington. Given the Utah's history of leadership, understanding, and action, and given its importance to the State's economic prosperity, this effort would be pursued much more effectively and pragmatically by allowing Utah to lead.

Regardless of the various impediments, it is critical that potentially damaging regulation not get ahead of real science; if Utah is allowed to lead, we believe we can accomplish our mutual environmental goals without damaging local economies.

Management of the Greater Sage Grouse

Utah takes its obligations concerning the management of the wildlife resources entrusted to its management very seriously, and has always worked diligently to provide adequate protection for those species that may be adversely affected by development of natural resources, or by human enjoyment of the outdoors. The greater sage grouse is a species that lives in the vast sagebrush habitat found in eleven states in the West, including Utah. The grouse's habitat ranges from the flat prairie lands in Wyoming and Montana, to the high-altitude terrain in California, to the naturally fragmented islands of habitat found on the Colorado Plateau. Given this geographical diversity, the protection and management of the greater sage grouse cries out for solutions specifically tailored to the local situation, and for solutions that are not blind to the character and needs of local communities. For a handful of reasons, the State is in a much better position than the federal government to manage wildlife and habitat.

Utah began to find such solutions 15 years ago for greater sage grouse by empowering local working groups composed of state and local officials, private landowners, and federal agencies to determine the factors negatively affecting the species locally, and to generate solutions. Utah has invested millions of dollars in partnership with federal agencies such as the Bureau of Land Management and the Natural Resources Conservation Service, for habitat restoration and rehabilitation work which have demonstrably improved the status of the bird in Utah.

Yet this vast amount of work appears to be irrelevant to the U.S. Fish and Wildlife Service, which is considering the need to list the species under the provisions of the ESA. The agency's 2010 decision that the listing was warranted, but precluded by higher priorities, did not mention these on-the-ground efforts to find solutions. Instead the Service focused solely upon scientific literature based upon studies conducted elsewhere. It is noteworthy that nowhere in the 2010 decision does the Service analyze the applicability of the scientific literature upon the local conditions found in Utah, in order to determine if the status of the Utah populations varies from those found elsewhere.

This deficiency is important, because Utah, like all the western states affected by the 2010 decision, has been working hard to formalize a state-specific Conservation Plan for the species. Utah's planning effort was advised by a Governor's Working Group composed of many stakeholders, including the BLM, Forest Service, and the Fish and Wildlife Service. The State's Conservation Plan provides for a continuation of the long-standing local efforts for private and school trust lands, and requests reasonable regulatory provisions from the BLM and the U.S. Forest Service. The Conservation Plan creates a balanced suite of protections designed to encourage a cooperative spirit of conservation, while balancing legitimate economic interests.

Federal agencies now advise us that the protection of the species may require each agency to consider protective stipulations designed to be an independent response to the 2010 listing decision. If adopted, these independent provisions will not be sufficient to conserve the bird on

their own, will antagonize the effort to earn the necessary protections on private lands, and will truly only serve to stand the cooperative spirit of a joint response on its head.

Of greater significance, the Fish and Wildlife Service appears to be altering its direction in terms of support for these state plans. At a recent Governor's Sage Grouse Task Force Meeting, the Service indicated the time and effort taken by the Service to respond to the request by each western state for review of its plan was not worth it, and that states should proceed without review by the Service. Because the states had been led to believe such a review was possible, and could lead to a letter of support, such as one received years ago by the State of Wyoming, the states feel betrayed, and that the spirit of a cooperative process to find solutions evaporated.

The State of Utah has now requested a letter of support from the Service for its Conservation Plan for the greater sage grouse. Utah is ready to proceed to implement the plan, having secured matching funds. The State seeks a partnership with the BLM, NRCS, Forest Service and the Fish and Wildlife Service. The State's Plan provides protection for 94% of the birds in Utah, and contains clear objectives and goals designed not only to stabilize population trends in Utah, but also to seek an increase in population trends. These goals and objectives are based on solid scientific evidence, but require the committed support of local government, private citizens and the federal agencies to succeed. Yet the FWS wants to throw a wet towel upon the effort by refusing to grant a letter of support, choosing instead to focus on its own internal deliberations concerning scientific literature. The Service has completely lost connection with the observational science needed to determine the status of the bird. Rather, the Service is stuck in the alluring ivory tower of unfocused scientific literature. The Service needs to support real efforts to protect the species, particularly because nothing the Service is currently considering will actually preserve the species in the event of a listing proposal.

Listing the sage grouse would put in place onerous restrictions on responsible energy development and community growth, restrictions that Utah and its neighbors anticipate will be unsustainable. Utah's goal over the past fifteen years - and particularly in the last eighteen months - has been to demonstrate that individual states are more than competent to develop and administer plans to preserve the bird, and to prevent a listing under the Endangered Species Act (ESA). The State Sage Grouse Conservation Plan is a balanced one that would preserve and grow populations of the sage grouse while at the same time allowing local economies to grow; and yet all signs point to an imminent listing under the Endangered Species Act by the US Fish and Wildlife Service. Setting aside the frustrating consideration that the Service's plan won't work, this could be devastating to sensitive rural economies throughout the West, illustrating, once again, how federal rules, procedures, and policies often impede balanced and reasonable state solutions to challenging policy problems.

Regulation of Hydraulic Fracturing

Finally, I'd like to take a moment to address proposed new rules from the Bureau of Land Management and the Environmental Protection Agency to further regulate hydraulic fracturing, a well-stimulation practice in use since the 1940's. Imperfect public understandings of an industry practice have led to a political outcry inconsistent with fact. That outcry has prompted rulemaking actions which, again, could harm rural communities in energy-producing states.

In Utah there has not been **a single** recorded instance of hydraulic fracturing fluids polluting Utah's waters. Utah regulators have long understood the risk, and have regulated the practice carefully and effectively. Although the substance of Utah's regulations and its compliance mandates regarding fracturing are sufficient, the state's Division of Oil, Gas, and Mining has responded to public concern through a program aimed at industry disclosure and transparency. Once again we have state regulations that are effective, along with new state policies that are sensitive to the growing public concern over these practices. Yet the State and industry are faced with unnecessary uncertainty regarding looming federal actions.

Hydraulic fracturing has been an operational practice for completing and stimulating oil and gas wells in Utah since the earliest drilling in the state. State regulation of the practice commenced with creation of the Utah Oil and Gas Conservation Commission in 1955. Let me restate that in all of the historical records of the Division of Oil, Gas, and Mining (DOGM), there has never been one verified case of fracturing causing or contributing to contamination of water resources.

Geology in Utah dictates that hydrocarbon development will necessarily be in deeper horizons than in many other states. Statewide statistics indicate that less than 2 percent of all wells drilled annually are shallower than 1,000 ft. in depth. In calendar year 2011, only 3.5 percent of wells were drilled shallower than 5,000 ft. in depth. As usable groundwater resources are generally shallower than 1,000 feet in depth, deeper oil and gas well depths greatly minimize the potential for problems stemming from fracturing, and current regulation in Utah has been effective in avoiding such problems.

Geography in Utah also minimizes the risk of hydraulic fracturing problems relative to human population. All existing development of hydrocarbon resources occurs far from populated areas of the state. There is no hydrocarbon development along the Wasatch Front where the majority of Utah's population resides, and the most highly drilled areas of the state are in the most sparsely populated areas of the Uintah Basin in eastern Utah.

On-site inspection of oil and gas wells is a key component of DOGM's regulatory program. All wells drilled on state or private lands in Utah are subject to a rigorous inspection program that includes: inspection and witnessing of well control equipment tests, casing/cementing operations, follow up to third party complaints, general compliance verification, drilling operations, emergency response, final land restoration/bond release, well plugging,

production/environmental, and workover/recompletion. In 2011, nearly 7,200 on-site inspections were performed by DOGM field operations staff.

DOGM's regulatory processes (including permitting, inspection, compliance, and enforcement) are effective in ensuring the responsible development of Utah's resources with due regard for and protection of the environment. DOGM's professional staff has the local knowledge and expertise to address the technical and scientific challenges posed by Utah's unique geology and geography. A nationwide process of hydraulic fracturing rulemaking by the BLM may have noble intent, but will likely be no more effective in achieving better oversight of hydraulic fracturing operations than currently exists, and doing so may come at substantial cost of manpower and time for both government and private sector organizations.

It appears to us that the BLM is responding to a political demand for action in the form of an unnecessary and duplicative regulation of hydraulic fracturing operations. Each producing field has unique oil and gas geologic features that make a nationwide rule difficult to apply across the country. The proposed rule-making is vague in many regards, which creates unfettered discretion for BLM officials and uncertainty for industry.

The State of Utah has had an effective regulatory program for many years which has successfully monitored the construction and operation of oil and gas wells, including well completion operations such as hydraulic fracturing. In addition, the state has a regulation requiring disclosure of substances used in hydraulic fracturing. Utah's record with the regulation of oil and gas operations is stellar - specifically NO environmental contamination due to hydraulic fracturing has occurred over decades of such operations. While new federal rules could potentially add value for states new to oil and gas development, given Utah's history of proactive and successful state regulation, it is clear that new federal rules will not improve the program, and could very well slow processes and add unnecessary costs.

Productive Management of State Lands

Regulation aside, when Utah is given control of its own lands and natural resources, it has put those lands to productive and environmentally sensitive use, for the benefit of the State's schoolchildren. The Utah School and Institutional Trust Lands Administration was created to manage twelve real estate trusts granted to the state of Utah by the United States at statehood. The Trust Lands Administration manages a 3.5 million-acre real estate portfolio (7% of Utah's land area) for the financial benefit of the twelve beneficiaries. The 3.5 million acre figure refers to surface lands in the trust. However, the Trust Lands include both surface lands and mineral lands. In addition to those 3.5 million acres, there are about a million more acres of mineral-only lands in the trust.

Given the incentive of an improved education system for the State's children, these lands are well managed. The State Trust land has grown the permanent trust fund from $95 million in 1995 to over $1.5 billion in 2012. As the fund grows, the interest flows annually to fund Utah's schools. In 2012 alone SITLA distributed $34 million toward public education.

State Versus Federal Permitting of Oil & Gas Operations

There is a great deal of concern in the energy industry about the baffling timelines required to develop energy on federal lands. In order to drill a well on federal lands, a company has to nominate a parcel for leasing, comply with the National Environmental Policy Act (NEPA), and receive an Application to Drill Permit (APD). The numbers regarding federal permitting are startling: Since 2006 lands offered for leasing are down 94%; time to comply with NEPA has increased to over 8 years; and the time to issue a federal APD has increased from 151 days in 2005 to 307 days in 2011. It is no wonder that, since 2008, oil production on private and state lands in Utah is up over 96%, while production on federal lands in Utah is only up 4%. Companies are prioritizing energy production on state and private lands over equally high resource value federal lands, and that is simply because it takes less time - and money - to get a well in the ground. This does not bode well for Utah or our cash-starved federal government.

There is no clearer comparison between the state and federal approaches than the APD process. In 2011, the state processed 554 state and private land APDs in an average of 79 days per permit. On the other hand, the BLM processed 810 APDs permits in an average 307 days each. State and federal APD permits require similar regulatory and engineering reviews, so it is hard to understand why a federal permit should take four times as long to be issued. The only explanation is the lack of efficient processes, a lack of resources, or simply the lack of will at the BLM to process permits within a reasonable timeline. Given the importance of these permits to rural Utah counties like Uintah and Duchesne, this delay is completely unacceptable.

Conclusion

My primary message is simple - because states differ in so many ways - geography, geology, habitats, meteorology, climate, population--it makes no sense to regulate each of them in exactly the same way. Ozone must be regulated, but it is a fundamentally different problem in Los Angeles than it is in Utah's Uintah Basin. Threatened species require our protection, but that needed protection will take different forms in different habitat areas that are subject to unique threats. Finally, as oil and gas extraction techniques change over time, public scrutiny and government regulation are needed, but any rules developed for shallow drilling adjacent to aquifers in dense population areas must of necessity be different to those developed for drilling in rural areas below 10,000 feet of rock. These are just a handful of high-profile concerns, but there are dozens of comparable issues in the area of environmental regulation of resource development activities, each of which demonstrates that, where willing and able, states are best positioned to regulate. Again and again, Utah has shown it is willing to proactively address

looming issues, and that its agencies and leaders are competent to craft and execute state-specific policies and regulations to ensure continued environmental health.

My second message is that where rural economies and livelihoods are at stake it is unconscionable to let petty political gamesmanship in Washington D.C. drive our nation's energy and environmental policy. When we let these follies drive our economic and environmental policy, local communities lose and the national economy suffers. Given the tough years we have just come through and still see on the horizon, the status quo of federal overreach is simply unacceptable. The state of Utah encourages Congress to focus on ways to empower states with the responsibility for making and implementing good policy, exactly as our Founding Fathers intended.