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Testimony on:
H.R. 1965 (Lamborn) Federal Lands, Jobs and Energy Security Act
H.R. 1394 (Tipton) Planning for American Energy Act of 2013

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This written submission and my oral comments before the U.S. House of Representatives Subcommittee on Energy and Mineral Resources on the above referenced legislation are informed by many different perspectives.

Energy extraction, coal mining, brought my great grandfathers from eastern Europe to western Colorado, six generations ago. I have operated small businesses in both boom and bust energy industry cycles in my hometown of Grand Junction, CO, and have helped govern my community, which serves as the headquarters for much of the energy development in northwest Colorado, in both good economic times and bad as a county commissioner and city councilman and mayor. I have learned from other Colorado communities as a board member and past president of the Colorado Municipal League as well as on the board of directors of Associated Governments of Northwest Colorado.

My work as a former member of the Colorado Economic Development Commission and helping direct local economic development efforts as a past board member of the Mesa County Economic Development Commission (now the Grand Junction Economic Partnership) reinforced the importance of both job creation and retention.

For nearly two decades, I have done consulting work on growth, energy, economic development, and workforce issues with local governments, their regional associations, state agencies, multi-national energy companies and others. I assisted one of my early clients, Shell, with community outreach in early stages of their oil shale effort prior to the company becoming one of the original holders of multiple research and development leases on federal lands.

It is because of that varied background that I understand and identify with the efforts of Representative Tipton and Representative Lamborn in their focus on jobs, energy security and the need to plan aggressively for energy development. But my experiences also prompt me to urge caution as the subcommittee considers the approaches to these important issues as contained in H.R. 1965 and H.R. 1394.

In general, these bills appear to prioritize energy development over other uses of our public lands, upending the multiple use philosophy and potentially threatening other important local jobs in agriculture, tourism and outdoor recreation, hunting and fishing and other multi-million dollar economic drivers that also rely on federal lands. The risk is that we ultimately end up swapping an existing job in historic and less cyclical industries for a new one in an industry known for uncertainty, thus creating a less stable long term local economy.

In western Colorado, the ever-increasing presence of recreation based jobs bolsters the economy. Just as importantly, small businesses, large companies and skilled workers call western Colorado home because of the quality of life provided by access to nearby public lands. Arbitrary leasing quotas would limit multiple uses in favor of the boom and bust nature of extractive industries.

It is also true that public land policies of the current administration have not favored protection over development. President Obama and President George W. Bush have overseen more acres leased for development than have been conserved and the 112th Congress just last year became the first Congress since World War II not to pass a single piece of land conservation legislation.

Since record keeping began by the BLM, more than 95 million acres have been leased for oil and gas development while only 25 million acres have been protected. Balance for the many diverse users that underpin the West's economies must be considered in bills such as those being considered today.

H.R. 1965 and H.R. 1394 also seem to substitute federal government requirements for marketplace realities. Right now, the only major constraints on oil and gas production on federal lands are the result of low commodity prices and the fact that, as Energy Information Administration Director Adam Sieminski testified before the Energy and Commerce Committee last year, rapidly liquids-rich shale where we resources where we are seeing rapid increases in production are found largely outside of federal lands.

Like it or not, we cannot legislate geology, nor can we force companies to shift their focus to less productive and less profitable federal lands.

Specific to H.R. 1394, requiring the Department of Interior to develop a “domestic strategic production objective” for onshore energy production and then “take all necessary actions” to meet that objective could, in a time when supplies are increasing or demand is static, force continuing or perhaps even increasing production leaving local communities vulnerable to chocks from  market collapses in those economies, giving a false sense of direction to the future development of those resources and resulting in additional exports that might ultimately threaten rather than assure domestic energy security.

Certainly subcommittee members are aware that, despite efforts to increase domestic energy production and decrease reliance on imported energy supplies, one of our nation’s fastest growing exports is finished fuel products.  U.S. exports of all finished fuels have more than doubled since 2006, averaging 107 million gallons per day for the first 8 months of 2012 and removing from the domestic market gasoline and diesel that might otherwise result in lower pump prices and reduced dependence on foreign imports.  According to the Energy Department, the United States is a now a net exporter of fuel for the first time since 1949,

Just last Friday, May 17, acknowledging a glut of natural gas as a result of increased domestic production, the Department of Energy gave permission for a terminal in Freeport, Texas, that was originally built to handle imports of liquid natural gas to instead ship LNG to Japan. Fourteen other domestic terminals are reportedly seeking export permits.  If all are approved, their total capacity would be 28.7 billion cubic feet per day according to a Barclays’s report.

That means the U.S. could export more than 40% of the 70.1 billion cubic feet per day the Energy Information Administration estimates will be produced by domestic gas wells in 2014.

All of which begs the question of whether it is wise to attempt to force increased energy production on federal lands when much of that product will flow overseas, creating short term economic gain but reducing domestic supplies, increasing consumer costs at home and diminishing prospects for U.S. energy independence.

Western Colorado learned the hard way about the dangers of government intervention without having the market solidly on your side when billion dollar loan guarantees and promises of a booming work force came crashing down on “Black Sunday” in May, 1982, leaving communities liable for local infrastructure costs, some of which have only recently been paid off.

Both H.R. 1965 and H.R. 1394 also appear to presume too few necessary drilling permits on federal lands and too little public land available to be leased for energy development.  The U.S. Bureau of Land Management reports that the industry has accumulated more than 7,000 permits on public lands that are currently not being utilized and more than 26 million offshore acres and more than 20 million onshore acres that are currently leased but idle.

A Recent Congressional Research Service Report which gained media attention explained the federal permitting question as follows: “Some critics of this lengthy timeframe highlight the relatively speedy process for permit processing on private lands. State agencies permit drilling activity on private lands within their state, with some approving permits within ten business days of submission. But oftentimes, some surface management issues are negotiated between the oil producer and the individual land/mineral owner. A private versus federal permitting regime does not lend itself to an “apples to- apples” comparison.”

That same report questions the need for federal policies like the bills under consideration today stating, “There is however, continued interest among some in Congress to open more federal lands for oil and gas development and increase the speed of the permitting process. But having more lands accessible may not translate into higher levels of production on federal lands, as industry seeks out the most promising prospects and highest returns.”

The legislation under consideration today, I would assume, is meant to make the system more efficient. Yet the practical implications of many of the provisions proposed would have the opposite effect. In western Colorado, a number of recent leasing proposals have drawn controversy not from environmentalists but by interests ranging from farmers and ranchers to municipal water providers, Republican county commissioners and even archeological concerns. Proposals put forth by the Colorado BLM Director have even included leasing a local town dam, and in areas where new forms of organic farming exist, sparked by the demand for organic produce that the market has called for in recent years, that didn’t exist 30 years ago when the original Resource Management Plan was written.

Colorado has been woefully behind other states, even Utah and Wyoming, in instituting many of the leasing reforms developed in 2010. These reforms have been driving down protests and making for a more efficient and shorter process for industry elsewhere in the country, but because Colorado hasn’t moved forward with tools such as Master Leasing Plans, the process has remained troubled and inefficient for all parties involved. Unfortunately, the legislation under consideration today would roll back the progress already being felt by the 2010 leasing reforms.

According to the BLM “The percentage of BLM leases protested declined again in fiscal year 2012, which ended Sept. 30, continuing a trend that began in 2009. Protests were lodged on fewer than 18 percent of the 2,064 parcels offered for sale during FY 2012, the lowest percentage since FY2003, when the filing of protests began to accelerate. Protests, which can cause delays, court battles and increase development costs, reached a high of more than 47 percent in 2009. In response to this gridlock, in May 2010, Interior Secretary Ken Salazar undertook reforms to the leasing program that have resulted in fewer protests.”

It is also worth asking if forced leasing, either by requiring specific percentages of land to be leased for drilling or by speculatively leasing federal land for oil shale development in the absence of confirmed research demonstrating successful technologies, offers taxpayers either the best market-based financial return for use of their public lands or the best assurance necessary protections are in place.

While efficiency ought to be the goal of all of us who have been involved in government at every level and a reasonable expectation on the part of those we serve, getting things done as quickly at the lowest cost should not come at the expense of public safety, environmental responsibility or by shifting the burden to existing local taxpayers for infrastructure and services required by industry.

For many years, the avowed goal for research, development and demonstration projects in the oil shale industry, as repeatedly stated by industry leaders, has been to create technologies and processes that are environmentally responsible, socially acceptable and economically sustainable. There has also been an expressed desire for certainty that, if successful in meeting those stated goals, they will be allowed to proceed with profitable production.

Let me suggest that environmental responsibility, social acceptability, economic sustainability and certainty regarding infrastructure and service expectations are just as important for the communities that host energy industries. In some important respects, H.R. 1965 would hinder achievement of those goals.

Merely increasing the speed does not assure the journey will be successful. Fast-tracking commercial leasing for oil shale development is problematic for several reasons.

It ignores the fact that most major companies involved in the research, development and demonstration projects continue to say a commercial production is 7-10 years in the future, something they've been saying ever since I first began my own oil shale work more than 15 years ago.

It ignores the fact that technical issues, not lack of availability of land or burdensome regulations, have caused more than a year's worth of delay in firing up the heaters for the AMSO/Total research, development and demonstration project in northwest Colorado.

It does not recognized that in Utah, where companies such as Red Leaf and Enefit intend to use modern versions of older mining and retorting technologies, those companies are several years away from production despite having access to state, federal and private lands sufficient to sustain their planned operations for many decades.

That is also true in Colorado, where newer in situ processes are being tested. Anticipated conversion of acreages available to Colorado RD&D lessees who might eventually demonstrate successful technologies will also allow profitable long term operations while creating market based cost structures for additional leasing, providing more realistic returns to taxpayers for minerals extracted from public lands.

H.R. 1965 fails to acknowledge that easier opportunities using existing technologies such as hydraulic fracturing have brought new shale oil and shale gas, products entirely different from oil shale, into the market, impacting market supplies and prices and therefore making the economics of heating rock to produce liquid that must then be refined into usable oil even more difficult.

Speculatively leasing large tracts of land for commercial oil shale development while at the same time short-circuiting the review process and limiting public participation in it presumes supposed benefits before viable technologies assure success while ignoring the necessity of dealing proactively with impacts.

On the ground, the reality is that local communities must provide services and infrastructure to support oil shale development, impacts which peak during the construction and start up phases long before revenues from production royalties and property taxes on new facilities kick in. That leaves existing local taxpayers and their governments on the hook absent some mechanism for up-front assistance.

Though the last oil shale boom-bust cycle demonstrated the need for that sort of help, there is no mechanism in H.R. 1965 to provide for advance payments against future royalties, lease bonus payments, or other methods of assisting local governments in hosting a significant start up industry in the 3-5 years before that industry begins to pay its own way.

Nor is there any mechanism to do as community leaders from northwest Colorado have been requesting since 2009 and commission a study of the potential cumulative impacts of imposing a commercial oil shale industry on top of existing energy and energy-supporting industries that include natural gas exploration, development and processing as well as pipeline construction, coal mining and power generation. Absent such a pro-active study, it appears that consideration of these impacts will be relegated to a shortened and much-restricted analysis under H.R. 1965 with reduced opportunity for public participation.

It is also unfortunate that H.R. 1965 would revert the oil shale regulatory scheme back to the rules of the Bush administration, subverting a years-long review now in the final stages of resolution. The BLM's own 2008 Programmatic Environmental Impact Statement (PEIS) acknowledges the lack of then-current information available regarding many issues.

Subsequent analysis has brought an improved understanding in many areas and is reflected in the updated PEIS and proposed rules and regulations.

Of particular concern is the royalty structure contained in the 2005 Energy Policy Act, cutting initial oil shale royalty rates by more than half. Half of royalty payments are returned to states and local governments where the activity occurs. Reducing those rates diminishes the financial ability of local communities to support infrastructure and services a new industry finds necessary to create and sustain jobs.

At a minimum, royalty rates for oil shale should equal the 12.5% charged for other minerals on federal lands. Even then, the partial distribution of those assessments on production back to state and local governments will come 3-5 years after they have faced increased infrastructure and service costs associated with the heaviest impacts, which occur during the construction and start-up phases. Anything less than 12.5% exacerbates that problem, unreasonably burdens current taxpayers and could have a potential negative impact on existing sustaining industries.

We are all in favor of good jobs, energy independence and a more promising future. But it is important to remember the lessons of the past, when haste and federal pressures fostered the oil shale boom that ended with the economically disastrous “Black Sunday” bust in May of 1982.

That is why the administrations of three Colorado governors, both Democrat and Republican, have argued at home and here in Washington as the 2005 Energy Policy Act and the 2008-2009 oil shale leasing rules were being promulgated, for a deliberate research and development-based process of determining the ultimate viability of oil shale development. That strategy is not apparent in H.R. 1965.

The purpose of my oral and written testimony is not to argue against a robust and successful energy industry, but only to make certain that inevitable impacts and community needs are given equal consideration as we move forward. I thank you for inviting me and for your time and consideration.