Testimony to the Energy and Minerals Subcommittee, House Natural Resources Committee
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Chairman Costa, members of the Subcommittee, thank you for inviting me to address this Subcommittee and to testify about the onshore oil and gas provisions of the Energy Policy Act of 2005 and how the implementation of this act has affected Western lands and resources.

While I am currently the Vice President of the Public Lands Campaign at The Wilderness Society, between 1994 and 2002 I served as a Bureau of Land Management (BLM) State Director, including five years in Colorado. It was a part of my responsibility to manage the BLM lands and resources to achieve a balance between conservation and development. In the five years I was State Director in Colorado, the number of acres sold annually at oil and gas lease sales doubled. I believe that it is possible to have a vibrant oil and gas program and at the same time protect the public's other important resources such as wildlife, clean air, clean water, and places to hunt, fish, recreate and enjoy wilderness.

Everyone you will be hearing from today agrees that oil and gas development is a legitimate and important use of the public lands. The problem is that over the past 6 ½ years oil and gas development has become the predominant use of the public lands where oil and gas resources exist. In fact the current policy being pursued by the BLM is so out of balance that there is a rising chorus of concern among growing numbers of state and local elected officials, game and fish departments, hunters, anglers, ranchers, farmers, and other residents of the rural West. Unfortunately, key aspects of Title III of the Energy Policy Act of 2005 (EPAct) have exacerbated the imbalances that were present prior to EPAct's enactment. My statement today traces the history of the current policies, and their impacts on other public land values, and makes some suggestions for areas of EPAct that should be revisited by this Committee.

The Federal Land Policy and Management Act (FLPMA) provides that the 261 million acres of public lands managed by the Bureau of Land Management be managed "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use" (43 U.S.C. 1701 (a)(8)). The law also provides that the public lands be managed in a manner that "recognizes the Nation's need for domestic sources of minerals…" (43 U.S.C. 1701 (a)(12)). However, in recent years it has become the policy of the BLM to facilitate the extraction of federal oil and gas resources, where these resources exist, to the virtual exclusion of all other resource values. My testimony will focus on this disturbing transformation of BLM's

policy in connection with development of conventional oil and gas resources on our public lands.

I understand that you will be hearing from other Westerners regarding their concerns with the renewed commitment to experimenting with oil shale development and their experiences in having energy developers, aided and abetted by the BLM, trample their rights as private property owners. Many of our collective concerns (and proposals for remedying them) are set out in a document entitled the Western Energy Agenda, which I've included with my testimony (attached). This document not only identifies the important values at stake, but also sets out a path to ensure that our national energy policies achieve the appropriate balance between oil and gas development and economically viable Western communities.

Current BLM oil and gas policies can be traced directly to Vice-President Cheney's secretive National Energy Policy task force report in May of 2001. The Vice-President's report recommended, among other things, opening up the Arctic National Wildlife Refuge to oil and gas development, opening up the few protected areas within the National Petroleum Reserve - Alaska, and a review of so-called "impediments" to onshore development on federal public lands. These so-called impediments are the lease conditions put in place to safeguard the public's natural resources while the mineral resource is being developed.

The task force report erroneously characterized 40% of federal onshore oil and gas resources in the lower 48 states as being "off-limits" to development (*National Energy Policy*, May 2001, p. 5-10). This early misinformation about 40% of the lands being off limits created the appearance of dire restrictions and problems with BLM's land use plans and fiduciary management of the oil and gas program. In fact, subsequent studies by the BLM indicated that fully 88% of natural gas resources were available for development (EPCA I report, p. xv) and the data presented in BLM's more recent assessment (EPCA II) shows that close to 80% of BLM acreage is available for development. Amazingly, the results of these recent studies have not changed the BLM's push to increase access even further.

The new energy policy was accompanied by two Executive Orders. Executive Order 13212 directed the federal agencies to "expedite energy-related projects," including by expediting permit review and taking other actions to "accelerate completion" of these projects. Executive Order 13211 required agencies to prepare a "statement of energy effects" for any action that could adversely affect energy supply and distribution, detailing not only potential effects but also alternatives to avoid those effects. Taken in conjunction with the energy policy, these orders effectively mandated oil and gas development as the most important consideration in land management and characterized all other resources as impediments.

Subsequent policies developed and practiced by the BLM to reduce environmental protection for the public lands, and encourage more oil and especially natural gas

development with fewer environmental safeguards, have been predicated on this erroneous assumption.

The BLM issues its policies and directives to its field offices in the form of Instruction Memoranda (IM) and IMs issued since the directed move away from balanced management reflect the agency's commitment to managing the public lands primarily to support oil and gas development. For example, Instruction Memoranda Nos. 2003-233 and 2003-234 were issued in July 8, 2003, for the stated purposes of reaffirming BLM's "commitment to not unduly restrict access to the public lands for energy exploration and development" and of implementing the Administration's goal for federal agencies to "expedite their review of permits or take other actions necessary to accelerate the completion of [energy-related projects]" including through reassessment and modification of so-called "constraints" to federal oil and gas leasing. IM 2003-233 also established seven priority areas (Powder River Basin, Green River Basin, Montana Thrust Belt, Piceance Basin, Uintah Basin, Ferron Coal Trend and San Juan Basin) for applying this approach. IM 2003-234 required a review of all existing lease stipulations to determine if they were still "necessary and effective" and to direct that, if "lease stipulations are no longer necessary or effective, the BLM must consider granting waivers, exceptions, or modifications."

IM 2004-110 was issued to direct land managers to proceed with leasing even while applicable land use plans were being revised, even if those plans were considering protecting the natural values of the same lands, and to require that any deferrals of leasing be supported by detailed explanations and documentation, submitted to the state and national directors of the BLM. This change in policy also required a change to the BLM's Land Use Planning Handbook, which had historically directed the agency not to take actions like leasing during the revision of a resource management plan, but in 2005 was revised to direct land managers to proceed with leasing.

IM 2005-247, issued in the wake of the Energy Policy Act of 2005 (which I'll discuss in more detail later in my testimony) to address "NEPA compliance" in light of the new leasing priorities, recommends that BLM develop an alternative of higher well density and development beyond that actually proposed by the operator and provides direction as to how to make the maximum number of projects fit into categorical exclusions to avoid NEPA altogether.

BLM's budget priorities also reflect this imbalance between the oil and gas resource and all of the other biological, cultural, recreational and other resources it is mandated to manage and protect. The BLM's oil and gas budget since FY 2000 has more than doubled – from $57 million in FY 2000 to $121 million in FY 2008, while funding for other important programs have remained stagnant or declined, for example the BLM's magnificent National Landscape Conservations System. Ironically, Congress has prohibited the BLM from helping to cover its administrative costs via the prohibition on cost recovery fees in Sec. 365 (i) of the Energy Policy Act of 2005, a provision which to its credit the House is on record of repealing in H.R. 6, passed earlier this year.

In addition to these substantial policy changes, BLM's land use planning initiative was hijacked to make more lands available for oil and gas development. In 2000, the BLM presented Congress with a request to substantially increase the amount of funding for its land use planning program, in order to update BLM land use plans that were severely out of date. Though the BLM's *Report to the Congress – Land Use Planning for Sustainable Resource Decisions* (February 2000) presented a compelling array of issues that needed to be addressed in new land use plans – including managing for threatened and endangered species, recreation, protected lands (such as the national monuments, national conservation areas, and wild and scenic river corridors that were specifically mentioned by Secretary Babbitt in connection with this budget request), OHVs, wildland/urban interface and energy development – the Bush Administration hijacked this initiative to focus on having new plans designed primarily to make more BLM lands available for development (despite the fact that most BLM lands in the five-state Rocky Mountain region were already available for development).

In February, 2002, the funding for the planning initiative originally designed to address the special values and competing uses of the public lands was officially prioritized for 21 "Time Sensitive Plans," which would be completed on expedited schedules. 11 of these 21 plans were included for the express purpose of addressing the oil and gas development potential of the lands. The remaining 10 were plans that BLM was required to complete as part of lawsuit settlements or the establishment of new units in the National Landscape Conservation System.

An analysis of the BLM's planning documents completed by The Wilderness Society in January, 2006, found that 95% of lands addressed in the 11 energy-related time sensitive plans would be open to oil and gas development, leading to a 200% increase (or more than tripling) in the amount of wells projected on these public lands (attached).

The prioritization of private development of the oil and gas resource over the management and preservation of other natural resources pervades BLM's land management, even beyond the time sensitive plans. In the Little Snake resource area of Colorado, 93% of the planning area is open to oil and gas development in the Draft Resource Management Plan. Every management alternative presented in the recently released Draft Resource Management Plan for the Pocatello, Idaho field office opened 98% of the planning area to leasing; even though there is very little potential for oil and gas development in the area, the BLM has focused on preserving opportunities for oil and gas drilling at the expense of wise management of the other natural values of these lands.

A subsequent, preliminary analysis of BLM and Forest Service major land use planning and energy project decisions completed by The Wilderness Society in October, 2006, found that more than 118,000 new wells were approved, or in the process of approval, in just Colorado, Montana, New Mexico, Utah and Wyoming, which would triple the amount of producing wells nationwide over the next 15 to 20 years (attached).

The impacts from this type of development would truly be staggering – the average amount of land actually graded, drilled, built upon or disturbed as estimated by the BLM would likely exceed 1,000,000 acres. This does not even take into account additional

serious and frequently severe impacts like fragmentation of wildlife habitat into smaller pieces that eventually cannot sustain viable wildlife populations. All of this new development must be considered against the backdrop of the existing 63,000 producing wells, the over 10,000 shut-in wells, the over 100,000 orphaned wells and the approximately 24,000,000 acres of leased acreage not yet in development that the industry already has under lease.

It is clear that sensitive resources, such as wildlife and wildlife habitat and wilderness-quality lands, are at risk from current policies. Oil and gas companies frequently request that the conditions in their leases, which are designed to protect public values such as wildlife, clean air and clean water, be put aside in favor of removing restrictions on oil and gas development activities. For example, the Rawlins, Wyoming Field Office granted 72% of the requests to waive lease conditions, known as stipulations, which were received between October 1, 2005 and September 30, 2006. The Pinedale, Wyoming Field Office granted 88% of the requests for wildlife exceptions received from October 2006 through February 2007. The Pinedale Field Office has a history in recent years of granting such requests, granting 90% of requests for exceptions from stipulations applied to protect sage grouse during the winter of 2002-2003 and granting 88% of requests for exceptions from big game winter range stipulations.

According to the Wyoming Game and Fish Department, "As densities of wells, roads, and facilities increase, the effectiveness of adjacent habitats can decrease until most animals no longer use the habitat." The damage caused by such oil and gas drilling is dramatic: studies have shown that road densities of two miles per square mile causes a 50% reduction in elk populations, while six miles of roads per square mile drives almost 100% of the elk from the area. A recent study in the Pinedale area showed a 46% decline in mule deer during the first four years of gas development. Pronghorn are even more sensitive to disturbance, with BLM documents indicating that pronghorn are adversely affected at road densities of one mile per square mile. A study of the potential impacts of coalbed methane development in the Powder River Basin on sage grouse, which was commissioned by the BLM, found that areas in which methane wells are being drilled did not have the same strong population growth recorded elsewhere in the basin in 2004 and 2005 – with bird population in 2005 at only 12% of what it was in 2000, in comparison to closer to 70% in areas outside development.

In Utah and Colorado, the BLM has issued new oil and gas leases on more than 200,000 acres of lands that have been the subject of Congressional attempts to designate them as wilderness. Lands proposed for wilderness protection in Wyoming and New Mexico have also been leased.

The BLM's exclusive focus on oil and gas development has led to hurried leasing and negligent land management; the agency is not fulfilling its obligations under FLPMA or under the Federal Oil and Gas Royalty Management Act. FLPMA requires the BLM to manage the multitude of resources on the public lands for their many uses and values. By focusing only on development of oil and gas, and acknowledging the other natural resources of our public lands only as "impediments" to development, the BLM has,

inevitably, allowed serious damage to occur. The Federal Oil and Gas Royalty Management Act of 1982 requires the BLM to inspect oil and gas operations to ensure compliance with lease conditions, including those stipulations designed to protect the environment.

The rush to open public lands to drilling is evidenced by the leased lands and drilling permits held unused by the oil and gas industry. BLM data indicates that while over 36 million acres of the federal mineral estate are under lease, only 12 million are under production. Does it really make sense for the BLM to rush parcels to auction when this kind of asset-hoarding is going on by the oil and gas industry? The BLM also predicts that it will receive requests for more than 10,000 applications for permit to drill (APDs) this year. In its rush to permit drilling, the BLM has consistently issued more permits than the industry can drill. For instance, in Fiscal Year 2004, industry requested and received approval to drill 6,052 wells, but drilled just 2,702, resulting in a surplus of more than 3,000 permits. Nevertheless, the BLM continues to prioritize processing APDs above all other management obligations.

The BLM's lack of due care for our public lands can be seen in its approach to applying and enforcing lease stipulations and conditions of approval for APDs. Stipulations are lease conditions that describe actions that the oil and gas operator must take to protect wildlife habitat, air, water and other important values while developing the oil and gas resource. Special stipulations may limit activities during certain time periods (such as prohibiting activities in raptor nesting areas or big game winter range during crucial times of year) or prohibit use of the land surface altogether (such as within ¼ mile of sage grouse leks). However, these lease terms can only be effective if they are applied. As I've noted previously, the BLM's guidance requires an ongoing assessment of whether lease stipulations should even be retained – characterizing them as "impediments" to development. Also, when asked, the BLM will generally agree to give operators relief from complying with those that remain a part of the lease.

Conditions of approval are imposed when an oil and gas operator applies for a permit to drill a well and can impose limitations on the way in which an operator will drill a well, such as setting out specific requirements to restore healthy plant populations and prevent erosion. So-called "best management practices" (such as reclamation of unused well pad areas) are applied as conditions of approval for an APD, but their application is at the discretion of the agency – as is their content. The BLM does not make best management practices mandatory in its land use plans, even though the agency touts its best management practices initiative.

The Government Accountability Office (GAO) issued a report in June 2005 entitled "Oil and Gas Development – Increased Drilling Permit Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities" (GAO-05-418). As the title indicates, the GAO found that the increased volume of APDs, and the mandates to focus on processing them, has resulted in more BLM staff resources devoted to issuing permits - with less attention being paid to monitoring and enforcing compliance with environmental standards that apply to the activities conducted under the permits.

A May, 2006, internal BLM assessment provided confirmation on a large scale of the GAO's findings. The report found that the Pinedale Field Office had failed miserably in fulfilling the many commitments made in land use plans, resource assessments (and in permitting oil and gas drilling), to monitor and limit harm to wildlife and air quality from natural gas drilling in western Wyoming. The report stated that there is often "no evaluation, analysis or compiling" of data tracking the environmental consequences of drilling. For example, the report details six years of failures by the BLM in Pinedale to honor its commitments to track pollution that affects air quality and lake acidification in nearby wilderness areas.

The BLM's rush to lease and to prioritize leasing over all other considerations has resulted in the agency including absolutely inappropriate parcels in lease sales, raising the ire of local municipalities and causing the BLM to remove parcels from lease sales after publicizing their availability. The following examples, from just 6 months of last year in Colorado, illustrate the depth of this problem:

1. The February 9, 2006 Colorado lease sale included about 11,000 acres in Palisade's watershed, and 600 acres in Grand Junction's watershed, according to the BLM. Those watersheds provide drinking water to the municipalities. Both municipalities protested the lease sale, based on risks to the water supply and inadequate protections in lease stipulations. [Land Letter, 2/2/06; Grand Junction Daily Sentinel, 1/19/06]. This same lease sale was also supposed to include parcels along the San Miguel River, which is listed on American Rivers' "Outstanding Rivers" list and, under BLM guidance, should not have been leased until the agency completed a study of its wild and scenic eligibility. A number of protests were filed. Ultimately, the BLM acknowledged their errors and removed nine parcels, totaling approximately 7,300 acres along the San Miguel River from the lease sale.

2. The May 11, 2006 Colorado lease sale was slated to include the minerals under a property owned by the City of Craig, where the city was planning to build a picnic area, boat ramps and other facilities on a city-owned parcel of land on the eastern edge of Elkhead Reservoir. Again, protests were filed and the city expressed its shock. The BLM again acknowledged its error and removed the parcel from the lease sale.

3. The August 8, 2006 Colorado lease sale was slated to include the minerals underlying three parcels in two Colorado State Wildlife Areas (the Piceance Creek and Browns Park State Wildlife Areas). Again, protests were filed and BLM decided to remove these parcels from the sale.

The ecological condition of the public lands has become so dire that the Administration has started a new program, known as the "Healthy Lands Initiative," to fund "restoration of habitat, weed management, and improvement of riparian areas" on a "landscape scale." For areas heavily impacted by oil and gas development the activities needed to

maintain the health of our public lands should have been a mandatory condition of developing them, but, as I've outlined already, the BLM has either not required or not enforced the necessary protective measures. And, even now, the Administration will not make the health of our public lands a priority on the same level as permitting oil and gas development. Funding for this initiative is expected to come not only from taxpayers, but also from cooperative agreements with private parties, incentives for industry and other "non-traditional" approaches to get assistance from those who care about these lands.

Provisions of Title III of EPAct further institutionalized the imbalance in the BLM's management of public lands. The Energy Policy Act of 2005 will only exacerbate BLM's continued focus on permitting oil and gas development at the expense of environmental protection. For example, though in several years prior to enactment of EPAct the BLM issued thousands more drilling permits than were used by operators, in Sec. 366 Congress imposed a 30-day timeframe for APD issuance based on arguments by industry representatives that the BLM was negligent in timely responses to submission of drilling permit applications. This provision further ensures that the BLM will do an inadequate job fulfilling its multiple use mandates. Conducting a complete environmental analysis of the direct, indirect, residual and cumulative impacts on resources as diverse as air, water, wildlife, cultural resources, and recreation is complicated and deserves to be done well and in conjunction with interested parties including landowners, communities and state fish and game agencies. The artificial timeframes in EPAct pressures the agency to essentially rush to judgment on permits, issuing them without sufficient review and contributing to the resulting damage of the public lands that I've described and the BLM (in its Healthy Lands Initiative) has now acknowledged.

Likewise, apparently due to complaints from industry representatives regarding the alleged onerous burden of complying with the National Environmental Policy Act (NEPA), Congress provided a series of mandatory "categorical exclusions" from NEPA compliance for certain activities in Sec. 390 of EPAct. These exclusions would mean that the BLM would no longer need to analyze and disclose the environmental impacts of certain activities, such as an oil and gas operator disturbing 5 acres at a time of a lease up to a total of 150 acres per lease, drilling new wells in a "developed field" and drilling on a site where drilling has previously occurred even if that drilling was just a water well. To those who own land nearby and to hunters, fishers, and others who care about our Western landscapes, the lack of environmental analysis, review of alternatives and public involvement is disturbing. The nation's natural resources are being subjugated to the development of the oil and gas resources without even the pretense of balance.

The "Pilot Projects" authorized in Sec. 365 of EPAct simply signal that oil and gas development is the highest priority activity in the BLM Field Offices where the program is authorized. These offices continue to issue more APDs than industry can drill, are unable to keep up with their inspection and enforcement obligations, no longer manage for multiple uses, and fail to mitigate the impacts of drilling (despite their promises to the public).

In conclusion, this Committee has an opportunity to redress the imbalances in the BLM's oil and gas program. To reiterate: our view is the oil and gas development is a legitimate use of the public lands – but not *everywhere* on the public lands, and not in a manner that impairs other resource values. It is possible to have an oil and gas program that provides for oil and gas to be made available to the American people, while protecting the last remaining wild places in the American West, the wildlife that inhabit these lands, the quality of the West's air and water, and the property rights of ranchers and farmers. Our specific recommendations include:

1. Instead of dedicating income from lease rentals to perpetuate the imbalance in management in the Pilot Project Offices, Congress should eliminate this program altogether, and instead require the oil and gas operators to fully cover the administrative costs of the program that provides such great benefits to them. .

2. Repeal Section 390 of the EPAct to eliminate new categorical exclusions from NEPA review, requiring the BLM to consider the impacts of additional oil and gas developments on public lands and to permit public review and comment.

3. Repeal Section 366 of EPAct, because it only serves to pressure the BLM to take quick action within artificial timeframes on permits and hamstrings the agency's ability to thoroughly review permits and protect other resources.

4. Fully fund the BLM's Inspection and Enforcement Program and ensure that inspectors' time is spent on inspection and enforcement activities, not on permitting more wells.

5. Require reclamation bonds that fully cover the cost of restoring damage to public lands and resources from oil and gas development. The BLM's current reclamation bonding requirements have not been changed in decades. Damage done to the public's lands from oil and gas activities should be avoided, and bonding levels should be set to cover the full costs of restoration.

6. Require the BLM to develop and require adherence to Best Management Practices designed to minimize the damage to public land values from oil and gas activities.

7. Given the amount of leases already in place and the damage to public lands that has already occurred, Congress should consider limiting the Department of Interior's ability to continue issuing leases in areas that have been proposed for protection, identified as having wilderness characteristics by the BLM or are included in Forest Service roadless areas – allowing the Department to "take a breath" and reassess its approach to oil and gas development on our public lands.

We commend to the Committee's attention the "Western Energy Agenda" attached to my statement. This series of modest proposals endorsed by a host of local and national organizations, if enacted, will begin to restore the balance so badly needed in the management of our public lands. I invite the Committee to hear from other Westerners

who are experiencing first hand the impacts of the current development boom on their farms, ranches, favorite hunting grounds, and communities. We look forward to working with the Committee to restore balance to the management of our nation's public lands in the weeks to come.