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TESTIMONY
OF
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BEFORE THE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U. S. HOUSE OF REPRESENTATIVES
REPRESENTATIVE BARBARA CUBIN, CHAIRMAN
“OIL AND GAS DEVELOPMENT ON PUBLIC LANDS”
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I appreciate this opportunity to provide testimony on behalf of the Wyoming Stock Growers Association (WSGA). A significant number of our over 1000 members are users of the public lands for livestock grazing and/or owners of private lands overlying federal minerals. They are often directly impacted by oil and gas development and, in particular, the manner in which access for such development is granted by the federal land agencies.

My testimony today will be focused in three areas. First, I will address the general failure of the current public land agency practices to include the private surface landowner as a full partner in the process of leasing and developing federal oil and gas resources underlying private surface (split-estate). I will then focus on restraints being placed on oil and gas producers by the Bureau of Land Management (BLM) that constitute an infringement on the private property rights of landowners. Finally, I will offer observations on the expansion of access stipulations intended for mineral development to grazing on public lands.

The Wyoming Stock Growers Association supports full development of the mineral resources within the state. We recognize the tremendous benefits that this mineral wealth continues to provide to Wyoming in jobs, education and infrastructure. In doing so, it removes a tax burden that might otherwise become destructive of Wyoming agriculture. Livestock grazing constitutes the primary use of most of the land, public and private, in Wyoming. The vast majority of agricultural operators want to be partners in fostering development of oil and gas resources. However, the failure to make us partners in this process often forces individual landowners to become perceived obstacles to development.

WSGA recommends several actions that should be taken by BLM to enhance the opportunity for cooperation by landowners and grazing permittees, thereby facilitating timely industry access to federal mineral resources. Where split estate lands are involved, the BLM leasing process should provide for notice to the landowner when an oil and gas lease has been issued. This notice should include the name and contact information for the lessee. As field development plans and APDs are filed with BLM, all non-proprietary information should be copied to the surface owner. This process will encourage early communication among the parties and avoid the distrust that often results from time-driven pressures to execute surface use agreements. While surface damage agreements are and must remain a matter of

private sector negotiation, the BLM should assume a more proactive role in facilitating timely communication between the parties.

On public lands, while the direct legal relationship between the oil and gas developer and the grazing permittee is lacking, the need for timely communication is not lessened. Unanticipated development activities can significantly impact livestock operations on public lands. The public opportunity to comment on Environmental Impact Statements and Environmental Analysis is inadequate to assure coordination between development and grazing activities. The BLM should assume a proactive role in keeping both parties informed so that, where appropriate, reasonable changes can be made in livestock management or oil and gas development operations to minimize adverse impacts.

WSGA's concerns regarding infringement on private property rights stem to a large degree from policy enunciated by the Wyoming BLM in Instruction Memorandum No. WY-99-24 (Appendix I). This IM addresses the extent of federal authority over actions occurring on private lands affecting plants and wildlife. While the IM carried a scheduled expiration date of September 30, 2000, it appears to continue to guide BLM policy in Wyoming. This IM recognizes as a basic rule that "the BLM has no direct authority over resource information gathering or land management activities taking place on non-Federally owned lands". It then, in our opinion, proceeds to violate this rule in providing specific direction to Wyoming Field Offices. Under the authority of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) this IM authorizes the gathering of information from private lands without permission using any "legal" means of inventorying short of actual on-the-ground trespass. Under the "interrelated and interdependent" requirement of Section 7 of the Endangered Species Act the BLM will deny an application for a right-of-way based on a potential impact on a listed species or its habitat located on private land.

The application of this IM to split estate mineral development has had a significant impact on access to federal minerals. It has also been a major contributor to conflict between surface owners and oil and gas operators. According to the IM, if the landowner does not grant the BLM permission to conduct the inventory work deemed necessary, "then the responsibility is placed on the operator wanting to conduct the mineral activity to acquire permission for the BLM specialist." This provision has been extended to plant and wildlife data beyond listed species. It has also been made applicable to the protection of cultural resources under the Antiquities Act. WSGA strongly objects to these provisions. We find them to be both a direct infringement on private property rights and an attempt to shift the burden for enforcement of a federal policy to the mineral operators. These requirements have resulted in significant delays in access to federal minerals. We urge Congress, if necessary, to take appropriate actions to remove this infringement and burden.

Many of the seasonal stipulations which limit access to oil and gas resource development appear to be based on an unquestioned acceptance by federal land agencies of critical habitat designations by the Wyoming Game and Fish Department. WSGA recognizes that there are appropriate and necessary seasonal restrictions that should be imposed both for protection of wildlife and, occasionally, protection of domestic livestock operations. BLM resource specialists should exercise independent judgment in imposing these restrictions. We have become increasingly concerned by attempts to apply these same seasonal stipulations and areas of avoidance to livestock grazing. Potential conflicts between livestock grazing and wildlife needs bear little resemblance to conflicts between wildlife needs and mineral development.

As members of this Subcommittee proceed with your analysis of impediments to oil and gas production on public lands, we urge you to broaden your analysis to include the effects that agency actions have on private landowners and public land grazing permittees. Policies and practices that recognize agricultural land users as full partners in successful mineral development will minimize conflicts that negatively impact timely development of federal mineral resources. I have attached for your information an editorial (Appendix II) that I recently wrote for our association magazine, Cow Country. I have outlined proactive steps that I believe can enhance relationships and foster oil and gas development in Wyoming. WSGA welcomes the opportunity to work with federal land agencies and the oil and gas industry in addressing the impediments that we have defined today.