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- before the -

U.S. House Natural Resources Committee

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Chairman Bishop, Ranking Member Grijalva, and other distinguished members of this Committee:

I appreciate the opportunity to testify today and thank you very much for your time. My name is A.J. Ferate. I am the Vice President of Regulatory Affairs of the Oklahoma Independent Petroleum Association (OIPA). The OIPA represents more than 2,200 independent oil and natural gas operators that explore for and produce crude oil and natural gas in the state of Oklahoma. Our association also represents a number of oilfield service companies that provide important services that support exploration and production activities. However, our members do not refine oil into gasoline or heating fuels and we do not market gasoline.

While I am here before you as a representative of independent oil and natural gas producers in Oklahoma, I am also before you as a former regulator of the industry due to my time at the Oklahoma Corporation Commission and as a former employee of large independent producers. I understand the challenges each element of the oil and gas industry faces in relation to federal regulation and how to alleviate many of those issues.

To be clear from the start of my testimony, I, as well as the industry I represent, understand that regulation is an important and essential part of the social license to operate. Bad actors need not apply because they will not be defended. But when regulation is used as a curb to industry rather than an assurance of safe operation,

the government takes on the role of market influencer as opposed to allowing free markets to operate as they should.

Before this Committee for discussion today are three bills that variously reform how the federal government manages onshore federal lands. The savings to the government by transferring regulatory and land processing to the states could be significant while still providing revenue through the royalties that the federal government possesses and will continue to possess.

As I begin to address the specifics of each bill, let me begin with an over-arching point that should be at the center of this discussion: Regulatory authority is best when it is designed to address issues that are specific to the states where the land exists. To be clear, the federal government's one-size-fits-all approach ignores the local and regional differences among operations in different parts of the country and different areas that make state regulation more adaptive and effective. In opposition to the current burdensome regulatory regime, the Department of the Interior should rely on the state regulatory bodies and inter-state regulatory mechanisms as the primary regulatory approach related to federal lands on a going-forward basis. We will explore these concepts in this testimony.

Further, it is appropriate for this Congress to contemplate restoring its promises to the states and deliver direct title to the federal land revenue the states are due. The current policy of sharing revenues with the states places the states at the mercy of federal land policy and does not offer predictable revenues to state budgets due to the risk that those revenues can simply be cut in the budget process. States are best situated to manage the royalty revenue they are due within their respective borders and should be allowed to do so.

The importance of charting a federal energy plan is essential as our nation moves forward in the decades to come. Ten years ago, I sat in a room with a U.S. Senator and a collection of oil industry executives. The Senator asked at that time if we can be truly energy independent. Some in the room were skeptical. Others hedged their views. One producer, with knowledge of the oncoming shale revolution, looked at the

Senator and said, “Absolutely.” Today the concept of “peak oil” is a remnant of the past and energy producers can capture greater reserves and disturb less land using horizontal drilling. It is because of this that it is important that this Congress have a full analysis available to it of where our energy future lies and how all resources will participate in that fuel mix. As Congressman Tipton recently stated, “We need a plan.” Indeed we do. And while the time to create that plan was decades ago, this Congress should not pass on the chance to do it now.

H.R. 3565: The Federal Land Freedom Act

Today, if an oil and gas exploration company wishes to apply for a permit to drill an existing lease, there are two different realms of reality that company can enter. A company can plan to drill on land regulated by states and have a permit approved in a matter of weeks in most states. In Oklahoma, I was informed by the Oklahoma Corporation Commission just last week that a properly formatted application can be approved in three days. Conversely, the story is not the same on federal lands, where the current wait for an Approval for Permit to Drill (APD) is a minimum of 240 days. If that shocks you, know that the wait for an APD has declined since 2012, when the wait was in the ballpark of 298 days.

A one-size-fits-all plan at the federal level has slowed production, is overly burdensome, and during the Obama Administration, discouraged production on federal lands. In the years 2007-2008 and 2009-2010, when the price of oil was still in the $100 range, Bureau of Land Management approval of APDs decreased 39 percent, from an average of 6,444 to 3,962.[1] BLM oil and gas lease issuance decreased by a similar 44 percent from an average of 1,874 to 1,053.[2] Perhaps most stunning in a high-priced oil environment, the number of new wells drilled on federal lands

[1] “Employment, Government Revenue, and Energy Security Impacts of Current Federal Lands Policy in the Western U.S., EIS Solutions for American Petroleum Institute,” by EIS Solutions, January 2012, p. 10.
[2] Id. at 10.

declined 39 percent from 4,890 to 2,973.[3] By contrast, in 2010, for example, permits requested on non-federal lands increased by 31 percent.[4]

The dramatic declines in drilling and production on federal lands appear to be caused by adverse federal land policy.[5] The vast majority of shale oil and gas wells are drilled on private and state lands, not federal lands "partly due to better extraction technology, favorable geology, and the ease of leasing."[6]

All of this is mentioned to suggest that not only is the federal government inefficient in processing requests on managed lands, but federal energy policy can be used as a weapon against un-favored energy sources at the loss of revenue to the federal government and to the states that share in the royalty revenues. This cannot continue.

Allow me to couch this discussion in the terms of an election: When you first ran for Congress, each of you no doubt hired a consultant or two that offices here in D.C., or perhaps across the river in Alexandria. However, you also selected the bulk of your staff from the very districts that you represent. You likely did that because they understood your district much better than hiring someone out of D.C. and you were right to do so. This is precisely the same reason that it makes more sense to allow states the opportunity to possess primacy over regulation of federal lands.

Under the current language of the bill, H.R. 3565 would act similar to the EPA Underground Injection Control Program. Under the program, EPA can grant primary enforcement authority to states that apply for said authority. EPA conducts audits under the program and maintains minimum standards state regulatory bodies must follow. In Oklahoma, we are familiar with the Underground Injection Control program because we were the first state to apply for primary enforcement and the first to receive it.

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[3] Id. at 14.
[4] Id.
[5] Id. at pp. 16-17
[6] Humphries, Marc, Congressional Research Service Report to Congress, "U.S. Crude Production in Federal and Non-Federal Land," June 22, 2016

In the past, some have challenged state regulatory authority on federal lands based on the argument that state regulators are incapable of regulating federal lands. This argument has no basis in reality. State regulators are better situated to understand the geology of the state and the unique land issues at hand in a state and to know operators that function within the state's borders. State regulators, as stewards of the state that they represent, are held to a higher duty more immediately by the citizens of their state than an unaccountable and faceless bureaucrat. The duty to get it right is higher, and it is taken seriously.

Further, state regulators undergo joint audits of their programs through the State Review of Oil and Natural Gas Environmental Regulations program, also known as STRONGER. Since its founding in 2009, STRONGER has provided services for the continued improvement to numerous state oil and gas regulatory programs and industry in order to enhance human health and the environment. The STRONGER review program involves environmental organizations, federal agencies such as EPA and DOE, and state regulators. The program has wide regard and is taken seriously by reviewed agencies.

It is not insignificant to consider the costs this Congress could reduce by granting primary enforcement. While I do not bring forward a fiscal analysis on the issue, federal outposts in states could be reduced if not eliminated. Permitting divisions at BLM would no longer be necessary, and workload extinguished. It is not a small thing to consider that royalty revenues could potentially increase under state control, efficiency could increase, costs could decline, and experts within the states would serve as trustees of the public. Of the bills being considered today, I must offer my highest encouragement for your consideration of Congresswoman Black's H.R. 3565.

H.R. 2907: Planning for American Energy Act

Also before this panel this morning is the Planning for American Energy Act. As I stated in the introduction of my testimony, it can be difficult to predict the future, but to have a roadmap of the nation's energy path, and factoring disruptive

technologies into that picture, is an essential element of not only national energy policy, but of strategic national defense.

Imagine for a moment that the shale revolution had not occurred. OPEC and the command economies of its nation-members would have continued their dominance of crude oil policy. Liquified Natural Gas facilities would not be exporting our fuel, but importing it at record numbers, likely from Russia. And certainly, manufacturing would have continued its exit from the United States, costing jobs nationally. This fiction could have been a reality in our country without the onset of the shale revolution. But even if shale was not a reality, the U.S. energy situation could have greatly benefitted if policy study had taken place in advance to determine our national needs — infrastructure requirements, national security factors and job training elements that could foretell future needs. Our country has fallen into luck on energy policy for decades but Benjamin Franklin's belief that "an ounce of prevention is worth a pound of cure" could not be more relevant in our nation than regarding its energy policy.

H.R. 2661: The State Mineral Revenue Protection Act

Many of the comments I provided in relation to H.R. 3565 can apply to the bill Congressman Cheney promotes with H.R. 2661. There are some that claim Congress dishonored its duties to return western lands as a result of the 1976 royalty scenario that exists today.[7] I do not comment as to the validity of those claims in this hearing, but I point them out to suggest that when Congress invents "administrative fees" that the western states are charged in order to process state royalty payments, Congress is only further receding the ability of states to trust the guarantees given to them.

Ultimately, states, just like any simple royalty owner, should have the autonomy to determine the best use of its royalties and the dollars collected from those royalties, rather than be subjected to mandatory administrative fees or, even worse, risk losing them by a future Congress. The Office of Natural Resources Revenue reports "more

[7] *See* Kochan, Donald J. "*A Legal Overview of Utah's H.B. 148 – The Transfer of Public Lands Act*", The Federalist Society, January 2013.

than $1.8 billion of the FY 2015 energy revenues was distributed to 37 states."[8] A cut in royalty revenues to states can be significant, particularly as most states — unlike the federal government — have balanced budget provisions.[9]

Supreme Court Justice Louis Brandeis famously proclaimed in his dissent to *New State Ice Co. v. Liebmann* that a "state may, if its citizens choose, serve as a laboratory; try novel social and economic experiments without risk to the rest of the country."[10] And that is exactly what our states are designed to do. If a state believes that it can more efficiently and affordably administer its own mineral revenues, there should be no reason to prohibit that ability.[11] The people of the various states are more than capable of determining the correct path forward for their funds, and should be allowed to do so.

Conclusion

As I conclude, I would be remiss to not encourage the members of this Committee to become significantly aware of the recent decision the 10th Circuit released in Murphy v. Royal. It opens up Oklahoma to the potential of significantly reshaping the state's borders and at minimum raises questions of jurisdiction over water rights, taxation and criminal issues in the state. There could be similar impacts under the decision in other states as well.

Members of this committee, it is imperative that platitudes not be thrown at the role of the states in our national experiment. The people of the various states take a significant pride in the localities they reside in, seek to do the right thing, and believe it or not, sometimes come up with better methods than the federal government processes from time to time. It should be the intent of this Congress to encourage the

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[8] https://www.onrr.gov/about/pdfdocs/Fact%20Sheet_FY15%20Disbursements_July%202016.pdf

[9] "The National Conference of State Legislatures (NCSL) has traditionally reported that 49 states must balance their budgets, with Vermont being the exception." http://www.ncsl.org/research/fiscal-policy/state-balanced-budget-requirements-provisions-and.aspx

[10] *New State Ice Co. v. Liebmann*, 285 U.S. 262, (1932).

[11] It is worth noting that the federal government has proved, in the past, incapable of managing funds in trust. For example, the Department of the Interior settled a case related to its poor accounting of Osage Nation minerals revenue in 2011. *See* https://www.justice.gov/opa/pr/united-states-and-osage-tribe-announce-380-million-settlement-tribal-trust-lawsuit

laboratories of democracy to be creative, using the knowledge of their individual states to more effectively regulate the lands within them, and manage their mineral revenue more effectively.

I thank you very much for the honor of being here today, and stand for any questions you may have.