QUESTIONS FOR THE RECORD
07.22.14 Full Committee Hearing, Leveraging America's Resources as a Revenue Generator and Job Creator
WITNESS: ONRR Director Gregory Gould

FROM CHAIR LANDRIEU

Question 1. As I mentioned in my opening statement in the hearing, I am very concerned that our country is not appropriately reinvesting back into natural resources from which it's deriving billions in contributions to the Federal Treasury. In preparation for this hearing, I wanted to understand how much of what we generate is invested back into the environment on an annual basis in order to sustain these critical contributions to the Treasury. I learned that the Federal Government does no such accounting.

A. **Can you at least estimate how much of the revenue generated is reinvested back into the resources?**

Response: In 1982, with the passage of the Federal Oil and Gas Royalty Management Act (FOGRMA), the Department created a comprehensive, consolidated system for the collection, accounting, and disbursement of these revenues. From 1982 through 2013, Interior provided $257.0 billion to Federal, State, and American Indian recipients through this program. Of those revenues, $4.4 billion has gone to the Historic Preservation Fund, $24.2 billion to the Reclamation Fund, $27.9 billion to the Land and Water Conservation Fund, and $156.7 billion to the General Fund of the U.S. Treasury. The general fund is used to support various functions and programs, including the annual appropriations to the Department of the Interior and other Federal agencies supporting energy and the environment. As part of the Energy Policy Act of 2005, $1 billion was appropriated by Congress to fund the Coastal Impact Assistance Program, which among other things, provided funding to support conservation, protection and preservation of coastal areas in States adjacent to OCS oil and gas producing areas.

B. **If not, can you provide suggestions as to how we may better be able to track this information?**

Response: The Department closely tracks the collection and disbursement of natural resources revenues. The expenditure of those funds, once disbursed to the U.S. Treasury General Fund, does not fall under our purview.

Question 2. Last year ONRR collected $9.06 billion from offshore energy and mineral production, yet returned only a small fraction back to the four states which host that production -- $297,000 under the Gulf of Mexico Energy Security Act, returning less than half of one percent of the revenues these states generate to them.

In comparison, onshore states sent $4.3 billion, but kept over $1.9 billion (about half). This system of revenue partnership has been in place since the 1920's. In fact, since this revenue sharing partnership with onshore states has been in place, they have kept over $35 billion

in revenues, to be used for environmental remediation, road and school construction and a host of other worthwhile causes.

A. **Is there any reason why the Federal government could not establish a similar partnership with the states that host offshore energy production?**

Response: The Federal government has been collecting leasing revenues from mineral production on Federal onshore lands since 1920; on American Indian lands since 1925; and on Federal offshore lands since 1953. During this almost century of revenue collection and disbursement, the laws have been amended numerous times to adjust the revenue sharing provisions. The Department of the Interior is obligated to make disbursements in accordance with current laws.

B. **Just generally, does it seem a little unfair that inland states that host energy production on Federal lands receive nearly half of those revenues generated, but offshore states, that also host energy from on Federal lands, receive virtually nothing at this moment?**

Response: The Department administers its programs to collect and disburse leasing revenues from onshore and offshore federal mineral production in accordance with applicable federal laws.

Question 3. Your testimony highlighted the important role federal land has in generating valuable revenue for the Federal Treasury and state and local communities.

A. **Can you tell me how ONRR ensures that the Federal government is getting an accurate account of how much energy production is occurring on Federal lands?**

Response: Federal oil and gas production verification is a shared responsibility among ONRR, the Bureau of Land Management (BLM) for onshore leases, and the Bureau of Safety and Environmental Enforcement (BSEE) for offshore leases. The Office of Natural Resources Revenue's production meter verification efforts enhance the Department's production measurement oversight, which ensures that the Department accounts for all production from Federal lands, provides greater assurance of data accuracy, reduces the potential for data manipulation and fraud, and contributes to further reduction in production reporting errors. ONRR's current production meter verification efforts focus on Federal offshore leases. ONRR and BSEE have entered into an Interagency Agreement to perform production verification, meter inspections, and other production measurement oversight functions on offshore rigs, platforms, and production facilities. ONRR also manages a project to determine the feasibility of automated production meters to improve the oversight of production measurements and to streamline reporting. The FY 2015 budget request includes an additional $3.0 million in funding for an Onshore Production Verification Pilot to expand production verification efforts to include onshore high-risk facilities on Federal and Indian leases and a data integration project to support onshore and offshore production verification efforts by developing and integrating systems.

B. **How does the Department ensure that all revenues are being collected and payments distributed in a timely manner? What efforts are you currently undertaking to streamline the processes?**

Response: ONRR maintains an aggressive and comprehensive compliance and audit program to ensure timely and correct payment of the nation's mineral lease revenues. Since 1982, the Department's additional collections of royalties and interest attributable to compliance activities total more than $4 billion. The compliance process starts with automated, electronic processing of royalty and production reports. Each month ONRR runs automated detection processes to look for discrepancies in royalty and production reporting to better ensure that industry follows Federal laws, regulations, and lease terms. ONRR subjects company-reported royalty data to more than 150 edit checks, and has incorporated up-front edits to prevent companies who report their royalties via the Internet from submitting erroneous data. In addition to automated upfront system edits, ONRR performs data mining efforts as a second-level screening process in order to identify further discrepancies in company-reported data before the data is subjected to compliance reviews and, ultimately, to audit. Collections as a result of data mining efforts were approximately $861,000 in 2010, $5 million in 2011, $18 million in 2012, and $19 million in 2013. The final steps in our compliance process include compliance reviews and formal audits conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). ONRR's audit program has received unqualified (clean) opinions on the past four third-party peer reviews required by GAGAS.

To provide greater assurance of the integrity of financial operations and the accuracy of financial data, ONRR undergoes annual financial audits, including a thorough review of mineral revenue custodial accounts. The Department, including ONRR's mineral revenue custodial accounts, received an unqualified (clean) audit opinion for fiscal years 2012 and 2013. The Office of Natural Resources Revenue's 2010 reorganization into the Office of the Secretary provided an opportunity for a strategic review to improve the management and oversight of revenue collection and disbursement activities for the Department. As a result of that strategic review, ONRR has institutionalized a continuous improvement process in which we are implementing numerous initiatives to streamline our processes.

Question 4. (At the Hearing): Please provide the total of all federal revenues received from federal lands from 1985-2013 and state disbursements for all commodities ONRR is responsible for, including commodities not under the purview of ONRR such as timber, grazing etc.

Response: Attachment A provides ONRR's historical disbursement data from 1985-2013. There are a few anomalies that need to be noted. The Historic Preservation Fund (HPF) disbursement is negative in 1999 and blank in 2006. This is because disbursement to the HPF in 1998, 1999, and 2006 was not authorized. The blank in State Share Offshore is because prior to 1986 the Department did not share any Federal offshore revenues with the states. Attachment B lists state disbursements by year from 1985-2013, and includes details for onshore and offshore. These totals agree to the subtotal for states' share column in Attachment A. Attachment C completes the response by providing detailed information about receipts from all revenue sources for the Department of the Interior.

FROM SENATOR MANCHIN

LWCF

Question 1. As the Chairman discussed in the hearing, the LWCF is 50 years old this year. I believe the LWCF needs to be permanently reauthorized an am a co-sponsor of S. 338. It is a program that has provided funding for a number of projects in West Virginia, some $221 million over the past four decades. In West Virginia, about 80% of the total funding has gone to federal agencies and 20% to the state, while federal agencies manage about 7.3% of the total land area.

A. What is the administration's position on S. 338?

Response: The Administration has not taken a specific position on S. 338. The President proposes $900 million in discretionary and mandatory funding in FY 2015, and proposes to permanently authorize $900 million in annual mandatory funding for the Departments of the Interior and Agriculture Land and Water Conservation Fund programs beginning in fiscal year 2016

B. What, specifically, would the administration recommend to improve upon S. 338?

Response: We do not have specific suggestions to improve S. 338. We would appreciate an opportunity to work with Congress on the reauthorization of LWCF.

Question 2. Many say the federal government should not acquire any additional lands and that, first and foremost, the federal agencies need to manage the areas they already have. Do you agree with this? If not, please explain why.

Response: No, the Department does not agree federal land acquisition should stop. The Department of the Interior takes seriously its responsibilities to maintain current sites, including facilities and infrastructure. This is reflected in the Fiscal Year 2015 budget, which proposes a total of $869.7 million, an increase of $30 million above the 2014 level, for maintenance needs across the Department.

Complementing this request are additional funds as part of the Administration's Opportunity, Growth, and Security Initiative, $100 million, and a mandatory funding proposal, $100 million, to address maintenance backlog needs for all natural resource agencies as part of the Centennial Anniversary of the National Park Service. The budget proposes an additional $200 million in mandatory funding for National Park Service Construction to help prepare for the National Park Service Centennial in 2016 and $100 million as part of the Administration's Opportunity, Growth and Security Initiative.

Furthermore, the 2015 bureau-specific budget requests include funding to continue the Department's ongoing support for critical ecosystem restoration projects such as the Elwha River ecosystem and fisheries restoration in Washington State. The budget also proposes focusing facilities funding on the most critical health and safety issues, such as funding to correct critical health and safety hazards at Many Glacier Hotel in Glacier National Park, repair critical life safety items at education facilities for Bureau of Indian Affairs-funded schools, and repair and rehabilitate dams managed by the Fish and Wildlife Service. Construction activities focus on the replacement of facilities in poor condition, to correct the most critical problems on our highest priority assets.

Moreover, maintaining current sites is not in conflict with identifying landscapes that merit conservation through easement or acquisition. The America's Great Outdoors listening sessions and public input process identified a powerful consensus across America that outdoor spaces—public and private, large and small, urban and rural—remain essential to American's quality of life, economy, and national identity. Americans communicated clearly that they care deeply about their outdoor heritage, want to enjoy and protect it, and are willing to take collective responsibility to protect it for their children and grandchildren.

Activities funded under LWCF ensure public access to the outdoors for hunting, fishing and recreation; preserve watersheds, viewsheds, natural resources and landscapes; provide corridors for wildlife to migrate within; and protect irreplaceable cultural and historic sites for current and future generations. In addition, LWCF funds are also used to protect working lands, where historical uses such as grazing and farming continue.

Proposed federal land acquisition projects are developed with the support of local landowners, elected officials, and community groups. In fact, land acquisition can often greatly simplify land management for federal managers and neighboring landowners.

For example, St. Vincent National Wildlife Refuge (NWR) is an island off the panhandle coast of Florida in Apalachicola Bay, off the Gulf of Mexico. Boat access to the refuge was through a leased deep water mooring and launch site. The lease was ending and would not be renewed as the owners were looking to develop the mainland at the launch site. Funding through the LWCF allowed the refuge to acquire a five-acre tract on the mainland of Apalachicola Bay. This small acquisition provides a permanent launch site with deep water mooring, secure parking and equipment storage. With the acquisition of this site, the refuge eliminates the annual $12,000 lease and is able to accrue significant savings in fuel for vehicles. Staff time traveling between the refuge office and worksite was significantly reduced, an important efficiency as daily boat access for St. Vincent NWR staff is required 24/7 for all island management activities, such as sea turtle nest monitoring and protection, habitat management, prescribed burning, hunting and fishing management and protection, and response to visitor emergencies.

Prior to the acquisition of the deep water mooring and launch site, the Service conducted a critical review and analysis of deep water mooring and access options in the general vicinity of the refuge. Only two or three options were possible, with the acquisition of the acquired site being the most cost effective and safest for staff. The other sites involved longer nautical travel distances at nine miles, were more costly as public boat launch sites, and did not offer the security needed for refuge equipment.

Question 3. In a state such as West Virginia, with a small percentage of federal land and with an abundance of recreational opportunities on non-federal lands, do you think we should have a larger allocation of funds via the state's matching grant program?

Response: The National Park Service's traditional LWCF State Conservation Assistance Program uses a formula to apportion funds to the individual States, as well as the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The amount provided to each State is determined through an apportionment formula contained in Section 6(b) of the LWCF Act. This formula includes a factor for equal distribution of 40 percent of the appropriation among the States, as well as a factor for distribution on the basis of need of the remaining 60 percent, which must include consideration of the State's proportion of population relative to the national total.

In 2014, Congress identified $3.0 million within this program to implement a new competitive grant component. This program, the Outdoor Recreation Legacy Partnership, will provide grants to help acquire or develop land for public parks and other outdoor recreation spaces in cities (for example, Beckley, Charleston, Huntington, and Morgantown), particularly targeting neighborhoods that are economically disadvantaged and lacking in adequate in outdoor recreational opportunities. This program is continued in the 2015 President's budget request.

<u>Secure Rural Schools and Payments in Lieu of Taxes</u>

Question 4. For over two years I have urged reauthorization of two critical programs – Secure Rural Schools and Payments in Lieu of Taxes – used by counties throughout West Virginia for vital services like firefighting and police protection, construction of public schools and roads, and search-and-rescue operations.

A. What, specifically, is the Administration doing to try and ensure these programs continue?

Response: The administration appreciates the importance of both the Payments in Lieu of Taxes (PILT) and Secure Rural Schools (SRS) programs to counties across the nation. The President's Budget request to Congress for FY15 proposes an extension of PILT permanent funding for one year, while a sustainable long-term funding solution is developed for the program. The budget includes a five-year reauthorization of the SRS program with funding through mandatory appropriations, beginning with $251 million in fiscal year 2015.

B. What is your position on using "active management" of public lands to increase revenues that would then help fund these two programs?

Response: Federal lands are managed in accordance with applicable laws. The Department of the Interior's active management is driven by the responsible management of lands, waters and resources in compliance with these laws.

On all federal lands managed by the Department of the Interior, management decisions are guided by resource management plans developed at the national, regional and unit level. Plans are regularly updated with public input to ensure they are current, based on best available science and adequately consider the needs and concerns of local communities.

FROM SENATOR BALDWIN

Question 1. What percentage of total receipts from oil and gas development of federal lands does the $900 million available under the LWCF represent?

Response: $900 million is approximately 6.8 percent of the $13.29 billion in Federal onshore and offshore natural resource revenues disbursed by ONRR in FY 2013.

Question 2. The LWCF was first available in 1965, almost 50 years ago. In terms of actual purchasing power, how much would the $900 million authorized by the LWCF be worth in 2014 dollars if adjusted for inflation? How much purchasing power for actual acres by federal, state, and local agencies is available under the LWCF today when compared to 1965 when this Law was authorized?

Response: Using the Bureau of Labor Statistics, Consumer Price Index (available at http://www.bls.gov/data/inflation_calculator.htm), the $900 million in 1965 has the same purchasing power as $6,809 million in 2014.

Question 3. It is my understanding that each year about $900 million is deposited in the LWCF account, but that the full amount deposited is not spent on LWCF purposes. How much in FY 2013 was not spent on LWCF purposes? How much over the 50 year history of LWCF is credited to the account but that has not been spent on LWCF purposes?

Response: Section 460l-5 of the Land and Water Conservation Fund Act authorizes $900 million to be deposited into the Fund. These funds are not available to the Department of the Interior or the Department of Agriculture without a specific annual appropriation from Congress. In fiscal year 2013, nearly $305.6 million was appropriated by Congress from the Fund; leaving almost $600 million unappropriated and therefore not spent on LWCF purposes. The cumulative unappropriated receipt balance at the end of fiscal year 2013 was $18.9 billion.

FROM SENATOR BARRASSO

Question 1. On November 25, 2013, Rhea Suh, Assistant Secretary for Policy, Management, and Budget, wrote that the Bureau of Land Management (BLM) "will move forward with a rulemaking process to revise its existing regulations to allow the Secretary broad flexibility in setting onshore royalty rates."

I am concerned that any proposal to raise royalty rates will put Federal lands at a competitive disadvantage with state and private lands. In 2011, DOI commissioned a study which found that higher royalty rates for Federal lands in Wyoming "will deteriorate their competitive position in the market, which is rather weak as it is."

On March 14, 2012, then BLM Director, Bob Abbey, testified before the Senate that there has been "a shift [in oil and gas production] to private lands in the East and to the South where there are fewer amounts of Federal mineral estate."

In June 2014, the Energy Information Administration (EIA) released a report which found that there was a 16 percent drop in onshore natural gas production on Federal lands between FY 2009 and FY 2013. EIA found that between FY 2012 and FY 2013 alone, there was a "9% drop in federal onshore natural gas production, with most of that decrease in Wyoming."

A. **Please explain, in detail, how raising the royalty rates on onshore oil and gas production on Federal lands will not further reduce their competitive position relative to state and private lands. In your answer, please address the additional regulatory burdens, including those associated with the National Environmental Policy Act, that apply to natural gas production on Federal lands but not natural gas production on state and private lands.**

Response: Consistent with the regulatory framework for how offshore oil and gas royalties are determined, the BLM is considering a rulemaking that would give the Secretary of the Interior flexibility to review and revise royalty rates for new competitively-issued onshore leases as appropriate. The BLM is committed to ensuring the public receives a fair return on its resources while balancing economic, environmental, and other considerations.

A range of factors influence the competitiveness of Federal onshore oil and gas leasing, including, but not limited to, the price of oil, the price of natural gas, the availability and cost of equipment, technology, the underlying geology, consideration of market demands/conditions, and the fiscal terms assigned to Federal leases (including minimum bids, rental fees, lease lengths, royalty rates, etc.). Some factors are within the control of the Federal government, while others are not. Royalty rates are only one of the factors that influence a company's leasing decisions, and there may be opportunities to substantially improve the return to taxpayers from royalty rate increases with few noticeable market impacts. For example, when the Bureau of Ocean Energy Management raised royalty rates on deep water offshore oil and gas leases from 12 ½ percent to 16 2/3 percent in 2007, and then to 18 ¾ percent in 2008, there was no significant decrease in leases sold or bonus bids received.

With respect to Wyoming, the state assesses a higher royalty rate on production from state lands than does BLM for Federal lands. The state assesses a 16 2/3 percent royalty rate on parcels in competitive leases sales and a 12 ½ percent royalty rate on parcels not sold in prior sales. Meanwhile, the BLM currently assesses a 12 ½ percent royalty rate on production from Federal lands. An increase in the royalty rate assigned to Federal leases could increase revenue to the U.S. Treasury as well as revenue to the States, since the Federal Government shares royalty revenues with states.

With regard to regulatory requirements, the BLM is subject to compliance with certain statutes, such as NEPA and FLPMA, and their implementing regulations, prior to leasing Federal lands while the states are not. The BLM reviews potential lease sale parcels and determines their eligibility for leasing based on the resource management plan for the area where the parcels are located, completes a records search to ensure the land is available for leasing, and conducts a NEPA review for environmental impacts and mitigation measures. Consistent with the Department's 2010 oil and gas leasing reforms, these reviews conducted at the leasing stage are necessary to help ensure that leases can be issued efficiently, minimizing conflicts and subsequent delays that occur as a result of potential lease sale protests or lawsuits. Compliance with Federal law and BLM regulations help ensure oil and gas operations are conducted in a safe manner and protect the environment.

B. Please also provide the current status of the rulemaking discussed in Ms. Suh's November 25th letter.

Response: The BLM is considering a rulemaking that would give the Secretary of the Interior flexibility to review and revise royalty rates for new competitively-issued onshore leases as appropriate. Any rulemaking process would include an opportunity for public comment and stakeholder engagement.

FROM SENATOR SCOTT

Question 1. According to ONRR, on average over the first five years of the Obama administration (2009-2013) there has been a 24 percent drop in total offshore revenues compared to the five previous years (2004-2008). To what do you attribute the 24 percent drop in offshore revenues?

Response: According to the Bureau of Ocean Energy Management's (BOEM) calculations using the ONRR data reflecting only revenues attributable to oil and gas activities (http://statistics.onrr.gov/ReportTool.aspx), the reduction in leasing revenues during the five-year 2009-2013 period compared to the previous five-year 2004-2008 period was 17.8 percent, not 24 percent.

A number of factors contributed to this reduction in leasing revenues. Bonuses declined substantially in the later period because of the cancellation and altered timing of Gulf of Mexico lease sales in 2010, 2011, and 2012 following the Deepwater Horizon oil spill and owing to the absence of any unusually robust sales such as occurred in the Central Gulf of Mexico and the Chukchi Sea in 2007 and 2008. There were no Alaska lease sales held in the later time period. Also, during the later time period there were historic discoveries of abundant amounts of low cost domestic onshore sources of natural gas, resulting in a dramatic decline in natural gas prices and accompanying decline in offshore natural gas production, which combined to result in a decline in royalties from natural gas production on the OCS. In addition, royalties were more adversely affected in the later period as a result of the added production of royalty free oil and gas associated with leases issued under the Deepwater Royalty Relief Act of 1995.

Question 2. Do you expect offshore revenue to continue to decline under the remainder of the Obama administration? If not, why?

Response: Leasing revenues from the Outer Continental Shelf (OCS) are not expected to decline between now and the beginning of 2017. As part of the President's fiscal year 2015 budget, BOEM provided estimates of future leasing revenues, which ranged from almost $8 billion in 2014 to $8.4 billion in 2018. The projected revenue increases during this period derive from anticipated larger amounts of production by existing and new projects in deep water. Oil and gas prices projected by the Energy Information Administration are anticipated to be slightly downward for oil and steadier for gas.

Question 3. In 2010 the Obama administration canceled President Bush's 2010-2015 offshore lease plan and later replaced it with a 2012-2017 plan that placed 85 percent of America's OCS off-limits to energy production and offered the fewest number of leases in the history of the program.

A. Does ONRR have estimates on how much revenue President Bush's 2010-2015 plan would have generated? If not please provide an estimate.

Response: Development of a Five Year Program involves multiple steps, decision points, and public involvement. The Draft Proposed Program (DPP) is a preliminary step in the development of a Five Year Program, after which there is additional analysis and opportunity for public input, often resulting in the further narrowing of the areas to be made available for leasing consideration in a final Program that best meets the nation’s energy needs.

While the 2010 – 2015 DPP provided an initial estimate for leasing revenues, it was the first of several steps and did not accurately represent the projected revenues of an approved final program. In the DPP for the 2010-2015 five-year program, BOEM provided estimates of the leasing revenues potentially generated by 31 sales covering 12 planning areas and subsequent projected production from leases to be issued in those sales. The total amount of bonus and royalty revenues projected from leases to be issued from these sales amounted to almost $368 billion, of which 70 percent was for Gulf of Mexico sales in current planning areas, 8 percent was from areas in the Gulf that Congress has set aside through 2022, 4 percent for Atlantic sales, 8 percent for sales offshore California, and 10 percent for sales offshore Alaska.

B. Also, please estimate how much total revenue will be lost due to the implementation of President Obama's restrictive 2012-2017 lease plan compared to what would have been generated under President Bush's 2010 - 2015 plan.

Response: As noted above, a DPP, such as the 2010-2015 DPP, is a preliminary step in the development of a Five Year Program. The development process of a Five Year Program starts with the Request for Information, which includes all 26 planning areas. From the Request For Information to a Proposed Final Five Year Program, each step provides an opportunity for further analysis and public input to help winnow down the areas for consideration before the Secretary makes a final decision on the areas that will best meet the nation’s energy needs. The 2010 – 2015 DPP was an initial document to help inform the current Five Year Program, which makes available 75 percent of the total undiscovered, technically recoverable oil and gas natural resources estimated for the entire OCS.

BOEM does not have estimates of the revenue impacts associated with changes to proposed lease sale schedules as the Program evolved pursuant to the OCS Lands Act planning process. The estimates provided in the DPP were based on the 2006 national resource assessment and economic assumptions reasonable at the time the DPP analysis was prepared. The Proposed Final Program analysis was based on the more recent National Assessment (2011) and updated economic assumptions. Thus, any direct comparison of projected revenues between the two proposals would be flawed. Further, no estimate of government revenues associated with the Proposed Final Program was prepared, as government revenues are not one of the factors to be considered in preparing a five year program pursuant to section 18 of the OCS Lands Act.

Question 4. ONRR has proposed a set of regulations regarding civil penalties for royalty reporting errors. In many ways, the rules conflict with the civil penalty system that Congress established in the Federal Oil and Gas Royalty Management Act (FOGRMA). Most notably, FOGRMA requires ONRR to give a federal lessee an opportunity to correct minor royalty reporting mistakes before imposing civil penalties, and it reserves the most severe penalties for a limited set of major errors. In addition, ONRR can impose these severe penalties only when the major errors are "knowing and willful." Under ONRR's proposed rules, however, ONRR could impose the most severe penalties for even minor royalty reporting mistakes, and it could impose these severe penalties for errors that are committed without any specific intent. How can ONRR justify these new rules when they directly conflict with the authority that Congress has granted to ONRR?

Response: As stated in the preamble of the proposed Amendments to Civil Penalty Regulations, "ONRR is amending its regulations to clarify ambiguities, simplify the processes for issuing notices of noncompliance and civil penalties and for contesting notices of noncompliance and civil penalties, and rewrite the regulations in Plain Language." Further, "The proposed rule would define what 'knowing or willful' means under 30 U.S.C. 1719(c) and (d) and part 1241. This statutory term is largely self-explanatory and readily implementable without regulation. However, ONRR believes that its enforcement efforts, adjudications of its enforcement efforts, and the regulated public would benefit from defining 'knowing or willful'." Specifically, ONRR is "proposing that the definition of 'knowing or willful' means gross negligence…. [and] is appropriate given Congressional intent in FOGRMA to establish a robust enforcement system and to ensure the integrity of the royalty accounting system." The public comment period closed on July 21, 2014. In accordance with the Administrative Procedures Act, ONRR is reviewing all comments, including those on this topic, and will respond to issues raised in the comments as part of the publication of the final rule.

Question 5. ONRR's proposed regulations regarding civil penalties for royalty reporting errors significantly cut back on procedural protections for federal lessees who challenge the agency's decision to impose civil penalties. Among other things, these rules would eliminate the ability of Interior's administrative law judges to rule on whether civil penalties are justified, would eliminate any ability to stay the accrual of penalties during the administrative appeal, and would give ONRR unreviewable discretion to deny

altogether a lessee's request for a hearing on the record. How can ONRR justify taking away these fundamental due process protections?

Response: As stated in the previous response, the preamble of the proposed Amendments to Civil Penalty Regulations, clearly states that, "ONRR is amending its regulations to clarify ambiguities, simplify the processes for issuing notices of noncompliance and civil penalties and for contesting notices of noncompliance and civil penalties, and rewrite the regulations in Plain Language." The proposed rule actually expands fundamental due process protections. As an example, ONRR proposed to consolidate the regulations currently located at sections 1241.54, 1241.56, 1241.62, and 1241.64 to a new section 1241.5. The reason for the consolidation is to clarify the hearing process and decrease redundancy. A consequence of this consolidation is that the proposed rule would extend the period within which to request a hearing from 10 days to 30 days for hearing requests for Failure to Correct Civil Penalty (FCCP) notice and the amount of civil penalties assessed in an Immediate Liability Civil Penalty (ILCP). The public comment period closed on July 21, 2014. In accordance with the Administrative Procedures Act, ONRR is reviewing all comments and will respond to issues raised in the comments as part of the publication of the final rule.