Testimony of Dennis Willis

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Of

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I want to thank the subcommittee for this opportunity to participate in this hearing and in our exercise of democracy. For most of 35 years, I was a public servant, employed by the Bureau of Land Management. During my career I worked in many aspects of the oil and gas leasing program. From the development of resource management plans (RMPs) to the preparation of lease sales, the permitting of an individual wildcat well to working on three environmental impact statements (EIS) documents for full field development. I saw the value of listening, learning and utilizing the good information and great passion the public brought to the process. The processes outlined in the Federal Land Policy and Management Act and the National Environmental Policy Act (NEPA) work because they seek involvement from all stakeholders regardless of the wealth, political influence, or popularity they may or may not enjoy. Since retiring, I have been involved in these processes as a member of the public and as board member of the Nine Mile Canyon Coalition, a small, local non-profit corporation. I am here today as a private citizen, resident of a Carbon County, an area blessed with both mineral wealth and awesome, iconic western landscapes. As the name suggests, my county has been heavily reliant on the production of fossil fuels for about 130 years.

In Carbon County we revel in our heritage of coal and oil and gas production. We value the contributions those industries make to our economy, tax base and employment. We also love our legacy of public lands. Our ranchers use the land for livestock production; we enjoy night skies and the rare experience of reading a book by the light of the Milky Way. We use public lands to hunt, fish, hike, bike, go four wheeling and teach our children and grandchildren. We live in the desert; our scarce water resources and community watersheds are precious. We enjoy jaw dropping, spectacular scenery. Archaeological and historic sites tell the tale of people on these landscapes for over 8,000 years.

We welcome oil and gas development but with the expectation the industry will be a good neighbor, considerate of community needs and sensitivities. When oil and gas projects happen, we do not dedicate the entire landscape to production. There is an expectation that other uses and users will continue to enjoy the public lands without undue burden. The NEPA process is how the oil and gas companies learn about the potential user conflicts and community sensitivities. It is part of the way we all stay good neighbors.

These bills are crafted solely to benefit the oil and gas industry by allowing them to avoid federal environmental law and ride roughshod over local public interest. These bills shut out the local public from participating in the management of their public lands. It also bars participation of other federal, state, and local agencies that routinely participate in the NEPA process. It denies the right of the public to freely petition their government, participate in the public NEPA process and have their concerns heard and addressed. It removes discretionary authority from the local public land managers and

imposes a one size fits all directive from the Congress. It ties the hands of land managers and local communities to identify, address and minimize conflicts administratively, leaving litigation as the only avenue to conflict resolution.

The most contentious oil and gas project I worked on in my BLM days was the West Tavaputs Drilling Project. The West Tavaputs Plateau has almost every resource category found on BLM lands. There are wilderness issues, wild horses, deer, elk and bighorn sheep, outstanding archaeology, endangered plants, birds and fish, sage grouse and the list goes on. Every issue, resource and resource user conflict you can imagine all occur on that one 140,000 acre project area. The West Tavaputs EIS involved five federal agencies, five state and local agencies, several Native American tribes, and 18 consulting parties, including local and national environmental groups. The draft EIS generated 58,000 public comments. Through the NEPA process, extensive outreach and meetings with interested stakeholders concerning resource impacts and alternative ways to address them, a final decision was reached. Nobody got everything they wanted but everyone got their needs met. The industry gave up some drilling locations and surrendered some leases. Environmental groups made concessions on wilderness; archaeological and sportsmen's groups also made compromise; and adversaries became good neighbors. When it was all over, there were no appeals filed. Utah Governor Gary Herbert proclaimed the effort as "energy development done right." Members of the Utah Congressional delegation agreed. Without the NEPA process bringing people to the table, the project would still be in litigation today, eight years after.

What might be fast and cheap for the energy industry may not be good for local communities in the west. The existing process, while not as fast as some would like, is effective at engaging communities, forging cooperation and results in a western landscape we can all thrive in.

The suite of bills we are discussing today are of great concern. This legislation seeks to end the practice of local BLM decision making based on site specific conditions and input from nearby communities and the broader public. It would silence the ability of local citizens contribute local knowledge and identification of community needs. These bills would usurp informed, rational, local decision making with a top down, one size fits all, dogmatic rule imposed by Washington, D.C. This is exactly the type of action I have heard current and past members of this committee rail against for the last 40 years.

NEPA is one of this nation's bedrock environmental laws. It is also a wonderfully democratic law; assuring the public is fully informed of federal actions, assuring the public the opportunity to participate and that public comments are not just received, but responded to. While it is sometimes cast as a villain of bureaucratic red tape or "paralysis by analysis," it is important to remember the objectives is assuring federal decision makers are making fully informed, rational decisions and the public is fully informed and allowed to contribute to the decision making process. In my opinion, the most important NEPA regulation is found at 40 CFR 1500.1(c):

Ultimately, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action.

There is simply no good reason to exempt the oil and gas industry from NEPA review and block the public from the decision-making process for development on publicly-owned lands.

Categorical Exclusions and Notice of Permit to Drill

BLM is tasked with multiple use management accommodating all competing resources. The site-specific review process affords the BLM and the public the opportunity to review and modify proposals to minimize conflicts between competing interests, protect human health and safety, and safeguard critical resources. It also enables the BLM the opportunity to make modifications and, enact appropriate and reasonable drilling stipulations on development proposals. The proposed CX expansion would eliminate these site-specific evaluations. It would also eliminate the public's right to participate in the in the NEPA process. Critically, the proposed legislation would eliminate BLM's discretionary ability – in coordination with affected communities and members of the public – to implement solutions that will help avoid needless resource use conflicts. This proposal is a recipe for increased conflicts over public lands, as if there were not enough of that already. It takes away the opportunity to work through the NEPA process, and will instead lead to increased conflict between development and other uses of public lands.

The proposed use of a Notice system and categorical exclusions (CXs) for oil and gas drilling permits are unwise and unwarranted. The Council on Environmental Quality guidance on CXs is to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (40 CFR 1500.5k). In BLM they mostly cover minor administrative actions like inventory and monitoring, or to transfer an authorization from one entity to another where there is no change on the land. They are also used to cover maintenance of existing facilities, placing directional signs and the like.

Oil and gas wells simply do not fit the criteria for a CX given that these activities are among the most impacting activities permitted by BLM on a regular basis. They deserve the scrutiny provided by the NEPA process. An oil and gas wellsite can have major impacts. The associated access roads and pipelines that are affiliated with oil and gas development can frequently have bigger impact issues than the wells itself. The overarching consideration for creating a CX is a lack of impact from the activity, not the project proponent finding the application of NEPA a bother. And when BLM is deciding whether or not to apply a CX, it is supposed to conduct a review to see whether known extraordinary circumstances or, in the case of some CXs, other information indicating environmental review is needed are applicable. If they are present, the process ensures that the BLM can require additional NEPA documentation in order to ensure a better decision.

This proposed legislation is also out of proportion with other BLM CX provisions. For example, this proposal allows heavy equipment surface disturbance on up to 10 acres individually and 150 acres cumulatively. My daughter is getting married on public land in August. For her wedding to obtain a recreation permit using a CX, the wedding party cannot occupy more than three acres, removal of vegetation and earth moving are not allowed, and occupancy of site is limited to no more than 14 days. If a simple family wedding is held to a limit of three acres, it begs the question why a drilling company could bulldoze the entire site to ten acres and occupy the area for upwards of 50 years.

These bills seem to assume that BLM has already evaluated the site-specific impacts of drilling. But that is seldom the case prior to the permitting stage. Rather, BLM's planning leasing and permitting processes actually anticipate more intensive environmental analysis prior to issuing permits to drill. When BLM conducts an RMP process, the areas open to oil and gas leasing are drawn on a very large-

scale map with low resolution and the majority of lands are left open to leasing. At the leasing stage, BLM may decide that the area is generally suitable for leasing but under current BLM policy, there is no requirement to conduct a detailed analysis of potential impacts. As a result, when applications for permits to drill (APDs) come in, that is the **only** time oil and gas development gets looked at on a site specific, small scale, high resolution basis. BLM needs to retain discretion at all phases of leasing and development to meet its multiple use mandate, these lands are not presumably sacrifice zones for oil and gas development. Yet, these bills would largely prevent BLM from considering harm from drilling and from taking any measures to prevent such harm .

The site-specific evaluation and NEPA review of APDs are critical. Decisions to site wells commit resources for decades; they are long-term, irreversible, irretrievable commitments of resources. They frequently involve major alteration of the topography and landscape. Conflicts can frequently be avoided by moving the well, sometimes by a matter of feet; and, in other cases, BLM can find a more suitable site for a developer within a few miles. Design changes can be incorporated at the APD stage to minimize impacts to scenic resources, protect water, reduce noise impacts, and prevent wildlife injury. Without the application of NEPA, there is no opportunity for the local manager or local land users to make changes or otherwise address and avoid conflicts; this seems to virtually encourage litigation as the avenue for resolution.

The proposed Notice and CX process provides no opportunity to mitigate conflicts. A Notice may place a well on a National Historic Trail or on an important scenic overlook. It may be located in especially sensitive and critical wildlife habitat or a community water source. Under the current process, BLM can address and mitigate these conflicts. Under the proposed Notice/CX scheme proposed here, all BLM could do is catalog the damage and commiserate with citizens whose opportunities to enjoy public lands are unnecessarily diminished, if they are notified at all.

There is also a basic fairness issues among public land users. In Carbon County, a group of citizens formed a committee to develop some singletrack mountain bike trails on public lands. These trails provide recreational riding opportunities and helped to link towns and communities. The committee worked through the NEPA process in cooperation with the BLM. Public input was solicited, and through the process we developed a better, more cohesive trail system than was originally proposed. NEPA worked as intended, it required a look at alternatives and resulted in a better project. NEPA on APDs work in much the same way. If a small group of community volunteers with no financial resources can wade through the system for a non-motorized singletrack trail, surely the burden is not too great for the paid professionals within the oil and gas industry. How do you explain to a volunteer group their non-motorized trail, constructed with hand tools requires a NEPA analysis but an oil company can bulldoze roads, pipelines and operate a well pad without any NEPA consideration? Much of our trail system is in a producing coalbed methane field. The trails were placed to avoid industry infrastructure. With the proposed Notice system and CXs, a drilling company could plop down facilities that obliterate our trails with no consideration or mitigation.

There is simply no justification for providing an activity that is as widespread and potentially harmful as oil and gas development with such sweeping exemptions from the NEPA process. The oil and gas industry already has thousands of unused drilling permits in Utah and throughout the West, and millions of acres of idle leases, which raises questions of why these bills are even under consideration and

whether this Committee should instead be examining ways to force the industry to use the permits and leases it already has.

Additionally, as drafted, the CX provisions have a major logical flaw. The proposed CX covers wells drilled in a field within five miles of an existing well. It is obvious a 5-mile radius covers a lot of country, approximately 78 square miles. That is 78 square miles where BLM will not have the opportunity to review critical areas and resources and the public will not have any say in the matter. An example from our area is known as the Tavaputs Plateau. The plateau is highly dissected by deep canyons. The canyon bottoms contain highly sensitive riparian and archaeological resources. The company that filed the original drilling proposal for this area requested multiple wells in the canyon bottoms. Through the NEPA process, and after the public provided information documenting the potential for impacts on cultural and natural resources, it was decided there would be no wells in the canyon and those targets would be drilled directionally from the top of the plateau. Those canyon bottoms are well within the 5-mile radius. The next Notification of a Permit to Drill could locate a well in the sensitive canyon bottom. The proposed CX would eliminate the ability of the local BLM office to require directional drilling from the plateau, resulting in the loss of critical resources unnecessarily, and without any mitigation. More broadly, the CXs included in the bills are so sweeping and generally-written that they would lead to many of the same problems that plagued the use of the Energy Policy Act CXs. According to a recent statement from the Government Accountability Office: "These problems, in a nutshell, were that BLM did not have good internal controls or guidance for how and when to use categorical exclusions. Therefore they were using them inappropriately in many cases and perhaps not using them when it was appropriate."[1]

We have often heard the industry brag about its ability to use technology like directional drilling to avoid occupying sensitive sites. I have seen their abilities in directional drilling, noise reduction and visual mitigation first hand and they are impressive. Under the proposed Notice and CX process, the company will not have to contemplate whether such techniques are appropriate and BLM would not be in a position to even suggest them.

The proposed Notice/CX process eliminates the ability of the BLM to manage public lands in areas with oil and gas activity. It will create conflict and litigation where the conflict could easily be mitigated. It denies the public and local citizens from having their rightful say in the management of public lands.

Protest Process Review

The proposed fees for protesting an oil and gas lease are onerous, burdensome and a further attempt to silence the local public. The Nine Mile Canyon Coalition has protested oil and gas leases in the past. But the decision to protest is not arrived at easily and preparation of a protest is difficult and stressful. Nobody files a protest frivolously or as a gratuitous exercise of free expression. Protests are only filed when the protester believes the BLM made a substantial error in their evaluation of the lease nomination. It is a continuation of the public participation in the NEPA process. The protest points out an error in agency decision making, gives BLM the opportunity to correct it and issue a better decision.

[1] Energywire, June 1, 2018, "Royalty panel recommendation could rehash NEPA controversy" https://www.eenews.net/energywire/2018/06/01/stories/1060083159

It is rather strange to have the BLM charge the public a fee for pointing out and helping BLM correct its errors.

Once again, there is an inherent unfairness in the process. Anybody can nominate any lease parcel at any time, for any reason, or no reason at all. A nomination can be frivolous, arbitrary and capricious. Once nominated, the BLM incurs all the expense of parcel evaluation and lease preparation. The nominator pays no fees and is under no obligation to bid on the parcel once it is offered. The nominator can choose to remain anonymous. Once BLM makes a decision to lease, a protester must present substantive reasons and show that the agency has made demonstrable errors within 10 days to have BLM reconsider its decision. The protester cannot choose to be anonymous. Requesting a federal agency to reconsider a decision for good cause should hardly be the type of action requiring the public pay a fee. Why should the public pay a fee for correcting/improving the work of an agency? It is the nomination of a lease that should be subject to a cost recovery provision (see Sec 304 of Federal Land Policy and Management Act).

Along with the proposed fees having a chilling effect on public participation, the proposed structure is simply silly. The purpose of a protest is to point out demonstrable error in the agency decision. The more error, the longer the protest is likely to be. The proposed fee structure provides and inducement for the BLM to do poor quality work and then charge a fee to the public for correcting it.

Minority Federal Minerals

While I do not have direct experience with these situations, the proposed bill raises two concerns in need of further consideration.

1. The development and production of the federal mineral estate is a federal action. The proposed legislation attempts to redefine federal action in this particular instance. I would question whether this is a rational or proper determination. The federal agency still is responsible for resource recovery, and protection of other resources in production of the federal oil and gas, as well as for consideration of cumulative impacts. This bill removes federal responsibility for everything but production verification and royalty recovery. The agency should not be relieved of its responsibility to human health and safety in the development of federal minerals. The federal agency must be able to hold operators accountable if one of these wells blows out due to an overpressure on the federal lease or when down hole failures result in the contamination of ground or surface waters.

2. The proposed bill seems to provide an incentive to game the system. Using directional drilling techniques, an operator could fully develop the federal mineral estate while avoiding all BLM review and oversight, and hence also all accountability to the public

Conclusion

What the oil and gas industry sees as burdensome red-tape, are critical protections, due process, rules of fair play, and economic lifelines for other public land users. The rules of the game should not be upended simply because of an inconvenience to one stakeholder, one industry, or one interest; they need to work for all the stakeholders at the table. What one industry sees as ‘red tape’ another industry

sees as a lifeline, a local community sees as their ability to protect community interests, and a parent sees as the future western landscape and lifestyle their child inherits.

These bills are a pure gift to the oil and gas industry. An expensive gift benefiting one industry at the expense of public lands and resources, and detrimental to people who live with and care about their public land heritage. Please don't claim these bills make sense for the public or public lands or those tasked managing them, or communities in the west. Please don't move them forward.

Thank you for the opportunity to share my experience as a retired BLM employee, board member of Nine Mile Canyon Coalition, and resident of Carbon County, Utah.

THE END