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June 5, 2007

The Honorable Nick Rahall
1324 Longworth HOB
Washington, D.C. 20515

The Honorable Don Young
1329 Longworth HOB
Washington, D.C. 20515

Dear Chairman Rahall and Representative Young:

On behalf of the Western Governors' Association, we are writing in support of the proposed revised section 105 in H.R. 2337, "Limitation of Rebuttable Presumption Regarding Application of Categorical Exclusion Under NEPA for Oil and Gas Exploration and Development Activities."

In February 2007, the Western Governors' Association adopted Policy Resolution 07-01, "Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West." The resolution urges Congress "to amend Section 390. Subpart (b)(3) of the Energy Policy Act of 2005 to remove the categorical exclusion for NEPA reviews for exploration or development of oil and gas in wildlife corridors and crucial wildlife habitat on federal lands. By removing the categorical exclusion, appropriate environmental site analysis will be completed as necessary to protect crucial wildlife habitat and significant migration corridors located in the field of development."

Subpart (b)(3) of section 309 of the 2005 Energy Policy Act is currently worded in such a manner that oil or gas wells could be drilled under a categorical exclusion, with no additional analysis, if "an approved land use plan prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity...." We are concerned that completion of an RMP after the five-year period that an EA or EIS covers, or before an EIS is completed for a developing field, would allow authorization of drilling under a categorical exclusion (Cat Ex), including in sensitive wildlife corridors and crucial habitat, with general provisions provided only by the RMP.

The Governors believe that the Categorical Exclusions authorized broadly under paragraph (b) of the Energy Policy Act may often be appropriate. However, with specific regard to subpart (b)(3), the

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Governors do not want their ability to require adequate mitigation in areas the States have identified as sensitive wildlife corridors and crucial habitat to be diminished or eliminated. Development of these sensitive areas obviously needs detailed disclosure and analysis of impacts to other resources, and the permits need to include avoidance and mitigation measures to protect those resources.


Although the Department of the Interior has worked fairly and inclusively with the states to date, the categorical exclusion provision in subpart (b)(3) of the 2005 Energy Act appears to provide a legal option to deny state fish and wildlife agencies the opportunity to protect and adequately manage fish and wildlife resources on BLM lands by authorizing oil and gas development without adequate analysis, disclosure and state agency involvement. Unless the problematic language in Subpart (b)(3) is amended or removed, or an additional administrative process implemented to allow state fish and wildlife agencies an opportunity to recommend appropriate protection and conservation conditions to accompany permits to drill in sensitive wildlife corridors and crucial habitat, significant wildlife impacts could occur.

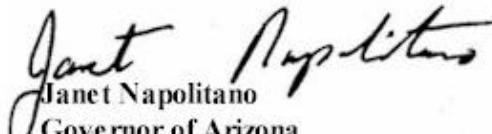
We believe the proposed revised section 105 in H.R. 2337 addresses this concern, and we therefore support the revised section 105. We do have concerns regarding subtitle (D), "Ensuring Responsible Development of Wind Energy," that we will explain in a separate letter.

The Western Governors appreciate the Committee's efforts to address our concerns in section 105, and we look forward to working with you as the bill moves forward.

Sincerely,


M. Michael Rounds
Governor of South Dakota
Chairman


Dave Freudenthal
Governor of Wyoming
Vice Chairman
Lead Governor


Janet Napolitano
Governor of Arizona
Lead Governor