

**Testimony by
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**Submitted on Behalf of
The Western Governors' Association
&
The Association of Fish & Wildlife Agencies**

**Submitted to
Joint Oversight Hearing on**

Land-Use Issues Associated with Onshore Oil and Gas Development

**Subcommittee on National Parks, Forests and Public Lands
Subcommittee on Energy and Mineral Resources**

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Chairman Grijalva, Chairman Costa, and members of the Subcommittees, my name is John Emmerich, I am the Deputy Director of the Wyoming Game and Fish Department. Thank you for the opportunity to address the Subcommittees regarding Section 390 subpart B(3) of the Energy Policy Act of 2005, on behalf of the Western Governor's Association (WGA) and Association of Fish and Wildlife Agencies (AFWA). The Western Governors' Association is an independent, nonprofit organization representing the governors of 19 Western States, American Samoa, Guam and the Northern Mariana Islands. Through their Association, the Western governors identify and address key policy and governance issues in natural resources, the environment, human services, economic development, international relations and public management. AFWA represents all 50 State Fish and Wildlife Agencies.

The West, including Wyoming, is a national focus for energy development. Several western states contain large domestic reserves of coal and uranium, world-class natural gas and wind resources, as well as significant oil production. There is also potential for oil shale development. These base energy sources are being tapped, and plans are underway for power plants, synfuel plants, pipelines and power grids to process and ship that energy across the west. The current scale and intensity of energy development is unprecedented in many Western states, and experts predict this development will continue for several decades. The Western Governors are strong advocates for environmentally responsible energy development, as demonstrated by the development and implementation of the WGA Clean and Diversified Energy Initiative.

While many Western states truly have a world-class energy resource, much of the West also has a world-class wildlife resource and a wildlife-oriented culture that the state and the nation value very highly. For example, about half of Wyoming's residents hunt and/or fish, 75% enjoy non-consumptive wildlife watching activities, and many

thousands of nonresidents also spend time in Wyoming each year specifically to take part in those activities. This participation in wildlife-associated activities is far higher than most other states. According to the U.S. Fish & Wildlife Service, \$21 billion was spent in 2001 on renewable hunting, fishing and wildlife watching activities in the 19 Western States. At this point in time, energy development is Wyoming's chief economic resource, but wildlife-associated activities have long been and will continue to be a very significant part of the State's second leading economic source, tourism and recreation. Economic support from tourism and recreation will need to be maintained to provide economic diversity and continue as a stable and vital part of the State's economy when development of energy sources inevitably slows.

The Western Governor's Association and the Association of Fish and Wildlife Agencies recognize the national energy need and the West's contribution towards fulfilling that need. They also recognize the statutory obligations of our State Fish and Wildlife Agencies to conserve and manage the fish and wildlife resources, which are so important to the economy, culture and heritage of our citizens. A key aspect of this obligation is ensuring the sustainability of the habitats on which these species depend.

Habitat impacts in many Western States have recently occurred as a result of the unprecedented energy development. In seven major oil and gas fields in Wyoming, there have been approximately 44,000 wells developed over several decades with the majority in the last ten years, and 55,000 additional wells are planned over the next 20 years. From this activity, it is estimated that roughly 25% of Wyoming will experience direct surface disturbance or the effects of indirect wildlife disturbance caused by increased human, vehicular and development impacts associated with energy development.

Many species associated with the sagebrush/grassland steppe, including mule deer, pronghorn, sage-grouse, green-tailed towhee, and Brewers sparrow to mention a few, have experienced long term declines in productivity and numbers over the last thirty years, despite periodic, short term increases. Causative factors are many but change in habitat conditions is certainly one of the major factors. The unprecedented level and pace of energy development in the West is an additional impact on already struggling wildlife.

In Wyoming sage grouse numbers have declined by approximately 60% and their numbers have declined even more so across their entire range over the last thirty years. Recent research and monitoring information on sage grouse and mule deer in the Pinedale anticline area of southwest Wyoming and the Powder River Basin of northeast Wyoming have clearly documented some of the impacts associated with intensive oil and gas development. Mule deer use on the crucial mesa winter range south of Pinedale has experienced a 27% decline since development started. Wyoming has seen a statewide increase of 68% in sage grouse numbers across Wyoming from 2004 to 2006, and a 44% increase in undeveloped areas adjacent to the Pinedale Anticline in this same timeframe. However, within the gas field there was no increase in grouse numbers associated with 37 leks and at least four of the leks were abandoned.

Energy development and fish and wildlife conservation are mutually achievable goals if development decisions are based on sound information and early, continual engagement between the Federal land management agencies, State Fish and Wildlife Agencies and the energy development industry. With the current pace, scale and intensity of energy development in many Western States, it is vital that State Fish and Wildlife agencies have opportunity to be engaged throughout the NEPA process to ensure accurate information on the location of crucial wildlife habitat and key migration corridors is identified and recognized and there is adequate analysis, disclosure and mitigation provided to minimize impacts and offset unavoidable impacts. It is our expectation that the BLM, particularly given its multiple use mandate, would likewise routinely address these issues in RMPs and again at the leasing and permitting stages.

The level of analysis, disclosure and recommended mitigation that is appropriate for sensitive wildlife corridors and crucial habitat is not provided in programmatic land use plans such as RMP's or Forest Plans. This can only be achieved through the more in depth analysis provided by an EA or in most cases an EIS developed with full state participation.

Subpart (b)(3) of section 309 of the 2005 Energy Policy Act is 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 a reasonably foreseeable development scenario, 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.

Of the ten BLM Field Offices in Wyoming, five are currently revising their RMPs, and four of these are scheduled for completion by the end of 2007. The geographic area managed by these Field Offices contain very significant oil and gas fields, including Moxa Arch, South Piney, Jonah, Pinedale Anticline, Atlantic Rim, and the huge Continental Divide-Creston area that alone covers over 1 million acres.

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 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.

In February 2007, the Western Governors' Association adopted Policy Resolution 07-01, "Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West" (attached). 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."

The WGA and AFWA would be happy to work with Committee Staff on this proposed amendment.

A second possible solution, which would not involve legislation, would be to have the BLM develop a memorandum of understanding or policy document requiring a companion process with Subpart (b)(3) that would provide the opportunity for state fish and wildlife agencies to review those permits that could be excluded from a formal NEPA analysis in these sensitive wildlife corridors and crucial habitat, and still provide BLM with an informal assessment of impacts and mitigation responses. These would then result in conditions of approval that BLM could attach to drilling permits. If this option is pursued, WGA and AFWA would be happy to work with the federal land management agencies to that end.

In some manner, whether by these proposed solutions or others, we strongly recommend that the unintended result of Subpart (b)(3) in potentially excluding States from discharging their mandated resource management responsibilities on BLM land be addressed.

Mr. Chairman, WGA and AFWA believe that more informed decisions that provide for both conservation of fish, wildlife and their habitats and efficient delivery of energy to our citizens can be achieved through early and meaningful coordination and information sharing among all involved. In addition to ensuring language in the 2005 Energy Act facilitates this sharing it is important to also facilitate the identification of sensitive wildlife migration corridors and crucial habitats and make that information readily available to ensure that significant landscape altering activities, including energy development, can be done while meeting the State's obligation to sustain healthy fish and wildlife populations.

The WGA resolution calls for the gathering, assimilation and mapping of this important fish and wildlife information on an ambitious schedule. Much of this information already exists in State Fish and Wildlife Agencies, State Natural Heritage Inventories and other

places. It is the intent of the WGA to first compile the location of existing information and facilitate its availability across state and agency lines while initiating inventory and monitoring work to address current gaps in information. This information, beginning with Federal lands, will then be used to enable informed decision making regarding energy development, and other associated development including transmission corridors, transportation corridors, etc. The interagency, interdisciplinary Wyoming Landscape Conservation Initiative is using a very similar process to determine the best places to assess and enhance wildlife habitats on a landscape scale in southwest Wyoming in a manner compatible with the unprecedented development occurring on the same landscape.

Governors and State Fish and Wildlife Directors are solution oriented. These landscape level activities are complex and cut across several governmental jurisdictions and private interests. However, we believe solutions are available if all parties rely on the best available information, coordinate often at the earliest stage and throughout, and develop relationships of trust, integrity and mutual commitment to meeting both fish and wildlife conservation objectives and the delivery of energy for our citizens.

Thank you for the opportunity to share our perspectives. I would be glad to answer any questions.