

TESTIMONY OF
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Good Morning. My name is Sharon Buccino. I am an attorney with the Public Lands program of the Natural Resources Defense Council. NRDC is a non-profit membership organization with over half a million members and activists across the nation. We work to protect the environment for the humans living in it. NRDC strives to protect nature in a way that advances the long-term welfare of present and future generations. I, like you, want to make energy permitting work better. I have had the privilege to work with ranchers, farmers, and homeowners across the West as energy development has come to their communities. Domestic energy production – the work of companies like Questar – is important. The permitting process is what allows this development to go forward in a way that identifies community concerns and addresses them. The permitting process is what gives citizens a voice in the government decisions that affect their daily lives.

NEPA Gives People a Voice.

One statute that is central to energy project permitting is the National Environmental Policy Act, known as NEPA. NEPA was signed into law in 1970 by President Nixon. Since then it has served as a valuable tool to produce informed and accepted government decisions. NEPA has helped preserve some of America's most treasured places, from the canyonlands of Utah to the old growth forests of Southeast Alaska. It has helped citizens protect their communities and enhance the quality of their lives. NEPA has helped federal officials better meet the needs and interests of the public they serve. As then Secretary of Energy James Watkins testified to Congress in 1992 regarding his decision to defer selection of a tritium production technology: “[T]hank God for NEPA because there were so many pressures to make a selection for a technology that might have been forced upon us and that would have been wrong for the country. . . .”¹

NEPA has improved projects. One project that I participated in involved seismic exploration in the Nine Mile Canyon region of Utah. The State of Utah has described the area as “an outdoor museum.” The Bureau of Land Management (BLM) describes the Nine Mile Canyon region as an area with “the greatest concentration of rock art sites in the U.S.A.” The project involved the use of 60,000 pound trucks and explosives to collect data about oil and gas resources in sensitive, arid areas. As a result of the review process under NEPA and the National Historic Preservation Act, the company conducting the exploration – Bill Barrett Corporation of Denver – took additional steps to protect the natural and cultural resources in the area. The company agreed to additional monitoring and mitigation to make sure that the vibrations from their equipment would not harm the irreplaceable Native American rock art, kivas and cliff houses. They agreed to limit their activity in areas with wilderness qualities. The NEPA process was indispensable in helping federal land managers perform their difficult job of balancing a variety of competing uses of the public lands. As BLM manager for the project, Mark Mackiewicz,

¹ Testimony of Admiral James Watkins, Secretary of Energy, before the House Armed Services Committee, 1992 (quoted in CEQ, *The National Environmental Policy Act, A Study of Its Effectiveness After Twenty-Five Years* 13 (January 1997)).

said, "I can't imagine this project without a process like (this)." Kenworthy, Tom. "Oil Projects May Get Less Scrutiny," *USA Today* (May 4, 2005) (Attached as Exhibit 1).

The Cape Wind project is another good example. Wind energy can help diversify our energy supplies and increase our energy independence. It is a critical part of a sound energy future. Cape Wind and other offshore proposals for wind electricity generating facilities off the East Coast present an opportunity to boost significantly the amount of energy produced from renewable sources in the eastern United States. Indeed, offshore wind power is probably the region's largest untapped renewable energy resource. Developing this resource is essential to help reduce local, regional and global air pollution that threatens public health, critical habitat, and the very sustainability of the planet. At the same time, offshore wind energy projects will utilize areas of the ocean that are held in common by citizens of the United States, and, if improperly sited and designed, could pose risks to natural resources in biologically-rich near shore waters. Renewable energy projects must not – and need not – undermine protection of coastal habitats and living marine resources. The review process is a critical tool for improving the project and reducing opposition by identifying the concerns of those affected by it and addressing them.

In addition, NEPA gives state and local governments a voice in federal decisions that affect their communities. One of California's most valuable resources is its coast. Ever since 1969, when a federal well released huge amounts of crude oil into the Pacific Ocean off of Santa Barbara, citizens and local elected officials have joined together to protect the coast from offshore oil drilling. In 1987, after its new five-year OCS plan went into effect, the Interior Department scheduled its first new sale – Lease Sale Number 91 – involving over a million acres off the coast of northern California. Pursuant to NEPA, the Interior Department held hearings in two coastal communities. Congressional representatives, state senators and assemblymen, and the state attorney general all expressed opposition to the proposal as did Democratic candidates in the upcoming June 1988 presidential primary. More than a thousand citizens spoke on behalf of their coastline at these hearings, which made headlines across the country. Following the hearings and a mere two days before the primary, the Republican candidate for president George H.W. Bush announced that he favored postponing the sale until it could be re-evaluated. On June 26, 1990, then-President Bush cancelled the lease sale (along with another CA lease sale and a Florida sale) and announced he would delay drilling off the Pacific coast (as well as southwest Florida and Georges Bank in New England) for ten years.

More recently, NEPA has continued to help protect California's coast from drilling. In 1999, the Clinton administration proposed to extend the terms of 36 undeveloped oil and gas leases along the central California coast, off Santa Barbara County – another coastal region of great ecological sensitivity. The Interior Department refused to conduct any NEPA analysis on the lease extensions, denying the state as well as the general public any opportunity to provide input into whether the leases, all of which were at least 20 years old, should be extended or allowed to expire. In another demonstration of the broad-based commitment to coastal protection in California, the

state, joined by NRDC and other environmentalists, successfully challenged the federal government's actions. NEPA gave local communities a way to speak up for their quality of life and their local economies.

If Members listen closely to their constituents, they will find that many, from city council members to homeowners, care deeply about NEPA. They care about having a say when a highway is proposed through their neighborhood or when the Department of Energy plans to store hazardous waste nearby. As the *Seattle Post-Intelligencer* reported following the recent April 23 hearing in Spokane, WA, held by the newly formed House of Representatives NEPA Task Force, "The biggest applause came when John Roskelley, a well-known mountaineer and former Spokane County commissioner, called himself an unabashed supporter of NEPA and added that explorers Lewis and Clark would 'embrace and strengthen NEPA' if they were alive today." For information on the House NEPA Task Force, see <http://resourcescommittee.house.gov/nepataskforce.htm>.

Congress Should Work to Enhance the Public's Voice, Not Silence It.

Yes, we can do better. We can make the energy permitting process more efficient and effective. Better means improving public involvement, not curtailing it. It means doing more thorough analysis of cumulative and regional impacts, not less. It means doing more monitoring and data collection, not less. It means giving federal land managers the resources to complete environmental reviews and engage the public in a timely manner, rather than imposing mandatory deadlines.

Several provisions in the energy bill now under consideration by Congress move in the wrong direction. For example, Section 2055 of H.R. 6 as passed the House aims to eliminate the NEPA process, rather than improve it. The provision, promoted by Rep. Peterson (R-PA), provides that numerous oil and gas activities on public lands "shall not be subject to review" under NEPA. The provision includes well pads less than 5 acres in size, increasing the number of wells in an existing field, disposal of water from coalbed methane drilling and seismic exploration. The provision's scope is sweeping. BLM has approved over 30,000 new wells in Montana and Wyoming's Powder River Basin alone. As one BLM official noted, "Most of our drill pads are less than 5 acres. Our average is less than 3 acres." "Oil Projects May Get Less Scrutiny," *USA Today* (May 4, 2005). The provision could affect offshore exploration, as well as onshore. Instead of using the NEPA process to identify and address public concerns and potential adverse impacts on their health, lifestyles, and communities, proponents of the provision excuse the government and industry from listening.

Another provision of H.R. 6 targets projects relying on renewable resources. Section 1702 limits alternatives, a critical element of NEPA. Public comment is limited to the preferred alternative, often the project version as put forward by company seeking the permit and a "no-action" alternative. Creative win-win solutions are foreclosed. The provision could exempt solid waste incinerators and dams from meaningful environmental review. The public deserves a meaningful voice in all energy projects – whether using renewable resources or not.

In addition, Title V of H.R. 6 could remove the application of federal laws, such as NEPA and the National Historic Preservation Act, from energy development decisions on tribal lands. The bill affects land both on and off reservation. It provides that once the Secretary of the Interior approves a tribal energy resource agreement providing a process for making energy development decisions, individual energy projects would proceed without federal approval. Since no federal action would occur, the existing guarantees of environmental review and public participation under NEPA would be lost. Concerned tribal community members and communities adjacent to the project would lose the mechanism that they have now to make their voices heard.

Another piece of H.R. 6 (Sec. 2028) requires the Interior Secretary to approve applications for permits to drill within as little as 10 days of completion, restricting the ability of federal land managers to provide the environmental review and public participation required by NEPA. Finally, Sections 1808 and 2014 would allow oil and gas companies to conduct their own NEPA analysis of proposed projects – and reimburse the companies for doing so. The bill offers no criteria to ensure that analyses would be unbiased and objective. Rather than viewing NEPA as a useful tool, proponents of these provisions see NEPA as an obstacle to drilling more public lands as quickly as possible. Our public lands can help meet our energy needs and almost 90 percent of them in the Rocky Mountain West are open for development. NEPA is the way to ensure that this development is done right.

I urge Members of the Committee to work to keep energy legislation clean of provisions that compromise environmental protections and public participation. In addition to the provisions limiting the application of NEPA described above, provisions in H.R. 6 that roll back important environmental protections include efforts to:

- Weaken the Safe Drinking Water Act by prohibiting hydraulic fracturing fluids from being considered pollutants of drinking water. (H.R. 6, Sec. 327)
- Undermine the Clean Water Act by exempting from the “stormwater” requirements all oil and gas construction activities, including construction of roads, drill pads, pipeline corridors, refineries, compressor stations, sweetening plants, etc. (H.R. 6, Sec. 328)
- Take authority for health and safety reviews of new oil refineries away from the state and local officials who are closest to the needs of their communities – away, also, from the Environmental Protection Agency experts in public health – and hand that authority over to the Energy Department, whose primary concern with refineries is that they maximize output. (H.R. 6, Secs. 371-79)
- Allow more smog pollution for longer than the current Clean Air Act authorizes. Under the existing Act, areas that have unhealthy air are required to reduce ozone-forming smog pollution by strict statutory deadlines. If these areas fail to meet these deadlines, they are given more time to clean up, but must adopt more

rigorous air pollution controls. The bill attempts to allow polluted areas to have more time to cleanup but without having to implement stronger air pollution controls, placing a significant burden on states and communities down-wind of the urban areas subject to this provision. (H.R. 6, Sec. 1443)

- Mandate that the Interior Secretary provide compensation to federal lessees in instances where the lessee claims that he or she is not being allowed to either explore for or develop a federal lease "...in the lawful manner requested by the lessee...", if the government has failed to act on a drilling permit application within a certain period of time. Leases relinquished under this provision are available for future sale, and can be re-purchased by the former lessee. (H.R. 6, Sec. 2054)

Most of these provisions appear to have been left out of the energy bill being considered by the Senate Energy and Natural Resources Committee. I urge you to fight to keep these provisions out of the final legislation and help ensure that energy development moves forward in a way that identifies and addresses its adverse impacts.

We Can Increase Domestic Energy Production Without Weakening Environmental Protections.

Energy exploration and drilling is already skyrocketing in the Rocky Mountain West. Numerous leases and drilling permits are going unused. Nearly 73 percent of the total acreage under BLM oil and gas leases is not in production. In the Rockies alone, BLM data reveal that, while more than 34 million acres have been leased to industry, only 11 million acres – 32 percent – are in production.² BLM has been issuing record numbers of drilling permits. The BLM approved 6,130 permits in FY04, up from 3,802 permits in the previous fiscal year.³ Many of these permits remain unused. In the Rockies, BLM data show that 2,489 new wells were drilled in FY04, leaving over 3,000 approved permits in the region unused.

One reason for the unused permits may be the limited availability of drill rigs. Industry has exhausted available drilling equipment in North America. Harden, Blaine, "Gas-Drilling Permits in Rockies Outstrip Ability to Tap Resource," *Washington Post* (April 28, 2005). There is also an acute shortage of gas-field workers. Charlie Ware, who directs an industry-sponsored school to train field workers in Wyoming, reported that energy companies have "told us that they need 1,000 new workers a year for the next five years to drill the leases that are out there right now." *Id.* These numbers demonstrate that, contrary to industry complaints, permitting is not blocking access to oil and gas on public lands.

² BLM, *Oil and Gas Leasing Statistics* (March 4, 2004).

³ BLM data published at www.wilderness.org/NewsRoom/Release/20041214.cfm ; Joby Warrick and Juliet Eilperin, "Oil and Gas Hold the Reins in the Wild West; Land-use Decisions Largely Favor Energy Industry," *Washington Post* (September 25, 2004); The Wilderness Society, Press Release, December 16, 2004.

Environmental review and public participation may cost money, but it is a necessary cost of doing business on public lands. Energy company profits are doing just fine. In the last quarter, Exxon Mobil's profits were up 44 percent, to \$7.86 billion, from the corresponding quarter a year ago. Blum, Justin, "Oil Majors' 1st-Quarter Earnings Shoot Up," *Washington Post* (April 29, 2005). Other oil companies' profits are surging as well. "There's an embarrassment of riches now that is unavoidable," said Lawrence J. Goldstein, president of the New York-based Petroleum Industry Research Foundation, Inc. *Id.* At its annual meeting on May 17, 2005, Questar reported that its shareholders had realized a 141% gain since 2002. As industry itself has said, we can increase domestic energy production and protect the environment at the same time. NEPA is the way to do that.

Conclusion

Limiting public involvement and weakening environmental review will not avoid controversy or improve projects. Using NEPA to address a project's negative impacts on surface owners and communities will do both. At a time when increasing demands are being made on our public lands and our shrinking open space, NEPA is needed now more than ever. I remain inspired by the positive vision at the heart of NEPA – it is a future where man and nature can exist in productive harmony. It is a future where our valuable public lands serve diverse interests. I hope that this is a vision that you all share and will fight for as well.