

**Written Testimony of Sharon Buccino,
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Before

**House Committee on Natural Resources:
Subcommittee on Energy and Mineral Resources**

**Re: Proposed Legislation to Empower States to Manage the Development and
Production of Oil and Gas on Available Federal Land**

October 13, 2017

Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify. My name is Sharon Buccino. I am senior attorney and Director of the Land & Wildlife program at the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 2.4 million members and online activists nationwide, served from six offices across the country.

Vision

I'd like to start where I think we agree: (1) No matter where we live, each one of us has a right to clean water and clean air. (2) Our public lands are part of what makes America great. (3) Choices we make as a nation about energy affect our daily lives today, as well as our children's lives tomorrow.

My guess is that we all want a secure and prosperous energy future. The question is how to get there. So let me turn to the bill at hand and whether it helps us get to a secure and prosperous energy future or hurts us.

I will focus on three fundamental elements of the law that apply to management of our public lands. The first is minimum protections – the basic protections for the air we breathe, the water we drink and the right to participate in decisions that affect us. The second is multiple use – the principle that our federal lands are managed to protect a variety of uses from hunting and hiking to drilling. And the third is the importance of effective enforcement. I will explain how each is provided now under federal law and compare it to what would happen under the proposed legislation.

Minimum Protections

Our system of environmental law is built on the principle of cooperative federalism. Laws like the Clean Air Act, the Clean Water Act and the Surface Mining Control and

Reclamation Act give states flexibility to determine *how* best to achieve certain goals like the level of healthy air quality. But it is the federal government that sets the standard for what counts as healthy. States are often free to set standards that are more stringent than the minimum federal protections, but cannot use weaker standards. There is good reason behind this approach – every person should have a right to clean air and water no matter where they live.

Another basic protection provided by current federal law is the right to participate in decisions that affect our daily lives. Such right is at the core of our democratic government. It is enshrined in the laws that govern the operation of federal agencies such as the Environmental Protection Agency and the Department of the Interior. The right to participate is particularly relevant when we are talking about the public lands that belong to each and every one of us. The lands at issue in the legislation being considered are the millions of acres that are managed by the Bureau of Land Management and the Forest Service for the benefit of all Americans. The two statutes that govern these lands – the Federal Land Management and Policy Act and the National Forest Management Act – provide the public the same basic opportunity to participate in planning, leasing and permitting decisions no matter where these lands are located.

As proposed, the ONSHORE Act would take away these basic rights to participate. A state *might* provide something comparable, but there is no guarantee. The statutory language included in the ONSHORE Act would arguably supersede the protections currently provided under existing law. Without a federal decision, the National Environmental Policy Act would not apply. Neither would the protections provided under the National Historic Preservation Act and the Endangered Species Act. FLPMA and the National Forest Management Act prohibits BLM approval of actions such as drilling permits that are inconsistent with the management plans for the lands at issue. The ONSHORE Act imposes no such explicit requirement on states.

Multiple Use

In addition to clashing with cooperative federalism, the proposed legislation conflicts with another fundamental element of the legal framework governing our public lands – the multiple use mandate. BLM’s governing statute – the Federal Land Policy and Management Act – requires that our public lands be used in the “combination that will best meet the present and future needs of the American people.” 43 U.S.C. 1702(c). Such mandate requires balance – BLM cannot lock up all land to be preserved untouched; but it also cannot turn all land over to drilling excluding other uses such as hunting, hiking, camping and grazing.

States do not have a similar mandate. This is probably one reason why states at times issue permits faster than BLM. But sacrificing the multiple use mandate for speed in oil and gas permitting is something few Americans want. Poll after poll show that Americans across the country and across party lines value the recreational opportunities our public lands provide. They value the beauty that our public lands hold. And they value the role that our public lands play in our national identity. In fact, sacrificing the multiple use mandate as the proposed legislation would do for permitting speed is a deal that not even many oil and gas workers

would likely take. These workers are the same people who treasure the chance to take their truck and their kids out into the wide open spaces our public lands currently provide.

Effective Enforcement

Finally, what's at stake in delegating permitting on federal land to states is not simply how quickly permits get issued. Issuing permits is the easy part compared to enforcing them. Enforcement requires staff and money. Inspectors are needed to ensure permit conditions protecting health, safety and the environment are met. Money and staff are also needed to ensure that production is accurately accounted for and appropriate royalties are paid.

The proposed legislation fails to address this critical issue. Section 44 specifies what a state must demonstrate in order to receive exclusive authority over the issuance and enforcement of drilling permits and plans. A state's application must address the substance of its regulatory program, but nowhere is there any requirement to address the staff and money available to enforce the program. Many states are already strapped to inspect oil and gas wells for which they are now responsible. Adding thousands of new wells on federal land will only stretch the limited resources of the states further.

Conclusion

To end, I'll come back to where I started – our common goal of a secure and prosperous energy future. I'll acknowledge that NRDC's vision of what that looks like is probably different than that of some in this room. NRDC believes that we must invest in efficiency and renewable energy, rather than continuing to rely on dirty fossil fuels. We need to lead into the future, rather than remain stuck in the past. That said – we can't shut down all our oil and gas wells tomorrow. Figuring out the most effective and efficient way to regulate them is important. Federal oversight is far from perfect. Too much, however, is lost in simply turning oversight to the states. Minimum federal standards matter. So does a multiple use mandate. And so does effective enforcement. Americans deserve a secure and prosperous energy future. The proposed legislation takes us in the wrong direction.

Thank you again for the opportunity to participate in this hearing.

Questions for witnesses:

1. Ms. Foerster, you mentioned that your commission has nine field inspectors. Can you tell me approximately how many wells these 9 field inspectors are responsible for overseeing? And how often to you estimate that they make it to each well to ensure compliance with permit conditions and proper accounting of oil and gas produced?
2. Mr. Watson, can you tell me how many inspectors the Wyoming Oil and Gas Conservation Commission has? And how many wells do these inspectors have to cover? Do you think state inspectors have enough time and resources to monitor operator compliance with permit conditions and monitor production and royalties paid? Do you know how many new wells are drilled on federal land in Wyoming each year? How would the Commission address the additional staff and money needs to deal with the these new wells it would now be responsible for under the proposed legislation?