

(Written Testimony)

Examining Access to Oil and Gas development on Federal Lands

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I appreciate the opportunity to testify as Governor Gary R. Herbert's Energy Advisor and on behalf of the Utah Governor's Office of Energy Development. This morning I will be focusing primarily on oil and gas leasing and permitting on federally managed lands, and make recommendations for how areas of the process might be improved to increase efficiency, environmental outcomes, and increased regulatory certainty. However, I would be remiss if I did not mention the importance of natural resources overall to the state's economy. As a natural resource state, our goal is to provide for economic opportunities with sound environmental outcomes across all of our resources. These include our energy, minerals and agricultural sectors, as well as our state and national parks. Each of these represents unique and important sectors, providing jobs and revenues for the state.

Energy jobs in particular in Utah account for 1.1 percent of the state's jobs, or a total of almost 16,000 direct employees in this sector. And these jobs provide some of the highest wages in the state accounting for 2.2 percent of the state's total wages. The average energy job in Utah pays 194 percent of the state's average wage. With respect to the state's energy revenues, they flow through the following means: Federal mineral leases, severance taxes, royalties from the School and Institutional Trust Lands Administration permanent fund, property taxes, sales tax, income tax, and conservation tax. Of these, most significant are the property taxes, sales taxes, and Federal Mineral Leases, which in 2015 made up over 68 percent of the \$673 million dollars in energy revenue to the state. These revenues support the state budget, particularly our state school system. At the local level, sales and property taxes fund police, fire, and other essential services.

Utah has seen energy booms come and go in recent decades, and since 2014 Utah has been experiencing a decline in production activity, in significant part related to low commodity prices for oil and gas driven by market conditions fueled by a technological revolution in well drilling and well-stimulation techniques. To give you an idea of the impact, oil production in 2014 was approximately 41million barrels; in 2015 production declined to roughly 37million barrels; and in 2016 it was at 31 million barrels, matching 2012 levels. Gas production has declined since 2012, when it peaked at 490 million MCF. In 2016 production was about 365 million MCF. However, we believe that to the extent that we can access our resources, we can create a new opportunity for development as commodity prices rationalize. This will be critical for building sustained growth and jobs, especially in those communities have been most impacted by the past years' decline in oil and gas activities. While Utah's overall unemployment rate as of May 2017 was 3.2 percent, the unemployment rates in Duchesne and Uintah counties, which are more dependent on oil and gas, were 5.9 and 6.6 percent, respectively.

In addition to Utah's core oil, gas and coal industry, Utah supports an all-of the above approach to energy development and we have seen a boom in solar activity in recent years. However, this has been limited to state and private lands, largely due to the same onerous leasing and permitting conditions that face our hydrocarbon resources. Delivering on the promise of all our energy and minerals opportunities requires getting regulation right.

Unfortunately, in a public lands state with close to 70 percent of land federally owned, the ability to access and responsibly develop our natural resources is dramatically impeded by complex processes and lengthy timelines for leasing and permitting, resulting in a general reduction in leasing activity. The total number of active onshore oil and gas leases in the country has declined over recent decades, and that pattern has continued without interruption since 2008.

Utah is 11th among states in oil production, 12th among states in natural gas production, and 13th among states in coal production. When it comes to oil and gas development in the state today, regulatory compliance on federally managed lands is significantly more difficult than what occurs through processes overseen by Utah's highly qualified staff at the Utah Division of Oil Gas and Mining. And we have not seen evidence that Federal process deliver results that are more robust than those provided through our state agency.

The Energy Policy Act of 2005 specifies that the Bureau of Land Management ("BLM") within the U.S. Department of the Interior ("DOI") must approve Applications for Permit to Drill (APD) within 30 days, yet the average permit time is 220 days. In fact, depending on the field office, it is not uncommon for APDs to take years.

Our recommendation to resolve lengthy delays in leasing and permitting is that a process be established for delegating primacy to Utah, and to states generally, for the regulation of oil and gas operations on federally managed public lands. We are not alone in making this recommendation. This year the Interstate Oil and Gas Compact Commissions (IOGCC) passed resolution 17.051 titled "Urging the Congress of the United States, the U.S. Departments of the Interior, and the U.S. Bureau of Land Management to Establish Processes for Delegating Primacy to the States for the Regulation of Oil and Gas Operations on Federal Public Lands." The purpose of the resolution is to urge the establishment of an administrative process to delegate a portion of BLM's responsibilities (specifically the regulation of oil and gas activities) through an appropriate primacy delegation mechanism to the States that may desire such delegation. The intent of the resolution is not to disparage or minimize the current role of the U.S. Bureau of Land Management to authorize development on federal land, but it is an attempt to optimize the operations of government at both the federal and state level.

The IOGCC has a long-established interest in oil and gas resource development and the regulation of such activities on public lands within the borders of individual states. As evidence of this interest, IOGCC has for many years included a Public Lands Committee as one of its seven business-related Standing Committees – specifically to identify and address issues relevant to the states' interests in public lands. The State of Utah became a member state of IOGCC in 1957.

The initial Utah Oil and Gas Conservation Commission evolved over time to become the present-day Division of Oil, Gas, and Mining ("DOGM") within the Utah Department of Natural Resources. DOGM's guiding principles include the facilitation of the responsible development

of oil and gas resources within the State of Utah. Specifically, DOGM is the counterpart to the federal government's BLM in the regulation of oil and gas operations. BLM is tasked to oversee the development of oil and gas resources on federal lands throughout the nation. And like DOGM, BLM performs this task by analyzing, approving, and monitoring the drilling, completion, operation, and final plugging of wells located on federal mineral leases.

We suggest that Utah's DOGM provide the permitting for wells on both state and federally managed lands. Today, DOGM permits wells that are co-located with other wells on federal lands. If DOGM is permitting similar wells in a similar location, what limits the State from doing both?

Utah's DOGM has a performance measure goal of permitting at least 80 percent of state or fee APDs within 60 days. Targets may not always be realized because approval time is dependent on a number of factors that can prolong the approval process. For example, in 2016, the average time for approval of state land APDs was 131 days and for approval of fee land wells was 81 days. However, in the eight years prior to 2016, average approval time ranged from 66 days to 121 days for state lands and 81 to 108 days for fee lands. Our understanding is that this is significantly more timely than BLM, which we have heard has an approval time in Utah ranging from 150 to 240 days.

Based on our examination of the relevant statutes, the Department of the Interior (DOI) and the Bureau of Land Management (BLM) do not currently have statutory authorization to delegate regulation (permitting, inspection, and enforcement) of oil and gas production to the states for production occurring on federal land. The primacy delegation may be accomplished by one of two actions: 1) Congressionally-directed legislation, or 2) Application of the Federal Permit Streamlining Pilot Project established as part of the Energy Policy Act of 2005. In September 2014, the U.S. Senate approved S. 2440, the BLM Permit Processing Improvement Act of 2014 that among other things, makes permanent the Federal Streamlining Project program.

Examples of primacy delegation of the federal government to states exist with certain environmental programs of the U.S. Environmental Protection Agency and even the coal-mining regulation responsibilities of the U.S. Office of Surface Mining, Reclamation, and Enforcement within the U.S. Department of Interior. States have a proven track record of success under these delegations, and would do so under similar delegation from BLM – if such opportunity were granted.

History has shown that states have successfully addressed the effective and efficient development of hydrocarbon resources, and this resolution seeks for continued primary roles for the states in conservation of resources, prevention of waste, and promotion of responsible development within their jurisdictions. One should note that even if a legislative process for primacy delegation for oil and gas development were to exist, it would be voluntary for states to obtain such primacy, and it would also free up the resources of the BLM to focus on its responsibilities of multiple use and appropriate leasing of minerals on federal land.

In addition, the Utah BLM Mineral Leasing schedule is currently structured in a manner that is not conducive to encouraging investment and developing resources. The majority of leases offered in Utah are currently deferred. Leases that are deferred are not offered again until

a year has passed. According to the Mineral Leasing Rules under CFR 43-3120 this time frame is not necessary and is at the discretion of the state BLM Director. Our recommendation is that BLM require a quarterly mineral leasing schedule for leases on federal western lands that have been deferred in order to encourage investment and development of resources across all available western lands on an equitable basis. Consistent BLM practices from state to state would also allow efficiencies for companies that operate in multiple states.

In conclusion, our experience has been that federal regulation in the realm of energy development is steered equally by science and by controversy. This unfortunate approach leads to over-zealous regulation that is not reasonable from a cost-benefit perspective, and that puts an undue burden on companies hoping to invest and create jobs in our rural communities. States like Utah, on the other hand, tend to base their regulations on a sensible “best practices” approach that leads to comparable outcomes at far less expense. We urge the federal government to recognize states with good regulatory track records, judging by environmental outcomes not environmentalist outcries, and should be prepared to delegate regulatory authority accordingly.