Royalty Policy Committee
Inaugural Meeting
October 4, 2017

Summary of Proceedings

U.S. Department of the Interior
Prepared: October 2017

I. Introduction

The U.S. Department of the Interior (DOI), hosted by Secretary of the Interior Ryan Zinke and by Chair of the Royalty Policy Committee Vincent DeVito, and with James Schindler presiding as Designated Federal Official (DFO), convened the inaugural meeting of the Royalty Policy Committee (RPC) on October 4, 2017, in Washington, DC. The purpose of the meeting was to:

- Provide Committee members with an Ethics Overview
- Overview of the DOI Data Portal
- Overview of the Life of a Lease
- Overview of Royalties as an Economic Concept
- Agree on first year priority issues and establish goals
- Begin Discussions on Valuation Reform
- Form subcommittees to begin work
- Adopt a timeline for future meetings and actions to be taken in order to achieve Committee goals

Please note that, throughout this meeting summary, comments made by presenters or by non-Committee members are attributed to specific speakers. Other comments are provided without attribution in order to foster open discussion among Committee members.

Interested parties are asked to contact the RPC at rpc@ios.doi.gov with any questions, comments, or concerns regarding the content of this meeting summary.

The following items are included in this meeting summary:

II. Summary of Decisions and Action Items

A. Decisions

- The RPC approved the creation of three subcommittees: Subcommittee on Fair Return & Revenue; Subcommittee on Planning, Analysis, & Competitiveness; Subcommittee on Tribal Affairs. *(see page 9)*

B. Action Items

- **RPC Staff**
  - Provide a copy of the facilitator's interview summary to RPC members. *(see page 8)*
  - Inform RPC members about subcommittee composition. *(see page 21)*
- **RPC Process Facilitator**
  - Create a meeting summary for the October 2017 RPC meeting. *(see page 21)*

III. Presentations and Key Discussions

Vincent DeVito, Counselor to the Secretary for Energy Policy, US Department of the Interior, opened the meeting and welcomed participants. All individuals in attendance introduced themselves. A full attendance list can be found in Section VI – Meeting Participants, page 22.

A. Opening Remarks and Expectations for the Royalty Policy Committee

Secretary of the Interior Ryan Zinke provided opening remarks for the Royalty Policy Committee. Secretary Zinke highlighted the importance of the RPC, particularly for simplifying royalties. He noted the Department of the Interior's role in ensuring a fair return to US citizens and also the critical importance of being a partner to industry and of having policies that are not punitive and that move the country towards prosperity. The Administration does not see the government's role as picking winners or losers.

Secretary Zinke noted that DOI is often the second largest revenue generator for the federal government. In addition, there are numerous opportunities of government functioning that can be improved. Secretary Zinke closed by highlighting his full confidence in Counselor DeVito and in the RPC's role in helping to achieve energy dominance. He emphasized the importance of the RPC's work and thanked participants for their time and contributions.

B. Welcome to the Royalty Policy Committee

Mr. DeVito thanked participants for their time and contributions to the newly reconvened Royalty Policy Committee. Mr. DeVito noted that the RPC is an opportunity for Committee members to participate in improving the way that DOI does business and that DOI has much more financial function and importance for federal revenue than most initially understand.

Mr. DeVito asked Committee members to keep in mind that the Administration and the RPC will be approaching its mandate with a business mindset. Investment in federal energy resources decreased during the previous Administration because people did not want to do business with the federal government anymore. The Trump administration has already changed that. If the government focuses on improving the US energy economy, that will create wealth for all citizens. This committee and the position of Counselor to the Secretary for Energy Policy are both core components of achieving energy dominance. The RPC has a unique agenda and authorization to examine every financial aspect at the Department of the Interior – not only royalty policies.

Mr. DeVito added that the RPC will be asking Committee members to commit a lot of their time but promised that the RPC will be making significant accomplishments. He expressed his understanding of the value of people's time and appreciation of their intellect. The RPC's focus will be on implementation and on recommending actionable items to the Secretary of the Interior.

C. Agenda Review and Housekeeping

James Schindler, Designated Federal Officer / Executive Director of the Royalty Policy Committee, reviewed housekeeping items and provided a broad overview of the meeting agenda.

Rachel Milner Gillers, independent facilitator of the Royalty Policy Committee, introduced herself and explained her role in providing impartial facilitation of the RPC in collaboration with her colleague Dierdre McCarthy Gallagher.

D. Ethics Overview

Scott Currie, US Department of the Interior Solicitor's Office, presented information about RPC members' ethics responsibilities. He covered the differential responsibilities between being a representative on the committee and a federal employee, the conflicts of interest that federal advisory committee members are required to avoid, and how some of these provisions are likely to apply specifically to the RPC. Additional information is available in Mr. Currie's presentation slides at: https://www.doi.gov/sites/doi.gov/files/uploads/royalty_policy_committee_ethics_responsibilities.pdf.

E. DOI Data Portal

Judy Wilson, Office of Natural Resources Revenue at US DOI, presented information about the DOI data portal. The data portal features background and revenue information and government data about the extractives industries in the United States. Ms. Wilson conducted a demonstration of various sections of the data portal, including how to navigate the site; governance of U.S. resource extraction; responsibilities at the federal level; how resources on federal lands result in revenue; energy and mineral resources revenue streams; federal production, revenues, revenue by commodity and revenue by company; and how to access diverse types of national and local data. Additional information is available in Ms. Wilson's presentation slides, available at: https://www.doi.gov/sites/doi.gov/files/uploads/data_portal_overview.pdf.

An RPC member complemented the Department of the Interior and the participants in USEITI on the hard work contributed to create the data portal and Mr. DeVito encouraged RPC members to use the data portal to get up to speed on issues relevant to the Committee.

F. Life of a Lease

Mike Nedd, Bureau of Land Management (BLM), presented information about onshore production of oil and natural gas, particularly on federal lands. Mr. Nedd provided information about BLM, federal laws governing production on federal lands, which lands are available for oil and gas development, the leasing and production processes on federal lands, how the federal government verifies production quantities, inspection and enforcement processes, and the general steps for coal leasing and mining on federal lands. Additional information is available in Mr. Nedd's presentation slides at: https://www.doi.gov/sites/doi.gov/files/uploads/rpc-_onshore_life_of_a_lease.pdf.

Following Mr. Nedd's presentation, RPC members asked the following questions. *Responses from Mr. Nedd and other federal officials are indicated in italics.*

- How is the royalty rate set and how is a royalty payment calculated? *The royalty rate is set at 12.5% by statute. Royalty payments are governed by a royalty calculation that essentially looks at the price at which a company made an arms-length sale of the resource, and of what quantity, and the 12.5% royalty rate is applied to that sale.*

- How long is the current waitlist and what is the current wait time for processing applications for permits to drill (APDs)? What is the cause of the overall decline in the number of APDs approved annually between 2008 and 2016? *BLM has a pending list of applications that is constantly being processed, with applications being processed and approved and new applications being received at similar rates. BLM is committed to processing all APDs within 100 days as directed by Secretary Zinke. There have been business decisions made by energy developers that have governed APD approval numbers since 2008.*
- How is the relationship between industry and federal agencies around non-royalty collections? *Relationships between federal agencies and developers around the collection or rents, royalties, bonuses, and any other fees are good. There are no issues in this regard.*
- How do tribal trust lands differ from BLM lands? *The Bureau of Indian Affairs plays a much larger role in managing minerals leasing on tribal trust lands, although BLM generally manages permitting on tribal trust lands. One hundred percent of the revenues collected by the federal government from production on tribal trust lands are returned to the tribe from whose land the resource was extracted.*
- Why does the Mineral Leasing Act of 1920 not allow tribes to share in revenues and what could be done about this? *That is a question likely best addressed to Congress.*

Walter Cruickshank, Bureau of Ocean Energy Management (BOEM), presented information about offshore leasing and production of oil and natural gas on the outer continental shelf. Dr. Cruickshank provided information about BOEM's planning areas for oil and gas production, the leasing and approvals processes for oil and gas, and BOEM's renewable energy leasing and authorization process. Additional information is available in Dr. Cruickshank's presentation slides at: https://www.doi.gov/sites/doi.gov/files/uploads/boem_leasing_overview_for_royalty_committee.pdf.

In response to questions from committee members, Dr. Cruickshank explained that:

- Federal law specifies a five-year lease term, with a maximum allowable ten years.
- In practice, BOEM treats the concepts "fair market value" and "fair rate of return" similarly. Conceptually, the Energy Policy Act of 2005 introduced the fair rate of return concept for offshore renewable energy to include consideration of broader considerations beyond market value.

G. DOI Economics Presentation

Benjamin Simon, DOI Office of Policy Analysis, presented information about royalties within the Department of the Interior. Mr. Simon provided information about royalty as an economic concept; how royalties are applied to fuel and nonfuel mineral commodities; how the current royalty rates and fiscal regime were selected; the relationship between royalties, bonus bids, and taxes; alternative types of royalties; comparisons between royalty rates for the federal government, states, and foreign countries; and criticisms of DOI programs. Additional information is available in Mr. Simon's presentation slides at: https://www.doi.gov/sites/doi.gov/files/uploads/economics-_energy_royalty_policy.pdf.

Following Mr. Simon's presentation, RPC members asked the following questions and provided the following comments. *Responses from Mr. Simon and other federal officials are indicated in italics.*

- Conceptually, should the government be indifferent as to whether it receives royalty in value or royalty in kind? *Conceptually, the two types of royalty payment are equivalent, although accepting royalty in kind has some other issues associated with it. Historically, royalty was paid in kind.*
- How much discretion does the government have to determine royalty rates and other types of fees? *Royalty is generally set by statute, but the Secretary of the Interior does have some discretion to determine bonus bids and some fees.*
- What types of rent payment is owed once production of oil or gas stops? *Following the completion of production comes the remediation phase, and no additional rent is paid during remediation.*
- Once production is completed and the well moves into remediation, the government should return the production bond that it holds.
- What types of costs can be deducted from the royalty "base" when determining the amount of royalty that is paid? *Some costs, such as those related to transportation and processing, can be deducted from the royalty base.*
- What was the nature of royalty relief for deep water oil exploration that was enacted in the 1990s? *Congress created a royalty suspension by which a company would not have to pay royalties on a defined volume of production. This was a suspension for any leases issued during a 5-year period.*
- What is the rationale for having different royalty rates for deep water and shallow water production? *Shallow waters in the Gulf of Mexico have been producing since the 1940s and the resource is more depleted. The lower royalty rate for shallow water resources was intended to stimulate leasing and production for marginal resources.*
- Slide #20 references raising federal royalty rates. What rates are being considered and what would the determining factors be for setting revised rates? *The material on that slide was summarizing a report from the Government Accountability Office that found that increasing royalty rates would increase federal revenues. The report did not suggest raising rates or provide specific suggestions for increased rates.*

H. Discussion on Committee Topics and Goals

Mr. DeVito initiated the discussion by outlining the Secretary of the Interior's goals for the Royalty Policy Committee. He reiterated the Trump Administration's commitment to achieving energy dominance and the RPC's significant contribution to that. Although previous iterations of the Royalty Policy Committee focused mainly on issues related to revenue collection and product valuation issues, the new committee will have a broader scope and will address a range of issues from leasing, permitting, royalty policy, product valuation regulations, revenue transparency, and other general policy improvements.

Mr. DeVito noted that the RPC will directly contribute to furthering many of the DOI-wide goals that Secretary Zinke has articulated. He proceeded to lay out his vision for the goals that the RPC will work towards achieving, with an overarching vision of expanding American energy development and providing greater input for local communities affected by leasing activities:

- Ensuring fair market return for resources produced on Federal and Indian lands, and determining whether to establish royalty payments for additional resources
- Review renewable energy operating fees to create harmonization onshore and offshore
- Assess the economics of present and future royalty rates
- Assess the economic models and analysis used by the Department
- Review international royalty rates and best practices elsewhere
- Evaluate different leasing programs, price-based royalties, and other arrangements
- Evaluate how our activities impact employment figures
- Look for ways to increase competition

Ms. Milner Gillers proceeded to review input provided by RPC members, including input about goals and priority topics, based on confidential interviews that the neutral facilitation team conducted with Committee members. She reported that RPC members with experience in multi-stakeholder efforts suggested that it would be useful if the RPC has clarity about the Secretary of the Interior's goals for the committee, has a clear and manageable agenda, and shows respect and patience when working with tribes.

Ms. Milner Gillers also recounted the following cautions and concerns articulated by RPC members that could limit the committee's effectiveness: a perception that the committee is partisan and not open to dissent; insufficient time to complete its work; a risk that stronger voices will drown out others; and if the RPC is seen as being politically motivated rather than a voice of expertise. She reported that RPC members would consider the committee to be a failure if the Secretary of the Interior treats it as a "check-the-box" committee and its recommendations are ignored. Finally, she noted that priority issues identified by RPC members centered around five themes: royalties, valuation, economic, policy, and process. Additional information from the independent facilitator interview summary is available at:
https://www.doi.gov/sites/doi.gov/files/uploads/rpc_nonfed_primary_member_input_sep_2017_v2.pdf.

Following Mr. DeVito's and Ms. Milner Gillers' comments, RPC members provided the following comments and asked the following questions. *Responses from RPC leadership are indicated in italics.*

Regarding priorities and goals for the RPC:

- Streamlining DOI processes would also be a priority for the RPC's work. *The leadership's perspective is that DOI bureaus should work in coordination with one another. We are looking at a corporate model rather than the silos that currently exist.*
- Should the RPC be looking at models other than royalties, such as profit sharing? *Yes, we anticipate that the RPC will have two subcommittees, one for rates and the other for economics.*
- What is the intent behind the goals that Mr. DeVito presented? They could be interpreted in different ways. *We are not talking about a master leasing plan. We are looking at current processes to see where they can be improved. We would like the RPC to define what direction it would like to move in.*
- Given that the Mineral Leasing Act references the relationship between the Department of the Interior and the states, it may not make sense to prioritize the perspectives and concerns of local communities.
- It may be useful to consider how relationships between the federal government and Native American tribes could be improved.
- The RPC should examine the difference between the intent of fair market value and the practical market value established at the wellhead.
- Reconsideration of valuation rules is top priority for industry.
- The cost of inputs should also be examined.

Other comments and questions:

- Tribal reservations have existed longer than many of the states and tribal lands should not be lumped in with "public lands." The tribal representatives on the RPC will be coordinating to represent tribal interests.
- Will Ms. Milner Gillers' interview summary be provided to RPC members? *Yes, we will provide this.*

I. Valuation

Bonnie Robson, Office of Natural Resources Revenue (ONRR), presented information about oil, gas, and coal valuation reform on federal and tribal lands. Ms. Robson provided information about DOI mineral leasing responsibilities and relevant DOI entities; statutory authorities and regulations governing valuation; and the 2016 Valuation Rule and its repeal in 2017, including advance notice of proposed rulemaking, public comments, and mention of the RPC in final rule of the repeal. Additional information is available in Ms. Robson's presentation slides at: https://www.doi.gov/sites/doi.gov/files/uploads/royalty_policy_committee_-_royalty_valuation_rulemaking.pdf.

Following Ms. Robson's presentation, RPC members asked the following questions and provided the following comments. *Responses from Ms. Robson and other federal officials are indicated in italics.*

- How is ONRR keeping up with new technologies, such as horizontal drilling? *The office makes its best effort to keep pace with emerging technologies. We employ diverse types of technical experts to do so.*
- What is the relationship between fair market value and the valuation procedures used by ONRR? *Fair market value is examined closely in the leasing process. When it comes to royalty value, instead of relaying explicitly on fair market value, royalty payments are made on the highest valuation of the multiple measures of value that exist. The reason for having multiple measures of value is because not all measures exist in all circumstances and not all them are necessarily credible.*

J. Subcommittees and 2018 Timeline

Mr. DeVito proposed the formation of three subcommittees of the RPC:

1. Subcommittee on Fair Return & Revenue
2. Subcommittee on Planning, Analysis, & Competitiveness
3. Subcommittee on Tribal Affairs

Ms. Milner Gillers requested that RPC members indicate which committee they would be interested in joining and also if they would be interested in serving as a co-director for any of the committees. She noted that the subcommittees would only include RPC members at present but that, in the future, the RPC could decide to open the subcommittees to additional participants.

RPC members provided the following comments and asked the following questions. *Responses from RPC leadership and the RPC facilitator are indicated in italics.*

- The Subcommittee on Tribal Affairs should include representation from all sectors and not be a government-to-government body. *The Tribal Affairs subcommittee will be a standard subcommittee, with representation from all sectors.*
- Which subcommittee will focus on valuation? *The Fair Return & Revenue subcommittee. The Planning, Analysis, & Competitiveness subcommittee will include consideration of royalty rates.*
- Which subcommittee will focus on process? *Process will be embedded in all subcommittees.*
- There is likely some overlap in focus between these subcommittees. It may make sense to see if we can define the subcommittees to make sure that they are not duplicating efforts.
- What topics will the Planning, Analysis, & Competitiveness subcommittee focus on? *DOI has many bureaus and the Planning, Analysis, & Competitiveness subcommittee would be looking at steps that could be taken to make DOI a better business partner to its investors.*

- Why is “wind” broken out under a separate heading in the description of the Fair Return & Revenue subcommittee? *The fee structure for wind works differently from other forms of energy. All other commodities are included in the “commodity by commodity” bullet point.*

The RPC approved the creation of the three subcommittees proposed by Mr. DeVito.

Ms. Milner Gillers reviewed the RPC’s timeline for 2018, which is available at: https://www.doi.gov/sites/doi.gov/files/uploads/timeline_draft_10-2-17_1.pdf.

- **Decision: The RPC approved the creation of three subcommittees: Subcommittee on Fair Return & Revenue; Subcommittee on Planning, Analysis, & Competitiveness; Subcommittee on Tribal Affairs.**

IV. Public Comments

Various members of the public took the opportunity to provide public comment during the RPC meeting.

Jayni Foley Hein -- Policy Director, Institute for Policy Integrity, NYU School of Law
The Department of the Interior is required, by statute, to earn “fair market value” for taxpayers for the use and development of federal resources. It must also harmonize resource production with environmental preservation and other values, pursuant to the “multiple use” mandate set out in the Federal Land Policy and Management Act.

How royalties are set and assessed is critical to ensuring receipt of fair market value for taxpayers. Policy Integrity has four main recommendations for your work:

1. Interior should increase federal fossil fuel royalty rates, as multiple studies show that higher royalty rates would increase total revenue for the public;
2. Interior should also consider adjusting royalty rates upward for coal, oil, and natural gas leases to recoup some of the environmental and social costs of production;
3. Interior should reinstate the Coal Valuation Reform Rule, which was projected to deliver up to $78 million in annual net benefits to the public; and
4. Interior should eliminate royalty rate reductions that contribute to inefficiently high levels of production and hinder receipt of fair market value.

In addition, we ask that you continue to engage the public in these important discussions around public lands and resources, and seek broad perspectives, in particular those not represented on the committee.

1. Interior should increase federal fossil fuel royalty rates, as multiple studies show that higher rates would increase total revenue for the public.

First, multiple studies show that increasing federal fossil fuel royalty rates would increase revenue for the public. A report by the U.S. Government Accountability Office ("GAO"), published in June 2017, found that, "Raising federal royalty rates—a percentage of the value of production paid to the federal government—for onshore oil, gas, and coal resources could decrease oil, gas, and coal production on federal lands but *increase overall federal revenue*..."

One of the studies that GAO reviewed estimated that raising the federal royalty rate for oil and gas to 16.67 percent, 18.75 percent, or 22.5 percent could increase net federal revenue by $125 million to $939 million over 25 years. And for federal coal, the studies that GAO reviewed suggested that raising the royalty rate to 17 percent or 29 percent could increase federal revenue by up to $365 million per year after 2025.

In fact, the White House Council for Economic Advisors ("CEA"), found that maximizing federal revenue from federal coal leasing would require royalty rates of 304 percent (equal to approximately a $30 per short ton royalty charge on Powder River Basin coal), which would curtail some future federal coal production while increasing revenue by $2.7 to $3.1 billion when fully phased in by 2025.

And independent analysis by the Institute for Policy Integrity at NYU School of Law found that increasing the federal royalty rate to 18.7% for Powder River Basin coal would have earned up to $1.2 billion in additional royalty revenue over five years.
In short, higher royalty rates can lead to more revenue for schools, infrastructure, municipal budgets, and environmental mitigation.

2. Interior should adjust royalty rates upward for coal, oil, and natural gas leases to recoup some of the environmental and social costs of production.
Second, Interior should adjust royalty rates upward for coal, oil, and natural gas leases to recoup some of the environmental and social costs of production. Fossil fuel leasing is not all upside. There are real costs—including climate change costs—that should be taken into consideration in managing these programs to earn fair market value and protect environmental values.

Interior, states, and tribes bear many of these costs directly, through fighting wildfires on public lands and dealing with the effects of reduced snowpack that threaten water resources. As just one example, climate change has led to fire seasons that are now on average 78 days longer than in 1970, and an increasing portion of the U.S. Forest Service budget is directed to fighting wildfires on public lands.

3. Interior should reinstate the Coal Valuation Reform Rule, which was projected to deliver up to $78 million in annual net benefits to the public.
Third, Interior should reinstate the Coal Valuation Reform Rule, which was projected to deliver up to $78 million in annual net benefits to the public. This rule was designed to

increase transparency, simplify procedures, and ensure that royalties are fairly assessed by using arm's length transaction prices.

The Coal Valuation Reform Rule was the result of five years of study and public participation and was designed "to offer greater simplicity, certainty, clarity, and consistency in product valuation and reporting for mineral lessees."

The Rule sought to accomplish its purpose through two major reforms: first, by closing a loophole that allowed lessees to pay royalties based on the value of the minerals as sold through captive (instead of arm's length) transactions, and second, by allowing for the audit and identification of transportation cost allowances. As we explained in our comments on the proposed repeal, there is no valid basis to repeal the rule; it should therefore be reinstated.

4. Interior should eliminate royalty rate reductions that contribute to inefficiently high levels of production and hinder receipt of fair market value.
Fourth, Interior should eliminate royalty rate reductions that contribute to inefficiently high levels of production and hinder receipt of fair market value. Interior should not be in the business of subsidizing uneconomical mining or drilling.

President Trump has indicated his intention to run the United States more like a business, but a well run business would not give away its assets for a fraction of their true value or allow outside actors to impose uncompensated costs on its bottom line. Public resources belong to all taxpayers, not to private developers. And public lands must be managed for the benefit of current and future generations.

Emily Hague -- Senior Policy Advisor, American Petroleum Institute
Good afternoon. My name is Emily Hague and I'm a Senior Policy Advisor for the American Petroleum Institute. Thank you for the opportunity to speak with you today.

API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly $2 trillion in U.S. capital projects to advance all forms of energy. Our members operate throughout the United States and represent all of the regional interests of the Industry Sector. The industry has paid more than 150 billion dollars in royalty revenues to the federal treasury.

In addition to revenues, U.S. energy development provides many benefits for the country, including billions of dollars in capital investments, creation of thousands upon thousands of well-paying jobs, continued improvement in our balance of trade, and increased energy security — all of which drive the American economy. The EIA forecasts that U.S. energy demand will grow by 11 percent between 2016 and 2050, with more than 66 percent of the energy demand expected to be met by oil and natural gas, as is the case today. America's oil and natural gas industry needs the certainty and predictability provided by clear and consistent leasing and royalty reporting regulations to continue providing the energy that keeps our nation and our economy moving. Preserving certainty and fairness in the process is what makes investments possible, and is critical for the consumers and workers that benefit from domestic production.

API members support the Interior's decision to re-establish the Royalty Policy Committee. The RPC has previously been a constructive forum for open engagement on leasing and revenue issues and provides an opportunity for all stakeholders to work with the Department in its efforts to improve and strengthen its regulatory programs.

API members want to work with the Agency and this Committee on valid, reasonable efforts to improve and strengthen the Federal leasing and royalty valuation processes, and support ONRR's stated intent "to offer greater simplicity, certainty, clarity, and consistency in product valuation and reporting for mineral leases."
To that end, we provide the following areas for this Committee to consider for future work efforts:

- First, API members conceptually support the option to choose index pricing for unprocessed and processed gas. Unfortunately, the index price option within the 2017 Royalty Valuation Rule was implemented in such a way that it was doubtful many lessees would choose this option. However, if crafted appropriately, an index price option 1) would have the benefit of providing early certainty to the Government, Industry and other stakeholders, 2) would be easy to understand, and 3) would reduce administrative burdens and costs of compliance.
- Next, the Agency should also continue to recognize that traditional principles of gathering are wholly inapplicable to the unique deep water and remote arctic Alaska environments. Expensive subsea or cross-lease movement across many miles to a surface facility location is a necessity in some instances, and the valuation of deep water and remote Alaska oil and gas production should appropriately reflect that reality.
- Interior and this Committee should also seek reforms that facilitate and expedite the interagency review process — in particular for permitting processes and decisions. Government policy plays a substantial role in the ability of the U.S. to tap its own supplies and help meet the projected growth in U.S. and global demand. The recent lack of growth in production on federal lands is partly the result of policies that have effectively discouraged investment in those areas.
- Finally, this Committee should clarify that a Lessee must place gas, residue gas or gas plant products into Marketable Condition only once at no cost to the Lessor. Such clarification would be consistent with previously stated ONRR policy and case law.

Thank you for your time and attention to our comments. API members look forward to working with this Committee on these important issues.

Ryan Alexander -- President, Taxpayers for Common Sense

Good afternoon Secretary Zinke and members of the Royalty Policy Committee. Thank you for the opportunity to offer public comments today. My name is Ryan Alexander and I am president of Taxpayers for Common Sense, a national, non-partisan budget watchdog organization based here in Washington. Taxpayers for Common Sense's mission is to achieve a government that spends taxpayer dollars responsibly and operates within its means.

For more than two decades, TCS has worked to ensure that taxpayers receive a fair return on natural resources extracted from federal lands and waters. Royalties and fees collected from resource development represent a valuable source of income for the federal government and should be collected, managed, and accounted for in a fair and accurate manner. As the resource owners, taxpayers have the right to fair market compensation for the assets extracted from our lands and waters, as would any private landowner.

Royalty revenues account for a significant portion of non-tax federal revenue and are an important source of income for the federal government. Unfortunately, over the years taxpayers have lost billions on royalty-free oil and gas leases, undervalued coal leases and royalty-free hard rock mineral operations on federal lands. Taxpayers have also lost because of a corrupt and inadequate royalty collection system.

The problem transcends several administrations. Which is why I have testified as far back in 2006 about problems with the royalty system. More recently, in a June 2017 report, the Government Accountability Office stated that since 2011, it has considered "Interior's management of federal oil and gas resources as a high-risk area vulnerable to fraud, waste, abuse and mismanagement." That same report goes on to say that it has made recommendations to Interior for reforming coal royalties and ensuring fair taxpayer returns.

Numerous other studies, including a 2016 report by the Council of Economic Advisers, have demonstrated how coal companies manipulate the current system for valuing coal to reduce royalty payments. Valuation of the minerals is a key component of the leasing process. If the value established for minerals is too low, royalty receipts will be too low.

Taxpayers also lose hundreds of millions of dollars a year on royalty-free natural gas that is leaked, vented, or flared from drilling operations on federal land. According to our own internal analysis of BLM data last fall, taxpayers received no royalties for more than 90% of the natural gas vented or flared in the last decade.

In the face of these problems, we were pleased that this past March Secretary Zinke reestablished the Royalty Policy Committee with a goal to "ensure the public receives the full value of the natural resources produced from Federal lands." But since then the

Administration has taken several actions that we believe undermine the ability of the Department of Interior to receive appropriate revenues for federal taxpayers.

Today's Royalty Policy Committee meeting to examine ways to provide a fair return to taxpayers for our natural resources is an important discussion. But simply making more federal lands available, limiting regulations on resource extraction, and heeding the requests of industry does not ensure taxpayers that they will receive appropriate revenues to address the nation's fiscal priorities, and worse yet, will lead to greater taxpayer liabilities down the road.

In the face of a $19 trillion national debt, we cannot afford to lose this valuable revenue. These problems must be resolved before we move forward with additional mining and energy production on federal lands and waters.

Thank you for the opportunity to present comments today. I look forward to working with the Committee and Secretary Zinke to ensure taxpayers are appropriately compensated for the natural resources we own.

Attachments:
Locked Out: The Cost of Speculation in Federal Oil and Gas Leases
Federal Coal Leasing: Fair Market Value and a Fair Return for Taxpayers
Fair Market Value for Wind and Solar Development on Public Land

Drew McConville -- Senior Managing Director, Government Relations, The Wilderness Society

You have been asked to advise the Secretary on ensuring that "the public receives the full value of the natural resources produced from Federal lands," and on "the fair market value of and on the collection of revenues derived from the development of energy and mineral resources on Federal and Indian lands."

This meeting comes at a crucial time as our energy leasing programs are in desperate need of reform. With the current system, we are losing millions in revenue, and compromising access to public lands.

In fact, most Western states charge a higher and fairer royalty rate for oil and gas than the Department of the Interior charges for onshore oil and gas. State oil and gas royalty rates average between 16.67 percent and 18.75 percent - much higher than the 12.5 percent currently charged for by the federal government. Notably, Colorado raised its royalty rate on state trust lands to 20 percent in 2016. Raising this rate to at least the rates charged by states would ensure that the American people receive the revenue they deserve for their land and resources; that state budgets and local community coffers can fund public activities and programs; and help ensure that everyone has clean air to breathe, clean water to drink, and wild places to recreate. Studies have found that raising rates can increase revenue even in cases where it leads to decreased production.

It is important to account for the well-documented impacts that oil, gas and coal development can have on our public lands. In addition to the carbon that is emitted from extracting and burning fossil fuels from our public lands, mining and drilling for these resources also scar the land, reduce and impair water resources, and fragment wildlife habitat. Nearby communities depend on public land for hunting, hiking, scenery, tourism, drinking water and other values important to their economies. Loss of wildlife habitat affects places that hunters visit and the areas animals need to survive, and contaminated rivers and streams damage local drinking water and great places for fishing. Any rates charged should consider all of the externalities that come from developing energy on federal lands. Even if a higher royalty rate cannot account for all of these lost experiences and very real damages, it can help states and communities better address them.

Ensuring that the American public receives fair value from our public lands is not limited to the royalty rate we charge. In the attached petition we recently filed with other stakeholders under the Administrative Procedures Act, we ask the Department of the Interior to reform the fiscal terms and management processes regarding oil and gas leasing to yield the legally fair market value return to the American people for the resources they own and to fulfill the Department's multiple use mandate. More rigorous, market-oriented fiscal terms and management practices will ensure public lands are efficiently, productively and appropriately used for public purposes and that the waste and neglect of resources due to speculative holding of chronic, non-producing oil and gas leases are minimized if not eliminated. For example, improving bonding practices is necessary to cover the costs of reclamation and restoration, and reforming policies to minimize speculative leasing will free up lands for other uses that provide greater benefit to the public, including renewable energy, recreation and conservation.

Thank you for this opportunity to contribute to the work of the committee. We ask that you continue to engage the public in this important discussion around our public lands.

Attachments:
The Wilderness Society, Powder River Basin Resource Council, et al., **Petition to the Department of the Interior and Bureau of Land Management to Initiate Rule-Making and Issue Guidance to Modernize the Onshore Oil and Gas Program for the Benefit of All Americans**, Submitted September 14, 2017.
https://wilderness.org/sites/default/files/APA%20Petition%20-%20oil%20and%20gas%20fiscal%20policies%20--9-13-17%20-%20final.pdf

General Accounting Office, **Oil, Gas and Coal Royalties: Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue,** GAO-17-540: Published: Jun 20, 2017. https://www.gao.gov/products/GAO-17-540 (Last accessed, October 5, 2017)

Robert H. Nelson -- Professor of Public Policy at the School of Public Policy of the University of Maryland

I am a professor of public policy at the School of Public Policy of the University of Maryland. From 1975 to 1993, I served on the economics staff in the Office of Policy Analysis within the Office of the Secretary of the Interior. Based partly on my service there, I have a longstanding interest in federal coal policy. I am the author of a 2017 book on *The Use and Management of Federal coal*, published by the Property and Environment Research Center in Bozeman, Montana. I brought copies of this book with me and am happy to make them available to committee members and staff.

I am also the author of *The Making of Federal Coal Policy* and many other publications relating to the management of federal lands and natural resources. During 1983 and 1984, I was the senior economist of the Commission on Fair Market Value Policy for Federal Coal Leasing (better known as the Linowes Commission). The Commission performed an exhaustive analysis of the federal coal leasing program including the methods and procedures for ensuring that the government received "fair market value" for its coal leases. The issue of appropriate federal royalties for leased coal is closely connected to the question of determining the total fair market value of leased coal. Higher royalties will mean lower bonus bids offered by private coal companies for federal coal leases. Past studies provide a valuable body of historical background and economic analysis that is available to inform the deliberations of the Royalty Policy Committee.

Some of the important considerations that the Royalty Policy Committee should take into account include the following:

The issue of federal coal royalties principally relates to the federal coal in the Powder River Basin in northeast Wyoming. Since about 2000, the production of federal coal has been about 40 percent of the total coal production in the United States. About 80 to 85 percent of that federal coal has been produced in the Wyoming Powder River Basin. In 2011 and 2012, 100 percent and 96 percent, respectively, of newly leased federal coal was in Wyoming, the great majority in the Powder River Basin.

The federal government owns about 85 percent of the coal reserves in the Powder River Basin. The other owners are the state of Wyoming and private parties but their coal is almost always intermingled with federal coal and could not be separately produced. This means that the federal government effectively holds a monopoly pricing power over the sale of coal reserves in the Wyoming Powder River Basin. If the federal government sought to maximize the revenues from federal coal leasing, it could do this by exercising this monopoly power. But that would result in the nationally inefficient use of the Powder River coal resource and would conflict with anti-trust principles such as those that the Justice Department applies to the private sector in the United States.

The monopoly status of the federal government in the Powder River Basin complicates the problem of determining fair market value of federal coal there. There are essentially no sales of state or private Powder River coal that would be capable of supporting a producing coal mine without the availability of complementary federal coal. Most federal coal leasing has long consisted s of making new federal coal available to support the further expansion and production of an existing coal mine. Because of this, bidding competition for federal coal in the Powder River Basis have been very limited. The potential use of the federal coal is essentially limited to the one existing adjacent existing mine (or occasionally two) that needs the complementary federal coal. This means that there is only one bidder and that bidding competition itself is incapable of revealing a fair market value.

The federal government is thus required to use a comparable sales method of appraising the value of the coal. But the available comparable sales of coal are largely federal coal itself, and this coal has been sold without bidding competition. In other words, it is typically difficult or impossible to find a comparable sale to establish a baseline value for the sale of Powder River coal. It would be fair to say that, in practice and lacking any other good alternative, rather than a principled economic determination of the appropriate selling price of federal coal, the federal governments methods have produced results that border on arbitrary.

In order to improve this process, a baseline of at least one or two genuinely competitive coal lease sales in the Powder River Basin is needed. The federal government could accomplish this task by leasing bodies of federal coal large enough to support a new free standing coal mine (including the advance assembly of necessary surface owner rights and of intermingled state and private coal rights to be included as a consolidated package in the sale). An alternative would be to set a cumulative coal lease sale target for the whole sale and then generate competition among coal companies to lease a total amount of coal that would combine to meet this target (known in the past as "inter-tract competition").

If the federal government is able to somehow establish a method of determining a defensible "economic value" for federal coal being sold in the Powder River Basin, it could then make a decision about the appropriate mix of bonus bidding versus royalties as a means of collecting this economic value. Royalties have the advantage that they divide the risk of future actual coal production and coal revenues between the government and the coal company that purchases the lease – and thus may work to maximize long run net government revenues. But they have the disadvantage that the royalty creates a price disincentive to produce all federal coal that is economically feasible. Bonus bids bring the government greater short run revenues without such a disincentive. Finding an appropriate balance, however, is less important than finding a total revenue goal for a federal coal lease from bonus bidding and royalties combined. Given the large complications raised by the federal government's monopoly status in the Wyoming Powder River Basin, this will not be possible without some innovations in the current process of federal coal leasing.

Rollie Wilson -- Fredericks Peebles & Morgan LLP

Good afternoon. My name is Rollie Wilson. I am here on behalf of the Mandan Hidatsa and Arikara Nation. I also work with Chairman Everett Waller with the Osage Minerals Council who is here and the Ute Indian Tribe. All of these tribes are major oil and gas producers. I recommend that the Committee include a Tribal Energy or Tribal Issues Subcommittee as one of its Subcommittees. It is important to recognize that Indian energy development occurs under its own set of laws and regulations. When we get into issues like "Expansion of American energy development" the experience on Indian lands is completely different from federal lands. We will need a Subcommittee that can focus on these specific laws and regulations.

In addition, it is important to note, that Indian tribes are more than just a sector of the oil and gas industry. The Federal government has a government-to-government relationship with Indian tribes and an obligation to consult with Indian tribes. A Tribal Energy or Tribal Issues Subcommittee would allow for that direct relationship and consultation obligation.

Finally, while this Tribal Energy or Tribal Issues Subcommittee is important, it is also important to keep Indian tribes and this Subcommittee included in the overall Committee effort as we move to streamline and promote energy development.

Mary Ellen Kustin -- Policy Director for Public Lands, Center for American Progress

Thank you for the opportunity to comment on the record today before the Royalty Policy Committee. My name is Mary Ellen Kustin, and I am the policy director for public lands at the Center for American Progress, or CAP.

CAP has previously submitted royalty policy recommendations to the Department of the Interior through open public comments, and I'd like to submit for this committee's consideration pertinent CAP reports to inform your discussions:

- Federal Oil and Gas Royalty and Revenue Reform
- Cutting Subsidies and Closing Loopholes in the U.S. Department of the Interior's Coal Program
- A Market-Based Fix for the Federal Coal Program
- Fair Share Scorecard (with the Center for Western Priorities)

One report that we completed in 2015 raised a red flag about the problem of loopholes that allow companies – primarily coal companies – to dodge royalty payments owed to U.S. taxpayers. The Office of Natural Resources Revenue's 2016 final rule entitled the *Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform* closed this loophole that had allowed companies to artificially lower the price of coal for royalty, tax, and other valuation purposes. Companies mining federal coal could first sell coal within their own networks of subsidiaries and affiliates under the pre-existing regulations.

CAP's report found that five of the largest coal companies operating in the Powder River Basin in Wyoming and Montana at the time had collectively created a network of 566 subsidiary companies. The most recent publicly available EIA data show that more than half of all coal produced in Wyoming in 2015 was first sold to a subsidiary of the same company that mined the coal – up from only five percent in 2004.

Economists calculated an annual loss of $124 million in royalties due to the undervaluation of federal coal between 2008 and 2012. Wyoming would have benefited more than any other state had these royalties been assessed on the true market value of coal.

As I'm sure you're all aware, in August, Secretary Zinke took action to reopen this loophole, and the federal government acknowledged reopening it would cost taxpayers $75 million per year in lost revenue. CAP vehemently opposes this action.

More broadly, it is worth noting that the federal government has not updated the royalty rates for onshore oil and gas extraction since 1920—and federal royalty rates for oil and gas lag behind most state and private rates. And the Department's recent decision to lower offshore oil and gas royalty rates to 12.5% for shallow water drilling is fiscally indefensible – that decision was a giveaway of taxpayer dollars.

We urge this committee to consider a true fair return to taxpayers.

We are concerned, however, given the direct financial stake many of your affiliations have in changes to royalty rates and the track record some of the companies represented here have for knowingly underpaying royalties to the American people.

In a recent review of federal data, CAP found the oil and gas companies represented on this committee as members or alternates, or that serve on the trade association boards operate more than 28,000 active leases and have more than 350 applications to permit drilling on public lands pending with DOI. And alarmingly, over the past 10 years, companies associated with this committee have been responsible for more than half of all fines collected by the Office of Natural Resources Revenue.

A small change in royalty rate structure could redirect billions in revenues back to the companies, instead of taxpayers. And we urge you to continue to seek public input from myriad stakeholders as there is a desperate need for a robust, honest conversation around royalty rates and how the government values America's natural resources.

Doug Lemke -- Tri-State Generation & Transmission

My name is Doug Lemke, I'm with Tri-State Generation and Transmission Association. Tri-state is a consumer owned not for profit wholesale electric power supplier owned by 43 rural electric cooperatives and public power districts in Colorado, Nebraska, New Mexico, and Wyoming. Tri-state owns and operates the Colowyo Coal Mine and is also a participant in the Trapper Mine and the Dry Fork Mine, which have federal leases and provide significant royalties to state and federal government. The cost of federal coal is a direct impact on our members and the consumers that they serve. For the not for profit cooperatives, like Tri-State, any increase in fuel cost is directly born by our members and our members system serves some of the most economically depressed communities in the region where residents can *[inaudible]* afford to pay higher electricity bills, as royalty policy committee advises the secretary, Tri-State strongly encourages you to consider: the impact on cost of electricity, federal state, and local government dependents on royalty payments, the true cost to mine federal coal including state and federal royalty payments, all bonus bids, *ad valorum* property taxes, *ad valorum* production taxes, sales and use taxes, severance taxes, and AML fees, the new ways to simplify the reporting and administrative burdens for all parties involved, the long term benefits for coal mining can have for the environment, specifically the reinvigoration of wildlife habitats which may be in decline or of poor quality, and the provisions of the Mineral Leasing Act that specifically identify and mandate the development of the resources for the benefit of the American public. Tri-state encourages the royalty policy committee to include alternatives that maximizes federal coal use while maintaining the current royalty rate, or even better, proposing ways to reduce it. Thanks for the opportunity to comment and we look forward to working with the committee in the future.

Roger Birdbare

Any statute or regulation that imposes transportation or processing fee or allowances that aren't in the lease amongst the Fifth Amendment taking under the Hodel Ruling, the Tribes have no authority over allotted oil, gas, and coal under the *[inaudible]* Decision. The DOI should consider using a joint operating agreement to show the true cost of exploring, drilling, and producing oil on allotted lands, rather than an arbitrary royalty rate, which often times doesn't reflect the actual cost as opposed to reasonable cost. And this in addition, amongst another taking, the royalty rates can vary in the fact that you have overrides who *[inaudible]* that the royalty rates *is* arbitrary.

V. Wrap Up / Closing

Mr. Schindler and Mr. DeVito thanked RPC members and members of the public for attending the meeting. They added that the facilitation team would be producing a meeting summary and that subcommittee membership would be shortly after the meeting.

VI. Meeting Participants

Chairman
Vincent DeVito

Designated Federal Officer
James Schindler

Ex-Officio
Scott Angelle, BSEE
Gregory Gould, ONRR
Walter Cruickshank, BOEM
John Tahsuda, ASIA
Jim James, BIA

Ex-Officio *(Alternate)*
Rich Cardinale, ASLM
Timothy Spisak, BLM
Renee Orr, BOEM
John Melhoff, ONRR

Academia/Public Interest
Roderick Eggert, CO School of Mines
Monte Mills, University of Montana Law
Van Romero, NM Institute of Mining
Daniel Rusz, Wood Mackenzie

Academia/Public Interest *(Alternate)*
Graham Davis, CO School of Mines
Kwame Awuah-Offei, MO University of Science and Technology

Industry
Estella Alvarado, Anadarko
Matthew Adams, Cloud Peak
Patrick Noah, ConocoPhillips
John Sweeny, VWR Corporation
Marisa Mitchell, Intersect Power

Industry *(Alternate)*
Alby Modiano, US Oil & Gas Association
Kathleen Sgamma, Western Energy Alliance
Greg Morby, Chevron
Gabrielle Gerholt, Concho Resources

Tribal
Russell Begaye, Navajo
Christopher Adam Red, Southern Ute
Charles Robertson, Choctow
Everett Waller, Osage

Tribal *(Alternate)*
Leslie Shakespeare, Eastern Shoshone
Bidtah Becker, Navajo
Neal McCaleb, Chickasaw

States
John Andrews, UT
Clinton Carter, AL
John Crowther, AK
William Darby, TX
Andrew McKee, WY
Brent Sanford, ND

States *(Alternate)*
Jerry Strickland, TX
Mark Edwards, NM
Shawn Thomas, MT

Royalty Policy Committee Staff
Chris Mentasti
Jennifer Malcolm

Facilitation Team
Rachel Milner Owens, Facilitator
Deirdre McCarthy Gallagher, Facilitator
Tushar Kansal, Facilitator

Members of the Public in Attendance
Aneesa Khan, The Wilderness Society
Autum Hanna, Taxpayers for Common Sense
Brian S, Taxpayers for Common Sense
Chris Stolte, DOI
Deanna Meyer-Pietresch, BOEM
Dwight Dealy, DOI Congressional Affairs
Eli Lowine, GAO
Emily Hague, API
Jackson Brossy, Navajo Nation
Jacueline Toth, CQ Roll Call

Jason St. John, Cloud Peak Energy
Jayni Foley Hein, NYU Institute for Policy Integrity
Jennifer Goldblatt, ONRR
Jhoset Burgos Rodriguez, DOI
Jim Steward, ONRR
Jim Whitcop, ONRR
John Barder, ONRR
Jordan Linhart, The Wilderness Society
Joseph Strausser, Airforce Office of Energy Assurance
Josh Learn, SNL Financial
Josh Leary, S&P Global
Judy Wilson, ONRR
July McQuilliams, DOI/BLM
Pamela King, E&E News
Rollie Wilson, MHA Nation
Ryan Alexander, Taxpayers for Common Sense
Skyler Kopko, Climate Investigations
Steve Basin, Indian Affairs
Steve Felbus, House Natural Resources Committee
Suzanne Swink, BP America
Valerie Volcovici, Reuters
William Munray, R Street

Members of the Public Participating Remotely
Aaron Mintzes, Earthworks
Adam Stern, DOI
Adela Quiroz, DOG Operating
Alan Kovski, Bloomberg BNA
Amanda Garrison, ONRR
Amy Lunt, Office of Natural Resources Revenue
Anita Gonzales-Evans, US DOI ONRR
Ben LeFebvre, Politico
Bethany Davis-Noll, Institute for Policy Integrity
Bob Wilkinson, Conoco Phillips
Bonnie Briggs, Office of Natural Resources Revenue
Brandt Arlan, Jay Connor Consulting
Brent Johnson, Office of Natural Resources Revenue
Carl Wunderlich, ONRR Royalty Valuation
Charles Norfleet, BOEM
Chris Carey, ONRR
Chris Greissing, IMANA
Chris Knight, Argus
Christine Kehr, Government Accountability Office
Dan Bucks, Self-employed Policy Consultant

Doreen Hoyt, Western Fuels WY
Doug Lemke, Tri-State Generation and Transmission Association
Ed Harlan, Jay Connor Consulting
Elizabeth Klein, State Impact Center
Esther Whieldon, Politico
Gina Liles, ONRR
Glenn Fischer, USGAO
Hans Hunt, WY State Legislature
Jason Modglin, Representative Drew Darby
Jeremy Norton, Devon Energy
Jody Peterson, ONRR
John Siciliano, Washington Examiner
Josh Learn, S&P Global Market Intelligence
Joshua Hoffman, House Committee on Natural Resources
Karl Wunderlich, Honor Royalty Valuation
Katy Christiansen, National Renewable Energy Laboratories
Kyle Silvio, Exxon Mobil
Lori LeBlanc, LA Mid-Continent Oil and Gas Association
Mandy Garrison, ONRR
Margaret Corrigan, None
Martin Heinze, Bureau of Ocean Energy Management
Mary Tharin, State of CA
Matt Brown, AP
Matt Harlan, Jay Connor Consulting
Megan Hessee, ONRR
Melissa Cloutet, Gulf Economic Survival Team / LA Mid Continent Oil & Gas Association
Mike Matthews, State of WY
Pamela Silverstein, National Rural Electric Cooperative Association
Peter Christnacht, Office Natural Resources Revenue
Preston Beard, BSEE
Rebecca Paris, WPX Energy
Robert Mullandry, ONRR
Robert Palmer, Campbell County Government
Roger Birdbear, Allottee
Ryan Windenberg, ONRR
Sarah Coffman, BOEM
Shannon Anderson, Powder River Basin Resource Council
Sharon Clute, Eland Energy Inc
Steve Dontsaver, State of WY
Teleford, State of MT
Thomas Cubbage, Covington & Berling
Timothy Cama, The Hill
Tom Lutey, The Billings Gazette
Troy Dopke, Office of Inspector General

Walter Haase, Navajo Tribal Utility Authority
Wendall Coates, Valley Resources
William Anderson, Bureau of Ocean Energy Management
Yasmen Saied, DOI

VII. Documents Distributed

- Agenda (PDF)
- Standard Operating Procedures (PDF)
- Tentative Timeline (PDF)
- Member Directory (PDF)