Committee on Natural Resources
September 8, 2009

H.R. 3534
The Consolidated Land, Energy, and Aquatic Resources Act of 2009

SUMMARY

The Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009 would make several significant changes to current law in order to create greater efficiencies, transparency, and accountability in the development of federal energy resources.

First, this legislation would consolidate the federal energy and mineral leasing programs within one bureau in the Department of the Interior in order to provide greater efficiencies by combining lease sales, inspection, enforcement and revenue collection into a single entity.

The bill would establish the Office of Federal Energy and Minerals Leasing – combining the oil and gas, wind, wave and solar programs currently located in the Minerals Management Service (MMS) and Bureau of Land Management (BLM). This is a major step forward in addressing criticisms leveled at past leasing and royalty collection practices.

Secondly, the bill would establish regional ocean councils, building on the accomplishments of existing voluntary collaborative management efforts, such as the Northeast Regional Ocean Council (NROC). These federal-state partnerships are developing regional plans for the balanced use of energy resources.

Under the bill, Outer Continental Shelf (OCS) Regional Planning Councils would be established for the Atlantic, Pacific, Gulf of Mexico, and Alaska regions. The councils would prepare marine spatial strategic plans to guide OCS energy development within the context of other activities occurring in the Exclusive Economic Zone. The strategic plans would then be incorporated into the 5-year OCS leasing plans required under the OCS Lands Act.

In response to myriad criticisms, the bill would reform the onshore oil and gas leasing program in order to provide a more coordinated, efficient and competitive use of federal oil and gas resources. For example, the bill would raise onshore rental rates for the first time since the 1980's, require new rules to ensure diligent development of leases, and impose "best management practices" on new leases. Additionally, to encourage production and discourage speculative holding of federal resources, the bill would assess a production incentive fee on existing leases that are not producing oil and gas.

In addition, the bill would address near universal censure of the federal royalty program in several significant ways: elimination of royalty-in-kind, elimination of federal

reimbursement on interest accrued on overpayments made in error by lessee; revision of several ambiguous provisions of law that hinder accurate accounting; and increased penalties for inaccurate royalty reporting and payments.

The bill would establish an Ocean Resources Conservation and Assistance (ORCA) Fund, dedicating a portion of OCS revenues to provide grants to coastal states and regional collaboratives for activities that contribute to the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems. And, finally, the bill would provide full funding for the Land and Water Conservation Fund.

A more detailed outline of the bill follows:

Title I — Consolidation of Federal Lands and Waters Energy Leasing Programs

New Bureau. Title I would establish a new bureau – the Office of Federal Energy and Mineral Leasing (OFEML) to act as the leasing agent, inspector and auditor for all federal renewable and non-renewable energy and mineral leasing, i.e., lease sales, production verification, royalty collection and audits, on lands managed by the Bureau of Land Management (BLM) and Forest Service (FS) as well as the Outer Continental Shelf (OCS). OFEML would be in charge of the management of nearly all OCS activities formerly under the purview of the Minerals Management Service and the oil and gas leasing program of the BLM.

Director. The OFEML Director would be required to meet high professional, ethical and fiduciary standards, and would require confirmation by the U.S. Senate.

Audit Standards. Reversing an outmoded and inadequate practice, the bill would require all employees who conduct audits to meet professional auditor standards.

Ethics Reform. In response to scandals uncovered by the Inspector General last year, the bill would require the Secretary of the Interior to annually certify that all employees involved in royalty production oversight are in full compliance with all federal employee ethics laws and regulations.

Auditing and Compliance. In order to provide more independence for the auditing and compliance function that is responsible for ensuring that the American people are obtaining their proper share of revenues from activities on public lands, those responsibilities would be transferred to the Interior Department's Office of the Inspector General (IG).

Title II — Oil and Gas Royalty Reform

Royalty Reform. In response to the many criticism levied on the federal oil and gas royalty program, Title II would include a number of technical provisions to ensure more accurate royalty collection, such as eliminating interest on overpayments, clarifying who

is liable for paying royalties on a lease, increasing penalties for underpayments or missed payments, limiting the ability of lessees to make adjustments to their payments after a compliance review or audit has been conducted, requiring more accurate reporting of the heat content of natural gas, and establishing a pilot program for the automatic electronic transmission of oil and gas data from producers to the government.

Royalty-In-Kind. In response to a series of Government Accountability Office (GAO) and IG reports highlighting serious ethical improprieties in the Royalty-in-Kind program and calling into question the financial benefits of the program, Title II would eliminate Royalty-In-Kind as a method of paying royalties on federal oil and gas leases.

Other Resources. To allow the government to ensure that all companies that extract resources from public lands provide the proper return to the American taxpayers, Title II would extend audit and compliance authority to cover all solid mineral mining on federal lands and the OCS, geothermal production, and alternative energy on the OCS.

Title III — Oil and Gas Leasing Reforms

Diligent Development Rules. In order to ensure that the public can be confident that federal oil and gas leases are being diligently developed and not held for speculative purposes, Title III would require the Secretary of the Interior to promulgate new regulations that would define "diligent development." Such rules would require all new onshore and offshore oil and gas leases to meet certain benchmarks during the primary term of a lease in order to show that energy development is being responsibly pursued.

Biannual Reports. In addition, the bill would require biannual reports from each federal oil and gas lessee holding a non-producing lease on the steps taken to develop such lease; this information would be maintained in an electronic database and made available to the public.

Non-Competitive Leases. In order to achieve greater efficiencies and increased revenues, the bill would eliminate non-competitive bidding for onshore oil and gas leases—all onshore lease sales would be sealed competitive lease sales, consistent with oil and gas lease sales on the OCS.

Minimum Bonus Bids. For the first time since the 1980's, minimum bonus bids would be increased for onshore lease sales from $2 to no less than $2.50, with Secretarial discretion to set a higher rate as appropriate, including after an analysis of the value of the lands being made available for lease. This would bring the onshore program more in line with the offshore program – currently, the Secretary has no authority to assess the value of the leases and set a higher minimum bid for particularly valuable land.

Rentals. Onshore lease rental rates, which have not been raised since the 1980's, would be increased by no less than $1 – from $1.50 in the first five years to $2.50 – with Secretarial discretion to set a higher rate as appropriate in later years.

"Best Management Practices." In response to growing concerns of Westerners who have experienced record rates of oil and gas development in recent years converting once pristine areas into industrial zones, the bill would direct the Secretary to promulgate "best management practices" rules for oil and gas development on federal lands to ensure sound, efficient and environmentally responsible energy development.

Coal Mine Methane Recovery. In order to increase the co-production of natural gas with coal mining and decrease the amount of methane released to the atmosphere, Title III would allow federal coal lessees to capture and sell the methane trapped within the coal seams, and would require them to capture or flare such methane in those cases when it is economically and technically feasible to do so.

Categorical Exclusions. In response to on-going investigations indicating that the Energy Policy Act Section 390 Categorical Exclusions are being abused, Title III would eliminate this unwarranted end-run around long-standing environmental statutes.

Alternative Energy Only. Section 368 of EPAct 2005 would be amended to clarify that OCS alternative energy projects would be limited to alternative energy leasing and development, deleting ambiguous language from the 2005 Act that could be interpreted to allow non-energy development – such as commercial development, aquaculture and other non-energy uses – under this authority.

Non-competitive Permits. In order to facilitate development of emerging technology, the bill would allow the Office of Federal Energy and Mineral Leasing to issue non-competitive, short-term permits for offshore alternative energy activities, such as testing new technologies and data collection.

Title IV — Full Funding of the Land and Water Conservation Fund

Title IV would extend the authority for the Land and Water Conservation Fund from 2015 to 2040; would provide that $900,000,000 of revenues generated primarily from oil and gas revenues be allocated to the Fund annually without further appropriation; and would require that such funds be shared equally with the States.

Title V — New Onshore Leasing Authority

Solar and Wind Leasing. In order to create a more competitive, predictable, and stable renewable energy program, Title V would require onshore solar and wind energy projects to obtain leases, as is done for oil, gas, and geothermal energy, instead of rights-of-way or special use permits, as is current practice by BLM and FS. Non-competitive leasing of federal land for equipment testing or data collection would also be allowed.

Best Management Practices for Solar and Wind. Title V would require onshore solar and wind projects to adhere to best management practices designed to ensure environmentally responsible energy development on federal land.

Compliance and Audits. To allow the government to ensure that all companies that extract resources from public lands provide the proper return to the American taxpayers, Title V would extend audit and compliance authority to cover solar and wind projects on public lands.

Transition to Leasing. In recognition of the many projects currently under review, the bill would allow all wind and solar projects on federal lands with a Plan of Development submitted for approval, or with testing equipment already installed, to be considered for approval under current law.

Uranium Leasing. In order to address the recent resurgence of interest in uranium and to address the lack of production royalty on uranium mined from federal lands (uranium is a locatable mineral under the Mining Law 0f 1872), Title V would make uranium on federal lands a leasable mineral to be administered by the Secretary of the Interior. Those claimants that can prove the existence of a valuable uranium deposit as of the date of enactment of this bill would be required to convert the claims to a lease within 3 years of enactment. Claims converted to leases under this provision would be relieved of any royalty payment for 10 years. Revenues accrued under this subtitle would be, subject to appropriations, used to clean up abandoned, non-superfund uranium mines and mill tailings sites on federal lands consistent with the Abandoned Mine Reclamation Program under the Surface Mining Control and Reclamation Act.

Title VI — OCS Coordination and Planning

Regional Councils. Title VI would address the need for long-term, coordinated planning on the OCS by establishing OCS Regional Planning Councils for the Atlantic, Pacific, Gulf of Mexico and Alaska regions. These Councils would prepare marine spatial Strategic Plans to guide OCS energy development within the context of other activities occurring on the OCS.

Membership. Council membership would include representatives of relevant federal agencies, coastal state Governors, affected Tribes, and representatives from stakeholder groups such as regional ocean partnerships, commercial and recreational fishing associations, the oil and gas industry, the alternative energy industry, environmental and other public interest organizations, shipping organizations, tourism associations, and others as the Council may determine are appropriate in order to achieve a balanced representation of all viewpoints.

Plans. Strategic Plans would to be prepared and completed within 4 years by each of the OCS Regional Planning Councils and would be used by DOI in developing 5-year OCS leasing plans under the OCS Lands Act.

Transition Period. To ensure uninterrupted leasing and development of our nation's Outer Continental Shelf resources while the Strategic Plans are being prepared, Title VI would allow the Secretary to continue the preparation and execution of 5-year plans under the OCS Lands Act, and the leasing of areas for offshore alternative energy under the existing alternative energy rule, until the Strategic Plans are approved.

Ocean Resources Conservation and Assistance Fund. A percentage of all OCS revenues would be deposited into an Ocean Resources Conservation and Assistance (ORCA) Fund, established by this bill, which would provide grants to coastal states and regional ocean partnerships for activities that contribute to the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems including: the development and implementation of comprehensive, science-based plans for monitoring and managing the wide variety of uses affecting the oceans, coasts and Great Lakes ecosystems; activities to improve the ability of those ecosystems to become more resilient and adapt to and withstand the impacts of climate change and ocean acidification; planning for and managing coastal development to minimize the loss of life and property associated with climate change and the coastal hazards resulting from it; and research, assessment and monitoring that contribute to these purposes.

Title VII — Miscellaneous Provisions

Deepwater Royalty Relief. Consistent with the President's FY 2010 Budget, the bill would repeal unnecessary Deepwater Royalty Relief provisions. This repeal was also proposed by the Bush Administration.

Non-Producing Fee. Consistent with the President's FY 2010 Budget, the bill would impose a fee of $4 per acre for existing non-producing leases. The bill, however, would impose the fee on both onshore and offshore non-producing leases (the budget proposal is limited to the Gulf of Mexico).

Leasing on Indian lands. Provision is made to clarify that nothing in the bill would amend or modify leasing as it is currently carried out on Indian lands by the Bureau of Indian Affairs.

Offshore Aquaculture. The bill would preclude the development of aquaculture operations in the outer continental shelf or exclusive economic zone of the United States.