

**Testimony of  
Alex B. Campbell**

**on behalf of the  
Independent Petroleum Association of Mountain States**

**Before the  
House Natural Resources Committee  
on the  
Consolidated Land, Energy, and Aquatic Resources Act of 2009**

**September 17, 2009**

Mr. Chairman and Members of the Committee—thank you for the opportunity to be here today to discuss the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act and the effects that this legislation could have on small, independent producers of natural gas and oil who operate on public lands in the Intermountain West. These lands contain vast amounts of our domestic natural gas resources. As several prominent political leaders and academics have recently observed, the expanded use of domestic natural gas is the most obvious and cost-effective way, immediately and over the long term, to reduce greenhouse gas emissions and increase energy security.

Enduring Resources, LLC is a small independent natural gas exploration and development company headquartered in Denver, Colorado. Independent producers like Enduring are mostly small American businesses with an average of twelve employees, yet we drill 90% of U.S. wells and produce 82% of America's natural gas. Our current gross production from our properties is approximately 40 mcf/d and we have 19 employees. We have extensive natural gas holdings in Utah and Texas. Approximately 80% of our Utah wells and leasehold are operated on public lands. I am the Vice President of Lands and have day-to-day responsibility to lease, site and permit our natural gas holdings.

I am here today on behalf of the Independent Petroleum Association of Mountain States (IPAMS). IPAMS is a non-profit organization representing more than 400 companies and over 150,000 workers engaged in all aspects of production of natural gas and oil in the Intermountain West. The Intermountain West supplies about 27% of America's natural gas and approximately 54% of that natural gas (and 34% of oil production in the Intermountain West) is on federal lands. The CLEAR Act would put at risk about 15% of America's natural gas supply.

The CLEAR Act as proposed would have significant negative impacts on the production of the Nation's supply of clean-burning natural gas. IPAMS believes that rather than "furthering the Nation's goals of securing a reliable and sustainable supply of American energy," as suggested by the Committee, the CLEAR Act would result in less American production of natural gas and oil and would put at risk many of the 267,000 industry jobs

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and the billions of dollars of investment in the Intermountain West at a time we can least afford such losses. As a result, the bill has the potential to disrupt the supply of American energy to millions of families, farmers, and small and large businesses. This proposal comes at a time when the President has challenged our Nation to focus on an increase of clean domestic energy supplies to address climate change, energy security and American jobs. This is the wrong answer to that challenge.

In sum, the CLEAR Act will: 1) add time-consuming delays by creating redundant and unnecessary layers of government bureaucracy and regulation; 2) institute policies that will hamper the action of efficient market mechanisms and decrease the integrity and transparency of leasing; 3) significantly increase costs to produce natural gas and oil on federal lands; and 4) fundamentally change the multiple-use management of public lands to an approach that will further restrict energy development – conventional and renewable.

### **Additional, Redundant Bureaucracy and Unnecessary Regulations**

Western natural gas producers believe that one of the major problems with the CLEAR Act is the unnecessary and redundant red tape and bureaucracy that will be created. The CLEAR Act would create a new bureaucracy in the Department of the Interior (DOI) – the Office of Federal Energy and Minerals Leasing – that would combine certain Minerals Management Service (MMS) functions with the Bureau of Land Management's (BLM) oil and gas program. CLEAR would add new regulatory requirements including new and unworkable notice requirements and counter-productive due diligence requirements. There is no demonstrable benefit to the environment or to increased supplies of domestic energy from these legislative provisions.

#### Office of Federal Energy and Minerals Leasing

The creation of the Office of Federal Energy and Mineral Leasing (Leasing Office) will create a new layer of bureaucracy to no purpose. Separating leasing from the overall land stewardship and multiple use management responsibilities of BLM will result in severed functionality and the lack of a holistic approach to land management. BLM and U.S. Forest Service land managers gain important knowledge of the lands they manage through the land planning process and their day-to-day management activities. This proposal would sever that knowledge from the leasing activity. This cannot possibly benefit either the environment or domestic energy supplies. The Act will create two offices whose missions may conflict. For example, CLEAR would require BLM to set the conditions for surface occupancy, but would remove BLM from the issuance of the leases or Applications for Permit to Drill (APDs) that must comply with those conditions. In addition, the new office would require duplication of professional minerals staff in the agencies because only the oil and gas program, and not coal, geothermal, and other

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leasable minerals, will be administered by the new agency. This is not cost-effective government.

#### Diligent Development Requirements

Under Section 301 of the Act, DOI would have one year to define “diligent development,” and then would require producers to meet certain “benchmarks” that “will ensure that leaseholders take all appropriate measures necessary to produce oil and gas from each lease that contains commercial quantities of oil and gas within the original term of the lease.”

This provision displays a lack of understanding of the business of exploration and production of natural gas and oil. Finding and developing oil and gas is not a simple process. Vast differences in geology, topography, reservoir characteristics, composition of the resource, environmental considerations, market conditions, transportation of the resource to market and many other factors make each oil and gas lease unique. The financial aspect of this business is also critical in determining when, where and how a property will be developed. Acquisition of the capital necessary to develop the properties is a never-ending activity for the independent natural gas producer.

An energy company will make no return on its investment in the lease (lease bid and rental payments) until it produces a resource. Industry is already under an *economic imperative* to develop the purchased leases as soon as it makes economic and regulatory sense to do so. Producers are already making every effort to diligently develop leases where it makes economic sense to do so, but existing regulatory processes and special interest groups throw up roadblocks and delays at every stage of the process, making development on public lands long and arduous. Any definition of diligent development must include recognition of all the many preparatory activities companies are performing to begin ground-disturbing developments (environmental and cultural surveys, APD permits, National Environmental Policy Act (NEPA) compliance, Plans of Development) and the impediments to development beyond operators’ control. The Committee should also recognize the budget implications of hiring a staff to review the diligent development plans required under the bill and to monitor the biannual reports required to be filed by all federal lessees.

#### Command and Control Planning: Best Management Practices

Another major deficiency of the proposed legislation is that it imposes centralized decision-making from Washington. The bill proposes to broaden top-down control by the government by directing the Secretary to impose one-size-fits-all best management practices (BMP) and benchmarks from Washington. This provision would separate the

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decision-making from those with the best information – the land managers on the ground, who are intimately familiar with the area’s land, resources, and stakeholders.

I have extensive experience with developing BMPs to site and develop Enduring’s federal holdings and have interacted with employees in BLM and EPA among other federal and state agencies in that process. I have found these employees to be hard working, dedicated and willing to sit down and problem-solve at all levels. They are open to new ideas to achieve enhanced environmental protections while developing federal natural gas as long as those ideas are within the confines of their regulatory authority. My concern today is how the CLEAR legislation will curtail the ability of the local managers to implement on-the-ground solutions. As the local administrators of these public lands, they have the best understanding of how to achieve our country’s goal to maximize domestic energy production while minimizing impacts on other resources. The CLEAR Act will dramatically change the ability of the local managers to best steward the public lands.

#### Additional Notice Requirements

Section 303 of the bill adds a new requirement that the Secretary shall provide 45 days notice prior to each sale to “all surface land owners in the area of the lands being offered for lease” and to the holders of “special recreation permits for commercial use, competitive events, and other organized activities on the lands being offered for lease.” This new statutory mandate will increase the administrative costs of the sale and provide opportunities to challenge sales despite the Leasing Office’s good faith efforts to comply. First of all, who are the surface owners “in the area of” the lands being offered for lease? The inference is that notice is required to not just surface owners of the severed federal minerals being offered, but also to anyone in the general vicinity. How will those surface owners be identified? Will the Leasing Office hire title examiners to identify all of the surface owners “in the area” of each sale? Will the Leasing Office rely on the records of the local tax assessor? If so, and the tax assessor’s records are in error, is the notice invalid? How is the notice to be given to such persons? If it is not given by certified mail or other method with confirmed delivery, how can purchasers of the leases be assured that the Leasing Office satisfied this obligation? What if, despite its best efforts, the Leasing Office overlooks providing notice to one of the surface owners in “the area” or to one of the holders of special recreations permits? Is the resulting lease void for the agency’s failure to comply with a statutory mandate?

This provision would create serious risks of title uncertainty. While oil and gas producers are accustomed to evaluating the geologic and engineering risks of drilling a well, they are not willing to invest millions of dollars to purchase a lease or drill a well in the face of clouds on the title. The challenges created by such a proposal were recently confirmed by BLM in the 2006 Split Estate Leasing Report to Congress required by Section 1835 of

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the Energy Policy Act of 2005 (EPAAct 2005). Instead of recommending the adoption of a similar provision, BLM issued agency guidance and new information to split estate property owners to provide better and timely information to the public in the leasing process. (Instruction Memorandum 2007-165).

### **Market Distortion and Reducing the Integrity and Transparency of Leasing**

The CLEAR Act directs fundamental changes to a federal oil and gas leasing system that has proved remarkably responsive to the energy demands of the Nation. It would separate critical leasing decisions from the best information. In our economic system the market – not government – is judged to have the best information on the value of a commodity. The CLEAR Act would reject that fundamental principle and direct the Secretary to set “market rates” for leases and change the competitive bidding system. The government setting a market value is an inherently contradictory concept. IPAMS believes the free enterprise system in a live auction system is the best method for determining fair market value, rather than government bureaucracy. The CLEAR Act would also reduce both the integrity and transparency of the leasing process.

#### The Competitive Bidding System

The CLEAR Act would change the existing system for bidding on federal leases from oral bids at a public sale to sealed bids, and would require the Leasing Office to evaluate the adequacy of bids before accepting them. IPAMS does not understand the impetus for these changes. In 2008, prior to the collapse of crude oil and natural gas prices, BLM was receiving record high bids for onshore leases, and we are unaware of any allegations that the U.S. has been receiving less than fair market value at the competitive lease sales. It is therefore unclear why a change should be made in a system that is working well for both industry and the U.S. Treasury. Moreover, when the Federal Onshore Oil and Gas Leasing Reform Act (authored in part by Representative Rahall) was enacted some 20 years ago, Congress chose to abandon the sealed bid procedure which had been followed for competitive leasing in known geologic structures (sometimes called a “KGS”) in favor of oral bidding. In addition, Congress specified that the highest oral bid greater than the national minimum bid (\$2.00 per acre) would be accepted “without evaluation of the value of the lands proposed for lease.”

There are several drawbacks to a system which attempts to second-guess the market price as established by public bidding. First, it will require increased staffing of the proposed Leasing Office with professional geologists and engineers to prepare the necessary evaluations of bid adequacy, which will require increased agency budget. Second, regardless of the skills of the Leasing Office staff conducting such evaluations, that staff will never have the same quality of information available to it as will industry. The oil and gas business is highly competitive and companies invest significant sums in

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proprietary exploration and data collection. Third, in wildcat areas where there is little well control data available, the fair market value of a tract will be difficult for federal geologists to determine. Lands in undeveloped areas may have only a nominal value unless geologists from several companies have concurrently developed an exploration concept that creates a speculative higher value for the lands. Unlike coal, where knowledge about the resource is generally available to all participants and where the large up-front investment necessary to develop a mine limits the number of competing bidders, knowledge about the oil and gas resource, if any, present in a wildcat area is often limited to the imagination of the geologists working the area. Fourth, the number of entities competing at the sale is very large, so the likelihood that a high bid at a public sale does not represent fair market value is very low. Fifth, industry reacts quickly to market changes. For example, if the Leasing Office staff develops a fair market value for an area in advance of a sale, falling prices or the development of technical data (such as new information showing that production from a particular formation is more short-lived than expected) could result in the industry assigning a lower value to the acreage than the Leasing Office's "fair market value." The result would be rejection of bids that, in fact, represent fair market value as of the date of the sale.

History supports this concern over post-sale bid evaluations. BLM had difficulty defending its decisions with respect to the adequacy of competitive bids under the old KGS sealed-bid system which Congress eliminated in 1987. A good example of the difficulties can be found in the decision of the Interior Board of Land Appeals (IBLA) in the case of *Harold Green v. BLM*, 93 IBLA 237 (1986). There, a sealed bid of \$22.75 per acre made at a competitive sale held in February of 1983 was rejected as inadequate. The high bidder appealed that rejection to the IBLA, which referred the matter to a hearing before an administrative law judge. That judge concluded that BLM did not justify its rejection of the high bid and directed the agency to accept the bid. BLM appealed the administrative law judge's decision to the IBLA which decided (3 ½ years after the sale) that BLM had, in fact, justified its rejection of the bid, yet each of the three judges separately suggested ways for BLM to improve its bid evaluation process. There simply is no reason to return to the costs and delays of a bid evaluation requirement which Congress discarded 20 years ago.

#### Integrity and Transparency of Lease Sales

Another effect of the CLEAR Act is the destruction of the integrity of the bidding system. Rather than a winning bid fairly translating into an issued lease, the bill leaves it to the discretion of the Interior Secretary whether to accept a bid within 90 days after the auction. The bill would thus codify the uncertainty and disincentive to lease federal minerals that resulted from the decision of Interior Secretary Salazar to reject 77 legitimate bids made at the Utah December 2008 lease sale auction. Enduring Resources was the successful bidder on four of those leases and had carefully planned how those

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leases would fit into its existing natural gas developments. The leases have been withdrawn and Enduring's plans to develop domestic natural gas resources for the Nation from these lands have been cancelled.

Currently the Mineral Leasing Act requires DOI to issue leases within 60 days of payment of the bonus so that the winning bidder receives the property that he/she has fairly purchased. If passed, the CLEAR Act would institute a subjective system, which is prone to second-guessing and the politics of the moment. No other bidding system, from eBay to fine art auctions, allows a seller to withdraw goods from a sale after someone has fairly won the bidding process.

As mentioned above, the oil and gas business is highly competitive and companies are reluctant to show their hand by bidding at a sale only to then have the Department determine that it will not issue the lease. Furthermore, even though existing law provides that the Secretary of the Interior shall issue a lease within 60 days following payment of the balance of the bonus, that statutory deadline is frequently missed, meaning that the bidder's money can be tied up, without interest, for many months. In fact, currently DOI is holding about \$100 million worth of lease bids in Colorado, Utah and Wyoming while it processes lease protests. The companies do not have the leases, but the government holds its money. That is significant company capital being held by the government in a non-productive capacity that could be used to find and produce more American energy.

Under the CLEAR Act, the Secretary "shall decide whether to accept a bid and issue a lease" within 90 days following payment of the bonus. The bill does not contain any standards upon which the Secretary shall base his decision to issue or not issue a lease. That decision should be made prior to the sale. Bidders spend significant sums in the form of professional staff time spent identifying whether lands offered for lease by BLM can be economically developed under the terms and stipulations described in the sale notice and formulating their maximum bids based on available geologic and engineering data. There is little incentive to invest that time and effort, and disclose your analysis in the form of the amount of your bid made at a public sale, only to have the Secretary decide several months later not to issue a lease on the lands advertised for sale.

### **Increased Costs**

In order to maintain natural gas supplies to meet American's every-increasing demand for this clean energy source, independents must reinvest 100% or more of their cash flow into new development projects. Because the CLEAR Act would increase rental fees, minimum bonus bids, and regulatory costs, natural gas and oil producers will have less capital available to explore for and produce American energy. This is particularly true in this economic climate where credit is tight and the price of both oil and gas is low. The DOI Inspector General (IG) has cautioned that mandating production on federal leases or

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increasing lease fees would not enhance production, but will serve as a disincentive to investment in federal leases.

In addition, the CLEAR Act also proposes a ‘production incentive fee’ of \$4 for non-producing acres. First of all, a lessee is already required to develop oil and gas within the original term of the lease because if it does not, the lease terminates. Second, how will the agency determine which leases “contain commercial quantities of oil and gas?” Unless a newly acquired lease offsets existing production (and even sometimes when it does), there is no guarantee that any particular lease contains commercial quantities of oil and gas until a well is drilled. Although advances in geophysical technology have reduced some of the exploration risk, there are still many dry holes drilled on federal lands. The average rate of success for wildcat wells is only 10-20% and for exploratory wells 25-50%.

The CLEAR Act proposed ‘production incentive fee’ of \$4 for non-producing acres is particularly troubling when the DOI IG found such problems with data integrity and information systems at MMS and BLM that DOI cannot say with certainty how many leases are producing. IPAMS recommends that DOI fix its data problems before trying to impose another cost on industry. Furthermore, since many leases are held up from production because of required environmental studies, timing restrictions for surface-disturbing activities, government processing delays and legal challenges, a production “incentive” fee would be inequitable if these factors were not considered.

The natural gas and oil industry is already one of the largest non-income tax sources of federal revenue. In FY2008, BLM spent about \$90 million to administer the onshore natural gas and oil program. From that small investment, the federal government gained \$4.2 billion in royalties, rents, and bonuses. For every dollar invested, the oil and natural gas program returned \$46.

In spite of the fact that oil and natural gas companies more than pay for this program, companies must also pay a \$4,000 fee per APD, whether or not the permit is granted. In the Fiscal Year 2010 budget, that fee is proposed to increase to \$6,500 without any justification for the increase and again in an economic climate when independent producers like Enduring can ill afford it. Industry assumes all the cost and risk of exploring for and producing natural gas and oil, provides a needed supply of domestic energy and pays a significant return to the American taxpayer.

The CLEAR Act would also result in higher regulatory costs and increase permitting delays by eliminating Section 390 Categorical Exclusions (CX)) of EAct 2005. EAct 2005 mandated the use of CXs to enable energy development where the environmental impact is minor, and where drilling was analyzed in a NEPA document as a reasonably foreseeable activity. In 2005, Congress recognized that this provision would encourage



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the timely development of domestic energy resources and concluded that in the narrowly described circumstances environmental impacts would be insignificant. A requirement for an “extraordinary circumstances” analysis would defeat the intent of the statute.

The CX provision was designed to limit redundant environmental analysis, free federal land managers to perform other tasks and encourage industry to limit environmental impact by drilling on existing well sites. CXs enable federal land managers to focus on activities like inspections and monitoring that lead to actual, on-the-ground environmental protection and companies can timely deliver domestic energy resources to consumers. CXs do eliminate redundant NEPA and enable energy development where the impact is minimal. The CX tool is an established NEPA compliance tool and indeed is one of the most frequently used NEPA compliance options by agencies across the federal government. The EPLA 390 CXs were narrowly drafted and are being cautiously implemented by BLM.

### **Changing the Multiple Use Management of Public Lands**

In addition to creating an entirely new agency to issue and administer oil and gas leases, adding burdensome regulations and dramatically changing the federal leasing process, the Act would impose on BLM and the U.S. Forest Service the obligation to review and approve “general land use plans that identify areas in which energy development would not conflict with other land uses.” This requirement would seem to trump, with respect to “energy development,” the multiple use management directive contained in BLM’s organic act, the Federal Land Policy and Management Act (FLPMA), and the multiple-use sustained yield statute governing National Forest System lands. “Energy development” is not defined in the bill and so would apply to all energy development on public lands, including coal, geothermal, wind, solar and oil and gas. Because the bill does not define exactly what energy development activities are deemed to “conflict” with other land uses, this provision will provide ample opportunities for challenges to plans by, for example, livestock producers who prefer that no energy development occur on their grazing permits, hunters who want no energy development in any area where big game might be found and surrounding landowners who dislike derricks, turbines or solar arrays. BLM and the Forest Service already strive to achieve “the enormously complicated task of striking a balance among the many competing uses to which land can be put” (as the Supreme Court noted in *Norton v. Southern Utah Wilderness Alliance*) and that task should not be further complicated by adding a seemingly contradictory requirement.

Operators in the West already experience lengthy planning delays to energy projects. Project-specific Environmental Assessments (EA) and Environmental Impact Statements (EIS) are routinely taking three to over five years to complete and BLM Resource Management Plan NEPA analyses have taken five years to close to a decade. Enduring

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has a sixty-four well EA that has taken over five years already. IPAMS recommends that instead of creating additional planning requirements, Congress should direct federal land managers to follow reasonable and time-sensitive guidelines for NEPA documents. The Council on Environmental Quality rules on NEPA documents contemplate a focused and timely process. Implementing the intent of those rules would free up the time and resources for land managers to engage in activities that truly benefit the environment, such as monitoring and enforcement, rather than endless documentation.

### **Recommendations**

In order to truly increase energy security and address global warming in a meaningful way, IPAMS recommends the following measures to increase production of natural gas on public lands:

- Congress should consider ways to shorten the timeframe for environmental analysis. The bureaucratic delays and runaway costs associated with more environmental studies provide no additional environmental protection, but would serve to restrict the development of new supplies of domestic oil and natural gas.
- Congress should ensure the DOI does not continue to restrict leasing of public lands by failing to timely complete its administrative responsibilities.
- Congress should carefully consider how new wilderness areas could limit America's ability to meet its future energy needs.
- Congress should increase the budget for the BLM oil and natural gas program to ensure the bureau has the necessary staff and resources to process permits to drill and rights of way for gathering and pipeline infrastructure so that new supplies of natural gas and oil can be brought to the market.
- Instead of creating new redundant processes, Congress should work with Interior and industry to improve existing processes so that public resources are made available to the nation in a timely and cost-effective manner.

I have attached for your convenience specific comments and concerns of IPAMS' members on the provisions of the CLEAR Act.

Thank you.

Alex B. Campbell/Vice President/Enduring Resources, LLC