

**Testimony of
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Former Secretary of the U.S. Department of the Interior**

**The Subcommittees on Oversight and Investigations and
Energy and the Environment
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Mr. Chairmen, I am Dirk Kempthorne. I have testified before Congress as a United States Senator, as the Governor of Idaho and as a Cabinet Secretary. This is my first time testifying in the elevated status of a private citizen. I am also the former Secretary of the Department of the Interior. My responsibilities as Secretary ended 449 days ago.

Ninety days ago the BP oil spill exploded into the nation's consciousness. The accident on BP's Deepwater Horizon oil rig caused 11 families to bury their sons, husbands and fathers. The accident injured 17 workers. It forced fishermen and others to lose their livelihoods. It engulfed the Gulf of Mexico with oil slicks that now tar coastal beaches and marshes of the bayou.

Out of respect for Congress where I served for six years, I accepted your request that I talk with you about this tragic oil spill. In light of leaving Interior 18 months ago and without access to Interior staff or briefing documents, I preface all of my remarks with the understandable “as I recall” caveat.

Until now, I have declined multiple media requests to comment in the belief America was best served by letting those now in charge to stay focused on job number one of stopping the oil spill.

As you can appreciate, I cannot provide any insight about the exploration plan and the many dimensions of the application for the permit to drill which culminated in the Deepwater Horizon accident because these were evaluated and approved after I left Interior.

As you know, almost one-third of the Nation's domestic energy production is generated from Interior managed lands and waters. For 40 years prior to this accident, the Interior Department and the industry it regulated had a remarkable record of success in safely developing and producing energy from oil platforms and drilling rigs that fueled American homes, cars, and factories. More than 223 trillion cubic feet of natural gas and 41 billion barrels of oil from 8,200 active mineral leases were produced from America's federal offshore waters during this time.

Before the Deepwater Horizon accident, there was a 40-year record of environmental protection in offshore drilling. The last major oil spill from a platform occurred in 1969 near Santa Barbara, California. As the Interior Department had stated – on various occasions – before the BP accident, “natural cracks in the seabed cause oil seeps 150 times larger in volume than oil spilled due to OCS oil and gas activities.” This record of environmental protection occurred when Republicans and Democrats at controlled the Administration and the Congress.

Secretary Norton and I took note of this remarkable safety record and so did our successor, Secretary Salazar. Before the BP oil spill, Secretary Salazar on March 31, 2010, announced he had revised the 2007-2012 five year plan. This plan called for developing oil and gas resources in new areas while protecting other areas. On the issue of safety, Secretary Salazar said and I quote “Gulf of Mexico oil and gas activities provide an important spur to technological innovation and industry has proven that it can conduct its activities safely.”

That statement is consistent with my own impressions while serving as the Secretary of the Interior.

Mr. Chairmen, this raises an important point. At an earlier hearing, Members of Congress and Americans unfortunately watched officers from the three companies involved in the Deepwater Horizon accident point fingers of blame at each other for causing the accident. Let’s not repeat that spectacle.

All of us – present and former Administration officials, Governors, Members of Congress and citizens – never contemplated an accident of this magnitude could ever happen. Had we thought so, I am confident that both the Executive and the Legislative Branch would have worked on a bipartisan basis to prevent it.

One indication that an oil spill of this magnitude could never have been imagined was the Gulf of Mexico Energy Security Act of 2006. That law contains no reference to needing to do additional work to prevent oil spills or expand capability to respond to oil spills. I don't ever recall concerns raised at my confirmation hearing or in my subsequent testimonies before Congress, or in reports from the Inspector General or from the news media that an oil spill of this magnitude could occur.

In fact, the opposite occurred. I recall being pointedly asked during Congressional hearings why Interior wasn't doing more to expand offshore energy development, not less. In part this concern was driven by the then soaring \$4 a gallon gasoline prices.

As Secretary, I toured an operating Gulf coast oil rig. I recall being briefed about shut-off valves on the ocean floor that would stop oil spills in an emergency. I was impressed by the pride and professionalism of oil rig workers, as well as the complexity of their task and their commitment to human safety and environmental protection.

Their commitment to safety and environmental protection was vividly reinforced by the fact that 36 major tropical storms and fierce hurricanes interrupted all or part of the Gulf Coast during the eight years of the Bush Administration. These storms carried the force of 200 mile-per-hour winds and 100-foot waves.

As Secretary, I personally experienced eight of those tropical storms and hurricanes. I recall receiving reports of the number of drilling rigs being evacuated, the amount of oil production being stopped and rigs being damaged. I don't recall a single instance of reports of loss of life, shut off valves not working, or major oil spills even when fierce hurricanes damaged or destroyed facilities. Secretary Norton will talk more about her experience with 28 of these storms, including the two worst ones, the infamous Hurricanes Katrina and Rita. But, again, our perspectives are not unique. Every Interior Cabinet secretary for 40 years could say the same thing before the Deepwater Horizon accident.

I do not envy my successor. I applauded the decision to name him as Secretary of the Interior. As a private citizen, I am not privy to the information developed and gathered to make these decisions. But I know the pressure of making decisions while under the glaring lights of public scrutiny and 24 hour news cycles. It is easy to second guess and criticize.

By requesting me to attend, you are asking about the record of the Bush Administration on offshore energy development. I mentioned previously that our eight year record – similar to other Cabinet Secretaries' records until the Deepwater Horizon accident – was that natural seepage of oil from the ocean floor exceeded oil spills from drilling operations by 150%.

I state this as a fact, not to claim credit. The real credit belongs to the men and women in industry who were motivated to work safely and to protect the environment and to the regulators who monitored their performance even in the face of category 5 hurricanes. The vast majority of these civil servants served their nation well. Both Secretary Norton and I recall being briefed by MMS employees who had lost their homes during hurricanes yet they left their families and did the work America needed.

I offer six additional perspectives from my experiences as Secretary.

1. Ethical Culture of the Minerals Management Service

This hearing gives me the opportunity to address an issue about the ethical culture at the Minerals Management Service. Let me address the issue of ethics head on. Shortly before leaving office, I was summoned to Congress to testify on Inspector General Reports about unethical conduct within the Minerals Management Service. Those who work with me know that if a problem surfaces I work to fix it. On September 18, 2008, I unequivocally told Congress that the conduct disgusted me and there would be prompt personnel action. Because that action was underway, I was advised by Interior's lawyers that I could not discuss it in detail. Now I can, including the fact that we fired people.

It should be part of this hearing record that Johnnie Burton, who had been director of the Minerals Management Service during Secretary Norton's tenure, has publicly stated, upon hearing about this conduct, that she personally requested the Inspector General to investigate. It should also be part of this hearing record that those involved were fired, retired, demoted or disciplined to the maximum extent permissible. The facts are that all of these actions were taken before we left office.

I would add a statement that Inspector General Earl Devaney said in testimony before the House Natural Resources Committee on September 18, 2008 and I quote: "I believe that the environment of MMS today is decidedly different than that described in our reports. While there is undoubtedly more that needs to be addressed, programmatic improvements must be matched with controls and strong oversight to ensure that this bureau, which is so lucrative to the United States Treasury and the American Public, does not again veer wildly off track."

I received another report critical of the Minerals Management Service royalty program. Again, I took action. The current Administration puts stock in the Garn-Kerrey report reviewing MMS. I would like the record to note that I personally called former Senators Jake Garn, a Republican and Bob Kerrey, a Democrat, and asked them to conduct a bipartisan, independent and thorough examination of this program with no pre-conceived outcome. They did. They issued a report that recommended 110 actions to improve the program, including, as I recall, more than 20 recommendations from the Inspector General's office. We methodically implemented all of the recommendations that could be done while we were still in office, which, as I recall, was about 70 in number.

Mr. Chairmen, I would ask that the testimony that Inspector General Earl Devaney and I gave to Congress in September of 2008 be made part of this hearing record as well as the Garn-Kerrey report.

I took seriously the need to foster an ethical culture at MMS. In fact, we hired an ethics professional to work full time in MMS' Denver office. We sought from Rick Cusick, Director of the Office of Government Ethics, a list of "best practices," which my top ethics officer reviewed for consistency with our own practices. As a result of these efforts, Mr. Cusick asked me to talk to 600 government-wide ethics officers about Interior's program. Inspector General Earl Devaney asked me to talk to all of the government's Inspector Generals about Interior's work at their annual conference.

2. Increased Deepwater Royalty Rates

Second, while I was Secretary, Interior not once, but twice, increased royalty rates that companies paid for energy produced from deepwater offshore leases. In 2007, we increased the royalty rate from 12.5% to 16.67%. In 2008, the royalty rate was again increased to 18.75%.

This is a 50% increase in royalty rates paid by oil companies for the right to produce oil and gas from federal waters. I can report to you that these increases came as a result of a conversation I had with President George Bush. He believed, and I agreed, that a 12.5% royalty rate was too low.

Partly because of these higher royalty rates and increases in energy prices, in 2008 the Interior Department disbursed from both offshore and onshore energy programs a record amount of money – more than \$23 billion as I recall – to federal, state, local and tribal governments. More than \$10 billion came from offshore oil revenues.

I would also note that not once, but twice, budgets that I submitted called for Congress to repeal sections of the 2005 Energy Policy Act that provided additional price incentives for deepwater oil and gas development. With today's energy prices, the Bush Administration believed these incentives were unnecessary. I still believe to this day that these incentives have outlived their usefulness.

3. Development of Five-Year Offshore Energy Plans

Third, as Secretary, I was required by the Outer Continental Shelf Lands Act to issue a 5-year plan covering the years 2007-2012 for offshore oil and gas development. Once we finished that plan it was, as required by law, submitted to Congress for a 60-day review. Congress had the power to reject that plan. Congress did not. In fact, as I recall, I don't think any legislation was even introduced calling for the plan to be rejected.

This plan was developed after extensive consultation with Members of Congress, state, local and tribal officials, industry, and environmental organizations. We received comments from more than 100,000 interested citizens. Seventy-five percent of the comments received from the public supported some level of increased access to the domestic energy resources of the Outer Continental Shelf. We gave great weight to the desires of coastal states regarding oil and gas development near their shores. I point out that this plan excluded oil and gas leasing near environmentally sensitive whale migration areas in Alaska. It also proposed for the first time leasing an area off the Virginia coast but only after I personally talked with the Governor of the Commonwealth of Virginia who requested, and I consented to, the area being no closer than 50 miles to Virginia's shores.

My five-year plan was developed with both draft and final Environmental Impact Statements. I brought these documents with me to show the amount of extensive environmental analysis invested in the 5-year plan. Both of these environmental impact statements were submitted to the public. The final EIS was submitted to Congress for its review as part of the 5-year plan.

A relevant fact is that these EIS's – along with environmental assessments and oil spill response plans – were based on the probability that a significant oil spill was small. The environmental impact statement used historical information and models. When the 2007-2012 five-year plan was written, there had not been a major oil spill in 40 years.

One very real consequence of the Deepwater Horizon accident is that these historical assumptions will be forever changed.

The historic information now includes the fact that the BP oil spill is the worst oil spill in US waters. All future environmental impact statements will have to take this fact into account as well as change the probabilities of such accidents occurring.

It is also my understanding that before I left office, a federal district court affirmed the adequacy of this environmental analysis. After leaving office, the D.C. Court of Appeals invalidated the part of the five-year plan that addressed oil and gas leasing in Alaska. The court said the Minerals Management Service was right to analyze the effects of impacts on the Alaska shoreline but had insufficiently analyzed the effect of drilling operations at well sites. The Salazar Administration went back to the Court of Appeals to insure the court had not invalidated the entire five-year plan. The court clarified its initial decision consistent with Secretary Salazar's understanding.

It is my understanding that development of leases already sold could continue and further non-Alaska leases could be sold while further environmental sensitivity analysis could be done. On March 31, 2010, Secretary Salazar released his preliminary revised program that I mentioned earlier.

It is also a relevant fact that in the five-year plan was the area that BP successfully bid on for its Deepwater Horizon operation. The process that was used to award that lease was the same process used to award thousands of other leases issued by both Democratic and Republican Administrations as established in regulations. The five year plan sets a schedule of lease sales. Energy companies submit sealed bids. The high bidder wins the lease after a process in which each high bid on a tract goes through an evaluation process to ensure the public receives fair market value before a lease is awarded.

It's my understanding that environmental Impact statements are also written for multi-lease sales. In the case of the BP lease sale, a further environmental assessment was approved by our then MMS Director, Randall Luthi. That environmental assessment was, as I understand, never legally challenged.

I mention this in part to show the extensive environmental analysis that was invested in the 5-year plan and lease sales. It is also clear, as I mentioned, that the historical assumptions these plans use will be forever changed to include the historical data of the BP oil spill.

4. Accelerated Development of Next Five-Year Plan to

Give The Next Administration More Lead Time To Develop Their Plan

A fourth policy development was that the Interior Department took action, as allowed by law, to give the next Administration a two-year head start in writing the next five year energy plan. Specifically, we issued a request to all parties that they comment on what the next five-year program should consider. The governors of all 50 states were to be asked for their comments, particularly on issues unique to each state.

I said at the time, and I quote “This initiative could provide a significant advantage for the incoming administration, offering options it would not otherwise have had until at least 2010. Today’s action would provide a 2-year head start for the next administration on developing a new five year program.”

I made the decision to not exclude any outer continental shelf area from consideration so that the next Administration would have a free hand to write its own plan.

5. Alternative Offshore Energy

A fifth significant development was taking steps to implement Congressional direction and further the work Secretary Norton set in motion to develop offshore wind, wave and ocean current energy. At the time, I believed, and still do, that this is a new energy frontier for the nation. Specifically, we issued the Final Programmatic Environmental Impact Statement for the Outer Continental Shelf Alternative Energy and alternative use program. We also announced an interim policy that would allow new facilities to test and collect data on alternative energy in federal offshore waters. I would also add that we emphasized the development of geothermal energy, and sold a record amount of geothermal leases during my administration.

6. Budgets and Coastal Impact Assistance

Part of my responsibility as Secretary was developing the Departmental Budget that includes the Minerals Management Service. In both budgets, the combined totals of appropriated funds and offsetting receipts were higher than when I took office.

Within the overall Minerals Management Service budget, funds for its regulatory program in the two budgets I submitted were \$2 million and \$1.4 million above levels set by Congress in the previous years, including both appropriations and offsetting receipts. Several increases specifically targeted the Gulf of Mexico and deepwater activities.

We also implemented a Coastal Impact Assistance program that shared more revenue from oil and gas leases with states adjacent to the development .of these offshore leases. This provided \$1 billion in additional revenue to six states over a four year period. In my last year in office, the Interior Department disbursed a record amount of onshore and offshore energy revenue –more than \$23 billion as I mentioned earlier – to federal, state, local and tribal governments.

Mr. Chairman, I close with two final thoughts.

First, as a former governor, I urge Congress and this Administration to work closely, hand-in-glove, with the Governors of Mississippi, Alabama, Louisiana, Florida and Texas. These Governors, Haley Barbour, Bob Riley, Bobby Jindal, Charlie Crist, and Rick Perry, are proven leaders, passionate about their states and their citizens, and pragmatic about finding solutions. They and can be essential allies to clean up the oil spill.

As a former Governor, I know what they are experiencing in the wake of this tremendous tragedy. They will be tremendous resources to restore damaged communities and natural resources.

Second, the consequence of the Deepwater Horizon accident is that it will forever change the offshore energy industry. Never again will a Cabinet Secretary take office and be told that more oil seeps from the seabed than has been spilt from drilling operations in U.S. waters. Never again will decision makers not include planning for events that might be low-probability events, but which, in the unlikely event they occurred, would be catastrophic.

With that, I will respond to your questions.