STATEMENT OF

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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE RESOURCES SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OVERSIGHT HEARING ON
"AVAILABILITY OF BONDS TO MEET FEDERAL REQUIREMENTS FOR MINING, OIL & GAS PROJECTS"

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Madam Chairman and Members of the Subcommittee, thank you for the opportunity to discuss with you actions the Department of the Interior is taking to ensure that federal bonding requirements, necessary to protect the public's interest in public lands, can continue to be met.

In order to protect the public lands, Congress has enacted several laws (and Federal agencies have developed regulations) requiring companies to demonstrate that they have sufficient financial resources to perform the reclamation and clean up of the site after completion of exploration, mining, and production activities. The Department of Interior's bureaus may require a reclamation surety bond or proof of other financial security prior to approving a plan of operation or issuing a lease or permit. For example, for onshore oil and gas leasing a minimum bond of $10,000 must be posted before any surface-disturbing activities related to drilling can begin. This bond is intended to help ensure compliance with all the lease terms including protection of the environment.

Earlier this year, the Department learned that due to significant losses in the surety industry after September 11, surety companies might stop writing new bonds, impose stricter underwriting criteria, set higher premiums for surety bonds, or increase collateral requirements. Any of these conditions could adversely affect the oil, gas or mining industry's ability to get bonds and operate on public lands.

DOI's Bonding Task Force

In response to these concerns, Secretary Norton formed a Bonding Task Force comprised of the bureaus under the Assistant Secretary for Land and Minerals Management [Bureau of Land Management (BLM), Office of Surface Mining (OSM), and Minerals Management Service (MMS)], the Secretary's Immediate Office (Alaska), and the Office of the Solicitor, to examine the scope and severity of the bonding issue and to develop recommendations to address identified problems.

As Chairman of this Task Force, I see an excellent opportunity to apply the guiding principles of Secretary Norton's 4 C's – Communication, Consultation, and Cooperation, all in the service of Conservation. Using the 4 C's, we hope to forge a more collaborative relationship on extractive industries' land use reclamation policies with State, local, and Tribal governments, environmental organizations, as well as the surety and mining industries. This will lead us toward our goal of managing our public lands in an appropriate manner, while providing adequate environmental protection and reclamation (including financial guarantees).

The three Interior bureaus – BLM, OSM, and MMS – all require financial guarantees in the form of surety bonds, cash or cash equivalents. In some cases, as in Alaska, bond pools have been established by States to meet these requirements. OSM and MMS allow for "self-bonding" and "third-party guarantees," while insurance is often required for unanticipated or catastrophic events.

Let me briefly describe the bonding requirements in applicable laws administered by the Department of the Interior:

- The Mining Law (the General Mining Law of 1872, 30 U.S.C.A. sec. 22-45) applies to "locatable minerals" such as precious metals and gemstones. While the law does not require bonds, the Department of the Interior requires 100 percent of the estimated reclamation cost to be secured by a bond.

- The Mineral Leasing Act of 1920 (30 U.S.C.A. sec. 181-287) applies to coal, oil, gas, phosphate, sodium, potassium, and other minerals and requires adequate bonds for bonus bids, onshore oil and gas surface and down hole operations and pipeline rights-of-way. By regulation, fixed bond amounts per lease for onshore oil and gas exploration are required.

- The Materials Act of 1947 (61 Stat. 681, as amended) applies to sand, gravel, and other common materials and does not require bonds for smaller sales and sales from community pits, although the land must be reclaimed as required by the sale contract or when mining is completed; the cost of reclamation is added to the cost of the material sold by the BLM. For larger sales the BLM may require a bond.

- The Outer Continental Shelf Lands Act of 1953 (67 Stat. 462), as amended (43 U.S.C. 1331, et seq.) applies to offshore oil and gas and allows for bonds. By policy, bonds are required to guarantee offshore end-of-lease activities such as plugging wells and platform removal.

- The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. sec. 1201-1328) applies to surface coal mining on public and private lands and requires performance bonds sufficient to cover 100 percent of the estimated reclamation cost.

- The Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701, et seq.), allows the Secretary to require a bond for Title V rights-of-way such as power lines or communication facilities.

- The Oil Pollution Act of 1990 (33 U.S.C.A. sec. 2701-2761) requires a showing of financial capability, which is frequently met with an insurance policy.

Each Bureau is now analyzing its bonding regulations to ensure they adequately protect the public interest. For example, the BLM is evaluating comments, including some on the lack of available surety bonds, on its final Surface Management regulations known as 3809. As part of the BLM's efforts to implement the President's National Energy Policy, the Bureau is working to complete final rules on bonding liability for onshore oil and gas operations. OSM, in May 2002, published an advance notice of proposed rulemaking seeking comment on issues related to bonding and other financial assurance mechanisms for treatment of long-term acid/toxic mine drainage. The comment period is being extended through October in response to stakeholder requests. MMS is studying the costs associated with removal of older offshore platforms to gauge if current bond requirements are sufficient.

The Task Force also has identified current levels of extractive activities for Department of the Interior-administered programs, and has estimated current financial guarantees for exploration and mining activities. This information follows my written statement.

The Task Force has also begun meeting with interested parties in relation to the challenges we face. So far we have met with members of the surety and mining industries who not only made us aware of its concerns but also gave us suggestions on how to tackle problems related to surety availability. We greatly value its insights into the problem and ideas for satisfactory solutions.

The Task Force will continue its communication with interested stakeholders, including environmental organizations, citizen groups, and State and local governments. Meetings with these groups are planned to be held between now and the end of August. At the conclusion of these meetings, the Task Force will report to the Secretary on the scope and extent of the problem, the concerns, insights and ideas of stakeholders, and recommendations for resolution of problems identified through communication with stakeholders and other interested parties. The plan is for the Task Force to submit its report by the fall.

Madam Chairman, this concludes my statement. I would be pleased to answer any questions that you may have.

Appendix A:

Current levels of extractive activity administered by the Department of the Interior

- 21,500 onshore "producible" oil and gas leases (out of a total of 48,600 leases)
- 7,500 offshore oil and gas leases
- 300 federal coal leases
- 203,000 mining claims
- About 80,000 producible, service, or temporarily abandoned onshore oil and gas wells
- Over 100 orphan wells
- 4,000 offshore platforms/facilities
- 23,000 active or temporarily abandoned offshore wells
- 8,500 inspectable units subject to Surface Mining Control and Reclamation Act
- 1,000 mining law plans of operations

Appendix B:

Face value of financial guarantees held by the Department of the Interior

BLM about 12,500 bonds for about $2.01 billion

MMS about 725 operations bonds for about $0.75 billion

MMS about 40 companies with $240 million in monetary appeals bonds and 17 self-bonded companies with $48 million

OSM about $570 million in estimated performance bonds

Non-DOI Financial Guarantees:

The face value of non-DOI-held financial guarantees, especially the amount of bonds held by individual states, is difficult to estimate. For example, state primacy under the Surface Mining Control and Reclamation Act (SMCRA) means that 24 States [each with its own program including 8 with Alternative Bonding Systems (ABS)] cover most of the bonding associated with surface coal mining in the United States. We do not have data on financial guarantees held by individual states.