United States Extractive Industries Transparency Initiative
Multi-Stakeholder Group Advisory Committee Meeting
April 23 – 24, 2014

Summary of Proceedings

U.S. Department of the Interior
Prepared: April/May 2014

I. Introduction

The U.S. Department of the Interior (DOI) convened the ninth meeting of the U.S. Extractive Industries Transparency Initiative (EITI) Multi-Stakeholder Group Advisory Committee (MSG) on April 23-24, 2014 in Washington, DC. The purpose of the meeting was to review and approve the draft Terms of Reference for the Independent Administrator, obtain updates on outreach efforts, the DOI Online Data Pilot, and State/Tribal opt-in, decide on next steps to advance from candidate to compliant country status under the EITI requirements. Presentations and discussions during the two days included the following:

- **Welcoming remarks** by Paul Mussenden, DOI
- **USEITI Multi-Stakeholder Group Business** by Paul Mussenden, DOI
- **International EITI Update** by Marti Flacks, U.S. State Department
- **Draft Terms of Reference for the Independent Administrator** by Greg Gould, DOI
- **Outreach and Communications** by Danielle Brian, Project on Government Oversight
- **DOI Online Data Pilot** by Paul Mussenden, DOI, Michelle Herzfeld, Debbie Tschudy, and Jon Swedin, Office of Natural Resources Revenue, DOI
- **State/Tribal Opt-in Process** by Greg Conrad, Interstate Mining Compact Commission, Veronica Slajer, North Star Group, and Jerry Gidner, DOI
- **Additional EITI Requirements for MSG Discussion & Future Consensus** by Greg Gould, DOI, Curtis Carlson, Department of the Treasury, Bob Reynolds, BP America, and Paul Bugala, Calvert Investments
- **Contextual Narrative Requirements** facilitated by Rachel Milner Gillers, Consensus Building Institute
- **Subcommittee Formation and Tasks** by Rachel Milner Gillers, Consensus Building Institute and Paul Mussenden, DOI

II. Summary of Action Items and Decisions

Action Items

- **Co-Chairs:**
  - Develop and provide direction to the subcommittees, including specific tasks to complete for the next meeting
- **DOI:**
  - Finalize new appointments/nomination process for Committee
  - Continue working to bring high-level DOI representative to June meeting

- Confer with legal counsel on whether they can send the first (joint MSG) communication to the reporting companies, providing background on EITI and requesting participation.
- Reach out to other DOI bureaus to start obtaining data
- Finish verifying list of reporting companies and provide to MSG when finalized
- Consider ways for citizens/groups to be testers of the online data pilot
- Contact all reporting companies to confirm they own the payor codes as identified by DOI, and what percent ownership they have of their companies

- **State/Tribal Subcommittee:**
  - Follow up with tribal contacts regarding specific nominations and coordinate with DOI on timing of publishing a notice for nominations in the Federal Register
- **Communications Subcommittee**:
  - Make edits to Communications/Outreach Plan requested by the MSG
  - Representatives from industry join the group to assist with outreach to reporting companies
  - Develop packet of information about USEITI and the MSG to provide when requesting/obtaining nominations
  - Develop talking points and a communication strategy for MSG outreach to all 590 companies to:
    - Introduce the EITI process and forthcoming compliance requests
    - Explain the Open Government Initiative and explain its relation to USEITI, etc.
    - Confirm their payor codes
- **Taxes working group**:
  - Consider concerns and questions from MSG
- **Contextual Narrative working group:**
  - Develop outline per MSG direction
- **CBI:**
  - Make Curtis Carlson's change to the July 2013 meeting summary; finalize all meeting summaries from 2013
  - Edit Contextual Narrative document per MSG discussion and post
  - Provide documents developed during the meeting, including draft summary

<u>Decisions</u>

- The MSG approved the adoption of the TOR.
- The MSG adopted the Communications Plan as its initial path forward on outreach, as a living document to be edited per MSG and subcommittee direction.
- The MSG agreed to sunsetting the Application Subcommittee, and approved the new set of subcommittees and working groups, to be given guidance by the MSG Co-Chairs via email after the meeting.
- The MSG adopted all 2013 meeting minutes as final.

III. Day 1 Presentations and Key Discussion Points: April 23, 2014

Mr. Paul Mussenden, acting Designated Federal Officer (DFO), U.S. Department of the Interior (DOI), opened the meeting, noting that Ms. Rhea Suh, DFO, was unable to attend the meeting but would be there at the next meeting in June. He asked for introductions around the room and on the webinar. Ms. Kim Oliver, Office of Natural Resources Revenues, provided a safety briefing and announced the breakout rooms.

Mr. Mussenden congratulated the MSG on the acceptance of its candidacy application by the EITI International Board, acknowledging the significant effort this took over the course of the previous year. MSG Co-Chairs Ms. Danielle Brian, Project on Government Oversight, and Ms. Veronika Kohler, National Mining Association, also congratulated the MSG and reflected on the good relationships they have developed.

A) US EITI MSG Business

- **Update on Nominations**

Mr. Mussenden introduced the MSG's newest member, Mr. Mike Matthews, State of Wyoming, who will serve as an Alternate for the Government Sector. Mr. Matthews described his background briefly. Mr. Mussenden recognized Mr. Walter Retzsch, American Petroleum Institute, who is retiring from his position as Alternate for the Industry Sector, for all his contributions to the MSG and the EITI process. On behalf of the Industry Sector, Ms. Kohler also thanked Mr. Retzsch, and nominated Johanna Tuttle from Chevron to fill Mr. Retzsch's position. She noted that Aaron Padilla, an industry sector MSG member formerly with Chevron Corporation, is now with the American Petroleum Institute and will remain on the MSG.

An MSG member had the following comment in response to Mr. Mussenden's presentation *(responses are indicated in italics):*

- Ms. Veronica Slajer, North Star, asked if the MSG could open up nominations for Tribal Sector seats. She requested the process for nominations be made clearer so she can better assist with outreach to tribal communities. *Mr. Gould, MSG Co-Chair, DOI, noted two seats have been held for the Tribal Sector, although previously there were no specific recommendations, and offered to discuss potential nominees with Ms. Slajer.*

- **Update on Charter Renewal**

Mr. Mussenden explained that the MSG charter must be renewed two years after it was signed on July 2012, according to Federal Advisory Committee rules. DOI is preparing an updated charter, to be ready prior to July 2014. It will extend for another two years, until July 2016.

- **International EITI Update**

Ms. Marti Flacks, U.S. State Department, offered her congratulations to the MSG on its new status as a Candidate Country. She summarized the meeting of the International EITI Board in Oslo, when the USEITI application was accepted. She related that the International EITI Board was very pleased with the quality of their application. She noted other updates, including Papua New Guinea and Ethiopia's acceptance as Candidate Countries as well. Iraq requested and was granted adapted implementation. The next meeting of the Secretariat will be July 1-2 in Mexico City. Burma and Columbia are expected to provide applications for candidate status at that meeting. Ms. Flacks concluded by encouraging MSG members to let her know if they will be

traveling internationally or if they see any potential opportunities to share experiences with representatives of another EITI country.

MSG members had the following comments in response to Ms. Flacks' presentation *(responses are indicated in italics):*

- Ms. Brian inquired about the International EITI Board's response to the U.S. proposal for adapted implementation, and for state/tribal opt-in. *Ms. Flacks explained she was not present for the Board's conversation, although a short summary of the meeting is forthcoming. The Board's decision is covered in the "Candidature Assessment – United State of America," which will be used to evaluate the U.S.'s adapted implementation. She did note the Board's concern about appearing to treat the U.S. as exceptional compared to other EITI countries. Mr. Gould, who went to Oslo to present the USEITI application, said the Board was impressed by the depth of information the U.S. already publishes online. Regarding adapted implementation, the Board understood the importance of publishing the first two reports in order to help the states see how the process works and how it can be beneficial.*
- Ms. Slajer requested an update from Ms. Flacks on the status of Australia and Canada's EITI implementation. *Ms. Flacks responded that Canada is not currently implementing EITI standards domestically; they have legislation underway similar to the Dodd-Frank Act. Australia completed its pilot in the fall, and will decide later this year whether to fully implement EITI standards.*

Ms. Kohler mentioned that a visit from a high-level U.S. official at an MSG meeting would be greatly appreciated. She acknowledged that DOI representatives have been working on this and requested they continue to do so. Mr. Mussenden stated he is trying to bring a high-level DOI official to the June MSG meeting, and also reminded the MSG of the briefings that DOI has conducted with the Secretary of the Interior, the National Security Council at the White House, as well as an interagency policy committee.

- **2014 Schedule and Milestones**

Mr. Mussenden reviewed the timeline to achieve compliance, including the requirement to publish a second report in December 2016. He pointed out there are half as many meetings scheduled for 2014 as there were in 2013, but the subcommittees will be working hard in between meetings. He explained that by the June 2014 MSG meeting, DOI will be further along in the process of procuring an Independent Administrator (IA). Over the summer, the subcommittees will be discussing issues that need resolution before the MSG can give the IA its recommendations for implementing the EITI process at the September 2014 meeting. The IA will then develop a plan for implementing the process, which the MSG will review at the December 2014 meeting.

An MSG member had the following comment in response to Mr. Mussenden's presentation *(responses are indicated in italics):*

- Ms. Brian inquired whether the June 2014 MSG meeting date is confirmed. *Mr. Mussenden responded that it is, and it has been announced in the Federal Register.*

B) Draft Terms of Reference for the Independent Administrator

Mr. Gould provided an overview of the Application Subcommittee's work, thanked its co-chairs, and explained how the group decided to remove the contextual narrative from the Terms of Reference (TOR) and address it separately. He reviewed DOI's process for obtaining an IA, including publishing a Request for Information (RFI). DOI received three responses to the RFI, two of which are on the relevant GSA schedule (GSA Schedule 520, Category 7), which will make contracting easier. He added that there were no responses from small businesses, so the Request for Quotes (RFQ), which is a competitive bid, will not be a Small Business Set-Aside. Mr. Gould stated that with the MSG's approval of the TOR at this meeting, its requested changes to the document will be made and the RFQ released the following week. The TOR serves as the MSG's direction to DOI for what the RFQ should include to meet EITI requirements. Using this direction, DOI will manage the procurement process. The DOI Technical Evaluation Committee will review and rank the responses to the RFQ in June, and in July, the DOI Contracting Officer will analyze this evaluation for price and technical capability. They will award the contract in August, after the DOI Solicitor's Office approves the final award package.

MSG members had the following comments in response to Mr. Gould's presentation *(Mr. Gould's responses are indicated in italics):*

- Ms. Slajer asked Mr. Gould to provide more information about why DOI is not setting aside the RFQ for small businesses. *Mr. Gould explained that if the government provides an opportunity for small businesses to express interest in a bid, and since no small businesses responded, they are not required to set it aside. Small businesses are still able to bid on the RFQ.*
- Mr. David Goldwyn, Goldwyn Global Strategies LLC, asked if the IA must be a U.S. company. *Mr. Gould replied that the company must be registered in the U.S. He later clarified that companies based in foreign countries that have trade agreements with the U.S. may bid, although the employees working on the project must pass a U.S Government background check, and have lived in the U.S. for a minimum of three years.*

Mr. Gould reminded the MSG that the goal of the TOR is to help ensure all EITI requirements are met, and that the TOR is a living document like all EITI documents. He then asked for sector comments on the TOR *(responses are indicated in italics).*

- Mr. Gould began the discussion of the TOR with the one Government Sector comment, a typo on page 8. With that change, the Government Sector declared its consensus on the TOR.
- From the Civil Society Organizations (CSO) Sector, Mr. Neil Brown with the Lugar Center asked for clarification of the MSG's role in the procurement process, specifically if the MSG will review proposals and provide input. He added that at a minimum, a description of how DOI decisions are made would be helpful. *Mr. Gould and Mr. Weiner, DOI Office of the Solicitor, explained the government cannot share the proposals with the MSG because the procurement process is a regulatory process that must follow legal requirements to ensure it is fair and defensible. Mr. Mussenden, DOI, added that DOI will continue to be proactive in sharing with the MSG as much information as possible about the procurement process.*
- Also from the CSO Sector, Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, proposed her view that there are two phases to the TOR: one is the procurement process, and the second is implementation, when there must be iterative

development of the report through close communication and interaction between the IA and the MSG and other stakeholders. *Mr. Gould noted the switch to the second phase will take place at the September MSG meeting.*

- There were no other comments from the CSO Sector.
- Ms. Kohler explained the Industry Sector's comments were already incorporated into the TOR, and there were no further comments.

➢ **Decision: The MSG unanimously approved the adoption of the TOR.**

C) Outreach and Communications

Ms. Brian thanked the Communications Subcommittee members for their work and the briefings they conducted across the country. She presented the draft Communications Plan for feedback, noting the proposed approach of creating individualized action plans for each major interest group. Ms. Amanda Lawson, Walter Energy Inc., requested the first communication to companies within the scope of USEITI come from DOI to the executive level within those companies. She also requested input from the MSG on how to broaden the geography of the outreach, and recommended that Publish What You Pay should be added to the outreach list. Mr. Bob Reynolds, BP America, emphasized the importance of reaching the executives within each reporting company, in order to accurately assess their company's level of acceptance.

MSG members had the following comments in response to Ms. Brian's presentation:

- In response to the suggestions that DOI send the first communication to the reporting companies, Mr. Gould expressed the government's concern that this could be seen as inappropriate in the context of a voluntary initiative. He recommended the industry sector initiate and lead outreach and communications with the reporting companies, and DOI limit its role to sending out major EITI announcements. Ms. Susan Ginsberg, Independent Petroleum Association of America, pointed out that not all reporting companies are members of trade associations, and the government may have better information about the reporting companies than industry does. She also indicated the importance of having a senior DOI official contact the companies in order to help achieve compliance with the EITI Standard. Mr. Goldwyn suggested a joint letter to the reporting companies to introduce them to the EITI process, signed by high level representatives of each sector so it will stand out from other communications.
- Mr. Goldwyn also proposed the MSG arrange to have a speaker or panel about EITI at major industry conferences such as CERA Week and the EIA Energy Conference. Mr. Keith Romig, United Steelworkers, mentioned the Platt's conference as another potential forum, and suggested publishing articles in trade publications.
- Regarding the talking points in the draft plan, Mr. Goldwyn encouraged greater emphasis on demonstrating to reporting companies what they will gain from complying with EITI standards – such as the ability to show the public what they contribute to the economy. Ms. Kohler pointed out that the Industry Sector has not yet conducted a cost-benefit analysis for EITI compliance, and that benefits might be different than in other countries because the U.S. industry is operating in a country with an already robust legal framework governing the sector including an audited reporting system ; however, industry members of the MSG are participating because they view EITI as an important initiative. Mr. Mussenden added his concurrence that the MSG needs to think through the

benefits to industry now that the process is farther along. Ms. Kohler also asked that "reporting companies" be made the first bullet under "Industry Participants." She reemphasized the Industry Sector's strong opinion that the first communication on EITI come not from industry but from the government, and that the MSG should begin focusing more on the importance of its communications with the reporting companies to achieving compliance.

- Mr. Brown requested DOI provide the MSG with the list of reporting companies, to help with refining the Outreach and Communications Plan. *Mr. Gould responded that DOI is working on confirming its data and checking what can legally be shared, before it can make the list available to the MSG, and Ms. Kohler added that the list changes from year to year. Mr. Mussenden clarified that DOI has the list of payors, but it are still developing the company-level data set.*

The MSG agreed to add a bullet: "Highlight industry's contributions to the economy at the federal, state, and local level," and that 80% of ONRR revenues come from oil and gas. It was also noted that "NGOs" should be changed to "CSOs," individual state governors and the US Chamber of Commerce should be added, and that additional strategic coordination and messaging across the federal government be conducted. Ms. Kohler requested the plan explicitly state that it is a "living" document and will continue to be updated. Ms. Brian suggested a representative of a trade association join the Communications Subcommittee. She also asked if the MSG agreed to move forward with this Outreach and Communications document, pending the inclusion of the edits and priorities emphasized at the meeting. The MSG agreed unanimously.

- **Action Item: The Communications Subcommittee will edit the Outreach and Communications Plan per MSG direction.**

- **Action Item: DOI will also confer with its legal counsel on whether the government can send a joint communication from the three sectors in the MSG to the reporting companies, providing background on EITI and requesting participation. DOI will also determine if the government can send a communication directly to companies.**

- **Decision: The MSG unanimously agreed to adopt the draft Outreach and Communications Plan as its initial direction to the Communications Subcommittee, with the edits discussed at the meeting.**

D) DOI Online Data Pilot

Mr. Mussenden introduced the topic of the DOI Online Data Pilot. The project is underway, and DOI would like feedback before it progresses further. Ms. Michelle Hertzfeld, Presidential Innovation Fellow at ONRR, gave an overview of DOI's goals for the project, which include making data accessible for those without any background, and also having more detailed and complex information that will be useful for those with technical expertise in this area. She noted their emphasis on infographics and interactive as well as map-based explanations. Ms. Debbie Tschudy, ONRR, described the team that is working on the pilot and how ONRR has historically collected and published data. She explained ONRR is committed to publishing online data disaggregated by company by the end of 2014. She also noted thatDOI is carrying out unilateral

disclosure as part of this pilot. Mr. Jon Swedin, ONRR, noted the most current data DOI can publish will be from 2013, and went over the thresholds for reporting companies. He also added that ONRR is working with DOI's solicitors to confirm DOI would not be releasing data considered proprietary under the Trade Secrets Act, and whether to aggregate data for those companies with only one mine and one commodity, and those whose revenues are less than $100,000/year. He showed an example of a unilateral disclosure report. Ms. Tschudy concluded the presentation by explaining that ONRR will be coordinating with its sister agencies at DOI - BLM, BOEM, and BSEE - to add their data to future reports. The report in December 2014 will include only ONRR's data. Ms. Hertzfeld also showed the MSG examples of the different tools and graphics they are developing.

MSG members had the following comments in response to the DOI Online Data Pilot and Unilateral Disclosure presentation *(responses are indicated in italics):*

- Mr. John Harrington, Exxon Mobil Corporation, asked to confirm that the data DOI is disclosing is only from revenue generated on federal lands, and not tribal lands. *Mr. Swedin confirmed that the data does not currently include tribal revenues.*
- Mr. Curtis Carlson, Department of the Treasury, asked about ONRR's level of confidence in its identification of the companies that own each payor code. *Mr. Swedin agreed this is a concern, and ONRR will review its methodology with industry.*
- Ms. Kohler asked if ONRR will share the template for unilateral disclosure with the reporting companies. *Mr. Swedin and Mr. Mussenden responded that ONRR could likely share the unilateral disclosure template with reporting companies, and noted that the pilot is still in its preliminary phases, so ONRR hasn't laid out yet all the steps it will take, and appreciated the input on what those steps should be.*
- Mr. Paul Bugala, Calvert Investments, asked for clarification on how ONRR will address project-level reporting in its pilot, and the legal basis for the concern that one mine / one commodity data is proprietary and thus should be aggregated into one line. *Mr. Gould responded that the Online Data Pilot will include only company-level data, not project-level data, while in the meantime, the MSG would work on defining how project-level reporting should function. Regarding the proprietary data, ONRR learned of this potential concern from the MSG. Mr. Lance Wenger, DOI, explained that ONRR is attempting to create a product that will avoid legal challenges, and releasing data on an individual or company with a single mine was getting too close to the line of what is confidential under The Trade Secrets Act. Ms. Tschudy noted the potential to combine what ONRR would release with what is already publicly available was what could cause competitive harm by revealing unit price information.* Mr. Aaron Padilla, API, suggested the MSG may want to hire common legal counsel, and offer to meet with legal departments of reporting companies to reach mutual understandings of the Trade Secrets Act.
- Mr. Padilla also questioned whether ONRR was missing an opportunity to design the online data portal appropriately from the beginning, by not including other DOI agencies' data from the beginning, and offered to assist with outreach to the other agencies. *Mr. Gould explained they will be reaching out to these agencies immediately. Ms. Herzfeld also stated that the website is being designed to expand easily, and uses open source software so it can be more easily used by others.*

- Mr. David Goldwyn, Goldwyn Global Strategies LLC, stated that any issues of dispute pertaining to enforcement of the Trade Secrets Act could be resolved by referring the issue to the Department of Justice Office of Legal Counsel.
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- Mr. Reynolds suggested ONRR could aggregate data on privately-held corporations, because they might be more sensitive to potential legal issues.
- Ms. Taylor applauded ONRR's work so far, and suggested they could take notes on their insights and reflections as they develop the pilot, so the MSG can learn from this experience as they build out their EITI reports. She also encouraged ONRR to involve citizens or civil society groups to test the data portal.

➢ **Action Item: ONRR will contact all reporting companies to confirm they own the payor codes as identified by DOI, and what percent ownership they have of their companies.**

➢ **Action Item: The Communications Subcommittee will provide talking points, after they are approved by the MSG, to ONRR for use in reaching out to reporting companies.**

Contract Disclosure
Mr. Charles Norfleet with BOEM gave examples of contract disclosure and other activities as conducted by BOEM for its offshore oil and gas leases. He highlighted how each BOEM region publishes its data differently, as a result at least in part of varying data availability.

MSG members had the following comments in response to Mr. Norfleet's presentation *(responses are indicated in italics):*

- Ms. Taylor asked if BOEM's process of publishing data could be captured as a case study illustrating the costs and benefits of this effort. *Mr. Norfleet indicated his view that the benefits outweigh the costs.*
- Mr. Reynolds asked how frequently BOEM's online data is updated. *Mr. Norfleet responded that their data is updated on a monthly basis.*

E) State/Tribal Opt-In Process
Mr. Greg Conrad, Interstate Mining Compact Commission, as one of the leaders of state and tribal outreach, described the status of and next steps for the process of moving toward subnational opt-in to the USEITI process. Now that the U.S. is a Candidate Country, the outreach working group is engaging in more robust communication with the States, expanding its contact base, and assessing States' concerns. He provided the MSG with a handout summarizing key issues for the States, for the MSG to respond to and incorporate into the Outreach and Communications Plan. He noted that USEITI compliance could succeed or fail based on how the MSG addresses subnational reporting. Mr. Conrad also stated that their working group is also addressing tribal coordination, and introduced Jerry Gidner, DOI, to discuss his work leading the government's outreach to tribes about the EITI process.

Mr. Gidner explained that the tribal effort is somewhat behind state outreach; however, most of the concerns listed in the letter from the Western Governors' Association (WGA) to the MSG are

likely also true for the tribes. He noted that the working group needs an Industry Sector representative, and the MSG should have tribal representation, especially now that the U.S. is a Candidate Country. Ms. Slajer reported her understanding that DOI will announce another nominations period in the Federal Register, with a 45-day window. The tribal working group will reach out to the tribes to find nominees.

MSG members had the following comments in response to the presentation *(responses are indicated in italics):*

- Ms. Brian proposed narrowing down the materiality threshold for States so the MSG has a more realistic idea of how many may be involved. *It was noted the materiality threshold may be different for states, but the scope will likely be the same. About 11 states comprise 75% of state revenue from extractives, so the MSG could begin with those states. Mr. Gidner pointed out that the situation is similar for tribes.*
- Ms. Kohler asked if DOI will cover the costs of reconciling state and tribal data (i.e., the additional work for the IA). *Mr. Gould confirmed DOI will pay for reconciling state and tribal data.*

➢ **Action Item: The Tribal Opt-in Working Group will seek to secure nominations from tribal communities for representatives on the MSG, and work closely with DOI on the timing of a notice for nominations in the Federal Register.**

➢ **Action Item: The Communications Subcommittee will develop a packet of information about the MSG to provide to tribes when requesting/obtaining nominations.**

The group confirmed that the Application Subcommittee's work was complete.

IV. Day 2 Presentations and Key Discussion Points: April 24, 2014

A) Meeting Summary Approvals

Mr. Mussenden asked if the MSG had any input on the meeting summaries from 2013. Mr. Carlson submitted an edit to the July 2013 meeting summary, and Ms. Brian noted that Mr. Goldwyn's name was misspelled in the November 2013 summary.

➢ **Action Item: Mr. Carlson will provide his edit to the July 2013 meeting summary to CBI, and CBI will make the change as well as the change to the November 2013 summary from Ms. Brian.**

➢ **Decision: With the changes from Mr. Carlson and Ms. Brian, the MSG adopted the meeting summaries from 2013.**

B) Additional EITI Requirements for MSG Discussion & Future Consensus

Ms. Rachel Milner Gillers, facilitator with the Consensus Building Institute, introduced the presentations with the preface that they are a preview of the work that the MSG will do over the course of the year. The goal was not to resolve or thoroughly discuss these issues at this meeting, but rather, to remind the MSG of the issues, and the plan thus far for addressing them. Mr. Gould

gave an overview of the issues to be discussed: taxes; account period; and project-level reporting. He suggested the goal of providing MSG recommendations on these topics to the IA in September. Working groups will be formed to develop these recommendations.

Taxes

Mr. Carlson gave a presentation on the issues related to federal income tax reporting if the MSG decides to pursue reconciliation. His presentation included the following main points:

- Reconciliation would take place only for C corporations, because they are the only ones that pay federal income taxes directly (others – S corporations, etc. – are pass-through businesses and it isn't possible to reconcile their taxes).
- A firm's consolidated tax group may have income from other sources besides extraction that will have to be parsed out.
- The IRS is not permitted to discuss a company's tax return with a third party without permission. The IRS could not talk to a reconciler about a firm's tax payment information to clear up a potential discrepancy between what the government reported to the reconciler and what a firm reported to a reconciler. For example, if the IRS recorded a payment in one accounting period and a firm reported it in another period, the IRS would need permission from the company to talk to the reconciler about the dates of the payments.
- Companies would have to provide information to the IA to connect their entity-level reporting up to the financial reporting entity.

MSG members had the following comments in response to the presentation *(responses are indicated in italics):*

- Mr. Harrington asked if the subcommittee will need to discuss how to differentiate payments companies make to the IRS that are *not* tax payments, such as fees and penalties, but that are material. *Mr. Carlson agreed this will need to be discussed, although those payments are coded such that the necessary information can be found.*
- Mr. Phillip Denning, Shell Oil Company, raised the fact that the Securities and Exchange Commission (SEC) published guidance that companies can report consolidated payments on their tax return, and this part of the original Dodd-Frank rule was not addressed by the District Court in its decision vacating the rule and therefore will likely still be applicable.
- Ms. Kohler asked if the MSG can decide on a reporting request for USEITI that matches what the SEC will request in the revised Dodd-Frank rule. *Mr. Carlson confirmed this is the goal despite the fact that corporations have different consolidation rules for financial and tax reporting. Corporate groups file consolidated (combined) financial reports and tax returns. The consolidated filings and returns show measures of income, expense, and tax for the group as a whole, rather than for each member of the group separately. Financial reporting standards and tax laws provide very different rules for when related corporations should be combined for reporting.*
- Mr. Roper asked for clarification on whether payor companies would request their tax transcript from the IRS and provide that to the IA. *Mr. Carlson responded that this would likely not work. The payor company would likely turn its transcript over to someone at the IRS or the Treasury who would pull out relevant information and provide it to the IA. It was also noted that payors can't currently request a transcript only for certain codes.*
- Ms. Brian asked if Form M, which includes an explanation of the differences between how companies report their tax payments to the SEC versus to the IRS, could be useful.

Mr. Carlson stated that Form M only addresses consolidated returns by individual entities for tax purposes, and is not sufficient for EITI purposes.

- Mr. Harrington pointed out that DOI will be reaching out to all reporting companies to confirm their payor codes, and the Treasury will need similar information – so perhaps these outreach efforts should be coordinated to minimize redundant communications to the companies.
- Ms. Kohler and Ms. Ginsberg asked if, in other sectors in the U.S., requests to the government to release confidential information have increased a company's liability or likelihood that it will be expected to provide other confidential information to other entities. *Mr. Carlson did not expect that reporting certain information would increase a company's liability. Ms. Milner Gillers suggested the subcommittee could discuss this.*

Accounting Period

Mr. Reynolds gave an overview of the different options available to use as the EITI reporting/accounting period, noting the International EITI does not provide guidance on this. He stated that the calendar year may seem clear, whereas fiscal years may seem unclear because they vary. He explained that Dodd-Frank references a company's fiscal year, so the companies can use whatever accounting period they already use. However, it is harder to make comparisons across entities if they are all using variable reporting periods. It is also very important to be able to reconcile across initiatives, such as between Dodd-Frank/SEC and EITI. He suggested the MSG should seek to find a definition for the accounting/reporting period that causes the least hindrance to compliance.

MSG members had the following comments in response to the presentation *(responses are indicated in italics):*

- Mr. Gould expressed his concern with the idea of allowing companies to use their own financial reporting periods, if they are different from DOI's, because companies' numbers will not line up with DOI's. *Mr. Reynolds stated that someone is going to have to do extra reconciliation. The question is who carries that burden, and trying to make it as small as possible.*
- Mr. Romig asked for clarification on whether companies can have different fiscal years from what they use for their SEC reporting. *Mr. Carlson confirmed this and said that companies can decide their reporting period for IRS purposes.*
- Mr. Roper pointed out that another consideration is state reporting periods, which often don't line up with either the calendar year or the federal government's fiscal year. He suggested trying to minimize the extra time required for the states to align their reporting.
- Ms. Kohler emphasized the importance of aligning with Dodd-Frank's reporting period because of the confusion that would exist if the government had two revenue transparency initiatives publishing different numbers for the same payments. *Ms. Milner Gillers proposed that all sectors share an interest in avoiding two different sets of numbers and there should be close coordination between the Industry Sector and the Government Sector.*

Project-Level Reporting

Mr. Bugala summarized the different parameters set out thus far related to project-level reporting in the EITI Standard, the USEITI Application, the TOR, best practices, and pending laws, which the subcommittee should consider. These include the following:

- EITI Standards require credible assurance that the U.S. process is applying international standards. The MSG is required in Section 5.2.e to agree to the level of disaggregation of the data published. EITI data is to be presented by individual company. Government entity and revenue stream reporting at the project-level is required if this is consistent with rules and requirements of the SEC and the forthcoming European Union requirements.
- The USEITI Application states that voluntary, project-level reporting is permissible if consistent with the Trade Secrets Act.
- The TOR for the IA states that reporting should be as proposed by the MSG and the U.S. Candidacy Application, and should clearly indicate the MSG's decisions and the related legal requirements in Dodd-Frank and European Union Accounting and Transparency Directives.
- An examination of best practices related to project-level reporting may be useful.
- A decision on project-level reporting should be made by the September meeting.

MSG members had the following comments in response to the presentation *(responses are indicated in italics):*

- Ms. Brian asked what the MSG would do regarding project-level reporting if the SEC hasn't finalized its rulemaking by September. *Mr. Gould stated the MSG should track the SEC's progress, and have a good idea of what the MSG wants to do regarding project-level reporting by September – however, the MSG does not need to make a decision on this until December 2015. Mr. Bugala added that the EU's process is also still being finalized, but that there is a significant body of information created already that can guide the MSG. He also noted that the last version of the Dodd-Frank Act did not define project for the purpose of project-level reporting.*
- Ms. Ginsberg and Mr. Harrington expressed concern about the feasibility of reporting data at too granular a level, and Ms. Ginsberg requested more information on related best practices.
- Mr. Harrington briefly touched on the API's proposal for subcommittee consideration that focuses on defining project at the state level

C) Contextual Narrative Requirements

Ms. Milner Gillers explained the task for the MSG in reviewing the work group's first draft outline of the contextual narrative. Before the meeting, the work group developed a spreadsheet with the list of EITI requirements in the left column, and the work group's ideas related to each section in the column on the right. The work group used orange-colored text for areas they proposed needed further discussion in the work group. The task of the MSG was to review the spreadsheet together and confirm whether members were in agreement on the rest of the text, in black, or if some of it needed to be changed to orange and discussed further – and whether there were items the work group thought needed further discussion that the MSG was actually in agreement on (so could be changed to black). This was intended to help confirm and narrow down the MSG's direction to the work group coming out of the meeting.

Mr. Conrad briefly reviewed a few considerations the work group kept in mind when they were compiling the contextual narrative spreadsheet: data availability; data quality; data quantity; and interoperability between datasets. If the MSG has a concern about data availability related to meeting a particular requirement, they should mark the far right column of the contextual narrative.

Ms. Milner Gillers also explained that the spreadsheet included columns for whether each item in the contextual narrative was a requirement, recommended, or encouraged. Ms. Flacks, based on her insights from discussions with the International EITI, stated the difference between "recommended" and "encouraged" in the EITI requirements is very small, and the words "must" and "should" are used interchangeably.

- The "recommended" and "encouraged" columns were merged.

Ms. Brian asked Ms. Flacks to discuss the relative weight of EITI principles and EITI requirements. Ms. Flacks responded that the founding principles of the organization are not a checklist to be followed, but are intended to inform all EITI decisions. The International EITI Board will review the USEITI report based on the requirements, but the MSG should make its decisions with the EITI principles in mind.

The group worked through the spreadsheet line by line, not getting into discussions about each item, but instead, explaining the basic view of each sector and deciding whether there was agreement or not.

<u>Changes to the Contextual Narrative Outline:</u>

- The description of the EITI process: the group decided this might not need to be included in the contextual narrative. It is required in the work plan.
    - This was changed to orange.
- 3.2a: the Industry Sector wanted to have less politicized language than "subsidy," and find a term that more completely encompasses the possible options. "Tax policy" was suggested; however, CSOs pointed out this would not address all the laws intended to be covered. Mr. Roper also did not understand the need to describe the calculation of Fair Market Value in coal, oil, and gas.
    - Change to orange: "subsidies/royalty relief" and the parenthetical on Fair Market Value
- 3.2a continued: The CSO Sector did not understand why this text was in orange. Mr. Harrington explained this topic seemed to imply the first report would include lengthy descriptions of the laws of each state. Mr. Gould and Ms. Taylor suggested this section was intended to be a high level legal/revenue structure overview, for those states that have high levels of extraction (perhaps six to eight states). Ms. Taylor offered to try to put together a first draft, to help share best practices across states. Ms. Brian noted that a basic analysis of differences between states seems necessary.
    - Put "?" in Data Availability box next to orange text on "Legal Frameworks and fiscal regimes."

- 3.2b: Mr. Harrington explained the Industry Sector's question was what should be included as a reform effort. The group went back to the requirement language and considered what is really needed for this section.
    - Delete orange text and replace with black text: Requirement language cited
- 3.4a: By adding "where publicly available," the concern about including mention of the size of tribal, subnational, and regional industries was allayed.
    - Change to black: "Tribal, Subnational, Regional" and add "where publicly available; and add "?" in Data Availability
- 3.4b (both rows):
    - Change to black, add "where publicly avail," and add "?" in Data Availability
- 3.4c: Mr. Harrington expressed his concern about obtaining data on exports from tribal and subnational industry.
    - Change to black, add "where publicly avail," and add "?" in Data Availability
- 3.4d:
    - Note that working group should define what is meant by "employment"
- 3.4e (second row):
    - Change to orange
- 3.5a and b: Mr. Padilla noted that pricing information is proprietary. Ms. Taylor expressed the desire for price trend information, and Mr. Gould pointed out that this level of detail is already included in the EITI requirement.
    - Replace text in Work Group Ideas column with "Requirement language cited"
- 3.7b: It was clarified that this is not required, but rather, encouraged.
    - Change to black
- 3.8 (all rows): Mr. Harrington clarified the intent for this is to address state and tribal revenues. For 3.8c, Ms. Taylor noted the CSO Sector's goals of discussing revenue sustainability and resource dependence to assist with long-term planning. Mr. Harrington explained the Industry Sector's concern that this might not be feasible to include for the state and tribal reporting. It was clarified that this could be high level, and there are already existing indicators that could be used. The MSG would not be responsible for generating the information.
- 3.9c: Mr. Gould explained that DOI already has a registry and is expanding it.
    - Change to black
- 3.10b: It was confirmed that qualified bidders lists are published.
    - Change to black
- 3.11c: Mr. Harrington explained that he did not see how to make this relevant and useful in the U.S. It was decided 3.11a and b might be relevant, but Ms. Flacks confirmed 3.11c was not as it refers to state-owned enterprises.
    - Delete/change to gray
- 3.11d: The group still needs to discuss how to define beneficial ownership, although it may not be in this section of the Contextual Narrative. Ms. Flacks clarified that if the U.S. tries to disclose this but is unsuccessful, they will not be penalized.
    - Make orange text in italics as placeholder
- 3.12a: The group noted this effort is already underway; however, the narrative should have a more bounded scope in order to be realistic.
    - Delete "any" and add "when publicly available" and change to black
    - Need to add requirement 4

D) Subcommittee Formation and Tasks

Mr. Mussenden explained that the MSG Co-Chairs had spent a significant amount of time discussing the proposed next steps for accomplishing the MSG's work. They developed a proposed reformulation of the subcommittees and working groups, as follows:

- Implementation Subcommittee
  - Contextual Information Working Group
  - Project-Level Reporting Working Group
  - Taxes/Account Period Working Group
- Communication Subcommittee
  - Payor Companies
- State/Tribal Opt-in Subcommittee

They also proposed an initial list of MSG representatives for each group. Mr. Gould acknowledged the significant overlap in tasks between subcommittees, explaining this would be addressed by constant coordination between them. Mr. Brown asked whether the Communication Subcommittee or the State/Tribal Subcommittee would carry out the actual outreach to the states and tribes. Mr. Mussenden suggested the subcommittee chairs would make this decision.

Mr. Mussenden asked for MSG agreement on the subcommittee formation, and asked if the Co-Chairs could propose specific direction to the subcommittees via email after the meeting. The MSG agreed to this.

- **Decision: MSG agreed the MSG Co-Chairs can develop and provide direction to the subcommittees, including specific tasks to complete for the next meeting.**

The group was reminded the next meeting is June 10 – 11, 2014, and the materials from this meeting would be distributed.

V. Public Comment

Ms. Marinke van Riet, Publish What You Pay - International, provided public comment via webinar on behalf of their global coalition. She commended the USEITI MSG for the openness and transparency of their meetings, and the ability to participate remotely. She strongly recommended that USEITI include project-level reporting and beneficial ownership in its first report, as this is the new global standard. Ms. van Riet suggested the U.S. has the opportunity through its leadership to negate the idea that transparency is only needed in the global south.

Ms. Jana Morgan, Publish What You Pay – United States, congratulated the MSG on the acceptance of the U.S. as a Candidate Country. She called on the MSG to require disaggregated reporting by project and company, in line with the new EITI Standard. She stated that allowing companies to remain anonymous does not meet these standards.

Ms. Corinna Gilfillin, Global Witness and member of the International EITI Board, reinforced the points made by Ms. Flacks earlier in the meeting, that the "shoulds" and "musts" in the standards are interchangeable. She also highlighted that the MSG is required to document what they have considered and how they make their decisions. She urged the MSG members to be leaders and adopt all recommended and encouraged elements of the standards. She noted that many companies participating in the MSG were also part of the European Union negotiations, where they agreed to project-level reporting and beneficial ownership, so she hoped this would lead to the MSG adopting these elements as well.

VI. Meeting Participants

The following is a list of attendees from the April 23 – 24, 2014 EITI meeting.

Chaired by Paul Mussenden, alternate Designated Federal Officer for the USEITI Advisory Committee, U.S. Department of the Interior.

Participating Committee Members

Civil Society
Rebecca Adamson, First Peoples Worldwide
Danielle Brian, Project on Government Oversight, USEITI MSG Advisory Committee Co-Chair
Paul Bugala, Calvert Investments
Keith Romig, Jr., United Steelworkers
Veronica Slajer, North Star Group

Government
Curtis Carlson, Department of the Treasury
Greg Conrad, Interstate Mining Compact Commission
Greg Gould, Department of the Interior, USEITI MSG Advisory Committee Co-Chair
Mike Matthews, State of Wyoming
Mike Smith, Interstate Oil and Gas Compact Commission

Industry
Phillip Denning, Shell Oil Company
Susan Ginsberg, Independent Petroleum Association of America
Veronika Kohler, National Mining Association, USEITI MSG Advisory Committee Co-Chair
Aaron Padilla, Chevron Corporation
Robert Reynolds, BP America
Brent Roper, Rio Tinto

Committee Alternates in Attendance

Civil Society
Neil Brown, The Lugar Center
David Goldwyn, Goldwyn Global Strategies, LLC
Laura Sherman, Transparency International - USA
Betsy Taylor, Virginia Polytechnic Institute and State University

Government
Debbie Tschudy, Department of the Interior

Industry
Chris Chambers, Freeport-McMoRan Copper & Gold Inc.
Nick Cotts, Newmont Mining
John Harrington, Exxon Mobil Corporation
Amanda Lawson, Walter Energy Inc.
Walter Retzsch, American Petroleum Institute
John Sardar, Noble Energy Inc.

Government and Members of the Public in Attendance

Tawny Bridgeford, National Mining Association
Lauren Catipon, BP
Rosita Christian, Office of Natural Resources Revenue
David Cohen, Chevron Corporation
Jeff Collins, Chevron Corporation
Angela Dozier, Office of Natural Resources Revenue
Ryan Ellis, Interstate Mining Compact Commission
Marti Flacks, US State Department
Jerry Gidner, Department of the Interior
Corinna Gilfillin, Global Witness
Cory Gill, Goldwyn Global Strategies, LLC
Jennifer Goldblatt, Department of the Interior
Anita Gonzales-Evans, Office of Natural Resources Revenue
Jennifer Heindl, Department of the Interior's Office of the Solicitor
Michelle Hertzfeld, Office of Natural Resources Revenue
Alex Hume, Grant Thornton
Sherry Kaswell, Department of the Interior's Office of the Solicitor
Susan Lang, Department of the Interior
Michael LeVine, Oceana (by webinar)
Ruby Minor, Office of Natural Resources Revenue
Aaron Mintzes, Earthworks
Chris Mentasti, Office of Natural Resources Revenue
Jana Morgan, Publish What You Pay - US
Johanna Nesseth, Chevron Corporation
Charles Norfleet, Bureau of Ocean Energy Management
Kim Oliver, Office of Natural Resources Revenue
Mia Steinle, Project on Government Oversight
Jon Swedin, Office of Natural Resources Revenue
Katie Sweeney, National Mining Association
Marinke van Riet, Publish What You Pay – International (by webinar)
Jim Weiner, Department of the Interior's Office of the Solicitor
Lance Wenger, Department of the Interior

Matt Williams, Office of Natural Resources Revenue
Judy Wilson, Office of Natural Resources Revenue
James Witkop, Office of Natural Resources Revenue

Facilitation Team
Elana Kimbrell, Kearns & West
Rachel Milner Gillers, Consensus Building Institute

VII. Documents Distributed

- Agenda
- Terms of Reference for the Independent Administrator
- Communications Plan for USEITI Outreach
- State Participation in EITI
- Letter from WGA and DOI Response
- EITI Contextual Narrative Requirements (MSG Discussion Document)

VIII. Certification

Interested parties are asked to contact USEITI at useiti@ios.doi.gov or 202-208-0272 with any questions, comments, or concerns regarding the content of this meeting summary.