

**United States Extractive Industries Transparency Initiative
Multi-Stakeholder Group Advisory Committee Meeting
September 10, 2013**

Summary of Proceedings

U.S. Department of the Interior

I. Introduction

The U.S. Department of the Interior (DOI) convened the sixth meeting of the U.S. Extractive Industries Transparency Initiative (USEITI) Multi-Stakeholder Group (MSG) Advisory Committee via teleconference on September 10, 2013. The purpose of the meeting was to finalize and approve a draft of the U.S. candidacy application to post for public comment and to discuss Fall 2013 USEITI outreach activities. The meeting included a discussion about MSG business items, a process for reviewing and commenting on the draft candidacy application, a discussion about outreach plans around the candidacy application, and an opportunity for public comment.

II. Summary of Action Items and Decisions

Action Items

Department of the Interior:

- Send meeting summaries / minutes from May, June, July, and September to co-chairs for review and then post on Oct 1 or 2.
- Finalize and post information, including meeting times and locations, for EITI public and tribal outreach meetings in Federal Register and on website.
- Work with co-chairs and Pat Field to create agenda for October 1-2 MSG meeting in Washington DC.

Subcommittee:

- Review the cost estimates in the country work plan and refine, as needed, prior to the December meeting
- Consider further refinements to the language about the Trades Secrets Act, if needed
- Consider the subnational and federalist system language in the document and particularly the adapted implementation request to provide potential further explanation for the international secretariat

All MSG members:

- Spread the word regarding the nominations process to be considered as Committee members and/or alternates to serve on the USEITI MSG.
- Conduct outreach to encourage broad public participation in upcoming EITI outreach meetings.

CBI:

- Schedule phone calls for dry runs of presentations to be made at EITI outreach meetings.

Decisions

- The MSG approved the draft U.S. candidacy application for posting in order to solicit public comment on the draft.

III. MSG Business

Acting chair Karen Senhadji, Senior Advisor to the Assistant Secretary, Policy, Management and Budget, and alternate Designated Federal Officer for the USEITI MSG Advisory Committee, U.S. Department of the Interior (DOI) opened the meeting. She conducted a roll call of meeting participants and introduced Mr. Patrick Field from the Consensus Building Institute (CBI) as the facilitator for the meeting. Mr. Field reviewed the agenda for the meeting, and noted that Mr. Tushar Kansal from CBI would be taking notes and providing a summary of the meeting. He noted that the call would be recorded.

Ms. Karen Senhadji, noted that DOI is completing review of meeting summaries from previous meetings held in May, June, and July. DOI will send those summaries, along with the September summary, to the MSG Co-Chairs for review by their sectors and intends to approve the summaries for posting during the next MSG meeting on October 1st and 2nd.

Ms. Senhadji provided the following updates about appointments to the MSG:

- Aaron Padilla from Chevron Corporation is a new appointee as an alternate, joining the industry sector.
- Nicholas Cotts from Newmont Mining is a new appointee as an alternate, joining the industry sector.
- John Harrington from Exxon Mobil Corporation will move from being an alternate to being a primary member, in the industry sector.
- Marina Voskanian from the California State Lands Commission is a new appointee as an alternate, joining the government sector.

Ms. Senhadji also noted that the nominations period for appointments to the MSG is currently open and encouraged current members to urge their colleagues to consider applying to join the MSG. The Federal Register notice about the nomination process has been posted and the deadline for nominations is September 30. Ms. Senhadji, Ms. Danielle Brian, and Ms. Veronika Kohler expressed appreciation for the hard work and contributions of staff members assisting their respective sectors, including the following individuals: Malka Pattison, Kim Oliver, Rosita Compton Christian, Jennifer Goldblatt, Chris Mentasti, Mia Steinle and Misty Seemans.

IV. Presentations and Key Discussion Points

The MSG reviewed the sections of the draft candidacy application, as summarized below, with the goal of completing a draft document to be made available for public comment from approximately September 15 to November 1.

A) Overview

Ms. Karen Senhadji, DOI, explained that the purpose of the candidacy application is to demonstrate how the United States has worked hard to fulfill the requirements for its candidacy to the EITI. She recounted that the MSG has discussed what types of materials should be within scope and what areas the USEITI would report on and how it would report, and has examined federal, local, and tribal requirements. The sectors have worked together to create a solid working draft that demonstrates the cooperation of the MSG and that the MSG has moved beyond the minimum requirements for EITI candidacy. Ms. Senhadji noted that the document is not a final document, and is intended to be a draft document that the MSG can put before the public for comment. The public comment process will include public listening sessions and extensive outreach, and the MSG will have a chance to consider the public comments that are received in order to create a final draft of the candidacy application that will be submitted to the international body at the end of the year. Ms. Senhadji also explained that, in order to solicit expert advice, the co-chairs have considered inviting members of the EITI Secretariat to the October MSG meeting. Ms. Senhadji thanked the subcommittee and everyone else for the hard work that they have put in to create the draft candidacy application over the summer.

Ms. Senhadji added that, subsequent to the latest subcommittee draft of the candidacy application being distributed to MSG members the morning of the MSG meeting, the industry sector proposed an amendment to the language of the document. In order to allow the MSG to consider those proposed revisions, a version of the draft application that includes the proposed edits would be displayed on the WebEx accompanying the teleconference and that the proposed revisions would also be read aloud.

Ms. Veronika Kohler, National Mining Association and USEITI MSG co-chair representing the industry sector, expressed support for discussing the draft candidacy application as a “draft” document, noting that the industry sector would still like to see some changes made to the document. She also stated that, since the MSG includes representatives from industry, civil society, and various government agencies, hopefully the interests of a broad range of public opinion will already be represented in the draft document and that the document will demonstrate the MSG’s due diligence.

Ms. Danielle Brian, Project on Government Oversight and USEITI MSG co-chair representing the civil society sector, echoed Ms. Kohler’s recognition of the document as a draft that is posted for public comment, particularly considering the last-minute changes proposed by the industry sector that the civil society sector did not have a chance to discuss before the teleconference.

As the review began, Mr. Field noted that the section under discussion would be available on the Webex and that he would reference the page and section number for those reading the document separate from the Webex. He noted that after discussion and revision of any language, as needed, he would call for consensus, asking if anyone could not live with the document as a draft for public comment. If no objections were heard, that section would be considered “consented to” for the public comment draft document. The Multi-Stakeholder Group then proceeded to review the draft candidacy application section by section, with no comments received about the

following sections, and thus, consensus achieved on each of these sections as a draft for public comment.

- Section 1.1
- Section 1.2
- Section 1.3
- Section 1.4, subsection titled “Scope and Materiality”
- Section 1.4, subsection titled “Extending EITI to Increase Comprehensiveness”
- Section 1.4, subsection titled “Adapted Implementation”

B) Section 1.4

The MSG discussed the text of Section 1.4, subsection titled “Legal and Other Constraints, “ and specifically the language regarding trade secrets and subnational governments.

1. Trade Secrets

Ms. Danielle Brian stated that the civil society sector would need to caucus about the proposed changes to the text on trade secrets given that the industry sector introduced the proposal right before the conference call and that the text, as proposed by the industry sector, would likely be unacceptable to the civil society sector. Ms. Brian expressed frustration on behalf of her sector with the process regarding receiving last minute changes that did not allow her sector sufficient opportunity to review such changes.

Mr. Aaron Padilla explained that the text was proposed at the last minute because some of the industry sector’s attorneys advised that the language previously written in the document was based on case law around the Trade Secrets Act and was not based on the Trade Secrets Act itself. He noted that the newly proposed text better reflects the Act itself. That being said, he noted, however, the industry sector also realized that the language contained in the candidacy application should be high-level, factual, and neutral in tone and so further changes to the revised text could be made to satisfy the interests of all of the sectors.

Mr. Paul Bugala expressed his frustration that the draft candidacy application was a document finished by the subcommittee through a lot of hard work and negotiation about the appropriate language to use and was sent to the MSG by the subcommittee for the MSG’s consideration. He questioned whether the proposed industry language refers to the Trade Secrets Act or a section of the United States Code that involves confidential information that goes beyond EITI. Ms. Karen Senhadji responded to Mr. Bugala’s concern about the role of the subcommittee by noting that the subcommittee is designed to be a working group and is not intended nor can it make final decisions on behalf of the MSG under the Federal Advisory Committee Act (FACA). The MSG is the forum in which decisions are made in full public view.

The civil society sector requested and caucused from the MSG conference call to discuss the revisions proposed by the industry sector. After caucusing, Danielle Brian articulated concerns felt by the civil society sector about receiving documents at the last minute. She noted that the civil society organizations do not have trade associations that foster rapid communication between different organizations on an ongoing basis. The MSG then proceeded to discuss the language regarding Trade Secrets and agreed, after dialogue, that as concise and brief a language

as possible would be desirable. The MSG proceeded to reach agreement on the language as follows while noting that further work on this section may be needed prior to the submittal of the final application.

“DOI Payments and Revenues: [Paragraph 1] Companies currently report royalty and related non-tax payments to ONRR, and a summary of this information is already publicly disclosed. The Trade Secrets Act (TSA) governs types of information that can be disclosed by the U.S. government.”

[Paragraph 2] “So long as MSG proposals for defining company or project-level reporting are consistent with the TSA, DOI may disclose reported revenues at a company or project-level to a third-party reconciler, and the information can then be made public. Similarly, there are no federal statutory or regulatory legal barriers prohibiting companies from voluntarily and independently disclosing DOI reported revenue payments directly to a third-party reconciler which can then be made public.”

➤ **Action Item: Review the cost estimates in the country work plan and refine, as needed, prior to the December meeting**

2. *Subnational*

The MSG noted that for the draft application, the language was sufficient as written by the subcommittee. However, see further discussion of this issue under Annex 3 below.

C) Annex 1

The MSG discussed whether Assistant Secretary Rhea Suh should be included in the membership list included in Annex 1 of the draft candidacy application as the Designated Federal Officer. The MSG agreed not to include Ms. Suh in Annex 1 as she is listed as the USIETI National Coordinator on page 2 of the draft candidacy application and as she will be submitting a cover letter accompanying the candidacy application to the EITI Secretariat.

D) Annex 2

Mr. Paul Mussenden, Deputy Assistant Secretary for Natural Resources, DOI, provided an overview of the country work plan included in Annex 2 of the draft candidacy application. Mr. Mussenden explained that the work plan is intended to provide a broad overview of objectives in terms of how the United States intends to implement EITI. The implementation plan laid out in the work plan is intended to fully cover the costs of implementation. He continued by explaining that the columns on the right contain monetary ranges intended to cover the possible range of implementation costs. He also noted that a footnote to the work plan contains an explanation about a delay in incorporating some costs, such as a reconciler, due to the initiative formally beginning in Fiscal Year 2014. Mr. Mussenden stated that the work plan represents DOI's best estimates to date, based on information from the EITI Secretariat, World Bank, and the U.S. Department of State, and that the document will be updated during the public comment period and also on an annual basis. He noted that DOI's sequester budget creates significant constraints but that the work plan is designed to allow for the implementation of USEITI despite the effects of the sequester.

Mr. David Goldwyn, Goldwyn Global Strategies LLC, contributed that DOI seems to have done solid due diligence in coming up with a range of cost estimates. Practically, the amount that the reconciler will charge will depend on a variety of factors including: the scope of work, how difficult it is to get the information, the degree to which the reconciler tests the underlying information, the kind of opinion that the reconciler gives with respect to the information disclosed, the amount of discrepancy that must be reconciled, and the report. As such, the MSG must engage in a more granular analysis before finally signing off on the estimates for the final application. DOI's auditor and another auditor who has EITI experience should work together to meet with the MSG and/or the subcommittee to discuss the scope of work and what needs to be reconciled to derive a more granular cost estimate. The current estimates are fine for the draft candidacy application but a more granular estimate should be created for the final document.

Mr. Mussenden agreed with Mr. Goldwyn's general analysis and call for creating a more granular estimate of the costs of reconciliation and noted that the process that Mr. Goldwyn is calling for is part of the design of the process to iteratively create a more specific scope of work. This process should not delay the progress of the candidacy application process, however, and will be ongoing.

- **Action Item: Review the cost estimates in the country work plan and refine, as needed, prior to the December meeting**

F) Annex 3

Mr. Aaron Padilla, Chevron Corporation, said that, the current, longer version of Annex 3 dilutes the strength of the statement that was previously made in favor of adapted implementation in the United States. He said that the American federal system is the basis for the MSG making a strong case to the EITI Board regarding adaptive implementation in the United States. He noted that during the public comment period, it would be helpful to revisit this issue in light of the outreach that will be conducted with sub-national stakeholders. Mr. Padilla stated that the current draft is sufficient for proceeding forward with the public comment period but it would be best to strengthen the request for adapted implementation in the future.

Ms. Veronika Kohler added that the subcommittee should continue strengthening the section on adapted implementation during the public comment period and explore whether it makes sense to focus on one strong justification or present multiple justifications in favor of adapted implementation.

Mr. Greg Conrad, Interstate Mining Compact Commission, added that it will likely require additional work if the MSG is going to explore further justifications for adapted implementation, particularly in light of constitutional implications. He agreed to move forward for now with the draft candidacy application but also emphasized the need to consult with others, including the U.S. Justice Department, in the future.

Mr. Conrad also inquired as to the reasoning behind including text about the Freedom of Information Act (FOIA) in the Annex, particularly since the states would bear a significant

burden of responding to FOIA requests. Ms. Danielle Brian responded to Mr. Conrad's question by explaining that, in many counties and states, a lot of information about revenue collection from extractives exists and that is public but that the jurisdiction has not been proactive about putting that information online or to otherwise make it accessible. So the inclusion of FOIA is intended to address that issue without being burdensome. Mr. Conrad responded appreciatively to Ms. Brian's explanation and said that he and Mr. Mike Smith, Interstate Oil and Gas Compact Commission, would discuss that issue with the states during the public comment period to better understand what the states might anticipate in terms of FOIA requests and would bring information about those concerns back to the MSG.

- **Action Item: Consider the subnational and federalist system language in the document and particularly the request for adapted implementation to provide potential further explanation**

G) Comments on the Overall Draft Candidacy Application

Mr. Richard Fineberg, Research Associates, stated that he was neither comfortable, nor uncomfortable, ratifying the draft candidacy application for public posting as he was unable to access the WebEx screen and the meeting, which was supposed to be a two-day face-to-face meeting had instead been turned into a two-hour phone conference.

H) Decision and Posting of the Draft Candidacy Application

Upon completion of discussion of all sections of the draft application and revisions, as noted above, Mr. Field asked the MSG members if anyone could not live with the draft application being released for public comment and outreach. There were no dissents of members and therefore Mr. Field noted that the draft application for public comment was consented to by the MSG.

Mr. Veronika Kohler, National Mining Association, inquired as to whether the subcommittee or the co-chairs would review the language in the Federal Register Notice about the posting of the draft candidacy application or would review the explanatory and introductory text accompanying the posting of the draft candidacy application. She emphasized that it would be important to include an introductory note about the background of the application and the fluidity of the workplan. Mr. Karen Senhadji responded that DOI would be happy to discuss language around framing with the co-chairs and the subcommittee for the text that goes onto DOI's website as this would be relevant to the outreach process. She added that the notice in the Federal Register would be pretty short and consist of boilerplate language, particularly considering that the Federal Register is not the MSG's primary communications medium and that it charges by length of the statement published.

- **Decision: The MSG approved the draft candidacy application for posting for public comment.**

I) Public and Tribal Outreach

The MSG noted the schedule of public meetings, which is as follows (all times local):

- New Orleans Public Meeting, Sept 24, 4:00 – 7:00 PM

- Houston Public Meeting, Sept 24, 4:00 – 7:00 PM
- Public Webinar, Oct 2, 3:00 – 5:00 PM Eastern
- Pittsburgh Public Meeting, Oct 10, 4:00 – 7:00 PM
- Denver Public Meeting, Oct 22, 4:00 – 7:00 PM
- Anchorage Public Meeting, Oct 22, 4:00 – 7:00 PM

DOI stated that locations, including addresses, of each of these meetings would be published soon on the Department's website. There are also a number of non-public meetings scheduled with specific groups, such as federally recognized tribes.

Mr. Pat Field, the facilitator, noted that the co-chairs have been working on powerpoint presentations to present the work of the MSG. Each public meeting will have a meeting summary and a reproduction of all written public comments received. The public comment period closes on November 1.

Mr. Veronika Kohler added that the reason to do the dry run of the presentations is because it would that the MSG conveys a consistent and unified message at each of the sessions. The idea is to speak as one voice on behalf of the MSG during the presentation, although not for the question and answer session.

Participants discussed the types of outreach that will be conducted to encourage participation in the public meetings. DOI said that it would be emailing all of its payors, will look into to purchase newspaper advertisements send news releases, and will be informing Congressional offices that represent the districts near where the meetings will be held.

MSG members discussed the nature and appropriate participation at the tribal meeting in New Town, North Dakota that is scheduled to be held in late October. Ms. Veronica Slajer, North Star Group, inquired about whether it would make sense for members of the civil society caucus to join Mr. Greg Gould, Office of Natural Resource Revenue (ONRR), at that meeting or to schedule side meetings with tribal members as adjuncts to ONRR's meeting. Mr. Gould and Ms. Senhadji responded that, while the ONRR meeting with the tribe is a government-to-government meeting, it would be appropriate to schedule additional meetings for other sectors to meet with tribes. Mr. Gould and Ms. Senhadji added that, although most meetings during the public comment period are open to participation by all sectors, such as the National Congress of American Indians and the Alaska Federation of Natives meetings, there are some meetings directly between the U.S. federal government and tribal nations at which EITI will be one of many other issues that is discussed.

V. Public Comment

No public comments were received during the meeting.

VI. Participants

The following is a list of attendees from the September 10, 2013 EITI meeting.

Chaired by Acting Chair Karen Senhadji, Senior Advisor to the Assistant Secretary, Policy, Management and Budget, and 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
- David Goldwyn, Goldwyn Global Strategies, LLC
- Deborah Rogers, Energy Policy Forum
- Keith Romig, Jr, United Steelworkers
- Michael Ross, University of California, Los Angeles
- Veronica Slajer, North Star Group

Government

- Mitchell Baer, Department of Energy
- Curtis Carlson, Department of Treasury
- Greg Conrad, Interstate Mining Compact Commission
- Greg Gould, Department of the Interior
- C. Michael Smith, Interstate Oil and Gas Compact Commission

Industry

- Phillip Denning, Shell Oil Company
- Susan Ginsberg, Independent Petroleum Association of America
- John Harrington, Exxon Mobil Corporation
- Veronika Kohler, National Mining Association, USEITI MSG Advisory Committee Co-chair
- Aaron Padilla, Chevron Corporation
- Robert Reynolds, BP America
- James Roman, ConocoPhillips
- Brent Roper, Rio Tinto

Committee Alternates in Attendance

Civil Society

- Laura Sherman, Transparency International – USA
- Richard Fineberg, Research Associates

Government

- Marina Voskanian, California State Lands Commission

Industry

- Walter Retzsch, American Petroleum Institute
- Robert Wilkinson, ConocoPhillips
- Nicholas Cotts, Newmont

Facilitation Team

- Pat Field, Consensus Building Institute
- Tushar Kansal, Consensus Building Institute

Invited Speaker

- Paul Mussenden, Deputy Assistant Secretary for Natural Resources Revenue, Interior

VII. Documents Distributed

- Agenda ([PDF](#))
- Draft USEITI Candidacy Application ([PDF](#))

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.