United States Extractive Industries Transparency Initiative
Multi-Stakeholder Group Advisory Committee Meeting
May 1-2, 2013

Summary of Proceedings

U.S. Department of the Interior
Prepared: November 2013

I. Introduction

The U.S. Department of the Interior (DOI) convened the third meeting of the U.S. Extractive Industries Transparency Initiative (USEITI) Multi-Stakeholder Group (MSG) Advisory Committee in Washington, DC on May 1 and 2, 2013. The purpose of this meeting was to identify and begin discussion of the criteria that would need to be addressed in the U.S. Candidacy Application to the International EITI. The meeting included several presentations, each followed by discussion with EITI members, as well as working sessions.

Presentations and discussions included the following:

- **Welcoming remarks** by Rhea Suh, DOI
- **State Department Report on EITI International** by Marti Flacks, U.S. State Department
- **Creation of Shared Goals** by Veronika Kohler, National Mining Association and USEITI MSG Advisory Committee Co-chair; and Rachel Milner Gillers, Consensus Building Institute
- **U.S. Extractives Sector Overview** by Greg Gould, Director of ONRR/DOI; Curtis Carlson, Director of Tax Policy at the Treasury; and John Tysseling, Chief Economist for the State of New Mexico
- **Identifying Criteria for U.S. Candidacy Application** by Rachel Milner Gillers, Consensus Building Institute
- **ONRR Revenue Streams** by Greg Gould, Director of ONRR/DOI
- **Discussion of Scope and Materiality for U.S. Candidacy Application** by Rachel Milner Gillers, Consensus Building Institute
- **Legal Analysis for U.S. Candidacy Application** by Greg Gould, Director of ONRR/DOI

II. Summary of Action Items and Decisions

<u>Action Items</u>

- ➢ Action Item: Ms. Flachs will report back to the MSG with more information on the International EITI's new approved rules and validation reports.
- ➢ Action Item: Mr. Gould will follow up with BLM and BSEE to identify the ratio of inspectors to wells, and report back to the MSG.
- ➢ Action Item: Mr. Tysseling will find out how much additional revenue New Mexico is able to recover from the state's audit program.

- Action Item: Ms. Brian, on behalf of the civil society sector, will investigate what information is currently public and available with regards to state revenue from extracted industries.
- Action Item: ONRR, together with the Solicitors Office of DOI, will provide the MSG with a legal analysis reference report.
- Action Item: Mr. Gould will take ONRR revenue data at the million-dollar threshold and breakout coal and other commodities for separate analysis.
- Action Item: Ms. Suh and Ms. Mersinger will work together to bring relevant sector analysis data to the MSG from the EIA.
- Action Item: The MSG agreed that tribal consultation should take place before further discussion occurs around the inclusions of tribal lands in the scope of EITI reporting.
- Action Item: A new subcommittee will be tasked with fact-finding and analysis regarding states' involvement in the EITI, including what information is currently available, as well as the scope of authority of the MSG to ask states to participate.

Decisions

- The MSG approved meeting minutes for the first and second meetings of the MSG.
- The MSG approved the Terms of Reference drafted and revised by the MSG subcommittee.
- The MSG made preliminary decisions about what sectors and commodities should be included in the scope of US EITI:
  - Include: oil, gas, and coal
  - Exclude: fisheries
  - TBD: hard rock and locatable minerals, renewables, saleable minerals, and timber
- The MSG made preliminary decisions about which types of government revenues should be included in the scope of US EITI:
  - Include: rents, royalties, bonuses, and fees collected by the federal government
  - Exclude: gas storage fees collected by the federal government
  - TBD:
    - Collected by federal government: income and other taxes, taxes for downstream activities
    - Collected by state governments: rents, royalties, bonuses, and fees; transfers from the Federal government; income and other taxes
    - Collected by tribal governments: rents, royalties, bonuses, and fees; transfers from the Federal government; income and other taxes; taxes on downstream products

III. Presentations and Key Discussion Points

Ms. Rhea Suh, Interior Assistant Secretary and Chair/Designated Federal Officer for the Multi-Stakeholder Group Advisory Committee, opened the meeting. She announced recent changes at the Department of the Interior, including the confirmation of Ms. Sally Jewell as the new Secretary of the Interior, the departure of Deputy Secretary David Hayes, and the effect of sequestration on federal agencies, including DOI. Ms. Suh praised the efforts of the MSG subcommittee in drafting the Terms of Reference for this meeting. She then thanked her two co-chairs, Ms. Danielle Brian, Project on Government Oversight, and Ms. Veronika Kohler, National Mining Association, as well as Greg Gould, Director of the Office of Natural Resource Revenue (ONRR), and ONRR/DOI staff Karen Senhadji and Paul Mussenden for their hard work and contributions. Ms. Suh announced the agenda for the first day, and asked the meeting participants to introduce themselves. The MSG approved meeting minutes for the first and second meetings of the MSG.

- **Decision: The MSG approved meeting minutes for the first and second meetings of the MSG.**

A. Terms of Reference

Mr. Gould reviewed the Terms of Reference drafted and revised by the MSG subcommittee; the final form of the Terms of Reference can be found in part VII of this summary.

In discussion following the presentations, Mr. Paul Bugala, Calvert Investments, expressed concern over language stating that MSG members will "respect the integrity of the Committee and its decision-making process by supporting the consensus to which they themselves have agreed." Mr. Bugala wanted to ensure that committee members could provide their own point of view on decisions reached, as well as inform and be accountable to their constituencies. Mr. John Harrington, ExxonMobil, added that there were members of his constituency who would prefer that this language not be added. Mr. David Goldwyn, Goldwyn Global Strategies, L.L.C., suggested that the purpose of the clause was to ensure that members who join a consensus do not re-litigate the consensus once it was reached and that there was no intention to preclude people from explaining their points of view to their constituencies. He proposed that the language remain in the document and the MSG retained the language in the document.

Mr. Bugala inquired as to why the following statement was included in the Terms of Reference: "These Terms of Reference do not impair the legal right of any party." Mr. Harrington explained that this language was included because one of the constituencies has a legal case in parallel process against the Securities and Exchange Commission. The MSG retained the language in the document.

The MSG approved the Terms of Reference. Mr. Bugala reminded the group that at the February meeting there was discussion of the International Secretariat reviewing the Terms of Reference. Mr. Gould confirmed this was in process.

- **Decision: The MSG approved the Terms of Reference drafted and revised by the MSG subcommittee.**

B. State Department Update on International EITI

Ms. Marti Flachs, U.S. State Department, presented the MSG with an update on the International EITI. She reported that the Philippines and Honduras have submitted candidacy applications; Papua New Guinea announced its intention to submit a candidacy application; Afghanistan was not considered compliant in its first attempt at validation; and both the Republic of Congo and the Central African Republic were suspended from the EITI due to non-compliance. The International EITI will have its next conference in Sydney in three weeks, at which point the board will approve its new rules and a new board term will begin.

Ms. Brian asked for more information regarding why countries' applications were rejected so that the U.S. could apply that knowledge to its application. Ms. Flachs expressed that the reasons why countries were suspended or found noncompliant were different for each country. She stated that many countries struggled with the question of materiality, and recommended that the US EITI MSG be clear in how it makes decisions about what sectors, payments, companies and revenue streams are covered.

Mr. Bugala and Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, requested that the International EITI's new rules and validation reports be shared with the MSG.

Ms. Kohler and Mr. Mike Flannigan, Peabody Energy, asked how these new rules would affect the U.S. application, including whether the U.S. would be required to implement the new rules, if there would be a phase-in process, and if the U.S. could expect a specific date by which it must comply. Ms. Flachs replied that the decision on how and when to phase-in the rules had not been made. She indicated that she would come to the MSG's next meeting to provide information on what was decided by the International EITI board on these issues.

Ms. Flachs gave an overview of the International EITI rule changes. Notable changes were made in the scope of contracts reporting. Ms. Flachs suggested that the rule changes may have less of an impact on the U.S. than on some other countries.

- **Action Item: Ms. Flachs will report back to the MSG with more information on the International EITI's new approved rules and validation approach**

C. Creating Shared Goals

Ms. Kohler and Ms. Milner Gillers, Senior Mediator at the Consensus Building Institute led the MSG in an exercise to identify shared goals. To begin, each sector presented three to five goals.

Industry (presented by Mr. Jim Roman, ConocoPhillips):

- Setting a good example by successfully establishing and implementing a USEITI program expeditiously.
- Validating federal government revenues associated with the resource extraction industry.
- Enhancing public understanding of what the industry contributes to the federal government by improving domestic and global visibility, understanding, and access to data that is publicly available.
- Minimizing administrative complexity and costs of the program.
- Constructive engagement to reach shared goals and enhance relationships among all of the sectors within the USEITI framework.

Civil Society (presented by Mr. Goldwyn):

- If the United States is going to implement EITI and set a good example for the world, we should strive to be leaders or try to be best in class.
- We need to ensure that disclosure is accurate and that all of the material payments which are made for resource extraction are captured and collected. We should have an analysis of any gaps in the reporting and verification system.

- We need to meaningfully address gaps in public disclosure of information and ensure accuracy of the information reported.
- We need to effectively disseminate the information, and it should be usable, policy relevant, and acceptable.
- We need to have accurate resources to carry out this mission.

Government (presented by Ms. Suh):
- The EITI is a goal around global standards that the U.S. aspires to accede to and be compliant with, as well as a process to aspire to in terms of the collaboration and inclusiveness across sectors.
- Transparency remains a key goal of the Obama administration, and it is critical to be as transparent with the American public as possible in regards to the revenue collected on their behalf. Ms. Suh also articulated the following specific goals:
  - Making revenue data more user-friendly and relevant for the American public.
  - Promoting open government and transparency in the U.S.
  - Leading by example internationally.
  - Submit a candidacy application and achieve EITI compliance in a timely fashion.

Ms. Milner Gillers led the MSG in an exercise to identify shared goals, which included:
- The U.S. should lead by example internationally;
- Apply for candidacy and achieve compliance in a timely and practical manner;
- Ensure available, complete data and identify gaps;
- Achieve effective stakeholder and public engagement;
- Ensure effective, accessible and user-friendly data dissemination; and
- Implement all processes sufficiently with care to cost-benefit analyses.

In response to questions about capturing data and verification, Ms. Suh reminded the MSG of sequestration concerns and advised the MSG to move forward in a direction that would not require the creation of a whole new set of internal government processes or people. Ms. Suh emphasized how technology could help the MSG achieve a great deal at low cost.

D. Comments by Alternates

The MSG opened the floor to comments by alternates.

- Ms. Rebecca Morse, Revenue Watch, expressed interest in innovation in data display and dissemination and in leveraging Web sites and new technology to help disseminate information in the best way. She added that it would be important to think about creative ways to get information out to specific communities or different areas or information on specific sectors. Innovative means of disseminating information could also be a form of international leadership.

E. Extractive Sector Review

Mr. Gould, Director of ONRR/DOI; Mr. Carlson, Director of Tax Policy at the US Treasury; and Mr. Tysseling, Chief Economist for the State of New Mexico; each gave a presentation to the MSG in order to provide committee members with a sense of the existing realities of how the U.S. reports royalties, revenues, and fees from the extractive industry.

ONRR Overview

Mr. Gould explained the structure of the Office of Natural Resources Revenue (ONRR) and that the office was created in recent years out of a desire to focus attention on improving the way the government manages federal and Indian lands and the revenue collection process. ONRR's mission is to collect, disburse, and verify revenue collected from federal and Indian energy and natural resources on behalf of all Americans. ONRR's vision, which dovetails with the goals of the EITI, is to be recognized as a world-class revenue management program, and to set the standard for accountability and transparency for revenue collections. Mr. Gould reviewed the laws that allow ONRR to collect royalties, which leases are managed by ONRR, and which products collect revenue (mainly oil, natural gas and coal). While the bulk of ONRR's revenue comes from royalty payments, the agency also collects rentals, bonuses, and fees. ONRR has in total two thousand payors, and has collected almost quarter-trillion dollars for federal taxpayers since the passage of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).

Mr. Gould emphasized that ONRR does not receive any cash; rather all funds collected go directly into the Federal Reserve Bank system. Mr. Gould reviewed the process by which information is computed and verified by royalty systems and staff, and then the process by which disbursements are scheduled and made. Mr. Gould also outlined the differences present when the extraction is done on Indian lands as opposed to federal land. Mr. Gould also highlighted the recent work completed on the ONRR web site; it is hoped that EITI would help ONRR determine how best to disseminate information through the site in the future. The slides shown by Mr. Gould for his presentation can be found at the following URL: http://www.doi.gov/eiti/FACA/upload/ONRR-EITI-Presentation_05-01-13.pdf.

MSG members responded to Mr. Gould's presentation with the following questions and comments. *Responses from Mr. Gould and other DOI officials are italicized.*

- Mr. Harrington noted that ONRR already has a robust and constantly ongoing check and balance system, and recommended that the reconciliation process take that into account.
- Ms. Brian asked if ONRR validates whether the revenues that are coming in are appropriate to the collection. *Mr. Gould responded affirmatively and explained ONRR's audit program, which is peer-reviewed and meets international standards. Mr. Gould explained that ONRR audits company information which includes the source information behind the royalty reports.*
- Ms. Deborah Rogers, Energy Policy Forum, wished to clarify what materials are audited by industry, and whether meter readings are verified by ONRR or industry. *Mr. Gould confirmed the presence of a very robust set of reviews performed by ONRR. ONRR looks at source documents from industry, and works with the Bureau of Land Management (BLM) onshore and the Bureau of Safety and Environmental Enforcement (BSEE) offshore to verify that the run tickets from meters are accurate. In the future, ONRR may be developing its own meter inspection program. Ms. Suh and Mr. Gould expanded further that ONRR has a risk-based compliance program. In the past year, ninety-two percent of companies ranked at high or medium risk were audited. Mr. Gould defined some of the 'high risk' factors, which include, but are not limited too companies that generate large revenue, have a history of poor reporting, or have not been audited in over three years.*

- Mr. Michael Ross, Revenue Watch Institute, asked whether BLM has its own audit program and whether there are other significant revenue streams that do not go through ONRR. *Mr. Gould explained that almost all payments go through ONRR. However, BLM collects fees and does not have an audit program. Office of Surface Mining (OSM) collects fees associated with abandoned mines and they do have a robust audit program. Ms. Suh added that the scale is incomparable, as it is likely that ONRR's collections are the second-largest revenue collection, over $12 billion annually, with the other DOI offices collecting in the $100's of millions. Mr. Gould confirmed that there is not much outside of ONRR in terms of federal extractive revenues; the next source is taxes.*
- Ms. Rogers requested the ratio of number of inspectors to number of wells. *Mr. Gould agreed to locate that number from BLM and BSEE. Ms. Suh added that since Deepwater Horizon and the creation of BSEE, the number of both safety and meter inspectors looking at the offshore environment has increased.*
- Ms. Taylor asked whether audits were publicly available. *Mr. Gould responded that, while there is information available on the ONRR web site regarding how many audits are completed, the audits themselves contain proprietary information and are therefore not publicly accessible. ONRR has collected an additional $4 billion as a result of the audit process itself, often due to underreported royalties and errors.*

➢ **Action Item: Mr. Gould will follow up with BLM and BSEE to identify the ratio of inspectors to wells, and report back to the MSG.**

Department of the Treasury Overview

Mr. Curtis Carlson, Director of Tax Policy at the US Treasury, explained that he was outlining certain activities within the Department of the Treasury and not within the IRS. He gave an overview of federal tax revenue from corporate taxes, including: the corporate tax rate, how corporations file consolidated returns, how corporations use different consolidation rules for financial and tax reporting, how adjustments are made to previous years' tax liability, and that tax is not imposed on the active earnings of a foreign subsidiary. Mr. Carlson differentiated between corporations that are taxed twice (once at the corporate level and once at the income level when received by the shareholder), and flow-through businesses, which are only taxed once at the personal level. Flow-through businesses are on the rise, representing 70% of net business income in 2008. Mr. Carlson shared information on excise taxes, as there are significant excise taxes associated with various types of fuel. He also shared a graph of federal income tax revenue from corporations in selected extractive industries for an eight-year period, and noted changes in tax law that occurred in 2009.

Mr. Carlson emphasized that the tax code does not allow the Treasury Department or the IRS to release individual tax return information for companies or individuals. Taxpayers can, however, always consent to having their returns released to someone else. The Privacy Act of 1974 precludes the IRS from gathering information that is not used for tax administration purposes. The slides shown by Mr. Carlson for his presentation can be found at the following URL: http://www.doi.gov/eiti/FACA/upload/Treasury-Presentation_05-01-13.pdf.

MSG members responded to Mr. Carlson's presentation with the following questions and comments. *Responses from Mr. Carlson are italicized.*

- Ms. Brian inquired whether the Department of the Treasury collects information on state taxes. *Mr. Carlson expressed that while there is a relationship, the Treasury does not collect information on state-level taxes.*

<u>Extractive Industries in the State of New Mexico</u>
Mr. John Tysseling, Chief Economist for the State of New Mexico, gave a presentation that underscored how US EITI's activities at the federal level are just a part of understanding the extractive industry in the United States. Approximately one-third of New Mexico's economic activity is tied to extractive industries. Extractive industries are active on federal, state, tribal, and fee lands, are subject to a variety of royalties and severance taxes, and are linked to other tax revenues as well. Mr. Tysseling noted the revenue value of the extracted resources, which include oil, natural gas, coal, geothermal, potassium and sodium operations, among others. When New Mexico was granted statehood, it was granted certain sections of land, approximately nine million surface acres and thirteen million mineral acres now held in trust. Mr. Tysseling emphasized the significant role of federal mineral lease payments and severance taxes from extractive industries on the state's annual budget.

Mr. Tysseling highlighted that a daunting list of statistical data would need to be collected should US EITI wish to gather information on resource attributes at the state level. For New Mexico in particular, Mr. Tysseling explained that for both natural gas and oil, understanding projections of reserves, the patterns of well completions and the role that the state's resources play in the markets would be important. Because the State of New Mexico has a strong relationship with extractive industries, data is closely monitored, difficult to acquire, and challenging to keep in a consistent form.

Mr. Tysseling suggested that his report, highlighting the diversity and unwieldiness of the data at the state level, influence the MSG's conversation around scope; he perceived limitations on the amount of detailed data that could be collected. His comments were based on a document entitled *Extractive Industries Revenue Summary: Profile of the State of New Mexico.*

MSG members responded to Mr. Tysseling's presentation with the following questions and comments. *Responses from Mr. Tysseling are italicized.*

- Mr. Keith Romig, United Steelworkers, asked what percentage of New Mexico's natural resource revenues came from commodities other than oil, gas or coal. *Mr. Tysseling replied that less than ten percent come from other commodities.*
- Mr. Bugala asked for clarification on whether the $1.6 billion that New Mexico receives from the extractive industry could be attributed to operations on public and private lands, or operations on public land only. *Mr. Tysseling answered that the majority was from operations on federal or state trust lands, with approximately ten to twelve percent from private land. Mr. Tysseling also answered a question regarding severance tax; severance tax is applicable to all productions in the state except for production by the tribal governments.*
- Mr. Bugala also inquired as to the difference between trust lands and the lands where there are other public mineral rights, and whether the relationship between the government and the operators was different. *Mr. Tysseling responded that the leases and the royalty obligations were a bit different. The trust lands are leased in a similar manner as federal*

leases. There is overlap in the production lands; where there are mixed ownership patterns, they would be intermingled in a checkerboard or similar pattern that would allow the entities to share in similar production areas.

- Mr. Smith, Interstate Oil and Gas Compact Commission (IOGCC), commented that the State of New Mexico was a member organization of the IOGCC, and noted that the Rocky Mountain States are often characterized as public land states. He expanded that for all of his thirty member states, the efforts of the EITI are important because they are all part of the royalty stream discussed. Mr. Smith inquired as to whether the state lands should be part of the US EITI process or whether discussion should be limited to the federal royalty stream. He also inquired how long it would take to mine similar data from his twenty-nine other member states. *Mr. Tysseling responded that it would be a very complex task to assemble the data from myriad sources. If the USEITI were to pursue the same level of analysis as in the presentation for every state with an extracted sector, it would likely require a multi-million dollar data collection and analysis to reach an acceptable level of consistency, and it would take a significant period of time. In contrast, the federal government's data is already consistent, uniform, and available.*
- Mr. Ross asked Mr. Tysseling to confirm that one-third of the revenues coming to the state budget from the extractive sector come from federal payments, and to elaborate on the remaining two-thirds that was determined to be difficult to acquire in other states. *Mr. Tysseling confirmed that the remaining two-thirds include severance tax and earnings on the permanent funds, among other income.* Mr. Ross inquired further whether, if data was difficult to acquire, it might be possible to monitor significant parts of the revenue stream in each state, such as severance taxes. *Mr. Tysseling answered that in states where the federal lands are a significant portion of the state; the majority of revenue will come from that federal data. However, in states where fee land dominates the information will be much more difficult to obtain and likely inconsistent. Information could be found, but the quality of it would likely be less than desired. Whereas New Mexico's systems are firmly in place, in states with newer development, the role that taxation is playing is in many cases still being negotiated and developed.* Mr. Ross suggested that perhaps production data could be utilized as it is reported by the industry to the various states. *Mr. Tysseling advised that the data may be at a different pressure date or meeting different sorts of location reporting requirements that would alter the nature of the report.*
- Mr. Rogers added that the conversation was getting to the underlying issue of data reliability. If the goal of the USEITI was to be transparent, Mr. Rogers suggested that it would be a poor idea to dismiss the issue as too complex, but instead to look at it more closely. Ms. Brian agreed that a complete reporting of all extractives for all states at all levels did not appear to be feasible, but that materiality and scope could be utilized to include certain states and data.
- Mr. Smith cautioned that the MSG keep in mind state sovereignty, as state lands are owned by states, and fee lands are subject to private contracts. He suggested that the federal data was significant, and that working to gather additional state data would burden the effort.
- Mr. Romig suggested it might be possible to shape scope by sector and sample size. It would be possible to get a picture of seventy to eighty percent of coal production by looking at four states.

- Ms. Taylor noted that Mr. Tysseling's presentation was extremely helpful in showing the complexity of the relationship between the federal and the state level, and recommended that the MSG include more state-level voices even if the scope is limited to federal revenues.
- Ms. Krill asked that Mr. Tysseling distinguish between federal lands and federal minerals, and the extent to which the federal government administers minerals that are under private or state lands in New Mexico. *Mr. Tysseling replied that the ownership of the mineral rights is distinct, clear and single. In joint management, where a resource is shared among multiple resource owners, there are specific contractual relationships and regulatory authority that is granted to the states that allows for the allocation of these resources between the ownership interests.*
- Mr. Reynolds asked whether New Mexico or any state has direct information on the amount of funds that industry pays to private or fee holders. *Mr. Tysseling responded that the information would not be available to them, and that additionally it would not be possible to disseminate or publish taxpayer-level severance taxes.*
- In response to a question from Ms. Rogers, *Mr. Tysseling highlighted the quality of New Mexico's audit program and offered to find statistics about how much additional revenue New Mexico was able to recover from the audit program.*

➢ **Action Item: Mr. Tysseling will find out how much additional revenue New Mexico is able to recover from the state's audit program.**

Following Mr. Tysseling's presentation, MSG members engaged in a broader discussion about state involvement and subnational in US EITI:

- Mr. Goldwyn offered some context for the federal/state relationship from the International EITI. The issue had not often emerged because in most countries the national government owns all the revenue streams. If the goal of US EITI was to inform people of the federal landscape relative to the state share of resource revenues, that would be possible. However, if the goal were to expand the scope of integrity testing of all citizen entitlements to resource revenues nationwide, there would be more complications. State involvement of this kind would be path breaking for the EITI, as this has not happened in another country.
- Ms. Ginsberg noted that the US EITI process began when President Obama announced the U.S.'s intention to participate, and asked that, if the MSG were to move to the state level, where that direction would come from. Ms. Suh replied that the intentions were that of the federal government of the U.S., and not the intentions of any of the state governments. Requesting cooperation and agreement from the states would be important.
- Mr. Smith added that it would be a state-by-state issue, and that involvement would require legislative action in each state.
- Mr. Ross inquired as to how the EITI was different from instances where the U.S. was representing both the federal and state government, such as an international trade organization or the United Nations. Ms. Laura Sherman, Transparency International – USA, responded that there is a very different ability to negotiate on behalf of the federal government vs. the states; the federal government cannot bind the states as to their own sovereign issues.

- Ms. Brian suggested it could be possible to use the United States Geological Survey (USGS) and Energy Information Administration (EIA) information on state-based production revenues, and make the matter less complicated in that way.
- Ms. Taylor highlighted the multiplicity of stakeholders for whom the MSG serve as representatives, on both a federal and state level.
- Ms. Ginsburg encouraged the MSG to be practical about its authority. She noted that there could be an agreed-upon scope that could foster agreement in answering these questions.
- Ms. Kohler and Ms. Suh concluded the session with the understanding that the place of state involvement in scope would be further addressed the following day.

F. Criteria for U.S. Candidacy Application - Day One

The MSG addressed the criteria needed for the U.S. to complete its candidacy application to the International EITI. Karen Senhadji, Senior Advisor to Secretary Suh, introduced the discussion.

Ms. Brian presented the subcommittee's drafted criteria. She shared that the goal was to first discuss what should be talked about on day one, and to have more detailed conversations about those topics on day two of the MSG meeting. Ms. Brian asked the MSG to consider whether the drafted list was complete. The MSG responded by sector with their priorities:

- Mr. Romig, on behalf of the civil society sector, noted that scope needed to be discussed first, and that then the MSG should determine the financial and other resources that would be needed to implement actions in a way that would be credible to the federal government. Third, he encouraged the MSG to discuss materiality. He expressed concern that leaving out a significant fraction of the revenue stream collected by the government might diminish international credibility.
- Mr. Gould, on behalf of the government sector, agreed that scope should be discussed first. He recommended that a legal analysis of barriers should follow, and lastly a work plan for engaging constituencies and gathering data.
- Ms. Kohler, on behalf of the industry sector, identified the conducting of a legal analysis as the priority. Scope should be discussed next, with materiality as an important part of that discussion. Then, she prioritized engaging with stakeholders, creating a work plan, fulfilling shared goals, and creating an outreach plan. Because the creation of shared goals was discussed earlier in the meeting, it would not be a priority activity.

Ms. Milner Gillers asked the MSG to determine their highest priorities for discussion, what information would be needed to have those discussions, and which items would be "achievable" (i.e. items that did not require further investigation/research) to discuss the following day. She inquired whether the MSG would be ready to engage in a scoping discussion about sectors, commodities, and types of land on day two of the meeting.

- Mr. Ross responded that he believed that the MSG would need to have more information about the legal framework first.
- Ms. Senhadji and Ms. Kohler encouraged the MSG to think not only about decisions that could be reached at that current moment. Certain items could be agreed to and others tabled for when more information would be available.
- Mr. Goldwyn asked if, on day two, someone could report on what revenue streams both BLM and ONRR already collect. Mr. Gould offered to address that topic on day two.

- Mr. Harrington suggested that the MSG identify all potential revenue streams first, and then discuss which ones to include. Mr. Roper suggested that the legal analysis be used to help identify which revenue streams could be considered. Mr. Reynolds added that the confidentiality issue had two sides: possible prohibitions against the industry disclosing information, and possible limitations on government publishing information.

Ms. Milner-Gillers asked members of the MSG whether they thought that legal analysis could be addressed the following day.

- Mr. Gould noted that a DOI legal analysis of the Department's revenues would not be completed in time for day two. He inquired as to the specific additional legal analysis data needed for discussion.
- Mr. Harrington requested a description of the relevant laws, how the barriers are defined, prescriptive advice, and clarification on how and if the outcome of the MSG discussions could compel the industry to disclose certain information.
- Mr. Goldwyn noted that the International EITI would likely want to know whether the U.S. could use a third party to verify income tax payments to the government and reconcile payments made by extractives companies. Mr. Carlson responded that such a scenario would only be possible through voluntary disclosure by the company or individual. Mr. Goldwyn discussed the value of a letter, functioning as a permission slip, that companies and individuals could use to voluntarily disclose payments to a third party and to frame the scope of the disclosure. He, Ms. Milner-Gillers and Ms. Kohler discussed whether this letter was a precursor to a legal analysis, or something that the legal analysis might help form. Mr. Goldwyn emphasized that what was needed was not a general legal analysis, but a legal analysis of specific questions relating to what authority US EITI would have under current law to solicit information and, in cases where the law is insufficient, would other mechanisms, such as written consent, be sufficient to secure the desired information.
- Mr. Flannigan stated that the legal question is basically black and white in that the IRS cannot disclose tax returns and cannot gather information other than for tax purposes. He suggested that, if the MSG would like to expand the scope of EITI, it could work with an attorney to figure out how to do so, and otherwise it should simply accept the limitations that exist under current law.
- Ms. Ginsberg asked the MSG to remember the difference between the U.S. and other EITI countries; the U.S. has more payors and independent producers, many of which are smaller firms that may not even be aware of EITI at present.
- Ms. Rogers noted that many questions that the group was raising might be addressed in the conversation around materiality.
- Ms. Kohler asked whether there was an available list of revenue streams that were legally allowed to be included that were already public. Mr. Gould responded that there was a legal analysis ongoing as to whether some data could be reported by industry, and whether the government could ask industry to report that data to a third party. ONRR has the ability to report on royalties, rentals, bonuses and fees at a project level.
- Ms. Senhadji noted that the issues of scope and legal analysis seemed to be a 'chicken-or-egg' issue and that, while legal analysis would have an impact on scope, scope should also inform the legal analysis.

Ms. Milner-Gillers asked the MSG to discuss the idea of engaging stakeholders within constituencies, a priority for some sectors.

- Mr. Harrington asked the MSG to remember that once a draft scope and work plan are created, all sectors would want time to vet those items. Ms. Taylor noted that a scope and materiality conversation would establish who the stakeholders would be. She recommended that day two culminate in action items with regards to stakeholder engagement.
- Ms. Sherman asked that it be clarified that materiality has two components: company level and revenue stream.

Ms. Milner-Gilners asked whether a materiality discussion could begin the following day.

- Mr. Bugala responded that making decisions regarding materiality on day two might be ambitious, but that perhaps the MSG could begin discussing the issue.
- Ms. Taylor responded that the civil society sector felt strongly that it would be beneficial and important to the scope conversation to have a broad discussion of materiality and come to some general agreement on principles. Ms. Brian agreed with Ms. Taylor and added that such a discussion would give the MSG criteria for why certain items would be considered within the scope of US EITI or not. This would be useful because the International EITI rejected countries for not having defined criteria for scope.
- Mr. Reynolds raised a concern that it could be inefficient to have a conversation about scope without the guidance of legal advice. Mr. Gould responded that the conversation around scope would establish the legal questions that need answering.
- Ms. Brian suggested that the MSG have the option to table certain items for further review when discussing what commodities to include in scope. Mr. Goldwyn recommended that the MSG look to the reporting practices of large companies in other countries and discuss if those practices may be desirable or permissible in the U.S.

G. Day One Conclusions

Ms. Senhadji reviewed the agenda for day two. She asked whether individual sectors had comments or concerns about the schedule.

- Ms. Brian, Mr. Harrington, and Mr. Romig recommended that individual sector meetings be shortened to allow for more time at the group table.
- Ms. Senhadji responded that she would convene with the co-chairs and that they would make a proposal at the beginning of day two as to the revised agenda.

H. Criteria for U.S. Candidacy Application, General Discussion - Day Two

Ms. Senhadji reviewed the previous day's activities, and announced that the updated agenda would include a presentation by Mr. Gould, a sector breakout, and then a group discussion of scope. Ms. Senhadji gave the floor to Mr. Gould.

Mr. Gould recapped selected aspects of his presentation on the Department of Interior’s revenue collection activities from the first day of the MSG meeting and also provided greater detail on key points. In particular, Mr. Gould highlighted the different streams from which ONRR collects revenues and also provided examples of revenues generated via different fees on extractives that are collected by different agencies within the Department of the Interior. The slides shown by Mr. Gould for his presentation can be found at the following URL: http://www.doi.gov/eiti/FACA/upload/ONRR-DOI-Revenues-Presentation.pdf.

MSG members responded to Mr. Gould's presentation with the following questions and comments. *Responses from Mr. Gould and other DOI officials are italicized.*

- Mr. Harrington inquired as to what kinds of royalties are included in the $55,000 in royalties collected from 'other products' in the 'Federal Offshore' column in 2012. *Mr. Gould replied that ONRR receives revenues for permitting and inspection fees, and that there was sulfur and salt leasing occurring offshore.* Ms. Senhadji inquired whether that number included wind. *Mr. Gould replied, "The rent and bonuses are separate line items because the rent and the bonuses can't be associated with oil or gas because these are oil and gas leases, and actually if there were sodium or, salt or sulfur on a lease, those initial rentals and bonuses would have been on the whole lease."*
- Ms. Brian and Mr. Harrington asked for clarification on the commodities included in the fees, and whether some were not explicitly included. *Mr. Gould confirmed this, adding that ONRR receives revenue from commodities such as gold, silver, uranium, iron, lead, gypsum, chemical-grade limestone, chemical-grade silica sand, diatomaceous earth, salt, soda, ash, sulfur, zinc, copper, potash, timber, wind, geothermal and solar. Mr. Gould added that ONRR and BLM were building a comprehensive list. Mr. Gould emphasized that depending on where a claim is made, it could be leasable or non-leasable; if it was not leasable it would be a fee system, if it was leasable it would be a royalty system.*
- Mr. Bugala, Mr. Gould, and Mr. Carlson discussed that iron and crushed stone, while not significant in ONRR's revenues, may be extracted from private land, and that government revenues associated with this extraction would therefore be generated in the form of corporate income tax.
- Ms. Brian suggested that the MSG remember that commodities not in the scope of Mr. Gould's reporting about ONRR may be included in Mr. Carlson's reporting about Treasury Department revenues due to extraction taking place on private land. Mr. Carlson explained that the Treasury Department’s categories were metal ore mining and nonmetallic mineral mining. He added that he would need to verify how specific he could be in breaking out specific industries and disseminating that information.
- Mr. Ross asked if there was information available as to how much money state governments collected directly. *Mr. Gould responded no, and suggested that information could be found at the state revenue offices.*

I. Scope Discussion for U.S. Candidacy Application - Day Two

After sector breakout sessions to confer about scope, the MSG reconvened to discuss whether different sectors/commodities, types of lands, and diverse revenue streams to different levels of government should be included in the scope of US EITI. MSG members also considered possible justifications for their decisions to include or exclude an item from scope as well as what additional information would be needed to take decisions on items which remained undecided. Each sector began by explaining its initial approach to including or excluding items from the scope of US EITI. A document produced by the MSG summarizing the outcomes of the scoping

decisions can be found at the following URL:
http://www.doi.gov/eiti/FACA/upload/Preliminary-Scope-with-comments_05-02-13.pdf.

Sectors/Commodities Discussion

- Ms. Kohler, speaking for industry, noted that oil, gas and coal should be included. Hard rock or locatable minerals should be grouped together. Industry believed that materiality would be their biggest concern, and so they included more commodities so that the EITI framework can be better defined.
- Mr. Harrington, speaking for industry, voiced a concern that given diversified portfolios and small companies/revenues, it may not make sense to begin the discussion by focusing on commodities. Ms. Milner Gillers responded that this was a first step, and to make broad strokes for the time being.
- Mr. Romig, speaking for civil society, noted that oil, gas and coal should be included because the revenue streams are significant, they have significant impacts on the economy, and they are important components of the extractive sector. Hard rock and locatable minerals should also be included because while revenue streams are smaller, the overall industry is sizeable and has major impacts; materiality would play a significant role there.
- Ms. Brian, speaking for civil society, added that renewables should be included as a commodity, and that a conversation should be had about saleable mineral (i.e. sand and gravel) and timber. She also requested a list of hard rock minerals, which Mr. Gould suggested would be available from BLM. Ms. Brian suggested that uranium be added to the list.
- Ms. Kohler recommended that the MSG make its own list of hard rock minerals so that, for example, uranium could be included as a hard rock mineral.
- Mr. Gould, speaking for government, noted that oil, gas, and coal should definitely be included, and that the sector would agree to the other items mentioned being included.
- Mr. Flanagan, speaking for industry, responded that renewables, saleable, and timber should be left in the to-be-determined column.
- Mr. Gould inquired whether, in the materiality conversation, other commodities would be eliminated other than oil, gas, and coal.
- Mr. Roper responded that hard rock minerals should be left on the table for now as an example to the global community. He argued it would not be ideal to have it left out from the onset.
- Ms. Kohler suggested that, if the MSG is considering including the renewables, sand and gravel, and timber industries in the scope of US EITI, members of the industry sector would need to engage those constituencies and explain the goals of EITI.
- Ms. Suh added that as timber was a commodity managed by the Forest Service, the MSG should include them in future conversations. Mr. Romig added that there are forestry-related unions that would need to be at the table as well.
- Mr. Bugala suggested that a justification for including saleable minerals and timber in the scope of US EITI is that they contribute significant revenues to the public, not all of which pass through the Department of the Interior.
- Ms. Brian noted civil society's belief in the importance of including renewables. While the receipts collected from renewable resources are small, renewable energy is a significant

focus of public policy and it would be important to be transparent about what is happening on public lands.

- Ms. Milner Gillers summarized that the MSG had come to relative agreement that oil, gas and coal could be discussed up front, there needed to be further discussions about hard rock and locatable minerals, renewables, saleable mineral, and timber. The MSG generally agreed that fisheries should be excluded from US EITI for the time being.

➢ **Decision: The MSG made preliminary decisions about what sectors and commodities should be included in the scope of US EITI:**
  - **Include: oil, gas, and coal**
  - **Exclude: fisheries**
  - **TBD: hard rock and locatable minerals, renewables, saleable minerals, and timber**

<u>Sectors/Commodities Discussion</u>
Multi-stakeholder group members discussed the process by which the MSG should consider inclusion of different types of lands in US EITI, including whether consideration of the ownerships of the land (federal, state, and tribal) should be combined with consideration of the type of government entity (federal, state, and tribal) that collects revenues for those lands.

- Ms. Slajer added that stakeholder engagement, specifically tribal involvement, should be categorized under additional action needed. Ms. Adamson affirmed that she saw the need to include tribal lands and revenue, wanted to consult the state tribal revenue auditors, and was interested to learn what other countries, such as Australia, had done in regards to aboriginal inclusions. Mr. Romig added further that states should be included in stakeholder engagement.
- Ms. Suh added a clarifying point: the royalties that DOI generates from leasing federal lands produces a payment to states. As a result, some state revenues are incorporated into federal revenue reporting.
- Mr. Ross added that EITI breaks out sub-national payments into two categories: transfers from the federal government, and payments made directly to state governments. Since 2011, EITI has been increasingly active in trying to have those included in national reports. If certain payments from companies to sub-national entities pass the materiality threshold, EITI requires that it be reported.
- Mr. Conrad added that some states do not agree with the sub-national designation. The U.S. constitutional structure may define a different approach. The state discussion would need to include materiality, practicality (i.e. compatibility and consistency, reportability, and verifiability of data), and legality.
- Ms. Morse added that if constitutionality and practicality concerns are worked out, it could be possible to look at which states receive a certain share of revenues that contribute to annual operating budgets, and use that to help determine materiality.
- Mr. Wilkinson asked for clarification as to private payments from private land, and whether the MSG was looking to define payments from extractive industries to individuals, or taxes from extractive industries to the federal government. Ms. Brian responded that more conversation would be needed to determine that.

➢ **Decision: The MSG made preliminary decisions about what lands should be included in the scope of US EITI:**

- **Include: federal lands**
- **TBD: state, tribal, and private lands**

Discussion of Collection Entity

After the lunch break, Ms. Milner Gillers suggested with Ms. Suh that the MSG categorize the next discussion by the government entity (federal, state, or tribal) that is collecting revenues.

- Mr. Ross asked if the categorization could be done by who receives the funds rather than who collects, giving the example of tribal governments, where the federal government collects funds but then passes on the revenue to tribes. Ms. Brian suggested, in response, that a category be added for transfers. A column was added to the US EITI Preliminary Scope table for state and tribal lands for transfers. Mr. Reynolds cautioned not to accidentally include revenues twice - once as collected by the federal government and again when passed through to tribes, etc.
- Ms. Kohler suggested that federal rents, royalties, bonuses, and fees be included in the scope of US EITI, and that everything else be placed in the to-be-determined column.
- Mr. Harrington asked that the MSG focus on what can actually be accomplished in the first candidacy application, because answers on what is practical and legal may not be available right away. Ms. Kohler agreed that the idea of phasing or stages should be discussed so that the scope decided upon is doable. Ms. Rogers agreed with the principle of defining a feasible scope, but cautioned against excluding items prematurely.
- Ms. Brian noted that countries were rejected from the International EITI not because their scope was too big, but because they had not adequately reflected why some items were or were not included in their programs' scope.
- Mr. Harrington asked if the MSG could be provided with a graph or more data points than just the million-dollar threshold. Mr. Gould responded that the million-dollar mark represents 98 percent of the revenue collected and approximately 410 payers (or 200 to 300 companies). On the other end of the spectrum, going to the $100,000 level includes 904 payers, and 99.69 percent of the revenues collected.

Discussion of States

MSG members discussed a number of considerations around the possible inclusion of states in the US EITI program.

- Ms. Kohler requested that the MSG be provided with a list of revenue streams, the payments, and the legal analysis of what can be disclosed, what is public, and how that payment is reported. This information would help in deciding what other payments and revenue streams could be included in the scope of US EITI. Mr. Harrington added it would be preferable to understand whether there are restrictions on disclosing what federal revenue is redistributed to the states. Mr. Tysseling added that he believed states would not have opposition to reporting transfers from the federal government. He reminded the MSG that gathering data on other state revenues, such as state-collected rents, royalties, and bonuses, would be very difficult. Mr. Smith agreed that the 30 states that have significant oil and gas production operate like 30 separate countries, and could not be compelled to share data.
- Ms. Brian offered, on behalf of the civil society organizations, to investigate what information on state revenue collection is already publicly available.

- Ms. Rogers suggested that the onus is on each states, rather than on the MSG, to determine individually whether it would like to participate in the EITI program.
- Mr. Ross agreed that investigating what information is publicly available is a good first step. He also cautioned that the MSG should keep in mind not only the obstacles to obtaining state data, but also what will be needed to ensure a successful application to the International EITI Board in terms of sub-national revenue directives.
- Ms. Taylor recommended that until a scoping process is conducted to see what data is available at the state-level and there has been some public engagement with those states, the MSG could not make a knowledgeable statement about whether to include or exclude states.
- Mr. Harrington recommended that the International Secretariat be contacted regarding the potential jurisdictional obstacles with involving the states and that the MSG ask how the International EITI would recommend moving forward.
- Ms. Brian, Mr. Smith, and Mr. Gould had a discussion of how this discussion could be brought forward to the states.
- Ms. Brian asked whether severance and excise taxes could be in the 'included' column, as they are public information. Mr. Tysseling responded that those taxes are not public.
- Ms. Rogers added that most companies meeting the materiality threshold would probably already be disclosing their tax information. Mr. Carlson clarified that there is a significant distinction between taxes and income taxes.

<u>Other Discussion</u>
Ms. Milner Gillers moved the conversation to tribal revenues and other issues. She reviewed that the MSG determined that stakeholder engagement, tribal consultation, international examples, and clarification of terms would all be needed to move forward. Mr. Gould added that information on how much money the government transfers for American Indian tribes, as a whole is public information.

- Mr. Flannigan asked for clarification on how the MSG had worked previously to involve the tribes. Mr. Gould responded that he and others had traveled to a number of tribes. The tribes wished to only be kept informed at that time.
- Ms. Slajer added that there is space allocated on the government side of the MSG for a tribal representative. She also recommended that the same conversations about state involvement could be applied to tribes, as they are sovereign nations.
- Ms. Adamson reiterated that it would be important to learn how Australia and Canada have worked through similar issues.
- Mr. Harrington noted on behalf of his constituency that there are specific taxes that he wanted to ensure were excluded because they are not directly related to extraction; these are taxes on downstream products that oil and gas companies pay. Mr. Ross responded that he would like those taxes to be placed in the to-be-determined column, as a materiality determination may be needed.
- Ms. Morse recommended going forward that the MSG have a full list of payments made at every level of government, so that the full picture could be captured and intentional decisions made. Ms. Ginsberg asked whether it would be possible to have a list of all the revenue streams that each state collects, and Mr. Smith replied that it would be specific to each state.

- Ms. Morse added that looking closely into creating some sort of list would be important, beginning with the payments required by the EITI and then thinking about what other items should be included.

- **Action item: Ms. Brian, on behalf of the civil society sector, will investigate what information is currently public and available in regards to state revenue from extracted industries.**
- **Decision: The MSG made preliminary decisions about which types of government revenues should be included in the scope of US EITI:**
  - **Include: rents, royalties, bonuses, and fees collected by the federal government**
  - **Exclude: gas storage fees collected by the federal government**
  - **TBD:**
    - **Collected by federal government: income and other taxes, taxes for downstream activities**
    - **Collected by state governments: rents, royalties, bonuses, and fees; transfers from the Federal government; income and other taxes**
    - **Collected by tribal governments: rents, royalties, bonuses, and fees; transfers from the Federal government; income and other taxes; taxes on downstream products**

Discussion of Legal Analysis

Mr. Gould provided the MSG with more information as to the overarching legal analysis that ONRR was conducting. The most pertinent laws to the MSG's work are the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), the Trade Secrets Act, the Paperwork Reduction Act, and the Administrative Procedures Act. Mr. Gould emphasized that while President Obama announced the U.S.'s intention to join the EITI, he did not extend any new authority in order to do so.

Mr. Gould reviewed the large amount of data from companies associated with tribal lands that is currently available and can be shared. He noted the top five states that received revenue transfers from ONRR revenues in 2012: Wyoming, New Mexico, Utah, Colorado, and California. Mr. Gould proceeded to review legal authority around disclosure of information by ONRR. He noted that there are no legal impediments to ONRR's disclosure of information on the revenue streams that ONRR collects. The Trade Secrets Act, however, prohibits ONRR from disclosing information at a level that could cause competitive harm to a company. Within this restriction, ONRR can generally disclose at the company, payor code, or multi-lease project level because these levels encompass multiple leases with different conditions and costs. A key question that remains outstanding is whether ONRR currently has the statutory authority to require companies to disclose information to a third party reconciler. If ONRR were able to compel such disclosure under current legislation, ONRR's statutory authority may need to be enhanced under new regulations, and the rule-making process for these new regulations would take one and a half years under the Administrative Procedures Act. The slides shown by Mr. Gould for his presentation can be found at the following URL: http://www.doi.gov/eiti/FACA/upload/ONRR-Legal-Framework-for-Disclosures-Presentation_05-02-13.pdf.

MSG members responded to Mr. Gould's presentation with the following questions and comments. *Responses from Mr. Gould and other DOI officials are italicized.*

- Mr. Roman noted that, as each state has its own Administrative Procedures Act and as EITI International requires the MSG to review the U.S. legal framework and identify any potential obstacles to EITI implementation, it would be useful for the government sector to help create a robust legal analysis of the legal framework of the United States that could be included as part of the U.S. application to the EITI International Board, particularly as the U.S. has issues that other EITI member countries do not have. *Ms. Suh responded that it might be more productive for the MSG to come to a consensus about scope and materiality, and then ask the solicitors to do a review to get a sense of whether that is possible legally. Ms. Suh also noted that a reference report was under development by the Department of Interior's solicitors and ONRR.*
- Ms. Brian asked whether companies located in other EITI countries volunteered or were compelled to disclose. Mr. Harrington responded that often it was a parallel process and voluntary disclosure and regulations happened simultaneously.
- Ms. Morse asked Mr. Gould what kind of competitive harm is posed by the disclosure of revenue information at the lease level. *Mr. Gould responded that the release of the sales price, the price that the company receives when it negotiated its sales contract, would put a company at competitive disadvantage. Both production values and revenue reporting would have to be disclosed for there to be competitive harm.*

➢ **Action item: ONRR, together with the Solicitors Office of DOI, will provide the MSG with a legal analysis reference report.**

J. Criteria for U.S. Candidacy Application – Materiality

Ms. Suh turned the floor to Ms. Milner Gillers to lead the MSG in a discussion about materiality. Ms. Milner Gillers provided the MSG with four options from the International Secretariat on how to define materiality. The first option was comprehensive reconciliation. The second option was to set an aggregate payment threshold based on the total payments made by a company/government entity. The third option was to set disaggregated payment thresholds. The fourth option was unilateral government disclosure. Ms. Milner Gillers asked the MSG to consider any additions, deletions, or edits to that list. The MSG took a brief pause for personal reflection and comments by alternates and the public.

Mr. Goldwyn, alternate, suggested that the MSG consider that, when a government joins EITI, it has a responsibility to ensure that once the 'who' and 'what' of disclosure is determined, that all parties in those categories actually participate in disclosure. In the history of EITI, no government of the size of the U.S. has attempted to participate. Mr. Goldwyn noted that the MSG might get to a point where urging and pleading is needed for compliance.

The MSG shared their recommendations for additions, deletions, and edits to the four options provided by the International Secretariat. Ms. Milner Gillers moderated the discussion.

- Ms. Brian stated on behalf of the civil society organizations that comprehensive reconciliation would be beyond what they would consider reasonable.

- Ms. Sherman suggested additional ways of determining materiality: both high-revenue companies as well as companies that have significant market share should be considered.
- Ms. Rogers asked whether it might be advantageous to use different thresholds for different entities; for example, the threshold for a large multinational could be different than the threshold for a small independent. Ms. Ginsberg responded that her conclusion was that the contribution of the smaller entities would not be significant enough to dictate such an aggregation.
- Mr. Goldwyn suggested that the MSG consider materiality by commodity, which could be done in two ways. The first method would be that all payments by companies which, in aggregate, hold a certain percentage of total production or revenues in a given commodity market could be included (for example, any company whose production falls into the top 90% of uranium productions). A second method would include all companies holding a certain percentage of total production or revenues generated by a sector (for example, any company which produces more than 5% of revenues in the oil market). In addition to either of these methodologies, an exception could be created for small companies such that any company below a given market capitalization or with revenues below a certain threshold would be excluded.
- Ms. Taylor cautioned that EITI guidelines suggest that the MSG consider the significance of a revenue stream relative to total revenues collected by the institution or region receiving the revenue. The MSG, then, should consider that resources are distributed unevenly geographically, and it may be material whether a sector is a predominant part of a given state's economy.
- Mr. Romig commented that the task of determining materiality might be easier in mineral mining than in oil, gas and coal.
- Mr. Tysseling raised a concern that attempting to aggregate affiliates into a corporate entity could be difficult, and could affect materiality rankings.

The MSG then broke into sector-specific meetings to discuss what information was required from whom and by when in order to continue scope and materiality discussions in the future. Ms. Suh encouraged the MSG to begin thinking about threshold data analysis research requirements as well. The MSG then returned, and Ms. Suh announced that the consensus was to return to the conversation on materiality, as consensus could be possible. She opened the floor to suggestions and comments.

- Ms. Kohler recalled the million-dollar threshold that Mr. Gould alluded to in his earlier presentation, and suggested that as it included a large amount of extractive industries, that it be used as a threshold moving forward.
- Ms. Brian responded that the civil society organizations would be comfortable working with that if it did not include coal; they recommended that coal be separated out because revenues generated by coal companies tend to be smaller than in the oil and gas industries.
- Ms. Milner Gillers asked Mr. Gould if he could provide a chart with all numbers except for coal. Mr. Gould responded that this would be possible.
- Ms. Kohler responded that the suggestion for the million-dollar threshold was an opportunity to agree on one collection; if the suggestion were to break out coal, the industry sector would need to reconsider the materiality threshold.
- Ms. Taylor asked whether it would be possible for the MSG to receive a list of the names of the companies at a certain materiality threshold without specifics as to their revenue.

Mr. Gould responded that he could make that information available. It might appear as if a company was listed multiple times, because they report to four separate payor codes.

- Mr. Komig, in support of Ms. Brian's statement, suggested that a reason to separate out commodities is that the general million-dollar threshold might miss a significant amount of certain commodities like coal. He also noted that, depending on the commodity, a different percentage would be taken out in taxes. Mr. Gould responded that while coal is included as significant in the general million-dollar threshold, he could conduct an analysis that breaks out different commodities.
- Ms. Brian clarified that her sector may come to agree with a general million-dollar threshold across oil, gas, and coal, but that an important first step would be to break out the different commodities and learn more. Mr. Conrad cautioned that the lower the threshold, the greater the impact would be on the states.
- Mr. Roper stated that if the goal was to look at reconciling what the government collects, the million-dollar threshold does that nicely. If the goal was to make sure that for every commodity that key reporting is done, than that would change the framework of the conversation.
- Ms. Kohler clarified that her hope was to create a materiality threshold that would work across commodities, and that breaking out commodities would not support that.
- Ms. Ginsberg asked Ms. Brian for clarification on what she intended by expressing interest in looking at materiality through the lens of impact on a given community. Ms. Brian replied that the goal was to better capture and have more transparency around what is happening with a given extractive industry in a given community.
- Mr. Roper and Mr. Gould discussed when the ONRR revenue statistics by payor and lease would be released. Mr. Gould stated that when it has been ensured that there are no instances where there is one payor paying on one lease, the information would be released.
- Mr. Harrington added that it could be possible to achieve what Ms. Brian and the civil society sector hoped for by collaborating to have the data organized so that it would be possible to go to the granular level without having to go through a significant reconciliation process.

➢ **Action item: Mr. Gould will take the ONRR revenue data at the million-dollar threshold and breakout coal and other commodities for separate analysis.**

Ms. Suh then asked the MSG to share what threshold questions and analysis they would need in order to make future decisions regarding materiality and scope.

- Ms. Brian, on behalf of the civil society sector, noted that the previously discussed ONRR revenue list with certain commodities broken out, provided by Mr. Gould, would be very important. Ms. Brian also requested a separate analysis of ONRR coal revenue. She also asked Ms. Kohler if a comprehensive list of hard rock minerals could be made available so that the MSG could work from the same list. Mr. Romig added that additional information from BLM as to their specific revenue streams would be useful. Ms. Brian also suggested that the U.S. Energy Information Administration (EIA) be involved in future if timber remains a potential commodity, and requested an analysis of the Forest Service and state level activities.
- Ms. Mersinger, Department of Energy (DOE) stated that the EIA has existing sector analysis that she could gather and bring to the MSG in future. Ms. Suh added that a

distillation of existing knowledge and a broader perspective of knowledge outside of the realm of the DOI would be very useful, and recommended that she and Ms. Mersinger follow-up.

- Ms. Kohler stated that the industry sector was ready to make materiality decisions, but that the aforementioned information from Mr. Gould would be useful in clarifying the picture of companies operating in the United States and EITI relevance. There is no threshold for industry's participation in a materiality discussion. As for defining a list for hard rock, Ms. Kohler recommended that the MSG utilize the information that Mr. Gould provided from ONRR, and that which commodities are included be determined by the materiality discussion. Industry's threshold as to which types of lands are included would be the legal considerations requested, a legal and practicality cost-benefit analysis, and a list of the revenues aligned with what is public or would have to be disclosed. Ms. Brian agreed, and added that tribal and state consultation would be essential to the land discussion.
- Mr. Flannigan, from the industry sector, inquired as to the next steps for investigating states' participation, and asked whether some entity would reach out to state governors. Ms. Suh responded that civil society had offered to gather data on eight states and what was already in place in terms of voluntary, legal, and/or public disclosure. Ms. Suh added that it would be useful for someone to complete a brief analysis of the MSG's jurisdiction and scope of authority in asking states to participate. Mr. Tysseling responded that while no formal mechanism was in place, he would discuss the matter with the Federation of Tax Administrators in June 2013. Mr. Conrad cautioned that the MSG was likely not at the point to contact governors' offices, and that there was no legal counsel available beyond his and Mr. Gould's experience with the DOI attorneys. Ms. Suh suggested that the subcommittee draw up a list of creative options for exploring how to address the potential opportunity that exists to include state information. Ms. Taylor responded with a concern that the questions involved in that opportunity were appropriate for the MSG as a whole and perhaps not a productive use of subcommittee time. Ms. Brian, Ms. Suh, Ms. Taylor and Ms. Kohler discussed the question of the subcommittee taking on the task of investigating and gathering information. Mr. Retzsch added that a state representative should be added to the subcommittee, and Mr. Conrad volunteered to join. Ms. Suh proposed that a separate subcommittee with relevant participants be tasked with this question, and asked for comments from the MSG.
- Ms. Ginsberg cautioned that given the high potential for holes in state data, it would be possible that much time, money, and resources could be used to gather information that would not ultimately be meaningful. Ms. Rogers and Ms. Brian responded that the goal was to address a great majority of the questions in a circumspect matter so that nothing was dismissed out of hand without investigation. Mr. Gould added that a well-defined reason would be needed before sub-national reporting could be excluded, which justified the efforts of the subcommittee. Mr. Romig added that the volume of state revenues was substantial and could not be easily dismissed as immaterial.
- Ms. Suh then concluded that a subgroup would be established out of the existing subcommittee with the lead of Mr. Gould, and would report back at the next meeting with their findings.

➢ **Action item: Ms. Suh and Ms. Mersinger will work together to bring relevant sector analysis data to the MSG from the EIA.**

- **Action item: The MSG agreed that tribal consultation should take place before further discussion occurs around the inclusions of tribal lands in the scope of EITI reporting.**
- **Action item: A subgroup of the existing subcommittee will be tasked with fact-finding and analysis regarding states' involvement in the EITI, including what information is currently available, as well as the scope of authority of the MSG to ask states to participate.**

IV. Schedule

Ms. Suh asked the MSG for their preference between an early or late June meeting.

- Mr. Flannigan recommended the earlier date, and emphasized keeping the process moving.
- Mr. Ross suggested that more sector meetings occur outside of and before complete MSG meetings to encourage a more productive meeting, and given that recommendation, to wait until late June. Ms. Kohler disagreed and stated the sector caucusing during the meeting was important to productivity, and that an earlier meeting would assist momentum. Ms. Suh suggested that the two recommendations were not mutually exclusive, and that sectors could prepare outside of the MSG meetings.

Ms. Suh congratulated the MSG on a productive meeting, and reflected that the group had addressed substance with expediency, grace, and collaboration. Ms. Kohler and Ms. Taylor added for future meetings that having items such as the Terms of Reference, presentations, and Powerpoints in advance would expedite the process further. Both thanked Ms. Suh and her staff for their efforts and hard work. The MSG then concluded its meeting.

V. Public Comment

There was one public comment made during this meeting:

- *Isabel Munilla, director of Publish What You Pay, United States*. Thanks so much. Great work today. This is nice to see a substantive meeting and nice to see all the energy and excitement here. Just a couple of points I wanted to make on this discussion. The EITI Secretariat is revising their guidance note on materiality. So it might make sense to try to get an update from them on when that's going to come out. So that will really help us with the materiality discussion, and as I understand, it kind of gives you a framework for having that discussion. So that might be useful. The other piece I wanted to mention is from the publishing piece civil society perspective. Looking at the universe of potential disclosures out there and explaining -- just explaining that universe to the public is hugely important because I think that will really help to deal with the lack of trust, the lack of understanding, just explaining to the public what is this universe and then what criteria did we use to come to the choice of when we exactly did the reporting and reconciliation on. I think it's important to think about this reporting in those two chunks. One is just this narrative report to the public where we can capture some of the things that maybe are not legally permissible to get into the reporting, in the detailed reporting, but we want to at least talk about. So maybe some of the state-level issues that came up or other issues. I think there's an important role for the EITI to describe to the public sort of what looks like a very complex process. The other piece I wanted to mention was that I think we need to thank CBI for joining again. I think having a facilitated meeting is really great because then the government can actually be sort of an independent participant. So I encourage if Interior can keep making that happen, I think that's great. And congratulations, everybody. Good meeting.

VI. Meeting Participants

The following is a list of attendees from the May 1-2, 2013 EITI meeting.

Chaired by Rhea Suh, Assistant Secretary, Policy, Management and Budget, and Designated Federal Officer for the USEITI Advisory Committee, U.S. Department of the Interior and 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

Government
Mitch Baer, Office of Oil and Gas Policy, Energy Department
Curtis Carlson, Office of Tax Policy, Treasury Department
Greg Gould, Office of Natural Resource Revenue, Interior Department
John Tysseling, New Mexico Taxation and Revenue Department
Mike Smith, Interstate Oil and Gas Compact Commission

Civil Society Representatives
Rebecca Adamson, First Peoples Worldwide
Danielle Brian, Project on Government Oversight
Paul Bugala, Calvert Investments
Deborah Rogers, Energy Policy Forum
Keith Romig, United Steelworkers
Veronica Slajer, North Star Group
Michael Ross, Revenue Watch Institute

Industry
Phillip Edward Denning, Shell Oil Company
Michael John Flannigan, Peabody Energy
Susan Ginsberg, Independent Petroleum Association of America
Veronika Kohler, National Mining Association
Robert Reynolds, British Petroleum America
Brent Roper, Rio Tinto
Jim Roman, ConocoPhillips

Committee Alternates in Attendance

Civil Society
David Goldwyn, Goldwyn Global Strategies, L.L.C.
Rebecca Morse, Revenue Watch
Betsy Taylor, Virginia Polytechnic Institute and State University

Government

Blair Mersinger, Office of Oil and Gas Policy, Energy Department

Industry
John Harrington, ExxonMobil Corporation

Government and Members of the Public in Attendance
Isabel Munilla, Director of Publish What You Pay

Facilitation Team
Rachel Milner Gillers, Consensus Building Institute

VII. Documents Distributed

- Draft Agenda (PDF)
- Revised Day 2 Agenda (PDF)
- Meeting Summary/Minutes February 13, 2013 (PDF)
- Meeting Summary/Minutes April 11, 2013 (PDF)
- Revised Draft Terms of Reference (TOR) with edits (PDF)
- Revised Draft Terms of Reference (TOR) clean (PDF)
- Final Terms of Reference (PDF)
- Draft Criteria for USEITI MSG Meeting (PDF)

- ONRR Presentation (PDF)
- ONRR DOI Revenues Presentation (PDF)
- ONRR Legal Framework for Disclosures Presentation (PDF)
- Treasury Presentation (PDF)
- New Mexico Background Paper: *Extractive Industries Revenue Summary: Profile of the State of New Mexico* by John Tysseling (PDF)

- Draft USEITI Goals (PDF)
- Preliminary Scope (PDF)
- Materiality (PDF)
- Checklist For EITI Scoping & Feasibility Studies (PDF)
- Guidance On Defining Materiality (PDF)
- USEITI Preliminary Scope with Comments (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.