

U.S. Extractive Industries Transparency Initiative (USEITI) Public Comment Period Summary July 9, 2012

I. Background

The U.S. Department of the Interior (DOI) conducted a public comment period from May 18 – June 29, 2012 to gather input from the public on the May 18 publication of the United States Extractive Industries Transparency Initiative (USEITI) Stakeholder Assessment and Multi-Stakeholder Group (MSG) Options. The Consensus Building Institute (CBI), an independent, non-profit organization prepared the draft assessment based on input from the initial public comment period, public listening sessions held in March 2012, and targeted multi-sector interviews. During the May-June public comment period, public listening sessions were held in Anchorage, Alaska on May 30; Pittsburgh, Pennsylvania on June 11, 2012; New Orleans, Louisiana on June 12, 2012; and online via a public webinar on June 1, 2012. A public workshop was held in Washington, D.C. Separately from these activities, the Department of Interior engaged Tribes and Alaska native organizations through individual Tribal meetings, with a meeting hosted by Alaska Native Corporations, and a consultation session at a meeting of the National Congress of the American Indian (NCAI).

CBI facilitated the listening sessions, webinar, and workshop and has prepared this summary of public comments, which can be found below and attached. Public comments included in this document inform CBI's final assessment report. The Federal Government's USEITI sub-Interagency Policy Committee will then use the independent assessment findings and public comments to develop recommendations for moving forward with MSG formation. As the designated senior government official in the USEITI effort, Secretary of the Interior Ken Salazar is tasked with deciding on a structure and selection process for the initial MSG members.

II. Summary of Key Themes from the Public Listening Sessions and Webinar

At public listening sessions in Anchorage, Pittsburgh, and New Orleans and on a webinar, DOI officials began with a presentation on USEITI, including an overview of the global initiative, benefits of implementing EITI in the U.S., a snapshot of the USEITI process to date, and the role of the MSG. CBI then presented independent assessment findings and options for forming the MSG. Following CBI's presentation, members of the public were asked to provide comments. Presentations are attached to this document in Appendix B and are posted online at the Department of the Interior's EITI website - <http://www.doi.gov/eiti>

The public was invited to provide comment on CBI's draft assessment and the following questions:

- *Which structure (non-Federal entity, Federal operating committee or other such legislatively-created entity, or FACA) is most appropriate for forming the MSG and why?*
- *Should an interim MSG be established?*

- *Can the core MSG sectors (civil society, industry, government) be sufficiently represented at the outset by 5 members and 5 alternates per sector?*
- *How best can DOI balance its role as convener with supporting an inclusive self-selection process among sectors?*
- *Other?*

Most public comments included questions and comments about USEITI education and outreach; MSG structure, size, and representation; civil society definition and participation; scope of the U.S. initiative; and funding for USEITI implementation.

Education and outreach. Attendees requested more coordinated and accessible outreach, and noted that additional time is needed for mapping and reaching stakeholders that may be interested in the USEITI process. Many noted that EITI can be difficult to understand, somewhat remote from day to day concerns, and needs to be better explained in regard to how it affects local and regional needs and issues. Concern was expressed about the lack of more intensive and extensive efforts to reach out to civil society across the country, especially to local communities and community organizations who are most directly affected by extractive industries. Suggested outreach tools include developing more interactive social media, convening conference calls, moderated email engagement, a more accessible website, more attractive and less complicated outreach materials, and creating a glossary of key terms.

MSG structure and size. Several commenters voiced preference for an independent, non-Federal entity in order to uphold the EITI spirit of self-determination and to ensure that government stakeholders stand equal to other sectors on the MSG. Some suggested that a non-governmental structure would help ensure buy-in among stakeholders who do not trust the government, and others noted that it will be important to explore the legal implications of convening an independent entity. Some commenters across sectors expressed concern about the various limitations and constraints a Federal Advisory Committee Act (FACA) convened MSG would impose. Multiple attendees across sectors noted that five members per sector will not allow for adequate representation on the MSG, and that an interim MSG may be helpful starting point.

Criteria for MSG representation. Attendees noted the importance of multiple levels of participation in order to represent needs at the local or industry-specific level. Some noted that sector representation be diverse and reflect the range and diversity of views and perspectives within each sector. Several noted that multiple forms of participation are essential for full and broad engagement and outreach.

Civil society definition and participation. Several attendees noted that civil society is an especially diverse sector and should include groups that monitor impact on communities overall, not only NGOs on specific issues. A few asked to define more clearly the term “civil society.” Some commenters noted that civil society should include environmental groups and community organizations representing communities affected by extraction. A few noted that Tribal representation should not be limited to the government sector, as many Tribes are not Federally recognized and would need to be represented as communities. One commenter noted that communities depending on the extractive industry for employment may not be comfortable disagreeing with industry counterparts on the MSG given the source of their livelihoods.

Scope of the initiative: lands, industries, and payments. The public listening sessions and webinars included limited discussion on scope, but suggestions were made that USEITI include: all extractive industries, taxes, state revenue, revenue from private lands, and contributions to political campaigns. A few commenters requested reporting on how revenue is being spent on communities, particularly in those with high poverty levels, and including environmental impact as well. A few noted the complexity of this issue as one delves into the details. Some noted that the scope must be narrow and manageable enough to achieve meaningful focus and gains in transparency.

Funding and Cost-Benefit for USEITI implementation. Commenters from both industry and civil society raised questions about funding the effort and whether or not the benefits of implementing EITI outweigh the financial investment. Some regional/local commenters asked for a more explicit cost-benefit analysis, in particular, for the value of resource-constrained organizations caring about and participating in EITI. Some noted that information produced must be useful to those most affected by resource extraction. Some attendees voiced concerns about duplicating current reporting efforts and spending money on reports that may not benefit the communities they are meant to serve. Representatives from civil society registered concerns about securing funding for education and outreach in addition to support for participation in USEITI deliberative processes.

Additional considerations for USEITI implementation. Some commenters noted the importance of proper auditing in the implementation phase and asked for clarification on current Office of Natural Resources Revenue (ONRR) auditing procedures. As USEITI progresses to the reporting and verification stages, it will be important that information be readable and meaningful to stakeholders at all levels. Some stakeholders raised concerns about the future of EITI given the upcoming national election and the uncertainty that creates.

III. Summary of Key Themes from the June 22 Public Workshop

At the public workshop held on June 22, 2012, a representative from the International EITI Secretariat offered an overview of global EITI progress, outlined the Secretariat's primary function as a resource for guiding member countries through the EITI process, and noted that the rules on structuring the MSG are intentionally flexible to allow for individual countries to decide how best to initiate domestic EITI implementation. CBI then reviewed draft independent assessment findings and recommendations on MSG formation.

In the morning, attendees broke out into three working groups to discuss the four potential options for convening the MSG (New or Existing Federal Advisory Committee (FACA), Independent Non-Federal Entity, and Operational or other kind of Committee). Each group reported out on their discussion, citing benefits, challenges, and further clarification needed on the convening options. In the afternoon, attendees broke out into three working groups to discuss potential membership criteria and the composition of the MSG, and each group reported out on their discussion. Following the workshop, civil society and industry caucused to debrief the meeting and to consider next steps and sector-specific convening needs. The following key themes summarize feedback shared during group report outs. More detailed comments from the DC Public Workshop can be found at the end of Section IV below.

Structure of the USEITI MSG. While many attendees raised questions about the options put forth in the draft assessment, most identified FACA and the creation of a non-Federal entity as the most

viable options for forming the MSG. FACA was noted as the option most familiar to DOI, yet participants raised multiple concerns about the efficiency of a FACA, funding and representation restrictions, and decision-making authority. A few groups suggested models for independent non-FACA options, including the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the National Wind Collaborating Committee (NWCC), and the North American Competitiveness Council.

Criteria for selecting MSG structure. Participants identified legitimacy, efficiency, and sustainability as three key criteria for deciding upon the optimal convening structure for the MSG. Most groups requested additional information from DOI in order to adequately evaluate and comment on the proposed structures.¹ Further clarification was needed on each option in order to understand differences in timelines, costs, funding, sustainability, restrictions on participation, primarily a “no lobbyist” policy, and which options will create decisions that are the most binding. DOI agreed to prepare further information on FACA and non-FACA approaches. Such materials were made available on the DOI website and via the EITI list serve on June 27, 2012.

MSG Size and Means of Participation. Most participants recommended that the MSG consist of seven members from each sector. According to most participants, five members per sector will not adequately capture the diversity of U.S. industries and civil society interests. Participants stated that regardless of MSG size, it will be critical for MSG members to create an adequate feedback loop with the sectors they represent so that sector input is reflected in MSG-level decision making. Designated alternates for each member should be established. Alternate MSG members should not have to be from the same organization, but they should be from the same sector.

Criteria for balancing the MSG across sectors. Attendees noted the challenge of recommending criteria for MSG selection given that USEITI scope is not yet defined. It may be useful to set up an initial MSG with broad and diverse representation that can be adjusted as scope is refined. Participants shared mixed opinions on criteria for size and selection of industry representation on the MSG. Some suggested the MSG include a mix of domestic companies and international companies. One commenter recommended that the MSG include separate sectors for the mining industry and the oil and gas industry, while others expressed concern that industry as a whole should equal other sectors in number. One commented noted that the role of investors, and in which sector they should sit, would need to be clarified. One group suggested that DOI may want to learn from Australia’s involvement of Tribal and local interests in the MSG, given that the role of these sovereign entities is not yet clear.

Criteria for selecting individual MSG representatives. Commenters noted that it may be difficult to find individuals that meet all of criteria put forth in the assessment. Some prioritized commitment to EITI, collaborative spirit, pre-disposition to consensus, and openness to the process as the most important criteria. Technical expertise could be provided at an advisory level if a member needs assistance with technical matters. Some attendees suggested that The MSG should be composed of individuals, as opposed to organizations, so members are personally committed. One group

¹ In the week following the workshop, DOI published a series of documents at www.doi.gov/EITI in response to requests from workshop participants for additional information on MSG convening options. The documents included a Federal Advisory Committee Act (FACA) Q&A; a side-by-side comparison of FACA vs. Non-FACA options including detail on funding, process, and decision making authority; and examples of non-FACA Federally funded groups.

suggested that members should include high-level executives in order to help generate buy-in for the USEITI process, although staff-level participation would be needed to operationalize high-level decisions.

IV. Public Comments from Listening Sessions by city/format²

The following summarizes questions and comments by city where the listening session was held. Responses by DOI are noted where they occurred. Please note that where sessions had fewer participants, the session allowed for a more conversational approach.

PUBLIC LISTENING SESSION: ANCHORAGE, AK– MAY 30, 2012

- *Comment:* Who names the reconciler and what is the background? Of the 30 countries that have signed up, how many times have the numbers been matched up?
- *DOI Response:* The reconciler is an independent accounting firm and will be selected by the MSG. The MSG is the engine for the implementation; comprised of industry, government, and civil society. The MSG decides what revenue streams will be included and materiality thresholds, so the composition of that group and functionality of that group is critical. The EITI fact sheet is a snap shot of all the steps and phases for a country to move through in order to be compliant. The fact sheet can be found online at: <http://eiti.org/document/factsheet>
- *Comment:* I assume that corruption and a barrier to corruption is one of the things the industry is interested in. Do you call it EITI or E.I.T.I.? Were you skirting the corruption issue deliberately?
- *DOI Response:* In the U.S. we have a fair amount of data available to the public. In terms of corruption within extractives in the U.S., that is not a primary issue for us in the same way it is in governments and governance in other countries. The U.S. is taking on a leadership role by supporting transparency and setting an example for other countries.
- *Comment:* In terms of leveling the playing field, it seems the U.S. is interested because U.S. corporations and trans-nationals are active in other countries. Given that if we name the four largest we'd have to get way down the list to the independents to find the ones who would obviously want a leveled playing field. Considering Shell, which is not a U.S. company, Exxon Mobile, ConocoPhillips, and Chevron, why would any of these companies be interested in leveling the playing field?
- *DOI Response:* In terms of transnational companies, because of their operations abroad, they think that the U.S. push for doing this will encourage other countries to join and have a more robust program for implementation. We have been a supporting country from the early stages.
- *Comment:* I am surprised to see Nigeria on the list because there is nothing close to revenue transparency in that country.
- *DOI Response:* My understanding is the Nigerian Government took on a very active role in passing an EITI Act. They are seeing improvements over time in reporting. Norway, the most developed EITI country, also finds discrepancies. The International Secretariat expressed EITI as a minimum standard, but strives for countries to do more.

² Comments included herein are a detailed account of what was said but not an exact transcript.

- *Comment:* Publish What You Pay reports that within ONRR only 50% of companies are looked at and checked for compliance and only 5% of companies are actually audited.
- *DOI Response:* ONRR reviews approximately 53% of all contracts annually, which is a significant amount in terms of how much oil is produced. We make sure every company is looked at every three years. ONRR recently transitioned to a risk-based approach for conducting compliance reviews and audits, and we have moved to an automated process where computers check the numbers right up front. ONRR has also implemented “data mining”, which is another way we are working to ensure every dollar is captured correctly and timely. In the last 18 months we have collected an additional \$18 million. We also increased our enforcement program. Penalties have increased, and government penalizes for misreporting or consistently misreporting.
- *Comment:* How many compliance reports have there been this year and how many have been different? Does the 53% includes audits and compliance reviews?
- *DOI Response:* We don’t have those statistics with us, but can get you that information.
- *Comment:* The BLM and MMS have had problems with Indian payments through the years. Can you be specific on your data? Is it a bread box, an annual number, a cumulative number? If you can’t break down the numbers we will not be making the best use of our time.
- *Comment:* Does this process have anything to do with the Norway decision to divest their investment funds in Rio Tinto because of Rio Tinto’s pension fund? They have \$3 billion divested from Shell.
- *DOI Response:* The Norway Minister of Finance makes the ultimate decision, and I am not sure what led to their decision. EITI possibly helped them come to this decision. They have sent a letter recommending they exclude Shell based on their poor behavior in Nigeria. What we do know is that Norway was an early adopter of EITI and the country is transparent in terms of their own revenue flows and streams.
- *Comment:* The North Slope Borough was formed in order to collect tax revenue from oil and gas. Would like to see state revenue includes. Outer Continental Shelf revenues will be Federal revenue. Most of our revenue has been state revenue here in Alaska. When MMS holds a lease sale and receives \$2 billion, we as citizens don’t know if we the U.S. taxpayer received a good deal or not because we don’t know what the seismic data show. Seismic data is proprietary but should be part of transparency because revenue and geologic information go hand in hand.
- *Comment:* Would like to see all extractive resources included, not just oil and gas, but minerals as well. Would like to know what they are paying. Are they paying enough? Should they be raised to be on par with gas? Reporting should be lease by lease, to know exactly what is being paid by each lease throughout the nation. This would be a way to get the true information to the public. Thinking out of the box, what about campaign contributions? I am concerned about is the companies that are hiding contributions through Super PACs that’s allowed under the law, but as a revenue transparency I want to know what they are paying to whom. I think it is extremely material in Alaska and probably nationally where these companies have invested their campaign contributions. Companies are flowing a lot of money under the table and I would like to know as a citizen where it is coming from and where it is going.
- *Comment:* I think as an extractive industry to be compliant, can they volunteer to not participate? How is that going to work if it’s a U.S. executive order?
- *DOI Response:* Once the MSG is formed and the group decides on materiality thresholds, all material payments must be reported.
- *Comment:* At Rio plus 20 next month, there is a discussion for a civil society initiative to require all companies to report environmentally. This could be part of the US EITI requirements.
- *Comment:* What is the status of the Dodd-Frank implementation? How long has it been?

- *DOI Response:* A final rule should be issued soon. It has been approximately 18 months since they were required to have completed the ruling. Under 1504, all companies publicly traded would have to report revenue extracted in U.S. and overseas. The rules will define that and at what level of detail. This is a SEC action but one of the limitations under the SEC is that it is only applicable to companies that are publicly traded. EITI encompasses all companies, but what requirements will be required would be up to the MSG.
- *Comment:* Why did you pick St. Louis, Denver, and Houston for the first round of public listening sessions?
- *DOI Response:* St. Louis was chosen for coal and mining, Denver is central for all oil and gas and is also where ONRR is located, Houston is in the Gulf of Mexico, and Washington DC of course is where many of the groups have a national presence.
- *Comment:* As of this moment Politifact believes Exxon Mobile and politicians lied that Exxon paid taxes. If I borrowed \$100 but paid \$50, but the contract said I was supposed to pay \$100, Politifact would tell the public that I hadn't paid my debt. This one example raises the complexity of the issue and reconciling payments and information. It is true that Exxon paid some taxes in 2009. But they had an \$820 million write back also showed in SEC report and included it in their financial report. I think it's a critical distinction of do we mean the income tax paid in the year or for the year? Where you have contradictions on a simple fact on whether or not Exxon paid taxes, it took me an incredibly long time to tumble on that information and I had to solve the question of what is going on here. There are such ambiguities in the numbers...cubby holes on what the numbers can be....did our largest and most profitable company pay taxes...basically there is a simple question and they said they paid taxes.
- *DOI Response:* To the point of Exxon Mobile, part of the task is getting the right MSG with expertise equipped to ask the right questions so there are several redundancies for technical policy expertise in determining what the template should look like and how accessible the data should be. We have to demonstrate those requirements have been met. The MSG has to focus on issues of accessibility. There is ample opportunity to have a focused attention to these issues.
- *Comment:* Selection by sector, I can safely predict that it will be lowest common denominator and the press is not a good place to do it. What kind of audit are we talking about? I know of two kinds, functional audit or compliance audit, and pro forma audit. Using the terms and not using them correctly here. One would be automated or computerized. Have we validated the numbers? You can have a pro forma audit that the numbers match and that can be pure garbage.
- *Comment:* At the moment I haven't seen anything that leads me to believe you've contemplated the risk of how slippery the reporting numbers are for our state here in Alaska. We have not audited our taxes since 2006 in the state of Alaska. To make it work you have to have comprehensive numbers. The state has committed to spend \$36 million to set up an audit system. We went to cost-based taxes and we haven't been able to audit. We've got a serious problem. Just appropriated \$34 million five years later. In my long experience you have a real garbage-in-garbage-out phenomenon. You may need a lot more documenting of what you are doing. The EITI process must include all state and Federal revenues. 95% of this state oil is controlled by ConocoPhillips, Exxon, and BP. Prudhoe Bay was the largest oil field at one point, but is now 3rd behind North Dakota. Your data must be comprehensive and not piece meal data. You should be advocating for comprehensive data because partial tax data will not tell stakeholders if they are getting a fair deal.
- If the state is collecting a lot of tax it is relevant to the industry. Data must be comprehensive data and you should not only consider part of the data.
- *Comment:* Will this MSG have staff?

- *DOI Response:* EITI has a secretariat, and we recognize the MSG has to have that functionality. We hope to get input on the expertise that the group should have. We fully recognize that the MSG has to be staffed.
- *Comment:* How will civil society stand itself up? How did Norway solve that? The civil society end is who needs the staff because it doesn't have a stake. The private and government do have staff and resources. Could the U.S. qualify for the oil development program of Norway? Is that the national program in which they build capacity? It is OFD. Their capacity building organization that goes to the countries. Could we qualify for their help?
- *Comment:* Consensus depends in large part on who is at the table. Can you offer me a quick estimate in this state of what the top three oil companies percentage of oil production are? Do you know that for this state onshore and offshore?
- *DOI Response:* No we don't have the state level data.
- *Comment:* Does EITI have guidelines on holding the data confidential? Do we recognize this is a huge problem? Aggregate versus disaggregate reporting. Are the results made public so the citizens can see the factors and what their investments are doing? Has EITI dealt with ring fencing? Do they have a posture on ring fencing?
- *DOI Response:* The MSG will have to decide on disclosure and non-disclosure in their final work plan. Some countries report disaggregated data. There is a pretty broad range of what is allowed in other countries.
- *Comment:* 11.6 billion was dispersed in 2011. Does that include royalty payments and is it reported publicly? Can it be found online?
- *DOI Response:* Yes. This information can be found on the ONRR website.
- *Comment:* Does EITI include procedures that reduce the timeline between revenue completion and audits?
- *DOI Response:* Regarding timeline, each country has its own standard. For ONRR it's a 3-year time lag. The MSG will ultimately decide on the timeline for reporting for USEITI.
- *Comment:* Are you clear in terms of my comments that as much as I respect you as government representatives, I am in fundamental disagreement as to whether I think you need to do a better job of outreach to the public. In this state the governor would not say there is a problem with the taxes and confidentiality. Every decision in this decade has gone that way. I think the data and confidentiality, ring fencing question, independent audit, annual disclosures and Dodd-Frank, unless those are all dealt with aggressively to get comprehensive data you will have illusions. Alaska is a case in point that demonstrates why you need comprehensive data.

PUBLIC WEBINAR: JUNE 1, 2012

- *Comment:* (Referring to) An article that's coming out in issue of *Executive Magazine* about Open Government and its failure to define the terms. As a former Federal bureaucrat, I don't know if I had this tendency before I joined the Federal Government or it just exacerbated it by working as a bureaucrat but sometimes ordinary-looking terms can be given special meaning, especially when it appears in the Federal Register and things like that. And so what you might take to be a 'stakeholder', I might not, it all depends on the context [in which] it is being used. What's driving this is the National Action Plan on Open Government, which doesn't really define what 'civil society' is. There has been some implications made about what 'civil society' means, what 'multi-stakeholder' is supposed to mean. It's been invented at this level and it should be clarified. That way you know, 'civil society' means something at DOI and it means the same thing in another part of the government and the same thing all around. So I don't place it at DOI's feet

so much as saying you need to turn around and place it at a higher level's feet and get them to say now by 'civil society' do you mean just 'civil society organizations' or who's involved? I'm just using that as one example but terminology is big for me.

- *Comment:* Have you gotten any guidance from the EITI International Secretariat about some of these open issues in particular the governance of the MSG and how to best balance having a legal mechanism by which you need to organize the input from the different constituencies, versus having a good degree of decision-making power in the hands of the MSG itself? They may be able to provide at least examples from other countries that may have faced similar challenges.
- *DOI Response:* We have spent time with the International Secretariat. We participate in conference calls with them. We went to Norway and visited with them in February, and spent some time with them there. We have an ongoing open dialogue with them, they've been very helpful and they're going to continue to help us through the process as we continue to gather the data through these sessions that we are doing now, and the comments we are receiving and CBI's assessment as well.
- *Facilitator response:* I think they haven't been able to give us a lot of specific direction in this regard, they can point to other countries and the process other countries used to set up the MSG but they also know strongly that the US has its own particular political and legal context and really defer this question of the administrative process to each country. Which leaves us a little bit, I think, having to figure out what suits us best here in the U.S. within our existing legal, operational, and political structure.
- *DOI Response:* It is important that these sessions, if people have ideas on how best to set up something like this in the U.S., this is the time and this is what we need to hear from because again the goal is not for the U.S. Government to be completely driving how any of the decision making goes but to get all the information we can from all the sectors. So it is very important right now that we remain in that listening mode so that we are getting all the information and suggestions that we need to take the next steps and set up the MSG. Again if anybody has ideas, we truly want to hear those ideas at this time.
- *Comment:* I thought that you laid out the advantages and disadvantages [of FACA] pretty well in the draft assessment. And to respond to the earlier request, and I think we'll probably be funneling our comments once we mull this over a little bit further to provide it in written form to you either individually or through EITI.
- *Comment:* I noticed from the CBI assessment that there's no mention of including the Securities and Exchange (SEC) Division of Corporate Finance on the MSG as API recommended in our first round of comments, could you just speak to that?
- *Facilitator Response:* We are responsible for the assessment and its imperfections. Yes, it should not have been excluded. It was absolutely in your letter so in the next version we will make sure it is more explicit, so thank you for that comment.
- *Comment:* A moderated email listserv could be an easy, simple way for people who don't have time to be at same place/time, for sending out information. A way of sharing stuff where people can opt in and out. It is one example of one way to be aware of what people's perspectives are, to see how it fits with (my) perspective and be more collaborative. Has anyone considered that or has that not been considered before?
- *DOI Response:* We are always looking to find ways to get the message out and share information, and we are at the step right now where we are trying to use all technology available to us, and working with communications staff at DOI to think of better ways/ideas to share information and have open discussions. We are all ears to any suggestions, and we'll do our best to set it up.

- *DOI Response:* The next public sessions are in Pittsburgh on June 11 and New Orleans on June 12. Information on both sites are on our website www.doi.gov/eiti, [that includes] all information on all upcoming public listening sessions, and we are planning on having a workshop on June 22 here in DC. Agenda and information for that workshop is coming next week.
- *Facilitator Response:* For those available to attend, this is really workshop-oriented. We hope to get a good representation across the sectors, industry, civil society and government and have a robust discussion about these topics in detail. The hope is out of that rich discussion we might find some joint direction about how to proceed with some of these key questions about size, membership, process, etc. The agenda will come out next week but we'd love people's participation to make that possible because we think that a rich, robust cross-sectorial discussion will really help to move the ball forward on some of these questions.
- *Comment:* With respect and thanks for your efforts I want to make clear that last night I spent considerable time trying to get to the EITI website and could not get there even with 2 different computers. It is up today and I'm not online right now. I want to mention for the record that one cannot get there. It's hard to make input. I want to point it out in case others were trying to reach you, they may not have been able to.
- *DOI Response:* We'll make sure that the website is working and double-check on that. Also know that you can send me comments in writing, you don't have to do it online. The address if you want to submit input in writing is USEITI Comments, c/o DOI, 1801 Pennsylvania Ave NW, Washington, DC 20006.
- *DOI Response:* I thank you all for participating today. I think it's really important to continue to get the word out so I'll put that back on all of you on the line today. If you can help get the word out on any of the means that you all use to let people know that this type of initiative is underway and that the U.S. Government is very much open to comment as we move forward with this process. It's a process that is not driven from above down but from the bottom up. If you can get the word out to everybody on how this process is going to work, we're going to continue this networking as we go forward. We have another month of the open comment period. Thank you again for taking the time and we look forward to hearing from all of you.

PUBLIC LISTENING SESSION: PITTSBURGH, PA – JUNE 11, 2012

- *Comment:* Are you collecting the dollar amount revenue or are you collecting tonnage extractions?
- *DOI Response:* For the purpose of EITI we are collecting and reporting revenue only. If oil and gas companies reported 10 billion dollars to the U.S., then the U.S. should show 10 billion dollars in receipts. It's a straight reconciliation of what was paid to government or received.
- *Comment:* And tax?
- *DOI Response:* The MSG will decide whether or not to include tax.
- *Comment:* Britain didn't do EITI within their country. Is the U.S. going to do it in the U.S. or in the U.S. in other countries?
- *DOI Response:* The British Government stated that they aren't a resource rich country because 20% of the GDP has to be from the extractive sector. U.S. falls at about 1.3 % GDP in extractives, but we feel it is important to lead by example and our overall sector is quite large in real dollars. The focus of U.S. EITI is extractives in the U.S.
- *Comment:* To what extent are the states involved?
- *DOI Response:* The MSG will decide Federal, state, and local involvement.

- *Comment:* So you are collecting the data and what will you be doing with it?
- *DOI Response:* The data will be sent directly to an independent third party reconciler to be published in a report based upon the reporting guidelines established by the MSG.
- *Comment:* Will there be online access to the EITI report?
- *DOI Response:* The MSG will decide how the data will be disseminated.
- *Comment:* How do you decide who will participate in the MSG from Civil Society?
- *DOI Response:* Each sector, Government, Companies and Civil Society will self-select. Therefore, Civil Society will decide who participates from that particular sector.
- Is the June 1st webinar archived?
- *DOI Response:* The webinar has not yet been archived, but we update the website regularly and plan to publish the webinar soon.
- *Comment:* It sounds like this is largely something that is symbolic of the U.S. Government setting an example. What are some of the more specific policy goals driving this initiative?
- *DOI Response:* EITI can be another opportunity for ONRR to validate that we are getting every dollar due. Implementation of EITI is also an opportunity to make sure the data is accurate and the public can access the information in a way that's easy for them to understand. The more informed the public has access to where the revenue streams are coming from, the better and the larger discussion of resource development is in the U.S.
- *Comment:* Does any of the report deal with where the money goes after it is collected?
- *DOI Response:* Initially we will want to get the revenue reconciled and then further down the road track the revenue to where it ends up. ONRR currently does that for special funds versus the general treasury. Under the current system when ONRR collects 11 billion dollars, a portion goes to the land and conservation fund, 50/50 with states, 100% on Indian land goes back to Native Americans, and some goes to the National Historic Preservation Fund. Revenues collected from the Office of Surface Mining goes back to reclamation. In general, the majority goes to Treasury, that is, the general fund.
- *Comment:* Can the members on the MSG be a nest made up of multiple of organizations?
- *DOI Response:* Yes. Civil Society is more challenging, but it's possible the conversation could be that we need two...national groups and regional groups and alliances or coalitions.
- *Comment:* A lot of NGO's look at money issues. Didn't see any mention of environmental communities or rural communities. Most groups are based in rural communities. It would be important to include that as well. That would be difficult to figure out how to do. We don't have the capacity or the skills to serve on an MSG.
- *Comment:* There is so much value in the communities where these things are happening.
- *Comment:* We have a center for rural matters here in Pennsylvania that addresses rural issues. Are you saying it takes an act of Congress to give decision-making power to a committee or an MSG?
- *DOI Response:* The Federal Government has to follow FACA if it is to receive collective advice. FACA committees can be very inclusive and collaborative depending on how they are run.
- *Comment:* You had a slide where you list the benefits of doing this. People have to feel like its benefiting them. So, in order to gauge civil society, I don't catch a lot of things but I haven't heard of this before and it has been around for 10 years.
- *DOI Response:* Yes. The EITI has been around since 2002.
- *Comment:* This is geared more towards countries like Azerbaijan, where the country has a lot of oil exports and the society are still poor and the only beneficiaries
- *Comment:* Let me take Appalachia as a counter comment. Take a regional picture of what's happening in the extractive communities. One family who owns the company has all the money and the families all around are wondering how they will feed their families.

- *DOI Response:* To cite a few examples of how transparency can be helpful, water utilities had to be much more transparent and do an annual report and send it to their water users. The toxic Use Release inventory (TRI) from the 80s or early 90s requires companies to list what they use. The information has been required and has forced behavior change where companies voluntarily reduce their usage of certain products.
- *Comment:* How do you sell EITI to make it sexy enough to get civil society involved or get people engaged? That's my job, how to engage the community.
- *Comment:* How much will this cost to put this together? What if we spend this money and in 50 years we aren't using fossil fuels anymore? Since we are already pretty transparent, is there a way to just make that information more accessible rather than forming the MSG?
- *DOI Response:* Some people might say the information and data that ONRR provides is general. So if we had more details of what companies are getting from industry X, we might be able to say if the Federal Government is getting value. Expanding to taxes, we could ask about subsidies, what are we giving instead of getting? Why do we get revenues from coal and not gold? What about renewable? That's the ways in which people have talked to us about ways they can use this initiative.
- *Comment:* Is EITI voluntary or mandated for companies?
- *DOI Response:* This is perhaps a question for our lawyers or the MSG. The U.S. already has reporting requirements. If we are going to make companies change how they report, do we need to change regulation and laws to back that up? EITI is voluntary on the government level, but once that MSG decides what's going to be in that report, the government has to make sure the report gets the information the MSG has decided on. The MSG also determines what action will be taken if the information is not reported. For every challenge we have talked about there is a solution, and it's just about how we get there.
- *Comment:* Do you have a list of the ways that civil society can use the information? Give people real concrete ideas of why they should report it?
- *Comment:* Are you going to report on all the comments received?
- *DOI Response:* Yes. We are posting on the web all of the listening session notes and a second assessment drafted by CBI.
- *Comment:* Setting aside the global symbolism, has there been an assessment of whether this system works for us? Has there been a cost assessment or an evaluation?
- *DOI Response:* For EITI International, their message to us is that they provide a framework but each country is different and has to do this in their own way. From the U.S. perspective the President made the decision to implement EITI. Our direction was to help the administration move this forward. We went to Norway and asked for examples and best practices, and were told there is no country like the U.S. in terms of complexity. Norway had an 8 person MSG, very simple. Australia is doing a pilot on this. Australia is similar to the U.S. and they have states in almost a Federal-like system. We are talking with them. The Canadian Government is thinking about it. In terms of costing, that's part of the MSG's job. They have to develop a fully-costed work plan. Some large companies already participating in other countries see the value in doing this. There are a range of views even across sectors. On Tribal lands there is a lot of concern related to this with regard to transparency. This is a really good idea, but is it a good idea in the U.S.?
- *Comment:* What happens if we have a change in administration in November?
- *DOI Response:* It depends on the sectors. If one or more sectors aren't interested we might move on. Hopefully we are doing this for all the right reasons and it doesn't matter what party you are in. The scope of the MSG beyond revenues on Federal lands and rights could become contentious.

- *Comment:* The East mostly operates on private lands. The MSG should consider those comments as part of their decision making
- *DOI Response:* Regarding communication and outreach, what kind of technology do you find most effective?
- *Comment:* Social media networks, email, regional groups, list serves, monthly conference calls.
- *DOI Response:* Are webinars useful?
- *Comment:* Yes. Videos are even better. Conference calls work better than webinars for those who don't have internet in rural communities. We are a member-based organization so we always try to give our members input. Really hard to get information to the community with short notice.
- *Comment:* Regarding public comment opportunities on key decisions, enough time to respond would be awesome.
- *DOI Response:* We would like to request permission to pass on your names to some of the other listserves. Please let us know afterward if you don't want us to pass on your contact information to other civil society organizations.
- *Comment:* I think the plus version of EITI will mean more to environmental groups. How are the frontline communities benefiting from this? What's being done with those revenues?
- *Comment:* Once the MSG is formed will membership change?
- *DOI Response:* Each group would have a standing role. Possibly with a staggered approach. This will be determined by the MSG.
- *Comment:* How do you initially pick?
- *DOI Response:* It depends on the administrative process used. Legally the Secretary could initial a notice and take nominations with nomination criteria. We recommend that the sectors self-organize and submit the fewest names possible. Civil Society can have a discussion and solicit their own nominations and establish criteria and negotiate to get to that five.
- *Comment:* Is CBI making decisions?
- *DOI Response:* No. They are a third-party neutral facilitator.
- *Comment:* Do you have any group or anybody from the civil sector?
- *DOI Response:* Revenue Watch and Publish What You Pay are the two big groups that were active in convincing the administration to do this.

PUBLIC LISTENING SESSION: NEW ORLEANS, LA – JUNE 12, 2012

- *Comment:* Define civil society?
- *DOI Response:* Civil Society is defined as the public at large, inclusive of non-governmental organizations.
- *Comment:* If you want this to be balanced you can't give any sector an edge. They have to be equally balanced. If it becomes FACA or another type you're giving government an edge and the ability to stop everything in its tracks. For instance if the President decides he doesn't want this or if Congress doesn't do anything or fails to agree then EITI will disappear. You have to maintain that the government is only a member they are not larger than the other 2 sectors. This has to be planned very carefully and run like a non-profit.
- *Comment:* Start out with an interim governance planning body then go into how work together afterwards, first decide the look of it.
- *Comment:* There are five (5) Tribes on the coastal region that have extraction taxes and have been denied Federal recognition. Any Tribal groups involved need to represent the people of

communities. Serious environmental justice issues are occurring (gulf-coast) face greatest risk from extractive industries with little feedback of taxes back to their area.

- *Comment:* In order to participate as NERDA trustees for the oil spill damage assessment, Tribes must be Federally recognized. Ones on the coast are not represented because they are not Federally recognized. Tribes along the coast that are impacted don't have a say.
- *Comment:* For NGO's there needs to be an understanding that civil society is not the same as NGO's. There are NGO's that work in communities and ones that work on specific issues. Doesn't mean they are looking at the overall picture of the particular communities. Make sure you have groups who look at the whole picture for communities overall.
- *Comment:* Lobbyist groups are not mentioned as revenue to be tracked. Which is concerning because it seems like a lot of money that goes through the government comes from lobbyist groups. We want that to be counted towards transparency.
- *Comment:* In regards to CBI interviews EPA, U.S. Coast Guard and Army Corp. of Engineers should also be interviewed because they have permits for regulation on extraction, and regulation is a major part in the fees that they pay as well as the funds.
- *Comment:* An interim group is a good idea because these ideas need to be brought up and hashed out so you can have something the MSG can start with. Don't think 5 members for each group will be adequate or representative enough for the MSG. It will need to be much larger, even if that means you maybe have regional groups that convene into a national group.
- *Comment:* Community education is a major part of this and without their understanding there won't be any balance no matter how many representatives you have for each sector. Having multiple methods of interaction is very important.
- *Comment:* Non-Federal entity might be a way of getting this started and then morph into something more formalized. Our elected officials are impressed by voters so let's educate and mobilize grass roots groups and get some credibility. This will help us reduce barriers because you would have a large constituency already involved in using the same language. Build a group of supporters where people sign up, this can build some political push for government not to pull out of national group.
- *Comment:* In relation to education and disseminating this info is there an opportunity to bank on Corporate Stakeholder Responsibility money?
- *Comment:* This is a great initiative but seems like many people are still unaware of it. Challenge ahead will be to get larger public to understand this initiative. Could be a great additional tool but only if people know about it and its user friendly.
- *Comment:* Interim MSG makes sense because it's going to be difficult to get 5 members to represent the different industries. Wouldn't suggest using trade associations for representation as they seem to be the lowest common denominator rather than leaders within the industry. FACA will be a major challenge so suggest moving toward the non-Federal entity instead.
- *Comment:* This location was difficult to get to. Faith-based organizations may be selected to be involved but in the end they seem to be chosen just to make the group look good and inclusive. Not optimistic about this process. There are too many committees which now seem to be prolonging the process. Nothing about this process seems new or exciting; the industry is still in control.
- *Comment:* If kept not as a FACA then you have a better chance of doing something with this initiative. The MSG needs to understand the communities that are involved in extractive industries. These are select communities we are talking about, not Martha's Vineyard. Understand the people that are impacted that you're trying to report to, because if you're not going to do something with these numbers then it's useless. Get report back to people it impacts and have them be able to understand it so can use it to their benefit in understanding

the risks they are facing by allowing extractive industries into their communities. There is a cost-benefit analysis communities have to do, which is probably too late for Louisiana.

Understanding the communities is part of the transparency process. Louisiana is different in what it considers income compared to other states, so mind set and knowledge from people in different communities will vary. This needs to be built on a framework of environmental justice. Any natural resource industry that is attractive, transparency is critical to protect people who have those attractive natural resources around the globe. Like the idea of before and after reports but need to make sure there is a pathway back to communities impacted in a language they understand. People are encouraged not to be educated because educated people will say no, so putting something out on a website isn't going to work. Also understand people most at risk to extractive industries have least ability to communicate.

- *Comment:* Government and industry will have a lot more funds to attend events than the civil society sector. So this will have to be arranged carefully so all sectors can participate equally.
- *Comment:* Oklahoma, Texas and Louisiana are the three largest states for oil extraction with the most number of oil rigs in the country. In communities working with oil rigs where you're going to be finding a lot of civil society, they are going to be hesitant to speak against industry. They will vote along party lines with the industry even if they are against it or not seeing the taxes and fees they are supposed to from regulation because that is where their income as well as family and friends income and livelihood comes from. So they will support the industry even though they know it's hazardous to community. Exxon mobile had settlements around the country with the United Steelworkers, except for in Baton Rouge, LA. Being the 2nd largest refinery in the country and top 10 in the world the union fell to industry because they knew that was the economy of the community. So no one will speak up against industry or government because at that point government is industry.
- *Comment:* Is fracking considered extraction?
- *DOI Response:* Yes, hydraulic fracturing is a form of extraction.
- *Comment:* Terrible things going on in the fracking industry in Northern Louisiana and are causing great environmental and health concerns.
- *Comment:* Challenge of a 15 member MSG is that there are so many different industries and constituencies to make sure are represented. Obviously can't have 100 people -- that would be unruly -- but how you structure this with advisory committees and having the MSG do outreach and a public comment process to make sure everything is represented while still running in an efficient manner.
- *Comment:* The structure and foundation is not setup to work. This is too massive for 15 members especially when you think of each state's issues.
- *Comment:* If this is a non-Federal entity or body what ultimate legal authority would it have to force organizations to produce this information?
- *DOI Response:* The MSG will make decisions, and under the EITI rules, the government has certain responsibility. One requirement is for the government and industry to report revenues. The issue will be how does the MSG and government with its responsibilities figure out a way to implement the recommendations of the MSG? The government's responsibilities under the rules are to make sure the requirements are met. The U.S. won't be given validation and become EITI compliant unless the International Secretariat sees the requirements as robust enough to be accomplished.
- *Comment:* In 2017 Go MESA (Gulf of Mexico Energy Security Act) for the states is going to really kick-in and needs to be considered as part of EITI.
- *Comment:* Concern of duplication of what we already report. Can information be extracted from what we already report?

- *DOI Response:* This is a very valid point. The rules do not require explicitly that the government come up with new regimes in order to be implemented. This is a very flexible standard because it is being implemented in countries with very different political and social structures. Government is not required to do wholesale changes; however there are ways to think through in a consensus-based process how you can make small changes to avoid as much duplication as possible.
- *Comment:* We already report to ONRR and Department of Energy Information Agency. Are you going to be speaking between each other?
- *DOI Response:* Yes. The interagency group meets monthly making collective decisions with members from the White House, Treasury, National Security Council, State Department and Commerce.
- *Comment:* There are individuals who have been serving in these communities for years and hold the majority of the knowledge but are tired of this. If we want to use this as a tool for civil society we need to make it un-convoluted and uncomplicated especially in the beginning so people will participate and feel they have a voice and value.
- *Comment:* Public dissemination of the report and what kind of information is involved. Maybe have industry report royalties on the same form and not have to do any other reporting schemes, but then once information is reconciled the royalty information would be reported publicly by company or project.
- *Comment:* Make data easy to understand: never more than a 2nd grade level.
- *Comment:* As a template the Gulf of Mexico Alliance which includes 5 states and the Federal Government has been working for several years and has both positive and negative aspects but could be you useful to get some get feedback from the facilitators of that who started it and have brought in most of the Federal agencies. They are meeting in Corpus Christi next week. EPA and NOAA are the major players in it. Not a lot of civil society represented. It is government, science and academia primarily. Good look at a state and Federal partnership.
- *Comment:* Include a glossary please in your final report.

PUBLIC WORKSHOP: WASHINGTON, DC

MSG Structure

- Factors in deciding which process to move forward with include: legitimacy, efficiency, and sustainability. Questions for further clarification included:
 - What option will create decisions that are the most binding?
 - Are there differences between timelines for setup? The desire is to get a MSG established quickly.
 - What are the different cost implications of each of the options?
 - What are the funding requirements?
 - What is the sustainability of the options?
 - What are the restrictions to participation for each of the options? Could the Government participate in a non-Federal entity? Can registered lobbyists participate in a FACA?
- When looking at other countries who have adopted the EITI, there is no consistent approach. Australia's EITI is closest to the U.S. context.
- There are concerns about an "interim" MSG. An "initial" formal MSG may be more appropriate.

- STRONGER, established by the Environmental Protection Agency (EPA), which reviews state programs and performs audits, could serve as a model for the USEITI MSG.
- The MSG should have a fluid structure so it can be modified as priorities change and lessons are learned.

I. FACA (New or Existing)

- Questions regarding the FACA process, specifically, included:
 - How does the process work?
 - How does the FACA lead to actionable decision making?
 - What is the public comment process?
 - How does the funding work?
- There are concerns around the efficiency of the FACA process, but FACA is the option most familiar to DOI.
- For a FACA, additional assurances would be needed to guarantee the self-selection of Committee members and binding recommendations once made upon DOI. A Memorandum of Understanding (MOU) could be established along with the FACA in order to ensure recommendations are implemented. The FACA's Charter could also note an agreement with the Secretary of the Interior to implement the recommendations of the FACA.
- A FACA process would require a formal structure and plan – including phasing – that would need to be established in order to address evolving needs.
- If a FACA is implemented, the existing Royalty Policy Committee (RPC) should not be used and a new one should be created.
- Concerns about the FACA include:
 - Cumbersome process
 - Formalized rules and restrictions
 - Recommendations are only to the government
 - Restrictions on membership would preclude participation by registered lobbyists in the FACA. One participant noted that some members of civil society are registered lobbyists who play an advocacy role in their work even though they are not-for-profit and do only modest amounts of lobbying.

DOI provided a high-level overview of the FACA creation and implementation process. Each Department has a FACA liaison, who would help with the FACA process. The general steps for a FACA are as follows:

1. A charter would be written that defines what the FACA will address. Charters tend to be broad since goals can change over time.
2. A Notice of Intent would be developed.
3. A Federal Register notice would be published to call for nominations for the committee. Interests must be fair and balanced. Criteria for membership would be developed and an independent facilitator and the program office would use the criteria to review applications and appoint people to the FACA.
 - a. FACA requires a group of no bigger than 25 people in order to be productive, but can the membership can be bigger at the discretion of the Secretary. Observers are allowed at FACA meetings.
 - b. Registered lobbyists are not allowed to be appointed to FACA committees under this Administration.

- c. Members' roles are defined at the time of appointment, but typically individuals are expected to represent their own interests with constant communication with their organization and other organizations in their sector.
 - d. Federal ethics rules apply to special government employees. In determining membership on a committee, the agency may appoint representative members or members who are designated as special government employees. A member is designated as a special government employee when the committee needs one or more members to provide their own independent judgment in committee deliberations, based on expertise or special knowledge (i.e., technical, scientific, etc.).
 - e. Other government agencies can be represented. Full time Federal Government employees may be appointed to the committee, providing their programmatic expertise necessary to help the committee do its work. The person is appointed and not the agency. The appointee represents the agency, inasmuch as the member is providing programmatic expertise for the committee to use in its work. The committee membership can always be revisited.
 - f. After a person is appointed to a committee they can be removed. When a FACA is stood up, ground rules and protocols are established. If a member violates the rules, he or she can be removed. Alternates should be identified in the committee membership selection process. The government can also remove someone for any reason.
 - g. Publication of appointees for public comment is not required for FACA, but it is required for negotiated rulemaking.
4. Appointees would be vetted for approval with the White House liaison.
 5. Appointment letters would be sent to members of the committee with a term of two years.

DOI provided additional clarification during Q&A on the FACA process:

- Funding of the FACA rests with the agency that creates it. Agencies cannot take money to fund the FACA from other Federal agencies. Donations of funds or in-kind services may be contributed by non-Federal entities to assist in the operation and management of a FACA committee. Such donations would be reviewed under DOI's donation policy to ensure that DOI may properly accept donations. Typical government-covered costs include: facilitation, production of the public record, Federal register notices, travel, logistics, facilities, project website, among others. The FACA's Charter indicates the number of meetings and costs expected. The estimated annual average cost for a FACA is \$250,000. If housed at the DOI, a specific proposal in the budget would need to be established for EITI.
- It takes about six months to stand up a FACA, but could take longer.
- The Secretary of the Interior would be the final decision maker in the FACA.
- If the MSG was stood up as a FACA, then the agency could decide to set up a negotiated rulemaking as a subcommittee to the FACA. There are no limits to the number of subcommittees a FACA can have and subcommittees can work at the same time as the FACA. The negotiated rulemaking subcommittee could consist of FACA committee members or new subject matter experts. The full FACA Committee should review and actively consider, revise, and direct subcommittee work, as needed. Upon consideration by the agency, a decision could be made to create a separate FACA committee to engage in negotiated rulemaking, since the creation of this group must adhere to all of the same requirements of the original FACA

committee. Generally, no time or process would be saved by creating a subcommittee for negotiated rulemaking in this context.

- Once approved by the full FACA Committee, the Committee would turn the recommendations over to the agency who would then: 1) write the rule based on the conceptual framework developed by the committee; or, in some cases 2) the negotiated rulemaking subcommittee would draft and negotiate the rule language themselves.

II. Legislative Option

- Which committees in Congress would be discussing EITI needs to be considered before moving forward with a legislative option.
- This option would not likely be expedient.

III. Non-Federal Entity

- Questions about the creation of a non-Federal entity included:
 - What would be the mechanism for convening a non-Federal entity?
 - What are the precedents?
 - Who would set up the non-Federal entity?
 - Where does it sit?
 - How is it funded?
 - Would the entity have the ability to do rulemaking?
 - Would a FACA be needed to be created as well?
- Trade Sphere, North American Competitive Counsel, and the National Wind Collaborating Committee were given as examples that the group could look to for setting up a non-Federal entity.
- A 501(c)(3) would require an investment of time and money. Individuals would be needed to become officers of an organization, insurance would have to be purchased, bank accounts would need to be set up, etc.
- A non-Federal entity would require some kind of recognition by the Federal Government in order to assure another MSG would not be created that would overwrite the work of the established MSG.

Membership Criteria and Composition of the MSG

- Alternate MSG members should not have to be from the same organization, but they should be from the same sector.
- It may be difficult to find individuals that meet all of the criteria. Commitment to EITI, collaborative spirit, pre-disposed to consensus, and openness to the process are important criteria. Technical expertise is also important but technical experts can be brought in to consult with the MSG if a member does not have that skill.
- The industry sector of the MSG membership should have a mix of domestic companies as well as international companies with a domestic interest. A question was asked if an international representative would be able to sit on the MSG or if it would have to be a domestic representative. For example, could a representative from BP London, who has more EITI experience, sit at the table instead of a representative from BP America? It was noted that this issue should be commented on in written public comments, if of interest.
- The MSG should consist of up to seven members from each sector. It is unlikely to represent all interests (e.g. in industry: mining, oil and gas, small companies, large companies, trade associations, etc.) with five representatives. Once stood up, sharing of information is vital

among the MSG members and the sectors they represent. Participation should be robust and members should communicate with their sectors about the decisions being made.

- Separate sectors should be considered for mining industry and the oil and gas industry.
- The MSG should be composed of individuals, as opposed to organizations, so members are personally committed. Designated alternates for each member should be established.
- Scope of the MSG still needs to be defined, which is why it is difficult to recommend criteria for the group. The MSG should have broad enough diversity of membership that can be adjusted once the scope is narrowed.
- High-level executives would help with buy in for the process but staff-level people are needed to execute the actual work.
- Australia should be looked to as an example for involving Tribal and local interests into the MSG. For instance, a coalition of indigenous peoples sits on their pilot MSG.
- Clarity is needed about which interests would be represented in each of the sectors. Tribes and investors should be represented. The role of investors and which sector they sit within is not entirely clear at this time.

Appendix A: List of Public Listening Session Attendees

USEITI Public Listening Session – Anchorage, AK, March 30, 2012

First Name	Last Name	Affiliation
Richard	Fineberg	Self
Jeffrey	Loman	BOEM
Rick	Steiner	Oasis Earth

USEITI Public Listening Session – Pittsburgh, PA, June 11, 2012

First Name	Last Name	Affiliation
Patti	Bruno	Office of Surface Mining
Veronica	Coptis	Mountain Watershed Association
Eric	Delio	Center for Coalfield Justice
Garrett	Eisenhour	Center for Coalfield Justice
Joanne	Kilgour	Center for Coalfield Justice
Lisa	LeDonne	Office of Surface Mining
Melissa	Troutman	Mountain Watershed Association

USEITI Public Listening Session – New Orleans, LA, June 12, 2012

First Name	Last Name	Affiliation
Heather	Allen	GRN
Jay	Colingher	LABB- Louisiana Bucket Brigade
Rev. Tyronne	Edwards	ZTCC- Zion Travelers Cooperative Center
Greg	Gonzales	Helis Oil & Gas Co.
Sydney	Howland	LABB- Louisiana Bucket Brigade
Jim	Miller	Freeport Copper Gold
Rebecca	Morse	Revenue Watch
Amrit	Naresh	Open Oil
Marry	Norriss	CTT
Tonia	Pence	Micah Project
Steve	Spies	Louisiana Budget Project
Aaron	Viles	Gulf Restoration Network
Patty	Whitney	BISCO -Bayou Interfaith Shared Community Org.

USEITI Public Workshop – Washington, DC, June 22, 2012

First Name	Last Name	Affiliation
Maryamu	Aminu	One International
Sue	Anamier	Oxfam America
Manpreet	Anand	Chevron
Joe	Bakies	Marathon Oil Company (MOC)

Sam	Bartlett	International EITI
Kathy	Benedetto	House Resource
Nell	Bolton	ECSLA
Paul	Bugala	Calvert Asset Management Company
Curtis	Carlson	U.S. Department of the Treasury – Internal Revenue Service (IRS)
Susan	Conner	Exxon
Phil	Denning	Shell
Richard	Fineberg	Research Associates
Marti	Flacks	U.S. Department of State
Todd	Fox	Rio Tinto
Ian	Gary	Oxfam transparency campaign
Corinna	Gilfillan	Global Witness
Susan	Ginsberg	Independent Petroleum Association (IPAA)
John	Harrington	ExxonMobil
Emily	Kennedy	AP American Petroleum Institute (API)
Wendy	Kirchoff	Independent Petroleum Association (IPAA)
Veronika	Kohler	National Mining Association (NMA)
Aaron	Mintzes	Earthworks
Jonas	Moberg	International EITI
Rebecca	Morse	Revenue Watch Institute/Open Society Institute
Isabel	Munilla	Publish What You Pay
Bartley	O'Hara	Oxfam America
Lizzy	O'Hara	O'Hara Federal Strategies
Walt	Retzsch	American Petroleum Institute (API)
Anthony	Richter	Revenue Watch Institute/EITI International Board/Soros NY
Elinor	Schwartz	California State Lands Commission
Justin	Spickard	American Petroleum Institute (API)
David	Stern	America Speaks
Suzanne	Swink	BP America Inc.

Appendix B: Presentations



U.S. Department of the Interior

U.S. Extractive Industries
Transparency Initiative (USEITI)
Public Listening Sessions

Anchorage, May 30
Webinar, June 1
Pittsburgh, June 11
New Orleans, June 12
2012

1



Agenda for Public Listening Session

Overview of USEITI
U.S. Department of the Interior

Independent Stakeholder Assessment and
Options for the Multi-Stakeholder Group
Consensus Building Institute

Key Questions
Public Comment

2



What is EITI?



INDUSTRY
discloses
payments



EITI REPORT
payments are
independently
reconciled and verified



GOVERNMENT
discloses receipt of
payments

- British Prime Minister Tony Blair launched EITI in 2002
- Thirty-five countries are in various stages of implementing EITI

MSG

EITI has two main elements:

- industry publishes what they pay and the government publishes what they receive
- the process is overseen by a multi-stakeholder group (MSG) made up of government, industry and civil society representatives



What are the benefits of USEITI?

Transparency & Dissemination



Enhanced Understanding by all Stakeholders



Better Governance & Accountability

Access to Data and Information

Informed Public Dialogue

Contributes to Fair Return for the Use of Public Resources

Quantifies Industry Contributions to the Government

U.S. Global Leadership in:

- Collaborative Decision Making
- Participatory Governance
- Transparency & Accountability



What has taken place so far?

- September 20, 2011 – President Obama announced the US intention to implement EITI as a signature initiative under the US Open Government Plan
- October 25, 2011 – President Obama announced that the Secretary of the Interior Ken Salazar would lead the U.S. effort to implement EITI
- October 25, 2011 – Secretary Salazar committed to working with civil society, industry, and the American public to implement EITI
- February 24, 2012 – DOI issued a Federal Register Notice requesting comment on the formation of the multi-stakeholder group (MSG) and the US implementation of EITI

Completes the first 3 EITI candidacy requirements

In order to apply for EITI Candidacy:

SIGN-UP REQUIREMENTS

- 1 The government is required to issue an unequivocal public statement of its intention to implement the EITI.
- 2 The government is required to commit to work with civil society and companies on the implementation of the EITI.
- 3 The government is required to appoint a senior individual to lead on the implementation of the EITI.
- 4 The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI.
- 5 The multi-stakeholder group, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets, and a timetable for implementation and incorporating an assessment of capacity constraints.

5



What is the role of the MSG?

- **The Multi-Stakeholder Group (MSG):**
 - Is comprised of government, industry and civil society representatives
 - Works collaboratively to decide how USEITI will be implemented
 - Develops the USEITI work plan and application for EITI Candidacy
 - Designs and implements the USEITI framework to achieve EITI compliance

6



Next Steps in USEITI

May 18- June 29, 2012	Public Comment on independent stakeholder assessment and findings regarding options for establishing MSG
TBD 2012	Establish MSG
Within 6- 12 months of MSG Established	MSG Develops USEITI Work Plan and Applies for Candidacy to International EITI Board/ Obtains Approval
Within 1-2 years of MSG Established	MSG Designs and Implements USEITI Framework, and Publishes First Report
Within 2 – 3 years of MSG Established	MSG Seeks Validation & Compliance

7



New Orleans Public Listening Session
Thank You

Additional Comments:
<http://www.doi.gov/EITI>

8

U.S. Extractive Industries Transparency Initiative (USEITI)

Formation of the Multi-Stakeholder Group (MSG)

Assessment Findings and Recommendations



Overview

1. Assessment Design
2. Stated Benefits and Concerns
3. Scoping Issues
4. Recommendations
5. Next Steps



Assessment Purpose and Design

- **Assist with Step 4 of the EITI Process: Establish MSG to oversee EITI implementation**
 - DOI and U.S. Institute for Environmental Conflict Resolution
- **Conduct 66 independent interviews across sectors:** February 15 to April 24, 2012
 - Benefits/Challenges of U.S. implementation
 - Scope
 - Representation
 - Selection
- **Facilitate public listening sessions (St. Louis, Denver, Houston, DC)**
- **Collect public comments:** February 24 to April 9, 2012
- **Provide recommendations for MSG formation**



Benefits Cited

- Global leadership on transparency
- Improve domestic transparency
- Inclusive, empowering multi-stakeholder process
- Forum for discussing benefits of extraction
- Strengthen tax collection
- Optimize existing reporting structures
- Improve relations between industry and the public
- Build public trust around resource governance
- Strengthen relations between DOI and civil society

“If countries like the U.S. enter into it, there’s no stigma attached to being an EITI country.”



Concerns Stated

- Defining and ensuring adequate civil society representation
- Complex governance and industry
- Alignment of U.S. policies and regulations
- Dodd-Frank and EU regulatory actions
- Potential duplication of reporting requirements
- Cost of new or revised reporting systems
- Cost of the USEITI process itself (MSG + Secretariat)
- Information published might not be value added
- Legality of convening independent MSG (vs. FACA)
- Ambitious timeframe (+/-)
- Insufficient education/outreach
- Sectors may have trouble self-organizing

“Information has to be beneficial – there is a risk that it won’t mean anything to people reading it.”



Scoping Issues

- **Lands: Federal, State, Tribal and/or Private**
- **Industries: Oil & Gas and/or Mining**
- **Payments: Royalties, Rents, Bonuses, Fees, Taxes, Other**

Draft options or start fresh? Most recommend providing multiple options - based on public input and best practices from other countries - for consideration at the outset

“Find the sweet spot between making it a manageable process but still covering a credible mass of what the US does in the extractive industry”



CBI Recommendations

- Who should establish the initial scope and direction of EITI implementation in the US?
- Should the MSG be initially established as an interim or full MSG?
- What decision rule should the MSG use to reach its decisions?
- What is an appropriate size for the MSG and how should sufficient balance be established across sectors?
- What might be the role of tribes and tribal allottees?
- How might states be involved?
- Criteria for representation individually and across the MSG
- Selection of Representatives
- Administrative and legal options for establishing the MSG



Establishing Initial Scope and Direction

We believe the MSG can best undertake the following:

- Consider the range of choices for an initial and longer-term scope for the MSG
- Affirm its membership, consider additional members, as needed, to further represent key stakeholder interests, and how best to communicate with and reach out to constituents and the general public.
- Develop a detailed work plan to be submitted to the EITI Secretariat.

Interim MSG?

- Pros: Could take less time to establish, provide time for all to gather more information on constituents' interests, help provide multi-stakeholder direction sooner
- Cons: Momentum could be lost, no different from the formal MSG



Balancing Criteria for MSG as a whole

- EITI International experience;
- Private and publicly held companies;
- Domestic-only operating companies;
- Trade associations and companies;
- Small and large companies;
- National and regional or local NGOs;
- Geographic diversity;
- Technical expertise; and,
- Policy expertise.



Selection of Representatives

Use multiple means of participation:

- Liaisons for technical or other participation
- Alternates, who may be other organizations, for each member (allowing additional participating organizations)
- Organized “second tables”
 - Two tier constituencies: e.g. states by sector, tribes by region or sector, civil society by sector or geography, industry through trade associations
- Public engagement at key points for broader transparency and input



MSG Selection by Sector

- **Industry:** Trade associations assist with industry selection (NMA, API, IPAA)
- **Civil Society:** International NGOs, domestic open government NGOs, investors, academics, faith-based groups, unions
- **Government/Federal:** Interagency USEITI working group assist with selection; congressional outreach
- **Government/State:** Governors associations, lands commissioners associations, and interstate compact commissions assist with selection
- **Government/Tribes:** TBD



Criteria for Individual MSG Representatives

- Access to a constituency, process for reaching decisions within that constituency, and the authority to make decisions;
- Some form of technical proficiency in revenues, reporting requirements, tax collection, etc.;
- Committed to the EITI process and to operating in a multi-stakeholder setting;
- Open to collaboration, new ideas, and joint exploration; and,
- Represent U.S.-based constituents, organizations or companies.



Decision Rule

- **Operate by Consensus, i.e. on decisions reached by the MSG, all representatives:**
 - will abide by or “can live with” (not necessarily be enthusiastic about or strongly in favor) the outcome; or,
 - can abstain from the decision in order to allow the MSG work to move forward and such abstention would be recorded in written documentation.
- **Secondary decision rule in rare circumstances:**
 - majority of each of the three sectors’ representatives can accept or live with the decision at hand.



MSG Size and Balance Across Sectors

- Start with 15 MSG members
- 5 members per sector: representative and efficient for early work
- Size can increase if needed
- Odd number needed for “fall back” sector simple majority rule to avoid tie or deadlocked votes within sectors
- Members, Alternates, Liaisons
- Organized “second tables” / 2-tier constituencies
- Public engagement at key points for broader transparency and input



Administrative and legal options for establishing the MSG

- A non-federal entity or body;
- A federal operating committee or other kind of Congressionally-created entity;
- A federal advisory committee, convened under the Federal Advisory Committee Act (FACA), convened by either DOI or the Executive Office of the President, creating either a new FACA Committee or utilizing an existing federal advisory committee, the Royalty Policy Committee (RPC), or the creation of a subcommittee within the RPC.

Criteria for weighing process options: efficiency and timeliness, legal precedent and protection; adherence to EITI requirements



Form	Convening Body	Legal Authority	Advantages	Disadvantages
Non-Federal Entity	Non-governmental sectors or "third party"; possibly federal government	Could be informal, chartered as a 501(c)3 or other means	Precedents exist; range of legal options for creating; independent of any one sector; allows for more decision making; meets "independent oversight" requirements of EITI; convening procedures can vary; could still receive federal funding	More ad hoc and less well established than other means; requires greater sector self-organizing; need to ensure to avoid any FACA triggers; may take longer to convene/organize; might still require a FACA committee
Operational or other kind of Committee, Commission, or entity	Congress creates; DOI or other agency supports	Public Law	Sanctioned by legislative branch; could provide a range of clear authority and process; precedent exists within DOI and elsewhere; convening procedures well established in and by law; allows for shared decision making	Takes time to establish; requires Congressional action; may have restrictions on membership (similar to FACA requirements in some cases)
Federal Advisory Committee (new)	DOI or White House	Federal Advisory Committee Act (FACA)	Well-known and used procedures; convening procedures well established; span of control exists within Government for execution/implementation; would provide means for action on some, but not necessarily all, of EITI steps for candidacy and compliance	Advisory only to government; government selects (formally); typically takes some time to establish; time-limited charter (2 yrs); may have restrictions on membership;
Federal Advisory Committee – (existing – full existing Royalty Policy Committee or subcommittee of the RPC)	DOI ONRR's Royalty Policy Committee	Federal Advisory Committee Act (FACA)	Same as above AND existing structure accelerates timeline; if subcommittee, can create membership as suggested in assessment and public comment; span of control exists within DOI for execution/implementation;	Advisory only to DOI; if subcommittee, advises only RPC which advises only DOI; current RPC not balanced across sectors; existing body not designated specifically for this activity; is not new and "fresh" in establishing a new initiative

Questions for Public Comment

- Which structure (non-federal entity, federal operating committee or other such legislatively-created entity, or FACA) is most appropriate for forming the MSG and why?
- Should an interim MSG be established?
- Can the core MSG sectors (civil society, industry, government) be sufficiently represented at the outset by 5 members and 5 alternates per sector?
- How best can DOI balance its role as convener with supporting an inclusive self-selection process among sectors?
- Other?



For more information:

**pfield@cbuilding.org
rmilnergillers@cbuilding.org**



Appendix C: Written Public Comments sent to the U.S. Department of the Interior

- American Petroleum Institute
- Barrick Gold of North America
- Stephen Buckley
- Richard Fineberg
- League of Women Voters of Pennsylvania
- National Mining Association
- Northwest Mining Association
- Oceana
- Publish What You Pay United States
- Maureen Upton



Stephen Comstock
Manager – Tax and Accounting Policy

Taxation

1220 L Street, NW
Washington, DC 20005-4070
Telephone 202-682-8455
Fax 202-682-8049
Email comstocks@api.org

June 29, 2012

Jennifer L. Goldblatt
Chief of Staff
Office of Natural Resource Revenue
U.S. Department of Interior
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Ms. Goldblatt,

The American Petroleum Institute (API) firmly believes the multi-lateral, multi-stakeholder, collaborative nature of the Extractive Industries Transparency Initiative (EITI) process is the most effective framework to promote transparency in developing countries. The independent verification and reconciliation of reported payments only found in EITI are crucial to effectively validate the value and monitor government stewardship of natural resource revenue.

API is pleased to provide additional comments on the formation, composition and administration of a United States EITI (USEITI) multi-stakeholder group (MSG).

I. MSG Formation

The Consensus Building Institute (CBI) released the USEITI Stakeholder Assessment (Assessment) on May 18, 2012. The Assessment requested further comment on the formation of the MSG and presented several options for the MSG. The options identified by CBI include: (i) a non-federal entity or body; (ii) a Federal Operating Committee or other kind of Congressionally-created entity; and (iii) a federal advisory committee, convened under the Federal Advisory Committee Act. (Assessment, p. 33). API supports the formation of the MSG as an informal, non-federal entity. An informal agreement among the members of the MSG to undertake the tasks necessary to implement USEITI is sufficient to support the functioning of the MSG. A non-federal entity or body would provide an appropriate structure for the flexible collaboration that a nimble MSG requires. API recognizes that research and further review would be required to gain more clarity for the establishment, administration, sustainability and authority for such a non-federal entity or body.

By contrast, forming the MSG through a Federal Operating Committee could result in unnecessary procedural hurdles and restrictions on the activities of the MSG. Forming the MSG through a Federal Operating Committee would require Congress to enact a statute establishing such a committee. In the current political climate, that simply may not be possible. Even if it were possible, the legislative process would likely be time-consuming, and the political compromises necessary for passage could result in undesirable conditions or restrictions on the functioning of the committee, thereby undermining one of the most important principles of EITI—design by consensus rather than mandate. Additionally, there do not appear to be any benefits of forming the MSG as a Federal Operating Committee that do not also exist with the MSG operating as a non-federal entity.

API also recommends against forming the MSG under the Federal Advisory Committee Act (FACA). The duties of the MSG participants under the EITI framework are simply incompatible with the requirements of an advisory committee formed pursuant to FACA. Advisory committees established under FACA “shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.” 4 U.S.C. Appx. 2, §9(b) (2012). This structure is incompatible with the duties and responsibilities of the MSG participants. In particular, under EITI Requirement 4, “EITI implementation requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner.” EITI Rules, *available at* http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf.

Federal regulations implementing FACA also recognize the inapplicability of FACA to groups like the MSG. Specifically, the following types of committees are not subject to FACA:

- “Committees not actually managed or controlled by the executive branch. Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;
- *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis¹ and not from the group as a whole; [and]
- *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information[.]”

41 C.F.R. § 102-3.40 (2012) (internal subdivisions omitted). The regulations also make clear that representatives of organizations or other entities may meet with government representatives and provide advice without triggering registration requirements under FACA: “Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person’s organization without violating the Act, if those organizations themselves are not ‘managed or controlled’ by the agency.” 41 C.F.R. Part 102-3, Appx. A (2012).

Even if these legal incompatibilities could be overcome—which they cannot—there are several reasons why forming the MSG under FACA would be a poor policy choice. Under FACA, the

¹ The regulations make it clear that the meaning of “individual” extends beyond natural persons to include representatives of organizations who provide advice on behalf of their organization. See 41 C.F.R. Part 102-3, Appx. A (2012).

Department of the Interior (DOI) would have disproportionate power over industry and the civil society groups in developing the work plan and reporting requirements under EITI. FACA would inappropriately empower DOI to manage and control the group, select the group's members, and set the agenda for the meetings. *See* 5 U.S.C. Appx. 2 (2012). Forming the MSG through FACA would have the further disadvantage of excluding from the MSG any individual who happens to be a federally-registered lobbyist. *See* 76 Fed. Reg. 61,756 (Oct. 5, 2011) (Office of Management and Budget, "Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions"). This prohibition would needlessly disqualify participation by otherwise qualified representatives of the oil, gas, and mining industries, and could also impact the availability of qualified representatives from civil society groups.

II. MSG Composition

API believes the USEITI MSG must operate on a consensus basis that is consistent with current EITI procedures. The MSG must be agile enough to reach consensus while at the same time provide adequate representation across the various sectors. We disagree with the Assessment recommendation that the MSG start with 15 members. (Assessment, p. 26). API supports the creation of a 21 member MSG in order to fully represent the range of interests of the various sectors from the outset. These 21 members should be self-selected and could be divided evenly between the three sectors with additional non-voting observers, technical advisors, and liaisons. We would note, however, there is no EITI requirement to distribute members evenly and it may be appropriate to have increased participation from industry and government as these are the sectors that must comply with reporting requirements under USEITI.

A. Industry

Industry representation on the MSG should include U.S. operating companies² and trade associations with company members, which report payments to DOI's Office of Natural Resource Revenue (ONRR). With thousands of companies reporting payments to ONRR, however, it will still be challenging to ensure appropriate representation even with seven to ten MSG members. The Assessment correctly points out that of the "\$11.6 billion in extractive revenues collected by ONRR, 90% is for oil and gas, 8% from coal, and the remaining 2% is for a number of other resources." (Assessment, p. 12). Based upon these figures, we strongly disagree with the Assessment's recommendation to have industry equally divided between mining and oil and gas. (Assessment, p. 21).

Instead, API would recommend industry MSG membership be determined by percentage of revenue from the respective extractive sectors. Therefore, oil and gas should have a significantly larger representation on the MSG than mining. For example, assuming a minimum of seven MSG members for industry, we believe oil and gas should be represented by two trade associations³ and three companies of varying sizes, while mining should be represented by one trade association and one company. In

² We believe the Assessment's recommendation that MSG representatives be limited to U.S. based companies is short sighted. Many international companies have U.S. based affiliates with substantial U.S. operations and make rents, royalty and bonus payments to the government. The MSG should not exclude companies based upon a foreign parent and such assertions are inconsistent with the principals of self-selection.

³ Under a FACA model it may not even be possible to have trade association representation on the MSG as some smaller organizations only have lobbyists on staff. Consequently, smaller companies – whose representation is essential to the MSG – would be placed at a huge disadvantage.

addition, based upon the diversity of the oil and gas industry we recommend, if practicable, an additional four MSG membership slots be allocated to small independent oil and gas companies as they will be disparately impacted by USEITI and may require additional representation. Ultimately, the wide range of companies with varying accounting systems will provide unique challenges to implementing USEITI. As such, the MSG must house a multitude of industry technical advisors as well.

B. Government

The initial focus of USEITI should only be on payments under the jurisdiction of DOI and therefore be limited to federal lands, excluding tribal, state, and private lands. As such, government participation in the MSG should be organized to reflect this focus. API believes the government will only need four to five MSG members and since the MSG operates on a consensus basis the smaller representation will have no impact on the government's role. We again stress the need for Securities and Exchange Commission (SEC) Division of Corporate Finance participation to ensure alignment with eventual Dodd-Frank §1504 rules. (Assessment, p. 20). We also recommend that at least initially state and tribal government's MSG participation be limited to non-voting observers. Finally, API is open to MSG reconsidering other reporting regimes at a later date, but for practical reasons suggests starting with a Federal Government focus to be able to design and implement a reporting program that works before considering more complexity.

C. Civil Society

API would like to reiterate that civil society MSG members should be familiar with EITI and committed to USEITI process and procedures. Commitment to USEITI is essential and civil society should demonstrate their commitment by selecting MSG members whose sole focus is on transparency. Infusing other social-cause-oriented groups into the MSG could jeopardize the USEITI process. We strongly believe that for consensus to be reached the self-selected civil society organizations must be willing to refrain from introducing issues into the MSG that are non-germane to government revenue transparency. With that said, API generally supports the potential civil society representatives found in the Assessment. (Assessment, p. 21).

III. MSG Administration

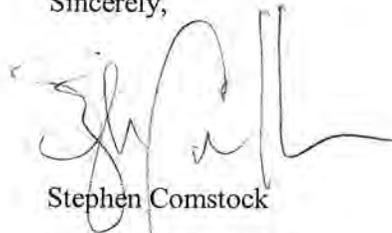
API recommends DOI consider beginning with a "pilot" MSG consisting of 21 members from the various sectors. A significant benefit to starting with a "pilot" MSG is that it will give the stakeholders the time and flexibility necessary to ensure a successful implementation effort. The United States becoming EITI compliant is no small task and developing an appropriate MSG framework is crucial. Having a "pilot" or interim type MSG will also help in the development of a fully funded work plan and allow the sectors to define the scope without the burdens of a mandated reporting timeline. During this "pilot" the USEITI Secretariat could be staffed with various members of the respective MSG sectors. Although long-term, we would expect the United States Government (USG) to provide sufficient funds for USEITI Secretariat staffing and facilities.

As previously noted, extractive industries already report all of the information necessary to for the USG to compile an aggregated federal-level EITI report. In fact, much of this data is already publically available and subject to the internal audits of the USG. Therefore, API believes that any costs

associated with implementing USEITI should be exclusively borne by the USG. We recognize this will require DOI to reallocate funds and make additional funding requests before Congress. The USG, however, has expressed the desire to lead by example in transparency and the costs associated with USEITI should not be shifted to industry. Many of our members, from the largest major oil company to the smallest independents, operate on federal lands and contribute billions of dollars annually in royalties, rents, bonuses, and other revenue to the Federal Government. Therefore, federal funds for an EITI Secretariat and implementing USEITI should be allocated from the payments already made by industry to the USG. That said, industry participants will likely largely choose to cover their own travel expenses regarding MSG participation.

API appreciates the opportunity to provide comments on the CBI Assessment and the creation of the MSG. Our membership consists of over 500 corporate members and we are the only national trade association that represents all aspects of America's oil and natural gas industry. We hope that our comments are useful to your task and build upon the CBI Assessment. Again, we look forward to engaging with DOI as the USEITI process moves forward. If you have any question related to these comments please contact Justin Spickard (202) 682-8420, SpickardJ@api.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Comstock', written over a light blue horizontal line.

Stephen Comstock

Manager - Tax and Accounting Policy
American Petroleum Institute



Barrick Gold of North America, Inc.
460 West 50 North Suite 500
Salt Lake City, UT 84101
Telephone: (801) 990-3900
Fax: (801) 990-3856

VIA ELECTRONIC MAIL

June 29, 2012

EITI Comments

c/o U.S. Department of the Interior
1801 Pennsylvania Ave., NW, Suite 400
Washington, DC 20006

Re: U.S. Extractive Industries Transparency Initiative Stakeholder Assessment
Comments, Docket ONRR-2012-003

To Whom It May Concern:

In response to the request for comments in the Consensus Building Institute's ("CBI") Stakeholder Assessment for the Formation of a Multi-Stakeholder Group ("MSG") for the United State Extractive Industries Transparency Initiative ("USEITI"),¹ Barrick North America ("Barrick") submits further comments regarding the formation of the Multi-Stakeholder Group. As the U.S. operating division of Barrick Gold Corporation, an Extractive Industries Transparency Initiative ("EITI") signatory since 2006, Barrick is an interested member of industry and a supporter of EITI. By being EITI signatories, Barrick contributes to an improved business environment and reduced political risk in countries where we operate. Barrick complies in all material respects with our EITI-related obligations. We have operations in one country which is EITI compliant; Peru, designated fully compliant in February 2012. Barrick was actively involved in the validation process in Peru and promoted this initiative among other mining companies and stakeholders. Peru is the first country in Latin America to obtain this designation. EITI country-level validation is a multi-year, multi-stakeholder process and, through our active participation in the process, we support the overarching goals of the EITI and endorse its 12 principles. The principles form the cornerstone of the initiative and demonstrate a commitment to anti-corruption and ethical business practices. Barrick appreciates this opportunity to comment on the USEITI MSG Assessment, and incorporates by reference its earlier comments supporting USEITI.²

Although the USEITI MSG Assessment presents a thoughtful analysis of the advantages and disadvantages of three different potential frameworks that could be used for the MSG, there is one paramount consideration under U.S. law - whether the formation of the MSG will be

¹ Consensus Building Institute, *USEITI MSG Assessment*, available at <http://www.doi.gov/eiti/upload/USEITI-MSG-Assessment-final.pdf> (May 18, 2012).

² See Barrick's April 9, 2012 comments in Docket No. ONRR-2012-002, attached.

legally defensible. An MSG formed outside the Federal Advisory Committee Act³ will be limited in its ability to interact with the federal government. The USEITI MSG Assessment acknowledges this point, noting that it is a “stated concern,”⁴ and invites further comment. Indeed, it is difficult to conceive how the MSG can reasonably fulfill its responsibilities without acting in an advisory capacity to the government. As analyzed below, as a member of the MSG, the government will necessarily be interacting with and developing its views in discussions and consultations with the industry and civil society members of the MSG. Because these interactions exemplify the types of advisory group-government communications targeted by the FACA, neither the non-federal or operational committee option would appear to be legally viable.⁵

I. CREATING THE MSG THROUGH FACA IS LEGALLY DEFENSIBLE, EXPEDIENT AND PREDICTABLE

The EITI Rules include flexibility regarding the format for the MSG to accommodate the variety of the laws and customs among the potential EITI implementing countries. In the United States, our government derives its power from the laws passed by the representatives of the body politic. To prevent independent committees of select groups of individuals from the exercise of undue influence on governmental actions, the FACA creates a clear, transparent and well-understood set of procedures that govern the operation of such bodies in their interactions with the government.⁶

While the EITI MSG may not look like a typical U.S. advisory committee,⁷ analysis of what the government will be doing as a member of the EITI MSG compels the conclusion that the FACA requirements apply. The EITI Rules mandate that the MSG will be composed of representatives from the government, industry, and civil society. The MSG will operate through consensus. As a member, the government representatives will necessarily learn from and be influenced by the views expressed by the other members of the MSG. The government will be formulating its own positions based upon these discussions, and the government’s actions and decisions will be inextricably linked to its MSG participation. The government’s participation on the MSG will be lending the imprimatur of government approval to the group’s work plan, and the government will ultimately act on recommendations formulated by this group with its participation. This is exactly the type of influence addressed by the FACA. The FACA requires the influence of a select group on governmental representatives be cabined through the transparency and public participation requirements.

The FACA rules provide assurances that the MSG will be formed in a manner compliant with federal law and through an established process. An advisory committee can easily be formed by following the steps set forth in the FACA regulations.⁸ The advisory committee

³ 5 U.S.C. Appendix II (“FACA”).

⁴ USEITI MSG Assessment at 8; *see also id.* at 12-13 and 36.

⁵ Extractive Industries Transparency Initiative, *EITI Rules, 2011 Edition*, available at http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf (“EITI Rules”).

⁶ 41 C.F.R. § Part 102-3.

⁷ 41 C.F.R. § 102-3.25.

⁸ 41 C.F.R. § 102-3.60.

format will allow for the transparency and public participation required by EITI Rules, while allowing the MSG to fulfill its required tasks, such as creating and publishing a work plan based on consultation with stakeholders. This work plan should include measurable targets, and a timetable for implementation and incorporation of an assessment of capacity constraints.⁹ These tasks are typical advisory committee tasks under the FACA rules; they do not require traditional governmental powers. To the extent that the MSG is required to expand its function, there is flexibility in the FACA regulations. 41 C.F.R. §102-3.30(e) specifies that the function of a FACA Committee is advisory “unless specifically provided by statute or Presidential directive.” This flexibility also dispenses with the concern that the MSG formed via FACA “would provide means for action on some, but not necessarily all, of EITI” required steps.¹⁰

The other concerns identified by the USEITI MSG Assessment regarding the FACA-based MSG do not result in a diminishment of its advantages. For example, the FACA sunset provision is easily (and routinely) addressed by the renewal process.¹¹ The USEITI MSG Assessment also raises the issue of whether there would be policy restrictions on an individual’s membership in the MSG, such as potential limitations on the participation of lobbyists imposed by Executive Order. These limitations are not inherent in the FACA itself, but derive from Executive Order policy that can be changed..

Perhaps the most persuasive argument in favor of the use of the FACA advisory committee format for the MSG is contained in the chart prepared by the CBI comparing the FACA option versus the non-federal option.¹² Below is a list of the issues from the chart where there was a significant difference between the two options, and an explanation of how the FACA option best suits the EITI Rules and the public interest.

- **Federal Funding:** the FACA advisory committee will receive federal funding, but the non-federal group may not, which could inhibit its ability to move forward.
- **Nomination Process:** the FACA process requires publication in the Federal Register and a neutral vetting of nominees, and the first meeting will be announced in the Federal Register, whereas the transparency and public notice is not required of the non-federal group.
- **Ability to Recommend Changes in Federal Rules or Regulations:** the FACA advisory committee will be empowered to do so, but the non-federal group may trigger the FACA if it attempts to act in an advisory capacity.
- **Invoke Negotiated Rulemaking Act:** the FACA advisory committee can create a rulemaking committee, but the non-federal group can not do so without creating a new FACA advisory committee for this purpose.
- **Public Meeting Notice:** the FACA advisory committee must notice meetings and publish the agenda, meetings must be open to the public, and keep records of the

⁹ EITI Rules at 17.

¹⁰ USEITI MSG Assessment at 37.

¹¹ 41 C.F.R. § 102-3.60.

¹² Email from Gillers re: USEITI Update: Information on FACA and Potential MSG Structures, FACA and Non-FACA MSG Comparison Chart, June 27, 2012 (“CBI Chart”).

meetings, whereas the extent of the transparency of the non-federal group meetings is unknown.

- **Well-Established Precedence, Experience, and Case Law:** quite simply, the FACA advisory committee will provide these three important elements, and the non-federal group would not.
- **Timeline to Create:** there is a known process for creating the FACA advisory committee, but there is no basis for knowing the format or the timing for creating the non-federal group.

The CBI Chart effectively relays critical information about the salient features of both options, demonstrating that the FACA advisory committee option will meet the requirements of the EITI Rules and U.S. laws.

II. A NON-FEDERAL MSG MAY NOT COMPLY WITH THE EITI RULES AND THE FACA

The USEITI MSG Assessment suggests that the MSG could be created through non-government means, such as having industry and civil society come together to create a group that would seek participation from the federal government. The group would incorporate the government's participation, but the government would not manage or control the group. Then, the government would contract with a third party to convene or operate the MSG. However, consistent with the EITI Rules, some specific actions must be performed by the government. Among other things, the government must:

- establish a multi-stakeholder group to oversee the implementation of the EITI;
- ensure that civil society is fully, independently, actively and effectively engaged in the process;
- engage companies in the implementation of the EITI; and
- remove any obstacles to the implementation of the EITI.¹³

It is difficult to see how the non-federal option set forth in the USEITI MSG Assessment can accommodate these responsibilities. In performing the required actions as set forth in the EITI Rules, the government must be a more participative member of the MSG than the non-federal option would seem to allow. When the government fulfills this role per the EITI Rules and engages in sharing information with industry and civil society, it necessarily is receiving the type of input that will result in the formation of opinions and ideas by governmental representatives.

The USEITI MSG Assessment uses the National Wind Coordinating Committee ("NWCC") as an example of a non-federal group that could serve as a template. The NWCC provides a "neutral forum for a wide range of stakeholders to pursue the shared objective of developing...wind power..."¹⁴ It describes itself as a "partnership of experts and interested parties" that "identifies issues that affect the use of wind power," and establishes "dialogue on

¹³ EITI Rules at 13.

¹⁴ National Wind Coordinating Collaborative, <http://www.nationalwind.org/>.

key and current topics and catalyzing activities that build consensus among its stakeholders....”¹⁵ The NWCC’s scope, goals, and activities are not analogous to the those of the MSG, and the NWCC cannot be used as a template for a successful non-federal option for the MSG. First, the NWCC was not created in response to a Presidential directive to implement an international voluntary reporting program. Second, the EITI activities are clearly set forth in the EITI Rules, whereas the NWCC has no such guidance by which it has to abide. NWCC can accommodate a reduced role for governmental representatives and prevent a situation where the NWCC is serving in an advisory capacity. However, the EITI Rules define the roles for the government and the MSG, and they do not include the flexibility needed for the MSG to operate as a non-federal group.

The other example provided by the CBI is the State Review of Oil and Natural Gas Environmental Regulations (“STRONGER”).¹⁶ STRONGER’s purpose is to reinvigorate and carry forward a review of state (not federal) environmental regulations. Therefore, STRONGER does not provide an example of how a non-federal group can interact with the federal government as an alternative to a FACA-compliant advisory group, but it does demonstrate that it would be difficult to find a non-federal group that performs actions akin to those required of the MSG.

III. THE MSG CANNOT LEGALLY BE CONSTITUTED AS AN OPERATIONAL COMMITTEE

Another option suggested in the USEITI MSG Assessment was to form the MSG as an operational committee. Under the FACA regulations, agencies are responsible for determining whether a committee primarily provides advice or recommendations and is, therefore, subject to the FACA rules, or is primarily “operational” and not covered by the FACA.¹⁷ The MSG described in the EITI Rules would not fit the mold for an operational committee.¹⁸ Operational committees have: (i) specific functions and/or authorities provided by law or Presidential directive, (ii) the ability to make and implement traditionally governmental decisions, and (iii) the authority to perform specific tasks to implement a federal program.¹⁹ Although the MSG will make decisions regarding how the group functions and these decisions will result in advisory input to the government, the MSG will not make traditionally governmental decisions, such as drafting mandatory rules or regulations.²⁰

The nature of the EITI is that it is voluntary; it is not a regulatory scheme.²¹ The MSG will assist in implementing the EITI, but it will remain the government’s responsibility to ensure that company reports and government reports are based on accounts audited to international

¹⁵ *Id.*

¹⁶ Email from Gillers re: USEITI Update: Information on FACA and Potential MSG Structures, June 27, 2012.

¹⁷ 41 C.F.R. § 102-3, Subpart A, Appendix A.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ “EITI rules do not require that MSG decisions become enshrined in domestic law.” USEITI MSG Assessment at 23.

²¹ USEITI MSG Assessment at 6; U.S. Extractive Industries Transparency Initiative Stakeholder Assessment, 77 Fed. Reg. 30022, 30023 (May 21, 2012).

standards.²² Those are traditionally governmental functions, and the EITI Rules do not anticipate that those functions would be delegated to the MSG. Actions that will be performed by the MSG include agreeing to a definition of materiality and the reporting templates.²³ These are not enforcement (*i.e.*, traditionally governmental) functions; they are advisory functions. Because the MSG will primarily act in an advisory capacity, it would fail to meet the requirements of an operational committee, and therefore, the MSG will be subject to the FACA.

IV. CONCLUSION

Despite the many advantages and disadvantages discussed in the USEITI MSG Assessment, the decisive issue is whether any of the non-FACA alternatives are legally sufficient; they are not. Because the MSG is required to interact with the federal government in an advisory capacity, the only legally defensible format for the MSG is one that is formed via the FACA.

Barrick looks forward to working with the U.S. Department of the Interior, other members of industry, representatives of interested groups, and the MSG FACA committee during implementation of USEITI.

Respectfully submitted,

/s/ Michael J. Brown

Michael J. Brown
Vice President, Corporate & External Affairs, NA

²² EITI Rules at 13.

²³ *Id.* at 21.

ATTACHMENT

Barrick Gold of North America, Inc. April 9, 2012 EITI Comments, Docket ONRR-2012-002



Barrick Gold of North America, Inc.
136 East South Temple, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 990-3900
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April 9, 2012

U.S. Department of the Interior
1801 Pennsylvania Ave, NW, Suite 400
Washington, DC 20006

Attention: Karen Senhadji, Senior Advisor to the Assistant Secretary for Policy, Management and Budget

Re: EITI Comments, Docket ONRR-2012-002

Dear Ms. Senhadji:

These comments are being submitted by Barrick North America (“Barrick”) in response to the DOI Notice Seeking Comment on U.S. Implementation of the Extractive Industries Transparency Initiative (“EITI”). 77 Fed. Reg. 11151 (February 24, 2012). Barrick operates six producing mines in the United States – Goldstrike, Bald Mountain, Cortez, Turquoise Ridge, Golden Sunlight and Ruby Hill – and has ownership interests in two others, as well as development projects and exploration activities in Nevada, Alaska and other States. Barrick appreciates the opportunity to comment on this important initiative.

Barrick is the U.S. operating division of Barrick Gold Corporation (“Barrick Gold”). Barrick Gold, a Canadian corporation, is the world’s largest gold producer and gold industry leader, with 25 operating mines and a pipeline of projects located across five continents. Barrick Gold joined the Extractive Industries Transparency Initiative (EITI) in 2006, the first Canadian mining company to do so. The company supports the overarching goals of the EITI and endorse its 12 principles, which form the cornerstone of the initiative and demonstrate a commitment to anti-corruption and ethical business practices. Barrick Gold discloses its taxes, royalties and other payments to governments on its website and in this report. Barrick Gold complies in all material respects with its EITI-related obligations.

As an EITI signatory, Barrick Gold contributes to an improved business environment and reduced political risk in countries where it operates. EITI country-level validation is a multi-year, multi-stakeholder process and, through active participation in the process, Barrick Gold constructively engages with other stakeholders in civil society and government who are also committed to anti-corruption.

Barrick Gold supports implementation of EITI in the countries where we operate. The company has operations in one country which is EITI compliant; Peru, designated fully compliant in February 2012. Barrick Gold was actively involved in the validation process in Peru and promoted this initiative among other mining companies and stakeholders. Peru is the first country in Latin America to obtain this designation. Barrick Gold also has operations in two EITI candidate countries; Zambia (candidate country since 2009) and Tanzania (candidate country since 2009). Barrick Gold has also filed comments with the U.S. Securities and Exchange Commission supporting implementation of EITI in the U.S. as incorporated in the Dodd-Frank Wall-Street Reform and Consumer Protection Act.¹

As described in the Federal Register notice, DOI seeks comment on (1) the composition, balance and key attributes for success on formation of the multi-stakeholder group (“the MSG”) to oversee implementation of EITI in the U.S. and (2) key concerns, if any, regarding EITI implementation in the U.S. Barrick’s comments, as set forth in detail below, can be summarized as follows:

- Consistent with the EITI principle that national implementation must be consistent with national law, the MSG must be convened and operated in compliance with the requirements of the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. II;
- A key aspect of the charge to the MSG in development of the EITI work plan should be review of disclosures made under current U.S. law, and evaluation of the extent to which the EITI transparency standards are already being met;
- To the extent that is not the case, any additional laws or regulations adopted must be drafted in a way that reflects the practical issues associated with implementation, does not create confusion in the marketplace or unnecessary and costly duplication of efforts, and minimizes the potential unintended consequences of such laws and regulations.

I. THE MSG MUST BE CONVENED AND OPERATED UNDER THE FACA

A. Requirements of the FACA

The FACA, as enacted in 1972, is designed “to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals.” *Nat’l Anti-Hunger Coalition v. Executive Comm. of the President’s Private Sector Survey on Cost control*, 711 F.2d 1071, 1072 (D.C.Cir, 1983), quoting *Food Chem. News v. Davis*, 378 F. Supp. 1048, 1051 (D.C. 1974). It establishes procedural requirements for the creation, membership, operation and reports of all advisory committees that are either established or utilized by a federal agency. 5 U.S.C. App. II § 3(2); 41 C.F.R 102-3.25, 102-3.40(d), 102-3.40(f). An advisory committee is defined as

¹ <http://www.sec.gov/comments/s7-42-10/s74210.shtml> (as visited on April 2, 2012).

Any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established or utilized . . . by one or more agencies in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

FACA Section 3(2).

The procedural requirements of the FACA are well established. They include the following:

- All federal agencies must comply with the FACA;
- Membership must be fairly balanced in terms of points of view represented and the functions to be performed;
- The advice and recommendations of the committee must be the result of its independent judgment;
- Before an advisory committee meets or takes any action, a charter must be filed with the head of the agency to whom the advisory committee reports, as well as the standing committees of the Senate and of the House of Representatives having legislative jurisdiction over such agency, and furnished to the Library of Congress;
- The charter must describe the committee's objectives and the scope of its activities; the period of time necessary for it to carry out its purpose; the agency responsible for providing necessary support for the committee; and a description of the duties for which the committee is responsible;
- Notice of all meetings of the committee must be published in the Federal Register 15 days prior to the meeting;
- Each meeting of the committee must be open to the public;
- All materials considered by the committee must be available for public inspection and copying; and
- Unless otherwise authorized by law, the advisory committee shall be utilized solely for advisory functions.²

B. Applicability to the EITI Workgroup

The purpose of the DOI notice and request for comment is to complete the two remaining steps in the process of finalizing the U.S. application for EITI Candidacy. These steps are described by DOI on its EITI website as follows:

² FACA Sections 5 – 10.

- The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI; and
- The MSG, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets, and a timetable for implementation and incorporating an assessment of capacity constraints.³

President Obama has appointed Secretary Salazar as the senior individual in the Executive Branch to lead the implementation of EITI in the U.S. Secretary Salazar has delegated authority for implementation to the DOI Office of Natural Resource Revenues (“ONRR”). Secretary Salazar is an officer of the Federal Government and DOI and ONRR are agencies within the meaning of the FACA. The function of the MSG is to advise Secretary Salazar and DOI/ONRR on implementation of the EITI. Accordingly, the MSG is an advisory committee that is to be established or utilized by a government agency for advice and recommendations and must be convened in compliance with FACA requirements.

Accordingly, DOI must create and file a charter for the MSG FACA, it must provide notice in the Federal Register of the creation of the committee, it must ensure that membership is balanced, and it must ensure that all meetings and documents reviewed and/or developed are open and available to the public.

C. The Balanced Membership Requirement

The DOI, like other federal agencies, will typically implement the balanced membership requirement of the FACA by providing Federal Register notice of the committee charter and solicitation of nominations from the public. An agency must ensure that “in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.” 41 CFR 102-3.60(b)(3).

The EITI Rules present a somewhat unusual situation in that they provide that the selection of representatives to the MSG is to be made by the group itself. “Each stakeholder group should have the right to appoint their own representatives, bearing in mind the desirability of pluralistic and diverse representation.” EITI 2007 Rules at 16. While DOI can certainly request that stakeholder groups take this element of the EITI Rules into consideration in presenting their nominations for the MSG FACA, the purpose of the balanced membership requirement is to prevent undue influence on agency decision-making by special interest groups, see H.R. Rep. No. 1017, at 6. The preventive remedy prescribed by Congress is an open selection process. One of the key stakeholders in the EITI process is “civil society.” As that term lacks an analogue in the U.S., the FACA nomination process will provide DOI with the requisite public input for FACA formation.

³ <http://www.doi.gov/EITI> EITI Factsheet 01(as visited on April 2, 2012).

II. THE MSG WORKPLAN DEVELOPMENT CHARGE SHOULD INCLUDE EVALUATION OF WHETHER EXISTING US DISCLOSURE REQUIREMENTS MEET EITI DISCLOSURE REQUIREMENTS

As described on the EITI Factsheet, EITI has two main elements: companies publish what they pay and governments publish what they receive; and the process is overseen by a multi-stakeholder group of government, companies and civil society. Once established by the government, the MSG develops a work plan for implementation of EITI, including identification of legal, regulatory or other obstacles to implementation that the government is then required to remove.⁴ The 2011 EITI Rules provide that “There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation and will have to respond to these in different ways.” (EITI 2007 rules at 20).

Unlike the great majority of countries in which there is no established law relating to public disclosure of payments by extractive industries and receipts by the government, the U.S. is starting from a very different point. The U.S. already has a highly developed and regulated disclosure system that operates pursuant to law and Congressional oversight. The extent of these disclosures, the financial requirements that apply to them and public accessibility do not seem to be well understood by the various MSG stakeholders. Thus, a comprehensive review of these laws and existing reporting by the MSG will be required to determine whether the EITI disclosure and oversight criteria are already being met under these existing U.S. law, and if so, how to present that case to the EITI Secretariat.

A. DOI Payment Disclosure Authority

For example, a number of laws delegate authority to DOI to manage extractive industry activity on federal lands, including the regulation, implementation and public reporting of payments to the government.⁵ Statistical reports on the ONRR website make this information, which is audited pursuant to U.S. government accounting standards, available to the public in aggregate form. The extent to which DOI discloses company specific information is controlled by the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The purpose of FOIA is to make information provided to the government available to the public to increase transparency and public accountability. That goal is balanced within the law itself against the interests of the information submitter through incorporation of a series of exemptions that protect certain information against release. For example, confidential commercial and financial information and trade secrets are exempt from disclosure. In the event of disagreement over application of the exemption, judicial review to resolve the dispute is available. *Chrysler v. Brown*, 441 U.S. 281 (1979).

B. SEC Dodd-Frank Disclosure Requirements

⁴ EITI Requirement 8, EITI Rules, 2011 Edition at p. 20.

⁵ These include *inter alia* The General Mining Law of 1872, as amended; those portions of the Federal Land Policy and Management Act of 1976, as amended (FLPMA) that affect the General Mining Law; and the Surface Resources Act of 1955 as described at <http://www.blm.gov>; and The Mineral Leasing Act of 1920, 30 U.S.C. 1923, the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1353, the Federal Oil & Gas Royalty Management Act of 1982 and other laws listed in full on the ONRR website. www.onrr.doi.gov

With respect to corporate disclosures, The Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Act”) mandates disclosure of payments “made to further the commercial development of oil, natural gas, or minerals” by companies “engaged in the commercial development of oil, natural gas, or minerals” who are required to file an annual report with the Securities and Exchange Commission (“SEC”). 15 U.S.C. 78m(q). This provision applies to “90 percent of the major internationally operating oil companies and 8 out of 10 largest mining companies in the world.” 75 Fed. Reg. 80980 and n. 39.

The term “payments” is defined by statute to include

taxes, royalties, fees (including license fees), production entitlements, bonuses and other material benefits, that the Commission, *consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable)* determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals (emphasis supplied).

The law directs the SEC to issue final regulations for the inclusion of information relating to any such payments to a foreign government or the Federal government. 15 U.S.C. 78m(q)(2). The law further provides that

(E) International transparency efforts. To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals (emphasis supplied).

The law further requires that payment information be provided in interactive electronic form for ease of aggregation. 15 U.S.C. 78m(q)(1)(C) and (D).

The SEC published proposed rules to implement these provisions of law on Dec. 23, 2010 in compliance with the substantive provisions of the amended Securities and Exchange Act and the procedural requirements of Administrative Procedure Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act. 75 Fed. Reg. 80978. The rules identify and request comment on 86 specific implementation questions as well as any other aspects of the rule. Comments by all interested stakeholders, including government, extractive industries, and civil society have been filed and are available on the SEC website for review. The final regulations adopted by the Securities and Exchange Commission must be based on this administrative record and will be subject to judicial review in the U.S. court system for compliance with U.S. law.

Given this context, the MSG charter required by FACA should require review by the committee of existing U.S. mandated disclosures and determination of whether those disclosures meet the flexible EITI standard for national law implementation.

III. US EITI PARTICIPATION SHOULD AVOID DUPLICATION, INCONSISTENCY AND REDUNDANCY

The key issues for Barrick in the U.S. implementation of EITI are (1) the importance of ensuring that it does not duplicate or confuse reporting that is already required in the U.S.; and (2) consistency with U.S. law. The key focus of the U.S. EITI implementation should be to provide transparent disclosures consistent with EITI as available under and consistent with U.S. law.

For example, virtually all of the substantive features of the work plan to be developed by the MSG in the voluntary EITI process – types of payments to be reported, reporting template, etc. – are currently the subject of the SEC rulemaking. Those requirements, when issued will be enforceable U.S. law for 90% of the mining industry. There is no rational basis for the development of a different set of voluntary reporting requirements or template.

Moreover, as Barrick Gold's SEC comments illustrate, one of the issues in the SEC proceeding is whether the statutory reporting requirements accurately capture the full range of material benefits to society from mining activity. The legislative language requires disclosure of taxes, royalties, fees, production entitlements, bonuses *and other material benefits*. Barrick Gold's position is that this definition must be interpreted as exceeding EITI requirements in order to provide a complete picture of such benefits.

Barrick Gold has recommended inclusion of infrastructure investment that will benefit the host jurisdiction, social and community payments, employer paid social security and similar benefits, and a broader range of tax payments. SEC Comment at pp. 14 and 15. Once the SEC rulemaking is finalized, those are the disclosure reporting requirements that will be enforceable in the United States and those are the requirements that should be deemed compliant with EITI. Redundancy and different forms of information reporting are inefficient for the government, industry and civil society and should be avoided.

Barrick appreciates the opportunity to submit these comments and looks forward to working with DOI and the MSG FACA committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. J. Brown", with a long horizontal flourish extending to the right.

Michael J. Brown
Vice President, Corporate & External Affairs

Dear EITI@DOI.gov,

The purpose of this message is to provide comments in response to your notice in the Federal Register, May 21, 2012 (p. 30022), concerning the U.S. **Extractive Industries Transparency Initiative (EITI)** Stakeholder Assessment, in which you stated:

*We encourage **stakeholders and members of the public** to participate in public comment period from May 18–June 29, 2012, to provide feedback on the stakeholder assessment and recommended options for establishing the U.S. multi-stakeholder group.*

By your use of the phrase "**stakeholders and members of the public**", in this notice and previously, you clearly imply there to be a difference between "stakeholders" and "members of the public". In other words, it appears that you consider some members of the public (maybe myself) as not being "stakeholders" with respect to the U.S. EITI. Or could it be that some stakeholders not "members of the public"? Please clarify.

In addition, the language throughout your documents (including those of your contractor) implies that you consider many, if not most, ordinary citizens to outside of "civil society" (as your contractor suggests on **page 7** in its "stakeholder assessment"):

<http://www.doi.gov/eiti/upload/USEITI-MSG-Assessment-final.pdf>

*The current EITI guidance **does not define** the [multi-stakeholder] sectors with any specificity. **However**, previous versions [found in other countries] have **suggested** the following: **Civil society** (or **what we might define in the U.S. as public interest groups**), as defined by community-based organizations, non-governmental organizations (NGOs), or what we describe as non-profits or not-for-profits, and the media, trade unions, academic and research institutions, and faith based groups.*

The terms "stakeholder" and "civil society" are supposed to describing two fundamental aspects of the U.S. EITI's "multi-stakeholder group" (MSG). If either one of those terms are ambiguous or unclear, then would create significant confusion and, so, a major barrier in any U.S. effort at EITI development and implementation.

As I requested in my prior comments to you: Please get clarification on these EITI terms that you've given to use.

However, I would expect to see those clarifications, along with other input from the public, reflected in an EITI proposal by DOI that would be offered for public comment. So far, the public has been asked to provide input/feedback on documents developed by a consulting organization that is outside of the U.S. government.

Policy development is "inherently governmental" and, while the work of an outside consultant can certainly help to inform the development of a government policy, the DOI needs to show that the public is commenting on an actual **DOI** proposal, i.e., not one developed by an outside

consultant. (You may want to check with DOI's General Counsel to make sure that you don't "cross a line" on this.)

If I have not been sufficiently clear in this message, please feel free to contact me at the number below.

sincerely,

Stephen Buckley
collaboration engineer
OpenGovMetrics.com
Cape Cod, Mass.
24/7 phone: (508) 348-9090
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From the desk of

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[Via E-Mail]

June 5, 2012

Gregory Gould, Director
Office of Natural Resources Revenue
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Alaska and the USEITI Multi-Stakeholder Group Process

Dear Gregory Gould:

Thank you for the time you and Patrick Fields spent in the USEITI outreach Alaska session in Anchorage May 30 and the webinar from Washington, DC, June 1. I write now to follow up with additional information and references regarding Alaska oil and gas development issues, and to pose questions of interest to persons involved with the MSG civil sector who seek to obtain useful public information on resource extraction economics. In the absence of a process that deals with these questions, I believe it would be difficult to establish public confidence in industry payment data and government oversight on behalf of the civil sector.

Existing controversies over oil and gas information in Alaska suggest that different sectors of the EITI Multi-Stakeholder Group (MSG) are liable to diverge on policy issues and the answers to specific questions. Moreover, the highly technical nature of many of these questions and the extremely small civil sector turn-out at both the May 30 session and June 1 webinar raise concerns that if USEITI, with an underweighted civil sector, encounters different answers to important petroleum questions, Alaska petroleum policy issues may not be dealt with in a balanced manner. This situation prompts me to ask: Does the new transparency initiative (or some other federal program) provide funding to enable civil sector members to deal with the complexity of petroleum and other extractive industry revenue issues?

As an individual who has been privileged to deal with Alaska petroleum development from a variety of perspectives as a reporter, a state and federal public servant and a consultant to government, non-government organization and occasional industry clients, I offer the following background information on Alaska to establish a framework for understanding the significance of EITI process questions:

- Petroleum revenue accounts for approximately two-thirds of Alaska state government annual expenditures.¹ To understand Alaska's unusual political and economic circumstances, it should be noted that approximately 98% of the state's oil production comes from Alaska's North Slope, where three major

¹ Mining risks are similarly controversial, posing site-specific risks with significant but much smaller economic consequences for the state.

transnational companies produce 95% of the state's crude oil. The same three transnational firms also own a similar percentage of the key transportation link, the Trans-Alaska Pipeline System (TAPS), an 800-mile pipeline that carries North Slope oil across Alaska to the ice-free tanker port of Valdez. Prudhoe Bay, the largest conventional on-shore oil field ever discovered in North America, entered production in 1977. The North Slope peaked at just over 2.0 million barrels per day (bpd) in 1988; since then, production has declined to approximately 550,000 bpd.

- Alaska, as part of the United States (an industrial nation with a tradition of open government), appears to be institutionally different from most EITI member nations. Nevertheless, this state faces similar issues. A fundamental risk Alaska faces as a state whose economy is highly dependent on petroleum extraction is the well-known uncertainty inherent in forecasting petroleum's future. I believe that uncertainty clouds the long-term investment picture and militates against petroleum industry expenditure on environmental protection, the consequences of which I have frequently documented in case studies on my web site since 2004. Natives and other rural residents whose subsistence lifestyles are at risk from development, the environmental community and the government agencies vested with responsibility for environmental protection should be interested in clarifying Alaska's petroleum economic picture.
- In reviewing *The Political Economy of Oil in Alaska: Multinationals vs. the State*, I concluded: "Researchers can make a significant contribution to the study of petroleum development by utilizing Alaska's celebrated (but relative) transparency to identify information process and data deficiencies, as well as the subtle but pervasive powers of oil industry seduction."² The industry's powers were demonstrated in the introduction to that book when the authors thanked the industry for financial support. The book made only passing reference to the Resource Curse (a theory that drives EITI) and failed to note that Nobel Laureate economist Joseph Stiglitz, in his chapter on dealing with the oil industry in the 2007 volume, *Escaping the Resource Curse*, identified Alaska as the poster-child of corporate cheating on oil tax issues.³
- Recent Alaska legislative history demonstrates that improvements in petroleum data are needed to resolve political controversy. In 2011 and 2012, special sessions of the Alaska Legislature were unable to resolve a stalemate on petroleum tax legislation. The Governor (a Republican party member) advocated a major petroleum production tax cut that was blocked by the State Senate (also headed by a Republican), which did not support the Governor's. This year, the Senate Resources Committee, after a lengthy hearing process, countered the Governor's proposal with a more limited measure that would provide tax aid to

² Richard A. Fineberg, Review of *The Political Economy of Oil in Alaska: Multinationals vs. the State* (by J. McBeath, M. Berman, J. Rosenberg and M.F. Ehrlander [Lynne Rienner Publishers, 2008]), in *The Northern Review*, No. 32 (Spring 2010), pp. 181-185 (<http://www.finebergresearch.com/oilpatch.html>).

³ Joseph E. Stiglitz, "What Is the Role of the State?" in: M. Humphreys, J. D. Sachs and J. E. Stiglitz (eds.), *Escaping the Resource Curse* (Columbia University Press, 2007), pp. 24-25.

independent developers rather than the three major producers, along with a proposal to set up a Petroleum Information Management System (PIMS) to deal with numerous data problems encountered but not resolved during the extended debate; the Governor scoffed at the Senate proposal, which died. Meanwhile, legislation to promote development of North Slope natural gas legislation also failed to pass.⁴ While it is by no means certain that data transparency would have resolved these issues, greater transparency certainly would have elevated the debate.

From this background, it is clear that Alaskans can benefit from USEITI reporting templates that will provide petroleum data that are transparent, comprehensive and able to be disaggregated by region, development project and company. If we are able to obtain these data, the Alaska initiative may also be making a significant contribution to the international EITI process.

I am pleased to note that the Citizens for Tax Justice (CTJ) had a representative at the June 1 webinar – and that the ONRR statistical web site permits smooth navigation by state, providing clear definitions and revenue collections by resource. However, I remain concerned (as we discussed May 30) that fundamental questions about EITI's standards and procedures appear to be rather vague, and questions about petroleum accounting policies and practices that I raised at the Anchorage session were not answered. Since last week's sessions followed a previous round of Interior Department public listening sessions in March, I assumed that by this time answers to basic questions about EITI processes and practices would be readily available so that prospective civil stakeholders would know how to use the EITI system to elicit information that would be both substantive and useful to policy considerations. However, it appears that the questions I raised May 30 and June 1 in this regard had not been considered in the USEITI stakeholder process.

In any event, to obtain the information needed to assure that Alaska resource development policies will serve the public interest, I believe the Alaska participants in the USEITI process must deal with the following eight issues:

1. Annualized Data Reporting

The Alaska Revenue Department's *Revenue Sources Book* reports petroleum data on a state fiscal year basis (July 1 thru June 30 of the following calendar year). Reporting on a calendar year basis would enable policy makers to compare Alaska results to annual corporation reports, as well as national and international data.

- *Do EITI protocols enable citizens to ask for data on a calendar year basis?*

⁴ For information on the recent Alaska petroleum data and the recent oil tax political controversy, see: "Mysterious Oil Numbers Tell A Troubling Story in Juneau: Adding "H" to ACES, You Get ACHES (Alaska's Confusing, Hidden and Elusive Share) and PAINS (Piecemeal, Artificial, Incomplete Number Systems)," May 8, 2012 (<http://www.finebergresearch.com>), with hyperlinks to background reports and articles.

2. Comprehensive Data

Comprehensive petroleum revenue data would have helped policy makers analyze data by providing a clear benchmark for inter-company comparison, as well as data on transportation profits, typically omitted from Alaska production analyses even though the three major producers also own a similar percentage of the Trans-Alaska Pipeline System (TAPS), as noted above, and therefore realize additional profits from their Alaska operations.

- *Do EITI protocols enable citizens to seek comprehensive resource data reports?*

3. Aggregated vs. Disaggregated Reporting

Argument during the tax controversy discussed above suggest that the state is in need of petroleum data that can be broken down in sufficient detail to provide meaningful information and insight into the different economics of the discovered and developed (“legacy”) oil fields and undiscovered resources.

When a jurisdiction requires ring-fenced taxing for a specific lease or project (i.e., tax losses on a small project may not be used to offset taxes on a large project), the results from the specific projects or leases should be made public with the aggregated data to enable citizens to evaluate the factors, such as economies of scale, that affect public revenue receipts?

- *How are ring-fenced investments reported?*

When a jurisdiction permits non-ring-fenced taxing for aggregated reporting (i.e., tax losses on a small project to be used to offset taxes on a large project), the results from the specific projects or leases should be made public with the aggregated data to enable citizens to evaluate the factors, such as economies of scale, that affect public revenue receipts.

- *How are non-ring-fenced investments reported?*

4. “Blanket” Confidentiality v. Transparency

In Alaska, companies are able to withhold data as confidential at will under grants of blanket confidentiality vitiates the ability of the public to ascertain basic information on production profits that should be transparent.

- *Does EITI have or promote guidelines that proscribe withholding of data as confidential unless the company can demonstrate that release of specific data would reveal trade secrets or jeopardize a legitimately held competitive advantage?*
- *If a jurisdiction grants taxpayer confidentiality and only one company invests in a project or overall jurisdiction, are the results disclosed publicly? If not, will EITI withhold compliance status?*

5. Audits

A successful transparency initiative depends on the audit function, which is a complicated, expensive and time-consuming process that does not lend itself to public review. By improving Alaska's petroleum audit capabilities, USEITI could make a significant contribution to the Alaska public policy dialogue. Answers to the following three questions would go a long way toward assuring the public that the USEITI initiative is capable of establishing a viable auditing system:

Independent Audits: How does EITI assure audit data integrity?

- *Does EITI require auditors to certify financial independence from the party (or parties) being audited?*
- *How does EITI verify audit independence?*

Audit Time Lag: In Alaska, cost-based petroleum production tax was first implemented in 2006, adding calculation of production costs for deduction from the tax base to the traditional calculations of the market commodity price and transportation costs. However, audits for 2006 were not completed for over five years (and, to the best of my knowledge, have not yet been verified). This experience prompts me to ask:

- *Does EITI have procedures to reduce the time lag between revenue payments and completion of petroleum audits?*
- *What are the EITI provisions that ensure independent audits and timely verification procedures?*

Performance v. Compliance Audits: As a civilian consumer of petroleum data, I find it useful to note the distinction between (1) performance audits, which seek to ensure that programs fulfill statutory goals and are being operated economically, efficiently and effectively, and (2) compliance or financial audits, which seek to fulfill the narrower purpose of determining whether data entries have been validated (not whether the expenditures fulfilled a broader purpose). As I understand it, a financial audit may tell you that a quantity of money was tabulated as received and/or expended under one category (or categories) without investigating how deductions were actually used.

- *Does EITI distinguish between performance audits or the narrow-scope compliance or financial audit?*

6. Federal Income Tax Reporting

Extractive Industry companies typically pay much less than the nominal 35% U.S. Federal Income Tax (USFIT) rate due provisions that include carry-forward and carry-back provisions, deductions, rebates and other tax adjustments. Moreover, a company's net USFIT in a calendar year may not (and usually does not) reflect USFIT payments for that calendar year.

- *Do EITI reports distinguish payment to government for resource extraction made during a calendar year from payments for extraction made in (or for) a calendar year?*

7. Oil and Natural Resources Revenue (ONRR)

ONRR's statistical web site allows navigation by state, onshore and offshore regions.

- *Can ONRR data be broken down by state to show, by company, for each commodity:*
 - *production volume?,*
 - *production costs?*
 - *Royalty?*
 - *Federal income tax?*
 - *Other federal payments (bonus payments, lease rents, etc.)?*
- *Can each of these data figures be reported publicly?*
- *Are these data aggregated to conform to the federal PADD (Petroleum Administration for Defense Districts) units?*

8. Dodd-Frank Section 1504

To be sure that the companies in on the ground floor in a given state or region are not overcharging new potential investors for facilities and services, company-specific data are also valuable.

- *What is the status of Section 1504 of Dodd-Frank? (Have implementing regulations been written and approved? Have regulations been put in place?)*
- *Does Dodd-Frank require disclosure of information extractive industry companies previously kept confidential?*

I hope these questions will elicit answers that contribute meaningfully to the transparency initiative.

With thanks for your time and consideration, I am

Sincerely,

Richard A. Fineberg

Comments of the League of Women Voters
to the
U.S. Department of the Interior
regarding
Implementation of the Extractive Industries Transparency Initiative
June 11, 2012
Pittsburgh, PA

The League of Women Voters of Pennsylvania commends the Department of the Interior for providing this forum for listening to the public input regarding the structuring of the Extractive Industries Transparency Initiative (EITI). Given our long-standing advocacy for transparency, we applaud the use of the work in the title of the initiative and encourage that all such reporting standards be made subject to right-to-know. Transparency is best implemented through making all data inputted by the extractive industries and government agencies posted on-line for access by the public. Further, all meetings should be recorded and made available in an audio-video format for posting on the internet.

The League of Women Voters has a national position regarding natural resources. It promotes an environment beneficial to life through protection and wise management of natural resources in the public interest. Under this position, we further support resource management that promotes resource conservation, stewardship and long-range planning with responsibility for managing natural resources shared by all levels of government. We trust you will consider these points as you move forward in structuring the Extractive Industry Transparency Initiative.

Roberta Winters, Vice President Issues and Action
Mary Beth Sweeney, state board member Environmental Issues
League of Women Voters of Pennsylvania

Contact information:

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June 29, 2012

EITI Comments
c/o US. Department of the Interior
1801 Pennsylvania Ave NW, Suite 400
Washington, DC 20006

Dear Sir/Madam:

The National Mining Association (NMA) appreciates the opportunity to provide comments in response to the Department of the Interior's (DOI) request for input on the Consensus Building Institute's (CBI) report entitled "Stakeholder Assessment for the Formation of a Multi-Stakeholder Group (MSG) for the United States Extractive Industries Transparency Initiative (USEITI)." 77 Fed. Reg. 30022. (May 21, 2012).

INTRODUCTION

NMA is the national trade association representing the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and engineering, transportation, financial and other businesses that serve the mining industry. As the trade association of one of the key U.S. extractive industries, NMA has a strong interest in the implementation of EITI in the U.S. Many NMA members have operations in EITI countries and as such, have experience with the EITI process and the benefits it can provide. NMA and its members support EITI's goal of transparency in revenue payments to governments.

RESPONSES TO QUESTIONS

The CBI Report raises specific questions about the design of the MSG for stakeholder comment. The formation and design of the MSG is the key to successful U.S. EITI implementation. Please find below NMA's responses to each of the nine questions.

- **Who should establish the initial scope and direction of EITI implementation in the US?**

As a preliminary matter, a tailored reporting focus for U.S. EITI is essential to ensuring the U.S. can meet the two-year deadline for becoming EITI compliant. Expansive reporting requirements are unwise, as the complexities of such an approach could complicate and possibly adversely affect U.S. efforts. Perhaps the simplest approach is to start with U.S. EITI capturing the types of payments already reported in the U.S. Other NMA suggestions for limiting the scope of reporting include:

- Limiting scope to revenues from federal lands;
- Limiting scope to certain commodities;
- Avoiding duplication of existing reporting;
- Inclusion of a materiality or threshold value.

As the facilitator for DOI, CBI has read all comments submitted to date, attended all listening sessions, and met individually with a number of stakeholders. As such, CBI is probably in the best position to provide suggestions on how to limit the initial scope of the reporting obligations and ensure successful EITI implementation. Waiting for the MSG to form, meet, and reach consensus on scope will be overly time-consuming. Any further modification or expansion of what revenues ought to be considered reportable should be determined by the MSG following an initial implementation period.

- **Should the MSG be initially established as an interim or full MSG?**

NMA sees no benefit in establishing an interim MSG prior to the full MSG. We anticipate the same difficulties will be faced in deciding upon the interim MSG as with the full MSG and therefore feel it would prolong the overall MSG convening process. However, we agree on the importance of setting up the MSG in the most expeditious way possible so as to enable it to be effective quickly. We believe this can ultimately be achieved by limiting the initial scope of U.S. EITI as discussed above. The MSG should be seen as a fluid decision making body what will have the flexibility to evolve over time as it sees fit.

- **What decision rule should the MSG use to reach its decisions?**

We agree with CBI's recommendation that the MSG should make decisions by consensus and that the fall back rule in the rare circumstances when consensus cannot be reached should be by a majority of each of the three sector's representatives.

- **What is an appropriate size for the MSG and how should sufficient balance be established across sectors?**

One of the greatest challenges for MSG formation will be to balance efficiency with sufficient sector representation. When considering numbers, it is important to note the complexity of the extractive industry in the US. Industry representation, to the extent possible, should be inclusive of companies that represent a number of different variables, including but not limited to: size, geography (domestic/international), ownership (privately/publicly held), and all for the various types of mineral extraction (oil, gas, hard rock, and coal). Given this wide array of characteristics, maintaining the appropriate balance of industry perspectives while limiting industry to seven representatives (the upper limit of the range discussed in the CBI Report) will be extremely difficult and has provoked much thought.

Pursuant to much mining industry discussion, we have two alternative suggestions for ensuring appropriate industry sector representation without creating a power imbalance between the three sectors. First, flexibility could be provided by broadening MSG representation to allow two-three extra industry representatives. This flexibility could be limited to distribution of members but not impact decision-making power. Second, industry could be limited to seven representatives but the MSG could provide for the designation of alternates to better achieve the appropriate balance of industry perspectives. Operationally this option still requires additional thought but we believe it could be accomplished in a way that ensures the dynamic of the MSG stays intact.

Furthermore, there is a benefit for all, to increased industry representation because it will ensure that information is readily available from the majority of the sectors that will eventually have to report revenues pursuant to the EITI mandate. In fact, different countries have created MSGs with varying sector representation based on their effective exchange of specific domestic issues, resulting in some cases a larger representation in the industry group.

The CBI Report lists a number of federal government agencies that seem to have direct and appropriate correlation to EITI with one exception: the U.S. Environmental Protection Agency (EPA) mining team. NMA sees no basis for MSG to include EPA. NMA believes the initial focus of MSG should be on traditional revenues for EITI reporting purposes and not other tangential revenues as noted on page 15 of the CBI Report, especially if the MSG is to meet the two-year deadline to become EITI compliant. EPA does not receive routine direct payments from the U.S. extractive industries. NMA believes that only federal agencies that are recipients of significant

direct material payments by the mining, gas, and/or oil industries should be included on the MSG as government representatives.

- **What might be the role of tribes and tribal allottees?**
- **How might states be involved?**

NMA does not feel that these questions need to be addressed before convening the MSG. At this time, NMA believes the inclusion of private lands would have adverse impacts on the potential for the success of U.S.EITI implementation. The issues of state and tribal involvement should be addressed by the MSG after initial implementation has been achieved, U.S.EITI is operating and if and when these groups request to be involved. In the future, as new stakeholders request to be engaged, the MSG can decide how to involve such groups in the U.S.EITI process, including whether to add representation from these groups to the MSG.

- **Criteria for representation individually and across the MSG**

NMA believes the criteria listed in the CBI Report are sufficiently clear and appropriate to guide the selection of MSG representatives. It should, however, be more clearly stated that people identified to be on the MSG would act as individuals representing their entire sector and not necessarily the specific entity for which they work (even though that may be why they were initially identified).

Since we see the MSG as a fluid decision making body, perhaps criteria for representation should also be fluid. Perhaps international experience with EITI should be emphasized initially in order to minimize early stage mishaps and utilize lessons learned from EITI compliant countries. Then once the U.S.EITI process is up and running, the balance could shift towards domestic representation. One way to allow representative of companies without prior EITI experience to gain experience would be by serving as alternates to more experienced representatives during the first years (time to be identified by MSG). Over the long-run, rotation of MSG members and participants would help ensure broad industry buy-in and long term sustainability of the program.

- **Selection of Representatives**

Self-selection. NMA believes is critical to the EITI process that each group feels it is independent and in no way influenced by or beholden to any other group on the MSG. NMA does not believe that it would be in the spirit of the EITI to have one sector or entity choose representatives for other stakeholder groups involved. Each stakeholder group should be responsible for selecting its respective representatives.

- **Administrative and legal options for establishing the MSG**

In NMA's judgment, the following key questions remain, making it difficult to identify which operating mechanism would be most effective for the MSG, without having more information. We appreciate CBI's efforts in trying to provide clarity on these points, as requested during the June 22 public listening session.

1. Timing estimates of different options? In NMA's view, it is most important for MSG to get up and running as quickly as possible. As mentioned earlier, the MSG should be a fluid decision making body; after it is established the MSG can decide to change operating its mechanism, or evolve to suit the needs of the MSG in providing for the successful perpetuation of U.S. EITI.
2. Sustainability/legitimacy. What will withstand the ebb and flow of political influences? What will be perceived as most legitimate? Are the decisions from any option legally binding?

We note that the CBI Report (pages 22 and 23) outlines various structures for convening USEITI none of which, unfortunately, are a perfect match. Based on the subsequent information provided by CBI, and not having sufficient time to investigate or reflect on the matter further, NMA hesitantly suggests that the MSG be set up using FACA. We are hesitant given the structural issues associated with a FACA, especially since the MSG, to be compliant with EITI requirements, must be reflective of the participants, not solely the federal government's decision. To uphold the spirit and intent of the EITI, the MSG must be an entity with the power to make its own decisions without external influence and whose decisions will be accepted. We remain concerned as to whether FACA would have the flexibility in its framework allow for a properly independent MSG to be established and would want DOI to ensure all stakeholders, that under FACA the MSG's decisions would be accepted and not altered by government bodies.

NMA also however sees the benefit of the clear structure that a FACA will provide in relation to an already identified process for implementation; and therefore may be the most expeditious vehicle to set up the MSG. It also seems to meet the majority of the requirements envisioned for the MSG. While opposed to the policy, NMA believes that the mining sector can live with the restriction that lobbyists would not be able to serve officially on the MSG.

CONCLUSION

NMA appreciates the opportunity to provide its views on the CBI Report. U.S. implementation of EITI holds the promise of both national and international benefits. However, steps toward EITI compliance must be properly structured to prevent the initiative from becoming overly duplicative, burdensome, and complex, risking the result that it collapses under its own weight. For example, we reference our letter of June 15, 2012 sent to U.S. Securities and Exchange Commission Chair Shapiro and U.S. Department of Interior Secretary Salazar specific to this concern. Consistent with U.S. goals to show our leadership in transparency and given the fact that existing U.S. requirements already address commonly recognized reporting streams from the commercial development of minerals, the U.S. EITI approach should rely significantly on the existing reporting structure.

If you have any questions regarding these comments, please contact Katie Sweeney or Veronika Kohler at 202/463-2600.



Our membership and services span the globe

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June 29, 2012

EITI Comments
c/o U.S. Department of the Interior
1801 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20006

Re: Stakeholder Assessment for the Formation of a Multi-Stakeholder Group for the United States Extractive Industries Transparency Initiative (77 Fed. Reg. 30022, May 21, 2012)

Dear Sir/Madam:

The Northwest Mining Association (NWMA) appreciates the opportunity to provide comments regarding the Department of the Interior's (DOI) request for input on the Consensus Building Institute's (CBI) report entitled "Stakeholder Assessment for the Formation of a Multi-Stakeholder Group (MSG) for the United States Extractive Industries Transparency Initiative (EITI). NWMA and its members support EITI's goal of transparency in revenue payments to governments, and we have a strong interest in the effective implementation of EITI in the U.S.

INTRODUCTION

NWMA is a 117 year old, 2,300 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies, many having prior experience with the EITI process and the benefits it can provide. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

NWMA fully endorses the comments of the National Mining Association (NMA) and fully incorporates them herein by reference.

NWMA RESPONSES TO CBI REPORT QUESTIONS

The CBI Report raises specific questions about the design of the MSG for stakeholder comment. NWMA believes the formation and design of the MSG is integral to the successful implementation of U.S. EITI. Outlined below are NWMA's responses to the questions posed in the CBI report.

1. Who should establish the initial scope and direction of EITI implementation in the U.S.?

As a preliminary matter, a tailored reporting focus for U.S. EITI is essential to ensuring the U.S. can meet the two-year deadline for becoming EITI compliant. Expansive reporting requirements are unwise as the complexities of such an approach could doom U.S. efforts. Following are several suggestions for limiting the scope of reporting such as:

- Limiting scope to revenues already reported;
- Limiting scope to revenues from federal lands;
- Limiting scope to certain commodities;
- Avoiding duplication of existing reporting;
- Inclusion of a materiality or threshold value.

As the facilitator for DOI, CBI has read all comments submitted to date, attended all listening sessions, and met individually with a number of stakeholders. As such, CBI is probably in the best position to provide suggestions on how to limit the initial scope of the reporting obligations and ensure successful EITI implementation. Waiting for the MSG to form, meet, and reach consensus on scope will be overly time-consuming. The MSG can adapt the scope as it sees fit at the appropriate time, perhaps after initial successes have been implemented.

2. Should the MSG be initially established as an interim or full MSG?

NWMA sees no benefit to establishing an interim MSG rather than a full MSG. Forming an interim MSG would present the same issues as deciding upon a full MSG, and therefore feel it would prolong the overall MSG convening process. However, we agree on the importance of setting up the MSG the most expeditious way possible so as to enable it to be effective quickly. We believe this can ultimately be achieved by limiting the initial scope as discussed above. The MSG should be seen as a fluid decision-making body that will have the flexibility to evolve over time as it sees fit.

3. What decision rule should the MSG use to reach its decisions?

We agree with CBI's recommendation that the MSG should make decisions by consensus and that the fall back rule in the rare circumstances when consensus cannot be reached should be by a majority of each of the three sectors' representatives.

4. What is an appropriate size for the MSG and how should sufficient balance be established across sectors?

One of the greatest challenges for MSG formation will be to balance efficiency with sufficient sector representation. When considering numbers, it is important to note the complexity of the extractive industry in the U.S. Industry representation, to the extent possible, needs to be inclusive of companies that represent a number of different variables, including but not limited to size, geography (domestic/international), ownership (privately/publicly held), and for many different types of mineral extraction (not necessarily limited to oil/gas/hardrock/coal). Given this wide array of characteristics, limiting industry to 5-7 representatives (the range discussed in the CBI Report) will be significantly difficult. Broadening representation of industry by allowing 2-3 extra representatives need not upset the balance of the MSG among the three sectors as the flexibility could be limited to distribution of members but maintain equity as to decision-making power. Furthermore, there is a benefit to an increased number of industry representatives on the MSG because it will ensure that information is readily available from the majority of the sectors that will eventually have to report revenues pursuant to the EITI mandate.

The CBI Report lists the U.S. Environmental Protection Agency (EPA) mining team as potential government participants on the MSG. NWMA disagrees with that suggestion. EPA does not receive routine payments from the U.S. extractive industries, and we believe only federal agencies that are recipients of significant material payments by the mining, gas, and oil industries should be included on the MSG as government representatives.

5. What might be the role of tribes and tribal allottees? How might states be involved?

The role of states, tribes, and tribal allottees is an important question for U.S. EITI. The mining sector, however, does not feel this is a question that must be addressed before convening the MSG. The issues of state and tribal involvement should be addressed by the MSG after EITI is up and running, initial successes have been achieved, and these groups request to be involved. In the future, as new stakeholders request to be engaged, the MSG can decide how to involve such groups in the EITI process, including whether to add representation from these groups to the MSG.

6. Criteria for representation individually and across the MSG

NWMA believes the criteria listed in the CBI Report are appropriate to guide selection for MSG representatives. It should, however, be more clearly stated that people identified to be on the MSG are there as individuals representing their entire sector, and not the specific entity for which they work.

Since we view the MSG as a fluid decision-making body, perhaps criteria for representation also should be fluid. International experience in EITI could be emphasized at the beginning of the process to minimize early-stage mishaps and utilize lessons learned. Then, as the U.S. EITI

process is up and running, the balance skews more towards domestic representation to ensure buy-in and sustainability.

7. Selection of Representatives

It is critical to the EITI process that each group feels it is independent and in no way influenced by another. NWMA does not feel it is in the spirit of the EITI to have one sector or entity choose representatives for all the stakeholder groups involved. Each stakeholder group should be responsible for selecting its respective representatives.

8. Administrative and legal options for establishing the MSG

The following key questions (in order of importance) have remained, making it difficult to identify which operating mechanism would be most effective for the MSG. We appreciate CBI's efforts in trying to provide clarity on these points, as requested during the June 22 public listening session.

- Timing estimates of different options? Most important is getting the MSG functioning as quickly as possible. As mentioned earlier, the MSG should be a fluid decision-making body. After it is established, the MSG can decide to change operating mechanisms as it sees fit, or as it evolves.
- Sustainability/legitimacy? What will withstand ebb and flow of political influences? What will be perceived as most legitimate? Are decisions from any option binding?
- Restrictions across the different options?
- Cost implications

Incorporating CBI's subsequent information and not having sufficient time to investigate further, we suggest the MSG be set up using FACA. To uphold the spirit and intent of the EITI, the MSG must be an entity with the power to make its own decisions without external influence and whose decisions will be accepted. Would FACA have the flexibility in its framework to function as the MSG? Can DOI ensure that under FACA the MSG's decisions would be accepted and not altered?

Given its existing process for implementation, a FACA may be the most expeditious vehicle to set up the MSG. It appears also to meet the majority of requirements envisioned for the MSG and the mining sector can live with the restriction that lobbyists will not be able to officially sit on the MSG.

CONCLUSION

NWMA appreciates the opportunity to provide our views on the CBI Report. U.S. implementation of EITI holds the promise of national and international benefits. However, steps toward EITI compliance must be properly structured to prevent the initiative from becoming overly duplicative, burdensome, and complex and thus risking the inevitable result that U.S. EITI

collapses under its own weight. Consistent with U.S. goals to demonstrate leadership in transparency, and given the fact that existing U.S. requirements address commonly recognized reporting streams from the commercial development of minerals, the U.S. EITI approach should rely significantly on the existing reporting structure.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Skaer".

Laura Skaer
Executive Director

June 29, 2012

EITI Comments
U.S. Department of the Interior
1801 Pennsylvania Ave, NW, Suite 40
Washington, DC 20006

Dear Sir or Madam:

Thank you for providing this opportunity to comment on the Department of the Interior's report addressing Stakeholder Assessment and Multi-Stakeholder Group Formation for implementation of the United States Extractive Industries Transparency Initiative (EITI). 77 Fed. Reg. 26315 (May 3, 2012). We support the Department of the Interior's work to implement the EITI and hope that it becomes a valuable tool in the agency's decisions about whether and under what conditions to allow industrial activities in our oceans.

Oceana is the world's largest nonprofit organization dedicated solely to ocean conservation. We focus on a limited number of strategic, directed campaigns to achieve measurable outcomes that will help return our oceans to former levels of abundance. Oceana believes in the importance of science in identifying problems and solutions, and our scientists work closely with our teams of economists, lawyers and advocates to achieve tangible results for the oceans.

The EITI can help us ensure that decisions about our oil and gas resources are based on good information. As a steward of our public resources, the Department of the Interior is responsible for balancing risks and benefits in deciding whether and under what conditions to allow extraction by private companies. Better information about profits made by multi-national companies and revenue received by the Department of the Interior will help ensure that these decisions prioritize benefits to the American people.

We encourage the Department of the Interior to create an open and inclusive process to implement the EITI. To that end, the Department of the Interior should encourage participation from members of "civil society," including representatives of nonprofit organizations, universities, and others in the implementing process. Further, the agency can do a significantly better job of furthering this participation. Until now, very little has been done to advertise this process or encourage participation. The Department of the Interior should, for example, more widely publicize public hearings and comment periods.

Thank you for your work to implement the EITI, and we look forward to working with you on this important issue.

Sincerely,



Susan Murray
Senior Director, Pacific
Oceana

Publish What You Pay US
Supplementary Comments on US EITI Multi-Stakeholder Group (MSG) Formation
June 29, 2012

PWYP US provides the following to supplement our comments provided in the listening sessions, and the June 22 workshop.

Recommended Initial Structure for the MSG:

PWYP US supports the establishment of a new advisory committee under FACA to initiate the US EITI process.

Advisory Committee Charter Elements:

We recommend that the charter of the advisory committee reflect:

- That it is an initial, inaugural, or first phase iteration of the MSG.
- That its objective is to craft the administrative, procedural and technical foundations for the US to meet the candidacy and implementation requirements of EITI. This process will reflect EITI principles.
- That it will conduct the work necessary to establish its successor MSG, which may include changes in committee structure, and representation, in order to meet the objective of attaining the most appropriate MSG for implementing the EITI in the long-term.
- A clear description of the roles and responsibilities of each of the constituencies within the MSG.
- A clear description of the limitations of the committee, its scope of responsibilities, constituency and authority.
- A clear description of the decision-making process the inaugural MSG decides the MSG should take, and clear guidelines describing how these decisions will be implemented by Department of Interior. As noted during the June 22 workshop, we would welcome a public commitment by the Secretary to implement the recommendations made by the group.

Committee Representation:

- We recommend that the committee include 7 representatives of each constituency, each with an alternate. This will help to ensure that each constituency is fully represented.
- We agree with the consensus that individual constituencies self-select and nominate members to serve on the MSG.

Feedback on non-FACA committee:

We believe that a non-FACA option, for example, setting up a 501c3, would not be fit for purpose for initiating the implementation of EITI in the US. This model is untested for this type of initiative, and the models provided do not suggest that it would be adequate to meet the rigorous standards required by EITI. For example, this option has no link to decision-making by the Department of Interior, which would prevent the implementation of key decisions. In addition, a 501c3 would require the establishment of a Board of Directors, Treasurer and other officers, which would require an extensive and time-consuming processes to determine these posts, while maintaining the independence and credibility of such a body. The relationship between civil society, industry and Interior, and our capacity to work together is new and untested. For this reason we prefer a process that has legislative foundations, has been well-tested by Interior, and for which significant operational precedents exist, from which we can draw lessons and guidance.

Key areas of work remaining

Significant work remains to educate the public and engage stakeholders. The establishment of an advisory committee under FACA will provide an opportunity to do further outreach. We recommend the

establishment of a communications subcommittee to develop an outreach strategy to address education and outreach gaps, and determine key stakeholders that must be engaged.

As Interior works on finalizing the MSG, we recommend that in parallel, it invest basic, core communications infrastructure in partnership with the Open Government Partnership team at the White House. It is crucial Dept. of Interior is proactive in expanding the visibility of its high-level commitment to the EITI in key extractives regions in the US, to spur and encourage civil society and industry participation and support. This support will be essential to building a constituency of participants, champions of the process and users of EITI data.

For questions, please contact: Isabel Munilla, imunilla@pwypusa.org, 202-496-1179

Dear USEITI,

I attended the public information session in Denver on March 21st, and have been following the emailed updates since then. At this point I would like to put forward my self-nomination for membership in the MSG.

Given my work in quantifying the economic benefits of large-scale mines around the world, and my years of experience in the global mining industry, I feel my inclusion on the MSG would add significant value to the discourse and output of the Group. EITI has been a factor in many of the countries I have studied, most recently Peru. I attach here both a narrative and standard format CV for your reference, and would be happy to provide whatever additional information would be useful. See also the link below to my recent report on the economic contribution of mining in Peru, presented at the World Bank in October among other venues, and the link to my previous report on the same topic, using Tanzania as a case study.

Peru report:

http://www.gold.org/download/rs_archive/wgc_econ_contribn_of_lge_scale_gold_mining_in_peru.pdf

Tanzania report:

http://www.gold.org/download/pub_archive/pdf/WGC_Golden_Building_Block.pdf

Please let me know what other steps there may be in the nomination process.

Best regards,
Maureen Upton

