

February 9, 2017

Judy Wilson
USEITI Program Officer
Office of Natural Resources Revenue
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Ms. Wilson,

As you know, the U.S. Extractive Industries Transparency Initiative (USEITI) is part of an international effort to promote openness and accountability in the management of oil, gas, and mining resources. The United States has supported the international EITI effort since its founding in 2003. The revenue disclosures that the government and extractive industries make through USEITI and EITI implementations around the world provide the public with critical information about the extent to which they are benefiting from their nation's natural resources.

We, the civil society members of USEITI, are strong supporters of this initiative, and we are proud of its accomplishments. In the spirit of cooperation, consensus, and transparency, we have worked closely with government and industry members of the USEITI multi-stakeholder group since it was established as a federal advisory committee in 2012. However, in light of recent developments, we are concerned that the USEITI process faces significant challenges. We are therefore writing to formalize our objections to the actions of two USEITI stakeholders.

Our objections are:

1. That the American Petroleum Institute, which is a member of USEITI, undermined the progress and goals of USEITI by supporting¹ a congressional resolution to nullify the Securities and Exchange Commission (SEC) rule that requires U.S.-listed resource extraction issuers to disclose payments made to governments for the commercial development of oil, natural gas or minerals,
2. And that, during the USEITI multi-stakeholder group meeting of February 1, 2017, you, serving as the Designated Federal Officer for USEITI, turned off the civil society chairperson's microphone as she was speaking, shut off microphones around the table while civil society members attempted to speak, shut down public access to the meeting and abruptly adjourned the meeting at 3:40 p.m., censoring testimony and preventing the public and all civil society members from speaking about issues relevant to the meeting.

¹ Letter from Jack N. Gerard, President and CEO of the American Petroleum Institute, to the Honorable Paul D. Ryan, Speaker of the U.S. House of Representatives, and the Honorable Nancy Pelosi, Democratic Leader of the U.S. House of Representatives, about H.J. Res. 41, January 31, 2017. www.api.org/~media/Files/News/Letters-Comments/2017/1-1-31-17_Letter_to_House_Leadership-CRA_Sec_1504.pdf

Per our first objection, the SEC rule implements Section 1504 of the 2010 Dodd-Frank Act, and is a critical piece of the EITI Standard² and the framework under which U.S.-listed companies would be required to disclose disaggregated royalty, tax, and other payment information. While some companies voluntarily disclosed their tax payment data for the 2015 and 2016 USEITI reports, most U.S. companies refused to make all of the payment disclosures required by the EITI Standard. The USEITI industry sector said in 2016 that they favored waiting for the SEC rule to be in effect before making disclosures.³

Therefore, without the SEC rule, there is no mechanism to compel companies to make mandatory disclosures of corporate tax payments and other disaggregated payment information under USEITI, as required by the EITI Standard. By encouraging Congress to nullify the SEC rule, the American Petroleum Institute has brought into question whether the United States can be validated as an EITI country and has undermined consensus-based decisions of the MSG with regard to payment disaggregation efforts.⁴ As such, we asked at the February 1, 2017 USEITI multi-stakeholder group meeting that the American Petroleum Institute be removed from the multi-stakeholder group for violating the spirit of the USEITI Terms of Reference.⁵

Per our second objection, the federal government's silencing of the civil society sector is a violation of the EITI Protocol on the Participation of Civil Society, which requires that "Civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal."⁶

Given that the acting Designated Federal Officer is a member of the USEITI Secretariat, we also have concerns about the multiple roles the federal government has played in USEITI governance. As the EITI Guidance Note for National Secretariats says, "National Coordinators and secretariats are expected to execute the collective decisions of the MSG. This task, however, is not always straightforward. Sometimes, despite a collective decision, stakeholders within the MSG may have different preferences as to the manner of execution. A National Coordinator or secretariat who is accountable primarily to the government might encounter challenges in handling this situation."⁷ USEITI needs to be consistent with Requirement 1.1 of the EITI Standard to ensure the independence of the presiding government official and to provide for the

² Extractive Industries Transparency Initiative, *The EITI Standard 2016*, Oslo, Norway: EITI International Secretariat, February 23, 2016, p. 25. eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf

³ U.S. Extractive Industries Transparency Initiative, "Multi-Stakeholder Group Advisory Committee Meeting," March 8-9, 2016, p.9. www.doi.gov/sites/doi.gov/files/uploads/useiti_msg_-_mar_2016_mtg_summary_final.pdf

⁴ U.S. Extractive Industries Transparency Initiative, "USEITI Company and Project Level Reporting Working Group Recommendation to Implementation Subcommittee," November 24, 2014. www.doi.gov/sites/doi.gov/files/migrated/eiti/FACA/upload/USEITI-Company-and-Project-Level-Recommendation.pdf

⁵ U.S. Extractive Industries Transparency Initiative, *Terms of Reference*, last amended June 28, 2016. www.doi.gov/sites/doi.gov/files/uploads/msg_updated_useiti_terms_of_reference_06282016.pdf

⁶ Extractive Industries Transparency Initiative, *The EITI Standard 2016*, Oslo, Norway: EITI International Secretariat, February 23, 2016, p. 42. eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf

⁷ Extractive Industries Transparency Initiative, "Guidance Note for National Secretariats," August 2016, p.4. eiti.org/sites/default/files/documents/guidance_note-25-national-secretariats.pdf

authority and freedom to coordinate action related to EITI across relevant agencies, and guarantee full and adequate participation by members of the civil society sector.⁸

The USEITI multi-stakeholder group has achieved a great deal since 2012, and we are proud of the group's work, notably the USEITI data portal.⁹ We have worked with countless civil society stakeholders in order to mold the data portal into a tool that has the potential to empower citizens with information about extraction taking place in their communities. The USEITI process has been and should continue to be an example of multi-stakeholder group best practice and collaboration to other EITI implementing countries around the world. That is why we feel it is our duty to formally object to the aforementioned government and industry stakeholders' actions, which are harmful to USEITI and violate the spirit of the EITI Standard.

As a result, we respectfully insist:

1. That the American Petroleum Institute representative be removed from the multi-stakeholder group,
2. And that the USEITI sector chairs create processes that are consistent with Requirement 1.1 of the EITI Standard to ensure the independence of the Designated Federal Official, provide for the authority and freedom to coordinate action related to USEITI across relevant agencies, and guarantee full and adequate participation by members of the civil society sector.

Sincerely,

Danielle Brian, USEITI Civil Society Chair
Project On Government Oversight

Rebecca Adamson
First Peoples Worldwide

Neil Brown
Lugar Center

Paul Bugala

David Chambers
Center for Science in Public Participation

Daniel Dudis
Public Citizen

Lynda Farrell
Pipeline Safety Coalition

Jennifer Krill
Earthworks

Michael LeVine
Oceana

⁸ Extractive Industries Transparency Initiative, *The EITI Standard 2016*, Oslo, Norway: EITI International Secretariat, February 23, 2016, p. 13. eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf

⁹ U.S. Extractive Industries Transparency Initiative Data Portal. useiti.doi.gov

Zorka Milin
Global Witness

Isabel Munilla
Oxfam America

Michael Ross
Natural Resources Governance Institute

Veronica Slajer

Jana Morgan
Publish What You Pay - US

Keith Romig
United Steelworkers

Brian Sanson
United Mine Workers of America

Betsy Taylor
Livelihoods Knowledge Exchange Network

** Member affiliations are listed for identification purposes only.*

cc: Greg Gould, USEITI Government Chair, Office of Natural Resources Revenues
Veronika Kohler, USEITI Industry Chair, National Mining Association