

From: [Rezaeero, Paniz](#)
To: [Sanchez, Alexandra L](#)
Subject: FW: FYI - potential hearing on O&G report in HNRC in 2022
Date: Tuesday, December 21, 2021 11:57:12 AM

fyi

Paniz Rezaeero
Deputy Director of Congressional Affairs - House
Department of the Interior
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Washington, DC 20240
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NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

From: Rezaeero, Paniz
Sent: Tuesday, December 21, 2021 11:43 AM
To: Wallace, Andrew G <andrew_wallace@ios.doi.gov>; Kelly, Katherine P <Kate_Kelly@ios.doi.gov>; Beaudreau, Tommy P <tommy_beaudreau@ios.doi.gov>; Lefton, Amanda B <Amanda.Lefton@boem.gov>; Stone-Manning, Tracy M <tstonemanning@blm.gov>; Feldgus, Steven H <steve_feldgus@ios.doi.gov>; Culver, Nada L <nculver@blm.gov>; Daniel-Davis, Laura E <laura_daniel-davis@ios.doi.gov>
Cc: Gray, Morgan <Leslie_Morgan_Gray@ios.doi.gov>; Salotti, Christopher <Chris_Salotti@ios.doi.gov>; Quinn, Matthew J <Matthew_Quinn@ios.doi.gov>
Subject: RE: FYI - potential hearing on O&G report in HNRC in 2022

HNRC now wants to hold a hearing on this topic on January 20 irrespective of whether BBB is passed.

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From: Rezaeero, Paniz
Sent: Tuesday, December 7, 2021 1:01 PM
To: Wallace, Andrew G <andrew_wallace@ios.doi.gov>; Kelly, Katherine P <Kate_Kelly@ios.doi.gov>; Beaudreau, Tommy P <tommy_beaudreau@ios.doi.gov>; Lefton, Amanda B <Amanda.Lefton@boem.gov>; Stone-Manning, Tracy M <tstonemanning@blm.gov>; Feldgus, Steven H <steve_feldgus@ios.doi.gov>; Culver, Nada L <nculver@blm.gov>; Daniel-Davis, Laura E <laura_daniel-davis@ios.doi.gov>

Cc: Gray, Morgan <Leslie_Morgan_Gray@ios.doi.gov>; Salotti, Christopher <Chris_Salotti@ios.doi.gov>; Quinn, Matthew J <Matthew_Quinn@ios.doi.gov>
Subject: FYI - potential hearing on O&G report in HNRC in 2022

HNRC wants to hold a hearing on either Jan. 20 OR Feb. 3 for a potential oil and gas report leasing hearing **but only if BBB is done by then.** Just FYI

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From: [Stork, Allison J](#)
To: [Sanchez, Alexandra L](#)
Subject: Fw: [EXTERNAL] Re: BOEM 3-Week Comment Period - Excerpt-by-Issue report
Date: Wednesday, December 1, 2021 8:43:12 PM
Attachments: [BOEM 3-Week Comment Period Suggestions EBI 6-17-2021.docx](#)

Hi Alexandra,

In case this is helpful to you, here is the excerpt-by-issue report provided by the contractor of comments that provided suggestions and/or recommendations with regard to the comprehensive review.

Thanks,
Allison

Allison Stork
Deputy Chief, National Program Development Branch
Leasing Policy & Management Division
Office of Strategic Resources
Bureau of Ocean Energy Management
U.S. Department of the Interior
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Sterling, VA 20166
Office: (703) 787-1795
Mobile: (571) 265-2994
Email: Allison.Stork@boem.gov

Hi Allison,

We hope BOEM has found the summary report helpful thus far. Per our discussion at the last check-in meeting, we are providing the excerpt-by-issue (EBI) report that contains the verbatim text of comment excerpts that ICF identified as containing the suggestions/recommendations that were summarized. This report is a useful reference if a reader wanted to see original comment text as it relates to a summary statement, but it is not meant to be read from cover to cover. As an appendix to the EBI, I've attached the counts-by-issue (CBI) table as well.

We will submit the Access database in a separate email later this afternoon.

Thanks,
Soniya

*U.S. Department of the Interior
Bureau of Ocean Energy Management*

Public Comment Processing, Analysis, and Creation of Reports for a Three-Week Comment Period

Excerpt-by-Issue Report of Suggestions and Recommendations

June 17, 2021

**Prepared by
ICF**

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Introduction

On March 25, 2021, the Department of the Interior (“the Department”) hosted a virtual public forum as part of the Department’s comprehensive review of the Federal oil and gas program, as called for in [Executive Order 14008](#). The forum featured several panelists to highlight perspectives from invited participants, including industry representatives, unions, environmental justice organizations, natural resource advocates, Indigenous organizations, academics, and other experts. To help inform the Department on next steps and outline recommendations for the Department and United States Congress to improve stewardship of public lands and waters, create jobs, and build a just and equitable energy future, a public comment period was opened from March 25, 2021 through April 15, 2021. Members of the public were asked to submit comments and additional information to inform the Department’s interim report at energyreview@ios.doi.gov.

Through April 15, 2021, the Department received 155,050 public comments, including individual comments, comments submitted as part of mass mail campaigns, petitions, and oral comments submitted during the virtual meeting. Of the comments received, 3,688 were identified as unique, 151,333 were part of 28 different mass mail campaigns and petitions, and 29 submissions were either duplicate or not germane. Of the 3,688 unique submissions, 92 submissions contained specific suggestions or recommendations for the Department. This Excerpt-by-Issue (EBI) Report reflects the comment text containing the specific suggestions or recommendations.

ICF’s process for analyzing public comments builds upon our commercial web-based CommentWorks® software product. As a first step, we processed electronic copies of the comments so that we could then import these data into CommentWorks. A hierarchical outline was developed to include key issues provided by BOEM staff and issues addressed by the commenters. ICF staff reviewed the comment letters, identifying the substantive excerpts within each submission (“bracketing”), and used the issue outline to associate each excerpt to the issue(s) to which it applies (“coding”). The end product of the bracketing and coding analysis is this “comment excerpt-by-issue report” – a report generated in CommentWorks that includes the *verbatim text* of substantive comment excerpts sorted by issue. Appendix A at the end of this report indicates the number of submissions that addressed each issue.

A note about the material presented in this report: Please keep in mind that this report includes verbatim comment excerpts as written by the commenters. The purpose of presenting this material in its verbatim form is to preserve the exact words of the commenter as they relate to each issue.

Index of Comment Submissions Sorted by Submission Number

The following table lists the submission numbers, commenter name, and commenter type of submissions which provided specific suggestions, sorted by submission number.

Submission Number	Commenter	Commenter Type
BOEM-EMAIL-32521-000004	Energy Policy Institute at the University of Chicago, Victoria Ekstrom High	Universities/Colleges/Academia
BOEM-EMAIL-32521-018330	American Exploration and Production Council, Wendy Kirchoff	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-018389	Earth Justice and cosigners, Steve Mashuda	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-018572	Chris Lish	Individual/General Public
BOEM-EMAIL-32521-018769	U.S. PIRG and Environment America, Len Montgomery	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-019020	International Association of Drilling Contractors, Matthew Giacona	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-019118	BP, Alves F	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-019684	Columbia University Center on Global Energy Policy, Marianne Kah	Universities/Colleges/Academia
BOEM-EMAIL-32521-019726	Wilderness Society Action Fund and cosigners, Alex Daue	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-019746	ConocoPhillips, Fennessey Karl	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-019934	OCS Governors Coalition, Meg Bankston	State Governors and State Agencies
BOEM-EMAIL-32521-019946	Nevada Conservation League, Paul Selberg	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-019955	Defenders of Wildlife, Peter Nelson	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-019979	Western Leaders Network, Jessica Pace	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-020244	Global Energy Institute and the U.S. Chamber of Commerce, Christopher Guith	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-020306	Center for American Progress, Jenny Rowland-Shea	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-020638	National Ocean Industries Association, Richard England	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-020685	Keystone Energy Board, Mallory Huggins	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-020687	Alaska Wilderness League, Kelsie Rudolph	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-021056	Business Alliance for Protecting the Pacific Coast, Vipe Desai	Non-Energy Industry and Associations
BOEM-EMAIL-32521-021182	National Ocean Industries Association, Richard England	Energy Exploration and Production Companies and Associations

BOEM-EMAIL-32521-022112	Project Canary, Brian Miller	Non-Energy Industry and Associations
BOEM-EMAIL-32521-022409	American Enterprise Institute, Benjamin Zycher	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-022815	Pueblo of Acoma, Governor Brian Vallo	Tribes and Tribal Organizations
BOEM-EMAIL-32521-023161	Western Organization of Resource Councils, David Wieland	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-023551	State of Utah, Department of Agriculture and Food, Redge Johnson	State Governors and State Agencies
BOEM-EMAIL-32521-023720	Petroleum Association of Wyoming, Pete Obermueller	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-024412	Southern Utah Wilderness Alliance, Landon Newell	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-025138	Center for Energy Science and Policy, George Mason University, Richard Kauzlarich	Universities/Colleges/Academia
BOEM-EMAIL-32521-025899	Natural Resources Defense Council, Josh Axelrod	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-026500	State of Louisiana, Office of the Governor, John Bel Edwards	State Governors and State Agencies
BOEM-EMAIL-32521-026571	Multiple Gulf Advocacy Organizations, Dustin Renaud	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-027601	State of Alabama, Office of the Governor, Kay Ivey	State Governors and State Agencies
BOEM-EMAIL-32521-027661	Alaska Wilderness League and Multiple Other Environmental Organizations, Kelsie Rudolph	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-028864	Powder River Basin Resource Council, Shannon Anderson	Non-Energy Industry and Associations
BOEM-EMAIL-32521-029065	The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al., John Hiscock	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-030652	National Parks Conservation Association, Matthew Kirby	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-031857	Arctic Slope Regional Corporation, Bridget Anderson	Tribes and Tribal Organizations
BOEM-EMAIL-32521-032355	Earth Justice and Multiple Additional Public Advocacy Groups, Tom Delehanty	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-032470	Environmental Action, Len Montgomery	Individual/General Public
BOEM-EMAIL-32521-033513	Access Fund, Erik Murdock	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-034219	Taxpayers for Common Sense, Michael Maragos	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-034250	Alex Daue, Dan Bucks, Powder River Basin Resource Council	Public Interest and Non-Governmental Organizations

	Marjorie West, Leland, The Wilderness Society	
BOEM-EMAIL-32521-034546	National Wildlife Federation and multiple other Public Advocacy Groups, Mary Greene	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-034585	The Wilderness Society (TWS), Alex Daue	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035130	Institute for Energy Research, Kenny Stein	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035249	Santa Clara Pueblo, Katie Klass J. Michael Chavania	Tribes and Tribal Organizations
BOEM-EMAIL-32521-035316	American Petroleum Institute, Holly Hopkins	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-035334	Terra Energy Partners, Michael Jewell	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-035416	Center for Biological Diversity, Miyoko Sakashita	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035527	Ocean Conservancy, Andrew Hartsig	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035678	Public Revenues Consulting, Dan Bucks	Other
BOEM-EMAIL-32521-035695	Citizens Caring for the Future, Kayley Shoup	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035709	Environmental Defense Center, Rachel Kondor	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035789	All Pueblo Council of Governors, Wilfred Herrera	Tribes and Tribal Organizations
BOEM-EMAIL-32521-035897	Conservation Voters of South Carolina, Cassie Ratliff	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036297	Jacki Lopez	Individual/General Public
BOEM-EMAIL-32521-036313	Independent Petroleum Association of New Mexico, Jim Winchester	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-036336	Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited, Corey Fisher	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036365	Wyoming County Commissioners Association, Jim Wilcox	Local Government
BOEM-EMAIL-32521-036433	Center for Biological Diversity and 107 Additional Public Interest Groups, Jacki Lopez	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036517	Rocky Mountain Wild, Alison Gallensky	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036524	National Ocean Policy Coalition, Brent Greenfield	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036534	Hispanic Access Foundation, Shanna Edberg	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036705	Tildon Jones	Individual/General Public
BOEM-EMAIL-32521-036709	North Dakota Petroleum Council, Kristen Hamman	Energy Exploration and Production Companies and Associations

BOEM-EMAIL-32521-036716	University of Colorado Law School, Mark Squillace and others	Universities/Colleges/Academia
BOEM-EMAIL-32521-036813	Shell Offshore Inc.	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-036835	Colorado Farm and Food Alliance, Pete K	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036936	American Alpine Club, Amelia Howe	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036937	Institute for Policy Integrity at New York University School of Law, Max Sarinsky	Universities/Colleges/Academia
BOEM-EMAIL-32521-037159	Natural Resources Defense Council and Earthjustice, Loomis Becca	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-037397	Texas Alliance of Energy Producers, Karr Ingham	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-037410	Southern Environmental Law Center, Melissa Whaling	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-037411	Canary, LLC, Robert Dillon	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-037419	Montana Wilderness Association, Aubrey Bertram	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-037427	Public Land Solutions, Jason Keith	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-037429	Western Energy Alliance, Tripp Parks	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-037433	Tom Magness	Individual/General Public
BOEM-EMAIL-32521-037440	Dell Morgan	Individual/General Public
BOEM-EMAIL-32521-037855	Coalition to Protect America's National Parks, Philip Francis	Public Interest and Non-Governmental Organizations
BOEM-TRANS-32521-000001	National Congress of American Indians, Fawn Sharp	Tribes and Tribal Organizations
BOEM-TRANS-32521-000003	Alaska Federation of Natives, Nicole Borromeo	Tribes and Tribal Organizations
BOEM-TRANS-32521-000004	National Congress of American Indians, Fawn Sharp	Tribes and Tribal Organizations
BOEM-TRANS-32521-000008	Alaska Federation of Natives, Nicole Borromeo	Tribes and Tribal Organizations
BOEM-TRANS-32521-000012	American Petroleum Institute, Frank Macchiarola	Energy Exploration and Production Companies and Associations
BOEM-TRANS-32521-000020	Ocean Conservancy, Michael LeVine	Public Interest and Non-Governmental Organizations
BOEM-TRANS-32521-000025	Natural Resources Defense Council, Sharon Buccino	Public Interest and Non-Governmental Organizations
BOEM-TRANS-32521-000035	Deep South Center for Environmental Justice, Beverly Wright	Public Interest and Non-Governmental Organizations
BOEM-TRANS-32521-000039	Natural Resources Law Center at University of Colorado Law School, Mark Squillace	Universities/Colleges/Academia

BOEM-TRANS-32521-000040	Harte Research Institute for Gulf of Mexico Studies at Texas A&M University, David Yoskowitz	Universities/Colleges/Academia
BOEM-TRANS-32521-000042	Natural Resources Law Center at University of Colorado Law School, Mark Squillace	Universities/Colleges/Academia

Index of Comment Submissions Sorted by Commenter Name

The following table lists the submission numbers, commenter name, and commenter type of submissions which provided specific suggestions, sorted alphabetically by commenter name.

Submission Number	Commenter	Commenter Type
BOEM-EMAIL-32521-033513	Access Fund, Erik Murdock	Public Interest and Non-Governmental Organizations
BOEM-TRANS-32521-000003	Alaska Federation of Natives, Nicole Borromeo	Tribes and Tribal Organizations
BOEM-TRANS-32521-000008	Alaska Federation of Natives, Nicole Borromeo	Tribes and Tribal Organizations
BOEM-EMAIL-32521-027661	Alaska Wilderness League and Multiple Other Environmental Organizations, Kelsie Rudolph	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-020687	Alaska Wilderness League, Kelsie Rudolph	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-034250	Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035789	All Pueblo Council of Governors, Wilfred Herrera	Tribes and Tribal Organizations
BOEM-EMAIL-32521-036936	American Alpine Club, Amelia Howe	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-022409	American Enterprise Institute, Benjamin Zycher	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-018330	American Exploration and Production Council, Wendy Kirchoff	Energy Exploration and Production Companies and Associations
BOEM-TRANS-32521-000012	American Petroleum Institute, Frank Macchiarola	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-035316	American Petroleum Institute, Holly Hopkins	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-031857	Arctic Slope Regional Corporation, Bridget Anderson	Tribes and Tribal Organizations
BOEM-EMAIL-32521-036336	Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited, Corey Fisher	Public Interest and Non-Governmental Organizations
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BOEM-EMAIL-32521-021056	Business Alliance for Protecting the Pacific Coast, Vipe Desai	Non-Energy Industry and Associations
BOEM-EMAIL-32521-037411	Canary, LLC, Robert Dillon	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-020306	Center for American Progress, Jenny Rowland-Shea	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036433	Center for Biological Diversity and 107 Additional Public Interest Groups, Jacki Lopez	Public Interest and Non-Governmental Organizations

BOEM-EMAIL-32521-035416	Center for Biological Diversity, Miyoko Sakashita	Public Interest and Non- Governmental Organizations
BOEM-EMAIL-32521-025138	Center for Energy Science and Policy, George Mason University, Richard Kauzlarich	Universities/Colleges/Academia
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BOEM-EMAIL-32521-035695	Citizens Caring for the Future, Kayley Shoup	Public Interest and Non- Governmental Organizations
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BOEM-EMAIL-32521-000004	Energy Policy Institute at the University of Chicago, Victoria Ekstrom High	Universities/Colleges/Academia
BOEM-EMAIL-32521-032470	Environmental Action, Len Montgomery	Individual/General Public
BOEM-EMAIL-32521-035709	Environmental Defense Center, Rachel Kondor	Public Interest and Non- Governmental Organizations
BOEM-EMAIL-32521-020244	Global Energy Institute and the U.S. Chamber of Commerce, Christopher Guith	Public Interest and Non- Governmental Organizations
BOEM-TRANS-32521-000040	Harte Research Institute for Gulf of Mexico Studies at Texas A&M University, David Yoskowitz	Universities/Colleges/Academia
BOEM-EMAIL-32521-036534	Hispanic Access Foundation, Shanna Edberg	Public Interest and Non- Governmental Organizations
BOEM-EMAIL-32521-036313	Independent Petroleum Association of New Mexico, Jim Winchester	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-035130	Institute for Energy Research, Kenny Stein	Public Interest and Non- Governmental Organizations

BOEM-EMAIL-32521-036937	Institute for Policy Integrity at New York University School of Law, Max Sarinsky	Universities/Colleges/Academia
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BOEM-EMAIL-32521-020638	National Ocean Industries Association, Richard England	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-021182	National Ocean Industries Association, Richard England	Energy Exploration and Production Companies and Associations
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BOEM-EMAIL-32521-030652	National Parks Conservation Association, Matthew Kirby	Public Interest and Non-Governmental Organizations
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BOEM-TRANS-32521-000025	Natural Resources Defense Council, Sharon Buccino	Public Interest and Non-Governmental Organizations
BOEM-TRANS-32521-000039	Natural Resources Law Center at University of Colorado Law School, Mark Squillace	Universities/Colleges/Academia
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BOEM-TRANS-32521-000020	Ocean Conservancy, Michael LeVine	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-019934	OCS Governors Coalition, Meg Bankston	State Governors and State Agencies

BOEM-EMAIL-32521-023720	Petroleum Association of Wyoming, Pete Obermueller	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-028864	Powder River Basin Resource Council, Shannon Anderson	Non-Energy Industry and Associations
BOEM-EMAIL-32521-022112	Project Canary, Brian Miller	Non-Energy Industry and Associations
BOEM-EMAIL-32521-037427	Public Land Solutions, Jason Keith	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035678	Public Revenues Consulting, Dan Bucks	Other
BOEM-EMAIL-32521-022815	Pueblo of Acoma, Governor Brian Vallo	Tribes and Tribal Organizations
BOEM-EMAIL-32521-036517	Rocky Mountain Wild, Alison Gallensky	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035249	Santa Clara Pueblo, Katie Klass J. Michael Chavania	Tribes and Tribal Organizations
BOEM-EMAIL-32521-036813	Shell Offshore Inc.	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-037410	Southern Environmental Law Center, Melissa Whaling	Public Interest and Non-Governmental Organizations
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BOEM-EMAIL-32521-027601	State of Alabama, Office of the Governor, Kay Ivey	State Governors and State Agencies
BOEM-EMAIL-32521-026500	State of Louisiana, Office of the Governor, John Bel Edwards	State Governors and State Agencies
BOEM-EMAIL-32521-023551	State of Utah, Department of Agriculture and Food, Redge Johnson	State Governors and State Agencies
BOEM-EMAIL-32521-034219	Taxpayers for Common Sense, Michael Maragos	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-035334	Terra Energy Partners, Michael Jewell	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-037397	Texas Alliance of Energy Producers, Karr Ingham	Energy Exploration and Production Companies and Associations
BOEM-EMAIL-32521-029065	The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al., John Hiscock	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-034585	The Wilderness Society (TWS), Alex Daue	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036705	Tildon Jones	Individual/General Public
BOEM-EMAIL-32521-037433	Tom Magness	Individual/General Public
BOEM-EMAIL-32521-018769	U.S. PIRG and Environment America, Len Montgomery	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036716	University of Colorado Law School, Mark Squillace and others	Universities/Colleges/Academia
BOEM-EMAIL-32521-037429	Western Energy Alliance, Tripp Parks	Energy Exploration and Production Companies and Associations

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BOEM-EMAIL-32521-019979	Western Leaders Network, Jessica Pace	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-023161	Western Organization of Resource Councils, David Wieland	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-019726	Wilderness Society Action Fund and cosigners, Alex Dauc	Public Interest and Non-Governmental Organizations
BOEM-EMAIL-32521-036365	Wyoming County Commissioners Association, Jim Wilcox	Local Government

Section 1 - Greenhouse Gas Emissions/Climate

Comments associated with this issue appear in the sub-issues below.

Section 1.1 - Technologies or strategies to reduce emissions on facilities or through other means

Comment Number: BOEM-EMAIL-32521-018330-13

Organization: American Exploration and Production Council

Commenter: Wendy Kirchoff

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

With technology, innovation, and public-private partnerships, we can continue to deploy a broad range of large-scale, low-cost emissions reduction technologies on federal lands. These technologies are helping operators produce oil and natural gas with lower carbon intensity and will continue to improve. The Department is in a unique position to encourage “research and development” projects by developing regulatory frameworks that streamline approvals for projects designed to further reduce emissions. This may include advanced commingling production designs, which can reduce methane emissions and surface disturbance.

The Department also could develop regulations that allow for future production on federal lands to pair with and complement other emissions-reducing technologies, such as carbon capture utilization and storage, which has great promise to significantly reduce emissions. Furthermore, industry standards and best practices work together with federal and state regulations to create additional environmental protections. These practices cover many different aspects of the industry operations and are regularly updated as a part of industry’s ongoing effort toward continued improvement. AXPC would be able to discuss industry best practices in greater detail with DOI as it researches the federal oil and gas program.

Comment Number: BOEM-EMAIL-32521-018572-4

Organization:

Commenter: Chris Lish

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

*Develop a comprehensive strategy for addressing and limiting the carbon pollution stemming from federal fossil fuel development, including the adoption of a carbon budget consistent with exceeding the United States’ obligations under the Paris Accord.

Comment Number: BOEM-EMAIL-32521-018572-5

Organization:

Commenter: Chris Lish

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

Withdraw the most sensitive federal lands and waters from availability for new oil and gas leasing, and require net-zero carbon emissions from any new leasing on other federal lands and waters.

Comment Number: BOEM-EMAIL-32521-018769-1

Organization: U.S. PIRG and Environment America

Commenter: Len Montgomery

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

On behalf of our members nationwide, we write to you today in support of the moratorium on oil and gas leasing on our federal lands and in our federal waters. Drilling on our lands and in our waters leads to devastating oil spills that put wildlife and waterways at risk; its daily operations pollute our air and our water; and its output, oil and gas, contributes to rising greenhouse gas emissions that endanger the livability of our planet. That's why we support the moratorium on leasing, and applaud the administration for taking this action to protect our air, our water, our communities and our climate.

But a one year pause is not enough. Continued leasing on our public lands and waters will lock us into a dirtier, more dangerous future of degraded habitats and a hotter climate. Every fossil fuel lease sold is an investment in the energy system of the past, at a time when we should be shifting our full attention to build the clean, renewable energy system of the future. That is we ask that the Administration take the logical next step and end the practice of oil and gas leasing on our public lands and waters permanently.

The harms of oil and gas drilling are clear:

Oil spills, especially in United States waters, happen regularly with thousands of spills occurring each year [Footnote 1: NOAA, Oil spills, <https://www.noaa.gov/education/resource-collections/ocean-coasts/oil-spills> accessed 15 April 2021] Spilled oil directly hurts wildlife that come into contact with it and the toxic compounds that make up oil can cause public health impacts. When oil is spilled from pipelines, such as the Enbridge spill in Marshall, MI, residents experienced odors and toxic air pollution, potential well water contamination. [Footnote 2: Environment Protection Agency, Oil Spill: Answers to Frequently Asked Questions, https://www.epa.gov/sites/production/tiles/2016-06/documents/enbridge_fs_20100812.pdf accessed 15 April 2021]

The infrastructure needed to support drilling also carries substantial risks for the environment and the health of nearby communities. Pipelines and ports needed to transport fossil fuels from oil fields to refineries and to market are prone to spills. Refineries are major sources of air pollution for local communities, and waste disposal sites, including injection wells and land farms, can pollute drinking water. And the development of this infrastructure disrupts sensitive habitats, especially on the coast. [Footnote 3: Elizabeth Ridlington, Frontier Group and Kelsey Lamp, Environment America Research & Policy Center, Offshore Drilling, Onshore Damage: Broken pipelines, dirty refineries and the pollution impacts of energy infrastructure, Fall 2019] Continuing leasing our public lands and waters will mean continued investment in this polluting infrastructure as new leases creates the potential for drilling activity for a decade or more. [Footnote 4: Bureau of Land Management, General Oil and Gas Leasing Instructions, accessed 14 April 2021.

<https://web.archive.org/web/20210413201324/https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing>] [Footnote 5: Bureau of Ocean Energy Management, Oil and Gas Leasing on the Outer Continental Shelf, accessed 14 April 2021.

https://web.archive.org/web/20210330132012/https://www.boem.gov/sites/defaultfiles/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/5BOEMRE_Leasing101.pdf]

Comment Number: BOEM-EMAIL-32521-019684-1

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia
Classification: Substantive

Comment Excerpt Text:

Multi-step Legal Approach to Restoring Regulations on Methane Emissions and Flaring

*A multi-step legal approach should be pursued first getting the 2016 methane and flaring rules back in place, and then initiating a new rule-making process to improve them. Reinstating the 2016 rule would probably be the fastest way to achieve more stringent methane emissions and flaring reductions. BLM should:

*Join the appeal of the Wyoming case that vacated the 2016 Waste Prevention Rule and reverse the Trump Administration's appeal of the California ruling that vacated the Rescission of the 2016 Rule.

*Once the appeals process for the Wyoming case is completed, initiate a new rule-making process to strengthen the 2016 Rule.

Comment Number: BOEM-EMAIL-32521-019684-3
Organization: Columbia University Center on Global Energy Policy
Commenter: Marianne Kah
Commenter Type: Universities/Colleges/Academia
Classification: Substantive

Comment Excerpt Text:

Leak Detection

*BLM should organize a third-party subscription-based regional methane emissions leak detection system on federal land that includes all the operators and wells within a region to take advantage of the best available technology and take advantage of scale and lower costs. These regional LDAR systems should be managed and staffed by a third party. A leak detection system could include satellites, ground sensors, drones, helicopters or airplanes. Cost-sharing in proportion to production would help defray the cost of modern leak detection and repair (LDAR) for small operators and marginal wells. Those who join the service would have the advantage of third-party certification of their emissions levels. That would allow good performers' gas to comply with European emissions standards for LNG imports. As a market for clean gas develops, they would also be able to command a higher price for their gas. If operators refuse to join, their emissions data would still be captured and published by this system but they will also need to comply with the 2016 Rule's LDAR requirements on their own and explain significant differences with the subscription system data.

Comment Number: BOEM-EMAIL-32521-019684-4
Organization: Columbia University Center on Global Energy Policy
Commenter: Marianne Kah
Commenter Type: Universities/Colleges/Academia
Classification: Substantive

Comment Excerpt Text:

Reporting Emissions

*Encourage the use of innovative technology to make emissions reporting simpler for the operators and more timely and more transparent for BLM and the public. Encourage the use of innovative technology such as sensors and satellites. The regional system described above under Leak Detection would be helpful from a transparency viewpoint since it would have a third party collecting the data. The regional LDAR system should be the primary

way that companies are judged to be in compliance with methane emissions rules. The BLM should publish the emissions data collected from both company-reported data and from regionally-collected emissions subscription-service data in an easy-to-use format, making the data more transparent to BLM, the companies and the public. Companies would need to explain substantial differences between reported and third party collected regional emissions data.

*Companies should be required to report emissions from flaring, venting and methane leaks separately. Today, some state regulations don't distinguish between venting and flaring (e.g., Texas).

*To reduce the reporting burden on producers and make the data more transparent to policy makers and the public, a common portal should be established for all of the emissions reporting agencies (e.g., EPA and BLM/BSEE, States) for electronic reporting. The data needs to satisfy each different agency's reporting requirements. However, an attempt should be made by a central coordinator to reduce overlap and make sure the best technology is being used to measure emissions.

Comment Number: BOEM-EMAIL-32521-019684-5

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

*Under the provisions on "Pneumatic Controllers and Pumps" of the 2016 Waste Prevention Rule, assess what can be done about intermediate bleed controllers because they are responsible for 88% of the emissions from pneumatic controllers.

Comment Number: BOEM-EMAIL-32521-019684-7

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Flaring

*There is a process in the 2016 Waste Prevention Rule whereby BLM can adjust the targets from the gas capture rules if the cost of compliance for small operators or marginal wells is deemed too high. Since there are many marginal wells and small operators, at a minimum, routine flaring should be banned for all producers regardless of size. The policy should be phased in over multiple years.

*Equipment standards should be provided for flares, while still allowing innovative technology that improves performance. The Environmental Defense Fund did an aerial survey of more than 300 sites in the Permian Basin and found that roughly 1 in 10 flares was unlit or malfunctioning such that methane was being vented into the atmosphere. Recommendations include:

*Efficiency standard for flares *Required reporting of the content of emissions from flares *Requirement that flares be lit. There is no such requirement today. *Required detection of unlit flares along with a device that automatically reignites them.

Comment Number: BOEM-EMAIL-32521-019746-4

Organization: ConocoPhillips

Commenter: Fennessey Karl

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Paris-Aligned Goals

ConocoPhillips was the first U.S.-based natural gas and oil company to set an ambition to become a net zero company for our operational Scope 1 and 2 emissions by 2050. We have also announced aggressive greenhouse gas (GHG) emissions targets and actions that are consistent with the Paris Agreement's aim to limit the rise of global temperature to below 2 degrees Celsius. The company has already aggressively and voluntarily reduced emissions intensity within its operations by improving energy efficiency, replacing equipment, electrifying plants and equipment, and detecting and repairing methane leaks. Since 2015 we have reduced our methane emissions intensity by nearly 65%.

We have already revised our previous operational GHG emissions intensity reduction target to 35-45% by 2030, from our earlier goal of 5-15%. In addition, we have endorsed the World Bank Zero Routine Flaring by 2030 initiative as a key near-term action within our ambition to become a net-zero company by 2050. Our flaring emissions make up only 11% of our total GHG emissions. Endorsing the World Bank initiative, with an ambition to meet it by 2025, will ensure continued near-term focus on routine flaring reductions across our assets.

We believe we can accomplish these goals even as we continue to partner with DOI and other state and Tribal beneficiaries in the development of oil and gas resources on Federal lands.

ConocoPhillips believes the most effective tool to reduce methane emissions and other greenhouse gases across the economy is a well-designed pricing regime on carbon emissions. In the absence of a carbon pricing policy, ConocoPhillips supports the direct federal regulation of methane from new and existing sources. The regulation should be economy-wide and cost-effective, and preserve a state's ability to adapt implementation to local conditions. Regardless, our company will continue its voluntary efforts to reduce methane.

Comment Number: BOEM-EMAIL-32521-032355-15

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Fourth, for validly issued existing leases, BLM should use its full authority to require mitigation of climate impacts. BLM's standard lease form gives it extensive continuing authority over existing onshore oil and gas leases. The lease incorporates by reference all "applicable laws" and Interior Department "regulations and formal orders in effect as of lease issuance." [Footnote 52: U.S. Bureau of Land Mgmt., Form 3100-11: Offer to Lease and Lease For Oil and Gas, at 1 (Oct. 2008), https://www.blm.gov/sites/blm.gov/files/uploads/Services_National-Operations-Center_Eforms_Fluid-and-Solid-Minerals_3100-011.pdf.] The lessees' rights also are subject to "regulations . . . hereafter promulgated when not inconsistent with lease rights granted or specific provisions of this lease." [Footnote 53: Id.] A BLM lease grants "the exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas . . . in the lands [under lease] together with the right to build and maintain necessary

improvements thereupon for the term” of the lease. [Footnote 54: Id] This generally provides the right to use the land for some level of development, see 43 C.F.R. § 3101.1-2 (discussing “surface use rights” under the lease), but does not prevent BLM from imposing new operational regulations on that development. See also *Indep. Petroleum Ass’n of Am. v. DeWitt*, 279 F.3d 1036, 1037 (D.C. Cir. 2002) (federal oil and gas “leases give controlling effect not merely to extant Department of Interior regulations but also to ones ‘hereafter promulgated’”).

Moreover, several lease terms expressly give BLM continuing authority to impose operational requirements preventing waste and protecting natural resources. The lease form requires the lessee to “take reasonable measures deemed necessary by lessor to” minimize impacts to land, air water and other resources. [Footnote 55: Id. at 3.] Under section 4 of the lease, the lessee is required to “prevent unnecessary damage to, loss of, or waste of leased resources.” [Footnote 56: Id.] Section 4 also authorizes BLM “to specify rates of development and production in the public interest . . . if deemed necessary for proper development and operation.” [Footnote 57: Id] Applying newly adopted protections is appropriate under both sections 4 and 6 of the lease so long as they are “reasonable” and prevent “unnecessary” waste or damage to natural resources. Thus, the fact that a new regulation imposes additional operational requirements does not make it “inconsistent with lease rights granted or specific provisions of this lease.” [Footnote 58: Id. at 1]

The governing statutes confirm BLM’s broad authority. The MLA directs Interior to require “all reasonable precautions” to prevent waste, 30 U.S.C. § 225, and empowers the Department to promulgate rules and “do any and all things necessary” to protect the public interest and carry out other purposes of the statute, *id.* § 189. FLPMA requires Interior to, “by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). It also authorizes Interior to promulgate rules and regulations to carry out FLPMA’s purposes, which include protecting the quality of the air, atmospheric values, and the environment. *Id.* §§ 1701(a)(8), 1740. The caselaw confirms BLM’s wide scope of regulatory authority under these statutes. See, e.g., *DeWitt*, 279 F.3d at 1039 (MLA grants “rather sweeping authority” to regulate); *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, 1083 (9th Cir. 1979) (MLA provides for “extensive regulation of oil exploration and drilling”).

As part of determining what climate mitigation measures would be “reasonable” or “necessary,” the Department should consider the cumulative impacts of developing all existing leases with varying levels of mitigation. The analysis also should consider in detail alternatives such as imposing a net zero emissions plan for drilling permits. Under a net zero plan, BLM would take a stepwise approach using the standard mitigation hierarchy: (a) first seeking to avoid carbon emissions by limiting development, then (b) minimizing emissions from development that does occur through conditions of approval and other requirements, and (c) offsetting those carbon emissions by (for example) plugging old or abandoned wells, increasing terrestrial carbon stocks, purchasing market offsets, etc. To implement a net zero program, it also will be necessary for the Department to quantify estimated greenhouse gas emissions (including downstream emissions) from development, and use a well-supported accounting method for various types of offsets.

In addition, the Department should consider a phased development approach to existing leases in order to minimize impacts over the shorter to medium term. The legal authorities cited above provide authority to require phased development, which could be implemented in parallel with the development of other comprehensive measures.

While adopting new substantive environmental protections for existing leases, the Department also should ensure that a full NEPA analysis, with meaningful consideration of alternatives, is prepared on all applications for permits to drill. Such analysis would allow field offices to identify additional site-specific measures to further reduce emissions, and adopt tailored conditions of approval for specific sites.

Comment Number: BOEM-EMAIL-32521-034585-25

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

d. DOI must ensure transparency with data related to oil and gas operations.

Sound management of GHG emissions requires clear, accurate, and transparent measurement. The U.S. government is one of the largest energy asset managers in the world. Yet, it has done little to inform its shareholders—American taxpayers—about the federal energy program and its associated climate related risks. Currently, there is no central database available that provides a comprehensive accounting of the cumulative GHG greenhouse emissions from federal public lands and waters.

As noted in Section II(a) above, DOI should track and publish data related to GHG emissions from fossil fuel development on our public lands and waters. The Department should ensure this data is available and easily accessible online so that the public can monitor and utilize this information. This data is essential not only for tracking purposes toward emissions goals, but also for addressing environmental justice and helping state and local leaders make informed decisions about their communities' energy uses and needs. DOI should build off the U.S. Geological Survey's 2018 report analyzing GHG emissions stemming from fossil fuels extracted from public lands. [Footnote 45: U.S. Geological Survey, Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005-2014 (2018), available at: <https://pubs.usgs.gov/sir/2018/5131/sir20185131.pdf>. This report accounts for upstream and downstream emissions] This recommended approach is consistent with the efforts of the Extractive Industries Transparency Initiative. [Footnote 46: <https://eiti.org/document/transparency-in-transition-climate-change-energy-transition-eiti>.]

RECOMMENDATIONS:

- DOI should create and maintain through USGS, or work with another agency to create and maintain, a publicly accessible central database that tracks oil and gas leasing, permitting, and production and provides a comprehensive accounting of the GHG emissions associated with fossil fuel development on public lands and waters.

Comment Number: BOEM-EMAIL-32521-036297-1

Organization:

Commenter: Jacki Lopez

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

Please see the attached law review article which argues the U.S.'s fossil fuel leasing programs have worsened global greenhouse gas emissions, which fuels the climate change crisis and worsens flooding. It identifies the disconnect between subsidizing development in floodplains and the fact that the United States has made those floodplains even more vulnerable to flooding by leasing federal fossil fuels that contribute to the climate change crisis and sea level rise has cost U.S. taxpayers billions of dollars and put millions of people and our nation's most imperiled species at increased risk.

Flooding will only get more expensive and devastating, especially if the United States continues in "business as usual" fossil fuel extraction and emissions, disproportionately putting vulnerable communities at risk. We must immediately end federal fossil fuel leases and require that federal agencies that fund, authorize, or permit fossil

fuel activities analyze the indirect greenhouse gas emissions impacts of those activities.

Comment Number: BOEM-EMAIL-32521-036936-1

Organization: American Alpine Club

Commenter: Amelia Howe

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Manage Lands as a Tool to Combat the Climate Crisis

The places we love to climb and experience the outdoors are under imminent threat from climate change. This is due, in part to oil and gas development occurring on public lands. Between 2005 and 2015, the extraction, transportation, and combustion of publicly owned oil, gas, and coal accounted for more than 20 percent of all U.S. GHG (greenhouse gas) emissions. [Footnote 3: The Wilderness Society In the Dark Report [https://www.wilderness.org/sites/default/files/media/file/Inpercent 20thepercent 20Darkpercent 20Report_FINAL_Feb_2018.pdf](https://www.wilderness.org/sites/default/files/media/file/Inpercent%20thepercent%20Darkpercent%20Report_FINAL_Feb_2018.pdf)] If American public lands were their own country, they would be the fifth largest emitter of GHGs. On lands managed by the Bureau of Land Management, 90 percent of public lands are available to oil and gas extraction while only 10 percent are available for a focus on conservation and other values including recreation and wilderness. [Footnote 4: The Wilderness Society Open for Business: An Analysis Shows oil and gas leasing out of whack on BLM lands <https://www.wilderness.org/articles/article/open-business-and-not-much-else-analysis-shows-oil-and-gas-leasing-out-whack-blm-lands>] The skewed balance towards energy extraction, which has been the central focus of the DOI over the past four years, is unacceptable and does not accurately reflect the multiple-use mandate of the agency.

If managed properly, public lands can serve as a mechanism for climate change mitigation through carbon sequestration and retention, and over vast opportunities for renewable energy development where appropriate. We appreciate the recently enacted moratorium on all new oil and gas leases on federally managed lands. We hope DOI staff will use this opportunity to shift our nation's energy priorities towards cleaner, more sustainable forms of energy generation. We would like to see DOI:

- Track and publish data on greenhouse gas emissions generated on DOI managed lands
- Create achievable goals to reach carbon neutrality on public lands + waters by 2040
- Measure the cumulative impacts of climate change caused by energy development on public lands and demonstrated by adverse impacts to communities, landscapes, and wildlife on or near public lands
- Transition the public lands energy portfolio from extractive to renewable where appropriate

Comment Number: BOEM-EMAIL-32521-037429-7

Organization: Western Energy Alliance

Commenter: Tripp Parks

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Climate Change

Western Energy Alliance supports the goal of reducing the GHG emissions that contribute to climate change. In fact, we are proud that the increased use of natural gas is the primary reason the United States has reduced more GHGs than any other country since 2000. [Footnote 12: <https://www.iea.org/articles/global-co2-emissions-in-2019>] While we agree on the larger concern for climate change, we differ with DOI leadership on the policies that should be implemented to address it and are instead focused on the actual results that our industry delivers.

Fuel switching to natural gas in the electricity sector has reduced more greenhouse gas emissions than wind and solar energy have combined. In fact, natural gas has delivered 61% of the reduction in greenhouse gases resulting from fuel switching in the electricity sector, removing 3,351 million metric tons of carbon dioxide equivalents (MMT CO₂ Eq) since 2005. [Footnote 13: U.S. Energy-Related Carbon Dioxide Emissions, 2018 [Hyperlinked: https://www.eia.gov/environment/emissions/carbon/pdf/2018_co2analysis.pdf], EIA, November 2019, p. 13] In contrast, wind and solar have only reduced GHG emissions by 2,125 MMT CO₂ Eq, or 39% of the total reduction.

We also support the administration's goal of reducing methane emissions. Continual innovation has enabled our industry to decrease methane emissions by 23% since 1990, even as oil and natural gas production have increased 49% and 71%, respectively. [Footnote 14: EPA [Hyperlinked: <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf>], p. 2-15, p. 3-69, p.3-84.] Technological innovation is a much better method of reducing GHG emissions than federal regulation. Further, industry is making significant investments and advances in carbon capture and sequestration.

As the oil and gas program review was implemented in response to an Executive Order on climate change, we urge DOI to recognize the solutions our industry has been providing for years. We have reduced GHGs from the development and production of oil and natural gas, as well as from the electricity sector where GHG emissions are ten times higher. We urge DOI to view us as a partner, not an adversary, in addressing climate change. Collaboration could be helped by changing the messaging from the Department on industry's GHG emissions, particularly by changing the talking points used in conjunction with the review.

Fossil fuel extraction on federal lands is responsible for nearly a quarter of all U.S. greenhouse gases (GHG).

This talking point is based on a study from the U.S. Geological Survey [Footnote 15: Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005–14. [Hyperlinked: <https://pubs.er.usgs.gov/publication/sir20185131>]] but is being distorted. DOI has falsely stated that fossil fuel extraction itself accounts for nearly a quarter of all U.S. GHGs, when in actuality the vast majority of emissions comes from the end-use combustion of fossil fuels, not from the extraction. The “nearly a quarter” talking point also includes coal production and consumption, yet is being used in messaging targeted specifically at oil and natural gas. USGS data actually show that just 0.6% of U.S. GHGs come from the extraction of oil and natural gas on federal lands.

Furthermore, since about 22% of U.S. oil production comes from federal lands and waters, it might make logical sense it would account for about the same amount of GHGs. [Footnote 16: The Consequences of a Leasing and Development Ban on Federal Lands and Waters [Hyperlinked: https://www.api.org/~media/Files/News/2020/09/Consequences_of_a_Leasing_and_Development_Ban_on_Federal_Lands_and_Waters.pdf], Prepared by OnLocation, Inc. for the American Petroleum Institute, September 2020. Federal oil and natural gas production constitute 22% and 12% of U.S. total production, respectively] However, while USGS shows that federal lands account for 23.7% of U.S. carbon dioxide (CO₂) emissions, looking at the top three GHGs including methane, [footnote 17: <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014>. The three main GHGs are CO₂ at 5,556 million metric tons of carbon dioxide equivalent (MMT CO₂ Eq) or 81%, methane (CH₄) at 730.8 MMT CO₂ Eq or 10.6%, and N₂O at 403.5

MMT CO₂ Eq or 5.8% for a total of 97% of U.S. GHGs. Carbon dioxide equivalents take into account the greater intensity of methane. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990 – 2014 [Hyperlinked: <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014>], EPA, April 15, 2016. This is the same version of EPA’s annual inventory that USGS used in its report] federal lands actually account for only 19% of all U.S. GHGs. Since the president and DOI have made reducing methane emissions an important agenda item, it would be unusual to ignore them just for the purposes of the “nearly a quarter” talking point. Even including coal, as the 19% does, that is less carbon intensity than the amount of energy provided to Americans.

Looking at just the oil and natural gas numbers, federal production accounts for “about a quarter” of American production but only 7% of U.S. GHGs. Overall, the “nearly a quarter” talking point consistently overstates federal oil and natural gas GHGs as a justification for banning leasing, which is a misleading use of the USGS data.

Banning federal oil and natural gas will have a positive impact on climate change.

In the absence of an alternative that does everything oil and natural gas do (home heating, transportation, industrial energy, electricity generation, electronic components, petrochemicals, etc.), banning federal production does not reduce the demand for oil and natural gas but merely displaces it to other parts of the country without federal lands or overseas. Whether oil and natural gas are produced in Texas, Pennsylvania, Russia or Saudi Arabia, the resulting GHGs equally impact global climate change.

Furthermore, the USGS study recognizes the emissions reductions industry has already achieved on federal lands, stating that “Compared to 2005, the 2014 totals represent decreases in emissions for all three greenhouse gases (decreases of 6.1 percent for CO₂, 10.5 percent for CH₄, and 20.3 percent for N₂O).”

As a final note on climate change, we recommend that DOI not try to replicate the waste prevention rule promulgated by the Obama Administration and overturned by the District Court of Wyoming, as it incorrectly granted air quality authority to BLM and circumvented the Clean Air Act. Methane regulation is best left to the states and EPA, which have the jurisdiction, and not conferred to BLM.

Section 1.2 - SC-GHG

Comment Number: BOEM-EMAIL-32521-018389-30

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Stronger air quality regulations for the Gulf of Mexico: As described above, air emissions from oil and gas activities cause impacts to the Gulf of Mexico and Gulf communities. Interior could significantly strengthen BOEM’s existing (recently revised) air quality regulations for offshore facilities. As a starting place, the regulations originally proposed by the Obama administration [Footnote 170: 81 Fed. Reg. 19,718 (Apr. 5, 2016)]. (but not adopted by the Trump administration) would have set a higher bar for operators to demonstrate that emissions will not contribute to air quality violations. For example, applicants would have needed to conduct and submit air modeling if their emissions were forecast to exceed a threshold. Interior should require a robust methodology for that modeling to ensure that applicants for exploration or drilling permits are not contributing to NAAQS violations in the Gulf. In addition, Interior should ensure that air quality modeling and monitoring includes emissions from all sources associated with activity on a lease, including emissions from support vessels

and aircraft near ports and the coast that can affect air quality in coastal communities. Interior should also consider providing for public notice and comment on air quality submissions before deeming a plan submittal “complete.”

Comment Number: BOEM-EMAIL-32521-019955-1

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Biodiversity is in crisis on a global scale. Numerous scientific studies in the last several years have documented and raised the alarm about this crisis. A landmark 2019 study compiled by hundreds of the world’s leading scientists found, among other things, that about one million species are facing extinction. In September 2020, the United Nations Convention on Biological Diversity released an updated report warning that humanity is at a crossroads and the biodiversity crisis is intensifying. Climate change is a major and exponentially growing cause of species endangerment.

The current statutory framework provides the Secretary authority to take bold steps to curb greenhouse gas emissions from federal lands and damage to native habitat resulting from fossil fuel activities. [Footnote 1: The Secretary has discretion to make lands unavailable for leasing. See 43 U.S.C § 1714 and See 43 U.S.C § 1702(c). Further, FLPMA charges BLM to protect “air and atmospheric,” “water resource,” “ecological, environmental,” and “scenic” values, “certain public lands in their natural condition,” and “food and habitat for fish and wildlife” (43 U.S.C. § 1701(a)(8)); prevent “permanent impairment of the productivity of the land and quality of the environment” (43 U.S.C. § 1702(c)); and “take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. § 1732(b)).]

Comment Number: BOEM-EMAIL-32521-019955-2

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 3 12

Comment Excerpt Text:

Conduct a programmatic review of the federal fossil fuel program to arrive at a course forward consistent with the United States’ goal of limiting climate change to 1.5 degrees Celsius and President Biden’s goal to protect 30% of US lands and waters by 2030. [Footnote 2: 86 FR 7619 (January 27, 2021)] Expediently operationalize the recommendations in the review utilizing enduring mechanisms such as rulemakings, programmatic RMP amendments, and mineral withdrawals.

Comment Number: BOEM-EMAIL-32521-019955-9

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Biodiversity is in crisis on a global scale. Numerous scientific studies in the last several years have documented and raised the alarm about this crisis. A landmark 2019 study compiled by hundreds of the world’s leading scientists found, among other things, that about one million species are facing extinction. In September 2020, the

United Nations Convention on Biological Diversity released an updated report warning that humanity is at a crossroads and the biodiversity crisis is intensifying. Climate change is a major and exponentially growing cause of species endangerment.

Fossil fuel activities impact habitats and species through multiple pathways. First, because federal lands account for nearly 25% of US greenhouse gas emissions, they are implicated in global changes to climate and habitat patterns. Second, industrial development associated with fossil fuels destroys and diminishes habitat and leads to increased pollution and disturbance. This is especially concerning for US biodiversity where the development footprint and effect zone overlap habitat for threatened and endangered species. Third, improperly plugged or abandoned wells can leak methane into the air and contaminate surface water and groundwater.

National Wildlife Refuges, which are dedicated to conserving and restoring fish, wildlife and plants and their habitats, are adversely affected by oil and gas operations. Refuges contain over 5,000 oil and gas wells, of which approximately 1,665 are actively producing. The estimated cost for cleaning up orphaned wells is between \$67,000,000 and \$484,000,000. At significant risk from oil and gas activities is the Arctic Refuge and its coastal plain which is essential wildlife habitat for globally significant densities of raptors, millions of migratory birds, listed Steller's and spectacled eiders, and marine mammals including polar bears and walrus. Millions of acres have been leased and if developed will have significant biodiversity and climate consequences.

The current statutory framework provides the Secretary authority to take bold steps to curb greenhouse gas emissions from federal lands and damage to native habitat resulting from fossil fuel activities. We urge the Department to utilize this authority and offer a series of specific recommendations. First and foremost, the review of the federal fossil fuel program must find paths forward consistent with the United States' goal of limiting climate change to 1.5 degrees Celsius and President Biden's goal to protect 30% of US lands and waters by 2030. Upon completion of the review, the Department must expeditiously operationalize the recommendations utilizing enduring mechanisms such as rulemakings, programmatic RMP amendments, and mineral withdrawals. DOI should promptly and clearly reverse policy direction for its unique and expansive Arctic lands shifting away from unrestrained fossil fuel extraction to a climate-conscious path forward that protects the irreplaceable biological values of the region.

The Gravity of the Extinction Crisis

We are well within the Sixth Mass Extinction, with overwhelming scientific evidence demonstrating exceptionally rapid loss of biodiversity over the last few centuries that is expected to continue or accelerate unless action is taken. Global and regional science syntheses highlight the dire status and trends of biodiversity conservation at local to global scales. Hundreds of scientists integrated the results from >15,000 studies to produce the 2019 global assessment from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services that predicted absent transformative change that up to one million species may go extinct in the next several decades. [Footnote 5: IPBES (2019). Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science- Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). Bonn, Germany: IPBES secretariat. Also see: Díaz, S., Settele, J., Brondizio, E. S., Ngo, H. T., Agard, J., Arneth, A., et al. (2019). Pervasive human-driven decline of life on Earth points to the need for transformative change. *Science* 366. doi:10.1126/science.aax3100] The 2020 report on progress on the Aichi Targets from the Convention on Biological Diversity [Footnote 6: Secretariat of the Convention on Biological Diversity (2020). Global Biodiversity Outlook 5: Summary for Policy Makers. Montreal, Canada: Convention on Biological Diversity. Available at: <https://www.cbd.int/gbo/gbo5/publication/gbo-5-spm-en.pdf>.] (CBD) plus a set of other significant global and national reports [Footnote 7: <https://www.cbd.int/reports/>. Also see, e.g., World Wildlife Fund (2020). Living Planet Report 2020: Bending the curve of biodiversity loss. Available at: <https://livingplanet.panda.org/en-us/>.] further emphasize the degree of the challenge that we face.

The threats to biodiversity are clear. Land- and sea-use change, overexploitation, climate change, pollution, and invasive species are the top five drivers of the extinction crisis. [Footnote 8: IPBES (2019), *supra*. Also see: Díaz, S., Settele, J., Brondízio, E. S., Ngo, H. T., Agard, J., Arneth, A., et al. (2019). Pervasive human-driven decline of life on Earth points to the need for transformative change. *Science* 366. doi:10.1126/science.aax3100] Of these, climate change is widely recognized as particularly complex as it both directly impacts biodiversity by shifting climate envelopes and is a factor that exacerbates other threats, such as invasive species and disease spread. [Footnote 9: IPBES (2019), *supra*. Also see: IPCC (2020). Summary for Policymakers — Special Report on Climate Change and Land. Intergovernmental Panel on Climate Change. Available at: <https://www.ipcc.ch/srccl/chapter/summary-for-policymakers/>; and Mantyka-Pringle, C. S., Visconti, P., Di Marco, M., Martin, T. G., Rondinini, C., and Rhodes, J. R. (2015). Climate change modifies risk of global biodiversity loss due to land-cover change. *Biological Conservation* 187, 103–111. doi:10.1016/j.biocon.2015.04.016; and Giejsztowt, J., Classen, A. T., and Deslippe, J. R. (2020). Climate change and invasion may synergistically affect native plant reproduction. *Ecology* 101, e02913. doi:10.1002/ecy.2913; and Hellmann, J. J., Byers, J. E., Bierwagen, B. G., and Dukes, J. S. (2008). Five Potential Consequences of Climate Change for Invasive Species. *Conservation Biology* 22, 534–543. doi:<https://doi.org/10.1111/j.1523-1739.2008.00951.x>; and Simberloff, D., Barney, J. N., Mack, R. N., Carlton, J. T., Reaser, J. K., Stewart, B. S., Malcom, J. W., et al. (2020). U.S. action lowers barriers to invasive species. *Science* 367, 636–636. doi:10.1126/science.aba7186] Addressing climate change — and its concomitant biodiversity effects — approaches, including a rapid transition to zero carbon energy systems at a global scale [Footnote 10: IPCC, 2011: Summary for Policymakers. In: IPCC Special Report on Renewable Energy Sources and Climate Change Mitigation [O. Edenhofer, R. Pichs-Madruga, Y. Sokona, K. Seyboth, P. Matschoss, S. Kadner, T. Zwickel, P. Eickemeier, G. Hansen, S. Schlömer, C. von Stechow (eds)], Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA] and nature- based solutions for mitigating and adapting to the consequences of climate change. [Footnote 11; Seddon Nathalie, Chausson Alexandre, Berry Pam, Girardin Cécile A. J., Smith Alison and Turner Beth. 2020. Understanding the value and limits of nature-based solutions to climate change and other global challenges. *Phil. Trans. R. Soc. B* 375:2019012020190120. <http://doi.org/10.1098/rstb.2019.0120>.]

In short, the science is clear about the depth, the breadth, and the causes of the biodiversity crisis, and that addressing the crisis will require transformative, systemic changes that must start now (IPBES 2019, Diaz et al. 2020).

The Importance of US Federal Lands to Sustaining and Recovering Biodiversity Nationally and Globally

The federal estate – including lands and resources managed by the Department of the Interior – are key to helping the United States address the extinction crisis. US federal lands comprise nearly one-third of this nation’s land base and harbor thousands of imperiled species across hundreds of ecosystems. See Figure 1. Federal lands are widespread and often are configured in large contiguous tracts and therefore have true potential to build out a protected areas network.

[See attachment 1 for Figure 1. The importance of US federal lands for species listed under the Endangered Species Act or at-risk of being listed.]

Defenders of Wildlife recently analyzed the ranges of imperiled species that partially or entirely overlap federal lands to understand better the role of federal lands in preventing extinction and facilitating species recovery. [footnote 12: We analyzed imperiled species ranges that occur within the continental US, Alaska, and Hawaii and for which spatial data was publicly available. We analyzed a total of 2735 species (1,454 listed under the ESA).] We found that federal lands, regardless whether they are permanently protected or not, provide significant habitat for thousands of imperiled species. Specifically,

-1,441 species protected as endangered, threatened, proposed for listing, or candidate under the ESA and 1,074 unlisted imperiled species have at least some portion of their habitats occurring on federal lands. This represents

around 87% of species protected under the ESA in the US and 92% of all the imperiled species we analyzed.

-346 ESA protected species have at least 30% of their habitat on federal lands, and 138 imperiled species have at least 75% habitat occurrence on federal holdings. We considered 30% as a significant amount of habitat.

[Footnote 13: Clancy, N. G., Draper, J. P., Wolf, J. M., Abdulwahab, U. A., Pendleton, M. C., Brothers, S., ... & Atwood, T. B. (2020). Protecting endangered species in the USA requires both public and private land conservation. *Scientific reports*, 10(1), 1-8.] See Figures 2 and 3.

-For the National Forest System and the National System of Public Lands, under-protected federal lands (e.g., where fossil fuel leasing is generally allowed) harbor just as much imperiled species richness as protected federal lands. [Footnote 14: Under-protected federal lands in this context are defined as GAP 3 and 4 and protected lands are defined as GAP 1 and 2 in the USGS Protected Areas Database for the United States. See U.S. Geological Survey, GAP Analysis Project (GAP), Protected Area Database. https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/pad-us-data-download?qt-science_center_objects=0#qt-science_center_objects] That is, under-protected federal lands have the same or greater imperiled species richness as protected federal lands, emphasizing the opportunity in strengthening protections on under-protected lands for imperiled species generally and in particular for those species that are more heavily dependent on federal lands.

-Federal lands may not have high imperiled species richness relative to other areas of the country (e.g. private lands in the southeast), but they can be critical to numerous small-range sensitive/imperiled species. Examples of these include the Wyoming Pocket Gopher that lives only within two BLM field office jurisdictions in Wyoming and the Palmer's Chipmunk that lives within one small mountain range managed by the US Forest Service and Fish and Wildlife Service in Nevada.

-Federal lands make up a majority of protected and under-protected areas in the US, which means that the federal government can make decisions with enduring implications for biodiversity and climate change.

In short, the US federal lands, if managed with a considerably stronger focus on habitat protection, could have a powerful impact on sustaining and recovering biodiversity in this nation and globally.

[See attachment 1 for figure titled The number of imperiled species with significant (>30%) amounts of habitat on federal lands.]

[See attachment 1 for figure titled The number of imperiled species with significant (>30%) amounts of habitat on federal lands by taxa]

The Impact of Fossil Fuel Energy Development on US Federal Lands, Wildlife, and Biodiversity

Fossil fuel extraction is an industrial process that diminishes and destroys habitat and impacts species. It does this in multiple ways. First, and most obviously, it industrializes and transforms native habitats and ecosystems through the construction of well pads, roads, pipelines, and other infrastructure. It introduces invasive species, fragments habitats, increases noise and light pollution, and increases human activity and habitat disturbance in the larger region. [Footnote 15: The adverse impacts of fossil fuel development on wildlife habitat are extensive and well documented in the scientific literature. For examples of syntheses of impacts to wildlife habitat from fossil fuel energy development, see: Riley, T. Z., E. M. Bayne, B. C. Dale, D. E. Naugle, J. A. Rodgers, and S. C. Torbit. 2012. Impacts of crude oil and natural gas developments on wildlife and wildlife habitat in the Rocky Mountain region. *The Wildlife Society Technical Review* 12-02. The Wildlife Society, Bethesda, Maryland, USA. https://wildlife.org/wp-content/uploads/2014/05/Oil-and-Gas-Technical-Review_2012.pdf. Also see: Wilbert, Mark. 2008. ANALYSIS OF HABITAT FRAGMENTATION FROM OIL AND GAS DEVELOPMENT AND ITS IMPACT ON WILDLIFE: A FRAMEWORK FOR PUBLIC LAND MANAGEMENT PLANNING. A Report Prepared for The Wilderness Society. May 20, 2008.

<https://www.fws.gov/southwest/ES/Documents/Oil-Gas-Fragmentation-Wilbert%20et%20al%202008.pdf>. Specific to sage grouse habitat, see: Manier, D.J., Bowen, Z.H., Brooks, M.L., Casazza, M.L., Coates, P.S., Deibert, P.A., Hanser, S.E., and Johnson, D.H., 2014, Conservation buffer distance estimates for Greater Sage-Grouse—A review: U.S. Geological Survey Open-File Report 2014–1239, 14 p., <http://dx.doi.org/10.3133/ofr20141239>.] As of the end of FY 2020, the US government had active leases on nearly 27 million acres with about half of those in production. [Footnote 16: See BLM oil and gas statistics at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>]

The adverse impacts from fossil fuel development to biodiversity are especially acute when energy development overlaps places with high biodiversity and/or habitat for rare and imperiled species. For example, in the Southwest, species like the Lesser Prairie-Chicken [Footnote 17: Evans, M. J., and Malcom, J. W. 2021. Lesser prairie-chicken habitat changes since court delisting. A report by the Center for Conservation Innovation, Defenders of Wildlife. Available at: https://defenders-cci.org/files/LPC_habitat_CCI.pdf.] and the Dunes Sagebrush Lizard [Footnote 18: Jacob Malcom, Matthew Moskwik, Jake Li. 2018. Petition to List the Dunes Sagebrush Lizard as a Threatened or Endangered Species and Designate Critical Habitat. Available at: https://www.biologicaldiversity.org/species/reptiles/dunes_sagebrush_lizard/pdfs/DSL-petition.pdf.] have experienced widespread habitat declines on public (and private) lands because of oil and gas development. In the Rocky Mountain Region, oil and gas development has affected 20% of the sagebrush biome [Footnote 19: See: Remington, T.E., Deibert, P.A., Hanser, S.E., Davis, D.M., Robb, L.A., and Welty, J.L., 2021, Sagebrush conservation strategy—Challenges to sagebrush conservation: U.S. Geological Survey Open-File Report 2020–1125, 327 p., <https://doi.org/10.3133/ofr20201125>.] -- habitat for the greater sage grouse which continues to decline at an alarming 3% per year. [Footnote 20: See: Coates, P.S., Prochazka, B.G., O'Donnell, M.S., Aldridge, C.L., Edmunds, D.R., Monroe, A.P., Ricca, M.A., Wann, G.T., Hanser, S.E., Wiechman, L.A., and Chenaille, M.P., 2021, Range-wide greater sage-grouse hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system: U.S. Geological Survey Open-File Report 2020–1154, 243 p., <https://doi.org/10.3133/ofr20201154>] Figure 4 shows the overlap of active oil and gas leases [Footnote 21: Imperiled species richness layer was generated by Defenders of Wildlife. Oil and gas lease data from https://navigator.blm.gov/data?keyword=gas&format=application%2Fvzip-compressed&fs_publicRegion=National.] with lands of high imperiled species richness in New Mexico and Colorado and illustrates the profound effect that our current fossil fuel program is having on biodiversity on our nation's lands.

Second, fossil fuel activities emit greenhouse gases that are rapidly changing the climate and disrupting the ecosystems and hydrologic systems upon which wildlife and plants depend. [Footnote 22: IPBES 2019, *supra*] Responsible for nearly 25% of US greenhouse gas emissions [Footnote 23: Merrill, M.D., Sleeter, B.M., Freeman, P.A., Liu, J., Warwick, P.D., and Reed, B.C., 2018, Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005–14: U.S. Geological Survey Scientific Investigations Report 2018–5131, 31 p., <https://doi.org/10.3133/sir20185131>], US federal lands represent a globally significant percentage of all emissions and thus are implicated in causing unnaturally rapid shifts in climate and concomitant changes to biodiversity. This means species like the endangered Mount Graham Red Squirrel and the imperiled Palmer's Chipmunk, found nowhere near the sites of fossil fuel production are nonetheless impacted by fossil fuel activities. This conclusion is supported by a recent study that found that climate change is a major cause of endangerment of species in the United States. Specifically, the study found that in the last 30 years the number of listed species threatened by species–species interaction and environmental stochasticity (e.g., climate change) has exponentially increased and that these threats have now “joined habitat modification in the tier of most crucial threats to listed species..., with environmental stochasticity emerging as a top threat, mainly in the form of climate change (e.g., rising sea levels, more severe storms, increased drought events etc.).” [Footnote 24: Leu, M, Haines, AM, Check, CE, et al. Temporal analysis of threats causing species endangerment in the United States. *Conservation Science and Practice*. 2019; 1:e78. <https://doi.org/10.1111/csp2.78>.]

Comment Number: BOEM-EMAIL-32521-020244-2

Organization: Global Energy Institute and the U.S. Chamber of Commerce

Commenter: Christopher Guith

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The agency's stated rationale for inhibiting oil and natural gas development on federal lands is to combat climate change. The Chamber believes there is much common ground on which all sides of this discussion could come together to address climate change with policies that are practical, flexible, predictable, and durable, and we will work with the administration to further this goal.

However, inhibiting oil and natural gas production on federal lands and waters would invariably lead to greater greenhouse gas emissions, making this policy counterproductive. Banning or restricting energy production on federal lands and waters does nothing to change demand for these resources and this policy will necessitate sourcing replacement supplies from new areas, including overseas imports and domestic areas further away from demand. These longer transportation routes, likely including overseas shipping, would increase emissions above current levels.

Comment Number: BOEM-EMAIL-32521-021056-3

Organization: Business Alliance for Protecting the Pacific Coast

Commenter: Vipe Desai

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Other Sections: 5

Comment Excerpt Text:

The climate crisis is also an economic crisis. Our businesses are facing the impacts of warming oceans, rising seas, and increasingly disastrous weather patterns head on. In the coming decades, the consequences of rising seas will strain many coastal real estate markets, putting nearly 2.5 million properties at risk of chronic flooding.

[Footnote 4: Union of Concerned Scientists (2018) Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate. 1-28p.] When enough of those households and communities falter, entire real estate markets may face a tipping point. In just one year, costs incurred from natural disasters [italics: doubled] from the previous year in the United States. In 2020, natural disasters caused \$95 billion in damages.

[Footnote 5: Flavelle, C. (Jan. 7, 2021) U.S. Disaster Costs Doubled in 2020, Reflecting Costs of Climate Change. The New York Times. Available: <https://www.nytimes.com/2021/01/07/climate/2020-disaster-costs.html>]

Imagine the level of destruction we will face if this trend continues and damages double again this year, and then again next year and the year after that, and so on. We cannot afford to wait. Permanently protecting federal waters from drilling will prevent over 19 billion tons of greenhouse gas emissions — the equivalent of taking every car in the nation off the road for 15 years. And it would prevent over \$720 billion in damages to people, property, and the environment, letting our businesses prosper long into the future. [Footnote 6: Oceana (2021) Offshore Drilling Fuels the Climate Crisis and Threatens the Economy. 1-4p.] Decisionmakers still have choices that can help limit threats to coastal cities and towns, and ultimately, to the national economy. Prohibiting new offshore drilling on the Outer Continental Shelf will help our nation address the climate emergency while protecting coastal communities and millions of jobs.

We are very encouraged that your administration has taken temporary action to protect our coastal economy. But this is not enough. Protections from offshore oil drilling enjoy bipartisan and overwhelming support. Across the political spectrum, voters, businesses, military leaders and elected officials oppose these dirty and dangerous practices. Current opposition includes:

- Over 390 East and West Coast municipalities

- More than 2,300 local, state and federal elected officials
- All the governors along the East and West Coasts — Republicans and Democrats alike
- Alliances representing over 55,000 businesses

The Biden administration has shown their commitment to evaluating the federal offshore leasing program and that evaluation will demonstrate what our coastal communities and businesses know at heart: we must permanently protect our coasts from offshore drilling. As your administration completes its review of the oil and gas leasing program, we urge you to consider the disastrous economic impact offshore oil drilling and its associated greenhouse gas emissions has on our businesses and communities, and the wide bipartisan support protecting our coast enjoys. We urge you the Biden-Harris administration to end all further oil and gas leasing and prioritize our oceans as a climate solution by investing in clean energy development, like offshore wind when responsibly sited and developed.

By permanently ending new leasing for offshore drilling and investing in clean renewable offshore energy, we can advance ambitious and durable climate action that protects coastal economies, creates jobs, and benefits everyone. For the sake of our climate and the future of our communities, now is the time for action.

Comment Number: BOEM-EMAIL-32521-022409-1

Organization: American Enterprise Institute

Commenter: Benjamin Zycher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

*Limitations, whether temporary or permanent, on fossil energy leasing on federal lands as part of a policy addressing anthropogenic climate change would have no detectable effects on climate phenomena. The net-zero U.S. emissions policy goal announced by the Biden administration would reduce global temperatures by 0.137 degrees C by 2100, using the EPA climate model under assumptions higher than those reported in the peer-reviewed literature on the future impacts of reductions in greenhouse gas emissions. The effect of a permanent ban on leasing on federal lands would be substantially smaller, and would not be detectable given the standard deviation of the surface temperature record.

*Even as part of a coordinated international effort to reduce greenhouse gas emissions, such policies cannot satisfy any plausible benefit-cost test. Using that same EPA climate model under the same set of assumptions, the Paris agreement if implemented immediately and enforced strictly would reduce global temperatures in 2100 by 0.17 degrees C.

Comment Number: BOEM-EMAIL-32521-023720-7

Organization: Petroleum Association of Wyoming

Commenter: Pete Obermueller

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Social Cost of Greenhouse Gases

DOI should not include the Social Cost of Greenhouse Gases (SC-GHG) in the royalty rate given the scientific uncertainty in calculating its magnitude and the susceptibility of its magnitude to policy level assumptions. The SC-GHG is calculated through an incredibly complex linkage of models that estimate several hundred years into

the future human populations, associated GHG emission rates, subsequent global temperature and precipitation changes based on projected GHG emissions rates, and finally projected global GDP impacts due to climate change impacts on such things as seas level rise, intense weather events, and agriculture. These GDP impacts are then discounted to the present using a range of discount rates.

These models are complex and have multiple uncertainties in input parameters, as well as calculation assumptions based on policy levels decisions. For example, the last two administrations have generated SC- GHG values that are an order of magnitude different (\$51 per ton currently under President Biden and expected to increase, while it was \$7 per ton under the last administration.) The lower SC-GHG value is based on GHG projected impacts to the United States GDP, while the larger SC-GHG estimates are based on GHG impacts to global GDP. Placing this externality cost on a single source of hydrocarbons – federal minerals – will result in hydrocarbon production leakage to other hydrocarbon sources and as noted above, likely have zero impact on global hydrocarbon demand. It is also unclear how the federal revenue raised from such a component of a royalty rate would be used in any rational fashion under the current statutory framework to mitigate climate impacts that are by and large projected to occur decades or even centuries into the future.

Comment Number: BOEM-EMAIL-32521-024412-1

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The climate crisis requires a halt to all new oil and gas leasing of federal lands and minerals administered by the Bureau of Land Management (BLM). The scientific evidence is clear and compelling—climate change is being fueled by the human-caused release of greenhouse gas (GHG) emissions, in particular carbon dioxide and methane.

The BLM’s oil and gas leasing program contributes vast amounts of GHG pollution to the atmosphere. According to the most recent data available from the United States Geological Survey (USGS), “[n]ationwide emissions from fossil fuels produced on Federal lands in 2014 were 1,279.0 million metric tons of carbon dioxide equivalent (MMT CO₂ Eq.) for [CO₂], 47.6 MMT CO₂ Eq. for methane . . . and 5.5 MMT CO₂ Eq. for nitrous oxide.” These emissions totals represent “23.7 percent of national emissions for CO₂, 7.3 percent for [methane], and 1.5 percent for [nitrous oxide] over” a ten year period. USGS, Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005-14, Report 2018-5131 at 1 (2018). [Footnote 1: Available at <https://pubs.usgs.gov/sir/2018/5131/sir20185131.pdf>.]

These climate-altering emissions are profoundly impacting our world. The western United States is particularly susceptible to the effects of climate change. The southwest is already experiencing increasing temperatures, prolonged droughts and catastrophic wildfires, with widespread impacts across its forests, wildlife, and human communities. Local economies, which are reliant on consistent precipitation and snowfall for surface and groundwater recharge, agriculture, recreation, and other uses, have also seen significant adverse impacts.

Put simply, any new fossil fuel development, including federal fossil fuel leasing and permitting, is incompatible with the actions required to be taken to avoid the worst effects of a quickly changing climate. Now is the time to secure a thriving, climate resilient future.

Comment Number: BOEM-EMAIL-32521-025899-5

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

By developing appropriate analytical tools for assessing the climate effect of decisions as well as societal costs of those decisions, the Department of the Interior can provide necessary resources to decision-makers to manage federal public lands to meet national and international climate goals

It is well established that continuing to produce fossil fuels at current rates will preclude us from meeting climate targets without reliance on high-risk assumptions about future large- scale carbon capture deployment or land-based carbon sink expansions. [Footnote 26: 2018 Intergovernmental Panel on Climate Change, Summary for Policymakers, in *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-industrial Levels and Related Global GHG Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty 6* (Valérie Masson-Delmotte et al. eds., 2018).] Recent analysis from the UN Environmental Programme (UNEP) has shown that, even with countries’ firm climate commitments, current nation-level planning will lead to production of more than twice the amount of fossil fuels as would be consistent with 1.5° Celsius warming, and fifty percent more than for 2° Celsius, by 2030. [Footnote 27: SEI, IISD, ODI, Climate Analytics, CICERO, and UNEP, *The Production Gap: The Discrepancy between Countries’ Planned Fossil Fuel Production and Global Production Levels Consistent with Limiting Warming to 1.5°C or 2°C*, 2019 available at <http://productiongap.org/>.]

It is therefore essential that DOI ensure its decisions concerning fossil fuels are consistent with climate targets moving forward. This requires varying levels of analysis at multiple stages prior to the issuance of any future authorizations—from the recommended PEIS to the Resource Management Plan (RMP), leasing, and permitting stages. During the previous administration, in the context of NEPA analysis of climate impacts, federal agencies, including the Bureau of Land Management (BLM), took the position in many cases that there were no tools available to determine the climate significance of its actions beyond an arithmetic comparison of project- related GHG emissions to global GHG emissions.

Such a comparison, however, does little to inform DOI or the public of whether those emissions are significant from a climate perspective and consistent or inconsistent with a 1.5o Celsius warming limit—or any level where warming is finally limited for that matter. Indeed, extraction by making each individual project’s contribution look trivial. The climate is thus left to die a death by a thousand cuts when those comparatively minimal emissions add up to a collective inability to meet our goals to halt warming, as the UNEP analysis suggests. [Footnote 28: Id.]

To prevent this fate, DOI must apply a “climate test” at the level of individual decision- making, as described in the following section. At the same time as it applies the climate test, DOI should also employ the Interagency Working Group (IWG) Social Cost of GHGs, [Footnote 29: Interagency Working Group on Social Cost of GHGs, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates Under Executive Order 13990 (2021), https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf] including the social cost of carbon (SCC) and social cost of methane (SCM) to disclose the social and economic costs of any decisions that will result in emissions of GHGs. While the Social Costs of GHGs may underestimate climate costs because they do not include all entire universe of damages caused by anthropogenic GHGs, the IWG’s social cost metrics remain the best estimates yet produced by the federal government for monetizing the impacts of GHG emissions and are “generally accepted in the scientific community.” [Footnote 30: 40 C.F.R. §

1502.22(b)(4).] The Social Cost of Greenhouse Gases analysis is separate from, but an important complement to, the climate test analysis aimed at determining consistency with climate goals.

Comment Number: BOEM-EMAIL-32521-025899-6

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

a. The Department of the Interior should develop a Climate Test, applicable to all agency decision-making, to determine whether agency actions are consistent with limiting global warming to 1.5o Celsius above pre-industrial levels

In the following sections, we provide the overarching framework for a climate test and its applicability to DOI's oil and gas program, as well as a discussion about the related application of the social cost of GHGs.

i. Developing a climate test tool to meaningfully determine a decision's or policy's climate impact

NRDC scientists are developing a tool, called a climate test, that will enable DOI to determine whether its decisions—at the planning, leasing, and permitting levels—are consistent with a 1.5o Celsius limit to global warming. We anticipate that a full description of our climate test will be published in the scientific literature later this year, but in the interim we have developed a tool that is usable by agency decisionmakers, which we will share in greater detail upon request. To the extent any other such tools are or become available, DOI should consider employing those as well.

In brief, the climate test draws upon known data or representative assumptions about the subject activity's characteristics (e.g., lifecycle GHG emissions, fuel type, capital and operating and energy systems modeling projection studies (e.g., carbon budgets, committed emissions from existing sources, energy demand, and fuel prices, etc.). These data—or default assumptions recommended by the tool and accompanying guidance documents in the absence of available data—form the inputs for a suite of evaluation and decision metrics. These metrics are organized into three modules: environmental, economic, and social. Each module is designed to assess a different set of relevant constraints and characteristics over the lifetime of the project or authorized action that communicate the subject activity's consistency with achieving 1.5o Celsius climate goals.

As shown in Table 1 below, the environmental module tests whether the project's life cycle emissions are consistent with carbon budgets for limiting warming to 1.5o Celsius when considered in balance with the effect the project will have on shifting future energy demands. The economic module tests whether the proposed action is vulnerable to creating “stranded assets”—whether due to lack of need, profitability, or competitiveness of the activity—by looking at whether it is consistent over its purported lifetime with evolving energy markets. The social module tests whether the project is consistent with principles of equity and environmental justice by looking at who is predominantly affected, what their existing environmental burdens are, and how the project may contribute to those burdens. Each quantitative test metric is structured to yield a simple, and easily interpretable result: <1 for projects that are consistent with the 1.5o Celsius goal and >1 for projects that are not. Further, how far a metric's score is from the decision point of 1 communicates that project's degree of compatibility with the 1.5°C goal.

Table 1: Elements of the Climate Test

Row 1: Module: Environmental; Assessment: Are the project's life-cycle emissions consistent with the 1.5°C

carbon budget and in balance with its future contribution toward meeting 1.5°C energy demand?; Scale: National; Sample Data sources: Project documentation for project characteristics; IPCC for 1.5C carbon budget/emissions reduction trajectory; Climate and energy systems modeling for projections of total energy demand (e.g., GCAM-USA); Peer-reviewed scientific studies for data on committed emissions from existing infrastructure, and lifecycle GHG emissions factors; EIA for breakdown of fuel end uses.

Row 2: Module: Economic; Assessment: Is the project at risk of becoming a stranded asset in a 1.5°C world? Determined via the following factors: (i) whether the project is likely to be continually needed - whether the project is likely to be continually profitable- (iii) whether the project is likely to remain continually competitive with clean energy alternatives.; Scale: Regional; Sample Data sources: Climate and energy systems modeling projections of energy supply and demand by fuel type (e.g., GCAM-USA); EIA for fuel price data; Peer reviewed scientific studies for near-term to net-zero carbon price (e.g., Kaufman et al 2020); [Footnote 31: Kaufman, Noah, et al, A Near-Term to Net Zero Alternative to the Social Cost of Carbon for Setting Carbon Prices, 20 Nature Climate Change 1010, Nov. 1, 2020) available at <https://doi.org/10.1038/s41558-020-0880-3>.] Lazard reports for levelized cost of energy and storage

Row 3: Module: Social; Assessment: (Is the project consistent with principles of climate and environmental justice? Determined via the following factors: whether the affected area is populated by historically marginalized or vulnerable communities; whether the affected area is already overburdened by environmental pollutants - whether the project will add significantly to pollution burdens (such as PM 2.5 levels) in the affected community; Scale: Local (project footprint); Sample Data sources: EPA EJSCREEN: environmental and demographic index data; EPA AERSCREEN modeling for PM2.5 concentration effects of project

Comment Number: BOEM-EMAIL-32521-025899-8

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Applying the Social Cost of GHGs to Department of the Interior decisions on oil and gas development

The social cost of carbon dioxide (SCC) and methane (SCM), as developed by the Interagency Working Group on Social Cost of Greenhouse Gases, [Footnote 32: Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates Under Executive Order 13990 (2021), https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.] are a very different measure of climate impact than a climate test, with each measure potentially playing a unique and valuable role in DOI's decision-making. The social cost of GHGs, unlike the climate test, enables DOI to quantify the economic impact of GHG emissions authorized by any of its decisions. This ability is particularly essential in situations where proponents of a decision that will result in increased extraction are touting the purported economic benefits of such extraction – whether in terms of employment gains, increased tax revenue, or general economic betterment. DOI should consistently apply the social cost of GHGs, including the SCC and SCM, in such instances to counterbalance claims of this nature with a clear-eyed assessment of the economic costs associated with GHG emissions. [Footnote 33: Id.; see also Interagency Working Group on Social Cost of GHGs (IWG), Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide 2-3 (2016), available at: https://www.epa.gov/sites/production/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.] Even in the absence of data regarding purported economic benefits, the social cost of GHGs tool is useful to provide perspective on the economic downside of extractive activity.

The social cost of GHG metrics are not, however, designed to provide a benchmark for the significance of GHG emissions or determine their consistency with climate goals. They assign a dollar figure to climate impacts but are not set up to provide context as to whether that dollar figure is significant from a decision-making perspective; and the dollar figure standing alone cannot tell us whether the emissions and their associated costs are consistent with a 1.5o Celsius warming world. Although both the social cost of GHGs and the climate test address the economics of drilling, they ask entirely different questions within that sphere: the social cost of GHGs methodology assesses the monetized cost of the externalities associated with extraction, whereas the climate test's economic module asks whether a decision is economically viable even when those costs are not entirely internalized. Accordingly, both the social cost of GHGs and the climate test should be applied to all DOI oil and gas-related decisions moving forward, ranging from programmatic-level reviews to site-specific leasing and permitting decisions.

Comment Number: BOEM-EMAIL-32521-025899-9

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

3. Where the Department of Interior determines, after application of a climate test framework, that it may issue new drilling authorizations, the agency should adopt an approach for limiting GHG emissions to the greatest extent possible

Because of the tens of millions of acres of federal public lands currently under lease and undeveloped, we anticipate that DOI will receive and consider numerous applications for permits to drill (APD) in the coming years. Because of this reality, we urge the agency to require, in conditions for approval (COA) or other requirements contained in future APDs, an approved net-zero emissions mitigation strategy that can provide immediate or near-term emissions reductions as well as credibly account for emissions offsets where necessary. [Footnote 34: See Pleune, Jamie, et al, A Road Map to Net-Zero Emissions for Fossil Fuel Development on Public Lands, 50 Env'tl. L. Rep. 10734, available at <https://dc.law.utah.edu/scholarship/236/>.] The Department's authority to impose such requirements is well-established and regulations allow for measures to be imposed that will "minimize adverse impacts to other resource values." [Footnote 35: 43 C.F.R. § 3101.1-2]

Importantly, by instituting a climate test process applicable at the PEIS and RMP levels, DOI would be able to better determine the extent to which climate mitigation measures may be necessary for ongoing oil and gas activities on federal public lands. We therefore recommend that, to the extent allowed under existing law, the current moratorium on oil and gas leasing remain in place until fundamental questions about the agency's management of the oil and gas program, in relation to climate change, have been answered. Further, because already-permitted production and the rights to future production secured under valid existing leases may lead to significant additional GHG emissions, DOI should consider examining its regulations applicable to "modification or waiver of lease terms and conditions," which presume the removal of protective measures—as opposed to the imposition of new measures that may arise due to changed conditions or other factors requiring more stringent requirements. [Footnote 36: 43 C.F.R. § 3101.1-4]

Comment Number: BOEM-EMAIL-32521-027661-3

Organization: Alaska Wilderness League and Multiple Other Environmental Organizations

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Although leasing has occurred in the Reserve for some time, development has been more recent and has occurred in a compressed timeframe, all while annual lease sales have also been occurring. This has resulted in intense impacts during that short timeframe that will continue and compound in the future. Additional time and comprehensive studies are necessary to fully understand the severity of those impacts and ways to address them. Despite these serious impacts, the Trump Administration offered every single acre available for lease and later adopted a revised Integrated Activity Plan in 2020 that opened over 18 million acres of the Reserve to oil and gas leasing and rolled back protections for designated Special Areas and high-value resources. DOI should immediately rescind this disastrous Plan while it considers the future management of the Reserve.

Continuing to manage the majority of the Reserve as an oilfield would be disastrous from a climate perspective. Development of the 2.6 million acres already leased will cause significant impacts. Because the Reserve is a remote area, oil development there requires massive new investments in infrastructure. That new infrastructure will lock us into decades of entirely avoidable carbon emissions: If produced, the estimated 8.7 billion barrels of oil and 25 trillion cubic feet of natural gas in the Reserve have the potential to release over 5 billion metric tons of CO₂ — the equivalent of more than 1 billion passenger cars driven in a year. Additionally, black carbon emissions will result in adverse impacts locally with the black carbon falling on and then melting nearby snow and ice.

Climate change is being acutely felt in Alaska, where parts of the Arctic are warming at three times the rate of the rest of the world. Threats to food security are increasing, animal migration patterns and abundance are shifting, and there are numerous unpredictable conditions, such as thawing permafrost and melting sea ice, that are already having serious repercussions.

Comment Number: BOEM-EMAIL-32521-027661-4

Organization: Alaska Wilderness League and Multiple Other Environmental Organizations

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 2

Comment Excerpt Text:

The Reserve's globally significant habitat and polar bears, caribou, millions of migratory birds, and numerous other species are already being impacted by climate change and could be further adversely impacted by oil and gas development and infrastructure. Impacts to villages and subsistence, particularly the community of Nuiqsut, are already occurring as oil development has expanded across the region and present serious environmental justice concerns. These impacts are also being further exacerbated by climate change impacts, such as coastal erosion, thawing of permafrost, and reduced sea ice.

Comment Number: BOEM-EMAIL-32521-028864-4

Organization: Powder River Basin Resource Council

Commenter: Shannon Anderson

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Comment Excerpt Text:

The Need for a Carbon Budget for Federal Oil & Gas Leasing and Development

Climate change poses concrete risks to the environment globally and locally, including water availability, ocean acidity, weather, sea-level rise, and the health of ecosystems and the public. To address these concerns, the United States and other countries committed in the Paris Agreement for the United Nations Framework Convention on Climate Change to holding the increase in the global average temperature to below 1.5°C above pre-industrial levels. Some reports have estimated that additional federal oil and gas leasing will prevent this goal from being achieved.

The first order of business is for DOI to develop appropriate methodologies to calculate GHG emissions associated with the entire fuel cycle for federally leased oil and gas, including extraction, processing, transportation, refining, and combustion. Only through such an approach can the climate change impacts of oil and gas be properly assessed. DOI should also work to quantitatively monetize the impacts of these GHG emissions using the EPA's social cost of methane and the Interagency Working Group's social cost of carbon methodologies, as well as the USGS carbon database.

Next, DOI's review must explore alternatives to mitigate those impacts and insure that federally leased oil and gas does not stand as an obstacle to GHG emission reduction goals. For instance, DOI – in coordination with other appropriate agencies – should determine how much of United States GHG emissions should be permitted to come from federal oil and gas leasing (again, considering full life cycle emissions), taking into account the Nation's GHG reduction objectives and other sources of GHG emissions. Once that Carbon Budget is established, DOI must apply it first to take account of existing leases. Any remaining Budget would then be allocated to new leasing based on a revised leasing framework, which would incorporate the applicant's ability to achieve GHG emission and other environmental goals. [Footnote 1: Capping the amount of leasing available, and having oil and gas operators compete for remaining leases, could also create an associated benefit of additional competition for federal oil and gas resources]

DOI should also consider incorporating the life-cycle costs of GHG emissions into the royalty rates charged for access to federally leased oil and gas. For example, the royalties might include an "add-on" that would be a flat sum (adjusted over time and keyed to inflation) to reflect these costs. This option is well within DOI's broad authority, for the MLA and FLPMA provide broad discretion to determine appropriate royalty rates. DOI should also consider the relevant alternatives associated with where the money raised by such fees should be allocated. Possibilities include:

- paying for carbon mitigation or other efforts to reduce GHG emissions elsewhere;
- assisting oil and gas employees displaced by reductions in federal oil and gas leasing or assisting states with lost revenue; or
- supporting oil and gas reclamation projects in areas where operators have not fulfilled their reclamation obligations.

Comment Number: BOEM-EMAIL-32521-032355-12

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

To the extent BLM adopts new management direction that allows any new oil and gas leasing, it should impose strict measures to mitigate the carbon pollution from developing those leases. One option would be to require that

royalties on all new leases include a charge for the social cost of carbon. The minimum federal onshore royalty rate—a percentage of production that lessees must pay to the Interior Department [Footnote 45: See generally U.S. Gov’t Accountability Off., *Federal Oil and Gas Royalties: Additional Actions Could Improve ONRR’s Ability to Assess Its Royalty Collection Efforts* (May 2019), <https://www.gao.gov/assets/700/699433.pdf>.]—currently sits at 12.5 percent, far below what most oil and gas producing states charge. [Footnote 46: Taxpayers for Common Sense, *Royally Losing: Higher Royalties on State and Offshore Oil and Gas Production Reap Billions More Than Drilling on Federal Lands*, at 2–3 (Feb. 2020), <https://www.taxpayer.net/wp-content/uploads/2020/02/TCS-Royally-Losing-2020.pdf>.] However, BLM has discretion to issue leases with a royalty rate higher than this floor. 43 C.F.R. § 3103.3-1(a)(2)(ii). BLM could offer all new leases with a significantly higher royalty rate that incorporates an estimate of the social cost of carbon from the oil and gas produced. [Footnote 47: BLM could by regulation also increase the minimum bid amount for all leases offered at competitive auction. See 30 U.S.C. § 226(b)(1)(B).] As Brian Prest of Resources for the Future discussed at the Department’s March 25 forum, such a royalty approach would yield significant emissions reductions while also generating additional revenue. Brian Prest, Fellow, Res. for the Future, Comments at the Department of the Interior Public Forum on Federal Oil and Gas Program (Mar. 25, 2021); see also *supra* note 44 (Prest working paper discussing modeling).

Alternatively, the Department should consider rulemaking to limit the climate and other environmental harms that could occur from new leasing. For example, the Department could require that APDs and drilling plans on all new leases include mitigation measures that achieve net zero carbon emissions (including downstream emissions) from lease development. [Footnote 48: This requirement also could be imposed through a programmatic RMP amendment, or by developing a national stipulation applicable to all leases] Another option would be to establish a carbon budget for production from new leases, with future development of those leases conditioned on production from the leases not exceeding the carbon budget.

Such rules fall well within Interior’s rulemaking authority. FLPMA provides: “In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b); see also *id.* § 1733(a) (“The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands.”). The Mineral Leasing Act (MLA) also grants the Secretary authority “to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter,” 30 U.S.C. § 189; *id.* § 226(g) (providing the authority to regulate surface-disturbing activities connected with federal leasing), which includes protecting the public interest.

Comment Number: BOEM-EMAIL-32521-032355-7

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

A. Continued Federal Fossil Fuel Development Is Inconsistent with Protecting and Preserving Public Lands.

President Biden has declared that “[t]he United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents.” [Footnote 1: Exec. Order No. 14,008, 86 Fed. Reg. 7,619 (Jan. 27, 2021); see also 1 U.S. Global Change Research Program, *Climate Science Report: Fourth National Climate Assessment* 36 (2017), https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf; World Economic Forum, *The Global Risks Report 2020*, at 33 (2020), http://www3.weforum.org/docs/WEF_Global_Risk_Report_2020.pdf;

Summary for Policymakers, in GLOBAL WARMING OF 1.5°C. AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE- INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSIONS PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND EFFORTS TO ERADICATE POVERTY (Valérie Masson-Delmotte et al. eds., IPCC 2018) (IPCC Summary for Policymakers).] Similarly, the December 12, 2015, Paris Agreement, [Footnote 2: United Nations Framework Convention on Climate Change, Conference of the Parties, Nov. 30–Dec. 11, 2015, Adoption of the Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9 (Dec. 12, 2015) (Paris Agreement).] which the U.S. recently re-entered, codified the international consensus that the climate crisis is an urgent threat to human societies and the planet:

Climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions. [Footnote 3: Id. at Decision, Recitals (emphasis added)]

In accord with the Paris Agreement, the U.S. has committed to climate change targets that require it steadily to decrease greenhouse gas emissions. The Agreement requires a “well below 2°C” climate target because 2°C of warming is no longer considered a safe guardrail for avoiding catastrophic climate impacts and runaway climate change. [Footnote 4: Id.; see United Nations Framework Convention on Climate Change, Subsidiary Body for Scientific and Technological Advice, Report on the Structured Expert Dialogue on the 2013–2015 Review, FCCC/SB/2015/1NF.1 (May 4, 2015); see also C-F. Schleussner et al., Differential Climate Impacts for Policy-relevant Limits to Global Warming: The Case of 1.5°C and 2°C, 7 Earth Sys. Dynamics 327 (2016).]

Accordingly, the U.S. committed to holding the long-term global average temperature “to well below 2°C above pre- industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre- industrial levels.” [Footnote 5: See Paris Agreement, supra note 2, at Art 2.] Under the Agreement, the U.S. Nationally Determined Contribution is to reduce net greenhouse gas emissions by 26–28% below 2005 levels by 2025. [Footnote 6: U.S.A First Nationally Determined Contribution Submission, submitted to the United Nations Framework Convention on Climate Change (undated),

<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/U.S.A.%20First%20NDC%20Submission.pdf>.] Independent of the Paris Agreement, the U.S. set a long-term goal of reducing emissions by 83% below 2005 levels by 2050. [Footnote 7: U.S. Dep’t of State, U.S. Climate Action Report 2010, at 3 (June 2010); The White House Office of the Press Sec’y, President to Attend Copenhagen Talks: Administration Announces U.S. Emission Target for Copenhagen (Nov. 25, 2009).]

U.S. climate commitments are incompatible with business as usual in extracting fossil fuel from federal waters and lands. The emissions from federal fossil fuel production already make up a significant portion of total U.S. greenhouse gas emissions, and future development will exceed allowable emissions targets. In 2018, the U.S. Geological Survey calculated the emissions of fossil fuel originating from federal lands—irrespective of where it was ultimately combusted—and found that, from 2005 to 2014, fossil fuels extracted from federal lands accounted for nearly a quarter (23.7 percent) of all U.S. carbon dioxide emissions and 7.3 percent of methane emissions. [Footnote 8: Matthew D. Merrill, et al., U.S. Geological Survey, Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005–14, Scientific Investigations Report 2018–5131, at 1 (2018), <https://pubs.usgs.gov/sir/2018/5131/sir20185131.pdf>.] Of those, offshore oil and gas production accounted for 4.3 percent of carbon dioxide emissions and 1.3 percent of methane emissions, while onshore oil and gas accounted for 5.5 percent and 4.9 percent of carbon dioxide and methane emissions, respectively. See FOSSIL EMISSIONS DATA file from the 2018 USGS study, <https://doi.org/10.5066/F7KH0MK4>.] Similarly, former Secretary of the Interior Sally Jewell directed a moratorium on federal coal leasing in 2016 and noted that combustion of federal coal “contributes roughly 10 percent of the total U.S. GHG emissions.” [footnote 9: Sec’y of the Interior, Order No. 3338: Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016), <https://perma.cc/UVX4-YMBW>.] The fossil fuel problem could grow

much larger: U.S. federal fossil fuels, if extracted and burned, would consume most of the global emissions budget estimated to have a greater than 50% chance of limiting temperature increase to 1.5°C. [Footnote 10: See Dustin Mulvaney et al., *The Potential Greenhouse Gas Emissions from U.S. Federal Fossil Fuels*, at 3 (Aug. 2015), <http://www.ecoshiftconsulting.com/wp-content/uploads/Potential-Greenhouse-Gas-Emissions-U-S-Federal-Fossil-Fuels.pdf> (estimating emission potential of federal fossil fuels at 349–492 GtCO₂e); United Nations Environment Programme (UNEP), *The Emissions Gap Report 2016: A UNEP Synthesis Report* xv (Nov. 2016) (listing global carbon budgets for temperature targets), <https://www.unep.org/resources/publication/emissions-gap-report-2016-un-environment-synthesis-report>.]

This reality accords with a large body of scientific research that concludes that the vast majority of global and U.S. fossil fuels must stay in the ground in order to hold temperature rise to well below 2°C. [Footnote 11: The IPCC estimates that global fossil fuel reserves exceed the remaining carbon budget for staying below 2°C by 4 to 7 times, while fossil fuel resources exceed the carbon budget for 2°C by 31 to 50 times. See Thomas Bruckner et al., *Energy Systems*, in *CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE. CONTRIBUTION OF WORKING GROUP III TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE* 525, Table 7.2 (Ottmar Edenhofer et al. eds., Cambridge University Press 2014) (estimates of fossil reserves and resource and their carbon content)] Scientific studies have estimated that 68 to 80 percent of global fossil fuel reserves must not be extracted or consumed if the world is to limit temperature rise to 2°C based on a 1,000 GtCO₂ carbon budget. [Footnote 12: To limit temperature rise to 2°C based on a 1,000 GtCO₂ carbon budget from 2011 onward, studies indicate that 80 percent (Carbon Tracker Initiative 2013), 76 percent (Raupach et al. 2014), and 68 percent (Oil Change International 2016) of global fossil fuel reserves must stay in the ground. See generally Carbon Tracker Initiative, *Unburnable Carbon: Are the World's Financial Markets Carrying a Carbon Bubble?*, at 2 (2013); Michael Raupach et al., *Sharing a Quota on Cumulative Carbon Emissions*, 4 *Nature Climate Change* 873 (2014); Oil Change Int'l, *The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production*, at 15 (Sept. 2016) (Oil Change International), http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf. 13 Oil Change International, *supra* note 12, at 6.] An estimated 85 percent of known fossil fuel reserves must stay in the ground for a 50 percent chance of limiting temperature rise to 1.5°C. [Footnote 13: Oil Change International, *supra* note 12, at 6.] Effectively, to limit temperature rise to 2°C, fossil fuel emissions must be phased out globally by mid-century. [Footnote 14: Rogelj et al. 2015 estimated that a reasonable likelihood of limiting warming to 1.5° or 2°C requires global CO₂ emissions to be phased out by mid-century and likely as early as 2040–2045. See Joeri Rogelj et al., *Energy System Transformations for Limiting End-of-century Warming to below 1.5°C*, 5 *Nature Climate Change* 519 (2015).]

Other studies underscore the need to halt fossil fuel extraction:

-A 2016 global analysis found that the carbon emissions that would be released from burning the oil, gas, and coal in the world's currently operating fields and mines would fully exhaust and exceed the carbon budget consistent with staying below 1.5°C. [Footnote 15: Oil Change International, *supra* note 12, at Table 3. According to this analysis, the CO₂ emissions from developed reserves in existing and under-construction global oil and gas fields and existing coal mines are estimated at 942 Gt CO₂, which vastly exceeds the 1.5°C-compatible carbon budget estimated in the 2018 IPCC report on Global Warming of 1.5°C at 420 GtCO₂ to 570 GtCO₂, see *supra* note 1.]

-Several studies describe the need to prevent carbon “lock-in,” where new fossil fuel production and infrastructure projects require upfront investments that provide financial incentives for companies to continue production for decades into the future. [Footnote 16: See, e.g., Steven J. Davis & Robert H. Socolow, *Commitment Accounting of CO₂ Emissions*, 9 *Env't Rsch. Letters* 084018 (2014); Peter Erickson et al., *Assessing Carbon Lock-in*, 10 *Env't Rsch. Letters* 084023 (2015); Peter Erickson et al., *Carbon Lock-in from Fossil Fuel Supply Infrastructure*, Stockholm Env't Institute Discussion Brief (2015); Karen C. Seto et al., *Carbon Lock-In: Types, Causes, and Policy Implications*, 41 *Ann. Rev. Env't Res.* 425 (2016); Fergus Green & Richard Denniss, *Cutting with Both Arms of the Scissors: The Economic and Political Case for Restrictive Supply-side Climate Policies*, 150 *Climatic*

Change 73 (2018).]

-A 2019 study found that phasing out all fossil fuel infrastructure at the end of its design lifetime, starting immediately, preserves a 64 percent chance of keeping peak global mean temperature rise below 1.5°C, while delaying mitigation until 2030 reduces the likelihood that 1.5 °C would be attainable to below 50 percent.

[Footnote 17: Christopher J. Smith et al., *Current Fossil Fuel Infrastructure Does Not Yet Commit Us to 1.5°C Warming*, 10 *Nature Commc'ns* 101 (2019).]

Together these reports make clear that, to limit the worst damages of climate change, the United States must rapidly phase out federal fossil fuel production.

B. FLPMA Requires the Department to Address Climate Impacts from Federal Fossil Fuels.

Halting new federal fossil fuel leasing, and dramatically reducing new development, will significantly affect U.S. carbon emissions and send a strong signal that the United States is committed to making the transition to a clean energy economy. Moreover, such a step is legally required under FLPMA.

Congress mandated in FLPMA that the Department manage public lands for protection over the long term. The Interior Department must avoid “permanent impairment of the productivity of the land and the quality of the environment,” 43 U.S.C. § 1702(c), and FLPMA requires that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” *Id.* § 1732(b). BLM must also manage for a multi-generational time horizon by striking a balance that “will best meet the present and future needs of the American people” and “takes into account the long-term needs of future generations.” *Id.* § 1702(c). This stewardship duty extends to a wide variety of resources, including “scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values,” as well as providing “food and habitat for fish and wildlife.” *Id.* § 1701(a)(8) (emphasis added).

The Interior Department’s current oil and gas and coal programs violate these requirements in two distinct but related ways. First, the programs conflict with FLPMA’s directive to manage for the “present and future” and account for “the long-term needs of future generations.” *Id.* § 1702(c). Federal public lands have the potential to be an immense carbon sink that helps address climate change. [Footnote 18: See Majority Staff of H.R. Select Comm. on the Climate Crisis, 116th Cong., *Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America*, at 13 (June 2020), <https://climatecrisis.house.gov/sites/climatecrisis.house.gov/files/Climate%20Crisis%20Action%20Plan.pdf>.] But, as noted above, public lands are responsible for approximately a quarter of U.S. carbon dioxide emissions and are a net GHG emitter. Thus, current minerals management is contributing to the problem of climate change despite having the potential to help solve it, [Footnote 19: See *id.* at 14, 479–87.] without regard for the long-term needs of future generations.

Second, greenhouse gas emissions and climate change will permanently impair the lands and resources BLM manages. BLM recognized in its 2017 scoping report on the federal coal leasing program that “greenhouse gases endanger the public welfare,” and described “the urgency of reducing greenhouse gas emissions.” [Footnote 20: U.S. Bureau of Land Mgmt., *Federal Coal Program: Programmatic Environmental Impact Statement—Scoping Report* 5-49, 5-50 (2017) (BLM 2017 Coal Report).] It noted that permanent atmospheric and ecological impairment may result from increased carbon emissions, with the planet “approaching a critical climate threshold beyond which rapid and potentially permanent—at least on a human timescale—changes” may take place, including but not limited to widespread species extinctions. [Footnote 21: *Id.* at 5-50.]

Other studies confirm BLM’s conclusion. A recent comprehensive, interdisciplinary literature review of climate impacts on BLM-managed land did not find “a single paper concluding that climate change does not pose a major threat to BLM ecosystems and the services and products for which those lands are valued.” [Footnote 22: Elaine

Brice et al., *Impacts of Climate Change on Multiple Use Management of Bureau of Land Management Land in the Intermountain West, USA*, 11 *Ecosphere*, at 13 (Nov. 2020), <https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/ecs2.3286>.] The study evaluated several categories of BLM-recognized land uses and values and found that climate change will harm virtually all of them. Impacted resources include terrestrial and aquatic wildlife and vegetation, water systems, air quality, outdoor recreational, grazing, cultural resources, and timber extraction. [Footnote 23: *Id.* at 13–18.] The tables below summarize many of these impacts. [Footnote 24: *Id.* at 14–15.]

[See attachment for graph titled climate change impacts on and interactions between various land uses for which the BLM manages.]

[See attachment for graph titled commonly documented impacts of climate change across the intermountain west and examples of references that discuss such impacts]

The study also evaluated all 44 existing resource management plans (RMPs) in the Intermountain West and concluded that current RMPs do very little to address climate impacts. Fewer than 40 percent of the evaluated RMPs mentioned climate change at all, and “[i]n general, references to climate change were vague, with very few specific predicted impacts or management considerations.” [Footnote 25: *Id.* at 10] In light of this inadequacy, the authors concluded that management reforms are needed and noted that “the most direct way the BLM can reduce the contribution to climate change from permitted land uses is by reducing permits for energy extraction on BLM land.” [Footnote 26: *Id.* at 17]

Similarly, a 2017 study found that climate change will impact numerous public land ecosystem services in the Rocky Mountains, all of which BLM helps manage. [Footnote 27: Jessica E. Halofsky et al., *Understanding and Managing the Effects of Climate Change on Ecosystem Services in the Rocky Mountains*, 37 *Mountain Rsch. & Dev.* 340 (2017).] That study indicated that climate change will likely:

- reduce and shift seasonal water flows;
- increase pollution and sediment levels in water supplies;
- decrease long-term timber viability;
- impair grazing in low-elevation, moisture-limited regions; and
- reduce snow-based recreation and certain other activities (e.g. fishing for cold-water species). [Footnote 28: *Id.* at 343–48]

Climate change will also force federal land managers to grapple with the possibility that, in some cases, “current species or ecosystem services cannot be maintained.” [Footnote 29: Linda A. Joyce et al., *Managing for Multiple Resources Under Climate Change: National Forests*, 44 *Envtl. Mgmt.* 1022, 1024 (2009).]

Whether from coal mining or oil and gas, continuing to increase federal fossil fuel development violates FLPMA because it risks causing permanent impairment of the quality of the environment and the productivity of public lands.

Comment Number: BOEM-EMAIL-32521-034585-16

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Under the emissions management framework and to the maximum extent allowed by law, mitigate the cumulative climate impacts of development on existing leases at the application for permit to drill (APD) stage.
- Curb methane emissions by defending the 2016 Waste Prevention Rule, which—if upheld—would realize immediate climate benefits by reducing gas that is wasted through venting, flaring, and leaking.

Comment Number: BOEM-EMAIL-32521-034585-22

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- a. Establish a DOI emissions management framework for achieving net zero GHG emissions from fossil fuels on public lands and waters by 2030 and no fossil fuel development on public lands and waters by 2050 at the latest.

Based on these emissions targets, DOI must develop a GHG emissions management framework to guide its management and energy development decisions. As part of this framework, DOI should systematically calculate, track, and publicly disclose the lifecycle emissions and associated climate and public health costs of management decisions.

Under the emissions management framework, DOI should adopt a federal net zero obligation at the national level and in land use planning, and impose a net zero obligation on lessees at the leasing and permitting stages. Leasing- and permitting-stage net zero obligations can and should flow from national policy and land management plan direction to achieve net zero on all new development, including new wells on existing leases, through compensatory mitigation using tools such as a climate fee. While an overarching national DOI emissions management framework is being developed, all relevant BLM field offices across the country should establish and implement plans to achieve net zero fossil fuel emissions within their regions, as detailed in Section II(f).

Additionally, to achieve climate emissions goals, protect taxpayers, and safeguard natural and cultural resources already leased and at risk of damage from production, DOI must significantly reduce potential emissions and liability by taking a hard look at the stock of existing leases. DOI should research and develop criteria and a programmatic approach for buying back existing leases with appropriate and effective valuation. A properly incentivized lease buyback program would yield significant co-benefits, including reducing GHG and other fossil fuel pollution and freeing land tied up under speculative and non-producing leases.

RECOMMENDATIONS:

- Establish a GHG emissions management framework to guide DOI's management and energy development decisions at the national, land use planning, leasing, and permitting stages to achieve net zero GHG emissions from fossil fuel development on federal public lands and waters by 2030 and no fossil fuel development by 2050. Implement the framework in a manner consistent with efforts to conserve at least 30 percent of U.S. lands and waters by 2030 and to ensure a just and equitable transition for affected communities.
- Develop a measurement protocol for GHG emissions from federal lands consistent with climate science.

- Develop a dashboard that will provide the information needed to manage publicly owned energy resources in a manner consistent with climate and other DOI goals.
- Develop tools necessary to populate the dashboard, including calculating volumes of fossil fuels and associated upstream and downstream pollution from existing leases, methods to estimate the carbon consequences of nominated and approved leases and reasonably foreseeable development in planning documents, and other key metrics.
- Adopt a federal net zero obligation at the national level and in land use planning, and impose a net zero obligation on lessees at the leasing and permitting stages, including new wells on existing leases, through compensatory mitigation using tools such as a climate fee.
- Research and consider developing a lease buyback program. Support legislation and appropriations as needed.
- Regularly disclose progress toward meeting emissions targets to the public.

Comment Number: BOEM-EMAIL-32521-034585-24

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

c. DOI should use the social cost of greenhouse gases to evaluate impacts from oil and gas planning, leasing, and development and to inform decisions for the oil and gas program.

DOI should integrate the social cost of greenhouse gases into all its oil and gas policies. The Interagency Working Group (IWG) on Social Cost of Greenhouse Gases has developed monetary estimates for the value to society of changes in carbon, methane, and nitrous oxide emissions resulting from regulations and agency actions. [Footnote 35: Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866 (2016). Available at: https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf. [hereinafter, IWG 2016 Report].] The IWG comprised multiple federal agencies and White House economic and scientific experts, and the estimates were developed with the best available science and methodologies.

The IWG's social cost of carbon (SCC) estimates were developed using peer-reviewed integrated assessment models (AIM) in 2010 and updated in 2013. [Footnote 36: Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis - Under Executive Order 12866 (2013); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis - Under Executive Order 12866 (2010).] In August 2016, IWG also published estimates of the social cost of methane (SCM) and nitrous oxide (SCN). While the IWG updates the social cost of greenhouse gases in line with the requirements in E.O. 13990, interim estimates may actually underestimate intergenerational climate costs because they need to be updated based on the latest peer reviewed science and economics. [Footnote 37: Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide, Interim Estimates under Executive Order 13990 (2021), available at: https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf [hereinafter, IWG 2021 Report].] These interim estimates remain the best for agencies to use in evaluating agency actions until

the IWG releases revised final estimates in January 2022. [Footnote 38: The complete set of annual, unrounded interim estimates for 2020-2050 for all three SC-GHGs in 2020 dollars are available on OMB website. Available at: <https://www.whitehouse.gov/omb/information-regulatoryaffairs/regulatory-matters/#scghgs>.]

According to one analysis, “[t]he SCC estimates the benefit to be achieved, expressed in monetary value, by avoiding the damage caused by each additional metric ton (tonne) of carbon dioxide (CO₂) [released] into the atmosphere.” [Footnote 39: Ruth Greenspan Bell & Dianne Callan, *More than Meets the Eye: The Social Cost of Carbon in U.S. Climate Policy*, in *Plain English*, *Envtl. Law Inst.* 1 (2011). Available at: http://pdf.wri.org/more_than_meets_the_eye_social_cost_of_carbon.pdf.] The SCC estimates the dollar value of negative economic impacts and recognizes that every marginal ton of CO₂ carries with it a social cost of carbon. [Footnote 40: Richard Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 *Nature* 173, 173-175 (2014).] For the SCC, the current IWG interim estimates that each additional ton of carbon oxide emitted in 2020 will cost between \$14 and \$152 with a central value of \$51 per metric ton of CO₂ (measured in 2020 dollars). [Footnote 41: IWG 2021 Report] Several courts have rejected agency refusals to use the SCC as a means of evaluating the impact of GHG emissions that result from agency action. [Footnote 42: 42See, e.g., *Sierra Club v. FERC*, 867 F.3d 1357, 1375 (D.C. Cir. 2017); *Montana Env’t Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1094-99 (D. Mont. 2017) (rejecting agency’s failure to incorporate the federal SCC estimates into its cost-benefit analysis of a proposed mine expansion); *Zero Zone, Inc. v. U.S. Dep’t of Energy*, 832 F.3d 654, 679 (7th Cir. 2016) (holding estimates of the SCC used to date by agencies were reasonable); *High Country Conservation Advocs. V. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190-93 (D. Colo. 2014) (holding the SCC was an available tool to quantify the significance of GHG impacts, and it was “arbitrary and capricious to quantify the benefits of the lease modifications and then explain that a similar analysis of the costs was impossible”) (emphasis in original). An agency may not assert that the social cost of fossil fuel development is zero: “by deciding not to quantify the costs at all, the agencies effectively zeroed out the costs in its quantitative analysis.” *High Country Conservation Advocates*, 52 F. Supp. 3d at 1192; see also *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1200 (9th Cir. 2008) (finding that while there is a range potential social cost figures, “the value of carbon emissions reduction is certainly not zero”).]

Similar to the SCC, the SCM is a valuable tool that DOI should use to analyze and disclose the impacts of lifecycle methane pollution from prospective oil and gas leasing on society. The IWG estimated that each additional ton of methane emitted in 2020 will cost between \$670 and \$3,900 dollars, with a central value of \$1,500 per metric ton of CH₄ (measured in 2020 dollars). [Footnote 43: IWG 2021 Report] For the SCN, the current IWG interim estimates that each additional ton of nitrous oxide emitted in 2020 will cost between \$5,800 and \$4,800 with a central value of \$18,000 per metric ton of N₂O. [Footnote 44: Id]

RECOMMENDATIONS:

- DOI should use the social cost of greenhouse gases to evaluate impacts from oil and gas planning, leasing, and development and to inform decisions for the oil and gas program, including establishing a climate fee, as described in Section II(b) of these comments.
- DOI should integrate the social cost of greenhouse gases into all its oil and gas policies.

Comment Number: BOEM-EMAIL-32521-034585-27

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

f. DOI must utilize land use planning decisions to make progress towards climate goals.

DOI has the authority to adopt a programmatic as well as a localized approach to phase out and ultimately eliminate fossil fuel development on federal lands and waters. [Footnote 49: 43 U.S.C. §§1701-1785; 42 U.S.C. §§ 4321-4370h; 30 U.S.C. §§ 226(a), (b), (m); 43 C.F.R. § 3101.1-2 (2019); see also Gibbs Pleune, J., J.C. Ruple, and N. Wolff Culver, A Roadmap to Net Zero Emissions for Fossil Fuel Development on Public Lands, ELR 10734 (2020), available at: https://www.eli.org/sites/default/files/docs/elr_pdf/50.10734.pdf.] Resource Management Plans (RMPs) are a critical lever the federal government should use to ensure climate smart decision-making and progress towards overarching fossil fuel emission goals.

Agency field offices are required by NEPA to develop and evaluate a set of alternatives that reflect planning priorities, as well as to “revise land use plans based on ‘new data’ and ‘a change in circumstances.’” [Footnote 50: Id., citing 43 C.F.R. 1610.4-9 (2019), id. 1610.5-6; id. 1610.5-5] Throughout this process, they must consider all reasonable alternatives, including a range of options for minimizing, reducing, and offsetting climate change impacts and GHG emissions. [Footnote 51: See, e.g., *Wilderness Workshop v. Bureau of Land Mgmt.*, 342 F. Supp. 3d 1145, 1156 (D. Colo. 2018) (holding BLM failed to take a hard look at the severity and impacts of GHG pollution, specifically the indirect impacts of oil and gas combustion, in an RMP revision); *W. Org. Of Res. Councils v. Bureau of Land Mgmt.*, 2018 U.S. Dist. LEXIS 49635 at *53-54 (D. Mont., Mar. 26, 2018) (holding BLM needed to consider climate change impacts relative to the amount of coal available for leasing, consider the downstream combustion of coal, oil, and gas open to development, and consider a 20-year global warming potential rather than 100-year)]

To ensure alignment with the Biden Administration’s climate commitments, BLM should immediately require a no new leasing alternative as well as a net zero fossil fuel emissions alternative in all relevant land use planning processes and revisions. Additionally, BLM should develop and apply both nationwide and state-specific screening criteria to guide the selection of lands that may be offered for leasing. To assist in implementing this analysis, we have developed a framework to explain how achieving net zero fossil fuel emissions in any given field office is possible. This framework is attached as Appendix D1 and is referred to as the “net zero framework.” Appendix D2 presents a hypothetical application of the framework.

The net zero framework requires all land use planning processes with potential for fossil fuel development to follow a hierarchy of avoiding, minimizing, and offsetting emissions to ensure alignment with climate goals. BLM must immediately prioritize avoiding emissions by rapidly phasing down and ultimately eliminating new leasing and development. BLM should establish robust screening criteria throughout the RMP process to ensure all decisions adequately apply the multiple use mandate, including prioritizing the protection of important conservation values and cultural resources from leasing and development. These decisions must be consistent with efforts to conserve at least 30 percent of U.S. lands and waters by 2030 and to ensure a just and equitable transition for affected communities.

As federal fossil energy development is rapidly ramped down, land management decisions must prioritize minimizing fossil fuel emissions from any continuing operations as much as possible. Minimization tactics include implementing a phased approach to leasing, prioritizing development with minimal impact to natural systems, implementing technology-based measures to capture leaking emissions, and enabling the option for additional restrictions on fossil fuel development over time. It is crucial for BLM to require the full cost of emissions via the social cost of emissions to be incorporated into the fees tied to production, phased leasing and development, stipulations requiring methane control, and other measures.

After implementing all possible minimization tactics, BLM offices should consider measures to counteract the remaining emissions through increasing terrestrial carbon sequestration and maintaining existing carbon stocks.

The remaining federal fossil fuel emissions should be addressed through a combination of offsets, such as emissions avoided due to additional generating capacity from responsible renewable energy development on federal public lands and waters, and, as a last resort, purchasing accredited carbon offsets.

The net zero framework provides a mechanism for BLM to achieve net zero GHG emissions from fossil fuel development in any given planning area. This framework and approach may be scaled up to a regional or district level and is expected to evolve as national and programmatic strategies are developed and implemented. BLM should also work closely with relevant state and Tribal governments to ensure alignment and consistency with other jurisdictions' climate goals. The agency has a tremendous opportunity to ensure alignment with climate commitments moving forward as several relevant planning processes are not yet finalized [Footnote 52: Farmington Mancos-Gallop RMP Amendment (NM), Carlsbad RMP (NM), Eastern Colorado RMP (CO), and Rock Springs RMP (WY) are all at the Draft RMP stage], are subject to ongoing litigation [Footnote 53: See *Western Slope Conservation Ctr. v. Bureau of Land Mgmt.*, 1:20-cv-02787 (D. Colo. 2020) (challenging BLM's RMP for the Uncompahgre Field Office in Colorado based on lack of analysis for climate change impacts, amongst other claims).], or are on remand for consideration of climate impacts. [Footnote 54: Grand Junction Resource Management Plan (CO) is on voluntary remand. See *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 1:19-cv-02869 (D. Colo. 2019). Colorado River Valley Field Office RMP (CO) has been remanded by the court for consideration of climate impacts. See *Wilderness Workshop v. Bureau of Land Mgmt.*, 342 F. Supp. 3d 1145 (D. Colo. 2018).]

RECOMMENDATIONS:

- When drafting or revising land management decisions involving fossil fuel development, BLM should prioritize (1) avoiding new leasing and development and associated emissions as much as possible, and protecting natural and cultural resources from leasing and development, (2) minimizing emissions that occur, and (3) offsetting remaining emissions via terrestrial carbon sequestration, maintenance of existing carbon stocks, and increasing responsible renewable energy.
- To ensure progress towards zero emissions, fossil fuel-free public lands by 2050, all relevant NEPA processes should require a no new leasing alternative as well as an alternative that achieves net zero fossil fuel emissions by 2030 within the relevant field office, using the attached net zero framework as a model. [Footnote 55: See Appendix D1] The framework should be implemented to be consistent with efforts to conserve at least 30 percent of U.S. lands and waters by 2030 and to ensure a just and equitable transition for affected communities.
- Support Senator Bennet's Public Engagement Opportunity on Public Lands Act of 2020 (S. 4641). This bill would prohibit the leasing of any parcel which has not been specifically identified or evaluated in the NEPA documentation for a particular lease sale.

Comment Number: BOEM-EMAIL-32521-034585-43

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 15 14

Comment Excerpt Text:

Curbing methane emissions is a key component to achieving net zero emissions and combating the deleterious effects of climate change. We strongly urge BLM to support Rep. DeGette's Methane Waste Prevention Act of 2021, [Footnote 99: H.R. 1492, 117th Cong. (2021), available at: <https://www.congress.gov/bill/117th->

congress/house- bill/1492?q=%7B%22search%22%3A%5B%22H.R.+1492%22%5D%7D&s=1&r=1.] and defend its 2016 Waste Prevention Rule, [Footnote 100: 81 Fed. Reg. 83,008 (Nov. 18, 2016),] currently on appeal in the Tenth Circuit Court of Appeals. [Footnote 101: Wyoming v. Department of Interior, No. 2:16-cv-00285-SWS (D. Wyo. Oct. 8, 2020), appealed Dec. 21, 2020, Wyoming v. U.S. Dep't of the Interior, Nos. 20-8072 & 20-8073 (10th Cir.)] The Rule limits the amount of publicly owned natural gas that is wasted through venting, flaring, or leaking. Though aimed at preventing waste, the Rule would have substantial and immediate climate and public health benefits.

RECOMMENDATIONS:

- Defend the 2016 Waste Prevention Rule on appeal and immediately implement the Rule if it is upheld. Swift implementation of the Rule would ensure substantial and critical near-term reductions in methane waste.
- Support Representative DeGette's Methane Waste Prevention Act of 2021 (H.R. 1492). This legislation led by Rep. DeGette, would codify long-overdue, widely agreed upon, common-sense standards to reign in excessive waste of vented and flared gas on public lands. By curbing unnecessary venting, flaring, and leaks at oil and gas facilities, this bill will help protect public health, reduce potent greenhouse gas emissions, and recoup millions of dollars owed to the American taxpayers.

Comment Number: BOEM-EMAIL-32521-035416-5

Organization: Center for Biological Diversity

Commenter: Miyoko Sakashita

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

3. To the extent Interior uses the social cost of carbon, it must be revised upward

To the extent that Interior undertakes an analysis of the social cost of carbon, the Biden administration's \$51 per ton calculation of the social cost of carbon vastly underestimates the true cost of carbon and must be revised upward. Studies have demonstrated that the numeric value assigned to the social cost of carbon vastly underestimates the true cost. [Footnote 241: Ackerman, F. & E. Stanton, Climate Risks and Carbon Prices: Revising the Social Cost of Carbon, in Economics, vol. 6 (Apr. 4, 2012) (the social cost of carbon could be almost \$900/tCO₂ in 2010, rising to \$1,500/tCO₂ in 2050).] Interior's review must consider a more robust and scientifically defensible social cost of carbon.

The currently applicable interim social cost of carbon, social cost of methane and social cost of nitrous oxide, [Footnote 242: Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane and Nitrous Oxide (Feb. 2021) ("IWG TSD"), available at https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf] which are intended to be used in agency benefit-cost analyses, [Footnote 243: Id. at 3.] fail to consider the cost of many of the impacts of carbon pollution and resulting climate change. [Footnote 244: See Stern, N & Stiglitz, J. Social Cost of Carbon, Risk, Distribution, Market Failures: And Alternative Approach, National (Feb. 2021), available at <http://www.nber.org/papers/w28472>.] As the guidance itself acknowledges, these interim values are not based on current climate change literature and therefore underestimate societal damages from greenhouse gas emissions. [Footnote 245; IWG TSD at 4] Of particular concern is that ocean acidification is not accounted for in models used to calculate the social cost of carbon. [Footnote 246: Howard, Peter, Omitted Damages: What's Missing From The Social Cost Of Carbon (2014), available at http://costofcarbon.org/files/Omitted_Damages_Whats_Missing_From_the_Social_Cost_of_Carbon.pdf] While it is not possible to

accurately price the value of avoided greenhouse gas emissions, a more accurate calculation would require rely on very small, or even negative discount rates, [Footnote 247: See, e.g., Ackerman, F. & Stanton, E., *The Social Cost of Carbon*, 2 (Apr. 2010); Marc Fleurbaey & Stephane Zuber, *Climate Policies Deserve a Negative Discount Rate*, 13 *Chi. J. Int'l Law* 565 (2013); Arrow, Kenneth J. et al., *Should Governments Use a Declining Discount Rate in Policy Analysis*, *Review of Env'tl. Econ. & Pol'y* (2014); Weitzman, Martin L., *Why the Far-Distant Future Should Be Discounted at the Lowest Possible Rate*, *J. Env'tl. Econ & Mgt.* 36:201-08 (1998).] and use the best available science and analysis to evaluate the Global Warming Potential of each greenhouse gas pollutant. [Footnote 248: See, e.g., National Academies of Sciences, Engineering, and Medicine 2017. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*. Washington, DC: The National Academies Press; IPCC Working Group I, Fifth Assessment Report, *Climate Change 2013: The Physical Science Basis*, Chapter 8: Anthropogenic and Natural Radiative Forcing (2014) at 633, 711-712, 714 (Table 8.7), available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf (providing adjustments in note B for fossil methane; 85-87 times greater than carbon over a 20 year period, and 30-36 times greater during a 100 year period)]

Ultimately, however, putting a dollar value on the impact of a ton of greenhouse gas emitted is an impossible task: in the public health context it involves judging how much life, or a healthy life, is worth – such as how much more valuable a life may be without asthma, a heart attack, or the myriad other adverse health effects caused by greenhouse gas pollutants. [Footnote 249; E.g. Wilde, Oscar, *Lady Windermere's Fan, A Play About a Good Woman*, Act III (1892) (“LORD DARLINGTON. What cynics you fellows are! CECIL GRAHAM. What is a cynic? LORD DARLINGTON. A man who knows the price of everything and the value of nothing.”).] Putting dollar signs on environmental values — such as the continued existence of a species or ecosystem, functioning ecosystem services, viewsapes and soundscapes — is equally, if not more difficult. Moreover, certain benefits have consequences too complex to adequately reduce to a dollar figure: cleaner water and air leads to healthier and more productive people; a less polluted environment allows flora and fauna to thrive; and a healthier planet is simply invaluable. The result is that in cost-benefit analysis there is often a tendency to ignore, or not otherwise value, the most important things an agency has to consider, simply because it is difficult to put a monetary price on them.

If the agency is nonetheless determined to undertake a social cost of carbon analysis, rather than apply current harm-based models for the social cost of carbon that invariably and inherently undervalue impacts, the agency should consider instead using a figure calculated by modeling the price that greenhouses gases must be in order to achieve net-zero emissions by 2050. [Footnote 250: Stern, N & Stiglitz, J. *Social Cost of Carbon, Risk, Distribution, Market Failures: And Alternative Approach*, *National* (Feb. 2021), available at <http://www.nber.org/papers/w28472>; Kaufman, N., Barron, A.R., Krawczyk, W. et al. *A near-term to net zero alternative to the social cost of carbon for setting carbon prices*, 10 *Nat. Clim. Chang.* 1010–1014 (2020).]

Comment Number: BOEM-EMAIL-32521-035527-1

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Ensure agency decision-making processes properly account for all climate, ocean acidification and other impacts from oil and gas activities. The agency must consider impacts from extraction and combustion of fossil fuels, as well as the production and use of petrochemicals, which are derived from oil and gas. The production and

consumption of plastic, in particular, has substantial climate change impacts and results in other air, water and health effects.

Comment Number: BOEM-EMAIL-32521-035709-6

Organization: Environmental Defense Center

Commenter: Rachel Kondor

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In addition to the direct environmental risks, increased fossil fuel production and consumption will result in untenable climate change impacts. With regard to oil and gas development permits, we urge the Department to consider that there would likely be a “lag time” between the changes in the environment and the warming effect. Scientists now agree that “the climate system will continue to change for many decades (centuries for sea level) even in the absence of future changes in atmospheric composition.” [Footnote 7: Wigley, T.M.L., The Climate Change Commitment, *Science*, vol. 37, March 18, 2005; Meehl, G.A., et al, How Much More Global Warming and Sea Level Rise? *Science*, vol. 307, March 18, 2005; Karl, T.R. *supra*; Hasselmann, K., *supra*, Levin, K., *supra*] Some warn that we may be approaching the “point of no return.” [Footnote 8: Alley, R.B., Abrupt Climate Change, *Scientific American*, November 2004.] Accordingly, the pressure on modern society to cease contributing to climate change through greenhouse gas emissions is even greater than previously thought.

Comment Number: BOEM-EMAIL-32521-036835-6

Organization: Colorado Farm and Food Alliance

Commenter: Pete K

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Finally, addressing the climate crisis must be the frame through which any future fossil fuels leasing program is considered. Leasing reform must also be land use planning reform, in that decisions about what resources and activities are appropriate on public lands, at the national, state, regional and local levels, must all be driven by the need to move decisively away from fossil fuels and toward achieving a climate-positive balance from public lands management in this decade.

Any future allocation of federal lands or minerals for fossil fuels must include a meaningful accounting of the direct, indirect and cumulative climate impacts, and an actionable analysis of environmental and social consequences from those impacts so that they may be avoided, minimized, and mitigated.

Meaningful climate and consequence analysis should consider the indirect and cumulative climate impact of public lands fossil fuel development on communities and on other economic activity including, for instance, in the case of western Colorado, diminished water quality and quantity, more extreme weather and fire events, increased pest infestations and disease, climate-change driven crop failures, and declining snowpack, all of which are already becoming reality.

In other words, a reformed oil and gas and fossil fuels leasing program must ensure that going forward federal agencies take the requisite “hard look” per both obligation of the office and as demanded by the urgency of the climate crisis, in any planning, leasing, permitting, or revision of fossil fuel development on federal lands or minerals.

This is not only in order to better manage the public lands and ensure fair return to U.S. taxpayers within a

transparent and sustainable program, which it should do, but is also in keeping with the broader and more basic requirement to avoid wide-scale public and environmental harm.

Comment Number: BOEM-EMAIL-32521-036937-2

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 8 12

Comment Excerpt Text:

Interior should pursue concurrent action on three fronts to restore rationality to the leasing program. First, the agency should revise management plans to curtail leasing and prioritize conservation and other beneficial uses, with a goal of achieving zero, net-zero, or net- negative emissions by 2030. Second, Interior should strengthen mitigation requirements on any fossil-fuel extraction that occurs including restoring restrictions on methane pollution, groundwater contamination, and oil-spill risk and considering greenhouse gas offsets on fossil- fuel extraction. And third, Interior should adjust the fiscal terms of new and modified leases to account for the costs of climate change and ensure a fair return to taxpayers. Additional detail on these recommendations is provided below and in the attached Policy Integrity report from September 2020 titled “A New Way Forward on Climate Change and Energy Development for Public Lands and Waters.” [Footnote 6: Jayni Hein, Inst. for Pol’y Integrity, A New Way Forward on Climate Change and Energy Development for Public Lands and Waters (2020), available at <https://policyintegrity.org/publications/detail/a-new-way-forward- on-climate-change-and-energy-development-for-public-lands-and-waters>]

For any reforms that Interior pursues, it will be critical for the agency to support those reforms with strong analysis that adequately assesses both beneficial and adverse impacts. Because good analysis takes time, Interior should begin assembling its analytical tools as soon as possible including developing an improved energy substitution model that corrects the myriad failures of its existing MarketSim model. [Footnote 7: See Center for Biological Diversity v. Bernhardt, 982 F.3d 723, 736–40 (9th Cir. 2020) (detailing fundamental flaws in the MarketSim model and vacating Bureau of Ocean Energy Management’s approval of an offshore oil drilling and production facility in the Beaufort Sea for its reliance thereon)] The second section of these comments discusses the numerous analytical improvements that Interior should consider to support reforms to the leasing program. Policy Integrity plans to publish additional materials in the coming months on how Interior can legally and economically support long-overdue reforms.

Comment Number: BOEM-EMAIL-32521-036937-24

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

(7) Develop a policy for the appropriate treatment of GHG emissions and the use of the Interagency Working Group’s Social Cost of Carbon and Social Cost of Methane in environmental impact statements, consistent with legal precedent and best practices for agency decisionmaking.

Comment Number: BOEM-EMAIL-32521-036937-7

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Interior Should Impose Stringent Environmental Mitigation Requirements on Fossil- Fuel Extraction

For fossil-fuel extraction that does occur on federal lands and waters, Interior should strengthen mitigation requirements for both greenhouse gases and other environmental impacts to minimize risks of air and water pollution and alleviate impacts on climate change.

Interior has broad discretion to impose environmental mitigation requirements on fossil- fuel extraction, both through regulation and through individual mitigation requirements reflected in stipulations at the leasing or permitting stage. Indeed, Congress specifically provided that BLM, in overseeing energy extraction, “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” [Footnote 21: 43 U.S.C. § 1732(b). Other provisions of the Federal Land Policy and Management Act further emphasize BLM’s responsibility to act as a steward over the land. For instance, the statute defines “multiple use” as requiring BLM to make “judicious use” of federal lands without “permanent impairment of the . . . quality of the environment,” and for BLM to manage public lands in a manner “that will best meet the present and future needs of the American people.” Id. § 1702(c)] The Outer Continental Shelf Lands Act likewise authorizes BOEM to pursue “orderly development, subject to environmental safeguards,” [Footnote 22: Id. § 1332(3).] and requires the agency “to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.” [Footnote 23: Id. § 1332(6).]

Interior should exercise its mitigation authority by imposing tight controls on both onshore and offshore drilling both through regulation and stipulation. On the regulatory front, Interior should reestablish and strengthen regulations put in place during the Obama administration (and subsequently rolled back during the Trump administration) to reduce methane waste, [Footnote 24: Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 83,008 (Nov. 18, 2016). This rule was recently vacated by a federal court in the District of Wyoming; the decision has been appealed to the U.S. Court of Appeals for the Tenth Circuit. Attempts by BLM to regulate methane waste through regulation may be challenging until that appeal is decided] minimize groundwater contamination from hydraulic fracturing, [Footnote 25: Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16,128 (Mar. 26, 2015).] and reduce the risk of catastrophic oil spills from offshore drilling. [Footnote 26: Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Prevent Systems and Well Control, 81 Fed. Reg. 25,888 (Apr. 29, 2016).] Although those Obama-era rules were typically supported by strong cost-benefit analyses, Interior revised those analyses in rescinding the regulations in ways that were inconsistent with the best available science and economics— such as by disregarding all climate impacts that occur beyond the nation’s borders. [Footnote 27: See, e.g., *California v. Bernhardt*, 472 F. Supp. 3d 573 (N.D. Cal. 2020) (finding that BLM arbitrarily and unlawfully devalued climate impacts in attempt to support its rescission of the Waste Prevention rule).] In restoring and strengthening mitigation regulations, Interior should look to those Obama-era cost-benefit analyses as a starting point.

Interior should also consider applying stronger greenhouse gas mitigation and offset requirements at the permitting or leasing stage as a form of compensatory mitigation. The Council on Environmental Quality specifically authorizes agencies to consider “appropriate mitigation measures” for any project, [Footnote 28: 40 C.F.R. § 1502.14(e).] including “compensating for the impact by replacing or providing substitute resources or environments.” [Footnote 29: Id. § 1508.1(s)(5); see also Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings

of No Significant Impact, 76 Fed. Reg. 3843, 3848 (Jan. 21, 2011) (explaining that “many agencies develop and consider committing to mitigation measures to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts”)] And in its 2017 programmatic assessment of the federal coal program, BLM proposed that the agency “receive compensation for unavoidable impacts associated with carbon-based externalities from lessees in the form of a fee paid at lease issuance based on the units of coal produced,” which BLM would then use to “ensur[e] that the desired outcomes of compensatory mitigation are achieved.” [Footnote 30: BLM, Federal Coal Program, Programmatic Environmental Impact Statement-Scoping Report 6-17 (2017).]

A similar compensatory mitigation requirement in the context of the oil and gas program, by which developers would be required to offset some or all of their emissions as a condition of extraction, would reduce carbon pollution from existing drilling while also reducing drilling by shifting the costs of greenhouse gas pollution onto the producers who are responsible for creating them. [Footnote 31: See Michael Burger, A Carbon Fee as Mitigation for Fossil Fuel Extraction on Federal Lands, 42 COLUM. J. ENVTL. L. 295 (2017) (describing Interior’s authority to require mitigation of greenhouse gas impacts “beyond question” and explaining that “this approach would achieve the public benefit, economic efficiency, and environmental equity that come with internalizing the external costs of [fossil fuel] extraction.”).] Especially because many of the financial measures discussed in the next section to internalize externalities likely cannot be applied after the leasing stage, an offset requirement could be especially critical for reducing greenhouse gas emissions for lands that have already been leased. [Footnote 32: See Jamie Gibbs Pleune, John C. Ruple & Nada Wolff Culver, The BLM’s /Duty to Incorporate Climate Science into Permitting Practices and a Proposal for Implementing a Net Zero Requirement into Oil and Gas Permitting, 32 COLO. NAT. RES., ENERGY & ENVTL. L. REV. (2021), at 81–88 (arguing that an offset requirement could be imposed after leasing, at the application for permit to drill stage).]

Comment Number: BOEM-EMAIL-32521-037410-1

Organization: Southern Environmental Law Center

Commenter: Melissa Whaling

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

I. BACKGROUND

A. Severe Climate Change Impacts to the Southeastern Coast Necessitate Strong Action on Offshore Drilling

Indisputably, the extraction, production, and consumption of fossil fuels has been the primary contributor to the greenhouse gas accumulation in the atmosphere beyond natural levels, thereby causing climate change. [Footnote 3: Gabriel Blanco et al., Drivers, trends, and mitigation, in CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE, 351-411 (Ottmar Edenhofer et al. eds, 2014), https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_chapter5.pdf.] About 75 percent of total U.S. anthropogenic greenhouse gas emissions in 2018 originated from fossil fuels. [Footnote 4:] Energy and the environment explained: Where greenhouse gases come from, U.S. ENERGY INFO. ADMIN. (EIA) (last visited Apr. 15, 2021), <https://www.eia.gov/energyexplained/energy-and-the-environment/where-greenhouse-gases-come-from.php>. Recent research has confirmed that the oil and gas industry has had an even larger impact on climate change than previously thought. [Footnote 5: Benjamin Hmiel et al., Preindustrial 14CH₄ indicates greater anthropogenic fossil CH₄ emissions, NATURE (Feb 19, 2020), <https://www.nature.com/articles/s41586-020-1991-8>]

More powerful storms, rising seas, and increasingly commonplace flooding are just a few of the signs that the impacts of climate change have already arrived on the southeastern coast. Tidal flooding and the damage and

disruption it causes is becoming more regular in cities from Norfolk, Virginia to Savannah, Georgia. [Footnote 6: William V. Sweet et al., 2019 State of U.S. High Tide Flooding with a 2020 Outlook, NAT'L OCEANIC & ATMOSPHERIC ADMIN. (NOAA) (July 2020), [https://tidesandcurrents.noaa.gov/publications/Techrpt 092 2019 State of US High Tide Flooding with a 2020 Outlook 30June2020.pdf](https://tidesandcurrents.noaa.gov/publications/Techrpt%20092%2019%20State%20of%20US%20High%20Tide%20Flooding%20with%20a%2020%20Outlook%2030June2020.pdf).] Charleston, South Carolina, for example, experienced 89 minor tidal flooding events on 76 days in 2019, shattering the record set in 2015 of 58 minor tidal flooding events. [Footnote 7: Bo Petersen & Mikaela Porter, Charleston and the South Carolina Coast Flooded a Record 89 Times in 2019, POST & COURIER (Jan. 3, 2020), [https://www.postandcourier.com/news/charleston-and-the-south-carolina-coast-flooded-record-times-in/article 7c18ee5e-2e3b-11ea-8784-23ddbc8d4e0c.html](https://www.postandcourier.com/news/charleston-and-the-south-carolina-coast-flooded-record-times-in/article7c18ee5e-2e3b-11ea-8784-23ddbc8d4e0c.html).] In 2020, Charleston saw 68 minor tidal flooding events and the most major tidal flooding events—tides over 8 feet—ever recorded in a single year. [Footnote 8: Chloe Johnson, Charleston Recorded Second Highest Number of Tidal Floods in 2020, Most Ever Major Floods, POST & COURIER (Jan. 4, 2021), [https://www.postandcourier.com/news/charleston-recorded-second-highest-number-of-tidal-floods-in-2020-most-ever-major-floods/article ed736228-4e92-11eb-af25-67108736d76c.html](https://www.postandcourier.com/news/charleston-recorded-second-highest-number-of-tidal-floods-in-2020-most-ever-major-floods/articleed736228-4e92-11eb-af25-67108736d76c.html)] These increased flooding trends are indicative of the reality of rising seas that communities are struggling to adapt to up and down the southeastern coast. [Footnote 9: Analysis of tidal data for Charleston, S.C., for example, has shown that sea level rise and astronomical tides alone accounted for 75 percent of moderate tidal flooding occurrences in 2019, meaning that this increase in tidal flooding cannot be explained by regular water level variances.] Before the middle of this century, experts expect some areas like Charleston and Norfolk will experience over 180 days of tidal flooding in one year, equivalent to a flooding event every other day. [Footnote 10: William V. Sweet et al., Global and Regional Sea Level Rise Scenarios for the United States, NOAA (Jan. 2017), [https://tidesandcurrents.noaa.gov/publications/techrpt83 Global and Regional SLR Scenarios for the US final.p df](https://tidesandcurrents.noaa.gov/publications/techrpt83%20Global%20and%20Regional%20SLR%20Scenarios%20for%20the%20US%20final.pdf).] The National Oceanic and Atmospheric Administration's ("NOAA") 2017 Intermediate-High scenario curve projects between 2 and 2.5 feet of sea level rise along the South Atlantic by 2050, compared to baseline sea levels in the year 2000 (Figure 1).

[See attachment 1 for graph titled NOAA 2017 Relative Sea Level Rise Scenarios along the Coast of SELC's Region: VA, NC, SC, GA, and AL]

Figure 1. Projections of sea level rise along the southeastern coast from the NOAA 2017 sea level rise scenarios, projecting localized estimates of sea level rise relative to the year 2000 for tide gauges in Virginia, North Carolina, South Carolina, Georgia, and Alabama. From top to bottom, the scenarios are Extreme (green), High (light blue), Intermediate-High (yellow), Intermediate (grey), Intermediate-Low (orange), and Low (dark blue). [Footnote 11: William V. Sweet et al., Data: Global and Regional Sea Level Rise Scenarios for the United States, NOAA (Jan. 2017), <https://tidesandcurrents.noaa.gov/publications/techrpt083.csv>]

Extreme rainfall has also become more frequent and damaging throughout the Southeast. [Footnote 12: David R. Easterling et al., Precipitation Change in the United States, in CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, VOL. I, 207-230 (Donald J. Wuebbles et al. eds., 2017) <https://doi.org/10.7930/J0H993CC>] Hurricane Florence in 2018 dropped approximately 8 trillion gallons of rain on North Carolina, according to National Weather Service radar estimates, and accumulated nearly 36 inches of rainfall recorded at one gauge. [Footnote 13: Nat'l Weather Serv., Hurricane Florence: September 14, 2018, NOAA (last visited Apr. 14, 2021), <https://www.weather.gov/ilm/HurricaneFlorence>.] In a climate scenario where today's emission levels remain constant, the number of extreme rain storms in the Southeast could increase by two to three times the historic average by the end of the 21st century. [Footnote 14: David R. Easterling et al., supra note 12.] Before the end of the century, throughout the Southeast, extreme summer thunderstorms that typically result in 100- year flooding events are expected to drop between 40 and 80 percent more rain than today. [Footnote 15: Andreas F. Prein et al., Increased rainfall volume from future convective storms in the US, NATURE CLIMATE CHANGE (Dec. 2017), <https://doi.org/10.1038/s41558-017-0007-7>] The Southeast has already experienced several billion-dollar storms that have been at least partially attributed to climate change. [Footnote 16: Nat'l Ctr. Env't Info., Billion-Dollar Weather and Climate Disasters: Overview, NOAA (last visited Apr. 14, 2021), <https://www.ncdc.noaa.gov/billions>]

Even in the absence of climate change, the Southeast coast is particularly prone to strikes from tropical storms, [Footnote 17: Xing Chen et al., Variations in streamflow response to large hurricane-season storms in a southeastern U.S. watershed, *J. HYDROMETEOROLOGY* (Feb. 1, 2015), <https://doi.org/10.1175/JHM-D-14-0044.1>.] with some cities experiencing a return period of 1-2 years. [Footnote 18: Robert A. Muller & Gregory W. Stone, A climatology of tropical storm and hurricane strikes to enhance vulnerability prediction for the southeast U.S. coast, *J. COASTAL RSCH.* (2001), <https://www.jstor.org/stable/4300254>.] Climate change is increasing the risks of these storms; the Atlantic basin sees more major hurricanes (i.e., Category 3 or higher) today than it did before the 1980s. [Footnote 19: Peter J. Webster et al., Changes in tropical cyclone number, duration, and intensity in a warming environment, *SCI.* (Sept. 16, 2005), <https://doi.org/10.1126/science.1116448>] In addition, our warming climate is producing greater storm surge, [Footnote 20: Ning Lin et al., Physically based assessment of hurricane surge threat under climate change, *NATURE CLIMATE CHANGE* (Feb. 14, 2012), <https://doi.org/10.1038/nclimate1389>.] rainfall, [Footnote 21: See, e.g., Christina M. Patricola & Michael F. Wehner, Anthropogenic influences on major tropical cyclone events, *NATURE* (Nov. 14, 2018), <https://doi.org/10.1038/s41586-018-0673-2>.] and property damage [Footnote 22: Morris A. Bender et al., Modeled impact of anthropogenic warming on the frequency of intense Atlantic hurricanes, *SCI.* (Jan. 22, 2010), <https://doi.org/10.1126/science.1180568>] each time a hurricane hits. Climate change is also causing tropical storms to become less predictable, [Footnote 23: Hurricane trajectories are meandering and stalling more, making their behavior harder for meteorologists to predict. This was exemplified by Hurricane Sandy's abrupt left-hand turn towards the New Jersey coast in 2012 and Hurricanes Harvey and Florence's stalling over Houston, TX, and Wilmington, NC, respectively. See, e.g., Timothy Hall, Webinar: How Climate Change is Impacting Hurricanes, S. ALL. CLEAN ENERGY (May 30, 2018), <http://www.cleanenergy.org/2018/05/30/climate-change-impacting-hurricanes/>.] gain strength more rapidly, [Footnote 24: Kieran T. Bhatia et al., Recent increases in tropical cyclone intensification rates, *NATURE COMM'NS* (Feb. 7, 2019).] and withstand maximum intensity well outside the geographic "hurricane zone." [Footnote 25: Geophysical Fluid Dynamics Laboratory, Global Warming and Hurricanes, NOAA (last updated Mar. 29, 2021), <https://www.gfdl.noaa.gov/global-warming-and-hurricanes/>.] Hurricane season itself is also becoming longer, [Footnote 26: Id.] and the destructive potential of August storms, for example, is expected to increase by 40 to 50 percent by the end of the century. [Footnote 27: Barry D. Keim et al., Spatial and temporal variability of coastal storms in the North Atlantic Basin, *MARINE GEOLOGY* (Sept. 2004), <https://doi.org/10.1016/j.margeo.2003.12.006>]

As a result of these observed and projected effects of climate change, research predicts that the Southeast will suffer the harshest economic consequences from climate change compared to other regions in the U.S. [Footnote 28: See, e.g., Solomon Hsiang et al., Estimating economic damage from climate change in the United States, *SCI.* (June 30, 2017), <https://doi.org/10.1126/science.aal4369>] These impacts will be felt most acutely by frontline communities already facing other stressors, such as poverty and social injustices. [Footnote 29: CHESTER HARTMAN & GREGORY D. SQUIRES (EDS.), *THERE IS NO SUCH THING AS A NATURAL DISASTER: RACE, CLASS AND HURRICANE KATRINA* (2006). See also, e.g., Zack Colman & Daniel Cusick, 2 Hurricanes Lay Bare the Vulnerability of America's Poor, *SCI. AM.* (Oct. 1, 2018), <https://www.scientificamerican.com/article/2-hurricanes-lay-bare-the-vulnerability-of-americas-poor/>.] Under-resourced communities often lack the capacity to prepare for and adapt to climate disasters due to limited financial resources, as well as barriers to political participation and decision-making. [Footnote 30: Sylvia N. Wilson & John P. Tiefenbacher, The barriers impeding precautionary behaviours by undocumented immigrants in emergencies: The Hurricane Ike experience in Houston, Texas, USA, *ENV'T HAZARDS* (Mar 1, 2012), <https://doi.org/10.1080/17477891.2011.649711>] It is crucial that future actions by the Department consider both the severe climate change impacts the Southeast is already facing and the outsized threat this poses to our communities.

Comment Number: BOEM-EMAIL-32521-037855-2

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Core Principle #1: It is time to align management of the federal mineral estate with DOI's mission statement and put "conservation first."

The DOI mission statement [Footnote 1:

<https://www.doi.gov/about#:~:text=The%20Department%20of%20the%20Interior,and%20create%20opportunities%20for%20the>] begins with...:"[t]he Department of the Interior (DOI) conserves and manages the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people..." (emphasis added). This simple statement reflects the order of priorities under which the Department should exercise its authority for managing the federal mineral estate – conservation comes before management (or use). With "conservation first" as the priority, it is clear that exploitation of non-renewable fossil fuels on public lands must be managed in a way that actually conserves a broad spectrum of "the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people" and not just the mineral estate itself.

In the big picture, it is undeniable that the burning of fossil fuels, in general, including those extracted from the federal mineral estate, contribute significantly to the cumulative carbon emissions that are a primary cause of global climate change. Warming temperatures, sea level rise, prolonged droughts, spreading insect infestations, increasing frequency and intensity of catastrophic wildfires, and increasing frequency and intensity of major tropical storms – all caused by climate change fueled by carbon emissions – are already having devastating adverse impacts on "the Nation's natural resources and cultural heritage" that DOI is obligated to manage "for the benefit and enjoyment of the American people."

Because of these impacts, DOI leasing program reforms should focus on quickly reducing the total amount of fossil fuel extraction from the federal mineral estate to only that which is absolutely necessary and appropriate to support national security and economic interests as America transitions toward reliance on renewable energy over the next few decades. In practical terms, this means among other things:

- Quickly curtail fossil fuel extraction on public lands and the outer continental shelf (OCS) to mitigate the effects of climate change;

- In general, limit future federal oil and gas leasing to high production potential / low environmental risk locations to the extent possible; stop leasing in locations, whether onshore or offshore, that are low production potential / high environmental risk;

Section 2 - Environmental Justice, underserved communities

Comment Number: BOEM-EMAIL-32521-018389-6

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Invest in Planning for a Just Transition (infra at p. 34) – As part of its measures to reform the permitting program, and informed by its review of effects of oil and gas leasing on communities, Interior must implement a

plan that will ensure a just transition to clean energy that ensures Gulf communities do not shoulder the economic burdens of reform and that any changes advance environmental justice.

Comment Number: BOEM-EMAIL-32521-019684-6
Organization: Columbia University Center on Global Energy Policy
Commenter: Marianne Kah
Commenter Type: Universities/Colleges/Academia
Classification: Substantive

Comment Excerpt Text:

*Analyze the impact of the existing emissions / flaring and new rules on low-income groups and native communities. Environmental justice benefits should be included in any cost-benefit analysis.

Comment Number: BOEM-EMAIL-32521-019979-4
Organization: Western Leaders Network
Commenter: Jessica Pace
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive
Other Sections: 7 10 8

Comment Excerpt Text:

During this review, we encourage the administration to consider the following recommendations, including adopting a mandate for the program that recognizes that leasing is not mandatory and should only be allowed if and when consistent with the multiple-use principle; ensuring that environmental justice and equity are factors in the review and reform efforts; eliminating speculative leasing practices; closing loopholes that place the burden of reclamation costs on taxpayers and private landowners; updating fiscal policies so that companies pay fair rates for development; and pursuing reforms with the objective of achieving a clean and renewable energy future.

Comment Number: BOEM-EMAIL-32521-020685-3
Organization: Keystone Energy Board
Commenter: Mallory Huggins
Commenter Type: Energy Exploration and Production Companies and Associations
Classification: Substantive

Comment Excerpt Text:

A BALANCED APPROACH TO SOLUTIONS

All climate solutions for public lands must consider emissions, the impact on wildlife, and the impact – including economic – on the community. Every solution has potential benefits and drawbacks; drawbacks should be mitigated and their burden/impact fairly shared.

Our recommendations:

-Clearly and broadly define “stakeholder” in public engagement efforts to ensure input from a wide range of perspectives.

-Establish a process to evaluate and publicly communicate decisions made about public lands, including the rationale for those decisions, and their implications for each stakeholder group.

-Be more transparent about resource allocations by requiring the development and public release of a Resource Management Plan for every national park and monument within five years of establishment and require its update every five years thereafter.

-Audit the skill sets and expertise of career staff to ensure that, as staffing gaps from the prior Administration and the Bureau of Land Management move are addressed, staff is carefully rebalanced with diverse voices (in terms of race, ethnicity, gender, disability, and other factors related to lived experience and identity) and perspectives (in terms of areas of expertise).

-Honor the perspectives of environmental justice leaders and communities by providing guidance and support to bureaus to realize the protections of the National Environmental Protection Act.

Comment Number: BOEM-EMAIL-32521-020687-3

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Gwich'in people call the Coastal Plain "The Sacred Place Where Life Begins" and have relied for thousands of years on the Porcupine Caribou Herd that use it as their calving and nursery grounds. Oil and gas activities threaten to alter the caribou migration and population and destroy the Coastal Plain's natural values. Risking the way of life of the Gwich'in and other Indigenous peoples who rely on those values is a significant environmental justice issue.

Comment Number: BOEM-EMAIL-32521-023161-12

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

Ensuring the availability and quality of clean water for rural communities

The availability of fresh water is a growing concern in the increasingly deep and persistent drought seen across much of our region. The continued use of these resources by the oil and gas industry is incompatible with livable communities and other uses critical to human wellbeing such as farming and ranching. Most of the water used in our region is claimed by the agricultural industry — 60 percent compared to the one percent used by the oil and gas industry. But a key difference is that water used for hydraulic fracturing is usually used to extinction, removed permanently from the hydrologic cycle that supports all life on this planet. This is because the water used in hydraulic fracturing, when returned to the surface as flow-back and/or produced water, has become so contaminated that it must be disposed of, usually by being injected in underground disposal wells. This means that the freshwater used by the oil and gas industry can impact the total freshwater available much more dramatically than water used by other industries. In addition, spills can result in ground and surface water contamination. Soil contaminants can percolate over time into the underlying aquifer. And if well casings fail or vertical cracks are

created that lead up to overlying aquifers, ground water can be contaminated by fracking.

In order to account for, and reduce, the incredible amount of scarce water used by the oil and gas industry, we urge the BLM to institute a system of cradle-to-grave management for water used by operators on federal lands, or operators using publicly owned water. The BLM should impose requirements on industry to reuse a percentage of the produced water from their wells to steadily decrease the industry's depletion of available fresh water. This will also reduce the volume of produced water disposed of in injection wells which treat underground aquifers as waste dumps. There is good reason to believe many of these deep aquifers would be economical water sources to meet human needs in a future increasingly dominated by persistent drought and climate change. As an example, Mexico City has been working to develop an aquifer over a mile deep to support the needs of its growing population.

Comment Number: BOEM-EMAIL-32521-025899-28

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

IV. Agencies Must Analyze and Disclose the Impacts of their Decisions on Vulnerable Populations and Public Health

The PEIS should analyze and disclose the impacts of federal fossil fuel leasing and permitting on vulnerable populations and public health.

A. Vulnerable populations

CEQ has recommended that federal agencies should incorporate environmental justice principles into their programs, policies, and activities, [Footnote 96: Council on Env'tl. Quality, Exec. Office of the President, Memorandum for Heads of Federal Departments and Agencies, Final Guidance for Federal Departments and Agencies on Consideration of GHG Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews 23 (2016), available at:

https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf 2016 (hereinafter, 2016 CEQ Final Guidance)] Federal agencies are required to consider environmental justice impacts pursuant to NEPA as directed by Executive Order 12,898, "Federal Actions to Address Environmental Justice in Minority Populations," which was issued to ensure that the environmental consequences of federal actions do not unduly fall on minority and low-income populations. [Footnote 97: Exec. Order No. 12,898, 59 Fed. Reg. 32 (Feb. 11, 1994), available at: <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>] Minority and low-income populations are most severely impacted by climate change because they live in places "more susceptible to climate change and in housing that is less resistant; lose relatively more when affected; have fewer resources to mitigate the effects; and get less support from social safety nets or the financial system to prevent or recover from the impact." [Footnote 98: See Climate Change and Poverty: Report of the Special Rapporteur on Extreme Poverty and Human Rights (2019), available at: https://srpoverty.org.files.wordpress.com/2019/06/unsr-poverty-climate-change-a_hrc_41_39.pdf.] Agencies that make decisions impacting climate change should consider environmental justice because any adverse effects of GHG emissions or climate change are exacerbated in these vulnerable populations. [Footnote 99: Douglas Fisher, Climate Change Hits Poor Hardest in U.S., SCIENTIFIC AMERICAN (May, 29, 2009), available at: <https://www.scientificamerican.com/article/climate-change-hits-poor-hardest/>.]

Comment Number: BOEM-EMAIL-32521-027661-4

Organization: Alaska Wilderness League and Multiple Other Environmental Organizations

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 1.2

Comment Excerpt Text:

The Reserve's globally significant habitat and polar bears, caribou, millions of migratory birds, and numerous other species are already being impacted by climate change and could be further adversely impacted by oil and gas development and infrastructure. Impacts to villages and subsistence, particularly the community of Nuiqsut, are already occurring as oil development has expanded across the region and present serious environmental justice concerns. These impacts are also being further exacerbated by climate change impacts, such as coastal erosion, thawing of permafrost, and reduced sea ice.

Comment Number: BOEM-EMAIL-32521-030652-4

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

As the Department works to rapidly promote this shift away from fossil fuels, the workers, communities, Tribes, municipalities, and states that are currently reliant on oil and gas for revenue and jobs will need proactive help and assistance to ensure that the transition occurs in an equitable and just way. The Department should proactively pursue and support policies that support this transition. This will involve a suite of policies that recognize systemic problems related to environmental justice and provide fair fiscal transition to workers and communities dependent on the fossil fuel industry. Those policies could include job training opportunities, incentivizing economic development in prioritized communities, restoring degraded lands, remediating orphaned fossil fuel sites, and furnishing direct funds to assist communities that have relied on fossil fuel revenue for essential services.

Comment Number: BOEM-EMAIL-32521-035316-4

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

API agrees that these shared goals should not be met without addressing outstanding environmental justice issues or by creating new societal burdens for communities and workers as we seek to meet the demand for affordable, reliable, and cleaner energy and have a positive impact on the communities in which we operate. The oil and natural gas industry is essential to supporting a modern standard of living for all by ensuring that communities have access to affordable, reliable, and cleaner energy. API's top priority remains public health and safety, and our member companies have well-established policies in place for proactive community engagement [Footnote 7: ANSI/API BUL 100-3 1ST ED (2014) Community Engagement Guidelines; <https://www.apiwebstore.org/publications/item.cgi?08980f40-f946-4322-a98f-37976a9cd841>] and feedback aimed at fostering a culture of trust, inclusivity, and transparency. We believe that all people should be treated fairly, regardless of race, color, national origin, or income, with respect to the development, implementation, and

enforcement of environmental laws, regulations, and policies. Several federal agencies and departments have initiatives to address environmental justice; DOI should collaborate within the federal family as it addresses this issue. In the meantime, API supports the following environmental justice principles:

- Increased racial, national origin and socioeconomic diversity of all stakeholders involved in the environmental policy development process.
- Development of enhanced risk communication tools and increased usage of those tools to inform businesses and communities on how to manage and/or reduce risks in operation areas.
- Development and application of the best and publicly available scientific methods to define the relationship between chemical stressors, non-chemical stressors, and social determinants of health.
- Use of community monitoring as a tool to better understand sources of emissions and potential impacts and mitigation measures.
- The development of improved decision-making tools.

We also believe that environmental justice is supported by balancing economic benefits that have helped fuel growth and prosperity, and common-sense regulations to manage potential environmental and health related risks. This is particularly true for the Gulf Coast states, for instance, where a recent ICF study [Footnote 8: <https://www.lmoga.com/assets/uploads/documents/LMOGA-ICF-Louisiana-Economic-Impact-Report-10.2020.pdf>] concluded that,

“Louisiana’s economy receives significant contributions from oil and gas industry activity in the state. State GDP is heavily influenced by oil and gas industry generated income, and the industry supports approximately one out of every nine of the state’s jobs, many of which provide annual wages which are significantly above the state average. Oil and gas activity also supports Louisiana residents and businesses through indirect and induced economic impacts, further reinforcing the importance of the industry to the state’s economy.”

The same is true for many Western states. Development on Federal lands promotes investment into rural areas where State and local economies depend on drilling and development for jobs, continued economic prosperity and revenue generated from state severance tax and other local taxes generated from such projects. According to a recent University of Wyoming study [Footnote 9: <https://www.wyoenergy.org/wp-content/uploads/2020/12/Final-Report-Federal-Leasing-Drilling-Ban-Policies-121420.pdf>], “a moratorium on new leases for oil and gas development on federal lands or a drilling ban would significantly reduce oil and tax revenues and economic growth” in Western states including Alaska. As New Mexico Governor Michelle Lujan Grisham confirmed in a recent letter [footnote 10: <https://www.heinrich.senate.gov/press-releases/heinrich-lujan-welcome-department-of-interiors-decision-to-return-to-standard-permitting-process-for-activities-on-public-lands-including-energy-development>] to DOI, “...an extended and indefinite suspension would have significant impacts on our workforce and state funding for education and creates unnecessary uncertainty for New Mexico’s state and local tax revenues.”

Comment Number: BOEM-EMAIL-32521-035897-3

Organization: Conservation Voters of South Carolina

Commenter: Cassie Ratliff

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Offshore drilling would also threaten our state's fisheries and the local communities who depend on them for their livelihood and subsistence fishing, such as the Gullah Geechee. A spill like BP's Deepwater Horizon in 2010 in the Gulf would cause irreparable damage to South Carolina's coastal and Sea Island communities and the natural resources upon which they depend. Even worse, drilling advocates often tout the development of onshore infrastructure and refineries in marginalized communities, who already bear the disproportionate impacts of climate change and pollution.

Comment Number: BOEM-EMAIL-32521-036534-2

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

At the point of origin, most drilling happens primarily in Latino, Black, and Indigenous communities. One example is Los Angeles, the largest urban oil field in the nation with over 3,000 oil and gas wells. Latinos and other communities are too frequently exposed to toxic emissions and spills. Our communities often live near offshore drilling, ports, refineries, and other heavily polluted areas. Oil and gas development is worsening COVID-19. [Hyperlinked: https://envirn.org/wp-content/uploads/2021/01/COVIDFossilFuels_Final.pdf] Air pollution from oil and gas increases asthma risk and severity of respiratory diseases like COVID. Hispanic children are twice as likely to die from asthma as white children, [Hyperlinked: <https://hispanicaccess.org/news-resources/research-library/item/1181-2021-conservation-toolkit-a-guide-to-land-water-and-climate-issues-and-the-impact-on-latino-communities>] and communities of color have higher COVID-19 hospitalization and death rates than white communities. At the point of use, oil and gas causes local pollution and threatens the cardiovascular health of communities that live near highways and other heavy vehicle areas - which are again disproportionately people of color. Gas is also a threat within the home, increasing asthma rates in homes with gas-powered appliances.

In the Inland Empire, 80% of students attending school within 1 mile of oil and gas wells are non-white, and over 60% are Hispanic. These communities face health problems from contaminated air. But when community members asked for translation so they could participate in an oil and gas leasing review – the BLM said no. In addition, due to lax rules, oversight, and insufficient resources, these communities rarely receive help to address the impacts of development - even when they are identified in advance.

Comment Number: BOEM-EMAIL-32521-036534-7

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 16

Comment Excerpt Text:

We were excited to see the President's FY2022 Budget Request include increased funding for reclamation and support for continued investments. These investments should also follow the promise made by the Biden campaign to provide at least 40% of funds to minority and socially disadvantaged communities - targeting these remediation funds in places like Farmington and Los Angeles to address the unequal impacts communities of color already face from development.

Comment Number: BOEM-EMAIL-32521-036534-8

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In the atmosphere, oil and gas emissions accumulate as greenhouse gases and trap heat on the earth's surface, causing climate change and ocean acidification. Latinos and other communities of color are disproportionately vulnerable to the wildfires, droughts, storms, floods, loss of food sources, and other natural disasters resulting from the climate crisis and a deteriorating ocean. From start to finish, oil and gas development feeds environmental racism.

If American public lands were their own country, the fossil fuels extracted on those lands would collectively make it the fifth-largest greenhouse gas emitter in the entire world.[Hyperlinked: <https://www.wilderness.org/trumpemissions>] Greenery absorbs pollution, so our shared natural lands should act as a carbon sink - not an emitter. It is egregious that instead we allow our public lands to cause such harm. We can, and must, do better. We must take a new approach that prioritizes the physical, mental, and social well-being of our communities and creates long-term solutions that consider future generations. The touchstone for any new oil and gas system must put people, their health and the health of their communities first. That is also why the BLM should adopt a new mandate for the oil and gas programs which affirmatively recognizes that oil and gas is not the sole or dominant use of our federal lands and waters. For too long, the department has prioritized this extractive development over more health- promoting and sustainable uses including conservation, recreation, water quality and quantity, and wildlife habitat - and that must change.

From HAF's community engagement and data collection [Hyperlinked: <https://hispanicaccess.org/news-resources/research-library/item/1181-2021-conservation-toolkit-a-guide-to-land-water-and-climate-issues-and-the-impact-on-latino-communities>] we know, Latinos highly prioritize clean air, clean water, protected public lands, and climate action. Latino public opinion stands strongly on the side of restricting oil and gas and requiring polluters to pay for the externalities they create. For example:

-82% of Latino voters in the West think oil and gas development on public lands should be stopped or strictly limited. They want their Representatives to emphasize conservation and recreation over energy development;

-95% of Latinos voters believe companies should be required to prevent leaks of pollutants, and 90% of all westerners believe companies should be required to pay for all clean-up after drilling;

-83% of Latino voters support transitioning to one hundred percent renewable energy over the next ten to fifteen years; and

-83% support a goal of protecting at least 30 percent of the U.S. lands and waters protected by 2030.

Latinos are great users of public lands, but we face barriers in accessing and enjoying the outdoors.[Hyperlinked: <https://hispanicaccess.org/news-resources/news-releases/item/979-new-report-shows-racial-and-economic-disparities-in-access-to-nature>] One of those barriers is directly caused by oil and gas development - every 30 seconds a natural area the size of a football field is paved over in the US, primarily for infrastructure and energy development. This nature loss is disproportionately happening in Black, Indigenous, Latino, and Asian communities. Our recent report, The Nature Gap, shows that Latinos and other communities of color are 3 times more likely to live somewhere nature deprived than white communities. The Department should affirmatively consider access to nature for Latinos and other communities of color as part of land management processes. BLM should prioritize decreasing the nature gap and avoid developing the lands closest to minority communities.

The Land and Water Conservation Fund (LWCF) is one program that has helped overcome some of the barriers faced by Latinos in the outdoors. HAF advocated for many years for full and permanent funding for LWCF, and

last summer we finally achieved it. LWCF funding is not threatened by a pause in oil and gas leasing. Regardless of new energy development restrictions, our communities will be able to enjoy their LWCF parks and treasured sites for generations to come and we agree that areas acquired with LWCF funds should not be developed for extractive development.

Oil and gas communities have already lost jobs, and future prospects are grim. So for these communities, pivoting to restoration, recreation and other sustainable land-use options is essential, and many places have already started. The transition from an extractive to a regenerative local economy must be just; re-dressing past harms and creating new relationships for an equitable future for the community.

Comment Number: BOEM-EMAIL-32521-037429-1

Organization: Western Energy Alliance

Commenter: Tripp Parks

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

One week after taking office, President Biden signed the “Executive Order on Tackling the Climate Crisis at Home and Abroad” [Footnote 1: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>] to ban new oil and natural gas leasing on federal lands and waters until the Department of the Interior (DOI) completes its comprehensive review. In implementing this Order and in DOI’s stakeholder forum on March 25th, DOI officials and outside interest groups have repeatedly stated that the federal oil and gas program is fundamentally broken and needs to provide a “fair return” to the federal government, while also addressing climate change and promoting environmental justice.

While the Alliance supports these three general goals, we urge DOI to reconsider moving forward with policies that will ban or curtail federal leasing and development as being directly contrary to the goals. Rather, oil and natural gas development and production on federal lands provides a great return at 29 times the investment, and increased production of domestic natural gas is one of the leading drivers of decreased greenhouse gas (GHG) emissions. Federal development should be expanded, not eliminated, in order to further the goals of environmental justice in rural otherwise disadvantaged communities most impacted by the contemplated policies.

Existing policies have enabled federal oil and natural gas production to increase substantially in the last decade at historically low levels of federal leasing, while technological advances by the industry ensure the footprint on federal lands is at its lowest level in decades, contra talking points from those who are fundamentally opposed to any oil and natural gas development.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees. Alliance members operate on federal lands and will be directly impacted by policy changes resulting from the comprehensive review being undertaken by DOI. We appreciate the opportunity to provide comments in conjunction with the March 25th stakeholder forum.

Comment Number: BOEM-EMAIL-32521-037429-11

Organization: Western Energy Alliance

Commenter: Tripp Parks

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Yet despite the fact that the vast majority of impact will be felt in eight western states, none of their elected representatives was invited to the stakeholder forum on March 25th. Further, rural counties with majority federal land ownership would experience the most direct impact from DOI's policies, yet no rural county commissioners or other local representatives were invited. By losing their economic base, previously sustainable rural communities would become newly disadvantaged. And the jobs lost would impact blue-collar jobs held by many diverse workers. These policies simply won't advance environmental justice.

It was a missed opportunity not to include such voices from the communities that will be actually impacted at the March 25th forum. Instead, the environmental justice panelists spent more time discussing refinery emissions in downtown Los Angeles than communities that will actually be impacted by the policies. While we are not discounting their points of view in general, refineries in Los Angeles have almost nothing to do with the federal oil and natural gas program. If DOI really wanted to address environmental justice as it relates to the president's plans to reduce or even eliminate oil and natural gas from federal lands, then the panel should have been focused on communities near and affected by federal development. In fact, eliminating development from overwhelmingly remote, rural federal lands located in the Rocky Mountain states and Alaska has the potential to displace it to nonfederal areas closer to urban centers with minority populations.

Comment Number: BOEM-TRANS-32521-000003-3

Organization: Alaska Federation of Natives

Commenter: Nicole Borromeo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

AFN also asks an equitable share of federal resources from executive order 14008 for disadvantaged communities be set aside for Alaska. Our state literally has 30 communities that are on the verge of falling into the sea or river during the next major fall or winter storms.

Comment Number: BOEM-TRANS-32521-000035-1

Organization: Deep South Center for Environmental Justice

Commenter: Beverly Wright

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

I urge secretary Haaland to undertake an environmental justice review of a federal oil and gas program, in order to address the racial discrimination that is center to oil and gas operations. For more than 50 years, the oil and gas industry has dominated the Gulf Coast region to the detriment of black communities engulfed in the massive amounts of toxic solutions, from oil refining and manufacturing, of plastics through oil and gas in the 2019 toxic release inventory, the petroleum sectors report the release of 11 million pounds of pollution in 25 Louisiana Parishes, much of this pollution is released from multiple facilities located in close proximity to black residents, these facilities release chemicals in the air that are scientifically known to cause cancer as well as damage heart and lung function which make it difficult to breathe and cause premature death. Unfortunately, the toxic pollution is made worse by the COVID 19 pandemic, a public by Harvard found that long term exposure to (indiscernible) fine airborne particles that include the oil and gas industry, increases the risk of COVID 19 hospitalization and death. Black people are more exposed to pollution at a rate that is 1.5 times greater than the pollution at large. Air pollution is not the only concern. We have reported on the massive amount of oil and gas waste from the BP oil

drilling disaster being exposed in landfills next to black communities. For example, three of the five landfills in Louisiana that received this waste are located in black neighborhoods, less known oil spills in the Gulf of Mexico add to this racial inequality. We are deeply concerned about the green house gas emission from the oil and gas industry that contributes to the climate crisis, each climate induced disaster, black and other communities of color suffer from the most suffer the most from stronger storms, increased flood events, sea level rise and dangerous heat waves. Recognize that it is our communities who are disproportionately exposed to extreme weather and less likely than white communities to recover from them. Oil and gas drilling off the coast of Louisiana has demonstrably changed the US border as a result of the sprawling network of pipelines that transport the oil and gas inland. Elevates sea level rise, and leaves entire communities in particular black and indigenous communities, vulnerable to the destruction. Destructive impacts of climate induced disorders. So demand heard from black communities from Louisiana cancer ally to environmental agencies, public hearings taking place across America is for a moratorium on pollution permits. A permit moratorium is essential to ensuring environmental justice and mitigating climate change. New Jersey lawmakers who recently passed a law to present permits in communities, as a well as members of congress who are working to pass the environmental justice for all acts, a bill that establishes a civil rights remedy for environmental racism. I had described the egregious secondary and cumulative impact from oil and gas leases which include poor health conditions in black communities and the existential threat of climate change, recommend that both environmental racism and racial inequity of climate vulnerability be taken into account in the Department of Interior's review of the federal oil and gas program. Our survival depends on it.

Section 3 - Other Environmental Considerations (not climate or EJ)

Comment Number: BOEM-EMAIL-32521-018389-32

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

Address risks from offshore fracking: BOEM should carefully examine the impacts of offshore fracking in the Gulf and elsewhere. This form of oil extraction increases the already numerous risks inherent in offshore oil and gas development. Water contamination, for example, is a significant risk of fracking because of the hundreds of chemicals used in fracking fluid. These chemicals pose risks to both human health and marine wildlife [Footnote 177: Theo Colborn et al., Natural Gas Operations for a Public Health Perspective, 17 HUMAN ECOL. RISK ASSESSMENT 1039 (Sept. 2011); Elise G. Elliot et al., A systematic evaluation of chemicals in hydraulic – fracturing fluids and wastewater for reproductive and developmental toxicity, 27 J. EXPOSURE SCI. ENV'T EPIDEMIOLOGY 90 (2017)]. [Footnote 178: Heather Cooley et al., Advanced Well Stimulation Technologies in California: An Independent Review of Scientific and Technical Information, CCST (Aug. 28, 2014), <https://ccst.us/reports/advanced-well-stimulation-technologies-in-california/>; Christopher D. Kassotis, et al., Endocrine-Disrupting Activity of Hydraulic Fracturing Chemicals and Adverse Health Outcomes After Prenatal Exposure in Male Mice, 156 ENDOCRINOLOGY 4458 (Dec. 1, 2015).] As operators turn to fracking to maximize production from existing wells, BOEM should develop comprehensive regulations to address the different risks posed by this technology in offshore wells.

Comment Number: BOEM-EMAIL-32521-018389-5

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Rigorously Review the Environmental Impacts of Oil and Gas Activity on the Gulf of Mexico and Gulf Coast Communities, (infra at pp. 3–16) – Interior should evaluate at least the following impacts:

- Oil spills and accidents;
- Noise and vessel traffic;
- Air emissions;
- Greenhouse gas emissions;
- Upstream impacts from refineries, petrochemical factories, and other facilities;
- Impacts of climate change in the region; and
- Impacts to environmental justice communities, including creation of new jobs focused on sustainability and conservation.

Comment Number: BOEM-EMAIL-32521-018572-2

Organization:

Commenter: Chris Lish

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

I value our public lands and waters and I strongly disapprove of how our public lands have been given over by previous administrations to oil companies for gas and oil drilling and hydraulic fracturing and other extreme methods of fossil fuel extraction. For far too long, the Bureau of Land Management (BLM) has wrongly elevated oil and gas leasing and development as the primary use of our nation's public lands, threatening our climate, wildlife, cultural treasures, and wild places. I encourage you to undertake a full and rigorous environmental impact study. If done correctly, it will verify the warnings from scientists there is no more room for new fossil fuel development if we are to have a chance at preserving a planet with a climate anywhere close to that under which human civilization has developed.

Comment Number: BOEM-EMAIL-32521-018769-5

Organization: U.S. PIRG and Environment America

Commenter: Len Montgomery

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Strengthen Environmental Review and Transparency

The environmental review requirements around leases should be strengthened to fully take into account all of the

risks, properly weigh the risks and take into account the climate costs of extracting and burning fossil fuels. The environmental review process should also be transparent.

Comment Number: BOEM-EMAIL-32521-019726-1

Organization: Wilderness Society Action Fund and cosigners

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

At the outset, we wanted to encourage DOI to proceed as expeditiously as possible with the review process. Doing so will go a long way toward resolving whatever uncertainty has emerged since President Biden issued Executive Order 14008, and will also allow DOI to focus its time and energy on implementing reforms that are adopted through this review process. Accordingly, we believe that DOI should promptly initiate a programmatic environmental impact statement (EIS) process and rulemaking to revise BLM's oil and gas regulations. This should not be the sole vehicle for reforming the program, however, as DOI has existing and wide-ranging authority to make meaningful change outside of the rulemaking process (e.g., through policy guidance).

Comment Number: BOEM-EMAIL-32521-019955-2

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 12 1.2

Comment Excerpt Text:

Conduct a programmatic review of the federal fossil fuel program to arrive at a course forward consistent with the United States' goal of limiting climate change to 1.5 degrees Celsius and President Biden's goal to protect 30% of US lands and waters by 2030. [Footnote 2: 86 FR 7619 (January 27, 2021)] Expeditiously operationalize the recommendations in the review utilizing enduring mechanisms such as rulemakings, programmatic RMP amendments, and mineral withdrawals.

Comment Number: BOEM-EMAIL-32521-023161-4

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We support the call for a programmatic environmental impact statement (PEIS) raised in comments from other organizations. We believe a programmatic review is necessary to fully understand the scope of required reforms.

Comment Number: BOEM-EMAIL-32521-023161-8

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 15

Comment Excerpt Text:

Prioritizing Public Health and Minimizing Air Emissions

BLM must prioritize public health and safety protection. Importantly, the agency should work with EPA to update air quality standards, improve air quality modeling and monitoring, and eliminate non-emergency venting and flaring at federal oil and gas wells. Achieving the standards of the 2016 Waste Prevention Rule should be a priority, at minimum. BLM should support passage of Rep. DeGette’s Methane Waste Prevention Act of 2021.

Comment Number: BOEM-EMAIL-32521-025899-2

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

I. The Department of the Interior should, following the publication of its forthcoming report on its oil and gas programs, commence a programmatic environmental impact statement covering all relevant aspects of these programs.

Due to the complexity of DOI’s oil and gas program, as well as the number of stakeholders involved, we believe that a truly comprehensive review of this program can be achieved via the commencement of a programmatic environmental impact statement (PEIS). As the Council on Environmental Quality (CEQ) has clarified in official guidance, a PEIS, pursuant to the National Environmental Policy Act (NEPA) [Footnote 11: 42 U.S.C. §4321, et seq] is a tool for addressing “the general environmental issues relating to broad decisions, such as those establishing policies, plans, programs, or suite of projects, and can effectively frame the scope of subsequent site- and project-specific Federal actions.” [Footnote 12: Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies: Effective Use of Programmatic NEPA Reviews, Dec. 18, 2014, at 9, available at https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Effective_Use_of_Programmatic_NEPA_Reviews_Final_Dec2014_searchable.pdf [hereinafter CEQ, PEIS Memo].]

A PEIS will help DOI achieve several process-related outcomes. First, it will help the agency ensure that its review is conducted in a transparent manner with multiple opportunities for public engagement. Second, it will allow the agency to set a timeline for completing each step of its review—an important issue for many stakeholders and governments (i.e., Tribal and state) whose decisions about future activities may rest upon the outcome and conclusions of DOI’s review. Third, it will allow the agency to utilize a framework of sufficient analytical breadth for comprehensively considering the many “direct, indirect, and cumulative impacts” of the federal oil and gas program. [Footnote 13: Id. at 10.] This high-level view is of utmost importance given the programs’ regional implementation, [Footnote 14: See generally Bureau of Land Management (BLM), Leasing, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing>.] relation to both domestic and global markets, and its cumulative contributions to anthropogenic emissions of GHGs. [Footnote 15: See Generally Merrill, Matthew D., et al, U.S. Geological Survey (USGS), Federal Lands GHG Emissions and Sequestration in the United States: Estimates for 2005-14, 2018, available at <https://pubs.usgs.gov/sir/2018/5131/sir20185131.pdf>] Finally, it will allow the agency to develop an analytical framework for meaningfully considering a range of alternatives for the oil and gas program, which, we believe, must inherently include consideration of an end to federal fossil fuel leasing as soon as possible.

A PEIS will also provide a framework for public engagement that will allow DOI to use every tool at its disposal to ensure the input of a broad cross-section of relevant stakeholders, affected communities, Tribal governments, and state governments. This is particularly important in the context of BIPOC communities, oil and gas dependent communities, and frontline communities situated near oil and gas development, all of whom may be reliant on or adversely affected by current federal oil and gas production in significant ways. In addition, a multitude of stakeholders including industry, conservationists, scientists, public land users, and the general American public

must also be given every opportunity possible to provide input into the management of lands that, by definition, are managed for their collective and ongoing benefit. [Footnote 16; 43 U.S.C. § 1702(c).] Given the continuing challenges posed by the COVID-19 global pandemic, public outreach must include multiple, targeted online forums, direct outreach to communities facing telecommunication challenges, extended comment timelines to allow for physical delivery of relevant materials, and as many other methods for alerting the general public to DOI's activities and providing opportunities for as much engagement as possible.

By assuring that public awareness and opportunities for engagement are secured at the outset of a PEIS process, DOI will be able to further assure that the conclusion of its process provides "a more comprehensive picture of the consequences of multiple proposed actions." [Footnote 17: CEQ, PEIS Memo, at 10] This "comprehensive picture" is especially important in the context of DOI's oil and gas program due to the complex positive and negative trade-offs that exist due to the confluence of prior agency administration of this program and the present and future urgency of rapidly reducing GHG emissions and, by extension, production and consumption, of the fossil fuels driving these emissions. The end result of such a process can and should provide the agency with an understanding of the many considerations that must be made while shifting the federal government out of the fossil fuel business—considerations that, if undertaken with a vision toward equity and community support, can facilitate a smooth and beneficial transition for Tribal governments, states, communities, and workers who remain overly economically dependent on oil and gas.

Though we view the need for a comprehensive analysis of the oil and gas program as a critical priority for DOI, we also urge the agency to set firm boundaries on the scope of its analysis in order to ensure timeliness and efficiency. Thus, we believe that a PEIS analyzing the following issues as they relate to the oil and gas program will prove sufficiently comprehensive to inform forward-looking policy decisions and reforms by the agency:

- An analysis of DOI's legal mandates for stewardship of public resources including its mandates to conserve and preserve those resources for future generations.

- An analysis of DOI's discretion to determine the best uses—including non-use or non-development—of public resources, including mineral resources, under existing legal authorities.

- An analysis of the near-term, medium-term, and long-term economic, social, and environmental effects on communities, states, and regions attributable to a moratorium on new leasing and including a formal end to new leasing to the extent allowed under existing legal authorities. This analysis should include consideration of the long-term benefits, ecological and economic, that may accrue from a change in management focus and uses of the landscape and its resources.

- An analysis of the near-term, medium-term, and long-term opportunities for DOI to work in partnership with other federal agencies, Tribal, state, and local governments and other key stakeholders, to facilitate a rapid, just, equitable, stable, and prosperous transition for communities whose economic livelihoods remain linked, to a significant degree, to ongoing oil and gas development and production from federal public lands.

- The development, in coordination with other relevant federal agencies, of a carbon budget for federal public lands, that determines the fair share of remaining U.S. emissions, under a 1.5° Celsius warming scenario, that could come from activities on federal public lands (including, but not limited to, existing and future oil and gas production).

- The development of an analytical framework for agencies to use to analyze and disclose the lifecycle GHG emissions and associated climate impacts resulting from their planning, leasing, and permitting decisions to assist the federal government in determining the effects those emissions would have on increasing or decreasing the likelihood of the U.S. staying within a carbon budget aligned with a 1.5° Celsius warming limit. This framework should also include tools for determining the incremental social costs associated with GHG emissions for

activities on federal public lands, including loss of biodiversity and carbon sequestration potential, ecosystem function, and alternative economic uses.

-The development of a government-to-government consultative framework for identifying how the work and analysis outlined above can be informed and influence by Tribal governments and their own resource management practices and goals.

One example of the process that DOI could review is the U.S. Forest Service's (USFS) completion of a PEIS for the Roadless Rule. [Footnote 18: U.S. Department of Agriculture, Final Programmatic Environmental Impact Statement, Feb. 2012, available at <https://www.fs.usda.gov/detail/planningrule/home/?cid=stelprdb5349164>.] The process was completed—from scoping to publication of a final PEIS—in eleven months. Despite the expeditious timeline, the USFS was able to conduct a complex, interdisciplinary, multi-stakeholder review of a major policy with implications across the entirety of the National Forest System. DOI could shape its analysis of the oil and gas program on this successful outcome and thereby limit any further unnecessary delays in determining DOI's future policy direction.

Finally, we also urge DOI to determine its capacity to carry out parallel processes for advancing necessary, interim reforms applicable to current oil and gas development activities on federal public lands. Many of these reforms have been studied by the GAO and identified repeatedly as areas of concern and in need of DOI attention and action. As discussed in more detail below, we urge DOI to proceed with these reforms as quickly as possible, in full compliance with applicable laws, in order to ensure less economic waste in the management of the federal estate, increased returns to U.S. taxpayers, and greater assurance that environmental harms caused by oil and gas development can and will be remedied by responsible parties.

Comment Number: BOEM-EMAIL-32521-028864-1
Organization: Powder River Basin Resource Council
Commenter: Shannon Anderson
Commenter Type: Non-Energy Industry and Associations
Classification: Substantive

Comment Excerpt Text:
The Need for Programmatic Review

We support the call for a programmatic environmental impact statement (PEIS) raised in comments from other organizations. We believe a programmatic review is necessary to fully understand the scope of required reforms.

In terms of timing, we believe it imperative that DOI completes the PEIS, and moves forward with revising its regulations and other initiatives necessary to carry out the decisions made by the NEPA process, as soon as practicable. To that end, we urge that any proposed regulatory or other reforms, such as Resource Management Plan (RMP) amendments or rulemaking, requiring notice and comment be issued concurrently with the Final PEIS. This approach is consistent with the process followed by BLM in completing the Solar PEIS. In that case, BLM issued a Record of Decision (ROD) incorporating final amendments to specific Resource Management Plans with solar energy resources within three months of the Final Solar PEIS. By proceeding in this manner, DOI can put its revised regulatory framework for oil and gas leasing and development into effect most expeditiously.

Comment Number: BOEM-EMAIL-32521-032355-16
Organization: Earth Justice and Multiple Additional Public Advocacy Groups
Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

The Comprehensive Review Should Address Non-Climate Impacts from Federal Oil and Gas Development.

While climate is a central and necessary element, the comprehensive review should address many other issues plaguing the onshore oil and gas program. Many of these have already been called out by the Biden administration for review. [Footnote 59: The White House, Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.] In addition, steps described above such as mineral withdrawals and RMP revisions that close lands to new leasing will also benefit non-climate resources. Further, BLM should:

1. Protect wildlife adversely affected by oil and gas development, such as greater and Gunnison sage-grouse, and enforce the Migratory Bird Treaty Act. Fully implementing and strengthening the 2015 greater sage-grouse RMP amendments, for example, is necessary to conserve the grouse and prevent it from being listed as threatened or endangered under the Endangered Species Act.

Comment Number: BOEM-EMAIL-32521-033513-1

Organization: Access Fund

Commenter: Erik Murdock

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

Access Fund's primary concern regarding the current leasing system is that the Department of Interior (DOI) has long allowed oil and gas developments to dominate land use planning and use. This practice conflicts with the Federal Land Policy and Management Act (FLPMA) and the fundamental principle that outdoor recreation such as climbing is one of the "major" uses of public lands, alongside grazing, energy development, fish and wildlife, rights-of-way, and timber production. In addition, the Multiple Use Sustained Yield Act (MUSY) mandates that public resources are managed "so that they are utilized in the combination that will best meet the needs of the American people ..." and that renewable resources shall be managed in a manner that avoids "impairment of the productivity of the land."

In other words, any primary use of federal public lands should not impair the productivity of another use. Federal law requires that energy development on federal land cannot impair the productivity of recreational use and associated economic activity. As the social and economic importance of outdoor recreation increases, it is critical that recreation assets such as climbing areas should be given the same level of consideration during land use planning as energy development. However, DOI has long facilitated rules and policies that prioritize oil and gas developments at the expense of other uses and the protection of invaluable natural and cultural resources.

Without a careful consideration of the interface between outdoor recreation and energy development, the benefits of outdoor recreation can be diminished. Resource extraction is certainly a valid and important use of federal lands, but the effects of industrial infrastructure (including access roads) on viewsheds, soundscapes, air quality, water quality, visitor safety, and sensitive cultural and natural resources need to be systematically analyzed and considered in order to satisfy FLPMA and MUSY, as well as protect America's outdoor recreation economy and quality recreation opportunities for future generations.

This programmatic review of the federal onshore oil and gas leasing program is a rare opportunity for the Interior

Department to modify their practices to better adhere to the mandate of FLPMA and protect unique outdoor recreation opportunities such as climbing.

Comment Number: BOEM-EMAIL-32521-034250-4

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

43 U.S.C. § 1702(c) (emphasis added).

Managing and planning for multiple use and sustained yield necessarily means that there must be a significant portion of public lands devoted to conservation in order to sustain public resources. Sustained yield does not support a focus on outputs from resource extraction or industrial uses. FLPMA specifically directs BLM to maintain in perpetuity “a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” FLPMA, 43 U.S.C. § 1702(h). Therefore, sustained yield requires BLM to sustain high-level yields of natural landscapes, scenic resources, clean air and water, wildlife, night skies, soundscapes, and opportunities for solitude, quiet-use, and primitive types of recreation.

BLM’s current oil and gas leasing policies recognize that oil and gas development is but one use of the public lands which should be balanced with other multiple uses and considered on equal ground. Instruction Memorandum 2010-117 explicitly states that in some cases, oil and gas leasing is inconsistent with protection of other public lands resources and values. IM 2010-117 goes on to affirm that, “Under applicable laws and policies, there is no presumed preference for oil and gas development over other uses.”

Courts have confirmed the agency’s discretion and obligation to consider protecting environmental values. For example, in *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683 (10th Cir. 2009), the court rejected the BLM’s argument that its analysis under the National Environmental Policy Act (NEPA) did not have to include an alternative that closed Otero Mesa to oil and gas drilling because doing so would violate the its multiple use mandate. *Id.* at 710. Noting that “a delicate balancing is required,” the court explained that “[d]evelopment is a possible use, which BLM must weigh against other possible uses – including conservation to protect environmental values.” *Id.* (emphasis in original).

BLM’s onshore oil and gas program must be modernized to ensure that the agency is meeting its broader obligations to the American people. Public lands should not be automatically ceded to the oil and gas industry upon demand. Where public lands and minerals are turned over to the oil and gas industry, other resources must be protected and responsible development diligently pursued.

Comment Number: BOEM-EMAIL-32521-034585-11

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

b. Process. Lay out a clearly defined process for the comprehensive review. We urge DOI to identify reforms to

the oil and gas program that can be completed using different types of mechanisms, balancing efficiency with durability:

1. Those that can be enacted swiftly through Instruction Memorandum, policy statement, or otherwise, without the need for rulemaking or legislation.
2. Those that require or would greatly benefit from rulemaking, a broader programmatic review and analysis under NEPA, [Footnote 9: See, e.g., 42 U.S.C. §§ 4331(b)(1), 4321, 4331, 4332(1) (requiring “to the fullest extent possible . . . the policies, regulations, and public laws of the United States [to] be interpreted and administered in accordance with the policies set forth in this chapter”).] or both. For those reforms that cannot be enacted swiftly, DOI should consider undertaking a programmatic environmental impact statement (PEIS) process with the purpose and need of aligning the oil and gas program with its duties under FLPMA.
3. Those that require or would greatly benefit from legislation.

Comment Number: BOEM-EMAIL-32521-034585-13

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

d. Timeline. Set a timeline that ensures efficiency, while also thoroughly considering input from outreach and engagement. Enact reforms that do not require programmatic review within one year. Complete any programmatic review by no later than early 2023.

Comment Number: BOEM-EMAIL-32521-034585-44

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

America’s Arctic is critical to combating the climate crisis. It is also bearing some of the worst impacts of climate change. DOI must address the lasting, damaging impacts of onshore and offshore oil and gas development in Alaska. We strongly support the letter submitted by Trustees for Alaska et al. calling for swift independent review of the Coastal Plain Leasing Program in the Arctic National Wildlife Refuge. We also strongly support the letter submitted by the Western Arctic Coalition calling for a new management framework for the National Petroleum Reserve – Alaska (Reserve) focused on meeting climate goals and protecting the remarkable wildlife habitat and biodiversity of the Reserve.

RECOMMENDATIONS:

- As directed by Executive Order 13990, complete independent review of the fundamentally flawed Arctic National Wildlife Refuge Coastal Plain Leasing Program and take swift action to protect these lands sacred to the Arctic Indigenous peoples.
- Ensure protections for the nationally and internationally recognized wildlife and wildlife habitats, wild rivers, subsistence, cultural resources, and wilderness lands and values of the National Petroleum Reserve – Alaska. Expedite review of the recently approved Willow Master Development Plan to assess its legality, climate

implications, and consistency with the public interest. Through amending the regulations that apply to the Reserve, DOI should implement a new management direction focused on meeting climate goals and protecting the extraordinary ecological values of the Reserve.

Comment Number: BOEM-EMAIL-32521-035416-7

Organization: Center for Biological Diversity

Commenter: Miyoko Sakashita

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

5. Evaluate the climate and environmental benefits of a managed phase out of offshore oil and gas.

There is not only need to end new offshore oil and gas leasing, but it is also essential that the U.S. manage a decline of fossil fuel production on existing leases. Producing the oil and gas from all existing leases is inconsistent with U.S. climate goals, and a phase out of existing oil and gas developments would put the U.S. on a better course. Interior's review should also fully consider the exercise of authority to suspend and/or cancel offshore leases based on "harm or damage to life, property, any mineral, national security or defense, or the marine, coastal, or human environment." [Footnote 287: 43 U.S.C. § 1334(a).]

Interior must come up with a plan to phase out offshore oil and gas development off the Gulf, Alaska, and Pacific Coasts. Each of these regions has experienced the detrimental impacts of climate change and should be prioritized for a managed decline that considers the welfare of the impacted communities—both families of industry workers and communities living among refineries and other infrastructure.

Interior should consider a multi-year plan to suspend activities under existing leases (and ultimately cancel the leases). The OCS Lands Act provides sufficient authority to do so. In particular, the Act provides "for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit" when "in the national interest;" or when there is "a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), . . . or to the marine, coastal, or human environment." [Footnote 288: 43 U.S.C. § 1334(a)(1).] The regulations allow leases to be suspended for other reasons, including when necessary to carry out NEPA or other environmental review requirements. [Footnote 289: 30 C.F.R. §§ 250.173–250.175]

Once a suspension period reaches five years, BOEM can cancel a lease after a hearing upon finding that: (1) continued activity pursuant to that lease would "probably cause serious harm or damage to life (including fish and other aquatic life), . . . to the national security or defense, or to the marine, coastal, or human environment;" (2) "the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time;" and (3) "the advantages of cancellation outweigh the advantages of continuing such lease or permit in force." [Footnote 290: 43 U.S.C. § 1334(a)(2).]

a. Each of the planning areas with federal leases is eligible for a suspension and cancellation due to their environmental risks and damage.

As described above, the climate emergency caused by fossil fuel use is causing biodiversity loss, habitat destruction, public safety and health disruption, national security risks, human displacement and other unacceptable harms that threaten to accelerate and worsen. The climate crisis alone sufficiently justifies suspending and cancelling offshore oil and gas leases. As part of its evaluation of what leases to cancel, Interior should pay particular attention to undeveloped leases that the agency issued without a proper accounting of the

climate impacts. This includes leases issued pursuant to Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, and 256; Lease Sale 244 in Cook Inlet; and numerous leases in the Arctic Ocean, including the leases now held by Hilcorp, Alaska LLC pursuant to Lease Sale 144 that Hilcorp sought to develop via its Liberty project. Interior issued these leases without properly evaluating how new oil and gas leasing exacerbates the climate crisis or the climate benefits of leaving the oil to be extracted under these leases in the ground. [Footnote 291: See *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723 (9th Cir. 2020).] This is a serious error. As the Ninth Circuit recently recognized in rejecting Interior’s approval of Hilcorp’s Liberty project because the agency failed to properly evaluate lifecycle greenhouse gas emissions in reaching the “counterintuitive result” that that burning Liberty’s oil will reduce greenhouse gas emissions, “[i]f [the agency] concludes that such emissions will be significant, it may well approve another alternative . . . or deny the lease altogether.” [Footnote 292: *Id.* at 736, 740.]

Additionally, there are other serious harms stemming from offshore drilling activities in each of the planning areas—a representative sampling of these considerations and harm to a few of the most sensitive species are described here.

Gulf of Mexico Region

Offshore drilling takes a heavy toll on Gulf Coast communities and the environment. The industry’s negative impacts include oil spills, pollution, and wetlands loss, and contribute to climate change. The industry is dangerous for offshore-oil workers, whose risk of fatality is seven times higher than the national average, [Footnote 293: Centers for Disease Control and Prevention, *Fatal Injuries in Offshore Oil and Gas Operations — United States, 2003–2010, Morbidity and Mortality Weekly Report* (Apr. 26, 2013)] and the welfare of Gulf communities. For example, Port Arthur, Texas and an area called Cancer Alley, Louisiana, are Black communities that host several refineries and rank among in the highest categories of risk to exposure for cancer causing pollution. [Footnote 294: O’Rourke, et al., *Just Oil? The Distribution Of Environmental And Social Impacts Of Oil Production And Consumption*, *Annu. Rev. . Resour.* 2003. 28:587–617 (2003); Environmental Integrity Project, *Breakdowns in Air Quality* (Apr. 27, 2016); Earthjustice, *Community Impact Report: The Toll of Refineries on Fenceline Communities* (Oct. 2014); Southwest Workers Union, *The Oil Industry in the Gulf of Mexico: A history of Environmental injustices*, Aug. 2003; Environmental Integrity Project, *ACCIDENT PRONE: Malfunctions and “Abnormal” Emission Events at Refineries, Chemical Plants, and Natural Gas Facilities in Texas, 2009-2011* (July 18, 2012); James, W. et al. *Uneven Magnitude of Disparities in Cancer Risks from Air Toxics*, 9 *Int. J. Environ. Res. Public Health* 4365–4385 (2012).] The oil industry’s own studies have acknowledged its significant contribution to coastal destruction, making the region more vulnerable to storms and hurricanes. From 1932 to 2010, coastal Louisiana lost about 1.2 million acres, equating to coastal wetlands disappearing at a rate of about one football field per hour. [Footnote 295: Bureau of Ocean Energy Management, *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017-2022 Gulf of Mexico Lease Sales 249,250,251,252,253,254,256,257,259, and 261 Draft Environmental Impact Statement* at 3- 188 (2016); Rich, Nathaniel, *The Most Ambitious Environmental Lawsuit Ever*, *NY Times* (Oct. 02, 2014), http://www.nytimes.com/interactive/2014/10/02/magazine/mag-oil-lawsuit.html?_r=0.] The oil and gas industry admits that it is responsible for at least 36 percent of the total loss of this area, though the Department of the Interior has stated that the industry could be responsible for as much as 59 percent of the loss. [Footnote 296: Marshall, Bob, et al. *Losing Ground: Southeast Louisiana is Disappearing, Quickly*, *Scientific America* (Aug. 28, 2014); <http://www.scientificamerican.com/article/losing-ground-southeast-louisiana-is-disappearing-quickly/>.]

Offshore oil and gas activities in the Gulf of Mexico imperil the critically endangered Gulf of Mexico whale—recently identified as Rice’s, and formerly Bryde’s, whale—with extinction. [Footnote 297: Rosel, P.E., Wilcox, L.A., Yamada, T.K. and Mullin, K.D., “A new species of baleen whale (*Balaenoptera*) from the Gulf of Mexico, with a review of its geographic distribution.” *Marine Mammal Science*. (Published online: Jan. 10, 2021).] Once widely distributed, these whales now are restricted to northeastern Gulf of Mexico in a deep canyon below the Florida panhandle known as DeSoto Canyon. [Footnote 298: Širovic, Ana, Hannah R. Bassett, Sarah C. Johnson,

Sean M. Wiggins & John A. Hildebrand, Bryde's whales calls recorded in the Gulf of Mexico, 30 *Marine Mammal Science* 399-409 (2014); Soldevilla, Melissa S., John A. Hildebrand, Kaitlin E. Frasier, Laura Aichinger Dias, Anthony Martinez, Keith D. Mullin, Patricia E. Rosel & Lance P. Garrison, Spatial distribution and dive behavior of Gulf of Mexico Bryde's whales: potential risk of vessel strikes and fisheries interactions, 32 *Endangered Species Research* 533-550 (2017).] The best abundance estimate available for Gulf of Mexico whales is 51, although there may be even fewer. [Footnote 299: NMFS, U.S. Atlantic and Gulf of Mexico Draft Marine Mammal Stock Assessment Bryde's whale (2020).] The Deepwater Horizon spill hit the population hard: an estimated 48 percent of their habitat was oiled and the whales suffered an estimated 22 percent population decline from their pre-spill population size. [Footnote 300: Rosel, Patricia E. & Lynsey A. Wilcox, Genetic evidence reveals a unique lineage of Bryde's whales in the northern Gulf of Mexico, 25 *Endangered Species Research* 25:19-34 (2014); Deepwater Horizon Marine Mammal Injury Quantification Team (DWH MMIQT), Models and analyses for the quantification of injury to Gulf of Mexico cetaceans from the Deepwater Horizon oil spill. DWH NRDA Marine Mammal Technical Working Group Report (2015); Lent, Rebecca J., Letter from Rebecca Lent, Executive Director, Marine Mammal Commission, to Dr. Stephania Bolden, Branch Chief, Species Conservation Branch, National Marine Fisheries Service Southeast Regional Office, Re: Bryde's whale 12-month finding (NOAA-NMFS-2014-0101) (2017); Soldevilla et al. 2017.] One whale showed evidence of exposure to the Deepwater Horizon oil- associated nickel (17.2 ppm) and chromium (12.2 ppm), with high skin concentrations of these heavy metals. [Footnote 301: Wise, Catherine F., James T.F. Wise, Sandra S. Wise, W. Douglas Thompson, John Pierce Wise Jr. & John Pierce Wise Sr, Chemical dispersants used in the Gulf of Mexico oil crisis are cytotoxic and genotoxic to sperm whale skin cells, 152 *Aquatic Toxicology* 335-340 (2014).] Additional mortality and reduced fecundity are expected to occur for decades, and estimated time to recover to a pre-Deepwater Horizon baseline is 69 years. [Footnote 302: DWH MMIQT 2015; Soldevilla et al. 2017] In addition to catastrophic impacts like Deepwater Horizon, anthropogenic activities in the region associated with oil and gas development (e.g., pollution, noise, ship traffic) contribute to chronic habitat degradation for Gulf of Mexico Bryde's whales. [Footnote 303: Rosel & Wilcox 2014; Soldevilla et al. 2017] Oil and gas activity may be hindering the Gulf of Mexico whale recovery, as "[o]il platforms act as artificial reefs and modify the natural biota; high-speed service vessel traffic increases noise levels and risk of oil and leaks, and seismic surveying for exploration and oil field maintenance increases noise levels." [Footnote 304: Soldevilla et al. 2017] Given the heavily industrialized nature of Gulf waters and the already restricted habitat for these whales, scientists have emphasized the essentiality of accurately identifying and removing anthropogenic threats through protective measures (e.g., marine protected area establishment). [Footnote 305; Id] To conserve and recover the Gulf of Mexico whale, offshore oil activities should be phased out.

Pacific Region

Offshore oil and gas activities in the Pacific also threaten the California marine and coastal environment. Most offshore drilling is located in the Santa Barbara Channel. The Santa Barbara Channel itself is considered the "Galapagos of the North" due to the high diversity of species in the area. For example, this includes the world's largest aggregation of blue whales. Offshore drilling threatens endangered blue whales to noise disturbance, vessel traffic, and oil spills. Anthropogenic threats are preventing the recovery of blue whales. The most-recent abundance estimate for the Eastern North Pacific blue whale is 1,496 whales. [Footnote 306: Carretta, J.V. et al., U.S. Pacific Marine Mammals Stock Assessment Reports (2020) 2020b] This blue whale population has shown no signs of recovery, and removal of more than one blue whale will impede its recovery. [Footnote 307: Id] Three blue whales were reported struck by vessels between 2014 and 2018, and all were deaths. [Footnote 308: Carretta et al. 2020a.] Most ship strikes are never seen or reported. Rockwood et al. (2017), for example, estimated that ship strikes kill 18 whales annually on the U.S. West Coast. [Footnote 309: Rockwood, R.C., J. Calambokidis, & J. Jahncke. Correction: High mortality of blue, humpback and fin whales from modeling of vessel collisions on the U.S. West Coast suggests population impacts and insufficient protection, 13 *PLoS ONE* e0201080 (2018); Rockwood RC, Calambokidis J, Jahncke J, High mortality of blue, humpback and fin whales from modeling of vessel collisions on the U.S. West Coast suggests population impacts and insufficient protection, 12 *PLoS ONE* e0183052 (2017); Redfern JV, McKenna MF, Moore TJ, Calambokidis J, Deangelis ML, Becker EA, Barlow J,

Forney KA, Fiedler PC, Chivers SJ, Assessing the risk of ships striking large whales in marine spatial planning. 27 *Conserv Biol.* 292-302 (2013).] And a 2019 follow-up study concluded that even the 2017 study estimates of cryptic mortality from ship strikes were an underestimate. [Footnote 310: Rockwood, C and Jahncke, J. Management recommendations to reduce deadly whale strikes off California. Report for the National Oceanic Atmospheric Administration, the United States Coast Guard, and the Maritime Industry (2019).] On top of the threat of vessels, noise from drilling activities, pollution and oil spills threaten blue whales and other Southern California wildlife.

Additionally, the leases off California have outlived their safe and anticipated lifespan. There is significant risk of oil spills and other accidents given the age of the platforms, pipelines, and other infrastructure off California. For example, the Plains Pipeline oil spill in 2015 resulted from an old, corroded pipeline. [Footnote 311: Refugio Beach Oil Spill Trustees, Refugio Beach Oil Spill Draft Damage Assessment and Restoration Plan/Environmental Assessment (2020).] Thousands of gallons of oil from a pipeline servicing offshore platforms spilled closing fishing areas, killing hundreds of animals, and oiling wildlife habitat. [Footnote 312: Id] The antiquated offshore infrastructure in California is long past when it should be retired. Longer lifetimes for old reservoirs and wells increase the risk of failures of pipelines, well control or other equipment. Oil companies have been drilling on the Pacific Outer Continental Shelf for 30 to 50 years. [Footnote 313: See e.g., Draft EA at 1-1.

] Studies have shown that 30 percent of offshore oil wells in the Gulf of Mexico experienced well casing damage in the first five years after drilling, and damage increased over time to 50 percent after 20 years. [Footnote 314: Vengosh, A. et al., A critical review of the risks to water resources from unconventional shale gas development and hydraulic fracturing in the United States, 48 *Environmental Science & Technology* 8334-8348 (2014); Davies R.J. et al., Oil and gas wells and their integrity: Implications for shale and unconventional resource exploitation, 56 *Marine and Petroleum Geology* 239-254 (2014)] A study on offshore pipelines found that after 20 years the annual probability of pipeline failure increases rapidly, with values in the range of 0.1 to 1.0, which equates to a probability of failure of 10 to 100 percent per year. [Footnote 315: Bea, R., C. Smith, B. Smith, J. Rosenmoeller, T. Beuker, and B. Brown, Real-time Reliability Assessment & Management of Marine Pipelines. 21st International Conference on Offshore Mechanics & Arctic Engineering. ASME (2002).] Another study covering 1996-2010 found that accident incident rates, including spills, increased significantly with the age of infrastructure. [Footnote 316: Muehlenbachs, et al. The impact of water depth on safety and environmental performance in offshore oil and gas production, 55 *Energy Policy* 699-705 (2013).] And massive wave action can alter pipeline stability, causing gradual displacement, especially in small diameter pipelines. [Footnote 317: U.S. Department of Transportation: Federal Highway Administration. Impacts of Climate Change and Variability on Transportation Systems and Infrastructure: The Gulf Coast Study, Phase 2 (2015).] Offshore pipelines can also face more corrosion than onshore pipelines due to higher temperature and pressure conditions that occur during the laying of these pipelines. [Footnote 318: Keuter, J. In-line Inspection of Pipes Using Corrosion Resistant Alloys (CRA). Rosen Technology and Research Center GmbH, Rosen Group, Germany; Standard Oil Company (1981) Drilling fluid bypass for marine riser. U.S. Grant. US4291772 A (2014).] This significantly increases the risk of an oil spill, which can have devastating impacts on marine life, including death and injury to fish, sea otters, and cetaceans. [Footnote 319: See e.g., Venn-Watson, S. et al. Adrenal Gland and Lung Lesions in Gulf of Mexico Common Bottlenose Dolphins (*Tursiops truncatus*) Found Dead following the Deepwater Horizon Oil Spill. 10 *PLoS ONE* e0126538 (2015) (finding that the Deepwater Horizon oil spill continues to kill dolphins years after the spill); Peterson, C. H., S. D. Rice, J. W. Short, D. Esler, J. L. Bodkin, B. E. Ballachey, and D. B. Irons, Long-term ecosystem response to the Exxon Valdez oil spill, 302 *Science* 2082-2086 (2003); Incardona, et al., Very low embryonic crude oil exposures cause lasting cardiac defects in salmon and herring, 5 *Scientific Reports* 13499 (2015).] This is a real concern for offshore oil and gas operations in federal Pacific waters as the platforms and associated infrastructure were originally constructed in the 1960s to 1980s and oil companies have been drilling since that time. [Footnote 320: See e.g., Draft EA at 1-1.] The development plans and environmental studies for most of these oil developments are woefully outdated and anticipated that the platforms would be decommissioned by now.

Alaska Region

Offshore oil and gas activities in Cook Inlet contribute to the imperilment of critically endangered Cook Inlet beluga whales. Cook Inlet beluga whales are in a precarious state with a declining population trend and no signs of recovery. New information reveals the population is “estimated to be smaller and declining more quickly than previously thought.” [Footnote 321: Sheldon, K. E. W. and P. R. Wade (editors) Aerial surveys, distribution, abundance, and trend of belugas (*Delphinapterus leucas*) in Cook Inlet, Alaska, June 2018. AFSC Processed Rep. 2019-09, 93 p. (2019).] Even before this new information, the federal government found that even one take every two years may impede recovery of this highly endangered species. [Footnote 322: NMFS, Stock Assessment Report: Beluga Whale (*Delphinapterus leucas*) Cook Inlet Stock (December 30, 2018) (“even one take every 2 years may still impede recovery”).] In 2015, Cook Inlet belugas became one of NMFS’s nine “Species in the Spotlight”—a program that prioritizes the agency’s efforts to protect those species at the highest risk of extinction. [Footnote 323: See NMFS, Species in the Spotlight Priority Actions: 2016–2020 Cook Inlet Beluga Whale *Delphinapterus leucas* (2015) (Species in the Spotlight).] NMFS considers these Species in the Spotlight a “recovery priority #1.” A recovery priority #1 species is one whose extinction “is almost certain in the immediate future because of a rapid population decline or habitat destruction, whose limiting factors and threats are well understood and the needed management actions are known and have a high probability of success, and is a species that is in conflict with construction or other developmental projects or other forms of economic activity.” [Footnote 324: Id] The recovery plan for the species in 2016, which lists oil spills, cumulative effects of multiple stressors, and noise as the threats of highest relative concern to the species. [Footnote 325: NMFS, Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*) at xiii (Dec. 2016) (Recovery Plan).] The species’ failure to recover may be due, at least in part, to oil and gas activity in their only habitat.

Scientific experts, including the federal Marine Mammal Commission, have repeatedly warned that noise pollution from oil and gas activities in the Inlet is likely to push Cook Inlet beluga whales closer to extinction. The Marine Mammal Commission has repeatedly urged federal agencies to “defer issuance of incidental take authorizations and regulations until it has better information on why the population has not showed signs of recovery . . . and has a reasonable basis for determining that authorizing additional takes by harassment would not contribute to or exacerbate [the species’] decline.” [footnote 326: E.g., Peter O. Thomas, Executive Director, Marine Mammal Commission letter to Jolie Harrison, Chief of Permits and Conservation Division, National Marine Fisheries Service (Aug. 5, 2019).]

Leases in the Arctic Ocean should also be suspended and cancelled due to the dangers they pose to Arctic wildlife and communities. Despite the fact that drilling in the Arctic Ocean poses massive risks and dangers, there remain 19 active leases in the Beaufort Sea comprising nearly 80,000 acres of active leases, three of which are producing. The Arctic Ocean is a vulnerable region, and home to polar bears, walrus, and bowhead whales. It is also home to Alaska Native communities that have depended for millennia on the ocean to support their culture and subsistence way of life.

Polar bears are especially vulnerable to oil and gas activity. Oil and gas activities increase threats to polar bears—both through increasing the carbon pollution that is causing the sea ice habitat the species needs to survive to disappear and through the harmful noise pollution, habitat destruction, and oil spills generated by these activities. The Southern Beaufort Sea (“SBS”) population is one of the most imperiled polar bear populations in the world, [Footnote 327: Hamilton, S.G. and A.E. Derocher. Assessment of Global Polar Bear Abundance and Vulnerability. *Animal Conservation* 22: 83–95 (2019) (An assessment of each subpopulation's vulnerability to climate change based on subpopulation size, amount of continental shelf habitat, prey diversity and changing ice conditions.).] and new research shows that reduced sea ice has adversely affected its behavior in a myriad of ways. [Footnote 328: Ware, J.V. et al.. *Habitat Degradation Affects the Summer Activity of Polar Bears* *Oecologia*. 184: 87–99 (2017)] A large-scale decline in the SBS population during recent decades has been attributed to sea-ice loss resulting from climate change. [Footnote 329: Obbard, M.E. et al. (eds.). *Polar Bears: Proceedings of the 15th Working Meeting of the IUCN/SSC Polar Bear Specialist Group*, Copenhagen, Denmark,

29 June–3 July 2009, at 52 (2010) (“Thus, the SB subpopulation is currently considered to be declining due to sea ice loss”).] The SBS subpopulation was estimated at 1,778 bears during 1972–1983, 1,526 bears in 2006, and 900 bears in 2010, representing an overall ~50 percent decline. [Footnote 330: PBSG. 2014. Southern Beaufort Sea. <http://pbsg.npolar.no/en/status/populations/southern-beaufort-sea.html>.] A new 2020 study affirms this population estimate. [Footnote 331: Atwood, T.C. et al. Analyses on Subpopulation Abundance and Annual Number of Maternal Dens for the U.S. Fish and Wildlife Service on Polar Bears (*Ursus maritimus*) in the Southern Beaufort Sea, Alaska. U.S. Geological Survey Open-File Report 2020-1087 (2020).] The 25 percent to 50 percent decline in SBS abundance between 2004 and 2006 is thought to have resulted from poor sea-ice conditions that limited access to prey over multiple years. Footnote 332: Bromaghin, J.F. et al. 2015. Polar bear population dynamics in the southern Beaufort Sea during a period of sea ice decline. *Ecological Applications* 25: 634–651 (2015).] Sea ice loss also increases energetic costs and nutritional stress, which “likely exacerbate[s] the physiological stress experienced by polar bears in a warming Arctic.” [Footnote 333: Durner, G.M. et al., Increased Arctic sea ice drift alters adult female polar bear movements and energetics, *23 Global Change Biology* 3460 (2017).; see also J.V. Ware et al., Habitat degradation affects the summer activity of polar bears, *184 Oecologia* 87 (2017) (finding that SBS bears were substantially more active than Chukchi Sea bears in lower quality habitat types and that on land, SBS bears exhibited relatively high activity associated with the use of subsistence-harvested bowhead whale carcasses).] Another recent study found that SBS polar bears cannot use a hibernation-like metabolism to meaningfully prolong their summer fasting period and that bears are susceptible to deleterious declines in body condition, and ultimately survival, during the lengthening period of ice melt and food deprivation. [Footnote 334: Whiteman, J.P. et al., Summer declines in activity and body temperature offer polar bears limited energy savings, *349 Science* 295 (2015).] Scientists at Interior interpret these observations as a prelude to mass polar bear mortality events in the future: “As changes in habitat become more severe and seasonal rates of change more rapid, catastrophic mortality events that have yet to be realized on a large scale are expected to occur.” [Footnote 335: Convention on Int’l Trade in Endangered Species, CONSIDERATION OF PROPOSALS FOR AMENDMENT OF APPENDICES I AND II, Sixteenth meeting of the Conference of the Parties, Bangkok (Thailand), (3-14 March 2013) Prop. 3 at 5.1.]

Noise pollution and harassment from oil and gas activity can harass these animals, which can cause harmful energy expenditure. Harassment that results in movement could lead to significant metabolic costs, especially if the metabolic response is sustained over an extended period of time. [Footnote 336: Watts, P. D. et al., Energetic output of subadult polar bears (*Ursus maritimus*): resting, disturbance, and locomotion, *98 Comparative Biochemistry and Physiology Part A: Physiology* 191 (1991)] Female polar bears that are energetically stressed may forgo reproduction, rather than risk incurring the energetic costs of an unsuccessful reproductive process, and the persistent deferral of reproduction could cause a declining population trend, further threatening a species with an intrinsically low rate of growth. [Footnote 337: Schliebe, S. et al., Range-wide status review of the polar bear (*Ursus maritimus*) at 155 (2006); Schliebe, S. et al., Effects of sea ice extent and food availability on spatial and temporal distribution of polar bears during the fall open- water period in the Southern Beaufort Sea, *31 Polar Biology* 999 (2008).] Polar bears are also at significant risk of oil spills. The bears must regularly groom themselves for thermoregulation purposes, meaning they will ingest oil on their fur; in experiments done on oil-exposed bears, all the subjects were dead within a month. [Footnote 338: St. Aubin, D. J. Physiological and toxic effects on polar bears, in *SEA MAMMALS AND OIL: CONFRONTING THE RISKS* 235 (J.R. Geraci & D.J. St. Aubin eds., 1990) (St. Aubin, Physiological and toxic effects on polar bears).] The SBS population has been specifically highlighted as one of the most likely to suffer significant population-level impacts from an oil spill. [Footnote 339: Schliebe et al. 2006; Schliebe et al. 2008] Ringed seal numbers would likely plummet as well, making substantially less food available for already nutritionally stressed polar bears. [Footnote 340: 76 Fed. Reg. at 13,474] The long-term effects of an oil spill could be much greater, as polar bears are biological sinks for pollutants. [Footnote 341: Norstrom, R. J. et al., Organochlorine contaminants in Arctic marine food chains: identification, geographical distribution and temporal trends in polar bears, *22 Environmental Science and Technology* 1063 (1988).] For example, toxins could bioaccumulate in polar bears after eating contaminated prey for years after the original spill. [Footnote 342: Id.; Schliebe et al. 2006]

Bowhead whales are also threatened by oil and gas activity. These whales are an endangered species, and there are about 16,000 whales in the Western Arctic stock. [Footnote 343: Muto, M. M., et al, Alaska marine mammal stock assessments, 2019. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-404, 395pp. (2020).] Bowhead whales migrate from the Bering Sea to the Beaufort Sea where they spend the summer from June through mid-October. [Footnote 344: Id] Researchers warn that “offshore oil development, increasing shipping traffic, changes in the Bering Sea ecosystem, sea ice retreat, and possibly killer whale predation within its range could impact this bowhead population and should be carefully monitored.” [Footnote 345: George, J. C., et al., Abundance and population trend (1978-2001) of western arctic bowhead whales surveyed near Barrow, Alaska, 20 Marine Mammal Science 755-73 (2004).] Federal oil and gas activities offshore and onshore threaten these endangered whales, which are also important for Arctic subsistence communities.

One need only look at Shell’s disastrous 2012 drilling season, as well as the near complete inability to respond to an oil spill in this remote region to understand why there should be no oil drilling in the Arctic Ocean. During Shell’s failed 2012 program the dangers Arctic leases were on display when its drilling rig, the Kulluk, ran aground off the coast of Kodiak Island, Alaska. [Footnote 346: Department of Justice, Drilling Company Charged with Environmental and Maritime Crimes in Alaska (2015); Funk, McKenzie, The Wreck of the Kulluk, New York Times (Dec. 30, 2014)] Earlier in the season, Shell’s oil spill containment dome was “crushed like a beer can” during routine testing in waters in Seattle and its other drilling rig, the Noble Discoverer caught fire and ran aground. Shell’s failed operations are proof that even the best-financed corporations are not prepared to operate safely in the Arctic Ocean. Any oil company that says that it can drill safely in the harsh and demanding Arctic environment is putting the entire region in jeopardy. There is no proven way to recover spilled oil effectively in conditions prevalent in the Arctic Ocean. It is unsafe, dangerous and irresponsible to allow offshore drilling in the Arctic Ocean.

a. Interior should consider the risks and harm from offshore oil spills.

Interior must properly analyze the enormous costs associated with major oil spills to wildlife, the environment, and coastal economies. Offshore oil and gas development consistently results in both chronic and disaster-related oil spills. For example, in 1979, an exploratory well in the Gulf of Mexico blew out and spilled 140 million gallons of oil over the course of 10 months. In 1989, the Exxon Valdez spilled more than 11 million gallons of oil into Alaska’s Prince William Sound. In 2004, Hurricane Ivan hit the Gulf of Mexico off the coast of Louisiana toppling an offshore well platform owned by Taylor Energy, which has been leaking gallons upon gallons of oil every day for 15 years, and is the longest running offshore oil spill in U.S. history. [Footnote 347: Zoe Schlanger, Newsweek, Oil Spill You’ve Never Heard of Has Been Leaking into Gulf of Mexico For a Decade (Apr. 18, 2015), <http://www.newsweek.com/oil-spill-youve-never-heard-has-been-leaking-gulf-decade-20-times-larger-323373>; Zaitchik, Alexander, Sierra Magazine, The Longest-Running Offshore Oil Spill You’ve Never Heard About, (Sept. 26, 2020), <https://www.sierraclub.org/sierra/longest-running-offshore-oil-spill-you-ve-never-heard-about>.] In 2009, the Montara oil rig spilled between 29,600 and 222,000 barrels of oil into the Timor Sea over the span of ten weeks. And in 2010, BP’s Deepwater Horizon rig exploded, causing estimated 206 million gallons of oil to spill into the Gulf of Mexico over the course of almost three months. Offshore spills occur as a matter of course in the Gulf of Mexico; [Footnote 348: Bureau of safety and Environmental Enforcement, Offshore Incidents Statistics (2021)] while dangerous conditions of the Alaskan environment and the lack of infrastructure make it impossible to deal with an oil spill. [Footnote 349: See e.g., <https://www.ecowatch.com/coast-guard-arctic-oil-spill-2462465383.html> (U.S. Coast Guard official stating that the U.S. could not clean up an oil spill in the Arctic); <https://www.scientificamerican.com/article/the-u-s-is-not-ready-to-clean-up-an-arctic-oil-spill/> (same).]

Federal records demonstrate that transport of oil and gas also carries a significant risk of environmental and public safety impacts. Nationally, there were 5,744 significant incidents with U.S. pipelines, involving death, injury, and economic and environmental damage between 2001- 2020—nearly 300 per year. [Footnote 350: Pipeline Hazardous Materials Safety Administration, Significant Incidents Trends (2021).] Incidents classified as

“significant” are those resulting in death or injury, had damages more than \$50,000, spilled more than five barrels of highly volatile substances or 50 barrels of other liquid, or where the liquid exploded or burned. [Footnote 351: Id]

Oil spills can have devastating consequences on the environment for many decades. The impacts on wildlife from fish to birds and marine mammals to sea turtles are lethal and long-term. For example, a recent study examining the impact of the Exxon Valdez oil spill on orcas found substantial, devastating impacts. Two pods of orcas were present during a spill. One pod lost 14 of its 36 members after the spill, and still hasn’t recovered. [Footnote 352: Actman, Jane, Exxon Valdez Oil Spill Devastated Killer Whales (2016). National Geographic (Jan. 26, 2016), <http://news.nationalgeographic.com/2016/01/160126-Exxon-Valdez-oil-spill-killer-whales-Chugach-transients/>] Another pod, known as Chugach transients, numbered 22 before the spill; nine disappeared immediately following the spill and were presumed to have died from ingesting or inhaling oil; [Footnote 353: Id] and others disappeared in the year after the spill. [Footnote 354: Muto, MM, Stock Assessment Report: Killer Whale (Orcinus orca): AT1 Transient Stock (2020).] Since the spill, not a single calf has been born and the population now numbers seven individual animals. [Footnote 355: Id.]

Scientists believe crude oil from the Exxon Valdez spill caused elevated mortality of pink salmon eggs in oiled streams for at least four years following the spill [Footnote 356: Peterson, Charles H., et al. Long-Term Ecosystem Response to the Exxon Valdez Oil Spill, 302 Science. 2082 (2003)] and contributed to the crash of Pacific herring populations—which have yet to recover. [Footnote 357: Thorne, Gary L. Thomas, Herring and the “Exxon Valdez” oil spill: an investigation into historical data conflicts, 65 ICES Journal of Marine Science 44–5 (2008).]

The impacts of the Deepwater Horizon oil spill on sea turtles, marine mammals, and fish have been well documented. In the immediate aftermath of the Deepwater Horizon oil spill, species diversity and richness within a 172-km² impact zone were “significantly depressed,” and severe impacts to benthic macrofauna and meiofauna [Footnote 358; Meiofauna (45-300 µm) are dominated by nematodes and harpacticoid copepods; macrofauna (>300 µm) are dominated by polychaete annelids, peracarid crustaceans, and mollusks. Fisher, Charles R., Amanda W.J. Demopoulos, Erik E. Cordes, Iliana B. Baums, Helen K. White, and Jill R. Bourque. Coral communities as indicators of ecosystem-level impacts of the Deepwater Horizon spill, 64 BioScience 796-807 (2014).] persisted up to seven years after the spill. [Footnote 359: Montagna, Paul A., Jeffrey G. Baguley, Cynthia Cooksey, Ian Hartwell, Larry J. Hyde, Jeffrey L. Hyland, Richard D. Kalke, Laura M. Kracker, Michael Reuscher, and Adelaide C.E. Rhodes, Deep-sea benthic footprint of the Deepwater Horizon blowout, 8 PLoS ONE e70540 (2013); McClain, Craig R., Clifton Nunnally & Mark C. Benfield, Persistent and substantial impacts of the Deepwater Horizon oil spill on deep-sea megafauna, 6 Royal Society Open Science 1811641 (2019); Reuscher, Michael G., Jeffrey G. Baguley, Nathan Conrad-Forrest, Cynthia Cooksey, Jeffrey L. Hyland, Christopher Lewis, Paul A. Montagna, Robert W. Ricker, Melissa Rohal, and Travis Washburn, Temporal patterns of Deepwater Horizon impacts on the benthic infauna of the northern Gulf of Mexico continental slope, 12 PLoS ONE e0179923 (2017).]

For example, the science shows the oil spill caused Florida loggerhead sea turtle nest densities to decline 43.7 percent from expected nesting rates in 2010. [Footnote 360: Lauritsen et al., Impact of the Deepwater Horizon Oil Spill on Loggerhead Turtle Caretta Caretta Nest Densities in Northwest Florida, 33 Endangered Species Research 83 (2017)] More than half of Kemp’s Ridley sea turtles were exposed to oil and scientists suspect a link to slowed population growth rates. [Footnote 361: Reich et al., d13C and d15N in the Endangered Kemp’s Ridley Sea Turtle Lepidochelys Kempii after the Deepwater Horizon Oil Spill, 33 Endangered Species Research 281 (2017).] Other research estimates mortality of sea turtles based on oiling, models sea turtle oiling and confirms effects from the oil spill. [Footnote 362: Mitchelmore, CA Bishop, and TK Collier, Toxicological Estimation of Mortality of Oceanic Sea Turtles Oiled during the Deepwater Horizon Oil Spill, 33 Endangered Species Research 39 (2017); Ylitalo et al., Determining Oil and Dispersant Exposure in Sea Turtles from the Northern Gulf of Mexico Resulting from the Deepwater Horizon Oil Spill, 33 Endangered Species Research 9 (2017): 9–24; Stacy et al.,

Clinicopathological Findings in Sea Turtles Assessed during the Deepwater Horizon Oil Spill Response, 33 Endangered Species Research 25 (2017); Wallace et al., Estimating Sea Turtle Exposures to Deepwater Horizon Oil, 33 Endangered Species Research 51 (2017).] For marine mammals, the new science documents numerous species of cetaceans observed in the oil footprint and the oil spill's lasting impacts. [Footnote 363: Aichinger Dias et al., Exposure of Cetaceans to Petroleum Products Following the Deepwater Horizon Oil Spill in the Gulf of Mexico, 33 Endangered Species Research 119 (2017).] In addition, researchers found marine mammal reproductive failure, impaired stress response and death caused by the oil spill. [Footnote 364: Kellar et al., Low Reproductive Success Rates of Common Bottlenose Dolphins (*Tursiops Truncatus*) in the Northern Gulf of Mexico Following the Deepwater Horizon Disaster (2010-2015), 33 Endangered Species Research 143 (2017); Takeshita et al., The Deepwater Horizon Oil Spill Marine Mammal Injury Assessment, 33 Endangered Species Research 95 (2017); Rosel et al., Genetic Assignment to Stock of Stranded Common Bottlenose Dolphins in Southeastern Louisiana after the Deepwater Horizon Oil Spill, 33 Endangered Species Research 221 (2017); Smith et al., Slow Recovery of Barataria Bay Dolphin Health Following the Deepwater Horizon Oil Spill (2013-2014), with Evidence of Persistent Lung Disease and Impaired Stress Response, 33 Endangered Species Research 127 (2017): 127–42.] The estimated time to recovery for the Barataria Bay dolphins is 39 years. [Footnote 365: Schwacke et al., Quantifying Injury to Common Bottlenose Dolphins from the Deepwater Horizon Oil Spill Using an Age-, Sex- and Class-Structured Population Model, 33 Endangered Species Research 265 (2017). A new study also finds that oiled birds, Harelequin ducks, from the Exxon Valdez spill took 24 years to abate the exposure of oil. Esler et al., Cessation of Oil Exposure in Harlequin Ducks after the Exxon Valdez Oil Spill: Cytochrome P4501A Biomarker Evidence, 36 Environmental Toxicology and Chemistry 1294–1300 (2016).]

The Deepwater Horizon spill killed an estimated 700,000 coastal seabirds and 200,000 seabirds [Footnote 366: Note that this figure “applies only to the acute discharge phase of the blowout, which extended for 103 d. Additional bird mortality not considered ... continued to be reported months after the well was capped.” Haney, J. Christopher, Harold J. Geiger, and Jeffrey W. Short, Bird mortality from the Deepwater Horizon oil spill. I. Exposure probability in the offshore Gulf of Mexico, 513 Marine Ecology Progress Series 225-237 (2014)..] offshore in its immediate aftermath. [Footnote 367: Id.; Haney, J. Christopher, Harold J. Geiger, and Jeffrey W. Short, Bird mortality from the Deepwater Horizon oil spill. II. Carcass sampling and exposure probability in the coastal Gulf of Mexico, 513 Marine Ecology Progress Series 239-252 (2014).] Factoring in estuarine bird deaths and delayed exposure effects, acute total mortality very likely exceeded one million birds. (Haney, Geiger & Short 2014a). Additional oiled birds were observed for at least one year post-spill, and response activities including cleanup further reduced seabird survival. [Footnote 368: Id]

In addition, new scientific studies of the impacts of the Deepwater Horizon oil spill on fish shows that not only did the oil spill cause up to \$1.2 billion in damage to the Gulf's commercial fisheries, [Footnote 369: Bureau of Ocean Energy Management, An Analysis of the Impacts of the Deepwater Horizon Oil Spill on the Gulf of Mexico Seafood Industry (March 2016).] but also significantly harmed fish habitat. For example, the oil spill affected about five percent of the spawning habitat during the peak spawning time for Atlantic bluefin tuna—an imperiled, overfished species. [Footnote 370: Hazen, et al. Quantifying overlap between the Deepwater Horizon oil spill and predicted bluefin tuna spawning habitat in the Gulf of Mexico, 6 Scientific Reports Scientific Reports 33824 (2016).] Researchers are concerned that because the oil has been linked to deformation and death of eggs and larval fish that there could be continuing population-level impacts. Additionally, new science shows that the phenanthrene, a polycyclic aromatic hydrocarbon, released from the oil caused the heart malfunctions in fish affected by the oil spill. [Footnote 371: Brette, Holly A. Shiels, Gina L. J. Galli, Caroline Cros, John P. Incardona, Nathaniel L. Scholz, Barbara A. Block. A Novel Cardiotoxic Mechanism for a Pervasive Global Pollutant, 7 Scientific Reports 41476 (2017).] The scientists note that there are also human health concerns associated with this finding because similar effects can occur in humans. [Footnote 372: Id]

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Organization: Center for Biological Diversity

Commenter: Miyoko Sakashita

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

b. Interior must evaluate the impacts from offshore fracking and acidizing and end the dangerous practice that deepens our climate crisis.

In its review, Interior should consider and evaluate the benefits of ceasing permits for offshore fracking which extends the lifespan of aging offshore oil and gas infrastructure that is already beyond its estimated lifespan. This locks us in to decades more of carbon pollution that our climate cannot afford.

Interior has ample authority to prohibit offshore fracking—the OCS Lands Act provides “for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit” when “in the national interest;” or when there is “a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), . . . or to the marine, coastal, or human environment.” [Footnote 373: 43 U.S.C. § 1334(a)(1).]

Offshore fracking and acidizing used in the Gulf of Mexico, Alaska, and Pacific cause environmental damages beyond those of conventional offshore oil and gas development by producing water and air pollution, increasing the risk of earthquakes and oil spills, and prolonging the life of aging infrastructure and our use of dirty fossil fuels.

Water contamination is a significant risk of fracking because of the hundreds of chemicals used in fracking fluid. For example, a peer-reviewed study that examined fracking fluid products determined that more than 75 percent of the chemicals could affect the skin, eyes, and other sensory organs, and the respiratory and gastrointestinal systems; approximately 40 to 50 percent could affect the brain/nervous system, immune system, cardiovascular system, and the kidneys; 37 percent could affect the endocrine system; and 25 percent could cause cancer and mutations. [Footnote 374: Colborn, Theo, et al., Natural Gas Operations for a Public Health Perspective, 17 Human and Ecological Risk Assessment 1039 (2011); Elliot, E.G. et al., A systematic evaluation of chemicals in hydraulic –fracturing fluids and wastewater for reproductive and developmental toxicity. Journal of Exposure Science and Environmental Epidemiology 1–10 (2016).] In addition to posing a significant health and safety risk to humans, fracking chemicals can kill or harm a wide variety of marine life. Scientific research has indicated that 40 percent of the chemicals used in fracking can harm aquatic animals and other wildlife. [Footnote 375: California Council on Science and Technology (CCST), Advanced Well Stimulation Technologies in California: An Independent Review of Scientific and Technical Information (2014); Kassotis, et al. Endocrine-Disrupting Activity of Hydraulic Fracturing Chemicals and Adverse Health Outcomes After Prenatal Exposure in Male Mice, 156 Endocrinology 4458-73 (2015).] And an analysis of the chemicals used during offshore fracking events in California found that many of the chemicals could kill or harm a broad variety of marine organisms, including sea otters, fish, and invertebrates. [Footnote 376: CCST 2014; CCST, An Independent Scientific Assessment of Well Stimulation in California, Volume II. Potential Environmental Impacts of Hydraulic Fracturing and Acid Stimulations (2015)] Indeed, scientists list some of the chemicals frequently used in offshore fracking as among the most toxic in the world with respect to aquatic life. [Footnote 377: Id]

Another recent study found that oil companies use dozens of extremely hazardous chemicals to acidize wells. Specifically, the study found that almost 200 different chemicals have been used and that at least 28 of these substances are F-graded hazardous chemicals—carcinogens, mutagens, reproductive toxins, developmental toxins, endocrine disruptors or high acute toxicity chemicals. [Footnote 378: Abdullah, Khadeeja, Timothy Malloy, Michael K. Stenstrom & I. H. (Mel) Suffet, Toxicity of acidization fluids used in California oil

exploration, Toxicological & Environmental Chemistry (2016).] Hydrofluoric acid, for example, is acutely toxic, and exposure to fumes or very short-term contact with its liquid form can cause severe burns. The study notes that acidizing chemicals can make up as much as 18 percent of the fluid used in these procedures. [Footnote 379: Id] Further, each acidization can use as much as hundreds of thousands of pounds of some chemicals. [Footnote 380: Id] This raises serious concerns as many of the hundreds of active offshore platforms in the Gulf discharge all or a portion of their produced water, including chemicals used in fracking and acidizing, into the ocean.

When not dumped directly into the ocean, wastewater from well stimulation is injected into the seafloor or transported onshore and injected there. This disposal method can result in leaks and contamination through the loss of well casing integrity. Studies have shown that 30 percent of offshore oil wells in the Gulf of Mexico experienced well casing damage in the first five years after drilling, and damage increased over time to 50 percent after 20 years. [Footnote 381: Vengosh, A. et al. A critical review of the risks to water resources from unconventional shale gas development and hydraulic fracturing in the United States, 48 Environmental Science & Technology 8334-8348 (2014); Davies et al. 2014.] Well stimulation can increase the risk of well casing damage. [Footnote 382: Davies, et al. 2014; U.S. EPA, Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, External Review Draft (June 2015) at 6-11] For example, a recent scientific study found that older wells can become pathways for fluid migration, and that the high injection pressures used in fracking can “increase this risk significantly.” [Footnote 383: CCST 2015] For this same reason, fracking can also increase the risk of oil spills. This disposal method can also result in the contamination of drinking water. [Footnote 384: DiGiulio and Robert B. Jackson, Impact to Underground Sources of Drinking Water and Domestic Wells from Production Well Stimulation and Completion Practices in the Pavillion, Wyoming, Field. Environmental Science and Technology (2016).]

In addition, new studies have drawn a strong connection between the recent rise in fracking wastewater injection and increased earthquake rates. [Footnote 385; Van der Elst, Nicholas J. et al. Enhanced Remote Earthquake Triggering at Fluid-Injection Sites in the Midwestern United States, 341 Science 164 (2013)] For example, the USGS has recognized that wastewater disposal from fracking is a “contributing factor” to the six-fold increase in the number of earthquakes in Oklahoma. [Footnote 386: Sumy, D. F., et al. Observations of static Coulomb stress triggering of the November 2011 M5.7 Oklahoma earthquake sequence, 119 J. Geophys. Res. Solid Earth 1904–1923 (2014); USGS, Record Number of Oklahoma Tremors Raises Possibility of Damaging Earthquakes, (May 2, 2014) <http://www.usgs.gov/newsroom/article.asp?ID=3880>.] Another recent study also found that wastewater injection is responsible for the dramatic rise in the number of earthquakes in Colorado and New Mexico since 2001. [Footnote 387: Rubinstein, et al. The 2001 – Present Induced Earthquake Sequence in the Raton Basin of Northern New Mexico and Southern Colorado, Bulletin of the Seismological Society of America (2014).] Wastewater injection has been scientifically linked to earthquakes of magnitude three and greater in several states: Arkansas, [Footnote 388: E&E News, USGS, Okla. warn of more drilling-related earthquakes in State, Mike Soraghan. Oct. 25, 2013.] Colorado, [Footnote 389: Id] Ohio, [Footnote 390: Ohio Dept. of Nat. Resources Executive Summary: Preliminary Report on the Northstar 1 Class II Injection Well and the Seismic Events in the Youngstown, Ohio Area (2012); Fountain, Henry, Disposal halted at well after new quake in Ohio, New York Times (Jan. 1, 2012).] Oklahoma, [Footnote 391: Holland, Austin, Examination of possibly induced seismicity from hydraulic fracturing in the Eola Field, Garvin County, Oklahoma, Oklahoma Geological Survey Open-File Report OF1-2011 (2011).] Texas, [Footnote 392: Frohlich, Cliff, Two-year survey comparing earthquake activity and injection-well locations in the Barnett Shale, Texas 109 Proceedings of the National Academy of Sciences (2014).] and New Mexico. [Footnote 393: Rubinstein, J. L., et al. 2014.] And a recent study attributed wastewater injection from fracking operations to earthquakes in California. [Footnote 394: Goebel, et al., Wastewater disposal and earthquake swarm activity at the southern end of the Central Valley, California, 43 Geophysical Research Letters 1092–1099 (2016).] But it is not just wastewater injection that can lead to earthquakes. The practice of fracking itself has been found to contribute directly to seismic events. [Footnote 395: Van der Elst, 2013; BC Oil & Gas Commission, Industry Bulletin: 2015-32 (Dec. 15, 2015), <https://www.bcogc.ca/node/12951/download>.] Even if the earthquakes that fracking directly generates are small, fracking could be contributing to increased stress in faults that leaves those faults more susceptible to otherwise

naturally triggered earthquakes of a greater magnitude. [Footnote 396: Van der Elst, et al. 2013]

The use of fracking and acidizing by oil companies prolongs the life of oil and gas drilling operations. [Footnote 397: See, e.g., Citi Investment, Research and Analysis (2012) Resurging North American Oil Production and the Death of the Peak Oil Hypothesis at 9 (2012); U.S. Energy Information Administration, Review of Emerging Resources: U.S. Shale Gas and Shale Oil Plays at 4 (2011); Orszag, Peter, Fracking Boom Could Finally Cap Myth of Peak Oil, Bloomberg, (Jan. 21, 2012); Adelman, Bob, New American, Re-fracking Old Wells Is Extending the Fracking Revolution, (Feb. 17, 2015), <http://www.thenewamerican.com/tech/energy/item/20136-refracking-old-wells-is-extending-the-fracking-revolution>] Indeed, in approving these dangerous oil techniques in federal waters off California, Interior admitted that doing so would prolong the life of offshore oil and gas wells and associated infrastructure on the Pacific OCS. The agency admitted, for example, that the use of these practices will lead to an “incremental increase in production” and “may support the continued recovery of oil as primary recovery declines.” [Footnote 398: Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement, Programmatic Environmental Assessment of the Use of Well Stimulation Treatments on the Southern California Outer Continental Shelf (May 2016).] This means that in addition to the unique impacts from offshore fracking and acidizing, the practices will also cause other environmental harms associated with conventional oil and gas development, including locking in more carbon pollution. In other words, any decision to authorize the use of offshore fracking and acidizing on the OCS “extend[s] the life of oil . . . production . . . , with all of the far reaching effects and perils that go along with offshore oil production.” [Footnote 399: California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002)] Conversely, prohibiting these oil extraction techniques on the OCS would be one way to help phase out offshore oil and gas drilling.

Comment Number: BOEM-EMAIL-32521-035709-3

Organization: Environmental Defense Center

Commenter: Rachel Kondor

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

While you conduct your review of the federal oil and gas leasing programs nationwide, we ask you to consider the following: (1) prioritizing environmental protection over issuing new leases and permits, (2) appropriately siting renewable energy and encouraging energy efficiency to offset the need for additional fossil fuel development; and (3) using your authorities to permanently protect certain special lands and waters.

Comment Number: BOEM-EMAIL-32521-036937-9

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Interior Should Begin Developing the Analytical Toolkit to Support Comprehensive Programmatic Reforms

For any reforms that Interior pursues, it will be critical for the agency to support those reforms with strong analysis of the environmental and economic impacts. For instance, analyses conducted under the National Environmental Policy Act must “appropriately consider” environmental “effects and values alongside economic and technical analyses.” [Footnote 53: 40 C.F.R. § 1501.2(b)(2); see also id. § 1508.1 (defining “effects” under NEPA regulations to include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on

employment), social, or health effects”).] And for any rulemakings, analyses conducted under Executive Order 12,866 must “assess all costs and benefits of available regulatory alternatives,” including beneficial and adverse environmental and economic impacts. [Footnote 54: Exec. Order No. 12,866 § 1(a), 58 Fed. Reg. 51,735 (Oct. 4, 1993).]

Under the Trump administration, in particular, both regulatory and project-level Interior determinations were judicially vacated for failing to carefully assess the environmental harms from energy extraction—with the agency’s failure to reasonably assess climate impacts drawing particularly intense scrutiny. [Footnote 55: See, e.g., *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736–40 (9th Cir. 2020) (vacating BOEM leasing plan for failing to reasonably assess greenhouse gas substitution effects under NEPA); *California v. Bernhardt*, 472 F. Supp. 3d 573 (N.D. Cal. 2020) (vacating BLM methane rollback for improper and unsupported valuation of methane pollution in regulatory cost-benefit analysis); *Citizens for a Healthy Cmty. v. BLM*, 377 F. Supp. 3d 1223, 1237 (D. Colo. 2019) (vacating BLM master development plan for failing to assess indirect combustion emissions in violation of NEPA).] Likewise, “NEPA requires agencies to balance a project’s economic benefits against its adverse environmental effects” and the failure to make reasonable assumptions about economic impacts disturbs this “balancing process.” [Footnote 56: *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446 (4th Cir. 1996).] Accordingly, Interior must assess and fairly balance the environmental and economic impacts of any reforms. [Footnote 57; See, e.g., *Watt I*, 668 F.2d at 1317–18 (quoting Interior as recognizing that offshore leasing should occur only when “the anticipated benefits outweigh the anticipated costs for an area,” with “costs” defined as encompassing the “economic[,] social and environmental costs of oil and gas activity”); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (holding that an agency’s “skewed cost-benefit analysis” was “deficient under NEPA”); *Bus. Roundtable v. SCC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (vacating regulation after agency “inconsistently and opportunistically framed the costs and benefits of the rule”); *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1203 (9th Cir. 2008) (stating that agency’s “decision not to monetize the benefit of carbon emissions reduction was arbitrary and capricious” when agency monetized economic costs).]

Strong analysis also supports the long-term durability of any policy. For one, strong analysis that rationally assesses both the beneficial and adverse impacts of any reforms will make it more difficult for a future administration to revise that analysis and reverse course. [Footnote 58: See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (“[A] reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”); *id.* at 537 (Kennedy, J., concurring) (“An agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past, any more than it can ignore inconvenient facts when it writes on a blank slate.”).] Additionally, a well-considered analysis of policy impacts can help dispel many of the exaggerated and one-sided claims of economic harm that opponents of reform are already advancing, [Footnote 59: See, e.g., Matthew Brown & Matthew Daly, *Explainer: Why Is Biden Halting Federal Oil and Gas Sales?*, Associated Press (Mar. 23, 2021) (highlighting an industry-supported studying showing job losses roughly five times higher than projected by an independent expert).] and firmly establish that reforms to the leasing program are justified and greatly benefit society at large.

To support Interior’s decisions and ensure better analysis, we recommend that the agency revise its model of the energy market to reflect reasonable assumptions about long-term trends of fossil-fuel and renewable energy generation. Interior can then use that model to estimate the climate benefits of reduced fossil-fuel extraction, which it can calculate using the social cost of greenhouse gases valuations developed by the Interagency Working Group on the Social Cost of Greenhouse Gases (“Working Group”). Interior may also wish to consider option value—the informational value of delay—as a benefit of any decision to curtail leasing, particularly in environmentally sensitive regions. And while Interior must assess the economic costs of any reform, it should do so consistently with its treatment of greenhouse gas impacts by looking system-wide, including leakage and substitution effects.

A. Interior Should Look to Develop an Energy Substitution Model that Corrects for the Limitations of

MarketSim, and Apply that Model to Assess Both the Benefits and Costs of Chosen Reforms

Any substantial policy reform is bound to affect energy extraction either directly (such as by curtailing leasing) or indirectly (such as by raising royalty rates, which raises the producer's cost of production and thereby decreases production overall). Estimating that impact, and its attendant effects on energy supply, prices, and sources, is a critical step in projecting both climate and economic impacts. [footnote 60: See Michael Burger & Jessica Wentz, Downstream and Upstream Greenhouse Gas Emissions: The Proper Scope of NEPA Review, 41 HARV. ENVTL. L. REV. 109, 179–81 (2017) (“Inventories of upstream and downstream greenhouse gas emissions can be supplemented by a ‘net emissions’ analysis. This entails examining how the project will affect the supply and consumption of other energy sources in order to determine the incremental emissions impact of the project as compared with a no action alternative.”)]

Yet in recent years, Interior has failed to adequately capture these market and substitution effects. While both BLM and BOEM have relied on a model developed by BOEM known as MarketSim, that tool suffers from several fatal flaws that cause it to grossly underestimate net greenhouse gas emissions. For one, MarketSim “fail[s] to include emissions estimates resulting from foreign oil consumption” and thereby irrationally “assumes that foreign oil consumption will remain static” despite increases in domestic production. [footnote 61: *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736–37 (9th Cir. 2020).] But this assumption violates basic supply-and-demand principles and the global nature of the energy market. For that reason, the U.S. Court of Appeals for the Ninth Circuit recently concluded that the MarketSim model is fundamentally flawed and vacated an offshore extraction project in which BOEM relied on MarketSim to analyze greenhouse gas impacts.[Footnote 62: *Id.*]

Another limitation with MarketSim is that it assumes a trajectory of domestic emissions over decades by which oil and gas remain the dominant energy source and renewables grow at a slow pace [Footnote 63: See Bureau of Ocean Energy Management, OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon 20 (2016), available at <https://www.boem.gov/ocs-oil-and-natural-gas/> (assuming “near constant demand over the next 40–70 years” and no “changes in laws or policies other than what is incorporated in existing laws and policies”).]—assumptions that are incompatible with reasonable attempts to meet international targets to curb the pace of climate change. For this reason, analyses applying MarketSim have found nearly 100% leakage and very limited greenhouse gas impacts from the federal leasing program. [Footnote 64: See, e.g., Willow Master Development Plan Final Environmental Impact Statement App’x E-2 tbl.2 (2020) (finding nearly 97% leakage from project’s emissions, with renewable energy making up for less than 0.4% of substituted demand); Coastal Plain Oil and Gas Leasing Program Final Environmental Impact Statement App’x R (2019) (finding roughly 96% leakage and virtually no displacement from renewable energy).] For instance, the BOEM analysis that was vacated by the Ninth Circuit counterintuitively concluded that a major extraction project would produce a net decline in downstream greenhouse gas emissions. [Footnote 65: Liberty Development and Production Plan Final Environmental Impact Statement 4-52 (2018) (“Here, lifecycle GHG emissions associated with the No Action Alternative are estimated to be higher than those associated with the Proposed Action, despite the model’s assumption that a slightly lower amount of energy would be consumed domestically overall. This is because the lifecycle GHG emissions associated with the mix of replacement fuels estimated to be consumed under the No Action Alternative are, on average, greater than the lifecycle GHG emissions associated with oil produced from the Liberty prospect[.]”)]

Especially given the recent Ninth Circuit decision, any future determinations relying on MarketSim in its current form are legally precarious, and the agency should instead revise the model to correct its flaws. Consistent with the Ninth Circuit’s opinion, any model should analyze impacts on foreign emissions as well as domestic emissions. In doing so, the model can incorporate evidence suggesting that curtailing domestic offshore oil production will reduce total foreign consumption by approximately 50% of the curtailed amount. [Footnote 66: See, e.g., Peter Erickson, Final Obama Administration Analysis Shows Expanding Oil Supply Increases CO₂, Stockholm Environment Institute (Jan. 30, 2017) & Peter Erickson, U.S. Again Overlooks Top CO₂ Impact of

Expanding Oil Supply . . . But That Might Change, Stockholm Environment Institute (Apr. 30, 2016) (calculating that forgoing 8.3 billion barrels of U.S. offshore production will decrease global consumption by 4 billion barrels and decrease global emissions by 1.7 billion metric tons of carbon dioxide); Gilbert E. Metcalf, *The Impact of Removing Tax Preferences for U.S. Oil and Gas Production*, Council on Foreign Relations (2016) (finding a global response of about 0.5 decrease per 1 unit of forgone U.S. production when matching the assumptions used in MarketSim, while also noting that hidden assumptions in MarketSim may lead global production to fall by even more than that, especially depending on the assumption of how OPEC will respond).]

A revised model should also account for the likelihood that domestic fossil-fuel demand will decline over the long term from efforts to reduce greenhouse gas emissions, [Footnote 67: See, e.g., Brad Plummer, *Blue States Roll Out Aggressive Climate Strategies. Red States Keep to the Sidelines*, *NEW YORK TIMES* (June 21, 2019) (“Over the past year. . . California, Colorado, Maine, Nevada, New Mexico, New York and Washington have all passed bills aimed at getting 100 percent of their state’s electricity from carbon-free sources like wind, solar or nuclear power by midcentury.”)] and should not assume an admittedly “worst case scenario outcome” whereby fossil-fuel demand grows for decades and produces an unsustainable amount of warming. [Footnote 68: BLM, *Coastal Plain Oil and Gas Leasing Program, Final Environmental Impact Statement S-40* (2019); accord U.S. Department of the Interior, Bureau of Land Management, *Draft Eastern Colorado Resource Management Plan & Environmental Impact Statement B-65* (2019) (explaining that it is “unlikely” that “emission trajectories follow a historical growth curve . . . over the course of the remainder of the century”).] While exact long-term estimates of demand for fossil fuels and renewables are admittedly difficult to project, Interior could elicit estimates from a range of experts, [Footnote 69: For example, EPA surveyed twelve experts in an expert elicitation on the mortality impacts of a decrease in PM_{2.5} in the United States. It utilized its responses to specify a concentration-response function, and explore uncertainty. Henry A. Roman, Katherine D. Walker, Tyra L. Walsh, Lisa Conner, Harvey M. Richmond, Bryan J. Hubbell & Patrick L. Kinney, *Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the US*, 42 *ENV'T SCI & TECH* 2268 (2008).] or generate long-term forecasts of the energy mix from international targets and commitments. Evidence based simply on demand elasticities also suggests that leakage is below the estimates that MarketSim has generated. [Footnote 70: See Brian Prest, *Supply-Side Reforms to Oil and Gas Production on Federal Lands, Resources for the Future* (2020) (using elasticities to estimate total leakage of 53–74%)] The model should then incorporate a short-run to long-run transition of energy demand.

As Interior revises its model, it should also review other technical limitations and perform holistic updates. For instance, some of MarketSim’s elasticities are questionable or outdated, so a revision to the model should incorporate the latest elasticity estimates. [Footnote 71: See BOEM, *Consumer Surplus and Energy Substitutes for OCS Oil and Gas Production: The 2017 Revised Market Simulation Model (MarketSim) 20* (assuming equality between onshore and offshore supply elasticities for the lower 48 states, and using two-decade-old supply elasticities for the lower 48 states).] A revised model could also incorporate smaller regions and/or improve within-region substitution, which MarketSim currently does not model. [Footnote 72: See *id.* at 11] Ideally, moreover, more work should be done to test the accuracy of any model that Interior develops. In particular, each model should be run against theoretical and known scenarios (including back-casting of power sector models) to test their relative strengths. Performing this testing at the outset will enable Interior to avoid MarketSim’s problem of generating counterintuitive and indefensible results.

It is also critical that Interior apply substitution equally to costs and benefits. In other words, however Interior generates its model, it must apply that model to analyze both climate and economic impacts. In the past, the agency has used substitution analysis as a one-way ratchet: offsetting the environmental costs of fossil-fuel extraction but not the economic benefits. [footnote 73: See, e.g., Willow Master Development Plan Final Environmental Impact Statement, *supra* note 64, at 226 (projecting project revenues without any recognition of substitution effect).] In reality, however, the ratchet works both ways. Strong analysis of substitution impacts on both sides would allow the agency to dispel exaggerated claims from reform opponents about economic harm,

[Footnote 74: See supra note 59 and accompanying text] and facilitate a fair comparison of the costs and benefits of programmatic reform.

Comment Number: BOEM-EMAIL-32521-037159-4

Organization: Natural Resources Defense Council and Earthjustice

Commenter: Loomis Becca

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

C. The Secretary Should Consider Climate Change Impacts in Adopting a New Five-Year Program

The Secretary is authorized to consider climate change when preparing a five-year leasing program and should do so. It is appropriate to consider the impacts of fossil fuel consumption in leasing program preparation due to present-day environmental circumstances, including global climate change. In 1981, the Watt I court acknowledged that the balancing of environmental concerns against the potential for oil and gas discovery would likely change over time as the nation's energy needs and environmental concerns evolved. [Footnote 46: 668 F.2d at 1317] In 2015, the Center for Sustainable Economy court noted that OCSLA requires the Secretary to schedule OCS leasing at the time that best meets the nation's energy needs and recognized that delaying leasing could be a valuable strategy. [Footnote 47: 779 F.3d at 610] As time passes, "[t]he true costs of tapping OCS energy resources are better understood as more becomes known about the damaging effects of fossil fuel pollutants. Development of energy efficiencies and renewable energy sources reduces the need to rely on fossil fuels." [Footnote 48: Id] These statements are highly applicable today. Renewables have gained traction and the costs of climate change—a consequence of fossil fuel consumption—have grown in magnitude. These changed environmental circumstances make consideration of climate change in leasing program preparation appropriate today.

The D.C. Circuit's 2009 Center for Biological Diversity decision is not to the contrary. In non-binding [Footnote 49: *Murray Energy Corp. v. Environmental Protection Agency*, 936 F.3d 597, 627 (D.C. Cir. 2019) (citing *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 235 (1959))] dicta, it asserted that OCSLA "does not authorize...Interior to consider the environmental impact of post-exploration activities such as consuming fossil fuels" when preparing a five-year program. [Footnote 50: *Center for Biological Diversity*, 563 F.3d at 485.]

Determining whether DOI may consider the environmental costs of fossil fuel consumption was not a necessary part of the legal reasoning underpinning the court's holding. In a brief concurrence, Judge Rogers wrote that the majority opinion need not have addressed whether DOI is authorized to consider fossil fuel consumption. [Footnote 51: *Center for Biological Diversity*, 563 F.3d at 489 (Rogers, J., concurring).] The court "ha[d] no occasion to opine regarding the Secretary's discretion to consider the global effects of oil and gas consumption [] other than to hold that the Secretary is not required by OCSLA to consider such effects at stage one" of the leasing program process. [Footnote 52: Id. (Rogers, J., concurring) (internal citation omitted)] Further, in *Center for Sustainable Economy*, the D.C. Circuit described its *Center for Biological Diversity* decision as "conclud[ing] that OCSLA was sufficiently ambiguous to permit Interior to forgo consideration of climate-related effects of burning OCS-derived fossil fuels, and to allow Interior to limit its consideration of the environmental impact of OCS leasing." [Footnote 53: 779 F.3d at 608 n.11 (emphasis added).] In other words, the dicta in *Center for Biological Diversity* merely stands for the notion that Interior has discretion not to look at climate impacts, but is not prohibited from doing so.

Further, even without consideration of fossil fuel consumption, the Secretary could still reach a determination that a null schedule leasing program best meets national energy needs. As discussed in section II.A above, new offshore leasing is not necessary to meet the nation's energy needs and is incompatible with the nation's transition

to a clean energy system. Preparing a null schedule five-year program would serve the purpose of best meeting national energy needs by directing the nation towards renewables and away from fossil fuels.

Comment Number: BOEM-EMAIL-32521-037410-8

Organization: Southern Environmental Law Center

Commenter: Melissa Whaling

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

A. Oversight of Offshore Drilling Safety Must be Strengthened

In addition to protecting the Mid- and South Atlantic Planning Areas from the introduction of offshore drilling for the first time, the Department must also strengthen protections in areas where offshore drilling is already taking place, such as in the Gulf of Mexico. Insufficient regulatory oversight over the oil and gas industry significantly amplifies the human and environmental risks of drilling.

In the wake of the Deepwater Horizon disaster, former President Obama established the independent National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (“BP Oil Spill Commission”), to investigate the causes of the disaster, and make specific recommendations for offshore drilling safety. As a result of their investigations, overwhelming concerns were raised about the Department’s mismanagement of offshore drilling, and many recommendations were made for regulatory oversight reform. In response to these conclusions, the Obama administration promulgated the Well Control Rule—the most comprehensive safety and environmental regulation developed in the wake of the Deepwater Horizon spill. The Well Control Rule, which involved an unprecedented level of stakeholder input, drew extensively on lessons learned from the Deepwater Horizon disaster and was put in place specifically to prevent this type of disaster from happening again. The BP Oil Spill Commission applauded this move, calling it “the most broadly important measure” to come out of its findings. [Footnote 144: See Letter from Bob Graham & William K. Reilly, BP Oil Spill Commission Co-chairs, to Former Sec’y R. Zinke, U.S. DOI (May 8, 2017), <http://oscaction.org/wp-content/uploads/Secretary-Zinke-letter.pdf>, at 2.]

Under the Trump administration, however, only two years after these groundbreaking measures went into effect, the Department decided to significantly weaken the Well Control Rule. [Footnote 145: Press Release, BSEE Sustains Safety and Environmental Protection while Reducing Regulatory Burden, BUREAU SAFETY & ENV’T ENFORCEMENT (Apr. 27, 2018), <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/BSEE-sustains-safety-and-environmental>] Members of BP Oil Spill Commission unanimously spoke out against the rollback, stating that it will “aggravate the inherent risks of offshore operations, put workers in harm’s way, and imperil marine waters in which drilling occurs.” [Footnote 146: Letter from B. Graham & W.K. Reilly to R. Zinke, *supra* note 144.] Particularly troublesome were the amendments that: 1) further incorporated industry standards by reference, 2) eliminated third-party inspection requirements, 3) weakened real-time monitoring and BOP equipment standards, and 4) abandoned previous DOI policies at the request of the industry. [Footnote 147: SELC, on behalf of 57 conservation groups, submitted comments on the proposal, urging the Bureau of Safety and Environmental Enforcement (“BSEE”) to reject the proposed changes. Those comments are incorporated by reference. See Letter from SELC et al. to Scott A. Angelle, Dir., U.S. BSEE (Aug. 6, 2018) <https://www.southernenvironment.org/uploads/words/docs/WCR Comments FINAL without attachments V 2.pdf>.] DOI provided no analysis on how these critical changes would impact offshore drilling safety, only offering purported economic benefits to the industry. To make matters worse, the Trump administration also rolled back the Production Safety Systems Rule, another Obama-era safety rule stemming from Deepwater Horizon reforms. [Footnote 148: Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Oil and Gas Production Safety

Systems, 83 Fed. Reg. 49,216 (Sept. 28, 2018).]

Rolling back the very regulations that were put in place to prevent a disaster like the Deepwater Horizon oil spill from recurring is foolish and reckless. Indeed, according to the Interior Department's own assessment, reducing regulatory oversight of offshore drilling makes losses of well control and catastrophic oil spills more likely. [Footnote 149: 2019-2024 DPP at 7-35, 7-34.] Accordingly, the Department must immediately reverse the Trump administration's dangerous rollback and restore these Obama-era rules that made offshore drilling safer.

Aside from promulgating the Well Control Rule, other areas of DOI's regulatory oversight of the oil and gas industry have fallen short of what is needed to address the inherent risks of industry practices and mismanagement in the Department. For example, a recent Government Accountability Office report found that oil spill restoration efforts are deficient, and collaboration among oil spill responders is lacking. [Footnote 150: U.S. GAO, Offshore Oil Spills: Restoration and Federal Research Efforts Continue, but Opportunities to Improve Coordination Remain (Jan. 2019), <https://www.gao.gov/products/GAO-19-31>.] The report found that as of January 2018, about 14 percent of the \$1 billion in restoration funds dedicated to the Exxon Valdez oil spill had not been spent, and only about 13 percent of at least \$8.1 billion in restoration funds dedicated to the Deepwater Horizon spill had been spent. [Footnote 151: Id] In its comprehensive review, the Department must thoroughly investigate ways to improve such a disturbingly weak regulatory environment and poor industry track record.

Comment Number: BOEM-EMAIL-32521-037440-10

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

8. Any horizontal drilling and subsequent fracking on a Federal Lease would have to be analyzed by an independent Geologist and Geophysicist to ascertain that there would be no drainage from our deeded minerals offsetting the Federal leases. We object to having to pay for any future independent analysis and legal fees thereof because of this proposed lease. Furthermore, we object to any drainage that might occur on our deeded minerals offsetting the federal leases.

Comment Number: BOEM-EMAIL-32521-037440-12

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

10. The land was designated a flyway for migratory birds by the USDA, and at the USDA's request, we put in ladders in the water tanks we have for cattle so that the birds would not continue to drown and would have a way to get out of the tanks. We object to any operations that would interfere with migratory birds or native birds on the ranch.

11. Because the of the migratory and native birds on the ranch, and because of the severe drought as so designated by Federal Agencies, we ask that an Environmental Impact Study be completed on our deeded acreage above the Federal Minerals to evaluate how any Oil and Gas activities would affect the Surface, Surface Water and the

subterranean Water, or animals that used the designated area before any minerals under our ranch are put up for lease.

12. Water pollution and sourcing of water are a major concern of our Ranch Partnership. Oil and Gas Operations by another energy company resulted in severe pollution of the ground water on the ranch so badly that we could not use the water for our personal use. After we took legal action, the energy company settled, and it has further taken them over 18 years of continual daily remediation to get the ground water back to within useable standards which still has not been totally completed.

13. Before any lease is finalized we respectfully request that BLM Certify they are in full compliance with all federal and state laws and regulations including the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA) and any subsequent regulations and court orders or judgments thereto.

Comment Number: BOEM-EMAIL-32521-037855-21

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

REFORM THE OCS OIL AND GAS SAFETY AND ENFORCEMENT PROGRAM MANAGED BY BSEE

Background: In 2011 following the 2010 Deepwater Horizon disaster, the Bureau of Safety and Environmental Enforcement (BSEE) was established to enforce offshore safety and environmental regulations, as well as promote a culture of safety, environmental stewardship, and resource conservation. In the years following the Deepwater Horizon disaster, BSEE promulgated multiple OCS oil and gas safety regulations to address findings and recommendations of the National Commission on the Deepwater Horizon Spill [Footnote 32: http://www.iadc.org/archived-2014-osc-report/documents/DEEPWATER_ReporttothePresident_FINAL.pdf]. Just a few years later under a new administration, BSEE made significant revisions to two of the new OCS oil and gas safety regulations, alleging that compliance with the rules was burdensome for the industry and the revisions would not significantly compromise safety and environmental protection. The revisions raised significant concerns among conservation groups, who were concerned that the weakened safety requirements would increase the chances of another disastrous OCS oil spill. However, under previous DOI leadership it was difficult to discern if the revised regulations have resulted in any serious problems or not.

Based on its assigned program responsibilities and the circumstances described above, we recommend that BSEE take the following actions:

A. BSEE should re-evaluate and amend, if appropriate, the specific regulations in question:

-Commission an independent review (e.g., by the National Academy of Engineers [Footnote 33: <https://www.nae.edu/>]) of the 2018 revision of the Oil and Gas Production Safety Systems rule for the OCS [Footnote 34: <https://www.federalregister.gov/documents/2018/09/28/2018-21197/oil-and-gas-and-sulphur-operations-on-the-outer-continental-shelf-oil-and-gas-production-safety>]. Address any shortcomings found in the rule through the appropriate process, such as revision of internal policy directives or new rulemaking, if needed.

-Commission an independent review (e.g., by the National Academy of Engineers) of the 2019 revision of BSEE's OCS Blowout Preventer and Well Control rule [footnote 35: <https://www.federalregister.gov/documents/2019/05/15/2019-09362/oil-and-gas-and-sulfur-operations-in-the->

outer-continental-shelf-blowout-preventer-systems-and-well]. Address any shortcomings found through the appropriate process, such as revision of internal policy directives or new rulemaking, if needed.

Comment Number: BOEM-EMAIL-32521-037855-9

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Conduct a comprehensive review to update and revise applicable BLM oil and gas regulations with the objective of systematically reducing oil and gas extraction on public lands to levels that are both necessary and appropriate considering climate change. Prepare a programmatic environmental statement (PEIS) to evaluate the impacts and benefits of proposed rule changes.

Section 4 - Tribal Considerations

Comment Number: BOEM-EMAIL-32521-020685-2

Organization: Keystone Energy Board

Commenter: Mallory Huggins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

The U.S. conservation movement historically has benefitted from the forced and/or coercive displacement of Indigenous and non-Indigenous peoples. Public lands have been spaces often restricted – explicitly or implicitly – to use and management by individuals with racial, economic, and geographic privilege.

Our recommendations:

-Issue a statement with actionable items on the relationship between public lands and colonization, with acknowledgement of the ways that public lands have been places restricted to people with privilege.

-Incorporate historical knowledge into land management practices, both in the form of Indigenous conservation practices and federal land management strategies that respect landscapes, objects, and plant and animal life held sacred by Indigenous peoples.

-Measure the cumulative impacts of climate change caused by fossil energy development on public lands and demonstrated by adverse impacts to communities, landscapes, and wildlife on or near public lands.

-Continue to distinguish between inclusive stakeholder engagement with the general public and government-to-government consultation with Tribal Nations.

-Identify ways that co-management with Tribal stakeholders can be prioritized in DOI land management practices.

Comment Number: BOEM-EMAIL-32521-022815-10

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

6. Consistency: Tribal consultation is not consistent between different state, bureaus, district, and regional offices involved in oil and gas leasing and development. Instead, much of this work ends up being relationship-based-where tribal consultation is most effective when Department staff and tribal representatives are able to forge a productive and trusting relationship. But this means tribes must build new relationships and educate new officials when staff changes, and it means that different offices produce different outcomes.

Comment Number: BOEM-EMAIL-32521-022815-11

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

7. Greater Chaco Region:

-The Greater Chaco Region is one example of an irreplaceable sacred landscape important to the Pueblos and other tribes, and this area has faced largely unrestricted oil and gas leasing and development. It has seen expedited decision making around this development that did not properly account for cultural resources or tribal voices, by no means sought tribal consent, and involved inconsistent outreach and feedback from different Department bureaus and offices.

-Acoma is grateful that President Biden has paused new oil and natural gas leases on public lands pending a review of federal oil and gas permitting and leasing practices. However, there have been notices related to .lease sales and development in the Greater Chaco Region, and we ask that the Department pause all of these actions. We also ask that the Department maintain this pause pending completion of the Greater Chaco Region Resource Management Plan Amendment (RMPA).

-We thank the Department for pausing work on the Greater Chaco Region RMPA due to the COVID-19 pandemic. We ask that the Department allow for completion of the ongoing tribally-led cultural resource studies of the Greater Chaco Region and further progress to be made on the RMPA's Section 106 process. Only then should the RMPA's NEPA process move forward, and the Department should then incorporate the baseline cultural resource information collected from the studies and the Section 106 process into a new draft NEPA Environmental Impact Statement that contains legally sufficient alternatives.

-We also ask that _an especially critical area of approximately 10 miles surrounding the Chaco Culture National Historical Park and including its outliers be administratively withdrawn from development.

Comment Number: BOEM-EMAIL-32521-022815-2

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

1. Tribally-Led Cultural Resource Studies: Acoma calls on the Department to ensure that sufficient tribally-led cultural resource studies take place prior to, and inform the Department's decision making about oil and gas leasing and development. This includes allowing tribal representatives to generate ethnographic information necessary for the Department to properly identify and assess impacts on cultural resources. This is especially important in areas known to be significant to tribes.

Comment Number: BOEM-EMAIL-32521-022815-3

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

2. NHPA Section 106 and NEPA: The National Historic Preservation Act ("NHPA") Section 106 and National Environmental Policy Act ("NEPA") review processes must be intertwined so that they may inform each other. The Section 106 process must progress so that information is gathered on cultural resources, including historic properties, which should be considered during NEPA review. NEPA review, on the other hand, results in the Department choosing a particular alternative-the effects of which must be mitigated through Section 106. The Department must ensure that these processes move forward together so that each may be effective.

Comment Number: BOEM-EMAIL-32521-022815-7

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

-As you know, NEPA and NHPA Section 106 review processes are important opportunities for tribes to consult on federal decision making. Any changes made to those processes should only be accomplished through tribal consultation. If the Department chooses to issue new NEPA or NHPA Section 106 guidance, it should first engage in sufficient and meaningful tribal consultation. Integration of NEPA and NHPA Section 106 processes together so that they may inform each other, a concept noted in Secretarial Order 3389, should be carried forward into new guidance. Additionally, new guidance should address how the presence of environmental justice concerns affects mitigation requirements.

Comment Number: BOEM-EMAIL-32521-022815-9

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

5. Consent: The Department must work to implement the United Nations Declaration on the Rights of Indigenous Peoples' ("UNDRIP") principle of free, prior, and informed consent when oil and gas leasing and development decisions affect tribal lands or waters, cultural resources, or other interests. So called "tribal consultation" that does not begin early in the process of decision making or that cannot affect the actual outcome of decision making is not adequate. In fact, consultation without the UNDRIP principles does not contribute towards the vision

outlined by President Biden's Build Back Better plan and his plan for Tribal Nations to address historical injustices brought forth by the federal government to the tribes.

Comment Number: BOEM-EMAIL-32521-027661-7

Organization: Alaska Wilderness League and Multiple Other Environmental Organizations

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We encourage DOI to take steps in each of these processes to ensure transparent and inclusive public participation and to ground its decision making in both science and traditional knowledge. DOI should engage in meaningful, collaborative consultation with impacted Tribes that fulfills federal trust responsibilities and ensures Tribes are in leadership roles and have the resources necessary to aid in the protection and preservation of their lands and resources. Another overarching element of the review should be for DOI to use all available tools to address the economic impact to Arctic communities for a just and equitable transition away from fossil fuels.

Comment Number: BOEM-EMAIL-32521-030652-2

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 18

Comment Excerpt Text:

The natural and cultural resources that national parks protect do not stop at park borders. Rather, parks act as anchors in interwoven cultural landscapes and ecosystems for wildlife, water, air, and people. As such, management decisions regarding lands outside of park boundaries can have far-ranging impacts on those resources that exist within the park. Where it comes to oil and gas development, the Department often has dual management authority over both the park resources as well as the oil and gas resources. The Department must elevate as a priority the protection of park resources over the multiple-use mandate to develop oil and gas resources. In some places, such as Chaco Culture National Historical Park, this will mean permanently banning any new future oil and gas development on the surrounding landscape. The Department should determine which park landscapes qualify for a permanent moratorium as well as ensure that all other park landscapes have elevated study consideration required prior to leasing.

This task can be accomplished by an additional layer of needed analysis as well as requiring consent from the relevant park superintendent(s) before an oil and gas lease is offered within a specified landscape surrounding any national park unit. That analysis should include:

- Formal consultation with the applicable superintendent(s) regarding the impact of the proposed sale on natural, cultural, and historic resources; visitor use and enjoyment of park resources; and the cumulative impacts of the proposed sale on National Park Service resources

- Consideration of the effects of the proposed sale on wildlife migration corridors and habitat connectivity

- Consideration of the effects of the proposed sale on tourism and recreational opportunities on and off the applicable Park Service land and water, through consultation with affected recreational user groups

- A viewshed analysis with respect to all potential points of view within the affected Park Service land or water

-Consultation with relevant agencies to evaluate the direct, indirect, and cumulative impacts of development on the air quality, including visibility impairment, of affected Park Service land and water to ensure compliance with all applicable air quality requirements

-Consultation with relevant agencies to evaluate the impacts of development on water quality and groundwater resources, including subterranean geologic resources which lend themselves to groundwater supply and ecological integrity of the park and surrounding landscapes

-Compliance with the applicable requirements of section 306108 of title 54, United States Code, taking into consideration the means by which the proposed sale may impact historic property, historic objects, traditional cultural properties, archaeological sites, or cultural landscapes

-Thorough tribal and traditional community consultation pursuant to Section 106 of the National Historic Preservation Act regarding Traditional Cultural Properties, sacred sites, and other traditional-use areas

-In any case in which an application for a permit to drill on affected BLM land is approved, the State Director or each State in which the affected BLM land is located shall ensure compliance with applicable BLM and NPS best management practices to reduce light pollution

The federal estate is put on a trajectory to phase oil and gas production out of its portfolio with an eye toward scientific integrity, socio-economic impacts, and climate action

Comment Number: BOEM-EMAIL-32521-030652-7

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Department must also fully consult and engage Tribal nations, both those recognized by the United States as sovereign nations as well as those not recognized. Tribes must be able to protect and preserve their own lands and resources. The administration should consider in its policy review and reform the right of Indigenous Peoples to give or withhold “free, prior and informed consent” to projects and policies affecting their lands and people, as stated in the United Nations Declaration on the Rights of Indigenous Peoples, which the United States has supported for more than a decade. The incorporation of these bottom-up principles in this federal process is an important and needed step as we address the history of public lands in the United States.

Comment Number: BOEM-EMAIL-32521-031857-2

Organization: Arctic Slope Regional Corporation

Commenter: Bridget Anderson

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

ASRC is one of twelve land-owning regional Alaska Native Corporations established pursuant to the Alaska

Native Claims Settlement Act of 1971 (ANCSA). [Footnote 1: 43 U.S.C. § 1606 et seq] Congress created Alaska Native Corporations and provided for the conveyance to them of certain traditional lands in settlement of Alaska Native aboriginal land claims to provide for the economic, social, and cultural well-being of the Alaska Native people, who became owners of—or shareholders in—the Alaska Native Corporations after ANCSA was enacted.

ASRC's region is the North Slope of Alaska, the northernmost region of the U.S. Arctic. ASRC's shareholders, the Iñupiat of the North Slope, have lived on and subsisted off the resources of the North Slope for over 10,000 years. The North Slope region spans 55 million acres and includes the Iñupiat villages of Point Hope, Point Lay, Wainwright, Atkasuk, Utqiagvik, Nuiqsut, Kaktovik, and Anaktuvuk Pass. The residents of these villages are predominantly Iñupiat, and they comprise many of the approximately 13,000 Alaska Native owners of ASRC.

Oil and gas development on the North Slope directly impacts the daily lives, property interests, and economic welfare of ASRC's Iñupiat shareholders. ASRC holds title to approximately five million acres of land on the North Slope, including both surface and subsurface lands, much of which is located along the coastline of the Beaufort and Chukchi Seas. Large portions of this land hold energy, mineral, and other resource potential. These lands—the ancestral lands of the Iñupiat people—were conveyed to ASRC by the United States pursuant to ANCSA to provide for the economic well-being of the North Slope Iñupiat. Under ANCSA, Congress created Alaska Native Corporations, including ASRC, “to provide benefits to [their] shareholders who are Natives or descendants of Natives or to [their] shareholders’ immediate family members who are Natives or descendants of Natives to promote the health, education, or welfare of such shareholders or family members.” [Footnote 2: 43 U.S.C. § 1606(r).]

Consistent with this unique Congressional mandate, ASRC is committed both to providing sound financial returns to its shareholders, in the form of jobs and dividends, and to preserving our Iñupiat way of life, culture, and traditions, including the ability to maintain a subsistence lifestyle to provide for our communities. We regularly invest in initiatives that promote and support education, the preservation of our language, healthy communities, and sustainable local economies. In furtherance of this congressionally-mandated mission to provide benefits to our shareholders, ASRC conducts, and will continue to conduct, a variety of development and construction activities related to natural resource utilization, infrastructure development, and other purposes. ASRC's perspective is based on the dual realities that our Iñupiat culture and communities depend upon a healthy ecosystem and subsistence resources, as well as natural resource development as the foundation of a sustained North Slope economy.

For these reasons, ASRC is dismayed that the Alaska Native people most impacted by Executive Order 14008 have not yet had a seat at the table for the discussions focused on the future of the Department's oil and gas program. While ASRC was pleased to see a representative from the Alaska Federation of Natives participate in last month's Forum, no one from Alaska's North Slope communities (Alaska Native or otherwise) participated. Representatives of Alaska's Iñupiat population whose livelihoods are inextricably linked to oil and gas development must be part of the conversation going forward.

Comment Number: BOEM-EMAIL-32521-031857-9

Organization: Arctic Slope Regional Corporation

Commenter: Bridget Anderson

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Consultation Obligation and Authority

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (2000), requires federal

agencies to implement an effective process to ensure meaningful and timely consultation with American Indian and Alaska Native Tribes throughout the development of policies or projects that may have Tribal implications. In 2004, Congress directed federal agencies to “consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175.” [Footnote 3: Pub. L. No. 108-447, 118 Stat. 2809, 3267 (2004) (amending Pub. L. No. 108-199, 118 Stat. 3, 452 (2004)).]

In accordance with this mandate, in 2012, the Department issued its Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations (ANCSA Consultation Policy). In its ANCSA Consultation Policy, the Department commits to “recognize[] and respect[] the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the Federal Government.” [Footnote 4: ANCSA Consultation Policy at 2.] The Department appropriately distinguishes the federal relationship with Alaska Native Corporations from the government-to-government relationship between the federal government and federally-recognized Indian and Alaska Native Tribes. [Footnote 5: ANCSA Consultation Policy at 1] ASRC respects the government-to-government relationship between the federal government and federally recognized Tribes. At the same time, however, the federal government must fully recognize its responsibilities to Alaska Native Corporations .

The ANCSA Consultation Policy states that “[w]hen taking Departmental Action that has a substantial direct effect on ANCSA Corporations, the Department will initiate consultation with ANCSA Corporations.” [Footnote 6: ANCSA Consultation Policy at 1-2.] The Department notes that such “direct effect[s]” could be the result of “[a]ny Departmental regulation, rulemaking, policy guidance, legislative proposal, grant funding formula change or operational activity that may have a substantial direct effect” on an Alaska Native Corporation, including any activity that may substantially affect ANCSA land, water areas, or resources and any activity that may impact the ability of an Alaska Native Corporation to participate in Departmental programs for which it qualifies. [Footnote 7: ANCSA Consultation Policy at 3.]

Executive Order 14008 and the Department’s actions to implement it undoubtedly have substantial direct effects on ASRC and its Alaska Native shareholders. The day-to-day lives and well-being of the Alaska Natives of the North Slope region are directly tied to the Department’s actions and to the consequences of Executive Order 14008, yet the Department has not yet sought to engage with the Alaska Natives from the North Slope region on these issues. To remedy this omission, we suggest that ASRC—as well as other impacted Alaska Native Corporations—be a mandatory part of any future discussions regarding the future of oil and gas activities on the North Slope. Including local, Alaska Native voices in these discussions is the only way for the Department and the Administration to chart a shared path forward regarding natural resource management across Iñupiat indigenous lands.

Comment Number: BOEM-EMAIL-32521-032355-6

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In conducting the comprehensive review and evaluating reforms, it will be important for the Interior Department to consult with tribal nations and ensure that their sovereignty and interests are fully respected.

Comment Number: BOEM-EMAIL-32521-034585-19

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

- Conduct robust government-to-government consultation with Tribes.
- Hold public meetings and listening sessions that allow full and equitable participation.
- Engage, consider, and implement input from Tribes, the public, frontline and fenceline communities, state and local governments, federal agency partners, and stakeholders, with adequate notice and time for comment submissions.

Comment Number: BOEM-EMAIL-32521-035249-1

Organization: Santa Clara Pueblo

Commenter: Katie Klass J. Michael Chavania

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

While we wholeheartedly support the Department's comprehensive review of the federal onshore oil and gas program, Santa Clara Pueblo strongly urges you to host a specific government-to-government consultation to hear from tribes directly on concerns related to oil and gas development on federal/public lands, in addition to seeking input regarding oil and gas development on tribal lands.

Comment Number: BOEM-EMAIL-32521-035249-2

Organization: Santa Clara Pueblo

Commenter: Katie Klass J. Michael Chavania

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

1. Tribally-Led Cultural Resource Studies: Santa Clara Pueblo calls on the Department to ensure that sufficient tribally-led cultural resource studies take place prior to and inform the Department's decision making about oil and gas leasing and development. This includes allowing tribal representatives to generate ethnographic information necessary for the Department to properly identify and assess impacts on cultural resources. This is especially important in areas known to be significant to tribes.

Comment Number: BOEM-EMAIL-32521-035249-3

Organization: Santa Clara Pueblo

Commenter: Katie Klass J. Michael Chavania

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

2. NHPA Section 106 and NEPA: The National Historic Preservation Act (NHPA) Section 106 and National Environmental Policy Act (NEPA) review processes must be intertwined so that they may inform each other. The Section 106 process must progress so that information is gathered on cultural resources, including historic properties, which should be considered during NEPA review. NEPA review, on the other hand, results in the

Department choosing a particular alternative- the effects of which must be mitigated through Section 106. The Department must ensure that these processes move forward together so that each may be effective. (For more on this, see Recommendation #4 below as it relates to ensuring adequate timeframes for meaningful consultation and effective integration of these two processes.)

Comment Number: BOEM-EMAIL-32521-035416-9

Organization: Center for Biological Diversity

Commenter: Miyoko Sakashita

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

6. The Department should ensure meaningful consultation with affected communities and tribes.

As a part of its review, Interior should ensure meaningful consultation with affected communities. To accompany the urgent need to end offshore oil leasing, the Secretary must also ensure secure livelihoods of communities impacted by fossil fuels. The federal government has a responsibility to safeguard communities on the front lines of climate change, families who depend on the fossil fuel industry, and communities harmed by fossil fuel pollution. Indeed, it is the policy of this administration to spur well-paying jobs, deliver environmental justice, and hold polluters accountable for their actions. [Footnote 400: See, e.g., Biden Executive Order, Secs. 201, 217.]

Interior must prioritize support for communities that historically have been harmed first and most by the extractive economy, including communities of color, Indigenous communities, and low-wealth communities. The entire process of drilling and refining fossil fuels is dangerous and dirty. [Footnote 401: Donaghy, Tim, et al., Fossil Fuel Racism (April 12, 2021).] Indigenous, Black, and other communities of color have been disproportionately burdened by offshore oil development. Refineries and petrochemical plants are more likely to be in low-income and communities of color. [Footnote 402: Johnston, J., & Cushing, L, Chemical Exposures, Health, and Environmental Justice in Communities Living on the Fenceline of Industry, 7 Current Environmental Health Reports 48 (2020).] African Americans are 75 percent more likely to live near toxic pollution than the rest of Americans and are exposed to 38 percent more air pollution than white people. [Footnote 403: Fleischman, L. et al. Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil and Gas Facilities on African American Communities (2017).] There is an urgent need to dismantle the systemic racism that has harmed these communities and ensure restitution. Interior should work with the Department of Justice to investigate and, as appropriate, seek damages and restoration from fossil fuel industry responsible for damages to public welfare, lands and waters — including the Gulf of Mexico, Southern California Bight, and Cook Inlet.

Additionally, the Secretary should consider ways to ensure families dependent on the industry have a path for good jobs and health care. The fossil fuel industry, characterized by boom and bust cycles, often leaves families and communities suffering. Jobs stemming from offshore oil and gas is a small portion of the energy sector — estimated between 62,500 to 315,000 direct and support jobs. [Footnote 404: LaRocco, Lori Ann, How Many Jobs Does Gulf Drilling Really Employ? Fact vs. Fiction, CNBC (Feb. 10, 2011), <https://www.cnn.com/2011/02/10/how-many-jobs-does-gulf-drilling-really-employ-fact-vs-fiction.html>; Bureau of Ocean Energy Management, Offshore Oil and Gas Economic Contributions (2018).] Despite the attempts of the Trump administration to bolster offshore development, the workforce has nonetheless dwindled. [Footnote 405: Heather Richards, Trump promised offshore jobs. That's not happening, E&E News (Aug. 1, 2019), <https://www.eenews.net/energywire/2019/08/01/stories/1060820411>.] Even with economic recovery on the horizon, “the jobs outlook for oil and gas production is bleak” in the Gulf of Mexico. [Footnote 406: Kristen Mosbrucker, Louisiana may have 'modest' oil and gas jobs growth by end of 2021, The Advocate (Nov. 18, 2020), https://www.theadvocate.com/baton_rouge/news/business/article_7c00d1d6-28f2-11eb-a601-

171505ce9e56.html]

Interior must also undertake a robust government-to-government consultation with Tribes. It should take special care to ensure that the rights of Indigenous Peoples are upheld, which includes following the Indigenous Principles of Just Transition. The coastal areas affected by drilling include some of the most important cultural resources for Indigenous nations. Tribal lands in coastal Louisiana are suffering severe land loss from pipeline canals while Native Villages in Alaska are being swallowed by rising seas — both displacing people from their ancestral lands. [Footnote 407: Palinkas, Lawrence A., *Fleeing Coastal Erosion: Kivalina and Isle de Jean Charles, Global Climate Change, Population Displacement, and Public Health* 127 (2020).] Alaskan subsistence is at risk from the impacts of offshore drilling, and many Alaska Native's livelihoods are permanently scarred from the Exxon Valdez oil spill. [Footnote 408: Gill, Duane, *Considering Cumulative Social Effects of Technological Hazards and Disasters*, 64 *American Behavioral Scientist* 1145 (2020).] Disastrous oil spills in 1969 and 2015 off Santa Barbara harmed Chumash sacred sites and animals. [Footnote 409: Ben-Hur, Arielle, *The Chumash Heritage National Marine Sanctuary: An Exploration of Changing the Discourse on Conservation* 105 *Pitzer Senior Theses*. 45-50 (2020).] Moreover, hurricane disasters have highlighted the vulnerabilities of communities of color to the oil industry. Severe storms — exacerbated by climate change and land loss from offshore oil activities — have destroyed homes, displaced families, and triggered toxic spills. [Footnote 410: Flores, Aaron, et al., *Petrochemical releases disproportionately affected socially vulnerable populations along the Texas Gulf Coast after Hurricane Harvey*, *Population and Environment* (2020); Day, J. W., et al., *Restoration of the Mississippi Delta: Lessons from Hurricanes Katrina and Rita*, 315 *Science* 1679–1684 (2007).]

A permanent end to offshore oil and gas leasing coupled with a bold plan to safeguard affected families is urgently needed. [Footnote 411: See e.g., *Gulf South for a Green New Deal Policy Platform* (2019)]

Comment Number: BOEM-EMAIL-32521-035527-3

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Explicitly recognize Tribal sovereignty and find ways to work collaboratively with Indigenous people, coastal communities, and others. Inclusion and meaningful partnership, including recognizing Indigenous Knowledge as equal to western science, are vital to a fair and just transition.

Comment Number: BOEM-EMAIL-32521-035527-7

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Ensure effective consultation with Tribes and incorporation of Indigenous Knowledge: The agency can establish procedures to ensure robust and meaningful consultation with affected Tribes and the solicitation and incorporation of Indigenous Knowledge on equal footing with western science.

Comment Number: BOEM-EMAIL-32521-035789-10

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Consistency: Tribal consultation is not consistent between different bureaus and regional offices involved in oil and gas leasing and development. Instead, much of this work ends up being relationship-based—where tribal consultation is most effective when Department staff and tribal representatives are able to forge a productive and trusting relationship. But this means tribes must build new relationships and educate new officials when staff changes, and it means that different offices produce different outcomes.

Comment Number: BOEM-EMAIL-32521-035789-11

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

-The Greater Chaco Region is one example of an irreplaceable sacred landscape important to the Pueblos and other tribes, which has faced largely unrestricted oil and gas leasing and development. Expedited decision making around oil and gas development has not properly addressed tribal concerns regarding cultural resources. The decision-making processes on federal land management for this region has by no means sought tribal consent and involved inconsistent outreach, correspondence, and decision making from different local and federal Department bureaus and offices. We must relay to you that examples of institutional and/or individual bias against Native Americans were observed and reported throughout the official BLM NEPA process around the FFO RMPA and development of the Greater Chaco Region and other actions.

-We are grateful that President Biden has paused new oil and natural gas leases on public lands pending a review of federal oil and gas permitting and leasing practices. However, there have been notices related to lease sales and development in the Greater Chaco Region. Therefore, we ask that the Department continue to pause all of these actions in accordance with the Presidential Executive Order 14008. We also ask that the Department maintain this pause pending completion of the Greater Chaco Region Resource Management Plan Amendment (RMPA) and that the RMPA be paused pending the lifting of federal, state, and tribal public health directives.

-We thank the Department for pausing work on the Greater Chaco Region RMPA due to the COVID-19 pandemic. We ask that the Department allow for completion of the ongoing tribally-led cultural resource studies of the Greater Chaco Region and further progress to be made on the RMPA's Section 106 process. Only then should the RMPA's NEPA process move forward, and the Department should then incorporate the baseline cultural resource information collected from the studies and the Section 106 process into a new draft NEPA Environmental Impact Statement that contains legally sufficient alternatives.

-We also ask that an especially critical area of approximately 10 miles surrounding the Chaco Culture National Historical Park and including its outliers be administratively withdrawn from development.

Comment Number: BOEM-EMAIL-32521-035789-2

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Tribally-Led Cultural Resource Studies: We call on the Department to ensure that sufficient tribally-led cultural resource studies take place prior to and inform the Department's decision-making process on oil and gas leasing and development. This includes, but is not limited to, allowing tribal representatives to generate ethnographic information necessary for the Department to properly and comprehensively identify and assess impacts on cultural resources, natural resources and cultural landscapes directly tied to our Pueblos' way of life and cultural longevity. This is especially important in areas known to be culturally significant to tribes.

Comment Number: BOEM-EMAIL-32521-035789-3

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

NHPA Section 106 and NEPA: The National Historic Preservation Act (NHPA) Section 106 and National Environmental Policy Act (NEPA) review processes must be intertwined so that they may inform each other. The Section 106 process must progress so that information is gathered on cultural resources, including historic properties and natural resources that are critical to cultural practices, which should then be considered during NEPA review. NEPA review, on the other hand, results in the Department choosing a particular alternative—the effects of which must be mitigated through Section 106. We call on the Department to ensure that these processes move forward together and to inform one another so that each may be effective and comprehensive in achieving their respective objectives and requirements.

Comment Number: BOEM-EMAIL-32521-035789-7

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

-As you know, NEPA and NHPA Section 106 review processes are important opportunities for tribes to consult on federal decision making. Any proposed changes made to these processes should be done with thorough tribal consultation. In early 2020 the White House made sweeping changes to NEPA with very limited tribal consultation. If the Department chooses to issue new NEPA or NHPA Section 106 guidance, it should first engage in sufficient and meaningful tribal consultation. NEPA and NHPA Section 106 processes should be integrated and intertwined so that they may inform each other. This concept is noted in Secretarial Order 3389 and should be carried forward into new guidance for the Department's Federal decision-making process. Additionally, new guidance should address how the presence of environmental justice concerns affects mitigation requirements.

Comment Number: BOEM-EMAIL-32521-035789-9

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Consent: The Department should work to implement the United Nations Declaration on the Rights of Indigenous Peoples' (UNDRIP) principle of free, prior, and informed consent (FPIC) when oil and gas leasing and development decisions affect tribal lands or waters, cultural resources, or other interests. For centuries, the Federal government made decisions and policies that were inherently contrary to the principle of FPIC. The current tribal consultation process within the Department is a glaring example of how the Federal decision-making process is contrary to the principle of FPIC. As practiced, the tribal consultation process does not begin at the beginning of the decision-making process. By having the tribal consultations after many initial decisions and objectives are decided, the tribal consultation just becomes a "check the box" exercise and does not allow the tribes to make "free, prior, and informed consent" regarding a Federal decision. In fact, consultation without the UNDRIP principles does not contribute towards the vision outlined by President Biden's Build Back Better plan and his plan for Tribal Nations to address historical injustices brought forth by the federal government against the tribes.

Comment Number: BOEM-EMAIL-32521-036517-1

Organization: Rocky Mountain Wild

Commenter: Alison Gallensky

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We urge the Department of Interior to listen to indigenous and equity experts to find ways to make these processes more equitable and inclusive and to require the use of these practices nationwide. We recognize that truly engaging with the public and addressing our concerns can be time consuming. We request that lease sales, permit decisions, and other activities related to the federal oil and gas programs proceed at a pace such that staff does not need to take short-cuts. We also support efforts to fund sufficient expert staff to meet this need.

Comment Number: BOEM-EMAIL-32521-036835-4

Organization: Colorado Farm and Food Alliance

Commenter: Pete K

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 18

Comment Excerpt Text:

5. Regular and robust public, community involvement and Tribal consultation is critical at every stage of oil and gas and coal-mining planning, leasing, and development.

Comment Number: BOEM-EMAIL-32521-037429-12

Organization: Western Energy Alliance

Commenter: Tripp Parks

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

On the other hand, new restrictions on federal development will impact rural Native American communities, particularly the Navajo, Northern Ute, Southern Ute, Three Affiliated, and Wind River tribes. Although tribal lands are not supposed to be affected, the interlocking land ownership of the West means that tribal development will be less than it otherwise would be. Companies cannot efficiently develop tribal and Indian allottee minerals that are interspersed with federal minerals as is so often the case across the West.

For example, about 21,000 Navajo allottees in northwestern New Mexico receive \$96 million annually in oil and natural gas royalty revenue. [Footnote 19: Final Audit Report: Bureau of Indian Affairs' Federal Mineral Office [Hyperlinked:

https://r.search.yahoo.com/_ylt%3DA0geKLtTb_FcR40AoUxXNy0A%3B_ylu%3DX3oDMTEybWVqMmY4BGnVbG8DYmYxBHBvcwM0BHZ0aWQDQjc2NzVfMQRzZWMDc3I-/RV%3D2/RE%3D1559355347/RO%3D10/RU%3Dhttps%3a%2f%2fwww.doioig.gov%2fsites%2fdoioig.gov%2ffiles%2fFinalAudit_BIAFederalIndianMineralsOffice_02032017_Public.pdf/RK%3D2/RS%3D.guzJ.5ClgobLg1d799YchMzJhw-], Office of the Inspector General, U.S. Department of the Interior, February 3, 2017.] With the checkerboard land ownership in the Four Corners, development cannot occur without a leasehold comprised of both. Environmental justice would not be served by taking away this vital source of income in an area otherwise suffering from poverty and unemployment. While the indigenous panel had an excellent representative for Native American rural communities with Nicole Borromeo of the Alaska Federation of Natives, the voice of Indian allottees was not included. We urge DOI to ensure their voices are included in future discussions.

Comment Number: BOEM-TRANS-32521-000001-2

Organization: National Congress of American Indians

Commenter: Fawn Sharp

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Private solutions for Indian country must be developed in partnership with Tribal Nations and meet the Federal Government's trust and treaty responsibility as well as the principles outlined in the UN declaration on the rights of indigenous peoples.

Comment Number: BOEM-TRANS-32521-000001-3

Organization: National Congress of American Indians

Commenter: Fawn Sharp

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

The Department of Interior has an important role to play in addressing the climate crisis facing Indian country, while at the same time, supporting tribal energy development. Energy resources on tribal lands are vast, largely on tap, and critical to the economic stability of many Tribal Nations and their citizens. Interior has estimated the tribal energy reserves on Indian lands could generate rate up to \$1 trillion for Tribal Nation and surrounding communities, most of which are located in rural areas, existing tribal energy revenues provide billions of dollars to Tribal Nations and individual Indian resource owners. These funds support tribal Government services and individual citizens. They are also important to America's efforts to achieve energy independence and security and promote Economic Development both inside and outside of Indian country. The development of energy Indian energy resources is a complex procedural and economic process that is carried out in part through tribal specific grant and lease approvals by Interior, this process involves many stakeholders including federal and state agency, tribal Governments, individual Indian mineral owner, private oil and gas operators, financing structures, a

competing tribal interest. It is necessary for the administration and interior to understand that too often well intentioned but overly broad responses to the climate crisis are not good for all of Indian country, for example, secretarial order initially announced a temporary pause on new oil and gas on public lands, initial this order raised significant concerns for Tribal Nation, not the least of which was the order's lack of clarity in distinguishing tribal from federal lands. While the administration may have clarified that the pause did not affect tribal lands because tribal lands are not federal lands, this situation highlights some of the intricacies of the climate crisis through administrative action which affect Indian development. In additionally, it's critical that the administration continues to recognize Tribal Nation's inherent right to regulate energy resources on tribal lands in order to protect sacred landscapes of future generations.

Comment Number: BOEM-TRANS-32521-000004-1

Organization: National Congress of American Indians

Commenter: Fawn Sharp

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

And the first basic principle is we seek political equality at the table. Government to government discussions are bilateral, and when we come to the table, we should be able to be honored, respected and we want to seek not only consultation, but consent, and so having regularly scheduled meetings between the agencies and leaders will be helpful. Educating all staff on the Government to government relationship would be another suggestion. I think broadly incorporating the principles of the UN declaration on the rights of indigenous people, would be consistent and in line with our vision how we're going to continue to improve the relationship with the United States and specifically the Department of Interior.

Comment Number: BOEM-TRANS-32521-000008-1

Organization: Alaska Federation of Natives

Commenter: Nicole Borromeo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

It would be helpful in our point of view if there was a little bit more back and forth in terms of (indiscernible) right now, we have to hunt down dear tribal leader letters, we're not sure where they're published all the time, they have to be in the legal register, that thing is a mammoth of a document to be combing through every day. When the consultation happens it's for a short amount of time, our tribes have a limited window to present. There's not a lot of back and forth and follow up, and then a rule will get released, we're then supposed to go through the same process again, of hunting it down, appearing for a couple of hours, and in Alaska, there's 229 tribes. You know, there's the same number of native corporations up here. So having just three consultations countrywide, limiting one to Alaska, is really a disservice to the input that we hope to provide throughout this process and other processes as well involving the oil and gas and plan through executive order, 14008. So if we could have a little bit more dialogue in general, we would really appreciate that, and the last thing I'll add is please come to us. Let us be your host when you have these issues. And let us show you our lands. Don't necessarily just rely on what private industry or environmental groups are saying. We want to be the ones to take you and to show you. And lastly, in Alaska, that means you're going to have to stay probably a week or so, because it's going to take you a day to get here, a day to adjust up in Anchorage, and then we've got to get out to the bush. We need to travel. If you put Alaska over the lower 48, we would span from Florida to California, all the way up into the Dakotas, so it takes time to see what you need to see up here, and we've got to get you out of Anchorage, Fairbanks and Juno to do that.

Section 5 - Jobs/Unions

Comment Number: BOEM-EMAIL-32521-018330-5

Organization: American Exploration and Production Council

Commenter: Wendy Kirchoff

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

II. Americans Receive Substantial Economic Benefits from Onshore Oil and Gas Leases. [Footnote 6: U.S. Energy Information Administration, “U.S. Energy Facts Explained” <https://www.eia.gov/energyexplained/us-energy-facts/>]

The enhanced value created by the trend of growing efficiency in federal mineral development is ultimately realized by American citizens, and on multiple levels, as Americans receive substantial direct and indirect economic benefits from onshore oil and gas leases. [Footnote 7: Considine, Timothy J, “The Fiscal and Economic Impacts of Federal Onshore Oil & Gas Lease Moratorium and Drilling Ban Policies” <https://www.wyoenergy.org/wp-content/uploads/2020/12/Final-Report-Federal-Leasing-Drilling-Ban-Policies-121420.pdf> December 14, 2020.]

Over the past decade, DOI has disbursed on average \$10 billion dollars annually from energy production on federal lands and waters to the U.S. and state governments. [Footnote 8: <https://revenuedata.doi.gov/query-data>] According to the Office of Natural Resource Revenue (ONRR), between fiscal year 2001 and fiscal year 2019, revenues from onshore leases increased substantially. [Footnote 9: Query Data: Natural Resources Revenue Data, Department of Interior, www.revenuedata.doi.gov] In fiscal year 2019 alone, revenues from federal onshore oil and natural gas leases totaled around \$4.2 billion. [Footnote 10: U.S. Congressional Research Service. REVENUES AND DISBURSEMENTS FROM OIL AND NATURAL GAS PRODUCTION ON FEDERAL LANDS, (R46537; Sept. 22, 2020) by Brandon S. Tracy, available at <https://crsreports.congress.gov/product/pdf/R/R46537>] These revenues are composed of:

-Royalties: \$2.931 billion;

-Bonuses: \$1.181 billion (bonuses are only paid when lease sales occur);

-Other revenue (including interest payments, Application for Permit to Drill fees): \$67 million; and

-Rentals: \$22 million.[Footnote 11: Id]

Disbursements of fiscal year 2019 revenues include approximately \$2.002 billion to state and local governments; \$1.539 billion to the Reclamation Fund; \$39 million to the Permit Processing Improvement Fund; \$172 million to other accounts; and \$444 million to the Treasury General Fund. [Footnote 12: Id] Royalties are, thus, only one of type of payment received by the United States. Additional revenues are paid directly to Treasury for rental payments, bonuses, and taxes. Collectively, these payments constitute the government’s share of funds received for federal oil and gas development, and the cumulative sum of these revenues is often referred to as “government take.” Any potential policy changes being considered by DOI should first consider the total government take already being paid by industry – and not solely focus on royalty rates in isolation. As found in an IHS CERA Study, [Footnote 13: <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/CERA-Final-Report-November-2011.pdf>] Comparative Assessment of the Federal Oil and Gas Fiscal System, bonus payments paid to obtain leases in the competitive bidding process also constitute a significant revenue stream. The IHS CERA study pointed out that in comparison to other fiscal

systems, the current federal oil and gas leasing system places greater reliance on front-ended bonus payments, which “provide no guarantee that the lessee will be able to discover oil and gas in paying quantities effectively shifting the risk of exploration onto the oil companies.” Bonuses are paid up-front (prior to any development), and create a self-correcting mechanism, in that leasehold economics are assessed based on a combination of the up-front bonus cost and royalty rate. As a result, increases to royalty percentages will not be viewed in isolation by industry and could result in lower lease bonus revenues or discourage investment. Federal onshore oil and gas revenues (including bonus payments) also contribute significantly to state budgets. [Footnote 14: <https://www.heinrich.senate.gov/press-releases/heinrich-lujan-welcome-department-of-interiors-decision-to-return-to-standard-permitting-process-for-activities-on-public-lands-including-energy-development>] In 2019 alone, DOI reported that it disbursed close to \$12 billion dollars from energy production on federal lands to the federal government and states. [Footnote 15: U.S. Department of the Interior, “Natural Resources Revenue Data” <https://revenuedata.doi.gov/query-data/?dataType=Disbursements>] In New Mexico, which accounts for 57 percent of federal onshore oil production and 31 percent of onshore natural gas production, 30 percent of the state’s budget is funded by oil and gas development, much of which is attributable to federal lands development. [Footnote 16: Adrian Hedden, Collapse of Oil Industry in New Mexico Could Last Years, THE JOURNAL, Nov. 27, 2020, available at <https://the-journal.com/articles/194050>]

Comment Number: BOEM-EMAIL-32521-018389-14

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Environmental Justice Communities

Interior must give significant attention to environmental justice communities in the Gulf as it takes both immediate steps and considers longer-term steps. E.O. 12898 requires each federal agency to “make achieving environmental justice part of its mission by identifying and addressing . . . disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” [Footnote 64 Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994)] The Executive Order requires agencies to work to ensure effective public participation and access to information: each agency should work to “ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.” [Footnote 65: Id. at Section 5-5(c)]. E.O. 14008 directs agencies to “make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.” As reflected in E.O. 13990, “[w]here the Federal Government has failed to meet that commitment in the past, it must advance environmental justice.” Together, these policies mandate that Interior prioritize efforts to advance environmental justice and to ensure that health, environmental, economic, and social impacts on communities disproportionately affected by oil and gas development are at the forefront of its planning decisions.

Impacts from spills, air pollution, and climate change are all hitting low-income and vulnerable communities in the Gulf region the hardest. Toxic pollution from refineries and petrochemical facilities disproportionately affects environmental justice communities located near these facilities along the Texas and Louisiana Gulf Coast. For example, facilities in “Cancer Alley” have created cancer hotspots in high-risk communities that already suffer from a deluge of environmental burdens. Brazoria County, in Texas, has 40 industrial facilities monitored by the Toxics Release Inventory, which, combined, release over 25 million pounds of land, air, and water pollution

annually [Footnote 66: EPA, 2019 TRI Factsheet: County – Brazoria, TX, https://enviro.epa.gov/triexplorer/tri_factsheet.factsheet?pYear=2019&pstate=TX&pcounty=Brazoria&pParent=NAT]. The nearby coastal community of Freeport is inundated with damaging industrial development. Given the region’s serious ozone nonattainment classification and toxic pollution from existing oil and gas and industrial infrastructure, coastal communities are disproportionately impacted by higher levels of pollution. Sea-level rise is also impacting nearly 20 percent of Texas residents who live in highly vulnerable low-lying coastal counties [Footnote 67: Harte Research Institute for Gulf of Mexico Studies, Living With Sea Level Rise on the Upper Texas Coast, https://gomaportal.tamucc.edu/SLR/Ch1_Intro/ (last visited Jan. 22, 2021)].

Native people also live close to areas impacted by offshore development. Rising sea levels and erosion are forcing Native communities to relocate. And the potential for oil and gas activity to disproportionately impact these populations is concerning, as Native American children are 60 percent more likely to have asthma as non-Hispanic white children [Footnote 68: U.S. Dep’t of Health and Human Serv., Off. of Minority Health, Asthma and American Indians/Alaska Natives, (Feb. 11, 2021), <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=30>]. Increased air pollutants from oil and gas facilities could increase the incidence of asthma as well as exacerbate the effects of those already experiencing asthma within the impacted area. Other impacts of development, such as those from oil spills, disproportionately harm Native people based on their reliance on fishing or hunting, or other uses of natural resources [Footnote 69: See, e.g., *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 255 F. Supp. 3d 101, 133–134 (D.D.C. 2017)]. The unique susceptibility of Native people to the numerous health, ecological, or socioeconomic impacts of oil and gas activity need to be fully evaluated. Interior should pay particular attention to environmental justice communities. Because of the disproportionate impacts and the government-to-government relationship, Interior should ensure that Indigenous and other communities are not only “consulted” in planning, but that they are approached as collaboration partners.

These significant and ever-expanding impacts demand that BOEM provide support to Gulf communities that have acted as sacrifice zones for our national energy needs for far too long by immediately beginning the transition away from oil and gas development in the region. Notably, demand for oil and gas is dropping and production has fallen due, in part, to the COVID-19 pandemic, but also because of lower prices and slowing economic growth. Since U.S. oil production peaked in 2019 at around 12 million barrels of oil per day, production has steadily declined and was 10 percent lower last year. Economists predict that production will not return to peak levels anytime soon, if ever [Footnotes 70: U.S. Crude Oil Production Grew 11% in 2019, Surpassing 12 Million Barrels Per Day, EIA (March 2, 2020), <https://www.eia.gov/todayinenergy/detail.php?id=43015>. Total crude oil production (offshore and onshore) averaged 12.23 million barrels per day. Id].

Investing in cleaner ways to provide energy, while also divesting from oil and gas industrial expansion is critically needed now. At the same time, many Gulf residents are also employed in the oil and gas industry. The oil and gas industry has already abandoned thousands of local Gulf workers in response to the recent economic crises in favor of paying dividends to investors and bonuses to executives [Footnotes 71: Matt Egan, The pandemic made 107,000 oil and gas jobs disappear. Most aren’t coming back anytime soon, CNN BUSINESS (Oct. 8, 2020), <https://www.cnn.com/2020/10/08/business/oil-gas-jobs/index.html>.] While ending leasing will not have a significant impact on the economies of Gulf states, a transition away from existing development will have potentially greater economic impacts to the region if not done right. E.O. 14008 directs Interior to specifically target job creation focused on conservation, sustainability, and clean-up of the oil and gas sector. It is critical that Interior understand and plan to implement a just and equitable transition away from fossil fuel development and the harms it causes to the region and the nation as a whole while ensuring that communities in the Gulf—with people who are both employed by the industry and who bear the worst impacts of oil and gas development—are not left behind.

Comment Number: BOEM-EMAIL-32521-018389-20

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Ending New Leasing Will Not Harm the Economy.

Contrary to industry reporting, an end to new leasing will not result in economic harm. Rather, such an action will support an efficient transition to a sustainable clean energy economy called for in E.O. 14008. In January, API released a misguided and unsupported, doomsday report that purported to show wide-spread economic harm and, astonishingly, an increase in greenhouse gas emissions that would occur as a result of a ban on leasing [Footnote 126: API, A Federal Leasing and Development Ban Threatens America's Energy Security and Economic Growth, Undermines Environmental Progress, <https://www.api.org/news-policy-and-issues/exploration-and-production/federal-leasing-and-development-ban-study> (last visited Apr. 14, 2021)]. However, economic experts have found fault with API's assumptions. For example, Brian Prest from Resources for the Future evaluated the API report and concluded that API made several questionable assumptions, leading them to grossly overestimate the effects of a leasing ban [Footnote 127: Prest, *supra* note 34. See also Brandon Mulder, Fact-checking Rep. Kevin Brady's Claim that Biden Ban on New Leases Will Kill 120,000 Texas Jobs, HOUSTON CHRONICLE (Feb. 2, 2021),

<https://www.houstonchronicle.com/politics/texas/article/fact-check-woodlands-kevin-brady-biden-oil-gas-ban-15917937.php>; Nick Cunningham, Oil Industry Inflates Job Impact from Biden's New Pause on Drilling on Federal Lands, DESMOG (Jan. 27, 2021), <https://www.desmogblog.com/2021/01/27/oil-inflates-job-impact-biden-pause-drilling-federal-lands/>].

There is no legitimate argument that industry will run out of leases anytime soon, or that halting new leasing will affect jobs in the near-intermediate term. The EIA recently reported that the Biden Administration's current pause on leasing will have no effects this year [Footnote 128: Short-Term Energy Outlook 15–16, EIA (Mar. 2021), https://www.eenews.net/assets/2021/03/11/document_ew_03.pdf]. As analysts have highlighted, the effects of no new leasing in the Gulf “would take some time to become apparent.” [Footnote 129: Wood Mackenzie, Woodmac: Five Effects of a Biden Administration on US Energy, WOOD MACKENZIE (Nov. 9, 2020), <https://www.oedigital.com/news/483040-woodmac-five-effects-of-a-biden-administration-on-us-energy>]. Even the industry's pessimistic predictions show that production would only decline by about 20–30 percent by 2040 with no new lease sales over that period [Footnote 130: EIAP, The Economic Impacts of the Gulf of Mexico Oil and Natural Gas Industry 3, (May 2020), <https://www.noia.org/wp-content/uploads/2020/05/The-Economic-Impacts-of-the-Gulf-of-Mexico-Oil-and-Natural-Gas-Industry-2.pdf>]. And industry analysis shows that production would not begin to fall below 2018 levels for another decade [Footnote 131: *Id.* at 28, fig.11]. While industry's analysis projects a small decrease in employment relative to today, [Footnote 132: Compare *id.* at 21 (estimating 60,000 direct and 235,000 indirect jobs from the Gulf in 2020 under the “base case”) with *id.* at 30 (estimating annual average of 56,000 direct and 212,000 indirect jobs by 2040 under the “no leasing case”)]. those decreases are based on an assumption that there is no planning or policy changes to support a just transition [Footnote 133: *Id.* at 13 (recognizing that the considerable “uncertainty around how the proposed policy changes would be developed and implemented” and that the analysis in the report is “subject to significant changes based on the potential development and implementation of the proposed policy changes by Congress, the executive branch and regulators”)]. Others have reported that an oil leasing moratorium would, in fact, create jobs, from clean energy substitutions [Footnote 134: E.g., Wes Siler, How Biden's Oil-Lease Moratorium Will Create Jobs, OUTSIDE MAGAZINE (Jan. 28, 2021), <https://www.outsideonline.com/2420587/how-bidens-oil-lease-moratorium-will-create-jobs>].

Only poor planning or neglect will lead to anything close to the exaggerated effects predicted by some of the

industry's analyses, but E.O. 14008 requires just the opposite— agencies must develop a strategy that “delivers environmental justice,” and “spurs well-paying union jobs and economic growth.” Ending leasing provides the time and resources necessary for Interior and other federal agencies to plan and invest to accomplish these goals. For example, as E.O. 14008 suggests, BOEM and BSSE can create well-paying union jobs through decommissioning projects that reclaim abandoned infrastructure offshore. Abandoned wells continue to leak oil, methane, and other harmful gases, and also create use conflicts for future development of offshore wind or other infrastructure in the region. This is an especially critical opportunity in the offshore Gulf of Mexico region. Offshore in federal Gulf waters, industry drilled around 53,000 wells from 1947 through 2014 and have abandoned about 26,000 of those wells [Footnote 135: GAO, Offshore Oil and Gas Resources: Information on Infrastructure Decommissioning and Federal Financial Risk 6 (2017), <https://www.gao.gov/assets/gao-17-642t.pdf>.] That means that about 50% of existing wells and associated infrastructure in the Gulf of Mexico has been either temporarily or permanently abandoned. And that only accounts for abandoned infrastructure in federal waters. In state waters, thousands more wells and countless infrastructure have been abandoned, particularly because decommissioning has reached record levels in shallow water as the reserves there have started to dry up [Footnote 136: Mark J. Kaiser & Siddhartha Narra, A hybrid scenario-based decommissioning forecast for the shallow water U.S. Gulf of Mexico, 2018–2038, 163 ENERGY 1150 (Nov. 2018), <https://www.sciencedirect.com/science/article/abs/pii/S0360544218316645?via%3Dihub>.] Although industry is required to plug wells before decommissioning and abandoning them, BOEM and BSEE do not regularly monitor the state of the wells. Many abandoned wells continue to leak oil as well as harmful gases, including methane, benzene, nitrogen oxides, and carbon dioxide [Footnote 137: Torbjørn Vrålstad et al., Plug & abandonment of offshore wells: Ensuring long-term integrity and cost-efficiency, 173 J. PET. SCI. & ENG'G 478 (Feb. 2019), [sciencedirect.com/science/article/pii/S0920410518309173](https://www.sciencedirect.com/science/article/pii/S0920410518309173); Hannah Seo, Unplugged: Abandoned oil and gas wells leave the ocean floor spewing methane, ENV'T HEALTH NEWS (Dec. 8, 2020), <https://www.ehn.org/oil-and-gas-wells-methane-oceans-2649126354.html>.] BOEM and BSEE can create economic opportunities in the area by working to address those leaking, abandoned wells.

Comment Number: BOEM-EMAIL-32521-018389-33

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In addition to ending new leasing and adopting regulatory changes, it is important for BOEM and BSEE to develop a plan to provide a just transition away from existing oil and gas activity in the Gulf of Mexico, concurrent with the requirements in E.O. 14008. We recommend that Interior immediately begin to analyze the extent of employment changes from phasing out offshore drilling and actively plan for the transition. Ending new leasing frees up both time and resources within Interior to study, plan, and execute a broader just transition strategy to keep communities whole as the United States leads the world in breaking its dependence on fossil fuels. With these resources and lead time, Interior can consult with all affected communities and develop a plan to significantly benefit the region and the nation.

Interior should, for example, plan for the training necessary for workers to move into clean energy jobs—including solar and wind in a region of the country where both of these energy sources are abundant. In addition to the jobs created by a transition to a clean energy economy, restoring the Gulf and its communities will require decommissioning drilling platforms, addressing abandoned wells, and converting other fossil fuel infrastructure. All of these actions will create additional jobs that require skill sets similar to those that exist to support the industry today and in the same coastal communities where fossil-fuel dependent jobs are located. Interior should immediately begin work to consult with all affected communities to harness these opportunities and ensure that

phasing out the oil economy is done with equity and justice at the forefront.

Comment Number: BOEM-EMAIL-32521-020244-1

Organization: Global Energy Institute and the U.S. Chamber of Commerce

Commenter: Christopher Guith

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Energy production on federal lands is important to our economy and energy security and it is vital to dozens of state and local economies across the country. Congress has directed Interior to pursue a multiple use policy as it manages federal lands in trust for Americans. Moreover, Congress has been specific in directing the agency to conduct lease sales at regular intervals and issue corresponding permits to facilitate energy production on federal lands as an integral function of its multiple use mandate.

As such, we are deeply disappointed with Interior's policy of indefinitely banning any new leasing or permitting on federal lands and waters for the purposes of oil and natural gas development. This policy is economically harmful, would eliminate hundreds of thousands of jobs, and ultimately increase greenhouse gas emissions. In short, this policy should be reversed.

Comment Number: BOEM-EMAIL-32521-021056-3

Organization: Business Alliance for Protecting the Pacific Coast

Commenter: Vipe Desai

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Other Sections: 1.2

Comment Excerpt Text:

The climate crisis is also an economic crisis. Our businesses are facing the impacts of warming oceans, rising seas, and increasingly disastrous weather patterns head on. In the coming decades, the consequences of rising seas will strain many coastal real estate markets, putting nearly 2.5 million properties at risk of chronic flooding.

[Footnote 4: Union of Concerned Scientists (2018) Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate. 1-28p.] When enough of those households and communities falter, entire real estate markets may face a tipping point. In just one year, costs incurred from natural disasters [italics: doubled] from the previous year in the United States. In 2020, natural disasters caused \$95 billion in damages.

[Footnote 5: Flavelle, C. (Jan. 7, 2021) U.S. Disaster Costs Doubled in 2020, Reflecting Costs of Climate Change. The New York Times. Available: <https://www.nytimes.com/2021/01/07/climate/2020-disaster-costs.html>]

Imagine the level of destruction we will face if this trend continues and damages double again this year, and then again next year and the year after that, and so on. We cannot afford to wait. Permanently protecting federal waters from drilling will prevent over 19 billion tons of greenhouse gas emissions — the equivalent of taking every car in the nation off the road for 15 years. And it would prevent over \$720 billion in damages to people, property, and the environment, letting our businesses prosper long into the future. [Footnote 6: Oceana (2021) Offshore Drilling Fuels the Climate Crisis and Threatens the Economy. 1-4p.] Decisionmakers still have choices that can help limit threats to coastal cities and towns, and ultimately, to the national economy. Prohibiting new offshore drilling on the Outer Continental Shelf will help our nation address the climate emergency while protecting coastal communities and millions of jobs.

We are very encouraged that your administration has taken temporary action to protect our coastal economy. But this is not enough. Protections from offshore oil drilling enjoy bipartisan and overwhelming support. Across the political spectrum, voters, businesses, military leaders and elected officials oppose these dirty and dangerous

practices. Current opposition includes:

- Over 390 East and West Coast municipalities
- More than 2,300 local, state and federal elected officials
- All the governors along the East and West Coasts — Republicans and Democrats alike
- Alliances representing over 55,000 businesses

The Biden administration has shown their commitment to evaluating the federal offshore leasing program and that evaluation will demonstrate what our coastal communities and businesses know at heart: we must permanently protect our coasts from offshore drilling. As your administration completes its review of the oil and gas leasing program, we urge you to consider the disastrous economic impact offshore oil drilling and its associated greenhouse gas emissions has on our businesses and communities, and the wide bipartisan support protecting our coast enjoys. We urge you the Biden-Harris administration to end all further oil and gas leasing and prioritize our oceans as a climate solution by investing in clean energy development, like offshore wind when responsibly sited and developed.

By permanently ending new leasing for offshore drilling and investing in clean renewable offshore energy, we can advance ambitious and durable climate action that protects coastal economies, creates jobs, and benefits everyone. For the sake of our climate and the future of our communities, now is the time for action.

Comment Number: BOEM-EMAIL-32521-023161-1

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8 6 18

Comment Excerpt Text:

WORC's members are all too familiar with the impacts of the federal oil and gas leasing program. The boom and bust production of these public resources has resulted in great wealth for a few, financial ruin for others, and irreparable environmental damage for all. As we prepare for what is likely to be the ultimate bust of this industry, the Department has a final opportunity to do justice to the communities and the ecosystems that have been most impacted by this program. As production declines, we specifically ask the department to prioritize:

1. Ensuring that the sale of public oil and gas accounts for the full cost of production, including the real cost of freshwater use, environmental impacts of waste streams, the contribution to the climate crisis, the disproportionate impact to low-income communities and people of color, particularly Indigenous people, and the complete plugging, reclamation and remediation of sites.
2. Working with the Administration to ensure continued dignified employment and opportunity for those who live in communities with oil and gas extraction.
3. Requiring a fair return on publicly owned resources while decoupling the ability of our state and counties to provide basic infrastructure and social services from federal royalties.
4. Leading an efficient yet open, inclusive, and transparent process for public participation and input including meaningful engagement with communities impacted by federal oil and gas leasing—allottees, split estate residents, tribal members, and other frontline communities.

Comment Number: BOEM-EMAIL-32521-025899-12

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

B. The Department of the Interior should, in coordination with other relevant federal agencies, develop a plan and timeline for a just and equitable economic transition for workers, communities, Tribes, and states reliant on funds and economic activity generated by oil and gas activities on federal and Indian lands

The response to EO 14008—from certain sectors, trade groups, and state governments [Footnote 58: See, e.g., Western Energy Alliance, Biden’s Leasing Ban on Public Lands Challenged by Western Energy Alliance in Federal Court, Jan. 27, 2021, available at <https://www.westernenergyalliance.org/pressreleases/bidens-leasing-ban-on-public-lands-challenged-by-western-energy-alliance-in-federal-court>; Gov. Mark Gordon, Governor Gordon Slams Planned Biden Administration Order Halting Oil and Gas Leasing, Jan. 26, 2021, available at <https://governor.wyo.gov/media/news-releases/2021-news-releases/governor-gordon-slams-planned-biden-administration-order-halting-oil-and-ga>—makes clear that, as the U.S. grapples with how to reduce reliance on oil and gas and eliminate GHG emissions, DOI and a range of federal agencies face significant challenges and a momentous opportunity to chart a pathway for a just and equitable energy transition in this country.

Today, the economies of several U.S. states remain precariously tied to federal receipts from oil and gas production on federal public lands. [Footnote 59: Reynolds, Nick, Wyoming’s Heavy Reliance on Federal Funds, Lack of Local Revenues Could Cause Problems Under Trump Budget, Casper Star Tribune, Mar. 24, 2019, available at https://trib.com/news/state-and-regional/wyomings-heavy-reliance-on-federal-funds-lack-of-local-revenues-could-cause-problems-under-trump/article_fc0008ce-df1b-5d74-afb1-f60a39ff4399.html; Oil and Natural Gas Contributed \$2.8 Billion to New Mexico Budget in FY 2020, N.M. State Public Media, Dec. 21, 2020, available at <https://www.krwg.org/post/oil-and-natural-gas-contributed-28-billion-new-mexico-budget-fy-2020>; Hedden, Adrian, Oil and Gas Leads New Mexico’s Budget Woes, Programs Could be Cut in Special Session, Carlsbad Current Argus, June 1, 2020, available at <https://www.currentargus.com/story/news/local/2020/06/01/oil-and-gas-leads-new-mexicos-budget-woes-cuts-coming-special-session/5278252002/>] This reliance has created a situation where the global energy transition underway (away from fossil fuels) holds the potential to cause significant economic harm to certain jurisdictions and communities absent proactive measures. At the same time, failure to acknowledge the transition underway, and to react proactively, holds the potential for far greater economic harms down the road.

For these reasons, we believe that, in the face of climate change and the variety of stressors it places on the landscapes, ecosystems, and resources DOI is tasked with managing, the agency must play a proactive role in a just and equitable economic transition. In doing so, it communities reliant on fossil fuel activity as they consider options for ending their economic reliance on receipts from federal oil and gas production and seek to diversify their economies.

Comment Number: BOEM-EMAIL-32521-026571-3

Organization: Multiple Gulf Advocacy Organizations

Commenter: Dustin Renaud

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

While we fully support an end to new oil and gas leasing in all areas of the Outer Continental Shelf, we also call on the Administration to develop a plan that ensures good jobs, healthcare, housing, and food security for families either directly or indirectly, dependent upon oil and gas development. Thousands of offshore and onshore oil workers in the Gulf have struggled since the rise of fracking, with the industry losing more than 14,000 jobs in the year before the pandemic began [Footnote 2: <https://www.reuters.com/article/us-usa-oiljobs-kemp/u-s-oil-and->

gas-jobs-fall-as-drilling-declines-kemp- idUSKBN1WU1V4]. More than a hundred thousand more were laid off after the 2020 price crash, as oil and gas companies chose to pay dividends to investors and bonuses to executives [Footnote 3: <https://www.cnn.com/2020/10/08/business/oil-gas-jobs/index.html>]. These decisions only exacerbate the long-term decline in oil and gas demand, with major producers acknowledging that oil demand won't return to its 2019 peak. While the abandonment of workers by the industry is an urgent concern, ending sales of new offshore leases will not have a significant impact on employment within the industry--federal lands and waters comprise just 20% of total US oil and gas production, and less than 25% of the 12 million acres already leased for offshore oil and gas is actually developed [footnote 4: <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>] We ask that the administration develop a just transition plan to ease the economic impact of the Gulf Coast that:

- Provides good jobs, healthcare, housing, and food security for families of oil industry workers
- Consults with impacted Gulf frontline communities, especially Black, Indigenous, Latinx, and People of Color, as well as fisherfolk and oil industry workers, and people who have suffered because of the BP oil spill, as well as communities polluted by refineries and petrochemical plants;
- Compensates communities that will suffer a loss of tax revenue from a phase-out of fossil fuel and petrochemical industry operations; and
- Offers business development support to help the economy of the Gulf South that includes investing in local businesses, recruiting new industries, and investing in infrastructure.
- Employs the experienced offshore oil workers in efforts to cap, clean up, and remove abandoned or orphaned wells and pipelines in the Coastal Zone and OCS permanently. Orphaned wells leak greenhouse gases, while the old pipelines obstruct ecological restoration efforts. Utilizing the skills of our oil and gas workers as part of the restoration and ecological recovery of the Gulf of Mexico is consistent with the directive of the Executive Order.

Comment Number: BOEM-EMAIL-32521-027601-2
Organization: State of Alabama, Office of the Governor
Commenter: Kay Ivey
Commenter Type: State Governors and State Agencies
Classification: Substantive

Comment Excerpt Text:

We have seen such positive and lasting impacts that the offshore oil and gas leasing program have on our state ranging from jobs, economic contributions, to the critical Gulf of Mexico Energy Security Act (GOMESA) funding. As we look forward and begin to embark on the recovery from COVID-19 and the economic downturn, we need to build a path to recovery by looking for ways to stimulate our respective economies, create jobs and provide relief for our families and businesses and the annual revenue we receive from GOMESA funds plays a crucial role to do just that for our coastal areas. In 2019, offshore Gulf of Mexico supported 28,000 jobs and more than \$2.3 billion in Gross Domestic Product (GDP) impact for the state! Now more than ever it is critical that our coastal states have economic stability so we can continue to provide jobs for our citizens.

Due to the pandemic and other extenuating circumstances, demand for oil and gas fell significantly last year causing a decline in appetite for leasing, therefore, GOMESA funds to the Gulf States and Alabama took a significant hit. In Fiscal Year 2019, Alabama received more than \$50 million to dedicate to coastal projects but saw almost a \$15 million difference with Fiscal Year 2020 disbursements. And, now, with the March 2021 Gulf of Mexico lease sale cancelled, we can expect more of the same for Fiscal Year 2021 GOMESA funds. GOMESA

funds have allowed for critical hurricane protection and coastal restoration projects across our coast. With increased hurricane activity over the last several years in the Gulf, hurricane protection funding is vital and necessary to continue to protect our citizens.

Comment Number: BOEM-EMAIL-32521-031857-6

Organization: Arctic Slope Regional Corporation

Commenter: Bridget Anderson

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Job Training and Employment Opportunities

Development of federal lands for oil and gas exploration and development activities has other positive economic benefits as well. For example, resource development on the North Slope creates jobs and training opportunities in a region that struggles with employment. Local companies—including ASRC subsidiaries—benefit directly from opportunities to contract with developers. These opportunities are economic multipliers, as they not only create jobs, but the revenue earned by the Alaska Native Corporation is then distributed to Alaska Native shareholders through direct payments of dividends and through other forms of community support.

Comment Number: BOEM-EMAIL-32521-031857-8

Organization: Arctic Slope Regional Corporation

Commenter: Bridget Anderson

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Impacts of Executive Order 14008 on State and Regional Economies

Halting oil and gas leasing of federal lands on the North Slope will create an economic impact ripple effect throughout the entire State. As noted above, oil and gas project development revenues make up a substantial portion of the revenues to both the State of Alaska and to our local municipal government, the North Slope Borough. Oil and gas revenues have generally compromised 80% of the State's general fund revenue since 1977. In 2017, oil and gas property taxes accounted for 95% of the Borough's \$392 million in total property tax receipts. Alaska's oil and gas industry contributed approximately \$3.1 billion to state and local governments in FY 2019 alone. The importance of the oil and gas industry to Alaska's economy cannot be overstated. The Department must fully consider the economic impact on the lives of Alaskans when it implements policies that affect such a significant sector of our State's economy.

Comment Number: BOEM-EMAIL-32521-034546-8

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

VI. A just transition.

As part of this review and when implementing reforms to the oil and gas leasing program, DOI must commit to advancing policies that ensure a just and equitable transition for affected people and communities. DOI must recognize that rural economies have relied on oil and gas development to provide jobs and fund vital public resources such as education, drinking water infrastructure, and rural healthcare for generations. As the country moves away from reliance on fossil fuels, programs supporting job creation and economic diversification in the communities and states most economically reliant on this industry must be established.

We applaud the administration's commitment to investing "40 percent of benefits of climate and clean infrastructure investments to disadvantaged communities" and believe this is a good start toward addressing some of these issues. However, more work is necessary. Colorado Governor Jared Polis established an Office of Just Transition, and released a "Colorado Just Transition Action Plan." The purpose of this office and its action plan is to "support coal workers, employers, and communities as they plan for the future closings of coal plants upon which their communities depend." [Footnote 53:

<https://cdle.colorado.gov/sites/cdle/files/documents/Colorado%20Just%20Transition%20Action%20Plan.pdf>] The federal government should look to this model to learn from both its successes and its short comings when developing programs to help economies transitioning from extractive industries in other parts of the country.

In addition to these long-term solutions for economic transition, there will also be a more immediate need to address shortfalls in state budgets as a result of reduced leasing on public lands. The administration should encourage Congress to appropriate money to affected states for leasing revenues lost during the oil and gas leasing pause.

DOI must also recognize that fossil fuel development results in significant public health, safety, environmental, and economic inequities in many low-income communities and communities of color. Often communities most impacted by development are unable to prevent this development, or to participate in decision making processes related to development. [footnote 54: Stephanie A. Malin, Environmental justice and natural resource extraction: intersections of power, equity, and access. *Environnemental Sociology* 5 : 2 (2019), available at <https://www.tandfonline.com/doi/full/10.1080/23251042.2019.1608420>] Emissions from drilling equipment, hydrocarbons escaping from wells, flaring of natural gas, and emissions from support vehicles -- all features of oil and gas development-- degrade local air quality. Development can also result in chemical contamination of land and water as a result of operational leaks and oils spills. These factors can "lead to a range of acute and chronic health impacts." [Footnote 55: Dara O'Rourke et al, Just Oil? The Distribution of Environmental and Social Impacts of Oil Production and Consumption. *Annual Review of Environment and Resources* 28: 587-617 (November 2003), available at <https://www.annualreviews.org/doi/full/10.1146/annurev.energy.28.050302.105617>] Additional impacts include abandoned and orphaned wells that leak methane, and other carcinogenic pollutants into local communities, and pollute local ground water. Compounding these environmental and health impacts is the reality that communities reliant on fossil fuel extractions experience "persistent poverty and economic malaise" as a result of volatility and instability caused by boom and bust cycles. [Footnote 56: Stephanie A. Malin, Environmental justice and natural resource extraction: intersections of power, equity, and access. *Environnemental Sociology* 5: 2 (2019), available at <https://www.tandfonline.com/doi/full/10.1080/23251042.2019.1608420>] DOI must work to address health, safety, environmental, and economic inequities caused by oil and gas development as part of any commitment to a just transition.

Comment Number: BOEM-EMAIL-32521-035897-2

Organization: Conservation Voters of South Carolina

Commenter: Cassie Ratliff

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Attempts to open our nation's coastlines have repeatedly been met with overwhelming bipartisan opposition from over 2,300 local, state, and federal officials, including South Carolina Governor Henry McMaster [Footnote 1: <https://www.usatoday.com/story/news/politics/2019/03/01/trump-offshore-oil-drilling-plan-faces-resistance-even-before-release/2814275002/>] and more than 380 municipalities, which include the 26 coastal communities in South Carolina who have spoken out against it. [Footnote 2: <https://usa.oceana.org/climate-and-energy/grassroots-opposition-offshore-drilling-and-exploration-atlantic-ocean-and#toc-overview>] This opposition to drilling runs along the entire Atlantic Coast, with an alliance representing over 46,000 businesses and 500,000 fishing families from Maine to Florida who all strongly oppose oil exploration and development off the East Coast. [Footnote 3: <https://usa.oceana.org/climate-and-energy/grassroots-opposition-offshore-drilling-and-exploration-atlantic-ocean-and#toc-overview>]

South Carolina in particular is at a uniquely high risk, with the 4th longest coastline along the Atlantic and home to over 500,000 acres of salt marsh, the most of any state on our coast. Offshore drilling would decimate our tourism and outdoor recreation economies that generate over \$20 billion in revenue and support more than 150,000 jobs across our great state. [Footnote 4: <https://outdoorindustry.org/state/south-carolina/>] Visitors come from all over the world to experience all that South Carolina has to offer and drilling simply isn't worth the risk to our economy and environment. [Footnote 5: https://www.postandcourier.com/business/economic-impact-of-tourism-in-sc-grew-again-reaching-22-6-billion-last-year/article_32269c48-2e31-11e9-816d-771fa7777b39.html]

Comment Number: BOEM-EMAIL-32521-036524-2

Organization: National Ocean Policy Coalition

Commenter: Brent Greenfield

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Moreover, Gulf of Mexico leasing activity provides the nation and states with significant funding for important conservation and restoration activities that provide societal and recreational benefits in both terrestrial and marine environments, with nearly \$700 million distributed in FY 2020. [Footnote 4: See "Interior Disburses Nearly \$249 Million to Gulf States for Coastal Conservation, Restoration and Hurricane Protection Programs," U.S. Interior Department Press Release, Mar. 30, 2021, accessible at <https://www.doi.gov/news/interior-disburses-nearly-249-million-gulf-states-coastal-conservation-restoration-and>.]

Lifting the pause on leasing in federal waters will help ensure that regions such as the Gulf of Mexico -- and the nation overall -- continue to benefit from the economic and environmental benefits associated with offshore energy lease sales, and will support the multiple use management approaches that have served the country well.

Comment Number: BOEM-EMAIL-32521-036705-2

Organization:

Commenter: Tildon Jones

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

I hope that the Department will modernize and update the leasing program to the benefit of all our country's citizens, not just the companies that seek to benefit from exploiting our public trust. Living in a place where they do business, I can attest first hand that their interests are not in our local communities. When commodity prices plummet, they shut their doors immediately to leave behind laid-off workers and decimated local economies. I would encourage your Department to consider the long term average economic benefits these industries bring, and not just the selective boom year statistics that they will offer. A simple analysis of children on free and reduced lunch in this community will yield great insight to the "wealth" these industries actually offer.

Comment Number: BOEM-EMAIL-32521-036937-12

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Interior Should Quantify the Net Economic Impacts of Its Reforms Using Its Revised Energy Substitution Model, and Seek to Mitigate Any Adverse Impacts on Local Communities Through Beneficial Land Usage

In prior analyses, Interior has estimated the localized revenue, royalty, and jobs impacts of extraction projects, but avoided further economic analysis that considers how those impacts could be offset through substitution, leakage, and broader economic effects. As noted above, this has produced a lopsided analysis whereby Interior offsets the environmental costs of extraction but assesses economic impacts without any consideration of substitution effects. [Footnote 92: See supra notes 73–74 and accompanying text] Because the revenue impacts of fossil-fuel extraction are partially offset due to leakage and substitution effects, they do not represent economic “benefits” in the true sense. [Footnote 93: The revenue generated from the sale of fossil fuels represents society’s marginal willingness to pay for those resources, and thus represents the economic “benefit” in the true sense. Subsidiary economic impacts from revenues generated, such as increased wages, royalties, and taxes, are transfers rather than economic benefits because they are derivative of those revenues and “do not affect total resources available to society.” Office of Info. & Regulatory Affairs, Regulatory Impact Analysis: A Primer 8 (2011) (“Transfer payments are monetary payments from one group to another that do not affect total resources available to society,” such as “[c]hanges in sales tax revenue due to changes in sales”).]

With a robust energy substitution model, Interior could estimate the actual forgone economic benefits of reduced fossil-fuel extraction. [Footnote 94: For actions that directly reduce fossil-fuel extraction like curtailing leasing, those costs are two-fold: the reduced economic revenue from any forgone production representing reduced demand (i.e. not offset by substitute production from another source), plus any additional production costs of substitute production compared to the production forgone.] Interior should estimate and report those forgone economic benefits, as doing so would facilitate an apples-to-apples comparison to climate benefits and other monetized benefit estimates from reduced extraction such as a reduction in oil-spill risk. A full analysis using an energy substitution model would also allow Interior to place the forgone economic benefits of reduced fossil-fuel extraction into the context of the economic benefits from increased renewable generation on federal lands and waters, and for the agency to assess the net economic impacts of all reforms. Additionally, a market-wide analysis would enable Interior to project broader economic impacts such as aggregate price increases or supply declines. Assessing and reporting all of these impacts would provide the public with detailed information about the economic impacts of programmatic reforms, and enable Interior to rationally justify its decisions to pursue any reforms through a transparent consideration of the costs and benefits.

While localized impacts on revenues, jobs, and royalties are not themselves economic costs of reduced fossil-fuel extraction due to offset effects, they nonetheless provide important context to help Interior gauge the impacts of programmatic reforms on communities that have historically relied on energy generation. To help mitigate any

adverse effects on these communities, Interior should identify renewable resource generation potential in areas that are expected to experience a decline in fossil-fuel production and seek to site renewable projects in these areas. [Footnote 95: See supra note 19 and accompanying text.] For instance, Interior should identify new opportunities to use abandoned or reclaimed coal-mine lands as renewable-energy production sites. Interior should seek to partner with agencies such as the Departments of Energy and Labor to identify locations for job training programs.

Comment Number: BOEM-EMAIL-32521-037410-9

Organization: Southern Environmental Law Center

Commenter: Melissa Whaling

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

B. The Transition Towards a Clean Energy Economy in the Gulf Should be Just and Equitable

As DOI and the Biden administration take “bold, progressive action” to “immediately commence work to confront the climate crisis,” as directed by Executive Orders 14008 and 13990, [Footnote 152: Executive Order 14,008 § 201; Executive Order 13,990 § 1] it must continuously seek out ways to make its offshore oil and gas program more socially equitable across Alabama and the rest of the Gulf of Mexico states.

The deep inequities of environmental and climate impacts cannot be overstated. Socially vulnerable, low-income, marginalized, and underserved communities in the Southeast bear the brunt of impacts from both climate change and oil and gas development. As discussed above in Section I.A, these communities are disproportionately vulnerable to climate hazards and have less ability to adapt to the shocks and stressors of climate change. [Footnote 153: See, e.g., Zack Colman & Daniel Cusick, supra note 29] Furthermore, the infrastructure footprint of risky oil and gas operations—like extraction, storage, and refining— overlaps with low-income and predominantly Black and Brown communities in disproportionate numbers. [Footnote 154:] See, e.g., Lesley Fleischman & Marcus Franklin, *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, NAACP & CLEAN AIR TASK FORCE (Nov. 2017), http://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf. Finally, due to systematic injustices in oil spill response and recovery, communities of color are often disproportionately affected by the impacts of oil spills. [Footnote 155: See, e.g., Hari M. Osofsky et al., *Environmental Justice and the BP Deepwater Horizon Oil Spill*, 20 N.Y.U. Env’t L.J. 99 (2012), https://scholarship.law.umn.edu/faculty_articles/415/.] These realities should inform the Department’s review of the federal oil and gas program as well as any other actions it takes to confront climate change.

To that end, we urge the Department to focus its greenhouse gas mitigation and climate change efforts on the needs of those who are most vulnerable. For example, underserved communities currently reliant on offshore oil and gas jobs in the Gulf of Mexico should be the first beneficiaries of renewable energy job opportunities and clean energy infrastructure investments. Policies aimed at reducing greenhouse gas emissions must also prioritize the shutdown of dangerous and polluting facilities adjacent to poor, Black, and Brown communities with equal financial support and urgency. We also urge the Department to follow the leadership of local and Indigenous peoples regarding decisions about oil and gas activities that affect their communities. Finally, the costs and burden of such a transition must be paid for by the industries that have polluted and poisoned the Gulf of Mexico for decades.

Comment Number: BOEM-EMAIL-32521-037419-3

Organization: Montana Wilderness Association

Commenter: Aubrey Bertram

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

These same public lands that the industry leases and fails to develop also fuel Montana's \$7 billion outdoor recreation economy, employing 71,000 people. Comparatively, federal oil and gas leasing contributed \$4 million to our state in 2019, employing between 1,200 and 2,000 people. While the overall rate of employment and economic contribution of the oil and gas sector in Montana pale in comparison to other industries, including outdoor recreation, its impacts are acutely felt by people who live in eastern Montana. The oil and gas industry employs approximately 1,000 people in rural, sparsely populated Richland, Dawson, Fallon, and Toole counties. Nearly 21% of the private employment in Fallon county is in this sector. As we look to reform our oil and gas leasing program and tackle the climate crisis, the department must make investments that secure a just transition of local economies away from a disproportionate dependence on the oil and gas industry and into more sustainable economies.

Section 6 - Revenues

Comment Number: BOEM-EMAIL-32521-019746-8

Organization: ConocoPhillips

Commenter: Fennessey Karl

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

In addition to increasing global emissions, a prolonged leasing halt and accompanying slowdown of permitting would almost certainly burden low-income families and indigenous communities by removing a major source of revenue. Take for example Alaska's North Slope Borough, which is the equivalent of a county in other parts of the U.S. in that it serves as the local government. Greater than 90% of the North Slope Borough's revenue comes from oil and gas taxes, with the oil industry currently paying ~\$400 million per year in property taxes on its North Slope infrastructure. This funding provides the revenue necessary for many basic services and amenities for residents, including running water, indoor plumbing, roads, schools, public health department and emergency response, which are quite costly in these remote arctic environment locations. Without continued oil and gas industry investment on the North Slope, the ability of its communities to maintain critical infrastructure and basic public services and amenities would diminish.

Comment Number: BOEM-EMAIL-32521-020638-10

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

As noted above, the industry generated \$5.4 billion in government revenue in 2019. Historically, the offshore oil and gas industry has been an important generator of revenues for the Federal government, as well as state and local governments. Between 2000 and 2018, more than \$120 billion in high bids, royalties and rents was

generated for the government [Footnote 10:

<https://revenuedata.doi.gov/explore/?dataType=Revenue&location=NF&mapLevel=State&offshoreRegions=true&period=Fiscal%20Year&year=2019>

]. Some of these revenues flow back to key conservation programs, such as the Land & Water Conservation Fund (which is funded entirely by offshore oil and gas production) and, beginning in 2021, certain provisions established in the recent Great American Outdoors Acts. In fact, just in March of this year the Department disbursed nearly \$250 million for coastal conservation and other programs, commenting that “Today’s action represents the second largest disbursement since the Dept first began disbursing GOMESA revenues to states and their CPS in 2009.” [Footnote 11: <https://www.doi.gov/news/interior-disburses-nearly-249-million-gulf-states-coastal-conservation-restoration-and>] These are critical revenues for vital programs that does not have to burden individual taxpayers.

In addition, revenues shared with Gulf Coast states through GOMESA are used by state and local governments for a host of vital programs, including wetlands preservation, coastal restoration, flood prevention and hurricane mitigation. [Footnote 12: <https://www.boem.gov/oil-gas-energy/energy-economics/gulf-mexico-energy-security-act-gomesa>]

Without continued and robust oil and gas production in the Gulf of Mexico, it will be more difficult to ensure funding for America’s conservation and environmental stewardship programs. However, these benefits and the enormous economic contributions they make could be threatened by unintended consequences of policy-making decisions.

Comment Number: BOEM-EMAIL-32521-020638-14

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Offshore Royalty Rates

There are several revenue streams generated in the leasing and production of Gulf of Mexico offshore resources. The first is the bonus bid, paid to the U.S. government by operators up front to acquire a federal oil and gas lease. The bonus bid is paid without ever knowing what resources may lie underneath the seabed and is kept by the federal government regardless of if oil and gas are ever produced from the lease. The second revenue stream is the annual rental payments tendered to hold the lease until it produces or expires. Again, this revenue is kept by the federal government and companies pay each year while they work through their own internal assessment process and/or as the DOI goes through its robust permitting process. The last revenue source is the royalty and occurs when energy resources are produced in federal waters, at which point companies extracting those resources are required to pay a “royalty” payment to the federal government—this is in recognition of the fact that resources on public lands and waters are a public resource. For federal leases in the Gulf of Mexico, the royalty rates have increased over time, and in 2008 the royalty rate was increased to 18.75% for all water depths. In 2017, in order to encourage continued interest in the more mature shallow waters, the royalty rate for newly acquired shallow water leases was decreased from 18.75% to 12.5%. However, since then, 84% of the leases acquired at OCS lease sales were in the deepwater regions and subject to the higher 18.75% royalty rate. [Footnote 19: <https://revenuedata.doi.gov/how-it-works/revenues/#oil-gas-rates>]

Critically, the significant payments brought in by royalty rates (along with bonus bids and rental payments) help to fund a wide range of state and federal programs, namely around conservation and park maintenance. In fact, as

described at a high level in an earlier section, disbursements from offshore oil and gas in fiscal years 2016 through 2019 were enormous, reaching almost \$5 billion to various accounts: [Footnote 20: <https://revenue.data.doi.gov/query-data/?dataType=Revenue>]

[See attachment 2 for graphic of recipients by year]

This includes not only the federal Land and Water Conservation Fund but also distributions to state governments along the Gulf Coast, as seen in a recent Congressional Research Service report on the topic and the related chart here: [Footnote 21: <https://crsreports.congress.gov/product/pdf/R/R46195>]

[See attachment 2 for graph titled GOMESA distribution to states/CPSs and the LWCF]

These revenues are important, and they will continue to be a critically important piece of the energy and economic story of the U.S. However, it is also the case that these revenues are only generated if access is provided and energy production in federal waters is attractive enough to bring capital to bear. Notably, domestic energy production from federal waters remains costly both in terms of capital expenditures and the government's take in the form of taxes, lease bids, bonus bids, rent paid, and royalty paid. In fact, IHS Markit conducted an analysis [Footnote 22; <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/2018-GOM-International-Comparison.pdf>] in 2018 looking at deep water production and found that the revenue ultimately flowing to companies producing energy in the Gulf is lower than many peer—and competitor—nations, roughly coming up in a middling position.

[See attachment 2 for graph titled discounted share of the barrel – deep water 250 MMboe oil field base case]

This is an issue, and one worth exploring. However, the problem had clearly become most acute in shallow waters of the Gulf of Mexico, a region with more marginal wells producing lesser volumes of oil. In shallow waters, from November 2000 to September 2018, oil production in shallow waters declined by some 75%. [Footnote 23: <https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-urges-interior-department-to-lower-royalty-rates-for-shallow-water-drilling-to-generate-more-jobs-revenue>] Subsequently, the Trump Administration reduced shallow water royalties to 12.5% for newly issued leases in the August 2017 Gulf of Mexico lease sale (Lease Sale 249). While this did not provide relief to the many existing leases, the change resulted in a nearly 22% reduction in government “take” of offshore oil operations in shallow waters, as seen in the chart below comparing domestic shallow water oil operations to peer nations abroad from IHS: [Footnote 24: <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/2018-GOM-International-Comparison.pdf>]

[See attachment 2 for graphic titled government take – shallow water oil fields – low, base, and high cases]

This was a valuable step that, we believe, increases the viability and attractiveness of domestic offshore energy. Royalty rates remain substantial in the offshore, and it is important that the Department continue to find the proper balance between attracting necessary capital to an enormously financially-intense undertaking (producing energy from federal waters) while at the same time bringing revenue back to American taxpayers.

Production Will Shift to Foreign Sources, and The Gulf of Mexico Will Be Developed By Mexico

Whatever occurs with domestic energy policy related to the Gulf of Mexico, the fact remains that other countries offer rights to explore, develop, and produce in the offshore. Restricting production in the Gulf of Mexico will not end the production of oil; it will only shift the production to countries like Russia, China, and Iran. When it comes to the Gulf of Mexico, we have seen investment shift to the Mexican side of the region. Mexico is already producing energy adjacent to state and federal waters belonging to the United States and is actively bidding out and considering additional acreage. We believe that a slowdown or cessation of activities in American waters

would be little less than a “unilateral disarmament” that would cost us one of the most productive and safe regions for energy development in the country while other countries eagerly step in to tap greater global market share and power.

Comment Number: BOEM-EMAIL-32521-021182-4

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

As noted above, the industry generated \$5.4 billion in government revenue in 2019. Historically, the offshore oil and gas industry has been an important generator of revenues for the Federal government, as well as state and local governments. Between 2000 and 2018, more than \$120 billion in high bids, royalties and rents was generated for the government [Footnote 10:

<https://revenue.data.doi.gov/explore/?dataType=Revenue&location=NF&mapLevel=State&offshoreRegions=true&period=Fiscal%20Year&year=2019>]. Some of these revenues flow back to key conservation programs, such as the Land & Water Conservation Fund (which is funded entirely by offshore oil and gas production) and, beginning in 2021, certain provisions established in the recent Great American Outdoors Acts. In fact, just in March of this year the Department disbursed nearly \$250 million for coastal conservation and other programs, commenting that “Today's action represents the second largest disbursement since the Dept first began disbursing GOMESA revenues to states and their CPS in 2009.” [Footnote 11: <https://www.doi.gov/news/interior-disburses-nearly-249-million-gulf-states-coastal-conservation-restoration-and>] These are critical revenues for vital programs that does not have to burden individual taxpayers.

In addition, revenues shared with Gulf Coast states through GOMESA are used by state and local governments for a host of vital programs, including wetlands preservation, coastal restoration, flood prevention and hurricane mitigation. [Footnote 12: <https://www.boem.gov/oil-gas-energy/energy-economics/gulf-mexico-energy-security-act-gomesa>]

Without continued and robust oil and gas production in the Gulf of Mexico, it will be more difficult to ensure funding for America’s conservation and environmental stewardship programs. However, these benefits and the enormous economic contributions they make could be threatened by unintended consequences of policy-making decisions.

Comment Number: BOEM-EMAIL-32521-022112-2

Organization: Project Canary

Commenter: Brian Miller

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

As the Federal government reviews the Federal oil and gas permitting and leasing practices, the Federal government should consider developing new operating standards that promote real-time, continuous independent monitoring. There are two distinct economic benefits should such monitoring efforts be incorporated into new operating standards. First, requiring that any natural gas production on public lands is monitored for methane

leaks will ensure that natural gas, a valuable commodity, remains in the pipe. This will ensure that the Federal government receives every penny it is owed, and more revenues will flow to Federal, state, and local entities who bear the burden of this development. Second, increased, real-time, continuous monitoring and scrutiny of natural gas operations on public lands will allow the Federal government to be a leader in enabling the production of the cleanest energy products available in this country, and set the stage for a market in differentiated natural gas products, that not only have lower environmental impacts in the development process, but also lower impacts when consumed. As an added benefit, these cleaner products command a higher price in the marketplace and hence a higher netback to the Federal government in royalty payments.

By reimagining new operating standards for natural gas development on public lands, we create a win-win-win scenario for multiple beneficiaries, including our environment, our communities, and our Federal, state, and local governments. Should the Federal government lead the way in the production of differentiated fuels, like responsibly sourced natural gas, others will follow, and the United States will enable the production of the cleanest molecules on the planet. Let's use science, technology, data, and innovation to propel our nation into a new leadership position—a new paradigm for measured natural gas development on public lands.

Comment Number: BOEM-EMAIL-32521-023161-1

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 5 8 18

Comment Excerpt Text:

WORC's members are all too familiar with the impacts of the federal oil and gas leasing program. The boom and bust production of these public resources has resulted in great wealth for a few, financial ruin for others, and irreparable environmental damage for all. As we prepare for what is likely to be the ultimate bust of this industry, the Department has a final opportunity to do justice to the communities and the ecosystems that have been most impacted by this program. As production declines, we specifically ask the department to prioritize:

1. Ensuring that the sale of public oil and gas accounts for the full cost of production, including the real cost of freshwater use, environmental impacts of waste streams, the contribution to the climate crisis, the disproportionate impact to low-income communities and people of color, particularly Indigenous people, and the complete plugging, reclamation and remediation of sites.
2. Working with the Administration to ensure continued dignified employment and opportunity for those who live in communities with oil and gas extraction.
3. Requiring a fair return on publicly owned resources while decoupling the ability of our state and counties to provide basic infrastructure and social services from federal royalties.
4. Leading an efficient yet open, inclusive, and transparent process for public participation and input including meaningful engagement with communities impacted by federal oil and gas leasing—allottees, split estate residents, tribal members, and other frontline communities.

Comment Number: BOEM-EMAIL-32521-023720-10

Organization: Petroleum Association of Wyoming

Commenter: Pete Obermueller

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Return to the American Public

Considering the current state-of-play to develop resources on federal lands, one would hope the DOI would be encouraging this activity on land it oversees. This ensures strong environmental controls and mitigation, as well as provides valuable contributions back to its stakeholders – the American public. This return comes in multiple ways, a large component of which is from revenues from royalties paid on production. Operators must also purchase the leases and pay an annual rental before or whether production ever occurs. Not many Federal programs generate revenue from no activity, but it does occur through the Oil & Gas Program. It is important for DOI to be cognizant of the financial resources federal land operators front to hopefully one day develop a lease.

In Wyoming, every citizen benefits from oil and gas development. Revenues from this industry provide funding for K-12 education, our lone state University, public infrastructure, revenue to cities and counties, and general state government operations. The federal oil and gas program provides significant benefits to the American public and to the states which host this industry. DOI may well be setting the stage for a future of lower returns from this program.

Comment Number: BOEM-EMAIL-32521-024412-28

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Lands with low development potential return less revenue.

BLM's oil and gas program does not adequately compensate taxpayers for the use of public lands and minerals. This fact is especially true when it comes to public lands with no and low potential for oil and gas. Adding insult to injury, the issuance of no and low potential leases encourages widespread, rampant, lease speculation while preventing BLM from managing these public lands for better, more appropriate, uses such as for preservation and wildlife.

Taxpayers are not adequately compensated for the leasing of public lands and minerals and are harmed by BLM's longstanding position to elevate leasing and development as the "dominant" use of public lands. A recent report concluded that since 1987 "30 percent of all public lands and minerals actively leased for oil and gas were sold for just \$2.00 per acre or less." TWS et al., *America's Public Lands Giveaway* (April 2020) [Footnote 45: Available at <https://storymaps.arcgis.com/stories/36d517f10bb0424493e88e3d22199bb3>.] [hereinafter, "America's Public Lands Giveaway"]. Their conclusion: "Such low cost leases shortchange taxpayers and incentivize speculation on public lands with little or no potential for oil and gas development." Id. See also GAO, *Report to Congressional Requesters, Oil and Gas, Onshore Competitive and Noncompetitive Lease Revenues*, GAO-21-138 (Nov. 2020) (reaching similar conclusions) [hereinafter, GAO Report 21-138"]. [Footnote 46: Available at <https://www.gao.gov/assets/gao-21-138.pdf>.]

First, there is an indisputable correlation between no and low potential lands and lower competitive bids. For example, in Nevada—which is not an oil and gas state—BLM offered hundreds of thousands of acres of low and no potential lands for leasing over the past four years. The sales were by all objective standards complete failures. Nevada-BLM's November 2019 sale included 48 parcels but the agency received bids for only 2 parcels—both at the minimum bid of \$2 per acre. See BLM, Nevada State Office, *Oil & Gas Competitive Lease Sale Results Summary* (Nov. 12, 2019). [Footnote 47: Available at https://www.blm.gov/sites/blm.gov/files/NV_OG_20191112_MD_COMP_SALE_RESULTS.pdf.] Similarly, at its March 2020 sale, Nevada-BLM offered 45 parcels but sold only 2—both for the minimum price of \$2 per acre. See BLM, Nevada State Office, *Competitive Oil & Gas Lease Sale Results Summary* (March 4, 2020). [Footnote

48: Available at

https://www.blm.gov/sites/blm.gov/files/NV_OG_20200324_BMDO_COMP_SALE_RESULTS.pdf.] Combined these two sales generated only \$18,873 in total payments—far less than what the agency spent to prepare for the respective sales, including staff time, NEPA analyses, and consultation obligations, among other expenses.

The same pattern is common in other western states, including Utah and Colorado. At the June 2019 sale, Utah-BLM offered 7 parcels in the Salt Lake Field Office—an area of no or low potential for oil and gas development [Footnote 49: In 1989, BLM prepared a supplemental environmental assessment to address oil and gas in the Salt Lake Field office. It predicted—for the entire multi-million acre planning area—three wells would be drilled in the foreseeable future. See generally BLM, Box Elder RMP Oil and Gas Supplemental Environmental Assessment, Bear River Resource Area (March 1989).]—and sold them for only the minimum bid of \$2 per acre. See BLM, Utah State Office, June 11, 2019, Oil & Gas Lease Sale Results. [Footnote 50: Available at https://eplanning.blm.gov/public_projects/nepa/119572/174906/212465/1-June2019_SaleResults.pdf.] This sale came on the heels of the March 2019 sale where BLM offered 20 parcels in this same area—none of which sold competitively but instead were acquired at the day-after sale noncompetitively for \$1.50 per acre. See BLM, Utah State Office, March 25-26, Oil & Gas Lease Sale Results. [Footnote 51: Available at https://eplanning.blm.gov/public_projects/nepa/117403/169443/206043/2AvailableNonComp.pdf.]

Two more recent BLM sales in Utah further illustrate this same point while also highlighting other inherent problems with BLM’s encouragement of lease speculation by offering no and low potential lands for leasing and development—that is, such leases attract lessees that have no intent to develop them and they raise ethical concerns including conflicts of interest and fraud. At the September 2020 sale, Utah-BLM sold 23 parcels, many for the minimum bid of \$2 per acre. See BLM, Utah State Office, September 29, 2020, Oil & Gas Lease Sale Results. [Footnote 52: Available at https://eplanning.blm.gov/public_projects/2000028/200369968/20027033/250033234/2020-9-29_Sept2020CompetitiveSaleResults.pdf.] The majority of the parcels were acquired by Levi Sap Nei Thang LLC—an individual with no known or proven experience in oil and gas development. Id.

It has been widely reported that Ms. Thang never had any intention to develop her leases but instead she used her popularity on Facebook to scam individuals into purchasing them at highly inflated prices, including the sale of 2 leases for more than \$500,000 to the owner of a sushi restaurant in Texas. See, e.g., Nichola Groom, How a Burmese immigrant profited by flipping cheap oil leases from Trump auctions, Reuters (March 22, 2021). [Footnote 53: Available at <https://www.reuters.com/article/us-usa-drilling-myanmar-insight/how-a-burmese-immigrant-profited-by-flipping-cheap-oil-leases-from-trump-auctions-idUSKBN2BE1C5>.] In the final year of the Trump administration—which saw a surge in the offering of low or no potential lands for leasing and development—Ms. Thang “became the nation’s top buyer of oil-and-gas leases . . . despite having no apparent energy background.” Id. See also Brian Maffly, Who is Levi Sap Nei Thang and why is she buying up hundreds of oil and gas leases in Utah and across the West? Salt Lake Tribune (Oct. 12, 2020) (“Despite [Ms. Thang’s] lack of experience, she has gone on a major spending binge in recent months, buying up rights to drill for publicly owned hydrocarbon deposits across six Western states”). [Footnote 54: Available at <https://www.sltrib.com/news/environment/2020/10/12/who-is-levi-sap-nei-thang/>.]

Ms. Thang is a colorful, but by no means, isolated, example. Speculators routinely participate in the leasing process and frequently purchase no and low potential lands for reasons that have nothing to do with oil and gas production. See, e.g., Brian Maffly, Park service, local governments decry oil and gas leasing near Zion, Salt Lake Tribune (Aug. 3, 2017); [Footnote 55; Available at <https://www.sltrib.com/news/environment/2017/03/10/park-service-local-governments-decry-oil-and-gas-leasing-near-zion/>.] Eric Lipton and Hiroko Tabuchi, Energy Speculations Jump on Chance to Lease Public Land at Bargain Rates, New York Times (Nov. 27, 2018). [Footnote 56; Available at <https://www.nytimes.com/2018/11/27/business/energy-speculators-public-land-leases.html>.]

At the December 2020 sale, Utah-BLM offered 21 parcels for sale but sold only 3. See BLM, Utah State Office, Competitive Oil & Gas Lease Sale Results Summary, Tuesday, December 8, 2020. [Footnote 57: Available at https://eplanning.blm.gov/public_projects/2001127/200383935/20030885/250037084/SaleResultsSummaryPublic-12-08-2020.pdf.] Two of the three leases were acquired for \$2 per acre by an individual named Vern Jones—a BLM contract employee who had also nominated the parcels for leasing. See BLM, Utah State Office, Competitive Oil & Gas Lease Sale Results. [Footnote 58: Available at https://eplanning.blm.gov/public_projects/2001127/200383935/20030884/250037083/SaleResults-12-08-2020.pdf.] This obvious conflict of interest was not the first instance of Mr. Jones having inappropriately mixed his BLM employment and private landman interests for personal gain. See, e.g., Brian Maffly, Federal land manager pulls plug on Utah tar sand lease because of conflict of interest, Salt Lake Tribune (Dec. 14, 2020). [Footnote 59: Available at <https://www.sltrib.com/news/environment/2020/12/14/federal-land-manager/>.]

Second, there is not a correlation between BLM offering more lands for lease and increased levels of energy production. No correlation exists because no and low potential lands are not developed (or are extremely unlikely to be developed), based on simple principles of economics. The following chart illustrates this point. [Footnote 60: This chart was generated based on BLM data. See BLM, Oil and Gas Statistics, <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics> (follow hyperlink for Tables 2 and 6).]

[See attachment for graph titled Oil and Gas Leases vs Producing Leases]

As shown above, the acreage of producing lease in Utah has remained consistent over the past decade regardless of the total acreage leased by BLM for development.

Comment Number: BOEM-EMAIL-32521-026500-1
Organization: State of Louisiana, Office of the Governor
Commenter: John Bel Edwards
Commenter Type: State Governors and State Agencies
Classification: Substantive

Comment Excerpt Text:

The Gulf of Mexico Energy Security Act (GOMESA) is the largest source of annually recurring federal revenue for the state's coastal program. Demonstrating its commitment to addressing the impacts of climate change, Louisiana has constitutionally dedicated its OCS revenue to the critical effort of climate adaptation, specifically coastal conservation, coastal restoration, hurricane protection, and infrastructure directly impacted by coastal wetland losses. Our efforts to conserve and restore our coastal wetlands not only makes us more resilient against rising seas and stronger storms, it also maximizes an important carbon sink and minimizes the conversion of that sink into a source of greenhouse gases when wetlands convert to open water. Recurring OCS revenue plays an important role in cash-flowing the coastal program, allowing it to advance many coastal protection and restoration projects at once and filling budget gaps left by nonrecurring or restricted funds. Sustainable and predictable oil and gas production from the Gulf of Mexico is critical to our ability to address our state's climate-related challenges, improve structural resilience to catastrophic weather, combat coastal land loss, and reduce our carbon footprint.

Comment Number: BOEM-EMAIL-32521-031857-4
Organization: Arctic Slope Regional Corporation
Commenter: Bridget Anderson

Commenter Type: Tribes and Tribal Organizations
Classification: Substantive

Comment Excerpt Text:

Local Tax Revenue

Oil and gas development also requires the development of infrastructure, which benefits local residents through the generation of tax revenues. The North Slope Borough, for example, derives the vast majority of its revenues through taxation of oil and gas infrastructure. These tax revenues allow the Borough to provide and invest in public infrastructure and utilities—such as heat, water, and sewer services—and other services including education, health care, and emergency services.

Comment Number: BOEM-EMAIL-32521-034250-10

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM should act on its own findings, as well as those of numerous external reviewers, and commence new rulemakings to update its royalty, bid and rental rates.

Comment Number: BOEM-EMAIL-32521-036835-2

Organization: Colorado Farm and Food Alliance

Commenter: Pete K

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

3. Taxpayers are owed and DOI must ensure a fair return for use of public lands and the development of publicly-owned minerals. All revenue streams and processes of this program, from minimum bids and non-competitive leasing to royalties and bonding, must be carefully reexamined to guarantee this program returns fair and reasonable value to the U.S. taxpayer.

Comment Number: BOEM-EMAIL-32521-037429-2

Organization: Western Energy Alliance

Commenter: Tripp Parks

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Onshore Production Provides a Fair Return

Companies operating on federal lands generate revenue for the federal government through the payment of bonus bids on parcels acquired at Bureau of Land Management (BLM) lease sales, rents on held acreage, and royalties

on producing acreage. In turn, Congress appropriates specific amounts annually for the management of the oil and natural gas program. Each year, the amount of revenues returned to the U.S. Treasury and state, local, and tribal governments far exceeds the amount budgeted by Congress, meaning the oil and natural gas program provides a fair return to American taxpayers.

In fiscal year (FY) 2019, for instance, federal onshore oil and natural gas production generated \$4,169,724,205 in royalties, bonus bids, and rents. [Footnote 2: Office of Natural Resources Revenue Data [Hyperlinked: <https://revenuedata.doi.gov/explore/?commodity=Oil%2CGas%2CNatural%20gas%20liquids%2COil%20or%20gas%20%28pre-production%29%2COil%20Shale&dataType=Revenue&location=NF&mapLevel=State&offshoreRegions=false&period=Fiscal%20Year&year=2019>], FY19 for onshore Oil, Natural Gas, Natural Gas Liquids, Oil or Gas (Pre-production), and Oil Shale] Meanwhile, Congress appropriated \$143,069,000 to BLM for Oil & Gas Management, Permit Processing, and Inspection Activities in FY19. [Footnote 3: Budget Justifications and Performance Information, Fiscal Year 2021, Bureau of Land Management [Hyperlinked: <https://revenuedata.doi.gov/explore/?commodity=Oil%2CGas%2CNatural%20gas%20liquids%2COil%20or%20gas%20%28pre-production%29%2COil%20Shale&dataType=Revenue&location=NF&mapLevel=State&offshoreRegions=false&period=Fiscal%20Year&year=2019%5d>], Page V-71] In other words, for every dollar spent by BLM managing the federal onshore program, the industry returned \$29.14 to the government. While this amount varies year-over-year based on swings in commodity prices and evolving industry interest, the ratio is consistently well over 15 times, providing great value and return on investment for BLM. Without federal lease sales the bonuses paid will of course be zero, dramatically decreasing this ratio.

Furthermore, these revenues are not merely dollar amounts on a spreadsheet at the U.S. Treasury. Last year Congress passed the Great American Outdoors Act (GAOA), which established the National Parks and Public Land Legacy Restoration Fund (NPPLRF). The new fund is devoted to national park and public lands restoration, and Congress is providing up to \$1.9 billion annually for five years (\$9.5 billion total) from onshore energy revenues.

Seventy percent of NPPLRF revenues are distributed to the National Park Service to reduce the \$12 billion deferred maintenance backlog in national parks across the country, and a recent study found the GAOA is expected to create more than 108,000 new jobs. The remaining NPPLRF funds go to the U.S. Forest Service, U.S. Fish & Wildlife Service, BLM, and Bureau of Indian Education schools to reduce their backlog of nearly \$8 billion in maintenance needs. As a result, the federal oil and natural gas program directly funds conservation and reclamation efforts on our cherished federal lands, and any decision to curtail the program will harm these important efforts.

State and local governments also rely on revenues from federal production for important programs, including local education needs. The federal government provides nearly 50% of onshore revenues to the states in which they are generated, providing an extremely valuable funding source for western states that have large amounts of federal lands, especially Wyoming and New Mexico. Western leaders have strongly and consistently opposed a move to ban oil and natural gas leasing in the West, as the impacts of such a decision would be tremendously harmful. [Footnote 4: https://www.westernenergyalliance.org/voices_against_biden_ban.html]

Comment Number: BOEM-TRANS-32521-000012-1

Organization: American Petroleum Institute

Commenter: Frank Macchiarola

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

First, the oil and gas industry is essential to America's post pandemic recovery and long term economic growth. Oil and natural gas development on federal lands and waters provide affordable and reliable and cleaner energy, supports millions of good paying job, provides billions of dollars to federal and State Governments and supports conservation efforts across the country. In 2019 alone, the LWCF which is funded almost entirely by offshore oil and gas revenues distributed over \$227 million across the country for outdoor recreation and conservation efforts. Policies aimed at slowing or stopping oil and natural gas production also prove harmful to our national security. US energy demand is likely to continue to rise and it's vital that the energy we use is produced right here at home. We urge you to expedite this review. The study we commissioned a long term leasing and development ban could result in 2 million additional barrels of oil a day being imported to meet needs and nearly one million American jobs lost.

Section 7 - Leasing Strategy (for example, Onshore Resource Management Plans, Offshore National Program, leasing pause or moratorium)

Comment Number: BOEM-EMAIL-32521-000004-6

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

Increase the rate of tract development by shortening primary terms, increasing minimum bids, and eliminating non-competitive leasing BLM's standard primary term of ten years gives firms a remarkably long time to hold a lease before developing it. While such a long lead-time might be appropriate for large, offshore deepwater developments that require long construction times, it is excessive for onshore resources that can be developed more quickly. [Footnote 18: For instance, Kellogg, "The Effect of Uncertainty on Investment", 1710, finds that firms can mobilize to drill conventional onshore wells in Texas within three months of a significant change in the oil price. Newell, Prest, and Vissing, "Trophy Hunting vs. Manufacturing Energy", 409, and Newell, and Prest, "The Unconventional Oil Supply Boom", 11, find that most of the response of unconventional drilling to price changes occurs within two calendar quarters of the price change.] It is also out of line with primary terms used by major oil producing states. As illustrated in Figure 1, the longest primary term used by Louisiana, New Mexico, North Dakota, and Texas when leasing state oil and gas parcels is five years. Three and five year terms are also common in private oil and gas leasing markets.

Short primary terms are valuable for two reasons. First, they promote timely resource development, one of BLM's core objectives. Second, they can increase the present value of the revenues earned by the resource owner, despite the fact that short primary terms may lead firms to make lower bids during lease auctions. A recent paper shows that primary terms create value for the resource owner by accelerating drilling, countering the incentive to delay drilling that is induced by the royalty. [Footnote 19: Herrnstadt, Kellogg, and Lewis, "Time-Limited Development Options", 32] That is, the royalty and primary term work together as complementary tools by which the resource owner can earn value from its reserves while not inducing the firm to excessively delay resource development.

The ability of firms to obtain a federal oil and gas lease and not develop it for a long period of time, or perhaps not develop it at all, is exacerbated by the low minimum bid of \$2 per acre that BLM uses in its auctions, along with the low annual rental payments of \$1.50 or \$2 per acre. Even in the least desirable, most outlying "wildcat" areas in the earliest days of shale plays, state auctions had minimum bids of \$100 per acre or more. In active shale plays today, minimum bids of thousands of dollars per acre are not uncommon. Given the BLM's low minimum

bid, and given the fact that many tracts are leased at the minimum, it is easy for a firm interested in developing a position in an outlying area to acquire a long-term option at near zero cost.

If BLM could be sure that the acquiring firm was indeed going to be the best user of the lease for a decade into the future, this situation could be reasonable. However, when a firm wins such a position at the minimum bid, it means that there are currently no other interested parties. When and if such land ever becomes productive, it is quite likely that more than a single firm will have an active interest in it, and there is no guarantee that the firm who bids early, at the minimum bid of \$2 per acre, is the best user. BLM's policy therefore not only deprives the public of value for the land in the initial lease, but it also means that it may not ever be developed as productively—and profitably for the public purse—as possible.

In addition, BLM's reserve prices are not actually imposed as binding reserve prices in practice. Instead, auctioned parcels that fail to receive a qualifying bid are transferred to BLM's "non-competitive" leasing program, where they can be leased to firms for no up-front fee at all. In state auctions, in contrast, parcels that do not receive minimum bids revert back to private or state ownership, and are available for future auction at corresponding market terms. Recent research comparing the outcomes of auctions to a similar "non-competitive" leasing market for state minerals in Texas shows that revenues and production from auctions, even those that will be delayed until a future date, can be much higher than that from non-competitive and informal transactions. [Footnote 20: Covert, and Sweeney, "Relinquishing Riches".]

Taken together, these policies result in some mineral leases that transact at far below their market value, and other mineral leases that should not transact at all, because no high-value users have shown any interest in them. Moreover, firms are able to sit on marginal tracts for a decade, precluding the land's use by others and imposing administrative costs on BLM.

A number of complementary changes can address these issues:

1. Shorten primary terms for onshore U.S. oil and gas leases to no more than five years, aligned with the policies adopted by state agencies and leases observed in private markets;
2. Increase the minimum bid per acre to be more aligned with the policies adopted by state agencies; and
3. Terminate the non-competitive leasing program.

Because the MLA prescribes ten-year primary terms, implementing recommendation one will require an act of Congress to amend the MLA. Recommendation two can be implemented by BLM via the administrative rulemaking process. However, increasing the minimum bid while retaining the non-competitive leasing program will be ineffectual, since firms will be able to respond to the higher minimum bid by not bidding at all, and still obtain a lease later without having to pay the cash bonus. Eliminating the noncompetitive leasing program (recommendation three) will require a statutory amendment to the MLA.

Comment Number: BOEM-EMAIL-32521-000004-8

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

While the resources governed by BLM are federally owned, development and extraction is performed by private firms. The lease contracts that govern the relationship between BLM and these firms are the key policy lever with

which BLM can fulfill its mission, since lease terms can profoundly influence firms' incentives to drill, the division of revenue between firms and the government, and firms' incentives to protect the environment.

Across the board, the terms of BLM oil and gas leases favor oil and gas production companies over U.S. taxpayers. They allow firms to capture the lion's share of oil and gas resources' value, while at the same time letting them avoid liability for environmental harm. Relative to benchmarks from state-level agencies that manage state-owned resources, BLM leases have low royalties and are awarded in auctions that impose miniscule minimum bid requirements, allowing firms to access federal resources at little expense to themselves. While BLM's low royalty rate can in principle accelerate resource development, its unusually long ten-year lease terms, low minimum bids, and low \$2 per acre rental rate undermine its development objective by allowing firms to effectively sit on federal land for a decade without undertaking drilling, at essentially no cost. Finally, while the BLM requires firms to post bonds as a guarantee that the surface environment will ultimately be restored, the size of the bonding requirement is far too small to adequately cover reasonable estimates of restoration costs.

BLM can address these problems and better fulfill its statutory multiple-use and sustained yield mission by adopting leasing policies that are more similar to those of major oil producing states such as Louisiana, New Mexico, North Dakota, and Texas. By setting higher royalty rates, eliminating royalty deductions, and increasing the minimum bid in its lease auctions—actions that can be taken by a rulemaking process rather than new statute—BLM can increase the share of federal oil and gas resources that leads to revenue for taxpayers rather than profits for oil and gas firms. The negative impacts of a higher royalty rate on development and production can be mitigated by shortening the lease term from ten years to five years and by eliminating the BLM's non-competitive leasing process, though these changes require statutory amendments. Finally, the BLM can, by rulemaking, prevent firms from walking away from their environmental responsibilities by substantially increasing bond amounts up to the point that they credibly cover the proper wells' plugging and abandonment at the end of their useful life. Adopting a stronger bonding policy will protect taxpayers from footing the bill for decommissioning costs and protect public health from the hazards imposed by abandoned wells.

Comment Number: BOEM-EMAIL-32521-018330-12

Organization: American Exploration and Production Council

Commenter: Wendy Kirchoff

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

VII. State Regulations Expertise Should Be Consulted and Considered.

Finally, DOI should also consider the environmental protections afforded through state regulatory schemes. BLM rules and standards for drilling and production require all operations on federal land to comply with state and local regulations in order to protect life, property, and the environment. State rules and regulations are oftentimes structured to address the specific hydrology, geology, production volumes, and unique features of the state. These requirements oftentimes include extensive monitoring and reporting requirements that further validate that ongoing oil and natural gas production activity does not create widespread impacts to water resources, air, and the surrounding surface environment. AXPC believes strongly that BLM should recognize the contributions provided through these regulatory frameworks and avoid duplicative provisions that would add complexity and burden on state and federal agencies as well as the regulated entity, without adding meaningful environmental or community benefit. Similarly, BLM should consult and consider state expertise in its evaluation of the federal oil and gas program. States with significant federal lands development are profoundly impacted by agency actions and policy decisions. Additionally, state regulators often have decades of expertise dealing with many of the issues the agency is presently evaluating and should be sought out for solutions and guidance. For example, addressing the

challenge of orphan wells, states, through organizations like the Interstate Oil and Gas Compact Commission (IOGCC), have gathered decades of expertise about addressing the challenge and the sensitivities that should be considered. In particular, these states have expressed concerns to federal regulators to caution against situations where regulations themselves are driving companies out of business and exacerbating the problem.

AXPC would encourage DOI to engage with state leaders and experts as they consider the impacts and opportunities of changes to the federal oil and gas leasing program occurring within state borders and purview.

Comment Number: BOEM-EMAIL-32521-018389-1

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BOEM should take a two-pronged approach to reform its offshore oil and gas leasing and permitting process. First, BOEM should use its authority under Section 18 of the Outer Continental Shelf Lands Act (OCSLA) to end new leasing by foregoing any proposed lease sales, adopting a new five-year program that does not offer any lease sales for the next five-year period, and to recommend to the President permanent withdrawals of areas from OCS leasing under Section 12(a) of OCSLA.

Comment Number: BOEM-EMAIL-32521-018389-16

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

IV. BOEM SHOULD END LEASING OFFSHORE.

E.O. 14008 directs BOEM to reconsider its leasing program in light of climate change, environmental and ecosystem concerns, environmental justice considerations, and the advancement of a clean energy economy. BOEM should use its statutory authority under OCSLA to end future leasing offshore in light of all these considerations. Under OCSLA, decisions to offer OCS leases are driven by an assessment of what would “best meet national energy needs,” [Footnote 78: 43 U.S.C. § 1344(a)] and must be consistent with environmental protection, and other economic and social values [Footnote 78: Id. § 1344(a)(1)–(4)]. Given the industry’s significant stockpile of existing offshore leases, the current and predicted future state of the oil market, and the urgent need to address climate change, additional lease sales are not necessary to meet the nation’s energy needs, and would be contrary to the environmental, economic, and social factors called for in E.O. 14008.

Comment Number: BOEM-EMAIL-32521-018389-18

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Industry Has a Significant Stockpile of Leases.

Over the last four years of the Trump administration, BOEM held five sales for offshore leases on public lands. In each lease sale, the administration offered all unleased areas in the Gulf of Mexico—over 77 million acres. By offering such a large supply of available acreage in each sale, Interior reduced competition and drove down bid prices. As a result, the industry has been able to stockpile a large number of leases [Footnote 103: See Erin Douglas, Oil Companies Snag Gulf of Mexico Waters for Offshore Drilling in Last Bid Before Biden Transition, THE TEXAS TRIBUNE (Nov. 18, 2020), <https://www.texastribune.org/2020/11/18/gulf-of-mexico-offshore-oil-drilling/>.] As of April 2021, industry holds 2,283 leases covering 12,142,429 acres in the Gulf of Mexico [Footnote 104: Combined Leasing Report, *supra* note 1]. Only approximately 20 percent of these leases and leased lands are producing oil or gas [Footnote 105: *Id.*]. Even at steady production rates, it would take years to exhaust the remaining 80 percent of existing leases (covering nearly 10 million acres). The urgent need to achieve our climate commitments means that by that time, the United States must already be far along the path of a move away from additional offshore oil production.

Moreover, interest in lease sales has waned in recent years. While the number of bids received, acreage leased, and high bids have fluctuated due to changes in oil and gas prices, royalty rates, and leases offered, among other things,¹⁰⁶ the total number of lease tracts sold has decreased over time. Between 2000 and 2009, BOEM sold an average of 319 lease tracts at each of its sales in the Gulf of Mexico.¹⁰⁷ Between 2010 and 2019, the average number of lease tracts sold dropped to 157.¹⁰⁸ The overall picture is clear: there is a stark imbalance between the supply of offshore leases and the demand for additional offshore oil. This is true even without considering the scientific and moral imperative to rapidly reduce greenhouse gas emissions to prevent the worst harms from climate change. At a time when demand and prices for oil are falling, and industry maintains a large stockpile of undeveloped leases in the Gulf OCS, there is simply no need for Interior to offer additional acres for sale.

Comment Number: BOEM-EMAIL-32521-018389-22

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

B. Interior Should End Its Program of Leasing.

The economic realities and environmental impacts described above, including climate change, all require BOEM to stop the expansion of oil and gas development in the United States and begin the transition away from oil and gas production. The first step in that process is to end new leasing. BOEM has the authority under OCSLA to end leasing by foregoing or canceling proposed lease sales and adopting a new five-year plan that recognizes the deep national interest in transitioning away from fossil fuels. BOEM should forego all four planned lease sales that remain under the current five-year plan. BOEM need not and should not wait for other environmental review to be complete before taking this action. BOEM should also embark on the rigorous process to develop a new five-year plan that will contain no new lease sales. In addition, Interior should recommend and support the use of President Biden's authority under OCSLA to provide permanent protections to unleased areas.

BOEM Should End New Leasing and Adopt a Five-Year Plan with No New Scheduled Lease Sales.

The existing five-year offshore leasing program, which runs through 2022, proposed eleven lease sales during the five-year period. Seven of those lease sales have already taken place, with the most recent occurring on November

2020 (after being delayed from August 2020 due to lack of market demand). The remaining four additional proposed lease sales include three in the Gulf of Mexico (one in 2021 and one in 2022) and one in 2021 in Cook Inlet off Alaska.

OCSLA gives the Secretary of the Interior discretion to determine whether and when to sell offshore oil leases. While the Act requires the Secretary to prepare and maintain a leasing program that includes a schedule of proposed lease sales, [Footnote 140: 43 U.S.C. § 1344(a)] it merely authorizes—rather than mandates—the Secretary to proceed with the actual lease sales proposed in that program [Footnote 141: 43 U.S.C. § 1337(a)(1)]. By its specific terms, the existing five-year leasing program provides that “the Secretary has flexibility to re-evaluate the nation’s energy needs and current market developments and can reduce or cancel lease offerings.” [Footnote 141: BOEM, 2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program 6–7 (Nov. 2016), boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-OCS-Oil-and-Gas-Leasing-PFP.pdf] The Interior Department regularly has canceled, delayed, or otherwise failed to proceed with individual lease sales specified in leasing programs. For example, in 2015 the department canceled Chukchi Sea Lease Sale 237 “due to lack of industry interest; current market conditions (e.g., low oil prices); and the unavailability of many of the most attractive tracts, which are already under lease at this time.” [Footnote 143: 80 Fed. Reg. 74,796, 74,797 (Nov. 30, 2015)] Since OCSLA was amended in 1978 to require creation of five-year leasing programs, there never has been a leasing program in which all the lease sales specified in the program were actually held [Footnote 144: See Congressional Research Service, Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022 at 10–12 (Aug. 23, 2019), <https://fas.org/sgp/crs/misc/R44504.pdf>].

Accordingly, the Interior Secretary should use her discretion to forego the remaining four lease sales contained in the existing leasing program that runs through 2022 (three in the Gulf of Mexico and one in Cook Inlet). Importantly, the Secretary should not wait for the rigorous review to be over to forego existing lease sales.

Interior should use the time remaining in the existing program to develop and adopt a new 5-year program that does not offer any lease sales in the Gulf or elsewhere in the OCS. As explained in detail in comments submitted by NRDC and Earthjustice on April 15, 2021, Interior has ample authority under OCSLA to accomplish this [Footnote 145: Letter from R. Loomis to Hon. Debra Haaland, Re: Recommendation for Preparation of a Null

Schedule Five-Year OCS Oil and Gas Leasing Program and Cancellation of Proposed Lease Sales on the Current Program (Apr. 15, 2021). Those comments are incorporated by reference here].

Interior should recommend and support President Biden’s use of 12(a) for permanent withdrawals of unleased acres.

While a null schedule five-year plan provides an immediate and effective end to new leasing in the near-term, permanent protection is necessary to ensure a meaningful transition from fossil fuel extraction in the OCS. OCSLA section 12(a) authorizes President Biden to “withdraw from disposition any of the unleased lands of the outer Continental Shelf.” [Footnote 146: 43 U.S.C. § 1341(a)]. Section 12(a) was first used by President Eisenhower to establish the Key Largo Coral Reef Preserve, still in place today, [Footnote 147: See 25 Fed. Reg. 2352 (March 19, 1960)]. and presidents since have used it to protect other offshore waters from development. Doing so offers long-term protection by rendering the withdrawn area unavailable for new leasing absent congressional action. Interior should recommend that President Biden use Section 12(a) of OCSLA to permanently withdraw all unleased areas of the OCS from leasing.

Comment Number: BOEM-EMAIL-32521-018389-24

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Regulations to Limit Development: BOEM and BSEE should adopt a phased- development regulatory strategy to limit the amount of additional development that could be approved on existing leases in a given time period. For example, Interior could establish an aggregate carbon budget over a time-limited period (such as 10–15 years) for production from federal oil and gas leases and then approve only those new permits that would not cause exceedances of the carbon budget. Alternatively, a phased-development system could also be based on limits on the total number of wells that can be operating in a particular geographic area, or limits on the total amount of air pollution emitted in a particular area. The latter could be strengthened by the adoption of a methane rule or stronger air quality regulations as detailed below.

Interior should also consider ways to phase out or prohibit activity on existing leases. For example, existing shallow water operations in the Gulf are a source of disproportionate risk to coastal communities because of their closer proximity to shore, but also because many of these operations suffer from poor maintenance, and are run by companies with poor safety records [Footnote 153: Eric Lipton, Trump Rollbacks Target Offshore Rules ‘Written With Human Blood’, NY TIMES (Mar. 10, 2018), <https://www.nytimes.com/2018/03/10/business/offshore-drilling-trump-administration.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=photo-spot-region@ion=top-news&WT.nav=top-news>]. As highlighted by the New York Times, many of these operations are attempting to squeeze the last remaining oil from aging wells and infrastructure [Footnote 154: Id]. There is little justification for continuing these operations as they require far more oversight resources and do not generate significant royalties. Moreover, their contribution to supply is marginal. As the National Offshore Industry Association highlighted at the March 25 forum, the vast majority of production in the Gulf comes from a smaller number of larger plays. To reduce risk, BOEM should (1) catalog the remaining expected production and life span of these operations; (2) ensure that they are financially and technically ready for decommissioning; (3) ensure safe operations as they wind down, and (4) avoid or deny unwarranted lease extensions.

Comment Number: BOEM-EMAIL-32521-018389-32

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 3

Comment Excerpt Text:

Address risks from offshore fracking: BOEM should carefully examine the impacts of offshore fracking in the Gulf and elsewhere. This form of oil extraction increases the already numerous risks inherent in offshore oil and gas development. Water contamination, for example, is a significant risk of fracking because of the hundreds of chemicals used in fracking fluid. These chemicals pose risks to both human health and marine wildlife [Footnote 177: Theo Colborn et al., Natural Gas Operations for a Public Health Perspective, 17 HUMAN ECOL. RISK ASSESSMENT 1039 (Sept. 2011); Elise G. Elliot et al., A systematic evaluation of chemicals in hydraulic – fracturing fluids and wastewater for reproductive and developmental toxicity, 27 J. EXPOSURE SCI. ENV'T EPIDEMIOLOGY 90 (2017)]. [Footnote 178: Heather Cooley et al., Advanced Well Stimulation Technologies in California: An Independent Review of Scientific and Technical Information, CCST (Aug. 28, 2014), <https://ccst.us/reports/advanced-well-stimulation-technologies-in-california/>; Christopher D. Kassotis, et al.,

Endocrine-Disrupting Activity of Hydraulic Fracturing Chemicals and Adverse Health Outcomes After Prenatal Exposure in Male Mice, 156 *ENDOCRINOLOGY* 4458 (Dec. 1, 2015).] As operators turn to fracking to maximize production from existing wells, BOEM should develop comprehensive regulations to address the different risks posed by this technology in offshore wells.

Comment Number: BOEM-EMAIL-32521-019118-1

Organization: BP

Commenter: Alves F

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

BP advocates for continued leasing in Central and Western areas of GoM. This is critical for ongoing business planning and to drive the investment and technological innovation required to maintain the attractiveness of this region, drive down carbon emissions and continue to make a material economic contribution to U.S. economy.

GoM is a well-regulated oil producing region with stringent safety and environmental control measures in place. This is one of the factors that makes the GoM's environmental footprint lower than other regions in the world. BP shares the administration's goal of a robust and effective leasing program that encourages continued investment in the GoM, one of the premier producing regions in the world.

BP recognizes some observers believe companies have "stockpiled" leases in federal waters and therefore no additional lease sales are warranted. Offshore exploration and development of leases is a complex process: once a lease is acquired, it requires rigorous technical and commercial assessments before final investment decisions are made. These decisions can take years and often no development occurs. Because of this complexity, there will always be a certain number of assigned leases that are not producing.

Comment Number: BOEM-EMAIL-32521-019118-5

Organization: BP

Commenter: Alves F

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Vetting of qualified operators

BP believes that DOI should consider heightened scrutiny of potential operators' ability to meet long-term financial obligations attached to a lease. This would strengthen mitigation efforts against the risk of premature abandonment of properties and subsequent uncertainty around decommissioning liability. We recommend DOI revisit the financial assurance rule that strengthens financial requirements (e.g., bonds sufficient to cover decommissioning liability) and provides clear guidelines on predecessor liability, preferably in reverse chronological order. We advocate for phased in implementation, with a risk-based focus on offshore properties in their later economic life cycle.

As indicated above, offshore development of oil and natural gas is complex - but it is also a capital intensive business from entry to abandonment phase. In an increasingly challenged economic environment, there are recent examples of companies failing to fulfil their obligations and shifting liability to others. This introduces

uncertainty and risk to companies that have long sold those assets and could affect overall investment in offshore development. Moreover, the lack of clarity regarding financial assurance requirements increases the potential for decommissioning costs to be transferred to the taxpayer. It is critical to future development to ensure companies that invest in offshore leases have provided financial assurance and have the financial capacity to address all obligations legally assumed or created. There is urgency to address this risk and we urge DOI to re-engage with all stakeholders on this complicated issue.

Comment Number: BOEM-EMAIL-32521-019118-6

Organization: BP

Commenter: Alves F

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

More efficient leasing process

While we do not recommend major changes to the overall leasing program, we believe there are some improvements that could make the lease sale process more effective.

1. Electronic Bid Submission BP recommends implementing an electronic means of bidding and Geophysical Data and Information System (GDIS) submittal which would help streamline the process and eliminate the need for in person travel to the Bureau of Ocean Energy Management (BOEM) office or risk of losing documents via courier services. Also, the tabulation of bid count and amounts could be a more automated process reducing costs and time spent going through the bidding documents.

Over the past year, BOEM has adopted modernization into their processes in various ways including electronic assignment submission, online tracking of these assignment and an inbox for general questions. However, the current lease sale process continues to require bids be submitted in person or via mail. Additionally, the bid package requires paper copies for the GDIS submission. Moving to more electronic and automated systems would improve efficiency of the bidding process.

Comment Number: BOEM-EMAIL-32521-019118-7

Organization: BP

Commenter: Alves F

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

2. Annual GoM-wide Sale: BP recommends having one GoM-wide sale a year. This would allow a focused and targeted opportunity for companies to access new leases while reducing the number of federal lease sales BOEM would be committed to conducting.

Under the existing five-year plan, there are two GoM-wide sales that take place five months apart. This is a carryover from a time when GoM had separate lease sales - one for central and another for the western planning areas. A single sale event each year would increase rigor in the bidding process and allow DOI to better manage

the performance of existing leasehold.

Comment Number: BOEM-EMAIL-32521-019746-1

Organization: ConocoPhillips

Commenter: Fennessey Karl

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

We support continued access to federal acreage, which generates substantial government tax and royalty revenue and supports job creation across the country.

Notably, much of our federal mineral rights are co-located with surface and subsurface ownership by state land and mineral agencies, Indigenous land and mineral rights and private landowners, often in a checkerboard of ownership. Often, decisions by the Bureau of Land Management have unintended negative consequences to those other interests by inadvertently preventing access to non-BLM lands and minerals. It is essential from an equity standpoint, and justified by the governing legislation, that BLM decisions on surface occupancy of federal lands for temporary and permanent easements and rights-of way also consider the benefits of oil and gas development in adjacent lands owned by non-BLM entities. At this time, ConocoPhillips does not have any U.S. offshore operations.

Comment Number: BOEM-EMAIL-32521-019955-3

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Maintain the pause on oil and gas leasing and aggressively start to address transition towards zero emissions from federal lands while the Department conducts the review. There is an ample stockpile of undeveloped leases that can support industrial operations for decades (although note that developing fossil fuel operations on stockpiled federal leases would take us well beyond the threshold where exceeding global temperature increases of 1.5°C and 2°C would be likely). [Footnote 3: See: Mulvaney, Dustin, Alexander Gershenson, and Ben Toscher, 2016. Over-Leased: How Production Horizons of Already Leased Federal Fossil Fuels Outlast Global Carbon Budgets. July 2016. Available at <https://foe.org/resources/over-leased-how-production-horizons-of-already-leased-federal-fossil-fuels-outlast-global-carbon-budgets/>.]

Comment Number: BOEM-EMAIL-32521-019979-4

Organization: Western Leaders Network

Commenter: Jessica Pace

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 10 8 2

Comment Excerpt Text:

During this review, we encourage the administration to consider the following recommendations, including adopting a mandate for the program that recognizes that leasing is not mandatory and should only be allowed if

and when consistent with the multiple-use principle; ensuring that environmental justice and equity are factors in the review and reform efforts; eliminating speculative leasing practices; closing loopholes that place the burden of reclamation costs on taxpayers and private landowners; updating fiscal policies so that companies pay fair rates for development; and pursuing reforms with the objective of achieving a clean and renewable energy future.

Comment Number: BOEM-EMAIL-32521-020306-4

Organization: Center for American Progress

Commenter: Jenny Rowland-Shea

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

The administration must fully consider the costs of any further leasing on federal lands in a programmatic review given the ongoing climate and conservation crises. If leasing does return, there are many policies BLM and Congress could pursue to increase transparency, accountability, and taxpayer fairness to the leasing program:

*BLM should ban anonymous nominations of parcels for lease across the oil and gas leasing program.

*The BLM should assess fees to recoup costs of running the program. This could include a meaningful filing fee for an expression of interest, instead of allowing anyone to nominate a parcel for free. These administrative fees would help deter casual speculators and shift some of the costs of administering lease sales to the oil and gas industry, instead of taxpayers.

*BLM should implement a bidder prequalification requirement and punish repeated bad actors. Under the current system, companies that routinely fail to pay rent are welcome to lease additional public lands. The BLM should implement a requirement that in order to lease more public land, a company must comply with the terms of its existing leases, including rental payments.

*BLM should prioritize leasing in high-potential areas that have a reasonable expectation of producing economically viable products. In prioritizing certain areas for leasing, BLM could also ensure no additional leases are sold in areas with Indigenous sacred sites, critical wildlife corridors, and other areas that conflict with oil and gas development.

*BLM should improve data collection and transparency, including tracking the costs associated with administering a lease. A more transparent oil and gas leasing system on public lands would benefit taxpayers and ensure that the government is serving as an accountable and responsible steward of the public's resources.

Comment Number: BOEM-EMAIL-32521-020638-1

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

OCSLA does require a balanced approach. Management of the outer Continental Shelf must be conducted in a way that “considers economic, social, and environmental values” and “the potential impact of oil and gas exploration on other resource values.” The process for developing and managing leasing and associated activities is designed to ensure that robust consideration is given to these important factors. However, the statute in no place authorizes or even suggests no leasing as an option. When read as part and parcel of this section that mandates leasing, use of the phrase “Management of the outer Continental Shelf shall be conducted” makes clear the requirement for continued leasing.

Comment Number: BOEM-EMAIL-32521-020638-11

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Offshore Oil and Gas: The Reason For Non-Producing Leases

In the process of developing these resources, it is true that federal operators in the offshore have bid upon—and currently hold—certain leases that are not currently producing. This has contributed to the perception that industry “stockpiling” leases and the argument that this means that additional lease sales are unnecessary. However, this represents a fundamental misunderstanding of how the oil and gas industry operates under the offshore leasing program. This is because the oil and gas industry often must bid on leases around which there is significant uncertainty or an inability to immediately move into drilling and production. In other words, companies must cast a wide net of lease blocks, then winnow through prospective lease blocks through additional exploration and study, a process that can take years, before they are able to identify a commercially viable discovery. While this brings immediate benefits to the federal government and taxpayers—in the form of bonus bids, rentals, and other payments into the U.S. Treasury—it begins a lengthy and costly process for industry during which the prospects for energy production in economic amounts are determined.

Legally competing at auction for rights to explore and develop offshore federal lands and paying a bonus to acquire a federal offshore oil and gas mineral lease can be a risky proposition for industry: there is no guarantee that oil and gas resources are present in the subsurface. There is an element of energy production that is still speculative even with incredible advances in technology. Due to this risk, some leases are not currently producing because they are still being studied to determine if energy reserves exist or if they exist in quantities high enough to be produced economically and in compliance with regulatory standards. In other cases, sites are being considered for exploratory wells and industry is going through the thorough regulatory process for approval. Given that a production well in the Gulf of Mexico can cost hundreds of millions of dollars to develop, some leases will eventually expire and be returned to the federal government for future consideration if technology improves enough to make resources accessible.

As the non-partisan federal Congressional Research Service concluded during the Obama Administration,

Many leases expire before exploration or production occurs...Generally, a number of concerns arise in the oil and gas leasing process that delay or prevent oil and gas development from taking place, or might account for the large number of leases held in non-producing status. There could be a lack of drilling rigs or other equipment availability, and financing and/or skilled labor shortages. Legal challenges might delay or prevent development. There are typically also many leases in the development cycle (e.g., conducting environmental reviews, permitting, or exploring) but not producing commercial quantities. [Footnote 13: <https://crsreports.congress.gov/product/pdf/R/R40645>]

Continued leasing under competitive terms is a necessary and critical component for the U.S. to move forward with a balanced approach that ensures that we are promoting energy security, national security, climate change solutions, environmental protection, safety, conservation programs, affordable energy, economic recovery, and job growth.

Comment Number: BOEM-EMAIL-32521-020638-4

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

In summary, leasing of America's offshore is imbedded in statute and has been for decades, with energy produced off our coasts for nearly 100 years. Continued leasing is mandatory. A lack of lease sales, and a lack of robust lease sales, is contrary to specific language as well as the spirit and intent of the OCSLA.

Also, while it is important to review the impacts of federal action and decisions, including federal oil and gas leasing, the current review constructively ignores the process and comprehensive reviews that are in place, and that have already been completed, for offshore oil and gas leasing pursuant to the system established by the OCSLA. The current review effectively subverts the established statutory process and substitutes it with a review that is conspicuously absent in law. As discussed by the BOEM Director at the outset of the virtual forum, Interior already follows a rigorous review process with many steps and environmental analyses completed in the finalization of the 2017-2022 leasing program. It bears repeating here some of the steps already in place and that already cover the March offshore lease sale that has been paused by the current review:

Comment Number: BOEM-EMAIL-32521-020638-9

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

For these reasons, Interior should promptly proceed with the current leasing program for 2017- 2022 and re-commence lease sales. There is significant concern that Interior is tapping into valuable time and resources that should instead be dedicated to the statutorily mandated development of the 2022-2027 oil and gas leasing program, which begins on July 1, 2022. We are only 15 months away from the commencement of the 2022-2027 leasing program and Interior has important steps to complete in order to fulfill this important legal requirement and provide the regulatory certainty needed for the country, Americans, and the industry to plan for continued investment, job growth, affordable, low carbon energy through domestic offshore oil and gas production.

Some 97% of offshore oil and gas production happens in areas termed either the Central or Western Gulf of Mexico--see here in a Department of Interior map—with green areas showing active leases towards the end of the Obama-Biden Administration. [Footnote 3: https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Gulf-of-Mexico-Region/GOM- OCS_Lower_48_Strategy_2012-2017.pdf] Despite proposals and significant public debate about tapping new areas, areas actively under consideration for potential leasing and development were not expanded under the Trump Administration.

[See attachment 2 for image of Gulf of Mexico]

There is a total of 1,712.26 million acres on the Outer Continental Shelf (OCS) [Footnote 4: https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Mapping-and-Data/PAstats_01-01-2018.pdf] [footnote 5: <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Presidential-Withdrawal-Map-and- GOMESA-Moratorium.pdf>]. Less than 12.5 million acres are currently under lease on the OCS [Footnote 6: <https://www.boem.gov/sites/default/files/documents/about-boem/Lease%20stats%203-1-21.pdf>], or about 0.73% of the OCS. Of that small amount, less than 2.5 million acres are currently producing, which totals less than 0.15% of the entire U.S. OCS. Some 97% of offshore oil and gas production happens in

areas termed either the Central or Western Gulf of Mexico, which total only about 95 million acres or only about 5.55% of the OCS (of which about 2.3 million acres are on producing leases). Areas of the Central and Western Gulf of Mexico have been leased and producing for decades. These prolific and productive areas contribute greatly to the national interest through a small footprint relative to total OCS acreage as described previously.

[See attachment 2 for map of US offshore federal oil and natural gas resources]

Despite this longstanding production in the Gulf and the Department of Interior's legal mandate to lease America's waters for responsible energy production, some have proposed that the Biden Administration should restrict or halt leasing in the Central and Western Gulf of Mexico. NOIA commissioned a study on just such a proposal, and that study is attached to this document, but in short such a policy would slash nearly 200,000 jobs from the United States and dramatically harm energy production over the next two decades.

[See attachment 2 for image of baseline vs no new leasing]

Comment Number: BOEM-EMAIL-32521-021182-1

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Legal and Regulatory Background:

Since the 1930s, energy companies have tapped oil and gas resources offshore in the United States. The primary federal law on developing oil and gas in federal waters (which begin at least 3 miles offshore, depending on the state) is the Outer Continental Shelf Lands Act (OCSLA). This law, critically, does not simply allow for offshore oil and gas development but rather it states that its main purpose is "expeditious and orderly development [of resources], subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." [Footnote 1: 43 U.S.C. Sec. 1332(3)] Furthermore, the statute uses mandatory terms such as "shall" and "will" in directing continuing leasing for exploration, development and production of oil and gas. OCSLA creates a framework by which federal waters and the resources thereunder are regularly leased via Section 18 of the law and the requirement for the Secretary of Interior to prepare and maintain a five year leasing plan which includes a schedule of lease sales. The leasing program explicitly must balance and consider "economic, social, and environmental values". [Footnote 2: 43 U.S.C. Sec. 1344 a(1)]

The specific wording of the statute confirms that leasing is not discretionary. While arguments to the contrary have been recently made, such arguments twist and contort the statute in an exercise of interpretive gymnastics that completely fails. The specific and repeated use of the word "shall" by Congress makes clear there is a mandate for continued leasing. We will provide a few examples of the mandatory nature of the statute and requirements for continued leasing here.

First, Section 18 opens by stating "The Secretary, pursuant to the procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act." Here, it is clear that Interior shall maintain a schedule of lease sales. This language goes beyond mere preparation and directs the government to maintain a leasing program. Interior must also maintain a leasing program that implements the policies of the Act and this includes expeditious and orderly development.

OCSLA does require a balanced approach. Management of the outer Continental Shelf must be conducted in a way that "considers economic, social, and environmental values" and "the potential impact of oil and gas

exploration on other resource values.” The process for developing and managing leasing and associated activities is designed to ensure that robust consideration is given to these important factors. However, the statute in no place authorizes or even suggests no leasing as an option. When read as part and parcel of this section that mandates leasing, use of the phrase “Management of the outer Continental Shelf shall be conducted” makes clear the requirement for continued leasing.

Next, OCSLA states, as part of the process for developing a leasing program, that the “Timing and location of exploration, development, and production of oil and gas among the oil- and gas- bearing physiographic regions shall be based on a consideration” of various factors. The plain language of this section and the use of the term shall make clear that leasing is a requirement. The factors themselves demonstrate that the current, 2017-2022 leasing program actually fails to meet the statutory intent because it provides an unreasonably narrow scope of leasing areas. According to the statute, among other things, the timing and location of leasing shall be based upon an “equitable sharing of developmental benefits and environmental risks among the various regions.” There are 26 planning areas for leasing in the U.S outer Continental Shelf, yet the current program as implemented has confined leasing to only two of the 26 areas. Surely an equitable sharing of the benefits and risks would require exploration, development, and production to occur in more than two of the 26 areas. The use of the term “shall” -- read in conjunction with the balance of the factors provided in this section of the statute -- makes clear the statutory directive for continued leasing.

Further, OCSLA states “The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact.” Once again, we see the Congressional intent for Interior is to fulfill its obligations in a balanced way so that environmental and coastal considerations are incorporated into the decision-making process. Once again though, Congress used the term “shall” and made it mandatory for Interior to proactively select areas for oil and gas leasing.

Also, OCSLA states “Leasing shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.” The intent could not be made clearer than it is here. Congress affirmatively states that leasing “shall be conducted.”

There is zero ambiguity in Congressional intent to continue to hold lease sales. The above are but a few of the examples of the explicit, directive language within the statute. There are many other examples. The plain reading of the statute is straightforward and mandatory and requires continued, robust leasing.

In summary, leasing of America’s offshore is imbedded in statue and has been for decades, with energy produced off our coasts for nearly 100 years. Continued leasing is mandatory. A lack of lease sales, and a lack of robust lease sales, is contrary to specific language as well as the spirit and intent of the OCSLA.

Comment Number: BOEM-EMAIL-32521-021182-12

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

In summary, there is nothing to suggest that the current system for federal offshore leasing is not working to best benefit the public, the government, and Americans throughout the country. The federal offshore fiscal system, through the use of auction-style bonus bids, ensures that the government and the American taxpayer continue to receive fair market value. Any changes to leasing and fiscal terms would likely impact the level of bonus bids and the overall competitiveness of the U.S. offshore region. The U.S. offshore is a region that competes with other

offshore regions throughout the world. The U.S. offshore has been able to effectively compete with other regions based upon the current system that is in place. With more than \$120 billion flowing to the federal treasury since 2000, supporting vital funding for the LWCF, urban parks and national parks, and with more than 300,000 jobs supported annually, producing the lowest carbon barrels, among other factors, there is little to no support or justification for significant changes to the federal offshore oil and gas leasing program. Adverse changes to U.S. offshore federal oil and gas leasing could jeopardize the tremendous positive benefits providing by offshore production and result in a shift in those benefits to other regions of the world, all to the detriment of U.S. employment, economic, energy, national and environmental security. In order to retain these important benefits, Interior should move promptly to proceed with offshore leasing under the 2017-2022 program and complete development of the 2022-2027 in a timely manner.

Comment Number: BOEM-EMAIL-32521-021182-2

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Also, while it is important to review the impacts of federal action and decisions, including federal oil and gas leasing, the current review constructively ignores the process and comprehensive reviews that are in place, and that have already been completed, for offshore oil and gas leasing pursuant to the system established by the OCSLA. The current review effectively subverts the established statutory process and substitutes it with a review that is conspicuously absent in law. As discussed by the BOEM Director at the outset of the virtual forum, Interior already follows a rigorous review process with many steps and environmental analyses completed in the finalization of the 2017-2022 leasing program. It bears repeating here some of the steps already in place and that already cover the March offshore lease sale that has been paused by the current review:

-The OCSLA law promotes and requires a balanced approach by ensuring American oil and gas resources are developed and that operations are conducted in a safe manner with environmental safeguards in place.

-Before any drilling can occur, the government – through the U.S. Department of the Interior – must go through many steps and multiple environmental analyses. Dozens of laws, approvals of regulations apply to offshore operations.

-In order to explore for oil and gas resources in federal offshore waters, companies must first purchase a lease, or contract, to obtain the right to explore for and produce offshore oil and gas resources. Leases are divided into 3 mile by 3 mile tracts (5,760 acres) and are generally for a term of 10 years. Companies purchase leases by bidding in an auction on the property, with the highest qualified bidder receiving the lease. The minimum bid for a lease is about \$250,000. Once a company obtains a lease, it pays rental fees as long as oil and natural gas are not being produced on the property. Once a lease goes into production, companies then pay royalties of between 12.5 and 18.75% of the total amount received in payment for the oil and gas sold on the market.

-The government offers leases at periodic lease sales, within which the government identifies all of the leases that are available for purchase.

-In order for the government to have a lease sale in an offshore area, the offshore area must first be included in the OCS Leasing Program that covers a period of 5 years. There are 26 different offshore areas (referred to as planning areas), and the government goes through a robust process before finalizing the OCS Leasing Program.

There are 5 steps in the process of developing the program, including comprehensive environmental reviews and opportunities for public input.

-Once a Leasing Program is finalized, the Department of the Interior then goes through a robust process prior to holding the lease sales that have been identified in the period covered by the program.

-After receiving a lease, companies must go through many steps prior to exploring for oil and natural gas. There must be an environmental assessment, the approval of an exploration plan, and approval of drilling permits which must adhere to strict environmental rules.

-If the exploration phase is successful and oil or natural gas is found in quantities sufficient for economic development of the field, then companies must go through several steps prior to actual production and marketing of oil and gas. Companies must obtain approval of development and production plans, deepwater operations plans, and consistency determinations for coastal zone management certifications. Many additional approvals are also required by law.

The March lease sale and corresponding leasing program that has been paused were subject to a statutorily prescribed and robust review as part of the process for developing the 2017-2022 OCS leasing program. This included multiple environmental reviews and a separate analysis and document that specially considered the greenhouse gas impacts of the leasing program, as well as several rounds of public comment periods. The current review is redundant. Furthermore, pursuant to statute and regulation, Interior should be in the process of completing the development of the offshore leasing program for 2022-2027, which provides the Department with an opportunity to complete another comprehensive review consistent with the law.

For these reasons, Interior should promptly proceed with the current leasing program for 2017- 2022 and re-commence lease sales. There is significant concern that Interior is tapping into valuable time and resources that should instead be dedicated to the statutorily mandated development of the 2022-2027 oil and gas leasing program, which begins on July 1, 2022. We are only 15 months away from the commencement of the 2022-2027 leasing program and Interior has important steps to complete in order to fulfill this important legal requirement and provide the regulatory certainty needed for the country, Americans, and the industry to plan for continued investment, job growth, affordable, low carbon energy through domestic offshore oil and gas production.

Some 97% of offshore oil and gas production happens in areas termed either the Central or Western Gulf of Mexico--see here in a Department of Interior map—with green areas showing active leases towards the end of the Obama-Biden Administration. [Footnote 3: https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Gulf-of-Mexico-Region/GOM- OCS_Lower_48_Strategy_2012-2017.pdf] Despite proposals and significant public debate about tapping new areas, areas actively under consideration for potential leasing and development were not expanded under the Trump Administration.

[See attachment for map of Gulf of Mexico]

There is a total of 1,712.26 million acres on the Outer Continental Shelf (OCS) [Footnote 4: https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Mapping-and-Data/PAstats_01-01-2018.pdf] [Footnote 5: <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Presidential-Withdrawal-Map-and- GOMESA-Moratorium.pdf>]. Less than 12.5 million acres are currently under lease on the OCS [Footnote 6: <https://www.boem.gov/sites/default/files/documents/about-boem/Lease%20stats%203-1-21.pdf>], or about 0.73% of the OCS. Of that small amount, less than 2.5 million acres are currently producing, which totals less than 0.15% of the entire U.S. OCS. Some 97% of offshore oil and gas production happens in areas termed either the Central or Western Gulf of Mexico, which total only about 95 million acres or only about 5.55% of the OCS (of which about 2.3 million acres are on producing leases). Areas of the Central and Western Gulf of Mexico have been leased and producing for decades. These prolific and productive areas contribute

greatly to the national interest through a small footprint relative to total OCS acreage as described previously.

[See attachment for map of US offshore undiscovered federal oil and natural gas]

Despite this longstanding production in the Gulf and the Department of Interior's legal mandate to lease America's waters for responsible energy production, some have proposed that the Biden Administration should restrict or halt leasing in the Central and Western Gulf of Mexico. NOIA commissioned a study on just such a proposal, and that study is attached to this document, but in short such a policy would slash nearly 200,000 jobs from the United States and dramatically harm energy production over the next two decades.

[See attachment for image of baseline vs no new leasing]

Increasing Energy Production From The Offshore:

In general, the story of offshore oil and gas has been one of innovation, safety, environmental protection, and stability. Prior to the COVID-19 crisis, we saw a continual increase in production from the Gulf of Mexico (see below). [Footnote 7: <https://www.eia.gov/todayinenergy/detail.php?id=41693>]

[see attachment for graph of monthly crude oil production us federal gulf of Mexico]

This production in the Gulf has formed the backbone of the domestic oil and gas renaissance. The offshore region has served as the foundation of U.S. energy security, providing more than a million barrels of oil per day since 1997 and reaching record volumes of two million barrels per day in August of 2019. Domestic production has climbed dramatically in recent years, helped by the offshore but pushed significantly by onshore energy production to the point that America has at times become a net oil and fuels exporter [Footnote 8:] This is a remarkable sea-change for the American economy, balance of trade, national security, and countless other benefits in communities across the country. In fact, if the Gulf of Mexico represented a country, it would be the 8th largest oil producing nation in the world.

[See attachment for graph of net imports of crude oil and liquid fuels]

Comment Number: BOEM-EMAIL-32521-022815-11

Organization: Pueblo of Acoma

Commenter: Governor Brian Vallo

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Other Sections: 4

Comment Excerpt Text:

7. Greater Chaco Region:

-The Greater Chaco Region is one example of an irreplaceable sacred landscape important to the Pueblos and other tribes, and this area has faced largely unrestricted oil and gas leasing and development. It has seen expedited decision making around this development that did not properly account for cultural resources or tribal voices, by no means sought tribal consent, and involved inconsistent outreach and feedback from different Department bureaus and offices.

-Acoma is grateful that President Biden has paused new oil and natural gas leases on public lands pending a review of federal oil and gas permitting and leasing practices. However, there have been notices related to .lease sales and development in the Greater Chaco Region, and we ask that the Department pause all of these actions. We also ask that the Department maintain this pause pending completion of the Greater Chaco Region Resource

Management Plan Amendment (RMPA).

-We thank the Department for pausing work on the Greater Chaco Region RMPA due to the COVID-19 pandemic. We ask that the Department allow for completion of the ongoing tribally-led cultural resource studies of the Greater Chaco Region and further progress to be made on the RMPA's Section 106 process. Only then should the RMPA's NEPA process move forward, and the Department should then incorporate the baseline cultural resource information collected from the studies and the Section 106 process into a new draft NEPA Environmental Impact Statement that contains legally sufficient alternatives.

-We also ask that an especially critical area of approximately 10 miles surrounding the Chaco Culture National Historical Park and including its outliers be administratively withdrawn from development.

Comment Number: BOEM-EMAIL-32521-023161-14

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Ending non-competitive and low potential leasing

BLM identifies development potential at the planning stage, but does not typically use that information to inform allocation decisions – whether lands should be open or closed to leasing and under what conditions (stipulations). Nor does BLM account for development potential at the leasing stage, frequently stating that, even for low/no potential lands, “[r]eceipt of an Expression of Interest for particular lands indicates some industry interest in development of those lands.” As a consequence, 90 percent of BLM lands are open to leasing, even though less than a quarter have moderate to high potential.

Noncompetitive leasing is an unnecessary and antiquated practice that wastes taxpayer resources and burdens public lands with idle leases. Noncompetitive leases rarely produce oil or gas or generate meaningful revenues for taxpayers. According to GAO, 99 percent of noncompetitive leases issued between FY 2003 and FY 2009 never entered production. Noncompetitive leases are regularly terminated for non-payment of rent. In fact, between 2009 and 2018, BLM terminated over 55 percent of noncompetitive leases because companies simply walked away and stopped paying rent owed to American taxpayers.

We urge BLM to prohibit the leasing of lands identified through planning documents as having low or no potential for oil and gas development and end noncompetitive leasing.

Comment Number: BOEM-EMAIL-32521-023161-29

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendations — Bankruptcy:

Bankruptcy is a key moment when there is a need for strong action on the part of regulatory agencies to ensure

that companies pay for cleanup. Bankruptcy courts can allow companies to transfer the responsibility and costs to plug and reclaim sites that are uneconomic to states and taxpayers, but continue to allow companies to operate profitable sites. In 2019, the Colorado-based company PetroShare filed for Chapter 11 bankruptcy. Under the bankruptcy plan, PetroShare's assets were liquidated, and one of its main creditors chose to take any assets it wanted. The state of Colorado allowed Wattenburg, the new company formed by the creditors, to abandon any of PetroShare's 89 wells it didn't want, leaving the cost to clean them up to the taxpayers of Colorado. Carbon Tracker predicted that Wattenburg will not want 67 idle wells and stripper wells, with an estimated clean up cost of \$11.7 million. The agreement allows the state to seize \$325,000 of PetroShare's \$425,000 bond. [Footnote 86: Carbon Tracker, PetroShare gets the Oil and Colorado, the hole. Link: <https://carbontracker.org/petroshare-gets-the-oil-and-colorado-the-hole/>]

In some cases, operators simply walk away from their operations without entering bankruptcy. In either case, corporations and their officers who leave liabilities to taxpayers through orphaned wells should not be considered for additional leases or permits by any regulator. These recommendations are not currently seen in state codes, but should be incorporated in the future.

Attorneys General Offices should intervene and strongly oppose proposals by oil and gas companies to offload the responsibility for reclaiming wells at the end of their profitable life onto the public through bankruptcy proceedings, and should rescind all permits for operators who orphan wells.

Regulators should deny new permits and leases and suspend or rescind existing permits and leases for operators who fail to plug and reclaim wells in a complete and timely manner.

Comment Number: BOEM-EMAIL-32521-023161-32

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Regulatory Agency Purpose, Mandate, Capacity

Many of the policy weaknesses that have set up the growing crisis of idle and orphaned wells and taxpayer liability are rooted in regulatory agencies with missions that focus on fostering or maximizing oil and gas production, and with insufficient capacity and resources to provide appropriate oversight of the industry. As the industry begins to decline, now is a critical time to provide regulatory agencies with the purposes, resources and tools needed to ensure a well-managed contraction that prioritizes public health and safety, and a clean environment.

Recommendations — Regulatory Agency Purpose, Mandate and Capacity:

The missions of regulatory agencies should be to regulate oil and gas development in a manner that protects public health and safety, clean air and water, and broader public interests, and to ensure complete and timely reclamation.

States should budget for the full amount needed to fulfill all responsibilities, including permitting, bond reviews, monitoring, inspections, and enforcement, and allocate the necessary funds. If needed, fees on permits or production should be established to fund regulatory programs.

Current State Policies:

In Colorado, following the passage of SB 181 in 2019 that prioritizes the protection of public safety, health, welfare and the environment in the regulation of the oil and gas industry, [Footnote 101: Colorado General Assembly, SB19-181 Protect Public Welfare Oil And Gas Operations, 2019 Regular. Link: <https://leg.colorado.gov/bills/sb19-181>] the Oil and Gas Conservation Commission enacted some of the most sweeping regulatory changes in the country, enabled by a change in its statutory mission from “fostering” to “regulating” oil and gas development in a manner that protects public health, safety, welfare, the environment and wildlife resources. The new rules include a new 2,000’ setback of oil and gas facilities from homes and schools, legal standing for all impacted residents before the COGCC, the first ever environmental justice rules for oil and gas permitting in Colorado, a near prohibition of venting and flaring’ [Footnote 102: Code of Colorado Regulations, 5 CCR 1001-9. Link: <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=9113&fileName=5%20CCR%201001-9>] riparian buffers, groundwater protections and more. [Footnote 103: COGCC, Colorado Oil & Gas Conservation Commission Unanimously Adopts SB 19-181 New Mission Change Rules, Alternative Location Analysis and Cumulative Impacts, November 23, 2020. Link: https://cogcc.state.co.us/documents/media/Press_Release_Mission_Change_Vote_20201123.pdf]

Comment Number: BOEM-EMAIL-32521-024412-10
Organization: Southern Utah Wilderness Alliance
Commenter: Landon Newell
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Suspension requests that are disfavored and should likely be rejected

As a general rule, requests for suspension of operations and production should be disfavored and rejected. Thus, to overcome this threshold rule, a lessee (or operator) should have to demonstrate that its request for suspension is substantially justified—that is, the reasons for the suspension cannot be attributed to unreasonable delay or inaction on part of the lessee. BLM should approve these suspensions very infrequently. This should include, but not be limited to:

-Requests based on the unforeseeable and unreasonable delay or inaction of a third- party federal or state agency that has permitting authority over an aspect of a proposed action.

-A suspension request may be approved by BLM when it is based on unforeseeable and unavoidable events beyond the control of the lessee (e.g., significant, abrupt, declines in the price of oil and natural gas).

Comment Number: BOEM-EMAIL-32521-024412-11
Organization: Southern Utah Wilderness Alliance
Commenter: Landon Newell
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Suspension requests that may be permissible

A suspension of operations and production should be permissible only when—despite diligent efforts by the lessee to timely develop its leasehold interest—the lessee is precluded from doing so due to unforeseeable and unavoidable circumstances beyond its control. BLM’s relevant State Offices should review all suspension requests prior to their approval to ensure consistency with the recommended guidance set forth herein. A presumption of permissibility should not exist if on review BLM determines that the facts underlying the suspension request can be attributed to unreasonable delay or inaction on part of the lessee. This should be limited to:

- Requests based on unreasonable delay or inaction on part of BLM.
- Suspensions based on (or required by) a federal court or Interior Board of Land Appeal decision.

Comment Number: BOEM-EMAIL-32521-024412-12

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Clarify the review and monitoring procedures for existing lease suspensions

BLM should establish timelines for State Offices to ensure compliance with the above- recommended guidance including instructions for lifting suspensions where no valid reasons exist to continue the suspension. Review should be prioritized based on the age of suspensions and whether the suspended leases are in BLM-identified lands with wilderness characteristics, culturally significant areas, and specially designated wildlife areas (e.g., priority habitat management areas, critical habitat), among other important resource values.

BLM should regularly review suspended leases to ensure that lease suspensions in effect are warranted, as required by Permanent Instruction Memorandum No. 2019-007, Monitoring and Review of Lease Suspensions End of First Quarter of Every Calendar Year (March 31st) (June 14, 2019). If upon review BLM determines a suspension is no longer warranted then BLM should promptly (i.e., within 10 days) administratively lift the suspension and notify the respective lessee(s). A suspension automatically terminates by operation of law when it is no longer justified or as otherwise stated in BLM’s suspension approval decision, even if BLM fails to promptly update the respective lease file(s). See 43 C.F.R. § 3165.1(c); § 3103.4-4.

An existing suspension may continue to be warranted if the underlying reasons and facts on which the suspension was based remain unchanged (e.g., BLM continues to prepare the NEPA analysis on which the suspension is predicated).

Extensions of existing suspensions of operations and production should be strongly discouraged and disfavored as a matter of BLM policy. Lease suspensions frustrate the primary purpose of oil and gas leases which is to encourage diligent development of the leasehold interest. They also deprive the U.S. taxpayer of rental and royalty payments.

If upon review BLM determines that that any lease suspension was granted in error then the suspension decision should be deemed to have been ultra vires—that is, the decision had no legal effect and it is as if the suspension had never been granted. See Ruby Drilling Co., 119 IBLA 210, 214 (1991).

BLM State Offices should regularly review and evaluate lease suspensions and provide timely reports to the

Washington Office in a publicly available format.

Comment Number: BOEM-EMAIL-32521-024412-29

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Lease stockpiling

BLM's broken leasing program has allowed industry to cheaply stockpile millions of acres of public lands with little or no benefit to U.S. taxpayers. According to a recent report, "nearly half (47.1 percent) of the 22.1 million actively leased acres are currently sitting idle, generating only \$1.50 per acre for taxpayers annually and preventing those lands from being actively managed for conservation and recreation." America's Public Lands Giveaway. This includes 100 percent of leases in Arizona, 97 percent of leases in Nevada, and 62 percent of leases in Utah. See *id.* In fact, only 2 of the 10 Western states with BLM-administered oil and gas leases presently have more than 50 percent of their existing leases in producing status. See *id.*

In addition, while the millions of acres of undeveloped, stockpiled, leases provide little financial return to taxpayers (no financial return if they're suspended) they have simultaneously prevented BLM from managing the leased lands for other important uses such as protection of wilderness character values. For example, BLM has repeatedly declined to manage BLM-identified lands with wilderness characteristics for the protection of those values because they were encumbered by oil and gas leases. According to BLM, the mere existence of oil and gas leases leaves open the door to future oil and gas development and thus "[t]he development of these valid existing leases will preclude the BLM from protecting the wilderness characteristic of these areas." Price RMP at 36. Similar statements are found in the Moab, Vernal and Colorado River Valley field office RMPs, among others. See Moab RMP at 28 ("Many of the areas [not managed for protection of wilderness characteristics] have high oil and gas development potential and over one-third of this acreage is already leased."); [Footnote 61: Available at https://eplanning.blm.gov/public_projects/lup/66098/80422/93491/Moab_Final_Plan.pdf.] Vernal RMP at 33 ("About 171,418 acres . . . were found to have wilderness characteristics . . . but were not selected for management of those characteristics . . . because they are considered to have high potential for oil and gas resources and currently have a large portion of the lands leased."); [Footnote 62: Available at https://eplanning.blm.gov/public_projects/lup/68145/86218/103392/VernalFinalPlan.pdf.] Colorado River Valley RMP at 3-135 ("There are six active oil and gas leases within the unit, totaling approximately 2,240 acres. None of these leases shows any active drilling or has previously drilled wells. The ability to manage for wilderness character would be difficult."). [Footnote 63: On file with BLM.]

These ill-advised management decisions not only encouraged lease speculation but also turned out to be based on inaccurate information and unsupported assumptions. For example, the Vernal RMP contains a list of several BLM-identified wilderness character areas that the agency elected not to manage for the protection of such values because, according to BLM, they were encumbered by oil and gas leases and would likely be developed in the future. See Vernal RMP at 33. In other words, BLM elevated leasing and development above all other uses of public lands and declined to manage to protect significant agency-identified resource values because the leases may—but may not—be developed at some unknown future date.

As discussed above, BLM's lofty predictions of future development in Utah were wrong—a fact recently acknowledged by the agency. According to BLM:

[A]s of September 2017, BLM's best estimate of reasonably foreseeable future wells [in the Vernal field office] has decreased . . . by more than 13,000 wells. . . .

These dropped projects include:

-Enduring Resource's Big Pack EA (664 wells) . . .

-XTO's Little Canyon EA (510 wells) . . .

-Enduring Resource's Southam Canyon EA (249 wells) . . .

-XTO's Hill Creek Unit EA (137 wells) . . .

-Uintah and Ouray Tribal Oil and Gas EIS (4,899 wells) . . .

-Greater Chapita Wells EIS Proposed Action (7,000 wells) . . .

-Gasco Final EIS Record of Decision permitted 1,298 wells Also note that as of August 2019, only 4 wells have been drilled . . .

-EOG's 22 well North Alger EA . . . contains 124 natural gas wells . . . Also note that as of August 2019, no wells have been drilled under this EA . . .

-In 2015 the BLM completed the Koch Wild Horse Bench EA, 135 wells . . . Also note that as of August 2019, no wells have been drilled under this EA.

-In 2016, the BLM published a Notice of Intent for the Crescent Point Federal- Tribal EIS, a project that proposed up to 3,925 new wells . . . This project has since been cancelled by the proponent, so no new wells will occur.

-Newfield Monument Butte – of 5,750 wells, none have been drilled.

-XTO Riverbend – of 200 wells, none have been drilled. . . .

In all, of the 25,721 wells “foreseen” by [BLM], 13,213 have been dropped by the proponent and 7,232 were approved by the BLM but not implemented by the proponent to the level expected. As a result of these overall reductions in foreseeable wells, [BLM's prior prediction] grossly overestimates the future number of wells in the Greater Uinta Basin area. The remaining projects [approved by BLM] are being implemented at a much lower rate than originally foreseen.

Gate Canyon EA, App. D. at 6-7. Stated differently, BLM's posited rationale for not protecting public lands—the threat of oil and gas development—has proven to be unsupported and, in the future, cannot serve as a basis for the agency's decision not to protect important public lands and resource values.

This scenario is not unique to the Uinta Basin, or Utah. As BLM has recognized, nationally oil and gas operators have put less than half of all existing leases into production and are “sitting on approximately 7,700 unused, approved permits to drill.” U.S. Dept. of the Interior, Press Release, FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future (Jan. 27, 2021). [Footnote 64: Available at <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>.]

In Utah, for example, operators drill less than half of their approved permits including during the “energy

dominance” years of the Trump administration, as shown in the following charts. [Footnote 65: These charts are based on data provided by DOGM. See Applications for Permit to Drill (APD) by County, <https://oilgas.ogm.utah.gov/oilgasweb/statistics/apds-by-cnty.xhtml>; Drilling Commenced (Wells Spudded) by County, <https://oilgas.ogm.utah.gov/oilgasweb/statistics/apds-by-cnty.xhtml>.]

[See attachment for graph titled Applications for Permit to Drill (APDs) vs. Wells Drilled in Southeast Utah (2017-2020)]

[See attachment for graph titled Applications for Permit to Drill (APDs) vs. Wells Drilled in Utah and Duchesne County (2017-2020)]

In sum, BLM must revise policies that enable industry to stockpile leases to the detriment of other resources, such as by issuing guidance that clarifies existing leases should not affect management decisions particularly in areas that are unlikely to be developed.

Comment Number: BOEM-EMAIL-32521-024412-3

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

First, BLM should prepare new guidance and policy, and update its respective Handbook and Manual. This guidance either does not currently exist or it is decades old. See BLM, Manual 3160-10 – Suspension of Operations and / or Production, Rel. 3-150 (March 13, 1987) (“Manual 3160-10”); BLM Handbook 3103-1, Oil and Gas Adjudication Handbook, Fees, Rentals, and Royalty (Revised 1995) (“Handbook 3103”).

The current Manual 3160-10 and Handbook 3103 do not address the many problems identified in GAO Report 18-411. To the contrary, the ongoing problems with BLM’s review of lease suspensions are, at least in part, caused by these outdated policies. For example, Manual 3160- 10, states that when approving suspensions the authorized officer “should grant the suspension for an indefinite term, rather than for a definite term, because it is difficult to predict the period of delay.” Id. § .31.2. As reported by GAO, this has caused enormous confusion among BLM field offices because when the suspension terms are “clearly defined” monitoring is easier while, in contrast, “suspensions involving environmental reviews often require more frequent monitoring because the time frames associated with these suspensions are less definitive and can range from several months to several years”—monitoring that oftentimes never occurs. GAO Report 18-411 at 20 (emphasis added).

Comment Number: BOEM-EMAIL-32521-024412-30

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

High conflict leasing

Leasing areas with high conflict consumes considerable agency resources. BLM must often complete consultations, supplemental NEPA analysis, and resolve and defend protests and legal challenges. Taxpayers likely lose money as a result of BLM's leasing decisions when the costs associated with offering the leases are properly accounted for, particularly in areas where there is not a high likelihood of development. This is often the case in places with high conflict, such as lands with wilderness characteristics, backcountry recreation areas, important wildlife habitat, and other areas that have important non-extractive resource values—the fact that they are removed from existing development preserves those values and also makes them less likely to be developed. Therefore, in the interest of resource efficiency and multiple use management, BLM should evaluate practices leading to high conflict leasing and implement new policies to reduce those conflicts.

One important way to reduce inefficient high conflict leasing is to prohibit leasing low potential lands with other resource values. BLM's oil and gas program inherently creates conflicts with other non-extractive uses of public lands such as wilderness preservation and recreation. However, the leasing of no and low potential lands amplifies these conflicts because it locks up large tracts of public lands while failing to adequately compensate taxpayers for the use of their land, as discussed above. The following examples illustrate the larger problem that must be addressed by BLM.

First, the San Rafael Desert in eastern Utah. This region is one of the most sublime and least travelled areas of federal public lands in Utah. Among its many unique and remarkable values, the San Rafael Desert is home to one of the most astonishing and diverse array of native pollinators (bees, wasps) anywhere in North America. BLM has recognized this area's unique sand dune landscape provides valuable habitat for pollinators and contains more "bee genera . . . than [exists] in all of New England." BLM, San Rafael Desert Master Leasing Plan and Draft Resource Management Plan Amendments / Draft Environmental Assessment at 3-82 (May 2017). [Footnote 66: Available at https://suwa.org/wp-content/uploads/SanRafael_MLP_EA_Draft.pdf.] It also contains hundreds of thousands of acres of BLM-identified lands with wilderness characteristics and is bounded on the west by the San Rafael Reef Wilderness and on the east by the Labyrinth Canyon Wilderness and Canyonlands National Park. Id. at 3-85.

In 2016, recognizing the significant resource values threatened by oil and gas development BLM formally initiated the process of preparing a "Master Leasing Plan" (MLP) for the San Rafael Desert—a process later jettisoned by the Trump administration without a reasoned explanation because it allegedly impeded on the administration's "energy dominance" agenda. See generally 83 Fed. Reg. 32681 (July 13, 2018). In 2008, BLM's Price RMP concluded that the area contained "high occurrence" for oil and gas. However, in 2016, as part of the MLP process, BLM recognized that its prior conclusion was wrong: "Oil or natural gas have not been discovered [in the San Rafael Desert]. All 79 wells drilled in the [San Rafael Desert] were dry holes." BLM, Reasonably Foreseeable Development Scenario for Oil and Gas in the San Rafael Desert Master Leasing Plan Area at 8 (Sept. 2016). [Footnote 67: Available at https://eplanning.blm.gov/public_projects/nepa/61781/93142/112263/SRD_MLP_Reasonably_Foreseeable_Development_Scenario.pdf.]

This reality, however, did not stop the Trump administration from offering more than 200,000 acres of leases for development in the San Rafael Desert at its September and December 2018 sales. Unsurprisingly, based on their low (or complete lack of) development potential the parcels sold primarily for at or near the minimum bid of \$2 per acre. See, e.g., BLM, Utah State Office, Sept. 11, 2018, Oil & Gas Lease Sale Results; [Footnote 68: Available at https://www.blm.gov/sites/blm.gov/files/Programs_OilandGas_Leasing_RegionalLeaseSales_Utah_2018_SaleResults.pdf.] The parcels located in the San Rafael Desert were acquired by North American Helium and Tacitus LLC] BLM, Utah State Office, Dec. 11, 2018 Oil & Gas Lease Sale Results. [Footnote 69: Available at https://www.blm.gov/sites/blm.gov/files/UtahSaleResults_Dec2018.pdf.] The parcel in the San Rafael Desert—parcel 257—sold to Twin Bridges Resources, LLC for \$6 per acre]

A broad range of opposition formed against the proposed leasing in the San Rafael Desert including from the National Park Service (NPS) and Environmental Protection Agency (EPA). The NPS opposed future oil and gas leasing in the San Rafael Desert, stating that it threatened Canyonlands National Park, air quality and air quality related values, dark night skies, viewsheds, soundscapes, watersheds, and the Old Spanish National Historic Trail. See NPS Letter to BLM, RE: Scoping Comments on the Master Leasing Plan for the San Rafael Desert. [Footnote 70: Available at https://suwa.org/wp-content/uploads/0005_San-Rafael-Desert-MLP-Scoping-Comments-6.22.16.pdf.] The EPA likewise opposed leasing until BLM had finalized new pre-leasing NEPA analysis (i.e., the MLP)—which BLM never completed—citing concerns with air resources, surface and groundwater, public drinking water supply sources, wetlands and riparian areas, and climate change, among others. See EPA Letter to BLM, RE: San Rafael Desert Master Leasing Plan, Resource Management Plan Amendment and National Environmental Policy Act Analysis Scoping Comments (June 29, 2016). [Footnote 71: Available at https://suwa.org/wp-content/uploads/0003_EPA-Scoping-Comments-San-Rafael-MLP-06292016.pdf.]

Conservation organizations and others formally protested the leasing decisions and filed legal challenges. As a result, BLM had to suspend the leases while it prepared “curative” NEPA analysis for hundreds of leases in Utah, including in the San Rafael Desert. See BLM, Supplemental Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing in Utah, DOI-BLM-UT-0000-2021-0001-EA (Jan. 2021). [Footnote 72: Available at <https://eplanning.blm.gov/eplanning-ui/project/2002778/510>.] The San Rafael Desert leases are now subject to renewed legal challenges. See, e.g., *S. Utah Wilderness All. v. Haaland*, Civ. No. 1:20-cv-03654-RC (D.D.C) (second amended and supplemented complaint filed on February 12, 2021).

Notably, none of the leases in the San Rafael Desert have been developed for oil and gas. Thus, taxpayers have likely lost money as a result of BLM’s leasing decisions when the costs associated with offering the leases are properly accounted for (e.g., NEPA preparation, ESA and NHPA consultations, and legal). This does not include the cost to our national heritage from the loss of the remarkable resource values found in the San Rafael Desert if development occurs on the leases.

Second, BLM’s piecemealed leasing in southeastern San Juan County, Utah. This region is one of the most culturally dense and significant in the entire nation. Sandwiched between Bears Ears National Monument on the west and Canyons of the Ancients and Hovenweep National Monuments on the east, the region contains well-preserved evidence of past peoples and cultures including cliff dwellings, pueblos, kivas, petroglyph and pictograph panels, ancient roads, and Chaco-era (circa 900-1150 A.D.) “great houses.” Numerous Native American tribes consider these sites sacred.

From 2010-2017 BLM did not offer any leases for development in this region due to unresolved conflicts between leasing and development and the protection of cultural resources. See generally BLM, Memorandum, Updated Utah Master Leasing Plan (MLP) Strategy (Aug. 14, 2015). [Footnote 73: Available at <https://suwa.org/wp-content/uploads/Updated-Utah-Master-Leasing-Plan-MLP-Strategy-8.14.15.pdf>.] The Trump administration BLM arbitrarily reversed this position and recommenced new oil and gas leasing in this region. [Footnote 74: This included the agency’s March 2018, December 2018, September 2019, and December 2019 lease sales]

The NPS, Native American tribes, local officials, and conservation organizations strongly opposed BLM’s leasing in this region. NPS repeatedly demanded that BLM not lease near Hovenweep National Monument citing the potential impacts to “air quality, dark night sky, scenic values, soundscapes and groundwater quality.” NPS Letter to BLM, Re: NPS Comments on BLM Canyon Country District Environmental Assessment for March 2018 Oil and Gas Lease Sale at 1 (Oct. 23, 2017) (attached as Ex. 3). BLM ignored these concerns. See, e.g., Juliet Eilperin, National Park Service warned lease sale Tuesday could harm national monument in Utah, *Washington Post* (March 20, 2018). [Footnote 75: Available at https://www.washingtonpost.com/national/health-science/national-park-service-warned-lease-sale-tuesday-could-harm-national-monument-in-utah/2018/03/20/ebf2f7be-2c54-11e8-b0b0-f706877db618_story.html.]

The Pueblo of Acoma and All Pueblo Council of Governors formally protested BLM's proposed sales as did numerous conservation organizations. See, e.g., All Pueblo Council of Governors, Protest of BLM Utah State Office September 2019 Notice of Competitive Oil and Gas Lease Sale (Aug. 26, 2019); [Footnote 76: Available at https://eplanning.blm.gov/public_projects/nepa/121035/20002940/250003510/2019-08-26-Sep19-All_Pueblo_Council_of_Governors-Protest.pdf.] Pueblo of Acoma, Protest of BLM Utah – Monticello Field Office September 2019 Competitive Oil and Gas Lease Sale (DOI-BLM-UT-000-2019-0003-Other- NEPA-MtFO-EA) (Aug. 26, 2019). [Footnote 77: Available at https://eplanning.blm.gov/public_projects/nepa/121035/20002941/250003511/2019-08-26-Sep19-POA-Protest_Redacted.pdf.]

More recently, the San Juan County Commission publicly demanded that BLM cancel the pending sales in this region and refund all monies paid citing the “extreme risk of damage and vandalism” to cultural resources. See San Juan County Comm. Letter to Nada Culver (March 3, 2021) (attached as Ex. 4). The Pueblo of Acoma likewise requested that the sales be cancelled on account of the “hundreds, to likely thousands of important cultural resources” threatened by the leasing and development. Pueblo of Acoma Letter to Rep. Haaland (Jan. 15, 2021) (attached as Ex. 5).

Notably, none of the leases have been developed (or even proposed for development). Thus, as with the San Rafael Desert leases, U.S. taxpayers have likely lost money as a result of BLM's leasing decisions when the costs associated with offering the leases are properly accounted for. These costs do not include the potential loss of our national cultural heritage if the leases are developed.

In addition, there are a high number of orphaned and/or long-term inactive wells in this area, which further highlights the lack of development potential in the area as well as the need to clean-up the existing problems before authorizing new leases and development. [Footnote 78: This includes, but is not limited to the following wells (identified by API number): 4303730943, 4303731086, 4303730776, 4303730762, 4303730808, 4303730983, 4303731020, 4303731145, 4303730485, 4303731403, 4303731406, 4303731564, and 4303730814]

Another policy solution to reduce inefficient high conflict leasing should be to only lease in the vicinity of existing development. The offering of new leases, if offered at all, should focus on public lands near existing oil and gas development because leases offered in such areas sell for higher competitive bids and are more likely to be put into producing status compared to parcels located in remote, undeveloped regions. At the same time, offering parcels near existing development discourages lease speculation while also avoiding significant conflicts with other uses of public lands.

For example, in Utah, since 2015 BLM has sold approximately 561 leases—148 of which are in BLM-identified lands with wilderness characteristics. Thirty percent of the wilderness character leases sold for the minimum bid of \$2 per acre and fifty percent sold for \$8 per acre or less. The average per acre price is seventy-one percent less than the price paid for leases outside of BLM- identified lands with wilderness characteristics in Utah.

The following chart depicts this information. [Footnote 79; This chart was prepared based on BLM's publicly available leasing data, see <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/utah>, and BLM's oil and gas leasing GIS shapefile data]

[See attachment for graph of bidding price of leases in LWC]

None of the leases offered and sold by BLM since 2015 located in BLM-identified lands with wilderness characteristics have been developed by the lessees (i.e., no production royalties have been paid) [Footnote 80: The Utah-BLM Supplemental GHG EA, which involved all of the BLM-identified wilderness character leases discussed above (as well as other leases), stated: “only one of the 226 suspended leases have been developed and no other leases have an approved Application for Permit to Drill (APD).” BLM, Analysis for Greenhouse Gas

Emissions Related to Oil and Gas Leasing in Utah, DOI-BLM-UT-0000-2021-0001-EA at 1 (Jan. 2021), https://eplanning.blm.gov/public_projects/2002778/200390662/20032939/250039138/2021-01-14-DOI-BLM-UT-0000-2021-0001-EA%20GHG%20Supplemental%20EA_Final.pdf. The one developed lease is located in the heart of the Uinta Basin and is not in or near BLM-identified lands with wilderness characteristics] In short, BLM and, more importantly, taxpayers received very little revenue as a result of BLM having offered these leases for development.

In sum, BLM should prioritize leasing in areas of existing development and disturbance, if any new leasing is allowed, and must halt—permanently—the offering of new leases for public lands that are not near such development to avoid foreseeable conflicts and litigation and also to protect important resource values such as lands with wilderness characteristics. As an example, Colorado-BLM for precisely these reasons implemented a practice during the Obama administration of prioritizing the offering of lease parcels on public lands near existing oil and gas development. A similar policy would help avoid resource waste associated with high conflict leasing.

Comment Number: BOEM-EMAIL-32521-024412-31

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Noncompetitive leasing

Noncompetitive leasing is fiscally irresponsible management of publicly-owned lands and minerals. Because companies pay no bonus bids to purchase noncompetitive leases, taxpayers lose out in the noncompetitive leasing process. Speculators can easily abuse this process to scoop up federal leases for undervalued rates, as shown in a 2018 report from the New York Times. [Footnote 81: Available at <https://www.nytimes.com/2018/11/27/business/energy-speculators-public-land-leases.html>.] The article provides examples of speculators intentionally using this process to nominate parcels for sale, then sit on the sidelines during the competitive lease sales and instead purchase the leases cheaper after the sale at noncompetitive sales. The article affirms that, “[t]he maneuver is one of many loopholes that energy speculators... are using as the Trump administration undertakes a burst of lease sales on federal lands in the West.” Owing to this practice, noncompetitive leasing surged during the Trump administration, which resulted in significant decreases in average bids paid – falling 80% in the State of Montana compared with bid averages during the Obama administration.

Additionally, information about leases that sell noncompetitively is generally not made available to the public and so there is no oversight or even awareness about public lands that are leased through this process. [Footnote 82: See generally GAO Report 21-138 (discussing and identifying many of these problems).] BLM should seek to eliminate non-competitive leasing through the review of the federal oil and gas program.

Comment Number: BOEM-EMAIL-32521-024412-32

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Expressions of interest

A driving force, perhaps the driving force, behind the problems discussed above is the fact that BLM's lease nomination process is broken. In short, anyone can anonymously nominate (for free) any parcel of public land for leasing and BLM has not established forward looking policies to screen the nominated leases to eliminate conflicts before they arise.

This broken process consumes enormous amounts of BLM resources and, if not improved, will continue to waste agency resources, invite future resource conflicts and legal challenges. For example, the Utah-BLM received hundreds of parcel nominations for inclusion in its September 2020 lease sale including on the doorstep of Arches, Canyonlands, and Capitol Reef National Parks, and Bears Ears National Monument. See, e.g., Juliet Eilperin and Darryl Fears, Oil and gas companies want to drill within a half-mile of Utah's best-known national parks, Washington Post (March 18, 2020). [Footnote 83: Available at https://www.washingtonpost.com/climate-environment/oil-and-gas-companies-want-to-drill-within-a-half-mile-of-utahs-best-known-national-parks/2020/03/18/4937f6c0-656c-11ea-acc8-80c22bbee96f_story.html.] BLM invested significant time and resources to prepare for the sale only to, at the last minute, rein the leases back due to (foreseeable) fierce public opposition to the proposal, including from numerous Utah elected officials and members of the United States House and Senate. See, e.g., Letter from U.S. Senator Dick Durbin et al., to David Bernhardt (Aug. 6, 2020) (demanding that BLM cancel the September 2020 oil and gas lease sale) (attached as Ex. 6); Letter from U.S. Rep. Lowenthal et al., to David Bernhardt (Aug. 11, 2020) (same) (attached as Ex. 7).

BLM's broken leasing program has provided the fertile soil necessary to allow this problem to germinate—sprouting into the nationwide problem it is today. For example, in just the past few years, Utah-BLM has expended considerable resources considering parcel nominations that had obvious resource conflicts only to be forced to pull them back due to fierce public opposition. This includes, but is not limited to, leasing proposals for public lands located at the doorstep to Zion National Park, [Footnote 84: See, e.g., Brian Maffly, BLM yanks oil and gas leases proposed near Zion after complaints from residents, Salt Lake Tribune (June 3, 2017), <https://www.sltrib.com/news/environment/2017/06/03/blm-yanks-oil-and-gas-leases-proposed-near-zion-after-complaints-from-residents/>.] Dinosaur National Monument, [Footnote 85: See, e.g., Brian Maffly, BLM to auction oil and gas leases next to Utah's Dinosaur National Monument and in San Rafael Swell, Salt Lake Tribune (Sept. 1, 2017) <https://www.sltrib.com/news/business/2017/09/01/blm-to-auction-oil-and-gas-leases-next-to-utahs-dinosaur-national-monument-and-in-san-rafael-swell/>, (explaining that BLM deferred two leases by Dinosaur National Monument after Utah Governor Gary Herbert objected).] the world famous Slick Rock Trail in Moab, [Footnote 86: See, e.g., Dino Grandoni, The Energy 202: Trump administration decides against drilling for oil under popular Utah bike trail, Washington Post (Feb. 24, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2020/02/24/the-energy-202-trump-administration-decides-against-drilling-for-oil-under-popular-utah-bike-trail/5e52bf5788e0fa632ba81ce8/>.] and the above-referenced September 2020 lease sale.

The problem is also not going away without significant structural, regulatory, and policy fixes. The Utah-BLM, for example, in the first four months of 2021 has received hundreds of parcel nominations including dozens for lands inside the 1.3 million acre Bears Ears National Monument established by President Obama in 2016 and adjacent to Canyonlands National Park. See SUWA Map – Nominated Oil & Gas Leases Surrounding Bears Ears National Monument (attached as Ex. 8). [Footnote 87: The lease nominations shown on this map depict the approximate parcel size (down to the township, range, and section, but not quarter-quarter sections or lots) and are based on publicly available data downloaded from BLM's NFLSS database. See BLM, National Fluids Lease Sale System, <https://nflss.blm.gov/eoi/list> (select, "Utah" under Geo. State, and "2021" under Calendar Year).] Regardless whether these nominations are processed and offered for sale or deferred, they underscore the larger foundational failings in BLM's oil and gas leasing program.

Comment Number: BOEM-EMAIL-32521-024412-34

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8 14

Comment Excerpt Text:

Based on the foregoing, we recommend that BLM take the following actions.

-Stop all leasing of no and low potential lands. As part of its review process, BLM must (1) review and update, as necessary, its existing RFDS to accurately determine which areas contain no or low potential for leasing and development, and (2) amend its RMPs, as necessary, to close such areas to all future leasing. BLM must provide for public participation in the review and preparation of RFDS.

-Increase minimum competitive and noncompetitive bid rates and penalize operators for failing to place their existing leases into production. As part of its review process, BLM must take steps to disincentivize lease speculation including, but not limited to: (1) establishing higher minimum bid rates and lease rentals, and (2) penalize operators for stockpiling undeveloped leases. On the latter point, BLM should consider establishing annual rental and production royalty rates that increase throughout the lease term (e.g., production royalty of 18.5 percent for years 1-3, 25 percent for years 4-7, and even higher for years 8-10).

-Increase the costs associated with the processing and approval of drilling permits. As part of its review process, BLM must take steps to discourage operators from failing to develop their approved drilling permits. Operators drill only half of their approved permits, which amounts to a significant waste of taxpayer money and BLM resources. BLM must increase the costs associated with the processing and approval of drilling permits as well as establish other financial incentives to encourage operators to apply for drilling permits they intend to develop.

-Establish new policy that instructs BLM to manage lands for the protection of important resource values such as wilderness characteristics, even if the lands are encumbered by existing leases. Approximately half of all oil and gas leases are never developed. Thus, BLM should not decline to protect agency-identified resource values such as wilderness characteristics based on the fact that the lands are subject to oil and gas leases. If leases are developed then they will remain valid and authorized, consistent with existing law and policy. However, if they terminate without having been developed then the lands should be managed for other more legitimate uses.

-Establish new policy and procedures to screen all oil and gas lease nominations. BLM must have a strategy to identify lands that are suitable (or not) for nomination, including screening criteria such as no and low potential lands and foreseeable conflicts with other public land uses (e.g., conservation and recreation). This criteria must require BLM to screen all nominations early in the process to avoid having to defer leases after having already exhausted significant amounts of agency time and resources.

-Develop new guidance regarding lease reinstatements. The practice of reinstating leases that have been terminated for failure to pay the annual rental fee needs to be evaluated by BLM and much more stringent provisions for reinstatement should be put in place. By law, BLM is only to reinstate leases in cases in which the failure to timely submit the rental was “justified” or “not due to lack of reasonable diligence” by the lessee. BLM should establish narrow and specific guidelines for when these criteria may be considered to be met.

Comment Number: BOEM-EMAIL-32521-024412-6

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Finally, BLM must reaffirm and clarify that it is agency policy that NEPA analysis and public participation are required prior to approving any request for suspension of operations and production. This policy already exists but nonetheless BLM state and field offices have failed to consistently follow it. The NEPA Handbook states: “Before any action described in the following list is used, the list of “extraordinary circumstances” . . . must be reviewed for applicability.” BLM, National Environmental Policy Act, Handbook H-1790-1, App. 4, pg. 147 (Jan. 2008). [Footnote 5: Available at https://www.ntc.blm.gov/krc/uploads/366/NEPAHandbook_H-1790_508.pdf.] The referenced list includes “[a]pproval of . . . suspensions of operations and production.” Id. App. 4, § B.4.

The relevant Interior Department Manual contains nearly identical statements and instructions. See Dept. of the Interior, Dept. Manual Part 516, National Environmental Policy Act of 1969, Chapter 11, Managing the NEPA Process—Bureau of Land Management §§ 11.9, 11.9.B(4), pgs. 7-8 (June 2, 2020) (“Department Manual”). [Footnote 6: Available at <https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-11-signed-508.pdf>.]

Thus, before BLM can approve any request for suspension of operations and production the agency must determine whether “extraordinary circumstances” preclude the use of a CX in which case “either an EA or an EIS must be prepared for the action.” NEPA Handbook at 147. See also Department Manual § 11.9 (“If a CX does not pass the ‘extraordinary circumstances’ test, the proposed action analysis defaults to either an EA or an EIS.”). The “extraordinary circumstances to be considered by BLM can be found in Appendix 5 of the NEPA Handbook, pages 155-56, and at 43 C.F.R § 46.215.

However, despite established Interior Department and BLM policy, BLM field offices do not consistently review requests for suspension of operations and production through the NEPA process, including public participation. For example, the Utah-BLM has never prepared NEPA analysis prior to approving such suspension requests and never provided for public participation in that process. See generally *Living Rivers v. Hoffman*, Case No. 4:19-cv-00057-DN (D. Utah) (complaint filed Aug. 2, 2019) (challenging BLM lease suspensions granted without NEPA analysis); [Footnote 7: Available at <https://www.doi.gov/sites/doi.gov/files/agreements-settlements/document/complaint.pdf>.] *Living Rivers v. Hoffman*, Case No. 4:19-cv-00057-DN-PK (D. Utah), Opp. to Defs. Mot. to Dismiss Action at 14 (filed Nov. 1, 2019) (explaining that there are no examples of Utah-BLM having prepared NEPA analysis prior to approving lease suspensions).

In contrast, Colorado-BLM field offices routinely prepare NEPA analysis for lease suspensions. See, e.g., BLM, Categorical Exclusion, DOI-BLM-CO-S050-2015-0042 CX, Suspension of Operations of 11 Oil and Gas Leases: COC-13483, COC-16076, COC-42314, COC-68787, COC-68788, COC-68789, COC-68790, COC-68791, COC-69066, COC-70004 and COC-70005 (June 2015); [Footnote 8: Available at https://eplanning.blm.gov/public_projects/nepa/48387/59294/64486/15-42_CX_Suspension_of_Operation_of_11_Oil_and_Gas_Leases.pdf.] BLM, Categorical Exclusion, DOI-BLM-CO-S050-2015-0054 CX, Extension of Suspension of Operations and Production Federal Oil and Gas Leases COC-63886, COC-63888, COC-63889, and COC-64169 (Sept. 2015); [Footnote 9: Available at https://eplanning.blm.gov/public_projects/nepa/52200/63107/68349/15-54_CXandDR_extSOP_4SG_leases.pdf.] BLM, Categorical Exclusion, DOI-BLM-CO-S010-2019-0009-CX, Suspension of Operations and Production for COC-70204 (May 2019). [Footnote 10: Available at https://eplanning.blm.gov/public_projects/nepa/122235/172896/210023/CX_and_DR_FINAL_Petrox_Suspension_of_Production_for_COC70204_05.15.2019.pdf.]

Comment Number: BOEM-EMAIL-32521-024412-8

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Clarify when suspensions are warranted and when they are not

To avoid the abuse of BLM-administered public lands and minerals, BLM must closely scrutinize all requests for suspensions of operations and productions. 43 C.F.R. § 3103.4-4(a) (suspension of operations and production may be granted “only in the interest of conservation of natural resources”). Past lease suspension abuses by oil and gas lessees and problems with agency oversight have been the subject of numerous Congressional and GAO inquiries and reports, as discussed above. In response to these concerns and problems, BLM should immediately issue guidance that all requests, including pending requests, for suspension of operations and production be reviewed subject to the following parameters: (1) requests that must be rejected, (2) requests that are disfavored and likely to be rejected, and (3) requests that are presumed to be permissible.

In all instances, an oil and gas lessee (or operator) should have the burden of demonstrating that a suspension of operations and production is substantially justified—that is, the reasons for the suspension cannot be attributed to unreasonable delay or inaction on part of the lessee. Failure to satisfy this burden should cause BLM to immediately reject the request for suspension.

BLM’s guidance should provide examples (non-exhaustive) of when suspensions are or are not warranted. BLM should further clarify that suspensions are discouraged and disfavored and require a strong showing of substantial justification by the lessee(s).

Comment Number: BOEM-EMAIL-32521-024412-9

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

a. Suspension requests that must be rejected

A fundamental requirement of every oil and gas lease is the requirement that a lessee must exercise reasonable diligence in developing and producing the leased resources. See 30 U.S.C. § 187 (“Each lease shall contain provisions for the purposes of insuring the exercise of reasonable diligence”); BLM Form 3100-11, Offer to Lease and Lease for Oil and Gas § 4, pg. 3 (Oct. 2008) (“Lessee must exercise reasonable diligence in developing and producing . . . leased resources”). [Footnote 11: Available at https://www.blm.gov/sites/blm.gov/files/uploads/Services_National-Operations-Center_Eforms_Fluid-and-Solid-Minerals_3100-011.pdf.] Thus, BLM should not approve any request for suspension of operations and production when, in the agency’s determination: (1) the lessee has not diligently and timely pursued development of its leasehold interest, and/or (2) it is based on unknown, speculative, and/or future events. This should include, but not be limited to:

-Requests received within six months of the expiration of a lease, whether it is in its primary or extended term.

-Requests based on a proposed action that requires NEPA analysis and, at the time it is submitted by the applicant, BLM cannot reasonably be expected to comply with all federal laws, including NEPA, prior to the expiration date of the lease term (primary or extended).

-Requests predicated on events the lessee could have—and should have—foreseen and avoided.

-Requests based on unknown, speculative, and/or future events (e.g., “unleased lands”).

Comment Number: BOEM-EMAIL-32521-025899-13

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

This work and the transition it will facilitate does not mean the production of oil and gas from federal public lands can or will end overnight. Indeed, the legally granted rights to explore for and produce oil and gas from tens of millions of acres presents DOI, Tribal governments, state and local governments, and communities with what is a likely a decade-long, or longer, runway for slowly easing economies and workers away from activity that is simply incompatible with a world that succeeds at preventing catastrophic climate change.

Because of this existing lease “cushion,” we urge DOI to take a proactive management approach that sets clear timetables and parameters for existing and planned oil and gas activities on federal public lands. This necessarily includes clear communication of changes to DOI policy, determination of DOI’s climate mitigation goals and capacities, development of the metrics and analytical tools DOI will utilize to measure progress toward those goals, and exploration of options available to oil and gas producers to be active partners in bringing about a shift in resource development and utilization.

A number of other federal agencies are likely to prove critical partners to DOI as it considers the most equitable pathways for ending oil and gas leasing of federal public lands. We encourage the agency to begin laying the groundwork for these partnerships immediately so as to build the intellectual, technical, fiscal, and technological bases for a smooth transition away from producing fossil fuels from federal lands. Thus, we believe that establishing a formal partnership on just and equitable transitions for energy-dependent communities (with an initial focus on communities dependent on resources extracted from the federal estate) [Footnote 60: See, e.g., Final Report by the Task Force on Just Transition for Canadian Coal Power Workers and Communities, Government of Canada, Dec. 2018, available at <https://www.canada.ca/en/environment-climate-change/services/climate-change/task-force-just-transition/final-report.html>; Case Study: Task Force on Just Transition for Canadian Coal Power Workers and Communities, European Commission, 2019, available at https://ec.europa.eu/energy/sites/default/files/documents/task_force_on_just_transition_for_canadian_coal_power_workers_and_communities_-_platform_for_coal_regions_in_transition.pdf] should include representatives from the following federal agencies and their relevant departments:

-Environmental Protection Agency

-Department of Labor

-Department of Energy

- Department of Agriculture
- Department of Commerce
- Department of Health and Human Services
- Department of Transportation

Comment Number: BOEM-EMAIL-32521-025899-24
Organization: Natural Resources Defense Council
Commenter: Josh Axelrod
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

D. Prohibit leasing of low potential lands

Under authorities in the MLA and subsequent amendments, the Secretary of Interior has broad discretion to determine the eligibility of lands available for oil and gas leasing. [Footnote 86: 30 U.S.C. § 226(b)(1)(A).] Because current DOI regulations and practices do not contain a detailed screening system or requirement for identifying lands with low or no potential for development, millions of acres are currently under lease with little chance of ever being used to produce saleable volumes of oil or gas. We therefore urge DOI to:

-Amend its regulations applicable to competitive leases to clarify that only lands with a high potential for development will even be considered by the agency for future lease sales. [Footnote 87: See generally 43 C.F.R. § 3120.1-1]

-Issue guidance to relevant regional offices that prohibits, to the extent possible under existing legal and regulatory authorities, the leasing of any lands where the applicable resource management plan (RMP) has not identified the development potential of nominated lands.

-Revise the Land Use Planning Handbook (H-160101) to clarify that federal public lands with low or no oil and gas development potential should not be offered or considered for leasing. [Footnote 88: BLM, Land Use Planning Handbook, H1-1601-1, Mar. 11, 2005, available at https://www.ntc.blm.gov/krc/uploads/360/4_BLM%20Planning%20Handbook%20H-1601-1.pdf.]

Comment Number: BOEM-EMAIL-32521-025899-25
Organization: Natural Resources Defense Council
Commenter: Josh Axelrod
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

E. Require more stringent screening of non-competitive leases and improve transparency in the non-competitive leasing process

The non-competitive leasing process represents one of the areas of DOI's oil and gas program with the highest

potential for abuse and economic waste. As such, we urge DOI to undertake a rulemaking to ensure that applicable regulations [Footnote 89: 43 C.F.R. § 3110.1] ensure that where non-competitive leasing takes place, it is done in a way that protects the public interest, reflects the legal requirements set out by the MLA and subsequent amendments, and is done so with greater transparency. Specifically, we suggest:

-Amend the regulations governing noncompetitive leases [Footnote 90: 43 C.F.R. § 3110 et seq] to ensure that the legal requirements for “qualified” applicants [Footnote 91: 30 U.S.C. § 226(b)(1)(A), (c)(1) (requiring that bidders on leases be “responsible” and “qualified”).] are clarified to better promote the public interest in receiving a fair return for publicly owned resources and responsible resource development. We believe that considerations of factors like the applicant’s development history, capabilities, development plans, access to capital or financing, and compliance history, including whether the applicant has a history of failing to make rental or other payments on other federal leases, should be included in applicable regulatory updates.

-To improve transparency and end secretive practices surrounding noncompetitive leasing, we also suggest that DOI develop and maintain a publicly accessible portal containing information relating to parcels available for noncompetitive leasing, offers made on noncompetitive leases, and the outcome of these offers. To the extent allowed under existing legal and regulatory authorities, the public should also be notified of lands made available for noncompetitive leasing, offers received, and leases offered, and should be given the opportunity to provide comment.

Comment Number: BOEM-EMAIL-32521-025899-30

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Department of the Interior should work with Congress to ensure important reforms lead to durable policy change for existing federal oil and gas development

The management of shared public resources must always be undertaken with the public’s benefit in mind. For this reason, we also urge DOI to work in partnership with congressional leaders to: First, support and help shape, as appropriate, legislation that is required to allow the agency to advance certain reforms for which it does not currently have sufficient legal authority. And second, support and help shape, as appropriate, legislation that will make permanent regulatory changes for which the agency already possesses legal authority to act. These proposed changes are briefly outlined below. To the extent the proposed reforms pertain to new leasing, they should be viewed as our proposed alternatives to what we see as the best course of action, which is to discontinue new leasing altogether.

Comment Number: BOEM-EMAIL-32521-025899-4

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

A. The Department of the Interior has broad legal discretion to limit and end new leasing of federal public lands for oil and gas development and should exercise this discretion to end new leasing, ensure GHG emissions and resulting climate impacts associated with existing production are managed and mitigated, and protect vulnerable ecosystems and communities from unnecessary development

1. The Department of the Interior's land management mandate is broad, forward-looking, and aimed at addressing the foreseen and unforeseen needs of future generations

The Federal Land Policy and Management Act (FLPMA) declares that it is national policy that federal public lands be managed “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” [Footnote 24: 43 U.S.C. § 1701(a)(8) (emphasis added).] This policy is then operationalized by the introduction of the multiple use management concept, which tasks DOI with managing federal public lands for multiple uses, “the combination that will best meet the present and future needs of the American people . . . [providing] sufficient latitude for periodic adjustments in use to conform to changing needs and conditions . . . [taking] into account the long-term needs of future generations for renewable and nonrenewable resources . . . [and] management of the various resources without permanent impairment of the productivity of the land and the quality of the environment . . . and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” [Footnote 25: *Id.* at § 1702(c) (emphasis added).] In short, it is standard that requires consideration both of the needs of future generations and the environmental conditions those generations may face as a consequence of decisions made in the present.

Because the leasing of federal public lands for oil and gas development has profound effects on numerous values DOI is meant to protect for future generations under FLPMA, we believe that there is an imperative, supported by the text of the Mineral Leasing Act of 1920 (MLA) and subsequent amendments, for oil and gas leasing to be viewed in the context of present and future conditions. Therefore, the inherent discretion reserved for the Secretary to offer lands for lease is of utmost importance. Specifically, the statutory text clearly allows for DOI to exercise discretion when it directs that “lands . . . known or believed to contain oil or gas deposits may be leased.” Though some may point to the quarterly sale language in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOGLRA) to suggest that DOI must lease lands, they ignore DOI's inherently discretionary authority to decide what lands are “eligible” and “available.”

The discretionary determination around eligibility of lands for leasing must inherently be considered, first, in the context of what might be termed FLPMA's “duty of care” for future generations quoted above, and second, in the context of climate change and the emissions caused and facilitated by ongoing federal oil and gas leasing. In the sections that follow, we provide several proposals for DOI to consider relating to the analytical tools the agency should develop to help it better determine, in a data-driven, scientific manner, the extent to which existing and future oil and gas development can be justified in the face a rapidly diminishing global carbon budget.

Comment Number: BOEM-EMAIL-32521-026571-5

Organization: Multiple Gulf Advocacy Organizations

Commenter: Dustin Renaud

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Initiate a revision of the nationwide OCS Oil and Gas Leasing Program that recognizes the climate crisis and offers no additional offshore oil and gas lease sales, and creates a plan to retire existing wells.

-Develop and implement a plan that will phase out existing offshore oil and gas drilling in the Gulf of Mexico, Southern California, and Cook Inlet.

Comment Number: BOEM-EMAIL-32521-026571-7

Organization: Multiple Gulf Advocacy Organizations

Commenter: Dustin Renaud

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Agencies and the office of the President of the United States need to work with Congress to make sure there are permanent protections in the Gulf, and in all federal waters.

-The Moratorium on the Eastern Gulf of Mexico Planning area should be made permanent.

-Statutes that allow for no new offshore leasing should be codified into the law through legislative changes.

-Funding must be provided for the needed infrastructure to keep our communities safe including early warning systems, enhanced evacuation procedures, raising of roads, and a rapid replacement of essential infrastructures such as bridges, levees, sea walls, water pumps, and sewage treatment facilities.

-Congress must reinstate the crude oil export ban.

Comment Number: BOEM-EMAIL-32521-027661-5

Organization: Alaska Wilderness League and Multiple Other Environmental Organizations

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We therefore ask the administration to implement a new management direction focused on meeting climate goals and protecting the extraordinary wildlife habitat and biodiversity values of the Reserve. DOI can accomplish this, in large part, by adopting more protective regulations for the Reserve and conducting new land management planning, consistent with the new direction and regulations. DOI should undertake a careful review of the current regulations governing the Reserve to determine how they can be strengthened to protect the environmental resources of the Reserve and lessen the impacts of oil and gas development on communities and subsistence resources. The regulations and land management planning should aim to end new leasing in the Reserve; protect areas of ecological and cultural significance; minimize and mitigate the climate and environmental impacts of any existing or proposed oil and gas activities on existing leases; provide for termination or relinquishment of existing, non-producing leases to the extent consistent with the Naval Petroleum Reserves Production Act (NPRPA); increase reclamation and bonding requirements; and address how environmental reviews occur in the Reserve.

The most biologically-rich and recognized wildlife and wilderness values of the Reserve are not reliably, effectively, or permanently protected at this time, and these values should not be compromised. The oil and gas leasing program in the Reserve was authorized in 1980, but there has been no comprehensive review of the Reserve's guiding regulations since that time, despite the many changes to the landscape and development in and

around the Reserve. The NPRPA provides broad authority and a statutory mandate for the Bureau of Land Management to provide maximum protection of areas with significant subsistence, recreational, fish and wildlife, or historical or scenic values, as well as the authority to condition, restrict, or prohibit activities as necessary to mitigate impacts. [footnote 1: See, e.g., 42 U.S.C. § 6504(a); 42 U.S.C. § 6506a(b).] Implementation of a new management direction for the Reserve, including revised regulations that protect Reserve values and resources, is consistent with this statutory authority and with the urgent need to combat climate change, safeguard biodiversity, and address the serious impacts from oil and gas already occurring to communities on the North Slope.

DOI should immediately withdraw its approval of the Willow Master Development Plan based on issues with its legality, climate implications, and consistency with the public interest. Willow would be a massive new development project. It would include up to five drill sites with up to fifty wells each, a central processing facility, an operations center, miles of gravel and ice roads, pipelines, and a gravel mine west of Nuiqsut. It is projected to produce 590 million barrels of oil, which would result in 260 million metric tons of CO₂ emissions over its 30-year life. This project will have major, long-term impacts on subsistence, community health, and the climate. There are serious legal questions related to the Trump Administration's approval of Willow. Two lawsuits challenging the project obtained injunctions from the Court due to legal problems with the permitting agencies' analyses, with the cases still pending in federal court. Willow is inconsistent with this Administration's stated goals of addressing climate change, environmental justice, and biodiversity conservation. Following withdrawal, DOI should initiate a new, thorough process to evaluate whether and how to approve the proposed Project.

Comment Number: BOEM-EMAIL-32521-028864-9

Organization: Powder River Basin Resource Council

Commenter: Shannon Anderson

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

Additionally, minimum bonus bids and low rental rates not only lead to lower revenue for the American public but also contribute to the problem of speculative leasing. As the Congressional Budget Office (CBO) recently explained: "A higher rental fee increases the cost of holding a lease, giving leaseholders an incentive to either explore parcels or return them to the government. In practice, the current incentive is weak because the fees are small relative to the cost of developing a lease." [Footnote 2: Congressional Budget Office, Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Lands at 8, available at https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options.pdf.] Thus, current rental rates are not creating the necessary incentives to maximize revenue from the development of publicly owned oil and gas resources. Likewise, under the MLA, minimum bids must be adjusted to "enhance financial returns to the United States. . . ." 30 U.S.C. § 225(b)(1)(B). Yet, the minimum bid for a competitive lease is just \$2.00 per acre. This is well below the level needed to deter companies from purchasing leases for speculative purposes.

DOI must also update policies that indirectly subsidize oil and gas development at the expense of the American taxpayer, including:

- Lease suspensions: inappropriate use of lease suspensions and unitization allows industry to hold leases indefinitely without production. There are millions of acres of federal minerals in suspended leases, many dating back to the 1980s and 1990s. [Footnote 3: Data accessed through LR2000]

- Lease reinstatements: current agency guidance does not provide clear direction for staff to evaluate and approve or deny reinstatements to ensure consistency with the MLA and agency regulations.

-Leasing low potential lands: the root of this problem is outdated planning guidance that leads BLM to make the vast majority of federal minerals available to leasing in land use plans, regardless of the likelihood of development and in conflict with multiple use management and fiscal responsibility.

-Leasing all oil and gas resources under a surface parcel: unlike private landowners, DOI leases all oil and gas resources under a surface parcel, rather than leasing a specific formation slated for development. In the Powder River Basin, this has meant that leases originally issued decades ago for traditional oil have been used by operators multiple times over for coalbed methane and now deep horizontal wells, resulting in a significant loss to the taxpayer that would have resulted from new leasing.

Comment Number: BOEM-EMAIL-32521-030652-5

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8 13

Comment Excerpt Text:

Any potential oil and gas leasing that continues in the near-term does so with an eye toward addressing historical inequities, curbing pollution and protecting taxpayers.

As we build toward an energy transition, we must address the fact that the current oil and gas leasing system is not only broken but has never been able to fully address the needs of the public. Since the system was instituted in 1987, 57% of all acres leased have been leased for \$2 or less with more than 90% of these leases no longer being active. We ask that the administration take the following measures:

-Increase royalty rates, annual rental rates and minimum lease bids for public lands that account for socio-economic costs, climate costs and promote a sustainable energy transition toward democratic, renewable energy development

-Promote methane capture and phase out industrial methane, VOCs and attendant emissions on public lands through a managed decline within a five-year period

-Permanently plug orphaned wells and remediate and reclaim orphaned well sites on federal land while increasing bonding rates to ensure that industries are held accountable for the monitoring, plugging, remediation and restoration of any future wells

-End the practice of leasing low-potential lands by requiring the BLM to assess all lands' mineral development potential before offering those lands for lease and prohibiting leasing on any lands found to have low or no development potential. These assessments (known as Reasonably Foreseeable Development scenarios (RFDs)) must be updated regularly, and the updating process must be open to public input and participation

Comment Number: BOEM-EMAIL-32521-032355-11

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

THE ONSHORE OIL AND GAS PROGRAM SHOULD BE BROUGHT INTO CONFORMITY WITH UNITED STATES CLIMATE COMMITMENTS.

A. BLM Should Halt New Onshore Oil and Gas Leasing.

The first step in getting out of a hole is to stop digging. As of October 1, 2020, there were already 37,496 existing federal onshore oil and gas leases in effect, covering 26.6 million acres (more than 41,500 square miles). [Footnote 39: BLM, Oil and Gas Statistics, *supra* note 31, Tables 1–2.] Only 48 percent (12.7 million acres) of that leased acreage is currently in production. [Footnote 40: *Id.* Tables 2, 6.] The leases already on the books, if developed, contain enough carbon to frustrate America’s ability to meet its Paris commitments.

The Interior Department has legal authority to halt new leasing. For example, the Department can use the land withdrawal authority provided in FLPMA, which allows the Interior Secretary to withdraw federal lands from extractive uses such as mineral leasing for time-limited periods. The Act authorizes large-scale land withdrawals for up to 20 years. 43 U.S.C. § 1714(c)(1). This provision contains no acreage cap, and there is precedent for very large withdrawals under FLPMA and other federal authority. See, e.g., Public Land Order No. 5653, 43 Fed. Reg. 59,756 (Dec. 21, 1978) (emergency withdrawal of virtually all public lands in Alaska, totaling approximately 110 million acres); *Andrus v Utah*, 446 U.S. 500, 513-19 (1980) (discussing pre-FLPMA withdrawal of all unreserved lands in 12 western states “pending a determination of the best use of the land”). FLPMA’s withdrawal authority can be applied to lands managed by any federal agency or department with the consent of the other agency, not just those managed by the Interior Department. 43 U.S.C. § 1714(i); 43 C.F.R. § 2310.1-2(c)(3).

At a minimum, a withdrawal should include a wide swath of lands that present the greatest concerns for future carbon emissions, such as those designated as having “high potential” for future oil and gas development. We note that 96 percent of new federal well spuds in 2019-2020 occurred in just five states, where a mineral withdrawal could focus: California, Colorado, Wyoming, North Dakota and New Mexico. [Footnote 41: *Id.* Table 8. Of the 1,486 new wells spud in fiscal year 2020, 1,433 were located in the five states noted above. *Id.*] In addition, lands located near national parks and monuments, those important for sage grouse [Footnote 42: From 2017 to 2019, approximately two-thirds of leased acreage was located in designated sage grouse habitat. Grant Gardner et al., *Oil and Gas Development on Federal Lands and Sage-Grouse Habitats*, October 2015 to March 2019, at 6–9 (July 25, 2019).] and other wildlife, and other environmentally sensitive areas, should be included in the withdrawal.

BLM can also adopt regional or national resource management plan (RMP) amendments, or alternatively, national regulations, that dramatically reduce the acreage of public lands open to leasing. FLPMA directs BLM both to develop RMPs, and issue regulations, to carry out its stewardship responsibilities and prevent unnecessary or undue degradation. BLM’s existing RMPs, however, overwhelmingly favor oil and gas development: 90 percent of public lands across the country are designated in RMPs as available for leasing, even where BLM has determined the lands have little potential for mineral development. [Footnote 43: The Wilderness Soc’y, *Open for Business (And Not Much Else): Analysis Shows Oil and Gas Leasing out of Whack on BLM Lands*, <https://www.wilderness.org/articles/article/open-business-and-not-much-else-analysis-shows-oil-and-gas-leasing-out-whack-blm-lands> (last visited Apr. 14, 2021).] Closing most federal lands to new leasing would be an effective tool for implementing BLM’s duty to address climate change.

At the Department’s March 25, 2021 forum, industry representatives denied that halting new federal leasing would have climate benefits because oil and gas development will allegedly move to private lands or other nations. See, e.g., Wendy Kirchoff, Vice President of Regul. Pol’y, Am. Expl. & Prod. Council, Comments at the Department of the Interior Public Forum on Federal Oil and Gas Program (Mar. 25, 2021). This potential (known as “leakage”) is overstated: modeling indicates that even accounting for leakage, a halt to new federal leasing will result in substantial carbon emissions reductions. [Footnote 44: See Brian Prest, *Supply-Side Reforms to Oil and*

Gas Production on Federal Lands, at 39 (Sept. 2020 rev. Mar. 2021), https://media.rff.org/documents/WP_20-16_Updated.pdf.]

Comment Number: BOEM-EMAIL-32521-032355-13

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Interior Department Should Use Its Full Authority to Mitigate Carbon Emissions from Development on Existing Leases.

Addressing new leases alone, however, will not bring the federal oil and gas program into alignment with national climate goals. See *supra* pp. 3–5 (discussing scale of potential carbon emissions and Paris commitments). A 2016 analysis, in fact, estimated that existing U.S. federal leases were sufficient to support production through 2044 (for natural gas) or 2055 (for crude oil). [Footnote 49: See Dustin Mulvaney et al., *Over-Leased: How Production Horizons of Already Leased Federal Fossil Fuels Outlast Global Carbon Budgets*, at 1 & fig.1 (July 2016), https://www.biologicaldiversity.org/campaigns/keep_it_in_the_ground/pdfs/Over-leased-Report-EcoShift.pdf.] As a result, meeting FLPMA’s requirements will also require minimizing carbon pollution from existing leases.

First, BLM can materially reduce the size of the problem by exercising its legal authority to cancel leases that were improperly issued. See 43 C.F.R. § 3108.3(d) (leases may be cancelled if “improperly issued”). In recent years courts have ruled that well over one million acres of onshore oil and gas leases were issued in violation of NEPA or FLPMA—many of them for failure to address climate issues. See, e.g., *W. Watersheds Project v. Bernhardt*, 441 F. Supp. 3d 1042 (D. Idaho 2020); *WildEarth Guardians v. Bernhardt*, 368 F. Supp. 3d 41 (D. D.C. 2019); *Mont. Wildlife Fed’n v. Bernhardt*, No. 18-cv-00069, 2020 WL 2615631 (D. Mont. May 22, 2020). Some of those leases have been remanded to BLM for further consideration, while others are on appeal or otherwise remain in litigation. BLM has ample administrative and litigation authority to eliminate these leases, which it should use. Still other existing leases have not yet been ruled unlawful, but share the same legal flaws as leases that were invalidated by a court. BLM should act to void these leases. [Footnote 50: See, e.g., BLM, Press Release: Secretary Jewell Announces Resolution of Oil & Gas Leasing Issues in Colorado’s White River National Forest (Nov. 17, 2016) (cancelling 25 leases for NEPA violations identified by IBLA decision addressing other leases in same area).]

Second, BLM should issue instruction memoranda, and potentially regulations, to restrict suspensions of operations and production and abuses of unitization plans that allow operators to hold non-producing leases for decades. A 2017 analysis, for example, noted that 3 million acres of leases were under suspension and that one third of those suspensions had been in effect for 20 years or more. [Footnote 51: W. Values Project, *Rigged – Why Oil & Gas Development Is Already The Dominant Use Of America’s Public Land*, at 17 (2017), <http://westernvaluesproject.org/wp-content/uploads/2017/08/WVP-Rigged-Report.pdf>; see also *The Wilderness Soc’y, Land Hoarders: How Stockpiling Leases is Costing Taxpayers* (2015), <https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf>.] Restricting suspensions and limiting unitization abuses can be expected to lead to the expiration of numerous leases that have been held well past their ten-year term.

Comment Number: BOEM-EMAIL-32521-032355-9

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Leasing Pause Should Remain in Effect Until the Comprehensive Review Is Completed and Reforms Are Adopted.

In addition, we strongly support President Biden's directive to pause new oil and gas leasing while the comprehensive review is underway. That leasing pause should be kept in place until the review is complete and new management directives are fully implemented.

Objections to the pause on economic grounds are misplaced for at least two reasons. First, the pause does not affect existing leases, permits, or operations, which will allow drilling and production to continue for years. At the end of fiscal year 2020, companies held 13,618 unused leases covering 13.9 million acres of public land [Footnote 31: See U.S. Bureau of Land Mgmt., Oil and Gas Statistics, Tables 1, 2, 5, 6, <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics> (last visited Apr. 14, 2021).] and held over 7,600 unused drilling permits. [Footnote 32: U.S. Bureau of Land Mgmt., Approved APDs Report - Federal, <https://reports.blm.gov/report/AFMSS/81/Approved-APDs-Report-Federal> (last visited Apr. 7, 2021); see also U.S. Dep't of the Interior, FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future (Jan. 27, 2021, last updated Feb. 11, 2021), <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands> (reporting 7,700 unused APDs)] Those 7,600 permits alone would allow drilling to continue for approximately four years based on the rate of recent well spuds on federal lands. [Footnote 33: BLM, Oil and Gas Statistics, *supra* note 31, Table 8 (stating that 1,486 wells were spud in fiscal year 2020)] And since the end of fiscal year 2020, the Trump administration issued even more new drilling permits at an unprecedented rate: 2,091 permits were approved between October 1, 2020 and January 31, 2021. [Footnote 34: U.S. Bureau of Land Mgmt., Application for Permit to Drill Status Report: 10/1/2020 to 1/31/2021, <https://www.blm.gov/sites/blm.gov/files/docs/2021-03/Jan%202021%20APD%20Status%20Report%20PDF.pdf> (last visited Apr. 14, 2021).]

Comment Number: BOEM-EMAIL-32521-032470-1

Organization: Environmental Action

Commenter: Len Montgomery

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

We, the undersigned, urge you, the Department of the Interior, to instate a permanent ban on fossil fuel leasing on public lands and waterways. A complete halt on oil and gas drilling on both land and water is critical to reducing climate-warming emissions and protecting the integrity of several national treasures.

As clean, renewable energy technologies continue to advance and become more accessible, there is no reason to continue to allow dirty, dangerous drilling. We thank the Department of the Interior for enacting a pause on leasing and ask that the moratorium be made permanent for the sake of our climate, wildlife and future generations.

Comment Number: BOEM-EMAIL-32521-034219-10

Organization: Taxpayers for Common Sense

Commenter: Michael Maragos

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Land Use and Strategic Leasing

Under the Mineral Leasing Act, as amended, the BLM is required to hold lease sales for eligible lands at least quarterly. But the BLM has wide discretion to determine which lands are eligible and should use that authority to choose where leasing should be prioritized over other land uses and to auction off leases with valuable deposits strategically.

Statute mandates that BLM take actions to ensure the ultimate recovery of resources as well as deliver a fair return for taxpayers on those resources. To achieve both and best serve taxpayers, BLM should adjust its leasing practices to market conditions. There is no running clock for resource development and the return to taxpayers can be increased by policies that allow for flexibility. Selling when industry prospects are high also limits the likelihood of companies stranding assets. The inverse, increasing industry's undeveloped reserves when prices are low also hurts the industry by reinforcing the price environment.

Strategic leasing would focus the BLM's limited resources. Holding extensive lease sales in Nevada, for example, where production is limited, bidding is minimal, and noncompetitive leases are common, is irresponsible. Regions where lease sales consistently fail to recoup administration costs should be abandoned.

Under the Mineral Leasing Act, parcels that are not bid on during a competitive lease sale are made available for noncompetitive leasing for a two-year period following the auction. This discourages auction participation and incentivizes speculation. Oil and gas companies acquire parcels, either directly or through speculators, without ever developing them to inflate their undeveloped acreage numbers reported to investors. The noncompetitive system allows companies to aggrandize their production prospects at low cost, even when the leased lands have little to no potential for development.

According to the 2020 GAO report on onshore competitive and noncompetitive lease revenues, noncompetitive leases make up 27.5 percent of all acres leased but only brought in 11.2 percent of total revenues from FY2003 to FY2019. In fact, only 1.2 percent of noncompetitive leases issued from FY2003 to FY2009 ever entered production and generated royalties during their 10-year primary terms. In our report, *Gaming the System: How Federal Land Management in Nevada Fails Taxpayers*, [Hyperlink: https://www.taxpayer.net/wp-content/uploads/2019/07/TCS-Nevada-Federal-Oil-Gas-Report_-July-2019.pdf] we found that at the end of 2018, 97.3 percent of all acres in authorized leases in Nevada lay idle and only 1 of the 2,400 noncompetitive oil and gas leases issued since 1999 ever entered production. In another egregious example, one company obtained 228 noncompetitive leases covering 113,000 acres in Montana in 2017 and 2018 [Hyperlink: <https://www.taxpayer.net/energy-natural-resources/taxpayers-lose-in-noncompetitive-montana-lease-sale/>], often by filing noncompetitive offers the day after lease sales.

As long as noncompetitive leasing remains an alternative per the Mineral Leasing Act, the BLM cannot ensure full market value is received for onshore oil and gas leases. Until legislation can be enacted ending the practice, increased focus on leasing in places and market moments when parcels are likeliest to get a bid and not enter the noncompetitive pool will limit taxpayer losses. In the interim, increased transparency and reporting on noncompetitive lessees is needed.

Comment Number: BOEM-EMAIL-32521-034219-2

Organization: Taxpayers for Common Sense

Commenter: Michael Maragos

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

This is why we support the pause on all oil and gas leasing on federal lands and waters. It is time to reform the system and only restart leasing when a fair return can be guaranteed.

To this end, TCS calls on the Department of the Interior to: immediately update oil and gas lease terms including royalty, rental, and bonding rates; increase the minimum bid for both onshore and offshore leases; issue stronger rules for waste prevention and valuation; dramatically improve transparency systems; better prioritize which lands should be made available for lease and which are more appropriate for other uses; lease valuable land strategically; and limit all reclamation, pollution, and climate liabilities associated with federal oil and gas development.

TCS anticipates providing more detailed input when DOI proposes specific actions but encourages the agency review to consider the following aspects of the federal oil and gas program.

Comment Number: BOEM-EMAIL-32521-034219-9

Organization: Taxpayers for Common Sense

Commenter: Michael Maragos

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Time for Transparency

In addition to reviewing leasing policies and their implementation, TCS strongly urges DOI and BLM to review their systems for providing transparency into the federal oil and gas programs. As owners of federal land and water and the resources they contain, taxpayers deserve to know what is being developed, by whom, what we're getting for the resources, what local effects production operations have, and how liabilities connected to development are limited. Current data and notification systems fail this standard.

Keeping track of oil and gas leasing and production requires extensive documentation. The availability of documentation and data for offshore leasing is encouraging and proves that such transparency is not beyond DOI's grasp. Though several beneficial steps have been taken in recent years and certain upgrades are in progress, the tracking systems for the onshore federal oil and gas program remain fractured and inefficient.

The National Fluids Lease Sale System (NFLSS) [Hyperlink: <https://nflss.blm.gov/report>] is a good first step toward centralizing lease sale preparation and administration information but leaves a lot to be desired. Historical lease sale information is still scattered on separate BLM pages and standardization and aggregation of data is still missing. Each BLM office should report the same information – the Utah Office's current practices should be a guide – and statistical summaries of lease sales should be provided at regular intervals. Posting all lease sale results on dozens of PDFs provides work for watchdog organizations but is highly inefficient. In addition, the failure to require each party nominating parcels for lease to disclose their identity remains unjustified.

Once a lease is issued, data about its management and operations on it are only provided through the Automated Fluid Minerals Support System (AFMSS) [Hyperlink: <https://reports.blm.gov/reports/AFMSS/>] and the Legacy Rehost 2000 (LR2000). The AFMSS provides a very basic level of information about drilling permits, but much more can be done. For example, the State of Utah's Department of Natural Resources - Division of Oil, Gas and

Mining provides vastly superior functionality for attaining similar information. Not only is the production history for each well easily attainable, but links are also provided to digital copies of all documentation associated with the well, including permit applications and approval paperwork.

Instead, metadata on federal well and lease management are currently provided through the antiquated LR2000. Its problems and shortfalls would take pages to fully explicate. After years spent working with LR2000 data, several themes are clear: it is inaccessible, inconsistent, inaccurate surprisingly often, and grossly insufficient. Whole hosts of actions are often summarized with one code entered on one date. BLM offices in different regions often use different codes or action remarks to document the same event. The extent and helpfulness of explanatory remarks differs widely from office to office and from one period in the database to another. Some actions should automatically change case disposition and do not, and some codes that should be accompanied by others stand alone.

[See attachment for image of action code query]

In short, the LR2000 is a chaotic records management system in need of an overhaul. Making the data accessible is of foremost concern, followed by improving the quality of data, enhancing its content, and making it communicate with other data systems. Ideally, trying to query the data would not produce error codes with regularity (see picture above), it would produce results that fully explain what actions BLM staff have taken, and provide documentation at each step. Cases created by segregation, interest assignment, and connection to well data need improved tracking protocols in particular.

Often, the only authoritative source of information about onshore leases is published in the Public Land Statistics and Oil and Gas Statistics. These are annual releases posted with data that is half a year old at best. The failure to publish leasing data monthly, or at least quarterly, demonstrates data collection and processing wildly out of step with the modern age.

On the production and revenue side, RevenueData.gov is a valuable resource that is continually improving. Ongoing initiatives to add disposition data and sales value data to the site are essential to enabling effective oversight of development of taxpayer resources. However, the availability of data at only an annual interval is a fundamental shortcoming of the platform. All of the major oil and gas producing states produce production data monthly. DOI should look to their example, particularly the Colorado Oil & Gas Conservation Commission and New Mexico Oil Conservation Division.

Comment Number: BOEM-EMAIL-32521-034250-12

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

2. BLM's policies on bonding rates, lease suspensions and reinstatements, and leasing low potential lands are essentially providing subsidies to the oil and gas industry and encouraging the speculative holding of dormant leases.

By not updating and clarifying policies on bonding, lease suspensions, lease reinstatements and leasing low potential lands, BLM is subsidizing the oil and gas industry's costs to hold inactive leases for excessive periods and to operate on public lands – in spite of the billions of dollars in industry profits from public lands drilling –

and undermining the industry's obligations of diligent development. The failure to update and clarify these policies especially encourages non-active speculators to retain a large share of leases involving substantial land areas in an undeveloped state for years and even decades on end.

Comment Number: BOEM-EMAIL-32521-034250-15

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

(b) Lease suspensions

Federal leases already have longer terms than many state and private leases, and are supposed to be terminated at the end of their ten-year terms. Lease suspensions result in companies holding federal lands and minerals for longer (often much longer) time periods without paying rentals or generating energy or royalties.

BLM's current policy guidance governing lease suspensions, set forth in BLM Manual 3160-10, was issued in 1987. The manual does not provide clear direction to BLM for how and when to exercise its discretion to reject lease suspension requests, and therefore the agency routinely grants suspensions that are not warranted or required by law. This has led to an extensive portfolio of suspended leases on federal lands. As of March 2015, there were 3.25 million acres of federal minerals in suspended leases, many dating back to the 1980s and 1990s. [Footnote 29: Data accessed through LR2000.]

The manual also does not direct BLM on how to manage currently suspended leases. Without such direction, BLM rarely evaluates the status of actively suspended leases to determine whether suspensions should be lifted, allowing suspensions to remain in place long after the circumstances that originally justified the suspension no longer exist. Thus, the 1987 manual does not provide direction or assurance that BLM holds suspension requests to the high standard set out in the regulations, provides limited terms for suspension and actively monitors and ends suspensions when they are no longer necessary.

This outdated guidance contributes to BLM's failure to recover revenue for federal resources and ensure producers are diligently developing leased lands. Inappropriate use of lease suspensions allows industry to hold leases indefinitely without making rental payments or producing energy. In this way, lease suspensions can allow industry to evade Congressional intent to diligently develop and provide timely and reasonable access to federal oil and gas resources.

The outdated guidance is also inconsistent with BLM's multiple use mandate. Because BLM regularly declines to adopt conservation management for lands encumbered by leases, holding leases in undue suspension is tantamount to removing those lands from multiple use.

Comment Number: BOEM-EMAIL-32521-034250-16

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

(c) Lease reinstatements

BLM's current policy guidance for reinstatements, set forth in BLM Manual Handbook 3108-1, was last revised in 1995. The guidance does not provide clear direction for BLM to evaluate and approve or deny reinstatements to ensure consistency with the Mineral Leasing Act and agency regulations. Oil and gas leases are automatically terminated "by operation of law" if annual rental rates are not paid by the anniversary date of the lease. [Footnote 30: 43 C.F.R. § 3108.2-1] However, the BLM "may" reinstate these leases under several conditions. [Footnote 31: Id. §§ 3108.2-2, 3108.2-3, and 3108.2-4] By law, the BLM is only to reinstate leases in cases in which the failure to timely submit the rental was "justified" or "not due to lack of reasonable diligence" by the lessee.

According to the BLM Handbook, justification can occur if "sufficiently extenuating circumstances or factors beyond the control of the lessee [] occurred at or near the lease anniversary date." [Footnote 32: BLM Handbook H-3108-1 at 31] BLM's regulations provide for three types of reinstatements: Class I (reinstatement at existing rental and royalty rates), Class II (reinstatement at higher rental and royalty rates), and Class III (conversions of unpatented oil placer mining claims). However, the agency's guidance does not clearly direct which type of reinstatement is appropriate, what specific criteria must be met for a reinstatement to be authorized, or when the agency should exercise its discretion to deny reinstatement requests. Due to the outdated guidance, BLM is permitting oil and gas leases that have been terminated to be reinstated without sufficient basis, providing the oil and gas industry with an extra opportunity to retain leases at the expense of diligent development, and frequently in situations where industry has intentionally defaulted on rental payments because of low prices, only to apply for reinstatements when prices increase.

Comment Number: BOEM-EMAIL-32521-034250-2

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

The problem: current practices tie up lands without producing energy or revenues.

Poor, indecisive and inefficient Interior management of oil and gas resources provides hidden subsidies to speculators who do not diligently pursue development. Because Interior often fails to actively manage public lands with dormant oil and gas leases for other public uses, it effectively denies the public—persons, organizations, and companies—the certainty they need to use these lands for beneficial economic, conservation, recreational or other purposes. When the federal agencies leave lands in limbo because of the remote possibility that a long dormant, low-value oil or gas lease might be developed some day, uncertainty reigns, and neither the public nor other industries can make long-term commitments to alternative uses of those lands. The economic, social and environmental benefits of those other uses are thus lost.

Below market royalty and rental rates, low minimum lease bids, inadequate bonds, lengthy and lax lease suspensions, unjustified reinstatements of lapsed leases, and leasing low potential lands encourages speculators to tie up federal lands often for decades—preventing decisions to either expeditiously develop the oil and gas resources for energy or, alternatively, maximize the benefits flowing from other uses of public lands. By subsidizing and enabling dormant leases, current practices tie up lands without producing energy or revenues for

the American people and simultaneously preventing those lands from being used for other purposes. Scattered in checkboard fashion across the American West are neglected public lands not utilized for the greatest good because of Interior's mismanagement and misguided subsidies for non-beneficial uses. Interior's neglect of these lands fails the multiple use standard of federal law.

The solution: charging market rates and discouraging unproductive leasing will yield the right balance of uses and returns.

To provide the greatest benefit to the American public, Interior should incentivize the timely production of oil and gas from public leases by charging market rates at every stage of the leasing and production process, and also decisively managing land and resources to support the most appropriate combination of multiple uses. Federal leases are issued for terms (ten years) that are longer than those used by many states or private parties so the industry already has ample time to develop leased lands. Interior, as manager of all leases of public lands and minerals, should focus on making sure those leases are ended if they are not being used productively and ensure leases are yielding a fair return while they are tying up public lands. Accordingly, this petition asks Interior to more effectively meet the standards of multiple use management and a fair return of revenues to the public by:

1. Charging higher, market-tested royalty rates (such as those used by states and the private sector) instead of the inadequate, subsidy-providing 12.5% rate;
2. Increasing rental rates on federal leases to a level sufficient to incentivize oil and gas production so that the percentage of federal leases that produce energy would rise well-above the current, unsatisfactory levels (e.g. only 50% in Rocky Mountain States);
3. Increasing minimum lease bids, as recommended by the Congressional Budget Office, to deter companies from purchasing leases for speculative purposes only;
4. Updating bonding requirements to reflect current costs associated with reclamation and restoration of lands used for oil and gas production;
5. Reforming lease suspension practices to establish rigorous standards guaranteeing that undeveloped oil and gas leases are either diligently placed into production or cancelled so that the land can be managed for other beneficial uses;
6. Updating lease reinstatement practices to require consistent and higher standards of justification for reinstating lapsed leases, with minimal tolerance for defaults on rental payments; and
7. Stopping the leasing of lands with low potential for oil and gas production and managing those lands for other purposes of greater benefit to the public.

The combination of these policies will generate millions of dollars annually for the American people, as well as states and local communities that benefit from federal oil and gas production. As numerous economic and fiscal studies indicate, higher royalty rates will generate large amounts of additional revenue with negligible impact on production. Indeed, several of the other changes proposed here will ultimately incentivize more timely production of oil and gas from federal lands and minerals, which raises the prospect for a net increase in energy production overall. Finally, and more importantly, a diversity of beneficial uses of federal land will expand as the waste and neglect of lands with dormant, speculative leases decline. Overall, better management of public lands will result in better uses in the right places, including renewable energy, recreation and conservation. More rigorous, decisive and efficient management will greatly increase the revenues and benefits to the American people from public lands and minerals.

Comment Number: BOEM-EMAIL-32521-034250-25

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

(b) Lease suspensions

BLM should issue new guidance for managing suspensions that includes clear direction for considering suspension requests and denying unwarranted suspensions; monitoring existing suspensions on a regular basis and removing those that are no longer justified; and providing for public review of lease suspensions. BLM is currently not holding suspension requests to the high standard set out in the regulations, and revised guidance is necessary to ensure compliance.

-Update criteria for granting suspensions: BLM should issue revised direction for considering suspension requests that includes clear criteria for when the agency does and does not have discretion to grant a suspension request. Pursuant to 43 C.F.R. § 3103.4- 4(a), obligations regarding all operations and production of oil and gas leases may be suspended “only in the interest of conservation of natural resources” and obligations regarding either operations or production may be suspended only when “the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee”; and must be justified by the applicant. Revised policy should provide the agency with guidance for implementing these regulations and appropriately considering whether to approve lease suspension requests.

-Establish a monitoring and tracking system for suspensions: A lease suspension is not intended to be unending; BLM requires that a suspension terminates when it is “no longer justified in the interest of conservation, when such action is in the interest of the lessor, or as otherwise stated by the authorized officer in the [suspension] approval letter.” 43 C.F.R. § 3165.1(c). BLM’s existing manual directs the agency to “monitor the suspension on a regular basis to determine if the conditions for granting the suspension are extant, and should terminate the suspension when it is deemed no longer necessary.” BLM Manual 3160-10.3.31.C.3. However, in practice this requirement is not applied through any regular or consistent mechanism. More explicit guidance should direct when and how this monitoring occurs. A verification system to ensure regular oversight including directing state offices to evaluate suspended leases on a quarterly basis and report to DC in a publicly available format should also be incorporated into the suspended lease management strategy.

-Increase transparency and opportunities for public involvement in lease suspensions and monitoring: BLM should be required to post documentation of lease suspension requests and decisions, including on its NEPA log, but also in a dashboard available via state office websites. Information on suspended leases, including status and reason for suspension, should also be made public to provide for public oversight and accountability on the length of suspensions in annual oil and gas program reports. A summary of lease suspensions should be included in the BLM’s annual reporting of oil and gas statistics, as well.

-Evaluate need for NEPA review: Finally, BLM should evaluate whether categorical exclusions are appropriate for individual suspensions, applying the “extraordinary circumstances” criteria, and if any of those criteria are met, then an environmental assessment or environmental impact statement must be prepared.

(c) Lease reinstatements

BLM must update its guidance for evaluating and approving or denying lease reinstatements to ensure oil and gas

companies are complying with the directives set forth in the Mineral Leasing Act and that taxpayers are receiving rental payments for leased public mineral resources. The practice of reinstating leases that have been terminated for failure to pay the annual rental fee needs to be evaluated by the BLM and much more stringent provisions for reinstatement should be put in place. By law, the BLM is only to reinstate leases in cases in which the failure to timely submit the rental was “justified” or “not due to lack of reasonable diligence” by the lessee. In updating the agency’s guidance, BLM should establish narrow and specific guidelines for when these criteria may be considered to be met.

-Require evidence of extenuating circumstances and reasonable diligence: According to the BLM Handbook, justification can occur if “sufficiently extenuating circumstances or factors beyond the control of the lessee [] occurred at or near the lease anniversary date.” [Footnote 56: BLM Handbook H-3108-1 at 31] BLM should ensure that any excuse of non-payment of rent is in fact beyond the control of the lessee—any claimed basis for failure to pay on time must be a “causative factor” showing control had been lost. [Footnote 57: Id] Failing to pay rent on time also can only rarely be excused as having occurred despite the exercise of reasonable diligence. To claim diligence, a lessee must be able to show they sent the rental “sufficiently in advance of the due date to account for normal delays.” [footnote 58: Id] Lessees seeking lease reinstatements must be required to provide detailed support that they meet these criteria, and only in the rare circumstances in which they are clearly met should reinstatements be authorized.

-Class I reinstatements should be generally unavailable: BLM should exercise its discretion to not authorize Class I reinstatements (reinstatement at existing rental and royalty rates), except in the most extraordinary circumstances.

-Define “inadvertence” to mean “not duly attentive”: Regarding Class II reinstatements, the failure to pay rent on time should only rarely be excused as having occurred because of inadvertence. Inadvertent means “not duly attentive.” While inadvertence may be unintentional, it is synonymous with “careless.” This lack of attention should not be readily excused for such a simple task as paying your rent on time. If an oil and gas lease has real value to the operator, certainly they should be attentive enough to pay their rent on time. The failure to pay rent on time is evidence the lease is not valuable to the operator, and therefore leaving the termination in place is justified. The failure to pay rent on time probably signals a general lack of diligence, such as not seriously engaging in actual drilling operations. See 43 C.F.R. § 3107.1 (allowing for extension of lease terms if actual, diligent drilling is commenced prior to the end of the primary term).

BLM’s guidance defining when inadvertence can be excused is so broad as to be meaningless. “Inadvertence” is viewed by the BLM to include failure to pay due to carelessness, negligence, an unintentional or accidental oversight, inattention, a mistake, a financial inability to pay timely, or any other reason.” BLM Handbook H-3108-1 at 37. This meaningless view of what constitutes inadvertence must be abandoned. A definition that recognizes inadvertence means “not duly attentive” needs to be put in place. Being careless, negligent, inattentive or not having the financial inability to pay on time are not due reasons to excuse nonpayment. [Footnote 59: The Interior Board of Land Appeals has ruled that being financially unable to pay rent is not considered inadvertent and is, therefore, not grounds for Class II reinstatement. Dena F. Collins, 86 IBLA 32 (1985). But BLM policy is nevertheless that “if a lessee does later secure the financial ability and timely files a petition for reinstatement, the petition is to be processed.” BLM Handbook H-3108-1 at 37. BLM should expect that lessees will maintain an ability to meet and abide by their lease terms on a continuous basis; lessees should be ready to pay rent when due, and if they cannot they should be willing to give up the lease and move on to other business opportunities.]

-Reinstated leases should not have their terms extended or royalty rates reduced. The BLM should not extend the terms of the lease or reduce the royalty rate when a lease is reinstated. Reinstatement of oil and gas leases for failure to pay rent should be an exception rather than a rule in the interest of multiple-use management of our public lands.

Comment Number: BOEM-EMAIL-32521-034250-26

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

(d) Leasing low potential lands

BLM should use development potential to plan for oil and gas development on federal lands in ways that mitigate resource conflicts, accommodate multiple uses of public lands without preference, and encourage development in areas that are most economic for oil and gas production. Limiting leasing in areas with low or no development potential would reduce administrative costs, mitigate conflicts between competing resources, and be more faithful to BLM's multiple-use mandate.

This approach would also be consistent with the MLA, which directs BLM to hold periodic oil and gas lease sales for "lands...which are known or believed to contain oil or gas deposits..." 30 U.S.C. § 226(a); see also *Vessels Coal Gas, Inc.*, 175 IBLA 8, 25 (2008) ("It is well-settled under the MLA that competitive leasing is to be based upon reasonable assurance of an existing mineral deposit."). These sales are supposed to foster responsible oil and gas development, which lessees must carry out with "reasonable diligence." 30 U.S.C. § 187; see also BLM Form 4 ("Lessee must exercise reasonable diligence in developing and producing...leased resources.").

-BLM plans should set out a framework for oil and gas development that supports closing lands to leasing where development is unlikely to occur: If BLM closes or defers leasing in low-potential areas, and conditions change to make development in those areas more likely, the agency can then complete additional analysis and planning to ensure that development occurs responsibly and accounts for current resource conditions. An updated approach to planning for oil and gas leasing should meaningfully account for development potential and conflicts with other resources. [Footnote 60: See TWS No Exit Report for detailed recommendations on an updated approach to making oil and gas allocations in land use planning:

http://wilderness.org/sites/default/files/TWS%20No%20Exit%20Report%20Web_0.pdf]

-Modernize the handbook with an approach that provides for closing lands to leasing and limits leasing in low- or no-potential areas: Updating the handbook would not only support BLM's obligation to consider managing lands for fish and wildlife, recreation and wilderness values, but also have minimal impacts on industry objectives. In locations like the Ely District in Nevada, where federal minerals are almost 90 percent open to leasing, only 32 wells were authorized over the past 101 years (as of May 21, 2014), even though there are 936 active leases covering just over two million acres of public land. [Footnote 61: See BLM Nevada Preliminary EA for the Dec. 2015 Oil and Gas Lease Sale, p. 1.4.] Closing these lands to speculative leasing will not harm responsible oil and gas development.

-Consider basing oil and gas lease sales on a "List of Lands Available for Competitive Nominations," as authorized by BLM regulations: BLM currently allows the oil and gas industry to nominate any public lands for leasing, which encourages widespread speculation in low potential areas and creates unnecessary conflicts with other multiple uses. This is extremely inefficient and wasteful system for leasing public lands is not the only model available to BLM, however, as current rules also permit BLM to create and utilize a "List of Lands Available for Competitive Nominations." 43 C.F.R. § 3120.3-1. Such a list would allow BLM to proactively direct industry to areas with better odds of development and with lower resource conflicts, while eliminating areas from consideration that are clearly speculative and unlikely to generate any oil and gas revenues for American taxpayers.

Limiting development in low/no potential areas would allow BLM to minimize the risk of impacts and conflict altogether in areas where development is likely to be minimal in the first place. This practice would also limit speculative leasing practices by the industry, which can foreclose alternative management decisions and burden the BLM with increased administrative costs and conflicts associated with leasing in low potential areas. Under a more strategic approach to making oil and gas allocations in land use planning, lands would be made available for leasing by evaluating both an estimate of oil and gas potential and the conflicts with or potential harm to other resources present on those same lands. We direct BLM to and incorporate by reference the recommendations made in the TWS reports cited above (attached and incorporated herein by reference).

Comment Number: BOEM-EMAIL-32521-034546-4

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

i. Nationwide and state specific screens for leases.

BLM does not regularly screen proposed leases against criteria that are designed to eliminate conflicts with other uses and resources. Instead, BLM treats nominations of eligible lands as a signal that these lands should be made available for leasing. [Footnote 23: See BLM, Preliminary EA for the September 2020 Competitive Oil & Gas Lease Sale 11 (May 2020) (“Receipt of an Expression of Interest indicates development interest in those lands.”), available at https://eplanning.blm.gov/public_projects/lup/95447/128292/156138/KingmanRMP-FEIS.pdf] Routinely, after an interested party nominates a parcel of land, BLM reviews the nominated parcels, consistent with its NEPA and FLPMA obligations, attaches required notices and stipulations, and makes the land available for lease. [Footnote 24: See BLM, IM 2018-034 – Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews (Jan. 2018) (directing BLM to apply “existing land use plan decisions” and to “not routinely defer leasing”), available at <https://www.blm.gov/policy/im-2018-034>; BLM, IM 2004-110 – Fluid Mineral Leasing and Related Planning and National Environmental Policy Act (NEPA) Processes (Feb. 2004) (directing BLM to “follow current land use allocations and existing land use plan decisions for Fluid Minerals” and to defer leases only after completing a multi-step process, including providing a justification letter to the nominating party), available at https://web.archive.org/web/20160805073910/http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction.html.] In essence, BLM reviews look at how the nominated parcel should be offered, rather than whether it should be offered. BLM’s response to public comments requesting withdrawal or deferral of releases shows that BLM presumes that once a parcel is nominated, BLM is obligated to lease the land. [Footnote 25: See e.g. Wyoming March 2021 EA, stating that BLM would not consider deferring all lease sale nominations because doing so would not comply with the underlying RMP: https://eplanning.blm.gov/public_projects/2003636/200393912/20029519/250035720/March%202021%20Wyoming%20Oil%20and%20Gas%20Lease%20Sale%20EA_draft.pdf] While deferrals or withdrawals do occur, they tend to be a result of political pressure or court cases. As a result of this presumption, BLM overwhelmingly favors oil and gas leasing on public lands above other uses. This preference is clear just in the numbers: between 2010 and 2019 BLM held over 400 oil and gas lease sales in the West and offered nearly 52 million acres for oil and gas lease sales. A screening tool that considers other uses and resources, such as wildlife habitat, recreation, cultural, and wilderness values, would help prevent this presumption in favor of oil and gas. When developing the screen BLM must consider certain statutory obligations. These obligations include environmental review requirements under the National Environmental Policy Act and compliance with FLPMA’s multiple use mandate and the undue degradation clause. [Footnote 26: 30 U.S.C. § 226(b)(1)(A); 42 U.S.C. § 4321 et seq.]

b. Low potential lands.

BLM should not lease lands with no or low potential of ever being developed. Under the current system, BLM identifies development potential at the planning stage, but does not consider this information at the leasing stage.²⁷ As a result the vast majority of BLM lands with low or no potential for development remain available for leasing, regardless of the potential for resource conflict. [Footnote 28: The Wilderness Society, No Exit: Fixing the BLM's Indiscriminate Energy Leasing (June 2016), available at <https://www.wilderness.org/sites/default/files/media/file/Report-No%20Exit-Fixing%20BLM%20Leasing.pdf>.] Because these lands are cheap and low risk, they are often leased by companies for purely speculative purposes. [Footnote 29: Institute for Policy Integrity, Look Before you Lease (January 2020), available at https://policyintegrity.org/files/publications/Option_Value_Report.pdf] Such practices have been clearly documented across the West. [Footnote 30: Center for American Progress, Backroom Deals, The Hidden World of Noncompetitive Oil and Gas Leasing (Noncompetitive leasing happens in a number of Western states, but the practice is particularly active in Nevada, where more than 2 million acres have been sold in this manner since January 2009), available at <https://www.americanprogress.org/issues/green/reports/2019/05/23/470140/backroom-deals/>.] Once leased, BLM will no longer actively manage for other beneficial uses including wildlife protection, ecosystem conservation, recreation and renewable energy production. [Footnote 31: https://policyintegrity.org/files/publications/Option_Value_Report.pdf] BLM should amend 43 C.F.R. § 3120.1-1 (lands available to competitive leasing) to prohibit leasing and lease extensions in lands identified in applicable land use plans as having low or no potential for oil and gas development. If a land use plan has not identified development potential of a nominated parcel, regulations should require BLM to update the plan prior to issuing any lease.

c. Noncompetitive leasing and the lease nomination process.

BLM's informal lease nomination process combined with the practice of noncompetitive leasing is wasteful, encourages speculative hoarding of public lands, and shields the identities of bad actors from public scrutiny.

Under BLM's informal nomination process, any member of the public can anonymously nominate any parcel of public land eligible for oil and gas leasing. Between 2010 and 2019, nearly 110 million acres of public lands were nominated for leasing through this informal process. [Footnote 32: BLM, Expressions of Interest for Potential Oil and Gas Leasing Since January 1, 2009, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.] However, over this same time period, only 11.6 million acres were purchased, [Footnote 33: BLM, Acreage in Effect, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.] underscoring the speculative nature of most lease nominations and the waste and inefficiency of the "informal" nominations process. [Footnote 34: BLM, Acreage Offered at Competitive Lease Sale Auctions Since January 1, 2009, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.]

Noncompetitive leasing requires that any leases not sold competitively be made available noncompetitively for a period of two years. Noncompetitive leases rarely produce oil or gas or generate meaningful revenues for taxpayers. According to the GAO, 99 percent of noncompetitive leases issued between FY 2003 and FY 2019 never entered production. [Footnote 35: GAO, Onshore Competitive and Noncompetitive Lease Revenues (Nov. 2020), available at <https://www.gao.gov/assets/gao-21-138.pdf>.] Parcels sold noncompetitively are sold for \$1.50 an acre and the \$2 bonus bid fee is waived. At worst this practice allows companies to stockpile public lands at low prices with little to no public scrutiny; at best this practice is simply a wasteful and unnecessary leasing system that drains BLM's already limited resources. [Footnote 36: <https://www.americanprogress.org/issues/green/reports/2019/05/23/470140/backroom-deals/>]

BLM can initiate a rulemaking to improve the nomination process. BLM's regulations at 43 C.F.R. Part 3120

have a formal nomination process, where BLM develops a list of lands that may be nominated for a particular sale. This formal process would prevent the speculative nomination of millions of acres of land unlikely to ever receive bids. BLM should employ this formal system and rescind regulations and policies allowing for informal nominations. BLM should also revoke BLM IM 2014-004, that allows for entities to anonymously nominate parcels, and implement a policy that requires individuals who nominate lands to identify themselves, and the parties they represent. Finally, pursuant to 43 U.S.C § 1734 BLM should establish a new filing fee for lease nominations to create some assurances that a company nominating a lease intends to bid on the parcel during the lease sale.

The Mineral Leasing Act contains provisions for noncompetitive leasing. [Footnote 37: 43 U.S.C. § 1714] As a result, Congress must act to eliminate this practice. However, there are steps BLM can take to improve the noncompetitive leasing system. The Mineral Leasing Act does not require the BLM to offer a noncompetitive lease to anyone who applies. The statute states only that the Secretary shall issue the lease to the first “responsible qualified applicant.” Therefore, BLM should amend its regulations at 43 Subpart 3110 (Noncompetitive leases) to require a “public interest” determination prior to issuing a noncompetitive lease. This determination must ensure that an applicant for a noncompetitive lease is both “reasonable” and “qualified” under the Mineral Leasing Act. [Footnote 38: 43 U.S.C. 1714 (c)(1).] Not offering for lease lands that have no to low potential of ever being developed will also likely help reduce the number of leases available noncompetitively.

d. Compensatory mitigation.

DOI should include compensatory mitigation in its oil and gas leasing program. To do so, the Department of Interior (DOI) should reassert the authority of its agencies, including BLM, to require compensatory mitigation. By reasserting this authority DOI can help to ensure that the use and harm of public lands is mitigated or offset by environmentally protective measures. DOI can reassert this authority through a Solicitors Memorandum as well as a Secretarial Order followed by agency level Informational Memoranda.

e. Public participation.

Both FLPMA and NEPA require public participation in leasing decisions. [Footnote 39: FLPMA 43 U.S.C. § 1739(e) requires that BLM give “the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.” NEPA requires that “environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).] However, the BLM often chooses to provide few, if any, opportunities for public input. This erosion of participation opportunities stems from BLM’s stance that leasing does not result in environmental impacts, and therefore does not trigger the public participation requirements of NEPA. [Footnote 40: See e.g. Northwest District Environmental Assessment. March 2020 (The sale of parcels and issuance of oil and gas leases is an administrative action), available at https://eplanning.blm.gov/public_projects/nepa/1502533/20008199/250009710/WRFO_LSFO_KFO_GJFO_EA_Comment_March2020.pdf.] Although courts have rejected this reasoning, finding that leases convey development rights leads to an irretrievable commitment of resources, [Footnote 41: See, e.g., *Sierra Club v. Peterson*, 717 F.2d 1409, 1414-15 (D.C. Cir. 1983).] BLM persists in this narrative. However, even if environmental review was not required at the leasing stage, FLPMA still mandates public participation “in, the preparation and execution of plans and programs for, and the management of, the public lands.” [Footnote 42: 43 U.S.C. § 1739(e).] This requirement clearly extends to lease sales.

BLM should initiate a rule making to require multiple opportunities for public participation during the decision-making process for every oil and gas lease sale. This should include at least 30 days to review and comment on draft NEPA compliance documents and at least 30 days to review and protest proposed lease parcels. Previous attempts to limit if not erase both public comment periods and protests highlights the importance of establishing

timeframes for participation in BLM's regulations.

Comment Number: BOEM-EMAIL-32521-034546-6

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 9

Comment Excerpt Text:

V. Permitting reforms.

As part of this review, DOI should consider several changes to its permitting process. These changes will help increase public participation and transparency, and help to ensure BLM is meeting its obligations under the multiple use mandate.

a. Applications for permits to drill.

BLM should increase transparency and public participation in its process for approving applications for permits to drill (APDs). The Mineral Leasing Act, as amended by Federal Onshore Oil and Gas Leasing Reform Act and current BLM regulations require that, at least 30 days prior to approval, BLM post information about APDs for public inspection [Footnote 45: 43 C.F.R. § 31623(g).] This information must be posted “in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau.” [Footnote 46: Id] BLM is not required to post this information electronically or in any more publicly accessible format beyond “the office of the authorized officer.” Regulations do not require any form of public participation beyond the posting of this notice. BLM should amend its regulations, and Onshore Order 1 to include a requirement that this information is posted electronically such that it is easier for the public to access. BLM should also include a public participation period for APDs such that the public can weigh in on the environmental review, conditions of approval, stipulations, and other aspects of APDs aimed at minimizing the impact of development on public lands.

b. Lease suspensions.

BLM should improve its monitoring and oversight of its lease suspension process, and it should make this process more open to the public. Under the current system, BLM state offices delegate monitoring responsibilities to field offices. However, there are no policies or regulations in place outlining procedures for monitoring suspensions, and field offices are not required to provide information in the federal online dataset (LR2000) about why a suspension is granted. [Footnote 47: GAO, BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures (June 2018), available at <https://www.gao.gov/assets/gao-18-411.pdf>.] As a result, field offices have disproportionate discretion of lease suspension monitoring, and BLM state and headquarter offices have little ability to oversee this monitoring. For example, in many instances, a BLM state level or headquarters official would have to obtain a copy of an official lease file, many of which are only in hard copy, from the regional office in order to determine the reason a lease suspension was granted. BLM must update its regulations and policies to ensure better monitoring and oversight of the lease suspension process. To do so, it should start by implementing the recommendations of the 2018 GAO report:

-the Director of BLM should include a data field in the lease suspension database to record the reasons for suspensions.

-The Director of BLM should develop official agency procedures for monitoring oil and gas lease suspensions, including when to conduct monitoring activities.

-The Director of BLM should require cognizant officials in headquarters and state offices to conduct top-level reviews of field offices' monitoring of oil and gas lease suspensions, as well as of official lease files and databases to ensure they are current and complete.

-As BLM updates or replaces LR2000, the Director of BLM should ensure the development of mechanisms, such as standardized summary reports on lease suspensions, to assist cognizant officials in headquarters and state offices with oversight of field offices' monitoring efforts. [Footnote 48: Id]

The BLM should also update regulations to ensure transparency and to protect the public's interest. To do so, the BLM should include a public notice and comment requirement for all applications for lease suspensions filed, and it should allow for state director review of all lease suspension decisions. Finally, all decisions to issue a suspension must be accompanied by a statement concluding that the suspension is in the interest of conservation of natural resources, and that the lessee has exercised due care and diligence, as required by the Mineral Leasing Act.

Comment Number: BOEM-EMAIL-32521-034585-11

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 3

Comment Excerpt Text:

b. Process. Lay out a clearly defined process for the comprehensive review. We urge DOI to identify reforms to the oil and gas program that can be completed using different types of mechanisms, balancing efficiency with durability:

1. Those that can be enacted swiftly through Instruction Memorandum, policy statement, or otherwise, without the need for rulemaking or legislation.
2. Those that require or would greatly benefit from rulemaking, a broader programmatic review and analysis under NEPA, [Footnote 9: See, e.g., 42 U.S.C. §§ 4331(b)(1), 4321, 4331, 4332(1) (requiring "to the fullest extent possible . . . the policies, regulations, and public laws of the United States [to] be interpreted and administered in accordance with the policies set forth in this chapter").] or both. For those reforms that cannot be enacted swiftly, DOI should consider undertaking a programmatic environmental impact statement (PEIS) process with the purpose and need of aligning the oil and gas program with its duties under FLPMA.
3. Those that require or would greatly benefit from legislation.

Comment Number: BOEM-EMAIL-32521-034585-26

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

e. Reinstate DOI and BLM mitigation policies and establish a robust mitigation program that requires no net loss of conservation value and full mitigation of climate impacts.

DOI and BLM are subject to a broad range of authorities supporting mitigation measures to avoid, minimize, and offset unavoidable impacts. [Footnote 47: See 43 C.F.R. §§ 1701, 1732(b). BLM has authority and obligation to ensure all operations protect natural resources and environmental quality, including by imposing mitigation requirements under NEPA, the Endangered Species Act, the National Historic Preservation Act, the Paleontological Resources Preservation Act, and the National Landscape Conservation System Act] As part of the Comprehensive Review, DOI and BLM should reinstate and improve several mitigation policies to ensure no net loss of conservation value, fully address impacts to cultural resources, recreation, and other resources and values on public lands, and require full mitigation for the climate impacts of the oil and gas program. These policies include but are not limited to Secretarial Order 3330 – Improving Mitigation Policies and Practices of the Department of the Interior; DOI Manual 600 DM 6 – Landscape-Scale Mitigation Policy; BLM Mitigation Handbook H-1974-1; and Solicitor’s Opinion M-37039. DOI and BLM should implement these policies at the land use planning, leasing, and permitting phases.

The mitigation hierarchy aims to minimize environmental harms associated with agency actions. BLM must first seek to avoid impacts; then minimize impacts (e.g., through project modifications, permit conditions, interim and final reclamation, etc.); and, generally, only if those approaches are insufficient to fully mitigate the impacts will BLM seek to require compensation for some or all of the remaining impacts (i.e., residual effects). In addition to using the mitigation hierarchy to address impacts to conservation values, cultural resources, recreation, and other resources and values on public lands, BLM should apply the mitigation hierarchy to fully address the climate impacts of the oil and gas program, including planning, leasing, and development. [Footnote 48: Gibbs Pleune, J., J.C. Ruple, and N. Wolff Culver, A Roadmap to Net Zero Emissions for Fossil Fuel Development on Public Lands, ELR 10734 (2020), available at: https://www.eli.org/sites/default/files/docs/elr_pdf/50.10734.pdf.]

RECOMMENDATIONS:

- Reissue and improve Secretarial Order 3330 – Improving Mitigation Policies and Practices of the Department of the Interior; DOI Manual 600 DM 6 – Landscape-Scale Mitigation Policy; BLM Mitigation Handbook H-1974-1; and Solicitor’s Opinion M- 37039. BLM should incorporate these mitigation policies into oil and gas decision-making in land use planning, leasing, and permitting to ensure no net loss of conservation value, and fully address impacts to cultural resources, recreation, and other resources and values on public lands.

Comment Number: BOEM-EMAIL-32521-034585-31

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Update the lease sale screening and nominations process.

BLM currently does not routinely or systematically screen proposed leases using criteria that are designed to eliminate conflicts with other uses or resources and to maximize taxpayer returns. Instead, once nominated, BLM looks primarily at whether lands are “eligible” and “available” for leasing. [Footnote 63: See 30 U.S.C. § 226(b)(1)(A).] If so, BLM typically includes those lands in lease sale offerings. Current agency practice continually leaves the vast majority of land available for leasing and development. [Footnote 64: include cite to a few land use plans that had +90% of land available for development]; see also The Wilderness Society’s online article, Open for business (and not much else): analysis shows oil and gas leasing out of whack on BLM lands, Available at: <https://www.wilderness.org/articles/article/open-business-and-not-much-else-analysis- shows-oil->

and-gas-leasing-out-whack-blm-lands.] Instead, BLM should enact a vigorous screening process at the land use planning stage, as explained in our net zero framework in Section II(f) above.

While deferrals at the lease sale stage can and do occur, they normally stem from political pressure rather than a decision-making framework that looks at whether leasing nominated lands is appropriate and consistent with conservation, fair market value, and climate change goals. BLM’s “informal” lease nomination process, which allows any member of the public to anonymously nominate any parcel of public land for leasing, is wasteful, encourages speculation, and shields the identities of bad actors from public scrutiny. [Footnote 65: BLM IM No. 2014-004, Oil and Gas Informal Expressions of Interest (2013), available at: <https://www.blm.gov/policy/im-2014-004>.]

To address these problems, BLM should establish robust screening criteria for nominated or proposed leases to ensure they align with RMPs and the multiple use mandate, ensure protection of important conservation values and cultural resources from leasing and development, and align with climate goals and an established emissions management framework consistent with the latest climate science.

These screens should be grounded in obligations under FLPMA [Footnote 66: 43 U.S.C. § 1732(b)], MLA [Footnote 67: 30 USC § 187.], NEPA [Footnote 68: 42 U.S.C. §§ 4321-4370(h).] and NHPA [Footnote 69: 54 U.S.C. § 300101 et seq]. The screens should also address “option value” in determining whether, when and how much to lease. As discussed in a recent New York University School of Law Institute for Policy Integrity report, “[w]hile private companies routinely account for option value, timing their purchasing and development decisions to be privately optimal, BLM fails to account for option value in its land use planning and lease sale processes.” [Footnote 70: New York University School of Law; Institute for Policy Integrity, Look Before You Lease; Reducing Fossil Fuel Dominance on Public Lands by Accounting for Option Value, 4 (2020); See also Jayni Foley Hein, Harmonizing Preservation and Production (2015) (“Option value derives from the ability to delay decisions until later, when more information is available In the leasing context, the value associated with the option to delay can be large, especially when there is a high degree of uncertainty about resource price, extraction costs, and/or the social and environmental costs of drilling.”), available at: https://policyintegrity.org/files/publications/DOI_LeasingReport.pdf.]

RECOMMENDATIONS:

- Amend 43 C.F.R. § 3120.1-1 (lands available to competitive leasing) to require nationwide and state-specific leasing screens, which should be reevaluated and adjusted, as necessary, on an ongoing basis (e.g., annually). The screens should ensure that leases align with resource management plans and the multiple use mandate; ensure protection of important conservation values, cultural resources, and other important resources and values from leasing and development; and align with climate goals and an established emissions management framework consistent with the latest climate science.
- Revoke and replace BLM IM 2014-004 (Oil and Gas Informal Expressions of Interest) with a new policy that requires companies and individuals who nominate public lands for leasing to identify themselves, as well as any parties who they represent.
- Support passage of Sen. Rosen & Grassley’s bill The Fair Return for Public Lands Act (S. 624) to impose a lease nomination fee and Rep. Levin’s Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503), and Rep. Porters Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021 (H.R. 1517) to end anonymous lease nominations and impose a lease nomination fee.

Comment Number: BOEM-EMAIL-32521-034585-36

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Eliminate lease suspension loopholes that allow bad actors to hold on to leases indefinitely.

Current law allows leases to be “suspended”—effectively put on hold—ensuring the leases do not expire even while companies are not paying rent and are not required to make progress on developing energy resources that would require royalty payments. While the leases are suspended, the oil and gas companies retain control of the lands, which prevents them from being managed for multiple uses for the benefit of the public—be it for recreation, conservation, renewable energy development or other multiple uses of public lands.

The Wilderness Society’s report Land Hoarders includes significant additional details and is attached as Appendix E.

RECOMMENDATIONS:

- Identify and end suspensions that are no longer justified and should have expired years ago.
- Issue new policy and training to inform future lease suspensions, and ensure suspensions are only granted when truly needed and end in a timely manner.
- Issue a new policy requiring NEPA compliance and greater opportunities for public participation, transparency (including annual reporting) and oversight of both new suspension requests and existing suspensions.

Issue administrative guidance, such as updating Instruction Memorandum No. 2019-007

– Monitoring and Review of Lease Suspensions

- The Government Accountability Office (GAO) should initiate an investigation and produce a report to further define the scope of the problem and remedial actions.
- Support Representative Levin’s Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503). This legislation includes provisions that allot a reasonable time for public and stakeholder input, require shorter lease terms to ensure the leasing agent is working with the most current information, and ensure that other uses are considered for the land in question.

Comment Number: BOEM-EMAIL-32521-035249-4

Organization: Santa Clara Pueblo

Commenter: Katie Klass J. Michael Chavanja

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

3. Withdrawal of Critical Areas: We also call on the Department to use its existing statutory authority to withdraw from development areas that are especially critical to tribes.

Comment Number: BOEM-EMAIL-32521-035249-5

Organization: Santa Clara Pueblo

Commenter: Katie Klass J. Michael Chavania

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Eliminating Expedited Timeframes: Oil and gas leasing and development is one area where tribal consultation and NEPA and NHPA review processes are especially broken. Expedited time frames have put significant pressure on these processes, preventing them from unfolding in a way that allows for meaningful tribal participation and proper consideration of tribal interests.

-Santa Clara Pueblo applauds the issuance of Executive Order 13990, titled Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (Jan. 20, 2021), which revoked Executive Order 13807, titled Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (Aug. 15, 2017). It was from the latter Executive Order that Secretarial Order 3355, titled Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 of August 15, 2017 (Aug. 31, 2017), came to be. This Secretarial Order was used to claim that Department decision making surrounding oil and gas must progress on an expedited timeframe, even during the COVID-19 pandemic. Secretarial Order 3389, titled Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews (Dec. 22, 2020), when paired with Secretarial Order 3355 then required the NHPA Section 106 process to proceed on the same expedited timeline. Both Secretarial Order 3355 and Secretarial Order 3389 should be withdrawn.

-As you know, NEPA and NHPA Section 106 review processes are important opportunities for tribes to consult on federal decision making. Any changes made to those processes should only be accomplished through tribal consultation. If the Department chooses to issue new NEPA or NHPA Section 106 guidance, it should first engage in sufficient and meaningful tribal consultation. Integration of NEPA and NHPA Section 106 processes together so that they may inform each other, a concept noted in Secretarial Order 3389, should be carried forward into new guidance. Additionally, new guidance should address how the presence of environmental justice concerns affects mitigation requirements.

-Santa Clara Pueblo also urges the Department to amend its internal guidance and instructional memoranda on oil and gas leasing and development, including lease schedules, to remove their imposed and rigid timeframes.

Comment Number: BOEM-EMAIL-32521-035249-7

Organization: Santa Clara Pueblo

Commenter: Katie Klass J. Michael Chavania

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

-The Greater Chaco Region is one example of an irreplaceable sacred landscape important to the Pueblos and other tribes, and this area has faced largely unrestricted oil and gas leasing and development. It has seen expedited decision making around this development that did not properly account for cultural resources or tribal voices, by no means involved tribal consent, and involved inconsistent outreach and feedback from different Department bureaus and offices.

-Santa Clara Pueblo is grateful that President Biden has paused new oil and natural gas leases on public lands

pending a review of federal oil and gas permitting and leasing practices. However, there have been notices related to lease sales and development in the Greater Chaco Region, and we ask that the Department pause all of these actions. We also ask that the Department maintain this pause pending completion of the Greater Chaco Region Resource Management Plan Amendment (RMPA).

-Santa Clara Pueblo thanks the Department for pausing work on the Greater Chaco Region RMPA due to the COVID-19 pandemic. We ask that the Department both fully fund and allow for completion of the ongoing tribally-led cultural resource studies of the Greater Chaco Region and further progress to be made on the RMPA's Section 106 process. Only then should the RMPA's NEPA process move forward, and the Department should then incorporate the baseline cultural resource information collected from the studies and the Section 106 process into a new draft NEPA Environmental Impact Statement that contains legally sufficient alternatives.

-Santa Clara Pueblo also respectfully requests that an especially critical area of approximately 10 miles surrounding the Chaco Culture National Historical Park and including its outliers be administratively withdrawn from development.

Comment Number: BOEM-EMAIL-32521-035316-11

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

V. "Stockpiling" of Leases and Permits

There has been criticism of industry for supposedly "stockpiling" federal leases and permits, but this criticism is based upon a misunderstanding of lease operations. Current leasehold policies are appropriate in their existing form. Market forces serve to regulate the number of leases a company chooses to hold. Not every lease contains resources in commercial quantities, nor does every non-producing lease represent a potential discovery. Oil and natural gas resources exist on only a small number of leases and are economic to produce on an even smaller number.

All non-producing leases are, in reality, active. Industry takes the risk to invest in and acquires new leases understanding that they will not be productive immediately, and some possibly not ever. It takes several years of due diligence, and a sizable investment, for a company to analyze the underlying geology, perform the necessary technology and engineering assessments, finalize commercial arrangements, and coordinate the logistics of exploration and development projects before a company can determine if a lease contains commercial quantities of oil and natural gas. [Footnote 28: White, Dylan, "Life Cycle of an Oil Well" <https://bellatorum.com/life-cycle-of-an-oil-well/> (March 22, 2021).] Nonetheless, even on non-producing leases, the U.S. benefits significantly by receiving substantial upfront payments from lease sale bonuses and annual rentals which are owed just for the opportunity to acquire a federal mineral lease with rights to explore for oil and natural gas, notwithstanding any additional fees and regulatory requirements that must be addressed to actually proceed with exploration and/or development activities on the lands. Further, when a leasehold proves to be unproductive, the lease is returned to the government at the end of the term or relinquished earlier if a company has completed enough work to understand the subsurface to determine there is low value in continuing to pay rentals on the lease without the potential of being able to produce affordable energy from the lease to help meet our national and global energy needs. In these instances, all monies collected by the U.S. Treasury in the form of bonus bids, rentals and any other permitting fees collected while the lease was held are kept for the public and the lease can be offered at a future sale for the government to collect additional revenues if a different company sees other potential in the

lease or when new technologies become available that garners renewed interest in the lease.

Onshore, all lease and permitting activity takes place within the confines and required timeframes of regulatory policies. These activities often take place on leased federal acreage that remains open to "multiple uses" such as recreation, livestock grazing, camping, potash mining, fishing, transportation, and more. There is no guarantee that all leases will eventually be productive. In fact, the total number of federal leases in effect onshore has declined every year since 2009, at an average rate of over 6% each year. [Footnote 29: U.S. Department of the Interior, "Oil and Gas Statistics" (Table 1, Table 3) <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>] As federal permits are expensive to obtain and can take up to a year to get approval, operators need to submit applications up to 18 months in advance of the rig schedule. As operators develop federal resources their plans often change as they learn from new well completions, which requires new permits for the same development areas. Also, some local BLM offices ask operators to submit speculative APDs on multi-well drilling pads so they can more efficiently do collective environmental reviews even though some of these wells are two to four years out on an operator's development schedule, which can create the illusion of abundant permits. Even so, with roughly 63% of onshore leases producing, producing acreage is near an all-time high while federal onshore leased acreage is near its lowest point in two decades resulting in less than 4% of the federal mineral estate being leased. [Footnote 30: U.S. Department of the Interior, "Oil and Gas Statistics" (Table 1, Table 5) <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>] This data point validates the existing structure is effective and there is no rampant "stockpiling" of leases.

While offshore leasing decisions share similar challenges and considerations with onshore, the operating environment, regulatory framework, and agency policies and practices result in companies managing their leasing and permitting practices differently. For example, Rental fees on offshore leases can now exceed \$100,000 annually and increase in the later years of the lease to encourage diligent development. Also, the unique operating conditions offshore mean that companies rarely "sit" on approved permits to drill – of the current "stockpile" of drilling permits less than one percent are held by offshore operators. One common area between the onshore and offshore is the fact that the lands and waters under lease are still, in most cases, available for "multiple uses." DOI needs to recognize the differences between the two regimes and avoid making changes leading to unintended consequences.

Comment Number: BOEM-EMAIL-32521-035316-19

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

E. Leasing and Development

The Gulf of Mexico has been the backbone of U.S. energy production for years, providing more than one million barrels of oil per day for the last twenty years. The importance of predictability and certainty in the offshore leasing program cannot be overemphasized and are crucial to a successful national energy policy. Companies need regular access to competitive leases to make the long-term commitments required for offshore development, particularly for investments at the magnitude required for deepwater projects and frontier areas. As technology improves and economic conditions change, leases once deemed noncommercial may evolve into viable exploratory drilling or development candidates with commercial potential. Because of this evolution, it is important to allow innovative companies the opportunity to pursue new leases to test innovative geologic concepts and to employ advancements in drilling and production technology. A continuous stream of new discoveries is needed to replace depleted reserves and help maintain or increase production levels. Without the opportunity to obtain substantial acreage through new leases, companies will be enticed to turn their attention and

investment dollars to prospects in other parts of the country or the world, where volumes are unlikely to compete with the comparative efficiencies and advantages of the US Gulf of Mexico. Such an outcome would make no sense for the Administration's shared goals.

API fully supports continued use of the current area-wide leasing program in all OCS areas. It is important to not mistake the meaning of "area-wide leasing," which is simply a single lease sale that combines more than one Planning Area; it does not in fact avail 100% of the acreage within those respective areas and should not be construed to somehow expand available acreage (e.g., limitations still exist, such as the Flower Garden Banks National Marine Sanctuary).

Comment Number: BOEM-EMAIL-32521-035316-9

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

III. Industry Reliance on a Stable Leasing and Lease Management Regime in the U.S. is Threatened by a Legally Suspect Leasing Ban

In the more than 100 years since Congress enacted the Mineral Leasing Act (MLA), and the nearly 70 years since the Outer Continental Shelf Lands Act (OCSLA) was adopted, API's members have confidently invested hundreds of billions of dollars to develop oil and gas resources on federally managed lands in reliance on a legally sound and stable leasing and lease management regime governed by those statutes. These companies have expended these considerable financial and time resources at substantial economic risk posed by high capital costs and leases' uncertain production potential. Any extended leasing ban would threaten that stability and industry's confidence in DOI's management of federal mineral resources.

The MLA directs DOI to hold quarterly lease sales in each Bureau of Land Management (BLM) state office. OCSLA in turn requires development of a Five-Year Program with comprehensive opportunities for environmental review and input from coastal states in establishing a schedule for lease sales, as well as prior to leasing and development approvals. The current Five-Year Program has lease sales scheduled through 2022. DOI recently cancelled several BLM quarterly lease sales and two OCS lease sales under the current Five-Year Program. Cancelling these and future required lease sales while DOI is considering a revised regime for federal mineral leasing contravenes the agency's statutory responsibilities. Lawsuits challenging implementation of a de facto leasing ban and the cursory and sudden cancellation of lease sales already have been filed in federal district courts in Wyoming and Louisiana.

API supports DOI's efforts to consider modifications to federal mineral leasing with full opportunity for public engagement. The issues are complex, and a multi-year rulemaking effort likely will ensue. However, any ban on statutorily-required lease sales in the interim is not legally permissible and upends the decades of stability and industry confidence in the DOI leasing program that has warranted the oil and gas industry's significant financial investment in that process.

Comment Number: BOEM-EMAIL-32521-035416-6

Organization: Center for Biological Diversity

Commenter: Miyoko Sakashita

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

4. Interior should revise the Outer Continental Shelf Oil and Gas Leasing Program to offer no new leases.

The offshore oil leasing program is guided by the threshold determination of the nation's energy needs — which now indicate that this country needs a swift transition away from fossil fuels and toward renewable energy. It is the nation's policy goal to “achieve net-zero emissions, economy- wide, by no later than 2050.” [Footnote 251: Biden Executive Order, Sec. 201] This means that national energy needs require halting new offshore oil and gas leasing, and not locking in decades of extraction.

Interior's authority over offshore oil and gas development on the Outer Continental Shelf (“OCS”) includes a duty to ensure environmental protections. Section 18 governs nationwide lease sale planning and the balancing of environmental and resource development. It “establishes a process which will permit the Secretary of Interior to weigh energy potential, and other benefits against environmental and other risks in determining how, when and where oil and gas should be made available from the various Outer Continental Shelf areas to meet national energy needs.” [Footnote 252: *California by Brown v. Watt*, 668 F.2d 1290, 1297 (D.C. Cir. 1981) (citing H.R.Rep.No.1474, supra n.22, at 103 (1978), U.S.Code Cong. & Admin.News 1978, p. 1702).] It requires “the Secretary to prepare, maintain and periodically revise a leasing program consisting of a schedule of proposed sales, indicating, ‘as precisely as possible, the size, timing and location of leasing activity which [the Secretary] determines will best meet national energy needs for the five-year period following its approval or reapproval.’” [Footnote 253: *Id.* (citing 43 U.S.C. § 1344(a)) (emphasis added).] The Act, “does not mandate any particular balance, but vests the Secretary with discretion to weigh the elements so as to ‘best meet national energy needs.’” [Footnote 254: *California v. Watt*, 668 F.2d at 1317]

Interior must consider the climate emergency as it prepares the leasing program and “considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS, and the potential impact of oil and gas exploration on other OCS resource values and the marine, coastal, and human environments.” [Footnote 255: 43 U.S.C. § 1344(a)(1).]

The leasing program developed now will cause carbon pollution for decades, which is inconsistent with the nation's energy needs to rapidly transition away from fossil fuels. For example, in the most recent five-year leasing program for 2017 to 2022, Interior stated that producing leases under the program have an expected lifespan of 40 to 70 years. [Footnote 256: See, e.g., Bureau of Ocean Energy Management, 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Program at 1-3, 6-20. Offshore oil and gas leases are issued for an initial term of five to ten years, but typically remain in production as long as oil or gas is produced in paying quantities. See 43 U.S.C. § 1337(b)(2)(A)-(B); 30 C.F.R. §§ 556.37(a)(2), 250.180(a).]

Available information indicates that there is not only a need, but also a clear path for the United States to shift away from fossil fuels. Analysts have estimated that global oil demand may have peaked in 2019, [Footnote 257: Jordan Blum, Oil, fossil fuel demand may have peaked in 2019 thanks to COVID-19:report, S&P Global (June 23, 2020), <https://www.spglobal.com/platts/en/market-insights/latest-news/electricpower/062320-oil-fossil-fuel-demand-may-have-peaked-in-2019-thanks-to-covid-19-report>] and numerous oil companies have also acknowledged that the world may have already, or soon will, reach peak oil demand. [Footnote 258: See Miranda Wilson, Peak oil demand could come sooner than expected — report, E&E News (June 22, 2020), <https://www.eenews.net/energywire/stories/1063430843/print>; Paul Takahashi, Oil demand to remain depressed into 2021, Houston Chronicle (Aug. 26, 2020), <https://www.houstonchronicle.com/business/energy/article/Oil-demand-to-remain-depressed-into-2021-15516000.php>] “What is happening in the markets reflects the broader and continual shift away from traditional fuels.” [Footnote 259: Kristi E. Swartz, NextExtra's market value surpasses Exxon's, E&E News (Oct. 5, 2020), <https://www.eenews.net/energywire/stories/1063715429>.] Research supports that a 100 percent clean energy transition is possible. [Footnote 260: Hansen, Kenneth, et al. Status and perspectives on 100% renewable energy systems, 175 Energy 471-480 (2019); Brown, T.W., et al. Response to

‘Burden of proof: A comprehensive review of the feasibility of 100% renewable- electricity systems, 92 Renewable and Sustainable Energy Reviews 834–847 (2018).] Energy experts have produced detailed studies that describe the path away from fossil fuels to meet energy needs. [Footnote 261: Larson, Eric, et al. Net-Zero America: Potential Pathways, Infrastructure, and Impacts (Dec. 15, 2020); https://environmenthalfcenury.princeton.edu/sites/g/files/toruqf331/files/2020-12/Princeton_NZA_Interim_Report_15_Dec_2020_FINAL.pdf; Jacobson, Mark, Z., et al. 100% clean and renewable Wind, Water, and Sunlight (WWS) all-sector energy roadmaps for 53 towns and cities in North America, 42 Sustainable Cities and Society 22-37 (2018).] New electric generating capacity is coming primarily from wind and solar. According to the EIA, renewable energy will “account for most new U.S. electricity generating capacity in 2021,” with solar accounting for the largest share of new capacity at 39 percent, followed by wind at 31 percent. [Footnote 262: U.S. Energy Information Administration, Today In Energy, Jan. 11, 2021, <https://www.eia.gov/todayinenergy/detail.php?id=46416>.] Moreover, “[e]lectricity generation from renewable energy sources will rise from 20% in 2020 to 21% in 2021 and 23% in 2022.” [Footnote 263: U.S. Energy Information Administration, Short-Term Energy Outlook January 2021 at 3, 19–20] Renewable energy costs have declined in recent years making them cost-competitive and reducing greenhouse gas emissions. [Footnote 264: Lazard, Lazard’s Levelized Cost of Energy Analysis: Version 13.0 (Nov. 2019); <https://www.lazard.com/media/451086/lazards-levelized-cost-of-energy-version-130-vf.pdf>.] Accordingly, the climate emergency dictates that our nation’s energy needs are to shift off of fossil fuel dependence.

Offering no new offshore oil and gas leases would therefore be consistent with the declared Congressional purpose of OCS Lands Act, which recognizes the “national interest in the effective management of the marine, coastal, and human environments,” and policy of developing OCS resources “subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.” [Footnote 265: 43 U.S.C. § 1332(3).]

Indeed, the Act’s legislative history demonstrates that Congress expected the proper balance to shift away from intensive extraction of oil and gas. When Congress enacted Section 18(a) in 1978, it sought to promote “orderly and efficient exploitation” of “almost untapped domestic oil and gas resources.” [Footnote 266: Continental Shelf Lands Act, Pub. L. No. 95-372, 3 U.S.C.C.A.N. 1450, 1460 (1978).] Congress recognized that this was more a stop-gap measure than a long- term solution to the nation’s energy needs:

Development of our OCS resources will afford us needed time — as much as a generation — within which to develop alternative sources of energy before the inevitable exhaustion of the world’s traditional supply of fossil fuels. It will provide time to bring on-line, and improve energy technologies dealing with, solar, geothermal, oil shale, coal gasification and liquefaction, nuclear, and other energy forms. [Footnote 267: H.R. Rep. No. 95-590, at 53 (1977).]

In addition, a federal appellate court has recognized that delaying lease sales in a five-year program has “a tangible present economic benefit” because the “true costs of tapping OCS energy resources are better understood as more becomes known about the damaging effects of fossil fuel pollutants” and allows for the development of . . . renewable energy sources [that] reduce[] the need to rely on fossil fuels,” among other benefits. [Footnote 268: Ctr. for Sustainable Econ. V. Jewell, 779 F.3d 588, 610 (D.C. Cir. 2015).] That same court has also recognized that “[t]he weight of [Section 18(a)] elements may well shift with changes in technology, in environment, and in the nation’s energy needs, meaning that the proper balance for 1980–85 may differ from the proper balance for some subsequent five-year period.” [Footnote 269: California v. Watt, 668 F.2d at 1317. The D.C. Circuit’s decision in Ctr. for Biological Diversity v. U.S. Dep’t of the Interior, 563 F.3d 466 (D.C. Cir. 2012), does not preclude the Secretary from granting the petitioned action based on the climate crisis. The question presented in that case was whether OCSLA mandates that the Secretary consider the global climate effects of oil and gas consumption in developing a five-year program, not whether its consideration of such impacts would be permissible. Id. at 484. The court’s statement that the Secretary lacks the discretion to consider such impacts is therefore dicta. As the Supreme Court has made clear, “broad language . . . unnecessary to the Court’s decision . .

. cannot be considered binding authority.” *Kastigar v. United States*, 40 U.S. 441, 454–55 (1972). Any suggestion that the case should be read to mandate lease sales in a five-year program fails for similar reasons. Nothing in OCSLA restricts the Secretary’s authority to consider the impacts of consuming the oil that could be developed under a five-year program. To the contrary, OCSLA provides the Secretary with more than sufficient authority to consider and analyze such impacts and choose to issue a five-year program with no new leases in light of that analysis.]

Our environment and national energy needs have profoundly changed in the seven decades since Congress originally enacted OCS Lands Act and the four decades since it enacted Section 18, as described more fully below. Indeed, the U.S. Department of Defense declared in 2014 that climate change “poses immediate risks to U.S. national security.” [Footnote 270: The White House, Findings from Select Federal Reports: THE NATIONAL SECURITY IMPLICATIONS OF A CHANGING CLIMATE, May 2015 https://obamawhitehouse.archives.gov/sites/default/files/docs/National_Security_Implications_of_Changing_Climate_Final_051915.pdf] And, as recognized by President Biden himself, “[o]n the first day of [his] administration, according to the Intergovernmental Panel on Climate Change, there will be only 9 years left to stop the worst consequences of climate change.” [Footnote 271: Biden-Harris, 9 KEY ELEMENTS OF JOE BIDEN’S PLAN FOR A CLEAN ENERGY REVOLUTION, <https://joebiden.com/9-key-elements-of-joe-bidens-plan-for-a-clean-energy-revolution/>.] Such reality, requires “immediate[] and ambitious[] action, because there’s no time to waste.” [Footnote 272: Id]

Interior must avoid the false assumption that a decline in U.S. production of oil and gas will result in similar or higher environmental costs from foreign oil. The assumption of perfect substitution posits that any emissions reductions gained by not allowing oil and gas leasing would be offset by oil and gas production elsewhere. However, numerous analyses show that perfect substitution simply does not occur in the real world and is not a reasonable assumption. Oil and gas production operates in a global market where changes in U.S. production translate into shifts in global prices, global consumption, and associated greenhouse gas pollution. Analyses show that increasing U.S. oil and gas production lowers prices and increases global consumption, while leaving U.S. oil and gas undeveloped increases prices and decreases global consumption. In short, every barrel of oil, and unit of gas, that is left undeveloped results in a significant reduction in global oil and gas consumption with associated decreases in greenhouse gas pollution, as detailed below.

A comprehensive analysis of the carbon pollution consequences of ending new oil leasing on U.S. federal lands and waters, and avoiding renewal of existing leases for resources that are not yet producing, found that ceasing new leasing would result in large GHG and climate benefits. [Footnote 273: Erickson, P. and M. Lazarus, How would phasing out US federal leases for fossil fuel extraction affect CO₂ emissions and 2°C goals?, Stockholm Environment Institute, Working Paper No. 2016-2 (2016).] This study accounted for the effects of substitution by other fuels for the oil that would be foregone by ending new leasing. The study estimated that for each unit (QBtu) of federal oil production cut, other oil supplies would substitute for about half a unit (0.56 QBtu) and net oil consumption would drop by nearly half a unit (0.44 QBtu). In short, every barrel of federal oil left undeveloped would result in nearly half a barrel reduction in net oil consumption, with associated reductions in GHG emissions. The analysis estimated that ending new federal oil leasing would reduce 2030 global CO₂ emissions from oil consumption by 54 Mt CO₂, with an increase in CO₂ emissions from other fuels of 23 Mt CO₂, for a net emissions benefit of 31 Mt CO₂. The analysis recommended that “policy-makers should give greater attention to measures that slow the expansion of fossil fuel supplies.”

Other analysis corroborates that reducing oil production would have climate benefits. A 2018 analysis published in *Nature Climate Change* estimated that global oil consumption would drop by ~0.5 barrels (range 0.2 to 0.6 barrels) for each barrel of oil not produced in California. [Footnote 274: Erickson, P. et al., Limiting fossil fuel production as the next big step in climate policy, 8 *Nature Climate Change* 1037 (2018).] The study noted that other assessments of the world oil market have found that every barrel of oil left undeveloped would result in approximately a half-barrel reduction in oil consumption. Likewise, another analysis in *Nature Climate Change*

concluded that increased oil production would significantly increase global oil consumption as the result of greater supplies and lower global oil prices. [Footnote 275: Erickson, P. and M. Lazarus, *Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions*, 4 *Nature Climate Change* 778 (2016).] Using publicly available global oil supply curves from the International Energy Agency and peer-reviewed elasticities, the analysis estimated that each barrel of increased oil production would result in an increase of 0.59 barrels of global oil consumption. Although this study focused on the effects of increases in Canadian tar sands production, the lead author stated the results are applicable to U.S. oil production and that each barrel of oil not produced in the U.S. leads to substantially reduced oil consumption. [Footnote 276: Erickson, Peter, Stockholm Environment Institute, personal communication, November 1, 2017]

An analysis of the effects of removing subsidies for U.S. oil and gas production found that decreases in the U.S. oil and gas supply would result in substantial decreases in global oil and gas consumption. [Footnote 277: Metcalf, G, *The Impact of Removing Tax Preferences for U.S. Oil and Gas Production*, Council on Foreign Relations, August 2016; Erickson, P., *Rebuttal: Oil Subsidies—More Material for Climate Change Than You Might Think*, November 2, 2017, <https://www.cfr.org/blog/rebuttal-oil-subsidies-more-material-climate-change-you-might-think>] In the case of oil, the model estimated that a decrease of 600,000 barrels per day in U.S. oil supply, resulting from a drop in U.S. oil production due to subsidy removal, would lead to a decrease in global oil consumption of 300,000 to 500,000 barrels per day. [Footnote 278: Id. at Table 2.] In the model, the decreased U.S. oil supply is only partially replaced by other sources of U.S., OPEC, and other rest-of-world supply. In short, each U.S. barrel not developed would result in a net reduction in global oil consumption of 0.5 barrels to 0.8 barrels. Similarly, for natural gas, a 1.06 to 1.32 Tcf per year decrease in U.S. natural gas supply would lead to a net reduction in global gas consumption of 0.94 to 1.06 Tcf per year, [Footnote 279: Id. at Table 3] which translates into a net reduction in global gas consumption of 0.7 to 1 unit for each unit of U.S. natural gas left undeveloped.

Finally, the modeling results from a Bureau of Ocean Energy Management (“BOEM”) analysis of lifecycle greenhouse gas emissions that would result from the 2017–2022 OCS Oil and Gas Leasing Final Proposed Program [Footnote 280: Wolvovsky, E. and Anderson, W., *OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon*. BOEM OCS Report 2016-065. 44 pp (2016).] estimated that leaving U.S. oil and gas undeveloped under the no-leasing alternative would result in a significant decrease in global oil consumption with associated reductions in carbon pollution. [Footnote 281: Unfortunately, in direct contradiction to its global oil market model results, BOEM erroneously concludes in this report that producing 3.7 billion barrels of oil would make no difference for GHG emissions, and would even reduce GHG emissions compared to the No Action alternative of no new leasing, by failing to account for the large-scale decrease in global oil consumption and the resulting enormous decrease in GHG pollution under the No Action Alternative. BOEM acknowledged that its GHG analysis was limited in “not fully capturing global market and GHG implications” (at Forward) and in not including the GHG savings from reduced global oil and gas consumption in its emissions estimate for the No Action Alternative (at page 23).] Importantly, BOEM’s global market model, MarketSim, estimated that foreign oil consumption would be reduced under the No Action Alternative by “approximately 1, 4, and 6 billion barrels of oil for the low-, mid-, and high-price scenarios, respectively, over the duration of the 2017–2022 Program.” [Footnote 282: Id. at Table 6-2. Table 6-2 estimates production from the Final Proposed Program with a range of 2.2 billion barrels for the low price scenario, 3.7 billion barrels for the mid-price scenario and 5.9 billion barrels for the high price scenario] Under the mid-price scenario, the model projected that each barrel of oil left undeveloped under the No Action Alternative would result in approximately a half-barrel decrease in global oil consumption. Specifically, the choice to leave ~8 billion barrels of oil undeveloped under the No Action Alternative in the mid-price scenario [Footnote 283: Id. at Table 6-2] would result in a reduction in global oil consumption of 4 billion barrels of oil. [Footnote 284: Id. at 23]

Although BOEM did not calculate the greenhouse gas emissions reductions from the decrease in global oil consumption, energy experts at the Stockholm Environment Institute (“SEI”) calculated the GHG benefits. Using standard energy contents (from the US Department of Energy) and carbon contents (from the US Environmental

Protection Agency), and discounting the oil used in products and not combusted (International Energy Agency), SEI estimated that the reduction in global oil consumption would result in a savings of 2.3 billion tonnes CO₂ in high-price scenarios for oil, 1.6 billion in mid-price scenarios, and 0.4 billion in the low-price scenarios. [Footnote 285: Erickson, Peter, Final Obama administration analysis shows expanding oil supply increases CO₂, Stockholm Environment Institute, January 30, 2017, at <https://www.sei-international.org/fossil-fuels-and-climate-change/news-and-opinion/30--news-archive/3617-final-obama-administration-analysis-shows-expanding-oil-supply-increases-co2>]As the SEI analysis points out, the decreases in global greenhouse gas emissions under the No Action Alternative are enormous:

These decreases in rest-of-world emissions dwarf the official estimated increases in US emissions that BOEM's official Programmatic Environmental Impact Statement reports for its No Action Alternative (relative to the Proposed Program), which instead amount to just 0.13 billion, 0.12 billion and 0.013 billion tonnes CO₂ for the high, mid, and low-price scenarios, respectively. Those calculations exclude the far larger emissions attributable to the global market effect. [Footnote 286: Id]

If BOEM were to account for the effects of reducing U.S. oil production on international oil consumption, the global greenhouse gas impact of the No Action Alternative over the life of the 2017–2022 Program would be a decrease of up to 2.3 billion tonnes of CO₂ which is greater than a year's worth of emissions from the entire U.S. transportation section (i.e., 1.7 billion tonnes CO₂).

In sum, numerous scientific and economic analyses, including those by federal agencies, show that the assumption of perfect substitution in greenhouse gas analyses for U.S. oil and gas production is unfounded and unreasonable, and dramatically misrepresents the carbon pollution and climate impacts from oil and gas leasing.

Comment Number: BOEM-EMAIL-32521-035527-14

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Planning/Leasing

A series of improvements should be made to the five-year planning and leasing stages of the OCSLA process. Deficiencies in the current process have been made clear by a series of lawsuits and the most recent draft plan, which reflects a waste of resources and unwillingness to respect the wishes of coastal states.

-Eliminate area-wide leasing unless there is compelling reason to use it. Make the default smaller sales in high-value areas to increase competition and facilitate environmental analyses.

-Codify the requirement to charge rent for leases for the period of time they are unused and to increase the amount of rent as an incentive to develop or relinquish leases.

-Direct a wholesale revision of planning and leasing regulations, which are inadequate and have not changed substantively since being implemented in the early 1980s.

-Clarify the Section 18 balancing process by:

-Establishing standards for the net-benefits calculation;

-Providing guidance on the interaction between the set of three broad factors described in 43 USC § 1344(a)(1)

and the eight more specific factors enumerated in 43 USC § 1344(a)(2);

- Requiring more robust consideration and prioritization of environmental factors and clarifying that the health of marine ecosystem should be a priority consideration;

- Requiring explicit recognition that exploration and development carries different risks in different regions (e.g., oil spills behave differently and may present more risks in cold waters) and that the assessment of risks must be tailored and cannot be one-size-fits all.

- Prohibit leasing or other activities in specific portions of the OCS either permanently or for a time certain and/or prohibit the Secretary of Interior from issuing leases on OCS lands that are adjacent to states that have prohibited OCS oil and gas activities.

- Require a specific level of baseline science, monitoring and observing in areas before exploration or development can proceed.

- Require a threshold level of infrastructure (e.g., ports, response assets) before leasing is allowed in OCS areas.

- Ensure appropriate analysis of low probability, high risk events.

Comment Number: BOEM-EMAIL-32521-035678-10

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Comment Excerpt Text:

G. Interior Needs to Reform Its Oil and Gas Lease Suspension Process that Denies the Public Revenue and Access to Federal Lands for Multiple Uses and Encourages Producer Speculation and Avoidance of Due Diligence Requirements.

Interior has seriously neglected its responsibility to the public through lax management of lease suspensions. Under lease suspensions, lessees retain their lease rights, but are exempt from any rental payments and are not required to make progress on developing the oil and gas resource. In a groundbreaking 2015 study of lease suspensions, The Wilderness Society documented that 3.25 million acres of federal leases were held in suspension, which amounted to almost 10% of the federal lands under lease by the oil and gas industry. [Footnote 4: The Wilderness Society, “Land Hoarders: How Stockpiling Leases is Costing Taxpayers,” Dec. 15, 2015.]

Many of these suspensions have been in effect for decades, and in acreage terms, 30% of the 3.25 million acres had been suspended for more than 25 years. TWS found that 32% of the suspensions were between 20 and 75 years old, 25% between 6 and 19 years old, and 43% were less than 5 years old.[Footnote 5: Id., p. 4] When the GAO reviewed the management of lease suspensions in 2018, it discovered a similar pattern of the age of oil and gas lease suspensions still in effect. [Footnote 6: U.S. Government Accountability Office, “BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures,” GAO-18-411, June 2018, p. 17. As of 2018, the GAO found that 24% of the suspension were more than 30 years old, 5% between 20 and 30 years, 7% between 10 and 20 years, 42% between 3 and 10 years, and 23% less than 3 years. The GAO reported total suspended lease acreage at 3.4 million acres, up from the 3.25 million acres reported by the Wilderness Society in 2015]

There are circumstances that justify lease suspensions—some being short-term such as severe weather conditions

that hamper lease operations, and others longer-term such as environmental reviews or litigation over the compliance of the lease with laws or regulations. However, both The Wilderness Society and the GAO report cite numerous problems of Interior inconsistently granting suspensions, failing to record the rationale for them, and neglecting to monitor and review if the suspensions are still justified. The Wilderness Society also notes that the suspensions are granted privately with no public disclosure or review that could help the BLM ensure that suspensions properly comply with the law and the terms under which they were granted.

Suspensions grant lessees cost-free extensions of leases with no responsibility to proceed with development. Interior's lax administration of suspensions has a number of negative effects. It provides lessees with a means of evading diligent development requirements and encourages lease speculation by granting lessees a cost-free extension of leases with no responsibility to develop the resource. Second, it denies the American people rental and royalty revenues. Finally, lax suspension administration imposes on the public a loss of value from alternative beneficial uses of federal because suspensions often limit multiple uses of the affected lands, contrary to law.

The lease suspension process needs to be thoroughly revised. The process of granting suspension should become transparent, with public notice of suspension requests, opportunity for public comment, and notification of Interior's decision. Suspensions should be time-limited for reasonable periods such as three years, with suspensions automatically expiring at set times. Requests to extend suspensions should require extraordinary justification, and decision-making on such requests should require public participation. Records of leases suspensions, their rationale and dates of expiration should be a public record available through the Internet. Interior's problems of record-keeping and monitoring suspensions need to be resolved promptly and thoroughly. Interior should commit itself to review and take action on all prior suspensions by a date certain.

Comment Number: BOEM-EMAIL-32521-035678-8

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Comment Excerpt Text:

E. Reforming the Leasing Process to Ensure a Full and Fair Return to the Public

The current oil and gas leasing process results in excessive, speculative leasing and fails to achieve a full and fair return to the public. At various times, including during the prior Administration, excessive lease offerings have been made for tracts with low suitability for oil and gas production. Thus, vast tracks of federal lands end up with dormant leases that discourage management of those lands for other beneficial uses. The entire process is in need of fundamental reform. Below are some of the major steps that should be taken to prevent excessive oil and gas leasing and to generate a full and fair return for the public.

1. Interior should offer for leasing only those tracts evaluated as most suitable for oil and gas development, that minimize value foregone from the loss of alternative beneficial uses, that are not better suited to renewable energy development, and that are subject to conditions that minimize harm to the public, including the prevention of methane gas waste. Interior should be required to develop analytical methods, rules and procedures to effectively and consistently apply these conditions. Prior to offering any tracts for oil and gas development, Interior should also analyze such tracts for their suitability and potential for renewable energy development, including development that can be integrated with agricultural or other sustainable uses. Interior should compare the relative total benefits and costs to society, including impacts on global warming, from using those tracts for either type of energy development. Interior should develop the standards for making these lease offering decisions in consultation with the Public Interest Advisory Committee and should conduct public meetings and hearings on those standards and analytical methods on which they will rely to make its leasing decisions.

2. Interior should establish a public registry of companies qualified to nominate and bid on parcels for oil and gas leasing. The registry would include companies experienced in due diligent and responsible oil and gas production on federal lands and are therefore qualified to bid on future leases. However, firms with a track record of serious or recurring violations of standards for exploration or production should be excluded from bidding. The registry would also include new firms that demonstrate the necessary technical expertise and access to capital to successfully conduct diligent production on federal lands in compliance with all applicable federal requirements. Importantly, although lease brokers would continue to be able to provide services to qualified companies in managing the bidding process, they would no longer be eligible to bid and become leaseholders for themselves. That change would reduce speculative leasing and potential abuses of the leasing process, achieve public transparency to enhance oversight of federal leasing, and support enforcement of the existing acreage limits on the holding of federal leases. Overall, establishing a process of qualifying potential leaseholders reduces speculation and supports diligent development in compliance with federal requirements

3. Interior should conduct all leases through a sealed bid process, as a means of more likely achieving market value. All bids would be opened and disclosed publicly after the close of the bidding. This would discourage some of the manipulation in the current system that allows speculators to manipulate leases into the noncompetitive process where they can avoid paying any minimum bid at all. Speculators are aided in this manipulation by being able to observe bidding in real time and withhold a minimum bid if they perceive that no other bid is forthcoming on a tract that they had originally nominated. If, in fact, no bids occur, they can subsequently secure the tract through a noncompetitive lease with no lease bid payment required at all. A sealed bid process can prevent these speculative abuses.

4. Interior should also evaluate whether to require parties that nominate parcels for leasing to submit a minimum bid with the nomination. If the nominated parcel is offered for leasing, then the bid would be entered at the outset of the auction. On the other hand, if the parcel is not offered for lease, the bid would be considered moot and cancelled. This procedure, if judged consistent with law, would be another means of preventing the manipulation of a lease offered for competitive leasing into the noncompetitive category. This procedure would not be necessary, of course, if Congress were to repeal noncompetitive leasing.

5. Interior should design and employ advanced lease auction procedures to better achieve market value. These procedures can be used to establish an “effective minimum bid” that is above the statutory minimum. Option values would also be incorporated into this effective minimum bid. Interior should implement either one or a combination of two broad processes to set an effective minimum bid above the statutory level: (a) an “inter-tract leasing” system, and/or (b) establishing minimum market value bids for each parcel. Regardless of which approach Interior would use, Congress should require Interior to require sufficient reporting from the oil and gas industry of information necessary for analyzing the market value of leases. Such information could include industry valuations of oil and gas deposits, data on the purchase and resale of leases, and other relevant information. This data would typically be proprietary and held confidential by Interior.

Under the market-oriented “inter-tract leasing” system, the bidding process is structured to use competition to establish the fair market value of leases in a defined area. Prospective lessees would bid competitively against each other for specific leases from among a group of leases in a production area defined by common characteristics. For any single bidder to successfully secure a lease it desires, its bid for that specific lease must exceed the effective minimum bid level established through the leasing process for bids on all offered leases throughout the production area. Moreover, none of bidders in the process will know in advance the dollar amount of the effective minimum bid, because the amount is an outcome of the bidding itself. Periodic Interior analysis of development rates on previously leased parcels would establish a percentage level below prior median bids that yielded a satisfactory rate of actual development. When the sealed bids are opened, Interior would accept those that exceed the sum of (a) the option values plus (b) the dollar amount at the acceptable percentage below the median bid in this specific auction in the production.

This sum would be the “effective minimum bid” for that auction in the production area, unless that amount is less than the statutory minimum adjusted for inflation and option values, in which case the adjusted statutory minimum becomes the effective minimum bid for that auction. Because bidders would not know in advance the effective minimum bid, they would be offered a second-round opportunity to secure a lease if they were willing to increase their bid to that level as established in this auction as noted below.

The second approach of Interior establishing an effective minimum value for each lease parcel would be based on Interior making estimates from detailed analysis of its data and reported industry information. Interior would estimate the effective minimum market value, including option value, for each parcel to the extent this estimate exceeds the adjusted statutory minimum bid. To encourage competition in bidding, Interior would again not disclose the effective minimum bid in advance of the auction.

Interior could use a combination of approaches to establish an effective minimum bid value for each parcel. Where it employs inter-tract leasing, the value estimates can be a check on the reasonableness of the bidding results. Where Interior receives too few bids to have confidence in inter-tract leasing, it can decide to use its estimates of value instead.

Comment Number: BOEM-EMAIL-32521-035695-5

Organization: Citizens Caring for the Future

Commenter: Kayley Shoup

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

* In order to address the speculative leasing practices that have become so rampant on public lands
<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.sltrib.com%2Fnews%2Fenvironment%2F2020%2F10%2F12%2Fwho-is-levi-sap-nei-thang%2F&data=04%7C01%7Cenergyreview%40ios.doi.gov%7Ce849ca8129a5411a937f08d9002e794f%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C63754102194012895%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C2000&sdata=3luRyx4A8ObBH0C3rbY7ElvqSErZuLDcUhwWmMbaTwY%3D&reserved=0>> , it is necessary to prohibit the leasing of lands identified through planning documents as having low or no potential for oil and gas development. BLM does not currently account for development potential when deciding whether lands should be open or closed to leasing, or when deciding which lands to offer for leasing. As a consequence, 90 percent
<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tu.org%2Fenergy%2Flow-potential-lands-campaign%2F&data=04%7C01%7Cenergyreview%40ios.doi.gov%7Ce849ca8129a5411a937f08d9002e794f%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637541021940122845%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C2000&sdata=S5UYtZlB4lagzYdZf0CjDBTX80CjKTRW%2Bjr3ovaPGeg%3D&reserved=0>> of BLM lands have been opened to leasing even though less than a quarter of public lands have moderate to high development potential. The Interior Department should issue a new policy that prevents making lands with low and no development potential eligible for leasing in land use plans and available for leasing at auction, including incorporating provisions from Senator Cortez Masto's bill
<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cortezmasto.senate.gov%2Fnews%2Fpress-releases%2Fcortez-masto-introduces-bills-to-protect-ruby-mountains-ruby-lake-and-other-public-lands-from-oil-and-gas-leasing&data=04%7C01%7Cenergyreview%40ios.doi.gov%7Ce849ca8129a5411a937f08d9002e794f%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637541021940122845%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C2000&sdata=S5UYtZlB4lagzYdZf0CjDBTX80CjKTRW%2Bjr3ovaPGeg%3D&reserved=0>>

WljoIMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=3hrTuJiMXrrDtb7FhbWsg%2F9BMbcGI5FI%2F0W2UepjyWA%3D&reserved=0> to statutorily prohibit leasing on low and no potential lands.

Comment Number: BOEM-EMAIL-32521-035695-6

Organization: Citizens Caring for the Future

Commenter: Kayley Shoup

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

* Noncompetitive leasing is another incredibly wasteful practice of the oil and gas leasing system that allows for industry to scoop up public lands via backdoor deals that hardly ever provide any benefit back to taxpayers. 99 percent

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gao.gov%2Fassets%2Fgao-17-540.pdf&data=04%7C01%7Cenergyreview%40ios.doi.gov%7Ce849ca8129a5411a937f08d9002e794f%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637541021940132803%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=qL0AK4%2BaOgAM%2BdbeKXsSKoRLfPIXzvIkIVjUhraaMA%3D&reserved=0>> of noncompetitive leases never enter production in their primary terms, and yet they still managed to tie up

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.americanprogress.org%2Fissues%2Fgreen%2Freports%2F2019%2F05%2F23%2F470140%2Fbackroom-deals%2F&data=04%7C01%7Cenergyreview%40ios.doi.gov%7Ce849ca8129a5411a937f08d9002e794f%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637541021940132803%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=Vbg1th3FpFCvD208YjeFE7gazNph9hmTktLUFDOkjpE%3D&reserved=0>> over 2.9 million acres of our public lands between 2009 and 2018. This process must be eliminated, and the Interior Department should include a finding in their report stating the need for Congress to pass the legislation necessary for doing so.

Comment Number: BOEM-EMAIL-32521-035709-4

Organization: Environmental Defense Center

Commenter: Rachel Kondor

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

I. Refrain from Issuing New Oil and Gas Leases or Permits.

Under the Outer Continental Shelf Leasing Act (“OCSLA”), the Secretary must prepare a schedule for proposed oil and gas leasing sales which she has determined “will best meet national energy needs” for a five-year period following its approval or disapproval. 43 U.S.C. § 1344(a). OCSLA requires the Secretary to consider multiple factors in preparing such a schedule, including “economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf... the potential impact of oil and gas exploration on other resource values...and the marine, coastal and human environments.” 43 U.S.C. § 1344(a)(1). In addition, the Secretary must, to the maximum extent practicable, strive for “a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.” 43 U.S.C. § 1344(a)(3). The language within Section 1344(a)(3) of OCSLA gives the Secretary the discretion to determine the right balance of new leasing v. environmental protections in a needs assessment.

Under the Federal Land Policy and Management Act, the Mineral Leasing Act, and other laws governing our public lands, the Secretary similarly retains significant discretion in issuing leases for oil and gas development, in order to best meet the present and future needs of the American people, which includes protection of the environment. 43 U.S.C. § 1702 and 30 U.S.C. § 181 et seq; also see *Udall v. Tallman*, 380 U.S. 1 (1965) (the Secretary of the Interior retains the power to refuse to issue any lease at all on a given tract of public land).

While the Department has a five-year offshore leasing program currently in effect until 2022, we urge you to refrain from issuing any leases under that program, and immediately begin the process of developing the next program in a manner that properly balances the many important considerations envisioned by OCSLA. Similarly, we urge the Secretary to consider instituting a longer pause on new leasing on public lands onshore as well, in order to fully assess the need for new permits and protect the environment. To that end, we ask you to take the following factors into consideration:

A. No Additional Permits to Drill are Needed Now.

The Department has acknowledged that there is a surplus of approved permits to drill on public lands and offshore waters, in part because the previous administration conducted a fire sale on oil, gas, and mineral leasing, and currently the oil and gas industry “has stockpiled millions of acres of leases” and is “sitting on approximately 7,700 unused, approved permits to drill.” [Footnote 2: DOI Factsheet (Jan. 27, 2021) <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands> (last visited Apr. 14, 2021).] Moreover, the Department acknowledged the massive acreage that the oil and gas industry has locked up with existing permits, citing to 26 million acres under lease to the oil and gas industry onshore, of which more than half of those acres are unused and non-producing. [Footnote 3: Id] Offshore the situation is even more stark, with over 9.3 million acres of unused and non-producing acres of public waters under lease. [Footnote 4: Id]

Even with all these unused permits in effect, the U.S. is currently a net exporter of oil. [Footnote 5: Bloomberg News, “The U.S. is Exporting Oil and Gas at a Record Pace,” December 12, 2017. Available at <https://www.bloomberg.com/news/articles/2017-12-12/u-s-fuels-the-world-as-shale-boom-powers-record-oil-exports>] New oil and gas development is clearly not necessary to meet national energy demand at the present time.

Comment Number: BOEM-EMAIL-32521-035709-7

Organization: Environmental Defense Center

Commenter: Rachel Kondor

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

C. New Leasing is at Odds with the California Goals for Clean Energy.

In California and in other states, we are moving toward a fossil-free future, sooner rather than later. For example, California adopted Renewable Portfolio Standards of 33% renewable energy by 2020, and 50% by 2030. [Footnote 9: California Public Utilities Code § 399.11] Several other states are also transitioning from fossil fuels to clean renewable energy. At a national level, we can achieve 80% of our energy needs from energy efficiency, renewable energy, and electric grid enhancements, by 2050, and at a reduced cost. [Footnote 10: <https://www.nrdc.org/sites/default/files/americas-clean-energy-frontier-report.pdf>] The Department should ensure in creating its new plan for development of public lands and waters that it is not operating at odds to a progressive energy future, which several states and other countries are attempting to achieve.

Approving new leasing would enable oil and gas development for generations to come. This scenario would not only undermine our state's and nation's efforts to transition to a clean energy future, but would also exacerbate climate change beyond what our planet can bear. Accordingly, we urge the Department to refrain from considering any oil and gas leasing, either on- or offshore.

Comment Number: BOEM-EMAIL-32521-035709-9

Organization: Environmental Defense Center

Commenter: Rachel Kondor

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

III. The Department Should Consider Permanent Protections for Onshore and Offshore.

We also urge the Department to look at permanent protection for important ecological areas with additional designations of national monuments, national parks, marine sanctuaries, and other types of federal protected areas. Of note, the Santa Barbara Channel region already includes multiple protected areas, including the Channel Islands National Marine Sanctuary, the Carrizo Plain National Monument, Channel Islands National Park, federal and state-designated marine protected areas, and a federal Ecological Preserve offshore Santa Barbara. The Department should also consider permanently withdrawing certain areas from offshore leasing pursuant to Section 12 of OCSLA.

Our region's ecology is known for its global significance. The central coast of California contains one of the rarest bio-regions in the world, due to its location in the confluence of two major ocean currents, which results in the highest biodiversity in the mainland United States. Our region includes hundreds of species that are not found anywhere else on the planet. A National Park Service study conducted in 2003 found that the Gaviota Coast area adjacent to the Santa Barbara Channel is "one of the rarest global biomes" and is "one of only five such locations in the world" in terms of its natural resources. [Footnote 11: National Park Service, U.S. Department of the Interior. Gaviota Coast Draft Feasibility Study & Environmental Assessment. April 2003. See pp. 48-49]

The Pacific Region is home to many species that are listed under the Endangered Species Act as threatened, endangered, candidate, or proposed and could be impacted by new oil and gas development. In addition, the Pacific Region includes critical habitat for multiple listed species. These species and habitats are part of what makes this Region unique and worthy of the multiple protections it has been awarded by federal and state agencies, as well as deserving of future protection.

The incredible natural resources of our region attract visitors from around the world, and our region's economy is heavily dependent on tourism, recreation, and fishing. In 2012, ocean- related tourism and recreation contributed \$17.6 billion to California's GDP, which grew to \$19.5 billion in 2016. [Footnote 12: <http://centerfortheblueeconomy.org/wp-content/uploads/2015/06/CALIFORNIA-OCEAN-AND-COASTAL-ECONOMIES.3.4.15.pdf>.] [Footnote 13: http://www.slc.ca.gov/About/News_Room/2018/02-07-18/Hammerle_Kelly_OCSOilandGasLeasing_FINAL_2-7-2018.pdf.] From 2010 to 2016, California's coastal economy GDP grew at a faster rate than national economic growth, which was 19.53 percent and 11.72 percent, respectively. [Footnote 14: http://www.slc.ca.gov/About/News_Room/2018/02-07-18/Hammerle_Kelly_OCSOilandGasLeasing_FINAL_2-7-2018.pdf.] The economic impact of another oil spill on California's coastal economy could have a catastrophic effect.

California has much to lose and little to gain from increased drilling and oil production. Please consider using your authorities of withdrawal and permanent protection to set aside additional special areas.

Comment Number: BOEM-EMAIL-32521-035789-11

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Other Sections: 4

Comment Excerpt Text:

-The Greater Chaco Region is one example of an irreplaceable sacred landscape important to the Pueblos and other tribes, which has faced largely unrestricted oil and gas leasing and development. Expedited decision making around oil and gas development has not properly addressed tribal concerns regarding cultural resources. The decision-making processes on federal land management for this region has by no means sought tribal consent and involved inconsistent outreach, correspondence, and decision making from different local and federal Department bureaus and offices. We must relay to you that examples of institutional and/or individual bias against Native Americans were observed and reported throughout the official BLM NEPA process around the FFO RMPA and development of the Greater Chaco Region and other actions.

-We are grateful that President Biden has paused new oil and natural gas leases on public lands pending a review of federal oil and gas permitting and leasing practices. However, there have been notices related to lease sales and development in the Greater Chaco Region. Therefore, we ask that the Department continue to pause all of these actions in accordance with the Presidential Executive Order 14008. We also ask that the Department maintain this pause pending completion of the Greater Chaco Region Resource Management Plan Amendment (RMPA) and that the RMPA be paused pending the lifting of federal, state, and tribal public health directives.

-We thank the Department for pausing work on the Greater Chaco Region RMPA due to the COVID-19 pandemic. We ask that the Department allow for completion of the ongoing tribally-led cultural resource studies of the Greater Chaco Region and further progress to be made on the RMPA's Section 106 process. Only then should the RMPA's NEPA process move forward, and the Department should then incorporate the baseline cultural resource information collected from the studies and the Section 106 process into a new draft NEPA Environmental Impact Statement that contains legally sufficient alternatives.

-We also ask that an especially critical area of approximately 10 miles surrounding the Chaco Culture National Historical Park and including its outliers be administratively withdrawn from development.

Comment Number: BOEM-EMAIL-32521-035789-4

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

Withdrawal of Critical Areas: We also call on the Department to use its existing statutory authority to withdraw from development areas that are especially critical to tribes.

Comment Number: BOEM-EMAIL-32521-035789-8

Organization: All Pueblo Council of Governors

Commenter: Wilfred Herrera

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

We also urge the Department to amend its internal guidance and instructional memoranda on oil and gas leasing and development, including lease schedules, to remove their imposed and rigid timeframes. By addressing the rigid timeframes, the internal guidance and instructional memoranda will be more consistent with Executive Order 13990.

Comment Number: BOEM-EMAIL-32521-035897-1

Organization: Conservation Voters of South Carolina

Commenter: Cassie Ratliff

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 12

Comment Excerpt Text:

On behalf of our members and supporters, we thank you for pausing all new offshore oil and gas leasing and conducting a thorough review of the broken oil and gas leasing system. This review process is an important step toward protecting our coastal communities from the threats of dirty and dangerous offshore drilling.

Now, we call on the Department of Interior to reform our country's oil and gas leasing system and chart a new path forward so that our public lands, coasts, and waters work for all people and local communities, not just the oil and gas companies. We ask you to consider:

- prioritizing environmental protection over issuing new leases and permits,

- appropriately siting renewable energy and encouraging energy efficiency to offset the need for additional fossil fuel development; and

- permanently protecting lands and waters that are of economic, cultural, and ecological significance to the communities that surround them.

We also urge the Administration and Congress to permanently protect South Carolina's coast - and the families and businesses that depend on it - from offshore drilling once and for all.

Comment Number: BOEM-EMAIL-32521-036313-1

Organization: Independent Petroleum Association of New Mexico

Commenter: Jim Winchester

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

On behalf of the 350+ members comprised of independent oil & gas producers and associated industry members who work in New Mexico, I'd like to respectfully submit these comments on the Department of Interior's comprehensive review of the federal oil and gas program as called for in Executive Order 14008. These comments also are submitted in response to the March 25, 2021 National Public Forum on the Federal Oil and Natural Gas program.

The Independent Petroleum Association of New Mexico (IPANM) is a non-profit 501(c)(6) that serves as the voice of independent oil and gas producers in New Mexico. Our mission is to preserve and advance the interests of independent oil and gas producers, while educating the public to the importance of oil and gas to the state and all our lives. We support the return of a responsible, balanced and robust federal leasing program, while also ensuring the safe extraction of the abundant natural resources on federal lands in New Mexico.

The oil and gas industry is adapting to the “new normal” that was imposed upon the State of New Mexico as a result of the COVID-19 pandemic, the 2020 oil price crash, and significant loss of state jobs within the industry. While oil prices have improved, our operators report significant challenges in their struggle to remain solvent.

IPANM operators definitively point to both the temporary 60-day federal moratoriums and the continuation of federal leasing moratoriums as the cause of economic distress that has slowed industry recovery while keeping workers unemployed in New Mexico’s oil & natural gas producing basins. Combined with the moratoriums, the new regulatory uncertainty at the federal level since the beginning of President Joe Biden’s administration threatens the present and future wellbeing of New Mexicans, the oil & gas industry, and billions of dollars in state revenue.

IPANM’s main concern is the prospect of prolonged or permanent federal leasing and permitting moratoriums. These moratoriums are destructive to state livelihood, as evidenced in recent history, state economics, and scientific studies. Through this letter, IPANM will demonstrate that moratoriums lead to significant state job losses, domestic insecurity, increased environmental damage, more bureaucratic delays, and undermine fundamental multiuse land principles.

Oil Production in New Mexico

New Mexico is the third-largest producer of oil and the eighth-largest producer of natural gas in the United States. The state’s dramatic production increases the past five years can be directly linked to the development of natural resources on the New Mexico side of the Permian Basin.

In 2020, New Mexico hit a record production of 357.8 million barrels of oil. Likewise, natural gas production set a new record of 1.9 trillion cubic feet produced. Despite these new records, the annual rate- of-growth from 2019 to 2020 declined significantly in BOTH oil and natural gas compared prior years.

Consider the following data from the New Mexico Oil Conservation Division:

-The growth of oil production in New Mexico from 2019 to 2020 represented a 10.8% increase compared to a much more robust 33.2% increase from 2018 to 2019. (Figure 1 data courtesy the NM Oil Conservation Division; Illustration courtesy the ABQ Journal).

[See attachment for Figure 1: Percentage Rate of Growth of NM Oil Production]

-The growth of natural gas production in New Mexico had a modest 7% increase from 2019 to 2020 compared to a 19% growth rate from 2018 to 2019.

These growth rate declines can be attributed to the temporary shutdown of thousands of New Mexico wells due to the oil price crash of March 2020. However, ongoing federal moratoriums will contribute to further slow production growth. With future permanent moratoriums, overall barrel production in New Mexico will be reduced due to natural decline in the production of existing wells.

Comment Number: BOEM-EMAIL-32521-036313-10

Organization: Independent Petroleum Association of New Mexico

Commenter: Jim Winchester

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Conclusion

Last month, Governor Michelle Lujan Grisham urged President Biden for relief to federal leasing and permitting moratoriums, writing that oil & natural gas “revenues fund public schools, infrastructure projects, and a range of other priorities, including environmental initiatives.” She also shared a warning from economists employed by state government. “An analysis conducted by our state Department of Finance and Administration shows that New Mexico stands to lose approximately \$709 million between fiscal years 2021-2025 if there’s a relatively modest 10 percent decline in production.”

IPANM agrees with Governor Lujan Grisham’s warning and assessment above. New Mexico’s federal lands must be available under a balanced, multi-use land program. Existing federal law mandates it. Oil & gas cannot simply be regulated out-of-business with sudden bans and moratoriums. Such drastic measures, as already demonstrated, fail to consider New Mexico’s communities, citizens and jobs.

Using science, innovation, and collaboration, IPANM’s operators work to prevent waste, reduce emissions, and improve air quality, all while growing production, creating jobs for New Mexicans, and revenues for New Mexico. To continue federal land leasing moratoriums and introduce uncertainty for permit approvals as part of new, federal policy is discompassionate and foolhardy.

Comment Number: BOEM-EMAIL-32521-036313-8

Organization: Independent Petroleum Association of New Mexico

Commenter: Jim Winchester

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

An additional consideration regarding moratoriums on New Mexico’s federal lands is proportionality. Only 17-percent of New Mexico’s 27.6 million federal acres are currently used for oil & natural gas production. On the global scale, the emission proportions from within our state from federal lands doesn’t even amount to a rounding error on the global level. Yet, back on the state level, it is on this 17% of New Mexico’s federal lands where a bulk of the state’s wealth is generated. Therefore, it can be concluded that the federal government is imposing a flawed, socio-economic trade-off to reduce our state emissions on the backs of New Mexican citizens.

New Mexico is a state that already has 18.2% of its population living below the poverty line, per the U.S. Census Bureau. Given one-third of the state budget comes from oil & natural gas revenues, New Mexico citizens will face the brunt of oil & natural gas revenue losses due to the state’s significant federal acreage percentage. Such a revenue stream in New Mexico is vital for adequate education, increased public safety, improved infrastructure, new environmental initiatives, and safe & affordable human health services.

Comment Number: BOEM-EMAIL-32521-036336-3

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Deprioritize oil and gas leasing in low potential areas.

The Mineral Leasing Act mandates that the Secretary of the Interior hold lease sales for lands “known or believed to contain oil or gas deposits.” By closing Forest Service and BLM lands that have low or negligible oil and gas potential, the Administration can narrow the scope of lands eligible for leasing and create efficiencies consistent with federal law. It is estimated that more than 90 percent of BLM lands are currently available for oil and gas leasing, yet outdated BLM policies encourage management decisions that prioritize oil and gas development over other multiple uses, resulting in significant resource conflicts and inefficient use of agency resources.

Comment Number: BOEM-EMAIL-32521-036365-8
Organization: Wyoming County Commissioners Association
Commenter: Jim Wilcox
Commenter Type: Local Government
Classification: Substantive

Comment Excerpt Text:

Supporters of the oil and gas leasing moratorium suggest that developers have stockpiled leases in recent years and have ample opportunity for additional production in the absence of future lease sales. This is not true. To the contrary, total acres of oil and gas leases in Wyoming have steadily declined over the years, dropping nearly 40% since fiscal year 2008. [Footnote 9: Bureau of Land Management, Oil and Gas Statistics: Total Number of Acres Under Lease as of the Last Day of the Fiscal Year, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>]

Moreover, developers rely on quarterly lease sales to plan for orderly exploration and production, expressing interest in and nominating parcels that allow them to build strong leaseholds for development. Access to specific federal parcels, in combination with directional drilling, can allow developers to minimize or eliminate impacts without limiting production. The opportunity to bid on federal parcels regularly is especially important in the context of complex landownership patterns, like in Wyoming, where the checkerboard and split estates makes oil and gas leasing challenging.

Contrary to common claim, most developers do not have leases stockpiled, ready for development. Instead, providing regular lease sales allows developers to efficiently explore and produce resources in a way that limit surface impacts.

Comment Number: BOEM-EMAIL-32521-036524-1
Organization: National Ocean Policy Coalition
Commenter: Brent Greenfield
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

The Coalition urges the Interior Department to expeditiously lift the pause on leasing activity in federal waters. The Gulf of Mexico is a casebook example of how commercial and recreational interests can thrive alongside one another and support both a healthy economy and environment. In addition to accounting for nearly 20% of the nation’s oil production, [Footnote 2: See Gulf of Mexico Fact Sheet, U.S. Energy Information Administration, accessible at https://www.eia.gov/special/gulf_of_mexico/.] the Gulf of Mexico provides over 40% of domestic seafood. [Footnote 3: See Gulf of Mexico, Environmental Defense Fund, accessible at <https://www.edf.org/oceans/gulf->

mexico#:~:text=Working%20with%20fishermen%2C%20chefs%20and,tourism%20industries%20across%20five%20states.] Underscoring the multiple use management approach that has served the Gulf of Mexico so well, activities including fishing and energy take place in the vicinity of the Flower Garden Banks National Marine Sanctuary, a diving paradise teeming with coral.

Comment Number: BOEM-EMAIL-32521-036705-1

Organization:

Commenter: Tildon Jones

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

I am pleased that the administration and Department are soliciting citizen input on the public lands leasing policies.

As a resident of Uintah County, Utah, I live in the center of an oil and gas development area. I live here because of the extensive public land and recreational opportunities they provide, and oil and gas development has limited or threatened those opportunities in the time I have lived here.

I have a couple of easy policy changes that could improve the leasing process and make it more accountable to the public:

- 1) Leases are issued for a defined amount of time, usually 10 years. If the leaseholder does not pursue development on the lease, the lease is supposed to expire. What I have seen is indefinite and unreviewed extensions of leases that should expire. The BLM should not automatically extend leases, and any lease extension should undergo public comment and NEPA review before being extended. Information and data change in 10 years, and the newest, best available information should be used to determine if a lease is still appropriate in a given area.
- 2) The BLM has considered lease offerings a "paper exercise" that does not lead to any action on the landscape. Because of this view, leases are often issued with known resource issues that must be analyzed and reviewed under NEPA once a drilling plan or application is received. I have seen examples of this for known wetlands within a river floodplain, designated recreational trails, and designated critical habitat for endangered species. None of these resource conflicts were considered significant enough to withdraw a proposed lease. Instead of allowing these resource concerns to go unaddressed, the BLM should weigh the impacts under the assumption a lease will be developed in some manner. This is not much different than the Master Leasing Plans proposed in the past, and makes sense as a reasonable approach to identifying sensitive resources and avoiding them in the first place. Many of the public lands debates are a result of having to defend sensitive areas over and over again as a result of proposed development. Knowing that important resources will be off limits from the beginning will help to avoid lengthy environmental reviews and increase efficiency within the program. It would also prevent speculation when energy prices increase and marginal leases might appear more lucrative.

Comment Number: BOEM-EMAIL-32521-036709-1

Organization: North Dakota Petroleum Council

Commenter: Kristen Hamman

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Thanks to the shale boom, the United States has seen tremendous economic growth and increased energy security. Despite the sharp drop in demand due to COVID-19, the United States was still the world's leading oil producer in 2020. Today, 97 percent of North Dakota's 1.2 million barrels of oil production per day comes from shale oil wells that are completed using the stimulation technique called fracking, and North Dakota is the second highest producing state.

Although the federal government does not own a majority of surface land in our state, we are still directly impacted by federal rules and regulations because of the unique makeup of mineral ownership here. North Dakota has a checkerboard of surface and mineral ownerships that poses a unique challenge for operators to comply with different layers of regulations on a split estate. Minerals are often severed from surface ownership and Drilling Spacing Units often contain federal, fee and state minerals.

Outside of the Fort Berthold Reservation, most of the mineral ownership in North Dakota and within the Bakken field boundaries is privately held. However, a minority of federal ownership of minerals is scattered throughout western North Dakota. Much of the federal mineral ownership was acquired through mortgage foreclosures during the Great Depression. The United States, acting through the Federal Land Bank and pursuant to the Bankhead Jones Act, foreclosed on many small farms, thereby acquiring ownership of the surface and minerals. The United States later sold most of the surface and, in many cases, reserved an undivided one-half interest or full interest of the minerals in these tracts, creating split estates. As a result, mineral ownership in much of the western part of North Dakota consists of a checkerboard pattern of fee, state, and federal minerals, and often within the same section or spacing unit. Federal mineral ownership interest in North Dakota is therefore very different than most other western states, where the United States typically owns both surface and minerals in larger tracts of land.

In North Dakota, there are a total of 3,370 drilling spacing units covering approximately 3,000,000 acres. Federal mineral ownership in these units varies from .1% to 100%. However, of the 3,370 units, about 1,800 have less than 50% federal ownership. [Footnote 1: North Dakota Department of Mineral Resources, Oil and Gas Division] This amounts to approximately 2 million acres that have a minority federal interest. Even with a minority federal interest, operators must comply with all federal requirements as well as all state requirements, which are often duplicative. We are concerned that a federal leasing moratorium, as well as any other changes to federal oil and gas leasing rules and regulations, would not only stifle development of valuable federal mineral resources, but it would also negatively impact our ability to develop private minerals in North Dakota.

Comment Number: BOEM-EMAIL-32521-036716-3

Organization: University of Colorado Law School

Commenter: Mark Squillace and others

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

5. The BLM Should Tighten Standards for Lease Suspensions: The Mineral Leasing Act allows the BLM to suspend an oil and gas lease “in the interest of conservation.” 30 U.S.C. § 209; see also 43 CFR § 3103.4-4. In a 2018 report, the GAO found that the BLM had suspended 2,750 oil and gas leases in 16 states, covering about 3.4 million acres of federally managed land. [Footnote 10: OIL AND GAS LEASE MANAGEMENT: BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures GAO-18-411 (June 2018).] Suspensions for 650 of those leases had lasted for more than 30 years. For 320 more they had lasted between 10 and 30 years. During lease suspensions, no revenues are collected. While there may have been good reasons for some of these suspensions, the GAO was critical of the BLM for failing to set out the reasons for the suspensions in its database.

Lease suspensions have a significant potential for abuse, especially when the BLM fails to set forth in writing reasons for the suspension in its decision. In *Copper Valley Mach. Works, Inc. v. Andrus*, 653 F.2d 595 (D.C. Cir. 1981), the Court of Appeals for the District of Columbia held that suspending leases to protect the environment met the statutory requirement that the suspension be “in the interest of conservation.” Nonetheless, almost any suspension could be potentially justified on environmental grounds and it is especially troubling that 650 leases

have been suspended for more than 30 years without any public explanation for those suspensions. This means that these public lands have been tied up for decades without explanation and without generating any revenue for state and federal coffers.

The BLM should undertake a systematic and periodic review of all existing lease suspensions and reassess whether the suspensions should be terminated. If a suspension was not properly issued or a suspension is no longer justified and the lease is beyond its primary term, then the BLM should take appropriate action to promptly cancel the lease. In conjunction with this review, the BLM should also tighten its regulations at 43 CFR § 3103.4-4 to ensure written and public documentation of lease suspensions with an explanation of the reasons for the suspension, the expected duration of the suspension, and the procedures that the BLM will follow to ensure prompt termination of the suspension when the conditions that formed the basis for it no longer exist.

Comment Number: BOEM-EMAIL-32521-036813-6

Organization: Shell Offshore Inc.

Commenter:

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

V. BOEM should continue to hold the scheduled, region-wide lease sales in the U.S. deepwater GOM for the remainder of the current 2017-2022 Five-Year Plan, which is an important part of serving the U.S.' climate ambition, and consider holding one annual (as opposed to biannual) lease sales in the next Five-Year Plan.

[Footnote 18: Shell's endorsement of continued lease sales in the U.S. deepwater GOM does not necessarily guarantee that Shell will or will not participate in future leases sales. Shell's investment decisions are made on a lease sale by lease sale basis using a multitude of factors]

The 2017-2022 National OCS Oil and Gas Leasing Program, published in 2016, calls for two annual region-wide lease sales in the GOM. Prior to each Lease Sale, BOEM issues a Record of Decision (ROD) considering the proposed lease sale against multiple alternatives, including whether to hold the proposed lease sale. With each ROD, BOEM elected to hold every lease sale in the 2017-2022 Five-Year Plan because it best balanced and achieved the many statutory considerations charged to the agency. For instance, in the ROD published for the last sale (Lease Sale 256, held on November 18, 2020), BOEM determined that,

The decision to hold Lease Sale 256 recognizes the crucial role that GOM oil and gas resources play in addressing the Nation's demand for domestic energy sources and fosters economic benefits realized through continued exploration and development in the GOM region. This decision promotes domestic energy production, which can reduce the need for oil imports.[] Additional benefits flowing from OCS leasing include continued employment, labor income, tax revenues, and other positive economic impacts; these benefits, though highest in the Gulf Coast States, are widely distributed across the United States. Continued oil and gas leasing on the OCS may also reduce the risk of spills from the transportation of imported energy resources (e.g., the reduced need for tankers to transport oil). Moreover, revenue sharing with applicable coastal states and political subdivisions, such as under the Gulf of Mexico Energy Security Act of 2006 (GOMESA), can help mitigate risks and costs assumed by the States and communities in the area of the lease sale. [Footnote 19:

<https://www.boem.gov/sites/default/files/documents/regions/gulf-mexico-ocs-region/leasing-and-plans/GOM-LS-256-Signed-ROD.pdf> at 7.]

Each ROD also affirmed the Interior Department's findings contained in its 2016 Final Programmatic Environmental Impact Statement for the 2017-2022 Five-Year Plan (PEIS). Namely, the PEIS found that,

Even if the U.S. moves decisively towards the demand and emissions trajectory implied by the IEA[‘s] climate-friendly 450 Scenario, large scale investment in oil and natural gas remains an important component of a lower-cost energy bridge to a low-carbon future through the next several decades (IEA 2015a, IEA 2015b). [Footnote 20: https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/fpeis_volume1.pdf at 1-11.]

Any decision not to hold lease sales in the U.S. deepwater GOM as called for in the 2017-2022 Five-Year Plan would be contrary to the Interior Department’s own findings and in failing to prioritize the lowest GHG-intensive barrels, would frustrate U.S. efforts to accomplish our shared climate ambition.

However, if the Interior Department believes lease sales are held too frequently, it may, as part of the 2022-2027 Five-Year Plan, consider testing one annual area-wide lease sale for the GOM (i.e., Western and Central Planning Areas) in lieu of biannual auctions. By reducing the absolute number of auctions by 50%, DOI could likewise conduct a highly informative and real-world test of the market dynamics and relative commercial interest in this region. For instance, if the number of lease bidders, levels of winning bids, or absolute acreage won in a single annual sale were to vary widely from previous auctions, the lease sale statistics will provide the Interior Department with rich and current data to better inform its future policy approach.

Comment Number: BOEM-EMAIL-32521-036937-18

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

(1) Revive landscape-level planning for Interior agencies, with particular attention to selecting priority areas for conservation, restoration, and renewable energy development, and consider a new landscape level planning rule following the demise of BLM’s “Planning 2.0 Rule” pursuant to the Congressional Review Act;

Comment Number: BOEM-EMAIL-32521-036937-19

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

(2) For onshore public lands, amend resource management plans (RMPs) in accordance with a zero GHG emissions by 2030 strategy, consider an immediate net-zero emissions strategy¹ for RMPs that uses offsets in the form of greater carbon sequestration, renewable energy production, or other strategies, and revive Master Leasing Plans if any leasing continues;

Comment Number: BOEM-EMAIL-32521-036937-21

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

(4) For offshore lands and waters, embark upon a new five-year planning process that seeks to achieve zero GHG emissions by 2030, or alternatively, net-zero emissions;

Comment Number: BOEM-EMAIL-32521-036937-4

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 12

Comment Excerpt Text:

For onshore public lands, the Bureau of Land Management (“BLM”) should amend RMPs and consider the possibility of no new leasing and/or meeting a target of zero, net-zero, or net-negative emissions by 2030. These options are not mutually exclusive, and could be pursued in combination. The first alternative is consistent with President Biden’s campaign calls to “ban new oil and gas permitting on public lands and waters.” [Footnote 10: The Biden Plan for a Clean Energy Revolution and Environmental Justice, JoeBiden.com, <https://perma.cc/9UBA-UPHM>] The second alternative would sharply curtail new leasing and phase-out emissions from existing wells (which are typically subject to 5–10 year leases) by 2030. To meet a net-zero emissions goal, BLM should also consider using offsets in the form of carbon sequestration, reforestation, greater renewable energy production, and other strategies to reduce emissions within the planning area.

For offshore lands and waters, the Bureau of Ocean Energy Management (“BOEM”) should embark upon a new five-year planning process to develop a program that seeks to achieve net-zero greenhouse gas emissions in the medium-term, by roughly 2030, or at least a sharp reduction in greenhouse gas emissions. The Outer Continental Shelf Lands Act requires BOEM to weigh “the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone,” [Footnote 11: 43 U.S.C. § 1344(a)(3).] and provides broad discretion for the agency to account for “shift[s] with changes in technology, in environment, and in the nation’s energy needs.” [Footnote 12: *California ex rel. Brown v. Watt* (Watt I), 668 F.2d 1290, 1317 (D.C. Cir. 1981); see also *California ex rel. Brown v. Watt* (Watt II), 712 F.2d 584, 600 (D.C. Cir. 1983) (“[G]reat deference is afforded to the secretary in these areas.”).] While a complete restriction on offshore lease sales may face legal challenge, [footnote 13: See *Ctr. for Biological Diversity v. U.S. Dep’t of the Interior*, 563 F.3d 466, 485 (D.C. Cir. 2009) (explaining that “Congress has already decided that the OCS should be used to meet the nation’s need for energy,” and that BOEM’s duty under OCSLA is to “minimize[] the local environmental damage to the OCS,” but that “Interior simply lacks the discretion to consider any . . . effects that oil and gas consumption may bring about”).] a net-zero emissions approach (which entails a sharp curtailment in leasing plus mitigation and offsets of greenhouse gas emissions, as explained further below) is prudent. The administration should also withdraw sensitive or frontier areas (like the Arctic Ocean) [Footnote 14: See 43 U.S.C. § 1341(a) (“The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.”).] and/or refrain from offering any leases in certain planning areas. [Footnote 15: See, e.g., *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 603–07 (upholding Interior’s decision to not offer any lease sales in some planning areas in Alaska in the 2012-2017 leasing program).]

Comment Number: BOEM-EMAIL-32521-036937-5

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

In addition to revising management plans to curtail fossil-fuel leasing, Interior should take additional steps to remove public lands from fossil-fuel developers and promote more beneficial uses. For one, Interior should tighten standards for lease suspensions to ensure that speculative fossil-fuel leases expire in a timely fashion so that lands are restored to federal control. While lease suspensions should be issued only in narrow circumstances, [Footnote 16: See 30 U.S.C. § 209] BLM in particular has liberally granted requests for suspensions, and maintained those suspensions long-term. As of 2018, more than 2,700 leases were being suspended by BLM—nearly 1,000 of which had been suspended for ten years or longer. [Footnote 17: Gov’t Accountability Office, Oil and Gas Lease Management: BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures 17 (2018); see also The Wilderness Society, Land Hoarders: How Stockpiling Leases is Costing Taxpayers 3 (2015), available at <https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf> (cataloging acreage of suspended leases per state).] By maintaining these lease suspensions, the agency prevents the natural termination of the lease and prevents the land from returning to federal control where it can be put to more productive use. Moving forward, BLM should both undertake a systemic review of existing lease suspensions and set forth policies tightening standards for their issuance and continuation.

Comment Number: BOEM-EMAIL-32521-037159-1

Organization: Natural Resources Defense Council and Earthjustice

Commenter: Loomis Becca

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

I. The Development of a Five-Year OCS Leasing Program

OCSLA requires the Department of Interior (“DOI”) through the Bureau of Ocean Energy Management (“BOEM”) to prepare a program every five years that establishes a schedule of oil and gas lease sales for the Outer Continental Shelf. [Footnote 5: 43 U.S.C. § 1344(a).] BOEM is authorized to hold only the lease sales scheduled in this five-year program. [Footnote 6: Id. § 1344(d)(3).] OCSLA requires DOI to “maintain” this program, and the legislative history clarifies that “a new program must be prepared every five years.” [Footnote 7: H.R. Rep No. 95-590, at 1557 (1977).] BOEM currently operates under the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Final Program (“2017-2022 Leasing Program”), [Footnote 8: BOEM, 2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program (hereafter “2017-2022 Leasing Program”) (Nov. 2016), <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-OCS-Oil-and-Gas-Leasing-PFP.pdf>. Before approving the leasing program, the Secretary must submit the Proposed Final Program to the President and Congress for a sixty-day period. 43 U.S.C. § 1344(d)(2). After this period passes, the Secretary may approve the leasing program. Memorandum from Walter D. Cruickshank to Secretary of Interior, Record of Decision and Approval of the 2017- 2022 Outer Continental Shelf Oil and Gas Leasing Program (Jan. 17, 2017), <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-Record-of-Decision.pdf>.] developed by the Obama Administration, which will expire on July 1, 2022. [Footnote 9: The Trump Administration attempted to replace the Obama Administration’s offshore oil and gas leasing program with a draft proposed program (covering the period 2019-2024) that would have opened up virtually the entire U.S. coastline to offshore oil and gas leasing. This plan was put on hold and never finalized after President Trump’s effort to open areas in the Arctic and Atlantic was held illegal and after strong bipartisan opposition to leasing off the coast of Florida and elsewhere.]

Before preparing a new five-year program, the Solicitor’s office should withdraw Solicitor’s Opinion M-37062

(“Solicitor’s Opinion”), which erroneously interpreted OCSLA to prohibit implementing a no new leasing policy through a null schedule five-year program or through lease sale cancellation. [Footnote 10: Solicitor’s Opinion, Secretarial Discretion in Promulgating a National Outer Continental Shelf Oil and Gas Leasing Program, M-37062, Dept. of Interior (Jan. 13, 2021). Solicitor’s Opinions, or M-opinions, are legally binding on DOI until overruled by the Secretary, Solicitor, or Deputy Secretary. Dept. of Interior, Dept. Manual pt. 209 ch. 3 § 3.2(A)(11).]

II. A Null Schedule Leasing Program is Consistent with OCSLA

OCSLA provides “broad standards” for leasing program preparation. [Footnote 11: *State of California By & Through Brown v. Watt* (“Watt I”), 668 F.2d 1290, 1301 (D.C. Cir. 1981).] First, the leasing program must be designed to “best meet national energy needs,” as determined by the Secretary. [Footnote 12: 43 U.S.C. § 1344(a).] Second, the leasing program must be consistent with the principles set out in section 18(a)(1)-(4), which consider the environmental, economic, and social issues associated with offshore leasing. [Footnote 13: *Id.* § 1344(a)(1)-(4).] We urge the Secretary to adopt a null schedule five-year program consistent with these principles.

A null schedule five-year program would be subject to judicial review for its consistency with OCSLA and the soundness of its factual findings and policy judgments. The D.C. Circuit has exclusive jurisdiction over actions challenging Secretarial approval of five-year programs, [Footnote 14: *Id.* § 1349(c)(1).] and the court applies a “hybrid” standard of review to such cases. [Footnote 15: *Watt I*, 668 F.2d at 1300] Findings of fact must be based on substantial evidence and policy judgments must be based on “rational consideration of identified, relevant factors.” [Footnote 16: *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 300 (D.C. Cir. 1988) (citing *Watt I*, 668 F.2d 1290).] The Secretary’s statutory interpretations receive Chevron deference. [Footnote 17: *Id.* (citing *Watt I*, 668 F.2d 1290).]

Comment Number: BOEM-EMAIL-32521-037159-5

Organization: Natural Resources Defense Council and Earthjustice

Commenter: Loomis Becca

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

III. The Secretary Should Cancel the Remaining Proposed Lease Sales in the Existing Five-Year Program

The Secretary has broad discretion to cancel OCS lease sales. [Footnote 54: Indeed, BOEM is not required by OCSLA or its regulations to affirmatively cancel lease sales; the agency may simply not hold them] While the statute and regulations do not speak directly to lease sale cancellation, prior Secretaries have cancelled lease sales, and the 2017- 2022 Leasing Program clearly contemplates the Secretary’s authority to cancel lease sales. [Footnote 55: 2017-2022 Leasing Program, *supra* note 8, at 10-6 (“At the [Leasing] Program stage, no irreversible commitment of resources occurs because, as discussed, the Secretary can always choose to cancel a sale.”); *id.* at 6-9, 10-5 to 10- 6, 10-16 (discussing the option value provided by the Secretary’s ability to cancel lease sales and noting that cancelling too many sales creates costly unpredictability for industry and the government by preventing long-term planning).] Further, OCSLA contains no requirement to conduct any of the “proposed” lease sales listed in the leasing program. [Footnote 56: 43 U.S.C. § 1337(a)(1) (authorizing, but not requiring, the Secretary to grant leases to the highest competitive bidder); *id.* § 1344(a) (requiring a leasing program consisting of a schedule of “proposed lease sales”).]

Past lease sales have been cancelled for both environmental and economic reasons. DOI cancelled multiple lease sales in Alaska due to market conditions, specifically low oil prices and lack of interest from the oil industry. [Footnote 57: *Chukchi Sea, Lease Sale 237*, 80 Fed. Reg. 74,796 (Nov. 30, 2015); *Beaufort Sea, Lease Sale 242*,

80 Fed. Reg. 74,797 (Nov. 30, 2015); Cook Inlet, Lease Sale 211 (2011) (<https://www.boem.gov/oil-gas-energy/leasing/cook-inlet-oil-and-gas-lease-sale-211>) (which was subsequently rescheduled as Lease Sale 219 and then canceled due to lack of industry interest, 76 Fed. Reg. 11,506 (March 2, 2011)); Cook Inlet, Lease Sale 199 (2007) (<https://www.boem.gov/about-boem/cook-inlet-oil-and-gas-lease-sale-199>).] Lease Sale 214 for the North Aleutian Basin of Alaska was cancelled after President Obama withdrew Bristol Bay from leasing pursuant to OCSLA section 12(a). [Footnote 58: President Barack H. Obama, Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition (March 31, 2010), <https://www.govinfo.gov/content/pkg/DCPD-201000214/pdf/DCPD-201000214.pdf>; Dept. of Interior, Press Release: Secretary Salazar Announces Comprehensive Strategy for Offshore Oil and Gas Development and Exploration (March 31, 2020), https://www.doi.gov/news/pressreleases/2010_03_31_release; BOEM, North Aleutian Basin Lease Sale 214, <https://www.boem.gov/oil-gas-energy/leasing/north-aleutian-basin-lease-sale-214> (last accessed Nov. 4, 2020).] Following the Deepwater Horizon oil spill, two lease sales were canceled in the Mid-Atlantic and Gulf of Mexico regions to allow the agency to develop safety measures and provide greater environmental protections. [Footnote 59: Mid-Atlantic Region, Lease Sale 220, 75 Fed. Reg. 44,276 (July 28, 2010); Western Gulf of Mexico, Lease Sale 215, 75 Fed. Reg. 44,276 (July 28, 2010).]

Four lease sales remain under the current 2017-2022 Leasing Program. [Footnote 60: 2017-2022 Leasing Program, *supra* note 8, at S-4] Lease Sale 258 for the Cook Inlet is scheduled in 2021. Lease Sales 257, 259, and 261 for the Gulf of Mexico are scheduled in 2021 and 2022.

The Secretary should cancel these lease sales. As discussed in section II, further OCS leasing is not justified environmentally or economically and is unnecessary to meet the nation's energy needs. Furthermore, there are no legal barriers preventing the Secretary from cancelling these sales. The Secretary has broad discretion not to hold lease sales, [Footnote 61: 43 U.S.C. § 1337(a)(1); 2017-2022 Leasing Program, *supra* note 8, at 6-9, 10-5 to 10-6] and there is no prohibition against a new administration cancelling a sale scheduled in a previous administration's leasing program. As noted above, President Obama withdrew Bristol Bay from leasing and cancelled the North Aleutian Basin sale, which had been scheduled in a leasing program prepared by the Bush administration. Additionally, a new administration's DOI has the authority to prepare a new leasing program before the expiration of an existing program, thus superseding the old one.

Comment Number: BOEM-EMAIL-32521-037397-1

Organization: Texas Alliance of Energy Producers

Commenter: Karr Ingham

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

First, even though Texas oil and gas production accounts for very little of total US production from federal lands and waters, the state stands to suffer significant damage by such a moratorium in terms of employment loss and state revenue. This is because a number of the companies who engage in production on federal lands are headquartered in Texas, have a substantial employment presence in Texas, and/or produce on federal lands in neighboring states. Further, Texas supplies a significant portion of labor and other resources for federal offshore production in the Gulf of Mexico.

Federal lands and waters account for 22 percent of total US oil production and 12 percent of natural gas production in 2019. In addition to surface lands the Federal government has management responsibility for hundreds of millions of federal minerals acreage underlying these lands and offshore areas. Production of oil and natural gas from these areas are critical to the nation's energy portfolio and will be key to ensuring the United States remains a dominant player in the worldwide energy arena.

A permanent moratorium on federal onshore and offshore production results in steadily diminishing US domestic production to meet the ongoing energy needs of our economy. These restrictions on domestic energy supplies, absent a corresponding decrease in demand, lead to negative consumer outcomes in the form of higher direct energy prices, lowered economic output, and reductions in supply chain activity on which the industry relies. America would begin to cede its manufacturing gains of recent years as the need for those services declines along with production and federal development activity. Further, the energy must then be sourced elsewhere. Energy imports, having declined sharply in the last 10 years, would begin to increase again as the US imports oil in greater amounts from foreign sources, virtually all of which produce energy in less clean fashion than the United States.

The Mineral Leasing Act and the Outer Continental Shelf Lands Act prescribe the necessary and proper rules and regulations to allow oil and natural gas producers to operate on federal lands. Both of these laws were established to promote the production of minerals on the public domain for the benefit of the country, its economy, its citizens, and its households and businesses. Congress designated executive agencies, particularly the Department of the Interior, to manage these lands under the principles of multiple use and sustained yield. It is clear that mineral production is a key aspect of the “multiple use” mandate and cannot be halted at the whim of the President or regulatory agencies.

Comment Number: BOEM-EMAIL-32521-037410-3

Organization: Southern Environmental Law Center

Commenter: Melissa Whaling

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

II. OFFSHORE DRILLING IS WRONG FOR THE SOUTHEAST COAST

A. OCSLA Provides Rigorous Procedural and Substantive Requirements for the Development of Offshore Oil and Gas Resources

In 1978, Congress declared the Outer Continental Shelf (“OCS”) to be “a vital national resource reserve held by the Federal Government for the public.” [Footnote 38: 43 U.S.C. § 1332(3).] The OCS “should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.” [Footnote 39: Id.] Furthermore, OCS management must be “conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.” [Footnote 40: Id. § 1344(a)(1).] In fulfilling these mandates and determining which areas to include in a leasing program, the Bureau of Ocean Energy Management (“BOEM”) within DOI must conduct a thorough analysis as required under the Outer Continental Shelf Lands Act (“OCSLA”).

BOEM must consider the eight factors outlined in Section 18 of OCSLA when determining the timing and location of offshore oil and gas exploration, development, and production. [Footnote 41: Id. § 1344(a)(2)(A)–(H).] These factors include, among others, the laws, goals, and policies of affected States, competing uses of the sea and seabed, and relative environmental sensitivity and marine productivity. [Footnote 42: Id.; see also *California by Brown v. Watt*, 668 F.2d 1290, 1297 (D.C. Cir. 1981) (describing Section 18 process and listing factors with which Secretary must make leasing program consistent).] Upon consideration of these factors, BOEM must develop its leasing program “so as to obtain a proper balance between the potential for

environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.” [Footnote 43: 43 U.S.C. § 1344(a)(3).]

In 2016, the Obama administration removed the Atlantic Planning Areas from the 2017- 2022 leasing program [Footnote 44: SELC, on behalf of 44 conservation groups, submitted comments on the 2017-2022 Draft Proposed Program urging the Bureau of Ocean Energy Management (“BOEM”) to remove the Atlantic Planning Areas from consideration. Those comments are incorporated by reference. See Letter from SELC et al. to Kelly Hammerle, Five-Year Program Manager, U.S. BOEM, & Geoffrey Wikel, Div. Env’t. Assessment Chief, U.S. BOEM (Mar. 30, 2015), <https://southernenvironment.sharefile.com/d-s52187b0c154242daa79289c1bbb22dd7>] after “weigh[ing] all eight of the Section 18 factors...and...balanc[ing] the potential for environmental damage, the discovery of oil and gas, and adverse impacts on the coastal zone.” [Footnote 45: U.S. BOEM, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROPOSED PROGRAM (Mar. 2016), <http://www.boem.gov/2017-2022-Proposed-Program-Decision> [hereinafter “2017-2022 PP”], at S-2, S-11; see also 43 U.S.C. § 1344(a)(2)(A)–(H).] This decision was based in large part on three factors: (1) strong coastal opposition, (2) substantial potential conflicts with military operations and commercial uses of the ocean (e.g., commercial fishing and tourism), and (3) current market conditions and persistently low oil prices. [Footnote 46: 2017-2022 PP at S-8 - S-10 (discussing ocean-dependent tourism, commercial and recreational fishing, commercial shipping and transportation, military activities, and NASA activities in the Atlantic OCS). See also *id.* at S-10 (“[T]he current market of increased onshore production and persistently low oil prices reduces the need for oil and gas development in the Atlantic at this time.”). See also Press Release, Interior Department Announces Next Step in Offshore Oil and Gas Leasing Planning Process for 2017-2022, U.S. DOI (Mar. 15, 2016), <https://www.doi.gov/pressreleases/interior-department-announces-next-step-offshore-oil-and-gas-leasing-planning-process> (“When you factor in conflicts with national defense, economic activities such as fishing and tourism, and opposition from many local communities, it simply doesn’t make sense to move forward with any lease sales in the coming five years.”)] The decision to remove the Atlantic Planning Areas was also based on “careful consideration of the comments received from Governors of affected states.” [Footnote 47: 2017-2022 PP at S-2 (referring to expressions of either opposition or concern from the Governors of New Jersey, Delaware, and South Carolina). See also *id.* at 9-1, Table 9-1.] Furthermore, the Obama administration’s decision was based on the need for “significant additional analysis...to determine how oil and gas leasing activities may fit within the already established, complex multiple use landscape along the Atlantic OCS.” [Footnote 48: *Id.* at S-10] Such an analysis has still not been done.

A similar result was eventually achieved during the Trump administration. On April 28, 2017, former President Trump issued his Executive Order, Implementing an America-First Offshore Energy Strategy, which called on BOEM to revise Obama’s five-year program to include lease sales in the Atlantic Planning Areas. [Footnote 49: Executive Order 13,795, Implementing an America-First Offshore Energy Strategy (Apr. 28, 2017).] A steady outpouring of opposition to offshore drilling followed, from coastal leaders and local governments. [Footnote 50: SELC, on behalf of 51 conservation groups, submitted comments on the 2019-2024 Draft Proposed Program urging BOEM to remove the Atlantic Planning Areas from consideration. Those comments are incorporated by reference. See Letter from SELC et al. to K. Hammerle, U.S. BOEM (Mar. 9, 2018), <https://southernenvironment.sharefile.com/d-s24749776abd040679b04217206a39ba3>] Those draft proposed plans were delayed “indefinitely” and never finalized. [Footnote 51: Timothy Puko, Trump’s Offshore Oil-Drilling Plan Sidelined Indefinitely, WALL ST. J. (Apr. 25, 2019), <https://www.wsj.com/articles/trumps-offshore-oil-drilling-plan-sidelined-indefinitely-11556208950>.] And just before leaving office, former President Trump, citing local opposition, issued a presidential memorandum enacting a ten-year moratorium on offshore energy leasing off the coasts of North Carolina through Florida beginning July 1, 2022. [Footnote 52: Presidential Memorandum, Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition, *supra* note 37. Notably, although President Trump publicly stated that he was protecting the coast of Virginia from offshore leasing, his official presidential memorandum did not formalize such protections. See Brett Hall, Trump says he’s extending offshore drilling ban off Virginia, North Carolina coasts, WAVY (Sept. 26, 2020), <https://www.wavy.com/news/politics/north-carolina-politics/trump-says-hes-extending-offshore-drilling-ban-off->

virginia-north-carolina-coasts/.] This stunning course reversal from an administration traditionally dedicated to expanding fossil fuel development showcases the powerful opposition and widespread unpopularity of Atlantic drilling.

Meanwhile, over recent years, the reasons for excluding the region from offshore oil and gas development have continued to become even more compelling:

- Every East Coast governor, including the governors of Virginia, the Carolinas, and Georgia have now publicly stated they don't want drilling off their shores;
- More than 250 communities have passed formal resolutions opposing offshore drilling (as of April 2021);
- Permits for seismic testing, the precursor to offshore drilling, were held up in federal court for more than two years and eventually expired;
- The economic contributions from ocean-based industries—which are incompatible with offshore drilling—have increased;
- Dozens of additional fishing, tourism, and small business associations, as well as military stakeholders, have sent letters and passed resolutions opposing offshore drilling;
- Unprecedented plans are in the works for offshore wind energy development on the East Coast;
- Scientific exploration continues to unearth the presence of natural resources at risk from oil and gas development;
- Critically endangered North Atlantic right whales that migrate and calve in the Mid- and South Atlantic are hovering at the brink of extinction and suffering alarming mortality rates;
- Scientific research continues to reveal the negative impacts of oil and gas exploration on marine ecosystems and the dire climactic consequences of continuing to pursue fossil fuel development;
- Hurricanes have intensified with climate change, further demonstrating the unique challenges for oil and gas development;
- Critical offshore drilling safety measures like the Well Control Rule, which was implemented in order to prevent an event like the Deepwater Horizon oil spill, have been weakened;
- Offshore energy production has become less competitive with other energy sources, and appetite for offshore oil and gas leases is lower than it has been in years; and
- Consumption of oil and natural gas is projected to plateau over the next five years.

Excluding the Mid- and South Atlantic Planning Areas from oil and gas activity remains the best decision for protecting the region's natural resources and coastal communities. In the Department's comprehensive review of the oil and gas program, it should consider not only exclusion from the next 5-year offshore leasing program, but also permanent protection for this valuable and fragile area.

Comment Number: BOEM-EMAIL-32521-037411-1

Organization: Canary, LLC

Commenter: Robert Dillon

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

As Department of Interior (DOI) has moved, at the direction of President Biden, to consider a long-term moratorium on new oil and gas leases on federal lands, some have attempted to downplay the consequences of such action. They reason that only a fraction of American oil and gas production – about a quarter of oil and a tenth of gas production – takes place on federal lands. While this may be true in a larger context, the reality in Western States is that fossil fuel production and federal lands are intimately linked. Consequently, a ban on federal oil and gas leases would be crippling to our industry.

As the owner of a major oilfield services provider, I can attest that it is virtually impossible to avoid federal lands when it comes to energy production. Most shale or “tight” gas plays straddle federal lands, meaning one can’t simply zig-zag their way through underground rocks to avoid federal mineral deposits. If they could do so, they would, as operating on federal lands is a costly and bureaucratic process that often delays projects. Given this reality, one in which operators need federal land to explore and extract energy, the moratorium DOI is considering could strangle oil and gas development in the West.

Comment Number: BOEM-EMAIL-32521-037411-5

Organization: Canary, LLC

Commenter: Robert Dillon

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

After the Biden administration took steps to suspend new oil and gas permits and halt lease sales on federal lands [Hyperlinked: <https://www.npr.org/sections/president-biden-takes-office/2021/01/27/960941799/biden-to-pause-oil-and-gas-leasing-on-public-lands-and-waters>] and waters, there's been much talk about how the move wouldn't impact the energy industry too dramatically.

The theory went that only a sliver of U.S. output – about 25 percent of oil and 10 percent of gas – is produced on federal lands and waters. The vast majority of operations are on private lands. It was also noted that the Biden administration wasn't turning off the faucet entirely. Companies that already hold acreage and permits to drill may continue, and indeed, many have stockpiled federal drilling permits [Hyperlinked: <https://www.denverpost.com/2021/01/10/oil-companies-drilling-permits-biden-climate/>] in recent months, limiting the near-term impacts on production.

While all true, those arguments ignore the troublesome side effects of Biden's actions. In the West, for instance, Biden's restrictions could have a much more significant impact by strangling gas development in the region – and not just on federal lands.

Any gas producer in the West will tell you that it's almost impossible to avoid federal lands, even if when drilling on state or privately held acreage because most shale or “tight” gas plays straddle federal lands.

That is the nature of horizontal drilling and fracking. The technology and drilling strategies that made the shale revolution possible – and turned pre-pandemic America into the world's top oil and gas producers – allows drillers to unlock resources underground miles from the drill pad.

As the head of a major oilfield services provider, I can tell you that operators can't just zigzag their way through

underground rocks to avoid federal mineral deposits. Believe me, if producers could operate only on non-federal land, they would do it, because federal land is more costly, and the bureaucratic process required to begin operations takes longer.

Gas-prone plays that fall under a great deal of federal control include the Powder River Basin of Wyoming, Colorado's Piceance Basin, and Utah's Uintah Basin. In areas like these, it often requires an adjacent lease on nearby land to optimize extraction of the gas reserves in shale rocks, whether because of geology or topography. Under Biden's crackdown, if any of that land is federal, the entire project would be blocked.

It's also not uncommon for producers to try to develop a water well on private, state or tribal land but run into ownership issues. The nature of land ownership in the West is such that there is often a closely interlocking patchwork of land ownership – with tribal lands next to federal plots, next to private areas, next to state lands. That points to more above ground and sub-surface issues as the Biden restrictions take effect.

On Jan. 27, Biden directed the Interior Department to pause all new oil and gas leasing on federal lands and waters [Hyperlinked: <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>] indefinitely, following through on a campaign pledge to satisfy the anti-fossil fuel segment of his coalition.

Interior says the pause will allow it to examine whether its leasing program serves the public interest and is striking the appropriate balance with competing priorities, such as climate change, wildlife habitat and clean water.

The oil industry, particularly Western producers, will no doubt strongly oppose restrictions in public comments to Interior. The review is so complex that it could take years to accomplish, which effectively moves it from a temporary ban to a long-term moratorium.

The Interior Department under Biden is trying to justify the ban by saying that 26 million onshore federal acres are currently leased to oil and gas companies, and 53 percent of those leases are considered unused or nonproducing. The industry is also “sitting on” 7,700 approved permits to drill, Interior says.

But the argument that the industry has plenty of unused drilling permits to keep it busy is a blanket statement that doesn't apply to every company. Just because one firm has enough leases in its back pocket doesn't mean that another does. Management teams run companies differently based on market conditions and strategic priorities.

The broader Biden goal is to reach national carbon neutrality by 2050 [Hyperlinked: <https://joebiden.com/climate-plan/>] in line with targets set by a growing number of nations and corporations, which would require fossil fuels to be gradually phased out or paired with carbon offset or capture technology.

That is a tall order for the world's largest oil and gas producer. And it's why some industry officials hope to persuade the Biden administration to ease up on restrictions. Eventually, industry believes the moderate, centrist [Hyperlinked: <https://www.theguardian.com/commentisfree/2019/apr/25/joe-biden-2020-democrats-choice>] Biden will reemerge.

In today's highly polarized political environment, though, that may be wishful thinking. It's no surprise that top industry groups, including the Western Energy Alliance, [Hyperlinked: <https://www.westernenergyalliance.org/>] are already filing legal challenges against the administration. The Alliance reckons the Biden ban on public lands will cost the U.S. economy \$670 billion [Hyperlinked: <https://www.westernenergyalliance.org/pressreleases/biden-ban-on-public-lands-to-cost-economy-670-billion-over-20-years>] over the next 20 years and hammer jobs in an industry already struggling after two price collapses over the past six years.

In court, the outlook for producers is much better. After all, the primary law governing federal leasing and permitting is the Mineral Leasing Act, [Hyperlinked: https://en.wikipedia.org/wiki/Mineral_Leasing_Act_of_1920] which states that the Interior Secretary shall hold quarterly lease sales. Shall, not may. That's about as cut and dry as it gets.

Comment Number: BOEM-EMAIL-32521-037419-1

Organization: Montana Wilderness Association

Commenter: Aubrey Bertram

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Overall, Montanans are hungry for significant changes to the management of our federal public lands. According to the bi-partisan Colorado College State of the Rockies Conservation in the West poll:

- 58% of Montanas are worried about the future of our planet.
- 71% support 30 x 30 goals.
- 64% of Montanans want our federal government to prioritize conservation and recreation on public lands over maximizing the amount of land available for energy leasing.
- 70% think that oil and gas development on national public lands should be strictly limited or even stopped altogether.
- 56% support transitioning our energy economy from fossil fuels to entirely renewable sources in the next fifteen years.
- 64% support making public lands a net-zero source of carbon pollution.

There are nearly 30 million acres of federal public lands in Montana. These places are foundational to Montana's quality of life. Our state has many attributes that most others lost long ago: unique and diverse wildlands from mountains to grasslands, connected habitat that serves intact populations of carnivores and game species, clean water that supports fish and other wildlife, and abundant opportunities to find solitude.

Roughly 91% of the federal mineral estate in Montana is open to oil and gas leasing, despite our relatively low rate of production, which is due in large part to the lack of recoverable deposits in our state's geologic makeup. As of December 2020, Montana ranked 14th in the nation for crude oil output and 20th for national gas production.

The BLM's interpretation of the Mineral Leasing Act's provision -- to make all public lands "known or believed to contain oil or gas deposits available" for leasing -- currently compels the agency to open up all possible mineral estates to leasing during the planning processes, regardless of the potential for production and without regard for wildlife habitat, outdoor recreation, carbon mitigation, wilderness, and other values.

This glut of land made available to private industry has made Montana a magnet for speculative leasing.

Our state ranks second in the nation for speculative leasing, a practice whereby private interests are able to purchase leases for the minimum bid of \$2 an acre or else buy leases not bid on for \$1.50 an acre after an auction ends.

Furthermore, approximately 350 leases, amounting to 891,557 acres of Montana's public lands, sit idle, producing no oil or gas, no royalties, and no jobs for our local communities. There currently isn't one single operating oil rig in the state. What's more, these leases prevent our local land managers from actively stewarding these lands for

the wildlife habitat, recreation opportunities, clean water, carbon sinks, and other values they provide.

The fiscal and management policies that encourage speculative leasing have cost Montanans millions of dollars in lost opportunity revenue since 1987, the last time legislative updates were made to the Mineral Leasing Act. The 1987 amendment to the act gives the Interior secretary a broad range of authority, which no secretary has ever acted on. We implore you to use your authority to:

- raise the minimum bid rate in competitive lease sales.
- raise the price for the noncompetitive purchase of leases.
- raise the royalty rate on production.
- raise the yearly rental rates for leases.

The secretary also has the power to direct robust rulemaking procedures to ensure robust public notice and participation at every stage of the leasing and development processes.

We therefore encourage you to use that authority to require the development of “reasonably foreseeable development scenarios (RFDs)” before making public lands available for lease. These RFDs will help prevent speculators from scooping up cheap leases to public lands that have little or no oil and gas potential.

Comment Number: BOEM-EMAIL-32521-037429-4

Organization: Western Energy Alliance

Commenter: Tripp Parks

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

The ban would not only limit production on public lands, as the study shows, but have spillover effects on adjacent nonfederal lands. Because of the checkerboard nature of federal, state, Indian, and private lands and minerals across the West, adjacent lands can become isolated and nonfederal oil and natural gas resources stranded when federal access is denied. Because of the interlocking land and mineral ownership in the West, the leasing ban will affect existing projects awaiting adjacent leases. It will affect tribal, Indian allottee, state, and private horizontal wells that cannot avoid federal minerals that lie along their laterals. New leases are necessary in both these common situations to move forward with projects on existing leases.

Taken together, the above statistics demonstrate that oil and natural gas production on federal lands provides a fair return to the government, directly funds important conservation programs, and provides jobs, state tax revenue and economic impact that cannot simply be replaced if the decision is made to end or limit federal leasing and permitting. DOI should not ignore these facts as it continues its review.

Comment Number: BOEM-EMAIL-32521-037440-1

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

We feel that the current Federal Oil & Gas lease form, leasing rules, and leasing regulations are severely out of date and are in direct conflict of the Federal Government goals of increasing Green Energy Production. Furthermore, they severely disadvantage and affect surface landowners with deeded property above the Federal

minerals, and deeded minerals directly offsetting Federal leases. Since this letter was written, the minerals described in the attached letter were put up for lease sale and were awarded to three separate entities. Because President Biden stopped Oil & Gas leasing on Federal lands, the actual leases have not been finalized. We think that based upon the outcome of the Oil and Gas sale, our original concerns expressed in the attached letter, and subsequent events that have occurred that these leases should not be finalized. These reasons in our attached letter, and reasons outlined below specific to our ranch can also apply to family farmers and ranchers nationwide. These comments and the attachment are being submitted for consideration in the current Department of Interior discussion forum on Oil and Gas. 1. We have been approached by three solar and/or wind companies to lease or purchase our deeded surface land to put in wind and solar farms to generate green energy. The most recent company approached us last week. Each company specifically states that they will not be interested if there is oil/gas drilling or production on the ranch that would interfere with their solar arrays or wind turbines.

a.SOLUTION: Prohibit Federal Oil and Gas Leases underneath Privately Deeded Surface Lands. There are millions of acres of minerals owned by the Federal Government, where the Federal Government also owns the surface that could be leased without affecting current ranching, farming, or green energy development.

b.SOLUTION: Prohibit Federal Oil and Gas Leases within a 25-mile radius of any existing or proposed Green Energy Project. There are wind farms and solar farms to our East and West. We are in the middle of these areas and our property with prolific sun and wind could easily be added to the existing and proposed grid. If the Government is serious and wants to shift to Green Energy, the Federal Government needs to protect Green Energy Areas.

Comment Number: BOEM-EMAIL-32521-037440-12

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Other Sections: 3

Comment Excerpt Text:

10. The land was designated a flyway for migratory birds by the USDA, and at the USDA's request, we put in ladders in the water tanks we have for cattle so that the birds would not continue to drown and would have a way to get out of the tanks. We object to any operations that would interfere with migratory birds or native birds on the ranch.

11. Because the of the migratory and native birds on the ranch, and because of the severe drought as so designated by Federal Agencies, we ask that an Environmental Impact Study be completed on our deeded acreage above the Federal Minerals to evaluate how any Oil and Gas activities would affect the Surface, Surface Water and the subterranean Water, or animals that used the designated area before any minerals under our ranch are put up for lease.

12. Water pollution and sourcing of water are a major concern of our Ranch Partnership. Oil and Gas Operations by another energy company resulted in severe pollution of the ground water on the ranch so badly that we could not use the water for our personal use. After we took legal action, the energy company settled, and it has further taken them over 18 years of continual daily remediation to get the ground water back to within useable standards which still has not been totally completed.

13. Before any lease is finalized we respectfully request that BLM Certify they are in full compliance with all federal and state laws and regulations including the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA) and any subsequent regulations and court orders or judgments thereto.

Comment Number: BOEM-EMAIL-32521-037440-3

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

3. One of the companies that bid on the tracts is an Abstract company that does not drill or produce Oil and Gas. They act as a front company for other companies, and attempt to broker leases they secure. Other companies that bid on the leases are speculating that they can broker the lease to an oil company that will drill it. This ties the land up under the current government lease form for 10 years. It prohibits us from either selling or leasing our land for Green Energy because there is the potential in the future that someone might drill the land and would want to build roads and pad sites where solar panels or wind turbines might be placed. This should not be allowed. The entity being awarded any lease, should be the entity that is required to drill the lands. a. SOLUTION: Require, as has been done with all private deeded leases in the past on our ranch, that the entity leasing the minerals cannot assign or sell it until it is drilled, and production is found without our prior approval. This would stop speculative nomination and leasing of Federal Lands by brokers and entities only interested in trying to sell their lease for a profit. A farmout agreement would be acceptable if it were a legitimate farm-out that was going to be drilled within the leasing period. Bottom Line: We want to be able to sell or lease our deeded land to Green Energy companies that are interested in putting in MW of Green Energy now. Because of the current Federal Oil/Gas lease rules and regulations and lease forms, we are being prohibited from doing so because the Green Energy Companies do not want to spend money putting in Green Energy solar and wind projects that may be required to be terminated because of a speculative oil/gas lease that may or may not be drilled. The fact that someone wants to speculate on a Federal Oil and Gas Mineral lease underneath our deeded land will cost our family untold monetary losses from both a sale of our properties and future royalties we might receive from wind and solar. We respectfully request that the antiquated oil and gas lease forms, rules and regulations be changed to stop the unfairness to both the Federal Government and Private landowners like ourselves that is currently taking place.

Comment Number: BOEM-EMAIL-32521-037855-10

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Eliminate anonymous expressions of interest (EOIs);

-Eliminate noncompetitive lease awards; if no competitive bids are submitted, then the parcels should be taken off the table for leasing opportunities for the next five years;

Comment Number: BOEM-EMAIL-32521-037855-12

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Amend the term of competitive leases from "a primary term of 10 years" to "an initial term of 5 years with an option to renew it for an additional 5 years" (still 10 years total); however, if the lessee takes no tangible steps

(such as filing for a permit to survey or to begin operations) to use the initial 5-year term of the lease, then the cost of the lease should automatically double for the second term;

-Generally limit onshore leasing, to the extent possible, to parcels identified as having high production potential and low environmental impact;

-Stop leasing in locations that have low production potential and high environmental risk to specially protected natural and cultural resources, such as units of the national park system, the national trail system, and the national wildlife refuge system; designated wilderness areas; designated critical habitat for federally-listed threatened or endangered species; areas of critical environmental concern; and significant cultural and archeological sites. These special places, not the mineral deposits on adjacent public lands, are our Nation's heritage to hold dear, conserve, and pass on unimpaired to future generations;

-Establish automatic no leasing (NL) or no surface occupancy (NSO) stipulations of at least 5 miles (and up to 10 miles if circumstances warrant) from the boundaries of any of the specially protected resource areas listed in the bullet above;

Comment Number: BOEM-EMAIL-32521-037855-20

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

REFORM THE OUTER CONTINENTAL SHELF (OCS) OIL AND GAS LEASING PROGRAM MANAGED BY BOEM

Background: In 2011, after a review of the 2010 Deepwater Horizon disaster in the Gulf of Mexico, the Department divided the functions of the former Minerals Management Service and assigned them to three newly created agencies, which included: the Bureau of Ocean Energy Management (BOEM), which manages development of U.S. Outer Continental Shelf (OCS) energy and mineral resources in an environmentally and economically responsible way. BOEM administers both the OCS oil and gas exploration and development program under the Outer Continental Shelf Lands Act [Footnote 30: <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Outer-Continental-Shelf/Lands-Act-History/Outer-Continental-Shelf-Lands-Act.pdf>]; and the OCS renewable energy program under the Energy Policy Act of 2005 [Footnote 31: <https://www.govinfo.gov/content/pkg/BILLS-109hr6enr/pdf/BILLS-109hr6enr.pdf>].

We recommend that BOEM take the following actions to reform the OCS oil and gas program:

-Impose an immediate moratorium on issuing new leases under the current five-year OCS leasing program.

-In general, limit future leasing to locations with established oil and gas leasing operations; and do not initiate new leasing adjacent to states that formally object to it because of the risks it creates to thriving tourism, commercial fishing, and other sustainable coastal economies that depend upon unpolluted marine waters and clean beaches.

-Prepare and issue a new draft proposed program (DPP) for FY 2023-2028 that includes the following provisions:

-The new DPP must comply with the balancing requirements of Section 18(a)(3) of OCSLA, which requires the Secretary to render decisions on the timing and location of OCS leasing that strike a balance between the potential for environmental damage, the potential for discovery of oil and gas, and the adverse impact on the coastal zone.

-Only necessary and appropriate lease opportunities should be offered; and these should be focused in areas with the greatest production potential with relatively limited environmental risk.

-Information provided in the 2019-2024 DPP identified areas with by the greatest production potential to be the Central Gulf of Mexico (GOM), Chukchi Sea (AK), Western GOM, and Beaufort Sea (AK). Of these, the Central GOM and Western GOM are currently the most extensively leased, with over 50,000 wells drilled (DPP Sections 4.3.1 and 4.3.2).

-The new DPP should clearly identify planning areas with relatively limited production potential or relatively high environmental and social costs; and such areas should be excluded from proposed leasing in order to “strike a balance” between the potential for environmental damage and the potential for discovery of oil and gas.

-The new DPP should include coastal buffer(s) to accommodate concerns such as military use, fish and marine mammal migration and other near-shore uses, and be universally applied to all planning areas with populated shorelines.

-A variety of other mitigation measures should also be considered including: avoidance of OCS oil and gas activities in ALL environmentally important areas (EIAs); temporal closures or restrictions to avoid conflicts with fish and wildlife during nesting/birthing/young rearing periods and migrations; and restrictions on the use of seismic air guns at certain times and in certain locations to protect marine mammals.

-The new DPP should be responsive to state concerns in accordance with Section 19(c) of OCSLA, which states: “The Secretary shall accept (emphasis added) recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.” By any reasonable interpretation of the statute, BOEM should accept any state’s formal request to be excluded from OCS leasing; and then focus proposed leasing in areas with existing leases that have their respective state’s support.

Comment Number: BOEM-EMAIL-32521-037855-3

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Onshore oil and gas leasing: Eliminate “speculative” leasing practices, such as anonymous expressions of interest (EOIs) and noncompetitive lease awards; stop leasing low production potential parcels adjacent to specially protected, nationally significant natural and cultural resources, such as units of the national park system, the national trail system, and the national wildlife refuge system; designated wilderness areas; designated critical habitat for federally- listed threatened or endangered species; areas of critical environmental concern; and significant cultural and archeological sites. These special places, not the mineral deposits on adjacent public lands, are our Nation’s heritage to hold dear, conserve, and pass on unimpaired to future generations.

-Coal mining on public lands: Impose an immediate moratorium on all coal mining activity on public lands until the review is complete; during the review, differentiate between leasing for thermal coal vs. metallurgical coal.

For thermal coal, issue no new leases, terminate inactive leases, and phase out existing active leases as soon as reasonable; and do not allow thermal coal extracted from public lands to be exported for burning in other countries. For metallurgical coal, allow continued leasing on public lands for the foreseeable future, based on the “necessary and appropriate” principle, until more environmentally friendly alternative(s) are readily available.

-Offshore oil and gas leasing: Place a moratorium on new OCS leasing until BOEM has updated its current five-year leasing program; limit new leasing to locations with established oil and gas leasing operations; do not initiate new offshore leasing adjacent to states that formally object to it because of the risks it creates to their thriving tourism industry, commercial fishing, or other “sustainable economies” that are dependent upon unpolluted marine waters and clean beaches.

-Offshore oil and gas safety regulations: Conduct an objective review of key regulations that were revised under the previous administration.

Comment Number: BOEM-EMAIL-32521-037855-7

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

REFORM THE ONSHORE OIL AND GAS LEASING PROGRAM MANAGED BY BLM

Background: The Bureau of Land Management (BLM) manages the federal government’s onshore subsurface mineral estate – consisting of about 700 million acres (30% of the United States) held by the BLM, U.S. Forest Service and other Federal agencies and surface owners – for the benefit of the American public. BLM also manages some aspects of the oil and gas development for Indian tribes from the Tribal mineral estate. [Footnote 2: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about>]

Procedures for administering the oil and gas leasing program are derived from applicable laws, regulations, and agency-issued directives. Effective, comprehensive, and durable reform of the program requires changes at all three levels of public policy. The following reforms are recommended:

A. Re-align BLM leasing program priorities and practices with applicable statutory mandates and the core principle of putting “conservation” first.

For many decades, BLM has managed the onshore oil and gas leasing program under the flawed premise that “leasing is required” [Footnote 3: See, e.g., Testimony from Michael Nedd, Deputy Director, Operations, BLM, to the U.S. House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources (Mar. 12, 2019) (leasing “required by the Mineral Leasing Act.”); Memorandum from DOI Inspector General, to Robert Abbey, Director, BLM 6 (Dec. 29, 2009) (“Kent Hoffman [Utah’s Deputy State Director for Lands and Minerals] and the BLM USO Natural Resource Specialist both commented that BLM is required by law to hold a quarterly lease sale.”), available at https://www.doioig.gov/sites/doioig.gov/files/BLM-Lease-Report_508.pdf.], which is clearly not the case. The Mineral Leasing Act (MLA), 30 U.S.C. § 22 [Footnote 4: See 30 U.S.C. § 226, which states: “All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.” <https://www.law.cornell.edu/uscode/text/30/226>], authorizes, but does not require, the Secretary to lease federally owned “oil and gas lands.”

The Federal Lands Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (a)(8) [Footnote 5: <https://www.law.cornell.edu/uscode/text/43/1701>], requires BLM to manage public lands “in a manner that will

protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” (emphasis added). Federal courts have consistently held that oil and gas development is not the dominant use of public lands and must be weighed against other valid uses, including recreation, fish and wildlife conservation, and renewable energy development. [Footnote 6: See, e.g., *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009) (“It is past doubt that the principle of multiple use does not require BLM to prioritize [oil and gas] development over other uses;”) *Nat’l Mining Ass’n v. Zinke*, 877 F.3d 845, 872 (9th Cir. 2017) (“Nor does [multiple use] preclude the agency from taking a cautious approach to assure preservation of natural and cultural resources.”).]

In addition, numerous other environmental and historic preservation laws, all of which emphasize conserving natural and cultural resources, are applicable to BLM’s oil and gas leasing program. These statutes include: the National Environmental Policy Act [Footnote 7: <https://www.law.cornell.edu/uscode/text/42/4331>], the Clean Air Act [Footnote 8: <https://www.law.cornell.edu/uscode/text/42/7401>], the Clean Water Act [Footnote 9: <https://www.law.cornell.edu/uscode/text/33/1251>], the Endangered Species Act [Footnote 10: <https://www.law.cornell.edu/uscode/text/16/chapter-35>], the Wilderness Act [Footnote 11: <https://www.law.cornell.edu/uscode/text/16/1131>], the National Historic Preservation Act [Footnote 12: <https://www.law.cornell.edu/uscode/text/16/chapter-1A/subchapter-II>], the Archeological Resource Protect Act, and others.

The first and foremost reform needed now is for BLM to transform its traditional thinking from “leasing is required” (which it is not) to: “conservation is required; leasing is not.” Under a “conservation first” strategy, it follows that while leasing may be allowed, it should only be allowed when necessary and appropriate to support national security and economic interests and if/when such leasing not in conflict with conservation. Putting such a transformation of BLM’s fossil fuels programs into practice requires significant reforms of applicable policies, regulations, and laws.

Section 8 - Fiscal Terms/Fair Market Value/Royalties/Bonding

Comment Number: BOEM-EMAIL-32521-000004-1

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

This is an excerpt from the U.S. Energy & Climate Roadmap produced by the Energy Policy Institute at the University of Chicago. Find the full Roadmap at: <https://epic.uchicago.edu/us-energy-and-climate-roadmap>.

[See original attachment A1 for Figure 1, which includes three bar graphs entitled “Average Royalty Rate,” “Maximum Primary Term,” and “Minimum Reserve Price” comparing data between Louisiana, New Mexico, North Dakota, Texas, and BLM. Figure 1 includes “Note: The average royalty rate in each state is the average of the lowest and highest royalties used in state auctions. Primary terms are identical for all auctions in each state except TX, which sometimes uses three years. The minimum reserve price is the lowest reserve observed in each state’s auctions. The highest reserve observed in NM is \$1,875/acre, and the highest reserve observed in TX is \$5,000/acre.” Figure 1 also includes “Source: Louisiana Department of Natural Resources; North Dakota Department of Trust Lands; New Mexico State Land Office; Texas General Land Office; Bureau of Land Management.”]

At the same time, current BLM leases fail to induce timely resource development by allowing firms to acquire

leases for miniscule initial prices and then effectively tie up land, without development, for as long as ten years. Moreover, the BLM's bonding practices, ostensibly designed to ensure that companies restore the surrounding environment when a well is exhausted, have not been revised in some fifty years, leaving them outdated and unequal to the task.

There are a number of changes the Biden administration could pursue to ensure that BLM meets its statutory responsibilities. Specifically, it could raise the federal royalty rate to substantially increase taxpayers' returns, reduce the standard lease term to speed the rate at which resources are developed, and increase federal bonding requirements to better protect the environment. Each of these steps would also bring federal onshore oil and gas leasing policy into better alignment with that used by state agencies.

Comment Number: BOEM-EMAIL-32521-000004-2

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

While the majority of U.S. oil and gas production comes from privately owned mineral resources, federally managed resources contribute a non-trivial share of U.S. hydrocarbon production. While the largest single federal oil and gas resource is the offshore Gulf of Mexico, considerable volumes of oil and gas are produced from onshore resources managed by BLM. In 2019, for example, 0.8 million barrels (mmbbl) of oil and 9.1 billion cubic feet (bcf) of natural gas were produced per day from onshore federal land, equal to 6 percent of total U.S. oil production and 8 percent of total U.S. natural gas production. [Footnote 1: Federal onshore production from Department of the Interior Natural Resources Revenue Data, accessed November 27, 2020, <https://revenuedata.doi.gov/?tab=tab-production>; total U.S. oil production from U.S. EIA, "Petroleum and Other Liquids," Accessed November 27, 2020, https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbld_a.htm. Total U.S. gas production from U.S. EIA, "Natural Gas Gross Withdrawals and Production," accessed November 27, 2020, https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcfa.htm.] At the average prices prevailing in 2019, these produced resources were collectively worth \$25 billion during 2019. [Footnote 2: Revenue calculation based on the 2019 average Cushing crude oil spot price of \$57/bbl and Henry Hub natural gas spot price of \$2.56/mmBtu. Price data are from U.S. EIA, "Petroleum and Other Liquids," and "Natural Gas," accessed November 27, 2020, <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pets&s=rwtc&f=a> and <https://www.eia.gov/dnav/ng/hist/mgwhhdA.htm>.] Given projections from the U.S. Energy Information Administration that U.S. oil production will hold roughly constant for the next twenty years, and that U.S. natural gas production will grow by approximately 20 percent over the same time period, responsible environmental and fiscal management of these resources should remain a priority for policymakers for the foreseeable future. [Footnote 3: Source: EIA Annual Energy Outlook 2020.]

While the federal government is the owner of resources produced on federal territories, it does not extract them itself. Instead, federal land is leased to private firms that possess the technical expertise with which to drill and produce oil and gas resources. This leasing process is a critical stage that governs whether, where, and when oil and gas resources are developed, how production revenues are shared between the government and the extraction firms, and the extent to which the local environment is protected. This chapter documents several ways in which current federal oil and gas leasing policy fails to deliver both statutorily required "market based" financial returns and necessary environmental protections to mineral owners—in this case, U.S. taxpayers—especially when compared to leases used in markets for state-owned and privately owned resources. [Footnote 4: BLM is directed by statute to generate a market-based return to taxpayers. See C.B.O., "Increasing Federal Income from Crude Oil and Natural Gas", 6, and the Federal Land Policy and Management Act (FLPMA) of 1976.]

A mineral lease is a contract that specifies, among other things: a primary term that dictates how many years a firm has to drill and complete at least one productive well; a rental rate that specifies a payment to the government each year prior to drilling; and a royalty that dictates the share of oil and gas production revenue that flows to the government. Both state and federal governments allocate leases to firms using organized auctions in which firms offer bonus bids that are the up-front cash payment they make should they be the winning (highest) bidder. In these auctions, the government sets a reserve price rule that specifies the lowest bid that the government will accept.

On federal lands managed by the Bureau of Land Management (BLM), each of the above terms is set in a way that is favorable to firms and—as suggested by current research in energy economics—is far from revenue-maximizing for the government. BLM oil and gas auctions use a ten-year primary term, a 12.5 percent (one-eighth) royalty, and a reserve price of \$2/acre. Figure 1 compares these terms to those used by four major oil and gas producing states—Louisiana, New Mexico, North Dakota, and Texas—when they lease their state-owned minerals. [Footnote 5: Each of these states has an active state-managed mineral leasing program and is a major producer of oil and/or natural gas. Texas, North Dakota and New Mexico are the three most productive states for oil production, while Texas is the most productive and Louisiana is the third most productive gas producing state. Pennsylvania, the second most productive gas producing state, is excluded because the Pennsylvania state government owns few of the mineral resources in the state.] Relative to the BLM, all four states use a shorter primary term and a larger royalty. And while the auction reserve prices in Louisiana and North Dakota are comparable to those used by BLM, New Mexico and Texas impose substantially higher reserve prices on bidders for their state-owned resources.

The differences between BLM and state oil and gas leasing policies reduce the revenue that the federal treasury receives from its oil and gas resources, and at the same time fail to expedite resource development. The low BLM royalty substantially curtails the value that the federal treasury can recover from the public’s oil and gas resources, and the low reserve price and long primary term together allow firms to sit on land for a decade in exchange for a negligible up-front fee and similarly small annual delay rental payments.

BLM’s oil and gas policies also affect the potential for damage to the environment and who pays for environmental liabilities. Once an oil or gas well is drilled, the well will produce at a declining rate for many years, gradually depleting the underground reserves. Eventually, the well will reach the end of its economic life once production revenues are too low to cover the well’s ongoing operating cost. At that point, the well is “shut in” to turn off production. However, a shut-in well poses hazards that can harm people’s health and damage the environment. For instance, even after it is shut in the wellbore can remain filled, up to the surface, with oil, gas, and brines from the underground formation. These fluids may contain heavy metals or chemicals potentially linked to cancers and developmental problems. [Footnote 6: Elliott, Ettinger, Leaderer, Bracken, and Deziel, “Evaluation of chemicals in hydraulic-fracturing fluids and wastewater”, 90-99.] Should these fluids leak, they will harm the environment around the well and potentially affect surface or groundwater resources downstream. To prevent such damage, shut-in wells must be decommissioned by a process known as plugging and abandonment (P&A). An important role for mineral policy is to ensure that firms properly decommission their wells at the end of their economic life.

[See original attachment A1 for Figure 2, which includes two bar graphs entitled “Bond Required for One Well” and “Bond Required for 100 or More Wells,” which compares data between Louisiana, New Mexico, North Dakota, Texas, and BLM. Figure 2 includes “Sources: Louisiana Department of Natural Resources; North Dakota Department of Trust Lands; New Mexico State Land Office; Texas General Land Office; Bureau of Land Management.”]

The BLM and all oil and gas producing states mandate that operating firms P&A their wells at the end of their economic life. However, BLM makes it relatively easy for firms to avoid the cost of doing so by declaring bankruptcy—thereby leaving taxpayers to foot the bill for their “orphaned” wells. Current regulations address this

well-known “judgment-proof problem” by requiring firms to post a bond, prior to drilling the well, which covers the expected decommissioning liability. However, relative to other oil and gas producing states, BLM’s required bond amounts are low and insufficient to cover P&A costs. The end result is that federal taxpayers are exposed to these costs instead.

Oil and gas will play significant roles in the U.S. and global economies for decades to come, and during that time the United States is likely to remain one of the world’s most important producers. The Biden administration should take urgent steps to ensure that taxpayers are receiving a fair return for these vital public resources, and that both current and future generations do not suffer preventable environmental harm from them.

Comment Number: BOEM-EMAIL-32521-000004-4

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Increase the federal onshore royalty rate

The royalty rate in any oil and gas lease (federal, state, or private) dictates the share of all oil and gas revenue that must be paid to the resource owner rather than be taken by the lessee firm. The BLM currently imposes a 12.5 percent royalty—the statutory minimum—on all of its oil and gas leases. This royalty rate falls well below that used in major oil producing states for leases on state-owned land. Texas, for instance, imposes royalties of 20-25 percent on its state-owned oil and gas leases (Figure 1). This rate is aligned with the 20-25 percent royalties that are commonly used in private oil and gas leasing. Thus, BLM gets as little as half as much as state or private landowners for every dollar’s worth of oil and gas produced from its lands.

While the direct effect of increasing the royalty rate is to increase the government’s payments from all oil and gas produced, setting the royalty rate too high can actually reduce both drilling activity and revenues. Because the royalty is essentially a tax on firms’ revenues, higher royalties will discourage the drilling and completion of wells. An excessive royalty might mean no drilling and no royalty revenue at all. Moreover, when leases are awarded, firms will consider future royalty payments when they make their bonus bids. If the royalty is high, that will make leases less attractive to firms and consequently lower their up-front bids.

The royalty rate that delivers the greatest value to taxpayers is therefore not 100 percent, but it is not 0 percent either. When, as is common, lease auctions do not attract a large number of bidders and the cash bonus is therefore low, the royalty ensures resource owners receive value for their resources rather than losing it to the extraction firm. Bonus bids alone do a poor job of capturing value for the mineral owner when there are few bidders, because extraction firms are better informed about the resource’s value than is the owner. [Footnote 13: Hendricks, Porter, and Tan, “Optimal Selling Strategies for Oil and Gas Leases with an Informed Buyer”; Bhattacharya, Ordin, and Roberts, “Bidding and Drilling Under Uncertainty”; Ordin, “Investment and Taxation”; and Herrnstadt, Kellogg, and Lewis, “The Economics of Time-Limited Development Options”] These firms’ superior information can allow them to win leases with bids that fall well below the true resource value. In these situations, a robust royalty can preserve revenue for the resource owner by capturing a significant share of the resource’s value as it is extracted. Thus, if the reserves underlying a lease turn out to be a substantial, the royalty can let the owner capture a share of the value of those reserves, even if the firm won the tract with a low bonus bid due to little competition.

In New Mexico, for example—where the median lease in a pair of recent studies attracted just two bidders—the

royalty rate that maximizes the state's revenue after accounting for production impacts is between 25 percent and 30 percent. [Footnote 14: Bhattacharya, Ordin, and Roberts, "Bidding and Drilling", 32; Ordin, "Investment and Taxation", 15.] In the Haynesville shale of Louisiana, where mineral owners frequently negotiate with just one firm, revenue-maximizing royalties for new gas leases may be as high as 50 percent, depending on the size of firms' informational advantage. [Footnote 15: Herrnstadt, Kellogg, and Lewis, "Time-Limited Development Options", 32.] BLM's royalty rate of 12.5 percent therefore falls well below the rate that would maximize the value received by taxpayers from federally owned oil and gas. Such a low rate is consistent with a desire to emphasize resource development rather than taxpayer value. For instance, one recent study estimated that the probability a lease is drilled would increase by 60 percent if New Mexico's royalty were zeroed out. [Footnote 16: Ordin, "Investment and Taxation", 32, estimates that the probability of drilling would increase from 9.6 percent to 15.4 percent if royalties were set to zero, a 60 percent increase.] BLM's prioritization of resource development over taxpayer value, however, is out of line with that of other major oil and gas producing states. Royalties in Louisiana, New Mexico, North Dakota, and Texas are at minimum 16.67 percent and can be as high as 25 percent. There is no obvious reason why BLM should deliver less value to taxpayers than do similarly tasked state agencies.

Comment Number: BOEM-EMAIL-32521-000004-5

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Simplify royalty valuation by eliminating deductions

The shortcomings of BLM's low royalty rates are exacerbated by the complexity with which oil and gas revenues are valued for royalty purposes by the Office of Natural Resources Revenue (ONRR, which like BLM is an agency within the Department of the Interior). Because the royalty rate applies to a share of oil and gas production revenue (as opposed to produced volumes), the price at which production is valued can have a profound effect on firms' royalty payments to the government.

Firms currently enjoy tremendous flexibility in how they price oil and gas sales and take allowable cost deductions for the purpose of royalty valuation. [Footnote 17: A detailed discussion of the ONRR 2016 Valuation Rule is available at https://www.onrr.gov/reportpay/training/TrainingFiles/OK_Report_Training/2016ValuationRule.pdf.] To value oil, for instance, firms can choose to use the price at the first arm's-length transaction for the oil or use an approved benchmark price such as the New York Mercantile Exchange (NYMEX) price for West Texas Intermediate crude at Cushing, OK. Firms can also elect to take allowable deductions based on actual transportation costs or on price differentials (based in turn on published prices or private exchange agreements), as well as on crude quality differences and some processing costs. All of these choices and more allow firms to select terms that are most favorable to them, at the expense of U.S. taxpayers. Enforcing this web of rules also requires careful audits to ensure that reported arm's-length transactions really are arm's-length and that reported cost deductions are legitimate, increasing the cost of the system for firms and the government alike.

ONRR instead could pursue a simpler and less administratively burdensome approach to royalty valuation: use a liquidly traded, transparent price index—such as West Texas Intermediate or Brent for oil, or Henry Hub for natural gas—as the benchmark for all produced oil and gas. The benefit of such an index is that daily prices can be independently verified by third parties, and the markets are sufficiently deep that they would be extraordinarily

difficult to manipulate. Universal use of an index would also obviate any need to verify transaction records or litigate whether a buyer and seller are truly arm's length.

Additionally, ONRR could eliminate deductions for transportation costs, price differentials, or product quality. Although these deductions do increase the value to firms of acquiring a mineral lease in the first place, enforcement requires costly audits, and even after auditing firms will still have some incentive to manipulate them. If deductions are eliminated, potential drilling partners may bid less in certain mineral lease auctions, but the winners of those auctions will end up paying more in royalties.

Comment Number: BOEM-EMAIL-32521-000004-6

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

Increase the rate of tract development by shortening primary terms, increasing minimum bids, and eliminating non-competitive leasing BLM's standard primary term of ten years gives firms a remarkably long time to hold a lease before developing it. While such a long lead-time might be appropriate for large, offshore deepwater developments that require long construction times, it is excessive for onshore resources that can be developed more quickly. [Footnote 18: For instance, Kellogg, "The Effect of Uncertainty on Investment", 1710, finds that firms can mobilize to drill conventional onshore wells in Texas within three months of a significant change in the oil price. Newell, Prest, and Vissing, "Trophy Hunting vs. Manufacturing Energy", 409, and Newell, and Prest, "The Unconventional Oil Supply Boom", 11, find that most of the response of unconventional drilling to price changes occurs within two calendar quarters of the price change.] It is also out of line with primary terms used by major oil producing states. As illustrated in Figure 1, the longest primary term used by Louisiana, New Mexico, North Dakota, and Texas when leasing state oil and gas parcels is five years. Three and five year terms are also common in private oil and gas leasing markets.

Short primary terms are valuable for two reasons. First, they promote timely resource development, one of BLM's core objectives. Second, they can increase the present value of the revenues earned by the resource owner, despite the fact that short primary terms may lead firms to make lower bids during lease auctions. A recent paper shows that primary terms create value for the resource owner by accelerating drilling, countering the incentive to delay drilling that is induced by the royalty. [Footnote 19: Herrnstadt, Kellogg, and Lewis, "Time-Limited Development Options", 32] That is, the royalty and primary term work together as complementary tools by which the resource owner can earn value from its reserves while not inducing the firm to excessively delay resource development.

The ability of firms to obtain a federal oil and gas lease and not develop it for a long period of time, or perhaps not develop it at all, is exacerbated by the low minimum bid of \$2 per acre that BLM uses in its auctions, along with the low annual rental payments of \$1.50 or \$2 per acre. Even in the least desirable, most outlying "wildcat" areas in the earliest days of shale plays, state auctions had minimum bids of \$100 per acre or more. In active shale plays today, minimum bids of thousands of dollars per acre are not uncommon. Given the BLM's low minimum bid, and given the fact that many tracts are leased at the minimum, it is easy for a firm interested in developing a position in an outlying area to acquire a long-term option at near zero cost.

If BLM could be sure that the acquiring firm was indeed going to be the best user of the lease for a decade into the future, this situation could be reasonable. However, when a firm wins such a position at the minimum bid, it means that there are currently no other interested parties. When and if such land ever becomes productive, it is quite likely that more than a single firm will have an active interest in it, and there is no guarantee that the firm

who bids early, at the minimum bid of \$2 per acre, is the best user. BLM's policy therefore not only deprives the public of value for the land in the initial lease, but it also means that it may not ever be developed as productively—and profitably for the public purse—as possible.

In addition, BLM's reserve prices are not actually imposed as binding reserve prices in practice. Instead, auctioned parcels that fail to receive a qualifying bid are transferred to BLM's "non-competitive" leasing program, where they can be leased to firms for no up-front fee at all. In state auctions, in contrast, parcels that do not receive minimum bids revert back to private or state ownership, and are available for future auction at corresponding market terms. Recent research comparing the outcomes of auctions to a similar "non-competitive" leasing market for state minerals in Texas shows that revenues and production from auctions, even those that will be delayed until a future date, can be much higher than that from non-competitive and informal transactions. [Footnote 20: Covert, and Sweeney, "Relinquishing Riches".]

Taken together, these policies result in some mineral leases that transact at far below their market value, and other mineral leases that should not transact at all, because no high-value users have shown any interest in them. Moreover, firms are able to sit on marginal tracts for a decade, precluding the land's use by others and imposing administrative costs on BLM.

A number of complementary changes can address these issues:

1. Shorten primary terms for onshore U.S. oil and gas leases to no more than five years, aligned with the policies adopted by state agencies and leases observed in private markets;
2. Increase the minimum bid per acre to be more aligned with the policies adopted by state agencies; and
3. Terminate the non-competitive leasing program.

Because the MLA prescribes ten-year primary terms, implementing recommendation one will require an act of Congress to amend the MLA. Recommendation two can be implemented by BLM via the administrative rulemaking process. However, increasing the minimum bid while retaining the non-competitive leasing program will be ineffectual, since firms will be able to respond to the higher minimum bid by not bidding at all, and still obtain a lease later without having to pay the cash bonus. Eliminating the noncompetitive leasing program (recommendation three) will require a statutory amendment to the MLA.

Comment Number: BOEM-EMAIL-32521-000004-7

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Strengthen bonding requirements to protect the environment & public health.

At the end of a well's life, it is necessary to "plug and abandon" (P&A) the well, for both safety and environmental protection reasons. This procedure involves pumping cement down the wellbore in order to create a permanent seal that separates the surface from fluids and gases in the underground oil and gas formation. Properly plugging a well is not cheap. Plugging the current inventory of orphaned wells would cost \$24,000 to \$48,000 per well, with potentially higher costs to decommission modern shale wells. [Footnote 21: Raimi, Nerurkar, and Bordoff, "Green Stimulus for Oil and Gas Workers", 12.]

Both federal and state governments require operating firms to decommission wells at the end of their economic life. Because the process is costly, however, firms have an incentive to avoid this obligation. One way they can do so is to transfer a well's ownership to a poorly capitalized firm that lacks the money required to cover the decommissioning cost. Once the well reaches the end of its economic life, the firm can then declare bankruptcy rather than pay for decommissioning. The ability to avoid environmental liabilities via bankruptcy is an example of the judgment-proof problem, by which firms that can avail themselves of bankruptcy protection have an incentive to take excessive risks. [Footnote 22: Shavell, "The Judgement Proof Problem", 45-58.]

A well that is abandoned by a bankrupt firm then becomes classified as "orphaned" and either remains unplugged—posing an ongoing environmental hazard—or is decommissioned at the public's expense. Data collected from state agencies indicate that the problem of orphaned wells is widespread. As of 2018, there were 56,600 documented orphaned wells in the United States, and likely hundreds of thousands of additional undocumented orphaned wells. [Footnote 23: Raimi, Nerurkar, and Bordoff, "Green Stimulus", 12; IOGCC, "Idle and Orphan", 14.] Assuming a minimum cost of \$24,000 per well, decommissioning these documented and undocumented wells would cost billions of dollars. Using public funds, states are plugging them at a glacial pace: only 3,356 orphaned wells were reported plugged in 2018. [Footnote 24: IOGCC, "Idle and Orphan", 5.]

To help prevent orphaned wells, many states and the federal government require oil and gas operators to post a bond—or pay an insurance firm to post a surety bond on their behalf—prior to drilling. The firms only recover the bond once the well is properly decommissioned.

In principle, this bonding requirement can solve the judgment-proof problem, but only if the required bond amount is commensurate with wells' decommissioning costs. However, BLM's requirement that firms only post a single, \$25,000 bond for each state in which they operate, regardless of the number of wells they operate, effectively requires firms to post a bond sufficient to cover the decommissioning of just one well, at best. Moreover, and as shown in Figure 2, the BLM bonding requirement is substantially weaker than that used in other major oil-producing states. For instance, \$25,000 per operator is the smallest bond that the State of Texas requires, and operators of multiple wells pay substantially more.

BLM's weak bonding policy gives firms both an incentive and an opportunity to escape environmental liabilities via bankruptcy, leaving taxpayers to foot the bill for well decommissioning—or to suffer the health and environmental consequences of orphaned wells. Evidence indicates that firms act on this incentive. Texas's bonding requirement was not always as high as that shown in Figure 2. Prior to 2001, operators in Texas were able to avoid bonding requirements by paying small annual fees. Starting in 2001, however, Texas required all operators in the state to post bond amounts equal to those shown in Figure 2 (poorly capitalized operators could pay risk-rated premiums to an insurer to post a surety bond on their behalf). These new requirements dramatically changed the distribution of operating firms in Texas and substantially improved environmental performance. [Footnote 25: Boomhower, "Drilling Like There's No Tomorrow".] Many small operators with poor environmental records left the industry, selling their wells to larger firms. Orphaned wells decreased by a remarkable 70 percent, and violations of state water protection rules dropped by 25 percent.

By following Texas's lead and strengthening its bonding requirements, BLM could also achieve these benefits on federal lands. BLM can increase its bond requirement by administrative rulemaking, without requiring new statutory authority.

Comment Number: BOEM-EMAIL-32521-000004-8

Organization: Energy Policy Institute at the University of Chicago

Commenter: Victoria Ekstrom High

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

While the resources governed by BLM are federally owned, development and extraction is performed by private firms. The lease contracts that govern the relationship between BLM and these firms are the key policy lever with which BLM can fulfill its mission, since lease terms can profoundly influence firms' incentives to drill, the division of revenue between firms and the government, and firms' incentives to protect the environment.

Across the board, the terms of BLM oil and gas leases favor oil and gas production companies over U.S. taxpayers. They allow firms to capture the lion's share of oil and gas resources' value, while at the same time letting them avoid liability for environmental harm. Relative to benchmarks from state-level agencies that manage state-owned resources, BLM leases have low royalties and are awarded in auctions that impose miniscule minimum bid requirements, allowing firms to access federal resources at little expense to themselves. While BLM's low royalty rate can in principle accelerate resource development, its unusually long ten-year lease terms, low minimum bids, and low \$2 per acre rental rate undermine its development objective by allowing firms to effectively sit on federal land for a decade without undertaking drilling, at essentially no cost. Finally, while the BLM requires firms to post bonds as a guarantee that the surface environment will ultimately be restored, the size of the bonding requirement is far too small to adequately cover reasonable estimates of restoration costs.

BLM can address these problems and better fulfill its statutory multiple-use and sustained yield mission by adopting leasing policies that are more similar to those of major oil producing states such as Louisiana, New Mexico, North Dakota, and Texas. By setting higher royalty rates, eliminating royalty deductions, and increasing the minimum bid in its lease auctions—actions that can be taken by a rulemaking process rather than new statute—BLM can increase the share of federal oil and gas resources that leads to revenue for taxpayers rather than profits for oil and gas firms. The negative impacts of a higher royalty rate on development and production can be mitigated by shortening the lease term from ten years to five years and by eliminating the BLM's non-competitive leasing process, though these changes require statutory amendments. Finally, the BLM can, by rulemaking, prevent firms from walking away from their environmental responsibilities by substantially increasing bond amounts up to the point that they credibly cover the proper wells' plugging and abandonment at the end of their useful life. Adopting a stronger bonding policy will protect taxpayers from footing the bill for decommissioning costs and protect public health from the hazards imposed by abandoned wells.

Comment Number: BOEM-EMAIL-32521-018389-29

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Changes that Would Increase Royalties and Other Revenues: Interior should implement two changes to address royalties and increase revenues: (1) reverse policies that make it easier for companies to get substantial royalty relief; (2) increase royalties or implement a carbon adder or carbon tax to increase revenues. During the Trump administration, BOEM instituted a number of new policies that have allowed oil and gas companies to get relief from royalties and have also lowered total revenues from existing operations. In 2019, Interior announced that it was instituting a new process to grant shallow water lessees special case royalty relief that allows for reduced-royalty or even royalty-free production in some cases [Footnote 164: See Seo, *supra* note 137]. The new policy was specifically developed to encourage increased production in shallow water areas, which had fallen by close to 90 percent in recent years. In late 2020, Interior extended many parts of these incentives to deepwater lessees

[Footnote 165: BOEM, Economic Division, Recommended Special Case Royalty Relief Discount Rates for Deepwater Oil and Gas Projects Using Subsea Tiebacks Requiring Enhanced Flow Assurance Technologies (Dec.

2020), https://www.boem.gov/sites/default/files/documents/environment/SCRR-Deep-Subsea-Tieback_0.pdf; Jessica Resnick-Ault, Trump administration encourages offshore drilling in final energy push, YAHOO! FINANCE (Dec. 3, 2020), <https://finance.yahoo.com/news/trump-administration-encourages-offshore-drilling-004507585.html>.] In 2020, Interior also said it would suspend leases for companies that ask, essentially stopping the clock on the lease term and underlying royalty obligations.¹⁶⁶ Interior should reverse these economically harmful policies that amount to subsidies to the oil and gas industry at the expense of the taxpayer.

In addition, royalty rates have been set too low for far too long. Currently, existing leases in either shallow or deep water have royalty rates of 12.5%, 16.67%, or 18.75%; [Footnote 167: BOEM, Economic Division, Recommended Discount Rates and Policies Regarding Special Case Royalty Relief for Oil and Projects in Shallow Water³ (Nov. 2019) https://www.boem.gov/sites/default/files/documents/oil-gas-energy/energy-economics/SW_SCRR_Discount_Rate_Paper.pdf.]

And these rates have been largely unchanged for more than a century [Footnote 168: U.S. lawmakers ask Interior to cut offshore oil royalty rates due to market slump, REUTERS (March 20, 2020), <https://www.reuters.com/article/us-global-oil-usa-royalties/u-s-lawmakers-ask-interior-to-cut-offshore-oil-royalty-rates-due-to-market-slump-idUSKBN2173GO>]. These rates are too low to account for the externalized costs to the taxpayer from extraction of public resources. Interior should consider increasing royalties by looking at a mix of sources—including increased royalty rates, taxes, or carbon adders. Industry has expressed support for such measures. At the March 25 forum, for example, API stated that it would support a carbon tax or other carbon pricing schemes [Footnote 169: Baker, *supra*].

Comment Number: BOEM-EMAIL-32521-018572-8

Organization:

Commenter: Chris Lish

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

*Ensure a fair return to taxpayers by increasing the amount that private corporations pay to lease federal lands and waters for fossil fuel development, including by setting royalty rates that account for the true social and environmental costs of the carbon produced on these leases.

Comment Number: BOEM-EMAIL-32521-018769-4

Organization: U.S. PIRG and Environment America

Commenter: Len Montgomery

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Royalty Rates

The way royalties are supposed to work is that, when private companies drill for oil and gas on American public lands, they pay back 12.5 percent of their profits -- a royalty fee -- to the Department of Interior, which can then

be redistributed to the public. Similarly, companies that drill offshore generally pay a rate of 18.75 percent in deep waters, and 12.5 percent in shallow waters.

Royalties on oil and gas exist because the American public owns the lands where fossil fuels are drilled. Privately owned fossil fuel companies simply buy leases that allow them to extract natural resources from federal lands and waters. That's why drilling companies have to pay the public for their extraction in the form of royalties. The current royalty rates are too low to fully compensate the American people for the level of destruction caused by the extraction and burning of fossil fuels.

Even worse, producers can apply for "royalty relief" in a number of situations, which can significantly lower the royalty rate actually paid. Last April, for example, the Bureau of Land Management announced that companies could apply for reduced royalty rates, some as low as 0.5 percent. BLM has also typically lacked transparency about how many applications for royalty relief they've received, and which companies are applying.

With the information that is available, Taxpayers for Common Sense found that 521 total drilling leases and agreements had been granted royalty reductions since April, covering a total of 346,496 acres of public land in Wyoming, Colorado, North Dakota, Montana and Utah between April and September 2020.

As long as we continue to allow for drilling leases on our public lands and oceans, we should ensure that producers are paying adequate royalty rates that fully account for the environmental harms they are causing. The practice of royalty relief should end.

Bonding and Insurance

The fossil fuel industry is inherently risky. When something goes wrong -- like an oil spill on an offshore rig or a hazardous waste truck crashing -- the damage can be catastrophic. However, companies aren't always held accountable. Outdated laws and inadequate requirements don't account for the true costs of accidents. As a result, taxpayers end up bearing the brunt of clean up costs, while fossil fuel companies are let off easy.

Bonds that the companies are required to pay are supposed to cover cleanup or plugging orphan wells abandoned by bankrupt companies. But the bond amounts companies must pay haven't been updated since 1951. The amount set aside doesn't even come close to covering the modern day cleanup and reclamation costs.

Insurers and bonding companies are often hesitant to stand behind oil and gas companies because they need to be willing to share the risk and extend credit, and risk they're sharing is extremely high. If bonds were more expensive and insurance was actually required for these companies to operate, they would be incentivized to improve their safety standards and decrease their environmental impacts until they've eliminated enough risks to be allowed to get financial assurance. And then, when things do go wrong, the polluters, not the taxpayers, would be on the hook.

Comment Number: BOEM-EMAIL-32521-019684-8

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

*If leasing on federal lands resumes after the 60-day moratorium, increasing royalty rates on new leases should be considered. The current 12.5% royalty rate hasn't been changed for 100 years and higher rates can be observed on private and many states' lands. However, federal leases also need to be competitive with private leases in order to

generate investment and revenues. At the same royalty rate, leases on federal land may not be competitive with leases on private lands. Federal leases have greater permitting delays, which reduces the value of the lease by pushing revenues out in time.

*BLM should assess the competitiveness of federal leases to determine how much the royalty rate can increase without shutting off a large portion of new production. The negative impact to the economics of raising royalty rates could be partially offset by ensuring there were sufficient BLM personnel to avoid major delays in permitting, which detracts from the economics.

Comment Number: BOEM-EMAIL-32521-019684-9

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 13

Comment Excerpt Text:

Abandoned Wells

*The U.S. Congress should fund BLM to plug abandoned oil and gas wells on federal land, which could be justified as a jobs program in addition to reducing methane leaks. The value of bonds on new leases should also be increased to adequately cover the cleanup costs. Methane emissions from abandoned wells correspond to 1-13% of methane emissions from the energy sector in the U.S. inventory. In addition, methane leaks are a safety hazard and have caused several high-profile explosions. The U.S. General Accountability Office (GAO) has reported on the size of this problem on federal lands and indicated that operators' up-front bonds were too small to fully cover clean-up costs.

Comment Number: BOEM-EMAIL-32521-019946-2

Organization: Nevada Conservation League

Commenter: Paul Selberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The current oil and gas leasing policy also allows companies to pay insultingly low rates, often as low as two dollars per acre, to drill on Nevada's public lands. This practice fails to generate a fair return -- and in many cases, hardly any -- to Nevadans whose tax dollars are used to fund this system. We are proud to see Senator Rosen identify and support a common-sense solution to the century-old oil and gas leasing system with the introduction to the Fair Return for Public Lands Act, a bill which modernizes royalty rates and ensures Nevadans aren't getting shortchanged on revenue-generating opportunities. According to Taxpayers for Common Sense, if oil and gas rental rates had been adjusted for inflation starting in 1987, Nevadans would have received an additional \$25 million from outdated rental rates alone between 2009-2018. That is \$2.5 million a year that could have helped education, transportation, and healthcare in Nevada. Senator Rosen's bill would require inflationary adjustments every four years to ensure oil and gas companies are paying the fair market value for the use of public lands for drilling. Nevadans are shown to strongly support legislation to improve the oil and gas leasing program. Colorado College's Conservation in the West poll found that 70% of Nevadans [Hyperlinked: <https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2020/>] want to boost the federal royalty rate to 25%.

Comment Number: BOEM-EMAIL-32521-019955-14

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Increase bonding rates so that they reflect the true cost of reclamation and plugging consistent with the recommendations offered by the GAO. [Footnote 40: GAO-19-615, September 18, 2018, available at <https://www.gao.gov/products/gao-19-615> and GAO-18-250, May 2018, available at <https://www.gao.gov/products/gao-18-250>.] This will help prevent damage to habitat and species by discouraging operators from walking away from inactive wells or failing to properly plug wells.

-Protect lands encumbered by leases that were let improperly by canceling the leases. This is especially important in places where imperiled species reside including, but certainly not limited to, priority sage grouse habitats.

Comment Number: BOEM-EMAIL-32521-019979-2

Organization: Western Leaders Network

Commenter: Jessica Pace

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

As it stands, the federal oil and gas program denies taxpayers a fair return for the development of public lands. The 12.5% federal royalty rate charged for onshore development – which is far below the federal offshore drilling rate of 18.75 – hasn't changed since 1920, and it has cost taxpayers billions of dollars in revenue for decades. According to one estimate [Hyperlinked: <https://www.taxpayer.net/wp-content/uploads/2020/02/TCS-Royally-Losing-2020.pdf>], the outdated royalty rate denied taxpayers \$12.4 billion in revenue between 2010 and 2019. Moreover, companies currently can buy oil and gas leases at auction for as little as \$2 per acre, with annual rental payments of just \$1.50 per acre. Our public lands are worth more.

Comment Number: BOEM-EMAIL-32521-019979-4

Organization: Western Leaders Network

Commenter: Jessica Pace

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7 10 2

Comment Excerpt Text:

During this review, we encourage the administration to consider the following recommendations, including adopting a mandate for the program that recognizes that leasing is not mandatory and should only be allowed if and when consistent with the multiple-use principle; ensuring that environmental justice and equity are factors in the review and reform efforts; eliminating speculative leasing practices; closing loopholes that place the burden of reclamation costs on taxpayers and private landowners; updating fiscal policies so that companies pay fair rates for development; and pursuing reforms with the objective of achieving a clean and renewable energy future.

Comment Number: BOEM-EMAIL-32521-020306-3

Organization: Center for American Progress

Commenter: Jenny Rowland-Shea

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Royalties. The current onshore royalty floor of 12.5 percent is unacceptable and not in line with the market, offshore rates, or the royalty rates charged by state and private landowners. BLM should conduct a new rule making that sets a floor of at least 18.75 percent for the royalty rate, while allowing the secretary of the Interior the discretion to raise the rate in response to market conditions, without further rulemaking. The secretary can then increase rates based on either oil and natural gas prices or the location of known resources where the rate might increase in an area of known production versus an area that is more speculative.

*Rents. The current rental rates of \$1.50 per acre for the first five years of a lease, and \$2 per acre thereafter are too low and should be increased. Companies are largely willing to shell out the nominal rental fee because the benefits to doing so "in the form of increased reserves and market value" outweigh the annual cost to hold on to undeveloped land. As one example for reform, in Texas, during the first two years of a lease, the rental rate is \$5 per acre. In the third year of the lease, that rate jumps to \$2,500 per acre to incentivize drilling or turning the lease back over to the citizens of Texas.

*Bonding. BLM should update current rules to set bonding requirements based on the number of wells that would need to be reclaimed and requirements should be based on realistic reclamation and clean up costs.

*Bonus bids. The current minimum bonus bid of \$2 per acre is far too low and should be significantly increased to take into account the effect of oil and gas activity on the climate and other externalities.

Comment Number: BOEM-EMAIL-32521-020306-4

Organization: Center for American Progress

Commenter: Jenny Rowland-Shea

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

The administration must fully consider the costs of any further leasing on federal lands in a programmatic review given the ongoing climate and conservation crises. If leasing does return, there are many policies BLM and Congress could pursue to increase transparency, accountability, and taxpayer fairness to the leasing program:

*BLM should ban anonymous nominations of parcels for lease across the oil and gas leasing program.

*The BLM should assess fees to recoup costs of running the program. This could include a meaningful filing fee for an expression of interest, instead of allowing anyone to nominate a parcel for free. These administrative fees would help deter casual speculators and shift some of the costs of administering lease sales to the oil and gas industry, instead of taxpayers.

*BLM should implement a bidder prequalification requirement and punish repeated bad actors. Under the current system, companies that routinely fail to pay rent are welcome to lease additional public lands. The BLM should implement a requirement that in order to lease more public land, a company must comply with the terms of its existing leases, including rental payments.

*BLM should prioritize leasing in high-potential areas that have a reasonable expectation of producing economically viable products. In prioritizing certain areas for leasing, BLM could also ensure no additional leases are sold in areas with Indigenous sacred sites, critical wildlife corridors, and other areas that conflict with oil and gas development.

*BLM should improve data collection and transparency, including tracking the costs associated with administering a lease. A more transparent oil and gas leasing system on public lands would benefit taxpayers and ensure that the government is serving as an accountable and responsible steward of the public's resources.

Comment Number: BOEM-EMAIL-32521-021182-9

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

These revenues are important, and they will continue to be a critically important piece of the energy and economic story of the U.S. However, it is also the case that these revenues are only generated if access is provided and energy production in federal waters is attractive enough to bring capital to bear. Notably, domestic energy production from federal waters remains costly both in terms of capital expenditures and the government's take in the form of taxes, lease bids, bonus bids, rent paid, and royalty paid. In fact, IHS Markit conducted an analysis [Footnote 22: <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/2018-GOM-International-Comparison.pdf>] in 2018 looking at deep water production and found that the revenue ultimately flowing to companies producing energy in the Gulf is lower than many peer—and competitor—nations, roughly coming up in a middling position.

[See attachment for discounted share of the barrel]

This is an issue, and one worth exploring. However, the problem had clearly become most acute in shallow waters of the Gulf of Mexico, a region with more marginal wells producing lesser volumes of oil. In shallow waters, from November 2000 to September 2018, oil production in shallow waters declined by some 75%. [Footnote 23: <https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-urges-interior-department-to-lower-royalty-rates-for-shallow-water-drilling-to-generate-more-jobs-revenue>] Subsequently, the Trump Administration reduced shallow water royalties to 12.5% for newly issued leases in the August 2017 Gulf of Mexico lease sale (Lease Sale 249). While this did not provide relief to the many existing leases, the change resulted in a nearly 22% reduction in government “take” of offshore oil operations in shallow waters, as seen in the chart below comparing domestic shallow water oil operations to peer nations abroad from IHS: [Footnote 24: <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/2018-GOM-International-Comparison.pdf>]

[See attachment for government take – shallow water oil fields]

This was a valuable step that, we believe, increases the viability and attractiveness of domestic offshore energy. Royalty rates remain substantial in the offshore, and it is important that the Department continue to find the proper balance between attracting necessary capital to an enormously financially-intense undertaking (producing energy from federal waters) while at the same time bringing revenue back to American taxpayers.

Comment Number: BOEM-EMAIL-32521-022112-2

Organization: Project Canary

Commenter: Brian Miller

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Other Sections: 6

Comment Excerpt Text:

As the Federal government reviews the Federal oil and gas permitting and leasing practices, the Federal government should consider developing new operating standards that promote real-time, continuous independent monitoring. There are two distinct economic benefits should such monitoring efforts be incorporated into new

operating standards. First, requiring that any natural gas production on public lands is monitored for methane leaks will ensure that natural gas, a valuable commodity, remains in the pipe. This will ensure that the Federal government receives every penny it is owed, and more revenues will flow to Federal, state, and local entities who bear the burden of this development. Second, increased, real-time, continuous monitoring and scrutiny of natural gas operations on public lands will allow the Federal government to be a leader in enabling the production of the cleanest energy products available in this country, and set the stage for a market in differentiated natural gas products, that not only have lower environmental impacts in the development process, but also lower impacts when consumed. As an added benefit, these cleaner products command a higher price in the marketplace and hence a higher netback to the Federal government in royalty payments.

By reimagining new operating standards for natural gas development on public lands, we create a win-win-win scenario for multiple beneficiaries, including our environment, our communities, and our Federal, state, and local governments. Should the Federal government lead the way in the production of differentiated fuels, like responsibly sourced natural gas, others will follow, and the United States will enable the production of the cleanest molecules on the planet. Let's use science, technology, data, and innovation to propel our nation into a new leadership position—a new paradigm for measured natural gas development on public lands.

Comment Number: BOEM-EMAIL-32521-023161-1

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 5 6 18

Comment Excerpt Text:

WORC's members are all too familiar with the impacts of the federal oil and gas leasing program. The boom and bust production of these public resources has resulted in great wealth for a few, financial ruin for others, and irreparable environmental damage for all. As we prepare for what is likely to be the ultimate bust of this industry, the Department has a final opportunity to do justice to the communities and the ecosystems that have been most impacted by this program. As production declines, we specifically ask the department to prioritize:

1. Ensuring that the sale of public oil and gas accounts for the full cost of production, including the real cost of freshwater use, environmental impacts of waste streams, the contribution to the climate crisis, the disproportionate impact to low-income communities and people of color, particularly Indigenous people, and the complete plugging, reclamation and remediation of sites.
2. Working with the Administration to ensure continued dignified employment and opportunity for those who live in communities with oil and gas extraction.
3. Requiring a fair return on publicly owned resources while decoupling the ability of our state and counties to provide basic infrastructure and social services from federal royalties.
4. Leading an efficient yet open, inclusive, and transparent process for public participation and input including meaningful engagement with communities impacted by federal oil and gas leasing—allottees, split estate residents, tribal members, and other frontline communities.

Comment Number: BOEM-EMAIL-32521-023161-21

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendations — General Financial Assurance/Bonding:

Regulators should eliminate blanket bonds that are not tied to the projected cost of reclamation, and require site-specific reclamation bonds that will fund the full projected cost to plug and reclaim all of an operator's wells and associated sites.

Until bonds are set at the actual cost of reclamation, regulators should establish bond amounts that increase as the factors that contribute to reclamation cost increase, including the number of wells, well depth, location, the amount and nature of surface disturbance, facilities and infrastructure to be reclaimed.

Bond amounts should be reviewed annually, and minimum bond amounts should be increased every three years based on the consumer price index or actual plugging costs.

Current State Bond Policies:

While these states, except for North Carolina, still allow blanket bonds that do not tie bonds to the total actual cost of reclamation, several have tiered bonding systems under which the statewide bond is relative to the number of wells.

Alaska has the highest blanket bond amounts and ties bond amounts to the number of wells on each bond. They have the following tiers for blanket bonding:

1 - 10 wells: \$400,000 per well; 11 - 40 wells: \$6 million; 41 - 100 wells: \$10 million; 101 - 1,000 wells: \$20 million; Over 1,000 wells: \$30 million [Footnote 35: Alaska Admin Code, 20 AAC 25.025. Bonding. Link: <http://www.legis.state.ak.us/basis/aac.asp#20.25.025>]

California has the following tiers for blanket bonding [Footnote 36: California Public Resource Code, Article 4, Sec 3205. Link: [https://www.conservation.ca.gov/index/Documents/CALGEM-SR-1 Web Copy.pdf](https://www.conservation.ca.gov/index/Documents/CALGEM-SR-1%20Web%20Copy.pdf)] :

\$25,000 for each well that is less than 10,000 feet deep or \$40,000 for each well that is 10,000 or more feet deep.

20 - 50 wells: \$200,000; More than 50 wells: \$400,000; More than 50 wells, including idle wells: \$2 million.

Regulators can require owners to provide additional bonds to cover the full cost to plug and abandon all wells and decommission all facilities or require a bond of \$30 million. [Footnote 37: California Public Resource Codes, Article 4, Sec 3205.3] It is not clear that this has actually been required of any companies to date. Link: [https://www.conservation.ca.gov/index/Documents/CALGEM-SR-1 Web Copy.pdf](https://www.conservation.ca.gov/index/Documents/CALGEM-SR-1%20Web%20Copy.pdf)

North Carolina requires a plugging and abandonment bond in the amount of \$5,000 plus \$1 per foot proposed to be drilled for all wells, and does not allow blanket bonds. The state also requires a disturbed land bond based on the cost of the conditions set in the reclamation plan, and an environmental damage bond in the amount of \$1 million or more. [Footnote 38: North Carolina Administrative Code, 15A NCAC 05H .1404. Link: [http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 05 - mining - mineral resources/subchapter h/subchapter h rules.pdf](http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2005%20-%20mining%20-%20mineral%20resources/subchapter%20h/subchapter%20h%20rules.pdf)]

North Dakota has a blanket bond for multiple wells set at \$100,000, but each blanket bond can't have more than six of the following: a well with a dry hole not plugged, a well that is plugged but the site not properly reclaimed, or a well that is abandoned and not properly plugged or reclaimed. [Footnote 39: North Dakota Administrative Code, Section II, 43-02-03-15. Link: <https://www.dmr.nd.gov/oilgas/rules/rulebook.pdf>]

Virginia has minimum individual bond amounts of \$10,000 per well plus \$2,000 per acre of disturbed land,

calculated to the nearest tenth of an acre. [Footnote 40: Code of Virginia, 45.1-361.31. Link: <https://law.lis.virginia.gov/vacode/45.1-361.31/>]

Wyoming adjusts reclamation bond amounts every three years based on the consumer price index. [Footnote 41: WOGCC Rules, Ch. 3, § 4(b) (iv)(A). Link: <http://pipeline.wyo.gov/wogcchelp/commission.html>]

Comment Number: BOEM-EMAIL-32521-023161-22

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendations — Infrastructure Financial Assurance and Reclamation:

Some infrastructure, such as flow lines and pipelines, is often not required to be removed and sites reclaimed. Even when decommissioning and reclamation are required, such as with water impoundments, waste facilities, roads and other surface disturbance, current blanket bonds are insufficient to ensure that reclamation occurs, particularly if spills occur. As a result, these sites are at risk of going unreclaimed, posing risks to public health and safety and the environment, and impeding other uses of the land.

Regulators should have limited discretion to exempt infrastructure from reclamation requirements, such as at the request of surface owners or to protect sensitive areas.

Regulators should require that bond amounts are adequate to ensure decommissioning and reclamation of all associated well infrastructure, including increased bonds or separate bonds for infrastructure that is expensive to reclaim, such as water impoundments, waste facilities, and pipelines.

Current State Infrastructure Policies:

The policies described below are some of the incrementally better policies currently in place, but they do not cover the full reclamation of infrastructure associated with oil and gas wells.

North Dakota requires bonds for underground gathering pipeline systems. [Footnote 42: North Dakota Administrative Code Section 38-08- 04 §1 d; Section 43-02-03-15 §8 a. Link: <https://www.dmr.nd.gov/oilgas/rules/rulebook.pdf>]

Wyoming requires bonds to ensure that surface impoundments that hold produced water from coalbed methane development are reclaimed. Bond amounts were set at \$7,500 or \$12,500 in 2009 based on an estimate of the full cost of reclamation, and increased 3% each year. [Footnote 43: WY DEQ, Implementation Guidance for Reclamation and Bonding of On-Channel Reservoirs that Store Coalbed Natural Gas Produced Water. Link: http://deq.wyoming.gov/media/attachments/Water Quality/Coalbed Methane Permitting/Reservoir Bonding and Reclamation/01_WQD-WYPDES-CBM_Implementation-Policy-for-Reclamation-and-Bonding-of-On-Channel-Reservoirs_2009-11.pdf]

Comment Number: BOEM-EMAIL-32521-023161-23

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendations — State Land Office Financial Assurance:

Many states manage a portion of the minerals within their boundaries, which are held in trust and leased to support public institutions, often schools and hospitals. For example, in New Mexico, nearly 13 million acres or 17% of all minerals in the state are trust minerals managed by the State Lands Office. Of the state's 46,566 producing wells, 30% are on state trust land. [Footnote 44: Santa Fe New Mexican, L and commissioner: Oil, gas cleanup could cost billions. Link: https://www.santafenewmexican.com/news/coronavirus/land-commissioner-oil-gas-cleanup-could-cost-billions/article_1beb9892-7e68-11ea-b747-6fa046476432.html] When wells on state trust lands are orphaned, states may be forced to pay for cleanup with the funds that are intended to go to education and health. These agencies have authority to set lease terms and administration, including requiring surface reclamation bonds but, like oil and gas regulatory agencies, commonly require blanket bonds that are significantly lower than projected reclamation costs. These agencies should utilize their statutory authority to the greatest extent possible to ensure complete and timely reclamation of the operations under their jurisdictions.

If oil and gas regulatory agencies do not set bonds at the full projected cost of reclamation, surface management agencies such as State Lands Offices should use their authority to require additional reclamation bonds to ensure that lands and waters within their jurisdiction are fully reclaimed.

Current State Land Office Financial Assurance Policies:

The Colorado policy is incrementally stronger than other State Lands Office bonding policies we reviewed, but North Carolina's statewide policy would ensure bonds cover the full cost of surface reclamation.

Colorado's State Land Trust Board requires separate surface reclamation bonds for development on state trust lands. For 1-3 Leases and/or Agreements: \$25,000 each, and for 4 or more Leases and/or Agreements: \$100,000 blanket bond per lessee. [Footnote 45: Colorado State Board of Land Commissioners: OIL AND GAS DEVELOPMENT POLICY. Link: https://drive.google.com/file/d/1Fwig_XL6uzFSRjJynCZpczGFKM4obVxP/view]

North Carolina requires a disturbed land bond based on the cost of the conditions set in the reclamation plan, and an environmental damage bond in the amount of \$1 million or more. [Footnote 46: North Carolina Administrative Code, 15A NCAC 05H .1404. Link: <http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 05 - mining - mineral resources/subchapter h/subchapter h rules.pdf>]

Comment Number: BOEM-EMAIL-32521-023161-24

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendations — Allowable Forms of Financial Assurance:

Surety bonds, cash deposits and irrevocable letters of credit are widely accepted as forms of financial assurance that are sufficiently secure to ensure reclamation will occur, but a number of states allow operators who are considered to be in good financial standing to evade posting a bond (Kansas, Michigan and Ohio), or provide for other unnamed forms of financial assurance (Mississippi and North Dakota) [Footnote 47: Interstate Oil and Gas Compact Commission, State Financial Assurance Requirements. Link: https://iogcc.ok.gov/sites/g/files/gmc836/f/financial_assurances_final_web_0.pdf] that put taxpayers at risk for shouldering the burden of reclamation, and lands at risk of going unreclaimed.

Acceptable forms of financial assurance should include surety bonds, letters of credit, or cash deposits. Less secure options such as self-bonding and equipment liens should be eliminated.

Comment Number: BOEM-EMAIL-32521-023161-5

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Addressing Inadequate Financial Assurances and Bonding

The Mineral Leasing Act currently requires the Secretary to issue rules which “ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations...” [Footnote 1: 30 U.S. Code § 226 (g)a] GAO has repeatedly found that blanket bonds are “insufficient” to reclaim wells since and these minimums have not been adjusted since the 1950s and 1960s, most recently in their Sept. 2019 report. [Footnote 2: GAO-10-245] GAO has recommended that BLM review and update its bonding requirements, and BLM has agreed, but has not yet done so. BLM’s minimum bond amounts no longer remotely reflect the true cost of reclamation, and bonds are rarely set above the minimum amount.

BLM’s use of blanket bonds, where an unlimited number of wells are covered by a single bond within a lease, a state, or nationwide, is fundamentally flawed and cannot ensure timely and complete reclamation of oil and gas operations. Most BLM blanket bonds (82%) are set no higher than the minimum bond amounts that have not been adjusted for inflation or changes in technologies and practices that have increased reclamation costs since they were first set. At least 99.5% of federal wells carry bonds that are grossly insufficient to cover the cost of reclamation. The typical reclamation cost for a low-cost well is \$20,000, and \$145,000 for a high-cost well, while the average value of a bond held by the BLM is just \$2,122 per well. A DOI OIG report from 2013 issued several recommendations, including full cost bonding, after noting that, “multiple BLM inspectors and supervisors noted that well bonding was insufficient.” [Footnote 3: OI-OG-12-0085-I]

BLM’s failed bonding policy has resulted in an unacceptable inventory of orphaned wells, an even larger inventory of long-idled wells which are not likely to produce again, a glut of marginally producing wells with little life left and whose environmental impacts often outweigh any production, and an ever growing gap between the total cleanup costs (estimated over \$6 billion) [Footnote 4: EcoNorthwest. (2018). Reclaiming Oil and Gas Wells on Federal Lands: Estimate of Costs. <https://westernpriorities.org/wp-content/uploads/2018/02/Bonding-Report.pdf>] and the financial assurance held by the BLM. The thousands of unplugged and unreclaimed oil and gas wells resulting from this failed system pose significant health, safety, and environmental problems, including hazardous waste that contaminates water supplies, greenhouse gases that contribute to climate change, and lower

property values. BLM has demonstrated a total lack of fiscal and environmental responsibility to the public in allowing this situation to go unaddressed for decades, and abrogated its statutory obligation to ensure complete and timely reclamation.

Our understanding is that the BLM's requirements the issuance of permits to drill are made applicable to Indian leases through the BIA's regulations, [Footnote 5: 25 C.F.R. § 211.4, 212.4, and 225.4] and that BLM's weak rules affect wells on tribal minerals, including individual Native American allottee leases.

Bonding Recommendations

We urge the BLM to require individual bonds for all oil and gas operations or operators set at the estimated cost of reclamation, and to be estimated by professional engineers in a form that covers the full cost of performing all reclamation tasks based on site-specific analyses. Bonds set at the cost of reclamation are the best way to ensure that reclamation occurs. This approach takes into account the presence of facilities that pose higher risk of leaks or spills or increased cleanup costs, such as pits.

Regardless of the base minimum bond amount, the BLM should discontinue use of statewide and nationwide blanket bonds. Because blanket bonds are not tied to projected reclamation costs at a specific facility, or to the number of wells or level of risk, they fail to ensure that sufficient funds are available should the BLM have to take on the responsibility to plug, abandon and reclaim a site.

Reliance on token bonds that are often referred to as "good faith" bonds is especially risky with smaller companies that are less likely to have the funds for plugging and reclamation when wells are depleted and no longer profitable. But given the historical boom and bust nature of the industry, BLM should apply full-cost bonding to all operators, regardless of current financial status, resisting any calls from large operators to exempt them because they are 'too big to fail'.

We urge the BLM to continue to review bonds at least once each year to index them for inflation and/or to determine whether changes in bond amounts are warranted due to changes in the well operation. In addition, bonds should be reviewed immediately when a well stops producing as well as every time well ownership is transferred, to ensure that bond amounts will cover the full costs of reclamation. The common industry practice in which wells with declining production and profit margins are sold to smaller companies results in the burden of reclamation often being assumed by the companies with the least ability to plan for and pay for it.

We urge the BIA to consider parallel rulemaking, considering similar policies, but with the Department's trust obligation and meaningful consultation as the guiding principles of the process.

Comment Number: BOEM-EMAIL-32521-024412-34

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14 7

Comment Excerpt Text:

Based on the foregoing, we recommend that BLM take the following actions.

-Stop all leasing of no and low potential lands. As part of its review process, BLM must (1) review and update, as necessary, its existing RFDS to accurately determine which areas contain no or low potential for leasing and development, and (2) amend its RMPs, as necessary, to close such areas to all future leasing. BLM must provide for public participation in the review and preparation of RFDS.

-Increase minimum competitive and noncompetitive bid rates and penalize operators for failing to place their existing leases into production. As part of its review process, BLM must take steps to disincentivize lease speculation including, but not limited to: (1) establishing higher minimum bid rates and lease rentals, and (2) penalize operators for stockpiling undeveloped leases. On the latter point, BLM should consider establishing annual rental and production royalty rates that increase throughout the lease term (e.g., production royalty of 18.5 percent for years 1-3, 25 percent for years 4-7, and even higher for years 8-10).

-Increase the costs associated with the processing and approval of drilling permits. As part of its review process, BLM must take steps to discourage operators from failing to develop their approved drilling permits. Operators drill only half of their approved permits, which amounts to a significant waste of taxpayer money and BLM resources. BLM must increase the costs associated with the processing and approval of drilling permits as well as establish other financial incentives to encourage operators to apply for drilling permits they intend to develop.

-Establish new policy that instructs BLM to manage lands for the protection of important resource values such as wilderness characteristics, even if the lands are encumbered by existing leases. Approximately half of all oil and gas leases are never developed. Thus, BLM should not decline to protect agency-identified resource values such as wilderness characteristics based on the fact that the lands are subject to oil and gas leases. If leases are developed then they will remain valid and authorized, consistent with existing law and policy. However, if they terminate without having been developed then the lands should be managed for other more legitimate uses.

-Establish new policy and procedures to screen all oil and gas lease nominations. BLM must have a strategy to identify lands that are suitable (or not) for nomination, including screening criteria such as no and low potential lands and foreseeable conflicts with other public land uses (e.g., conservation and recreation). This criteria must require BLM to screen all nominations early in the process to avoid having to defer leases after having already exhausted significant amounts of agency time and resources.

-Develop new guidance regarding lease reinstatements. The practice of reinstating leases that have been terminated for failure to pay the annual rental fee needs to be evaluated by BLM and much more stringent provisions for reinstatement should be put in place. By law, BLM is only to reinstate leases in cases in which the failure to timely submit the rental was “justified” or “not due to lack of reasonable diligence” by the lessee. BLM should establish narrow and specific guidelines for when these criteria may be considered to be met.

Comment Number: BOEM-EMAIL-32521-025899-21

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Finally, for royalties paid on saleable volumes of oil and gas, the MLA established a royalty rate of 12.5 percent which has gone unchanged since it was established in 1920. [Footnote 76: 30 U.S.C. § 226(b)(1)(A).] Under applicable regulations, DOI maintained its discretion to determine the royalty rate applicable to most competitive leases so long as it is at least 12.5 percent. [Footnote 77: 43 C.F.R. § 3103.3-1(a)(2)(ii).] This suggests that the agency has the ability to impose significantly higher royalty rates on most producing volumes of oil and gas, and we urge DOI to issue agency-wide guidance to do so immediately. At minimum, we suggest that DOI raise the minimum royalty rate for onshore oil and gas leases to at least 18.75 percent so as to harmonize the royalty rates charged for offshore production. [Footnote 78: See Humphries, Marc, *The OCS Royalty Rate: Statutory Requirements and General Guidance*, Congressional Research Service, Sep. 14, 2017, available at

https://www.everycrsreport.com/files/20170914_IN10782_914c67da5a932e01c341c7bc75c8efe13226be04.pdf
(noting that the royalty rate for deepwater operations is 18.75 percent).]

Comment Number: BOEM-EMAIL-32521-025899-22

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

B. Update required bond amounts to reflect actual costs of reclamation

Under authorities in the Mineral Leasing Act (MLA) and subsequent amendments, the Secretary of Interior was delegated the authority to determine appropriate bonding levels for the purpose of ensuring “the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease.” [Footnote 79: 30 U.S.C. §226(g)] Current bonding levels are set by regulation [Footnote 80: See 43 C.F.R. §§ 3104.2, 3104.3.] and fall woefully short of providing for the “reclamation” and “restoration” duties Congress sought to impose on oil and gas producers causing disturbances to federal lands. [Footnote 81: See generally Government Accountability Office (GAO), Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells, Sep. 2019, available at <https://www.gao.gov/assets/gao-19-615-highlights.pdf>.] As such, we urge DOI to commence a rulemaking to update its minimum bonding requirements, ensuring that such levels provide assurance to the public that oil and gas producers have sufficient resources for plugging orphaned and abandoned wells and reclaiming and restoring lands disturbed by their activities. While a rulemaking is in process, we also urge DOI to update Instructure Manual 2019-04 to ensure that the agency is adequately considering the risks of wells being orphaned by bankrupt or insolvent operators. [Footnote 82: BLM, Oil and Gas Bond Adequacy Reviews, IM 2019-014, Nov. 15, 2018, available at <https://www.blm.gov/policy/im-2019-014>.]

Comment Number: BOEM-EMAIL-32521-028864-10

Organization: Powder River Basin Resource Council

Commenter: Shannon Anderson

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Comment Excerpt Text:

The Need for Bonding Reform

BLM’s regulations require that bond amounts are to be set:

...to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations...

43 C.F.R. § 3104.1(a). BLM’s guidance provides that the regulatory levels are minimums and calls for adjusting bonding levels based on different risk factors that may arise on existing leases or existing unitwide, statewide or nationwide bonds. However, the agency’s practice is to seldom charge more than the regulatory minimum.

BLM's bonding policies have not been updated in over sixty years. Minimum bond amounts set in statute no longer remotely reflect the true cost of reclamation or inflation and the agency's review and tracking procedures for determining bond adequacy and the government's own liabilities fall far short of what they need to be. As a result, orphaned and abandoned wells, and wells with "unresponsive operators," are left unclaimed while American taxpayers are left to cover the costs of the oil and gas industry's negligence.

The bond minimum of \$10,000 for individual bonds was last set in 1960, and the bond minimums for statewide bonds (\$25,000) and for nationwide bonds (\$150,000) were last set in 1951. According to a 2010 GAO report, "If adjusted to 2009 dollars, these amounts would be \$59,360 for an individual bond, \$176,727 for a statewide bond, and \$1,060,364 for a nationwide bond." [Footnote 4: GAO-10-245] Based on inflation alone, current bond minimums are far lower than originally intended. A later 2011 GAO report understated that, "Specifically, the minimum bond amounts—not updated in more than 50 years—may not be sufficient to encourage all operators to comply with reclamation requirements." [Footnote 5: Government Accountability Office. (2011). *Oil and Gas Bonds: BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability*. (GAO Publication No. 11-292). Washington, D.C.: U.S. Government Printing Office] In fact, BLM field office managers agree. BLM officials interviewed by GAO at 12 of the 16 field offices agreed that these minimum bond amounts are inadequate for managing potential liability. [Footnote 6: Id] This is because the minimum amounts are not sufficient to incentivize operators to comply with reclamation requirements, and the cost to reclaim a well site far outweighs the value of the existing bonds. This creates a perverse financial incentive for an oil and gas operator to walk away from a well and leave it orphaned, forcing taxpayers to pick up the plugging and reclamation tab.

DOI must require reclamation bonds that adequately cover plugging and reclamation costs of wells. Bonds should be site-specific, full-cost bonds, or at the very least \$13/foot, similar to wells bonded under the underground injection control (UIC) program of the Safe Drinking Water Act (SDWA).

In addition to updating bonding amounts, DOI must also update its definitions and mechanisms to properly track and review bond adequacy and well status. According to GAO, "limitations with the data system BLM uses to track oil and gas information on public land restrict the agency's ability to evaluate potential liability and monitor agency performance." To manage potential liability BLM has policies for reviewing bond adequacy and managing idle wells, but does not consider a well "idle" until it has not been producing for at least seven years. Waiting until year seven makes it more likely that the oil and gas operator has already abandoned the well site, and the wait makes it more difficult to start collection from a leaseholder or other responsible party, who often by then have sought protection under bankruptcy laws. BLM should instead seek consistency with states like Wyoming to better track idle and orphan wells.

Comment Number: BOEM-EMAIL-32521-028864-8

Organization: Powder River Basin Resource Council

Commenter: Shannon Anderson

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Comment Excerpt Text:

The Need for Fiscal Reform

DOI has a legal obligation under FLPMA, the MLA and related authorities to modernize its revenue-generating policies for onshore oil and gas development. Under FLPMA, BLM must ensure that American taxpayers "receive fair market value of the use of the public lands and their resources. . . ." 43 U.S.C. § 1701(a)(9). This requirement is also found in the MLA, which demands regular adjustments to royalty and rental rates and minimum bids, in order to "enhance financial returns to the United States. . . ." 30 U.S.C. § 225(b)(1)(B); see also

id. §§ 225(b)(1)(A), 225(d) (authorizing royalty and rental rates increases). Thus, DOI has a clear duty to update its revenue-generating policies and must do so now, given how outdated those policies have become. DOI must more accurately compensate the American taxpayer for the value – and cost – of the oil and gas resources being leased.

The Government Accountability Office has repeatedly concluded that “the inflexibility of royalty rates to changing oil and gas prices has cost the federal government billions of dollars in foregone revenues.” GAO-08-691 (Oil and Gas Royalties) at 16. Furthermore, GAO has found that DOI can recoup these revenues with “negligible” impacts on oil and gas production. GAO- 17-540 (Oil, Gas, and Coal Royalties) at 16. It is for these reasons that on April 15, 2015, BLM issued an Advanced Notice of Proposed Rulemaking (ANOPR) seeking input on potential changes to fiscal policies related to its onshore oil and gas leasing program. As the agency stated: “The anticipated updates to BLM’s onshore oil and gas royalty rate regulations and other potential changes to its standard lease fiscal terms address recommendations from the Government Accountability Office (GAO), and will help ensure that taxpayers are receiving a fair return from the development of these resources.” 80 Fed. Reg. 22148 (Oil and Gas Leasing; Royalty on Production, Rental Payments, Minimum Acceptable Bids, Bonding Requirements, and Civil Penalty Assessments). Now, six years later, it is high time for DOI to complete that rulemaking process and update royalties and other fiscal payments from oil and gas leasing and development.

Specifically, royalties are in desperate need of updating. Congress never intended for onshore royalty rates to remain stagnant. That is why onshore royalties are set “at a rate of not less than 12.5 percent. . . .” 30 U.S.C. § 225(b)(1)(A) (emphasis added). This rate represents a floor which DOI must adjust upward as production rises and to avoid the oil and gas industry enjoying windfall profits that rightfully belong to the American people. However, in practice, BLM has never updated its royalty rates for onshore oil and gas development. They have remained at 12.5% ever since 1920, when Congress first passed the MLA. Notably, at this point, federal onshore royalty rates are lower than the rates used by every major western oil and gas producing state, and much lower than commonly charged by private mineral owners. It is past time for an update. In its review, in addition to evaluating a much-warranted increase in the regulatory minimum royalty amount, we encourage DOI to consider mechanisms other than a flat fee royalty to enhance financial return to the American public, including net profit sharing or royalty bidding.

Comment Number: BOEM-EMAIL-32521-028864-9

Organization: Powder River Basin Resource Council

Commenter: Shannon Anderson

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

Additionally, minimum bonus bids and low rental rates not only lead to lower revenue for the American public but also contribute to the problem of speculative leasing. As the Congressional Budget Office (CBO) recently explained: “A higher rental fee increases the cost of holding a lease, giving leaseholders an incentive to either explore parcels or return them to the government. In practice, the current incentive is weak because the fees are small relative to the cost of developing a lease.” [Footnote 2: Congressional Budget Office, Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Lands at 8, available at https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options.pdf.] Thus, current rental rates are not creating the necessary incentives to maximize revenue from the development of publicly owned oil and gas resources. Likewise, under the MLA, minimum bids must be adjusted to “enhance financial returns to the United States. . . .” 30 U.S.C. § 225(b)(1)(B). Yet, the minimum bid for a competitive lease is just \$2.00 per acre. This is well below the level needed to deter companies from purchasing leases for speculative purposes.

DOI must also update policies that indirectly subsidize oil and gas development at the expense of the American taxpayer, including:

- Lease suspensions: inappropriate use of lease suspensions and unitization allows industry to hold leases indefinitely without production. There are millions of acres of federal minerals in suspended leases, many dating back to the 1980s and 1990s. [Footnote 3: Data accessed through LR2000]
- Lease reinstatements: current agency guidance does not provide clear direction for staff to evaluate and approve or deny reinstatements to ensure consistency with the MLA and agency regulations.
- Leasing low potential lands: the root of this problem is outdated planning guidance that leads BLM to make the vast majority of federal minerals available to leasing in land use plans, regardless of the likelihood of development and in conflict with multiple use management and fiscal responsibility.
- Leasing all oil and gas resources under a surface parcel: unlike private landowners, DOI leases all oil and gas resources under a surface parcel, rather than leasing a specific formation slated for development. In the Powder River Basin, this has meant that leases originally issued decades ago for traditional oil have been used by operators multiple times over for coalbed methane and now deep horizontal wells, resulting in a significant loss to the taxpayer that would have resulted from new leasing.

Comment Number: BOEM-EMAIL-32521-030652-5

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7 13

Comment Excerpt Text:

Any potential oil and gas leasing that continues in the near-term does so with an eye toward addressing historical inequities, curbing pollution and protecting taxpayers.

As we build toward an energy transition, we must address the fact that the current oil and gas leasing system is not only broken but has never been able to fully address the needs of the public. Since the system was instituted in 1987, 57% of all acres leased have been leased for \$2 or less with more than 90% of these leases no longer being active. We ask that the administration take the following measures:

- Increase royalty rates, annual rental rates and minimum lease bids for public lands that account for socio-economic costs, climate costs and promote a sustainable energy transition toward democratic, renewable energy development
- Promote methane capture and phase out industrial methane, VOCs and attendant emissions on public lands through a managed decline within a five-year period
- Permanently plug orphaned wells and remediate and reclaim orphaned well sites on federal land while increasing bonding rates to ensure that industries are held accountable for the monitoring, plugging, remediation and restoration of any future wells
- End the practice of leasing low-potential lands by requiring the BLM to assess all lands' mineral development potential before offering those lands for lease and prohibiting leasing on any lands found to have low or no development potential. These assessments (known as Reasonably Foreseeable Development scenarios (RFDs))

must be updated regularly, and the updating process must be open to public input and participation

Comment Number: BOEM-EMAIL-32521-031857-3

Organization: Arctic Slope Regional Corporation

Commenter: Bridget Anderson

Commenter Type: Tribes and Tribal Organizations

Classification: Substantive

Comment Excerpt Text:

NPRA Impact Grant Program

Alaska Native communities on the North Slope benefit from oil and gas development in a myriad of ways, the greatest of which is direct financial support. The Naval Petroleum Reserves Production Act (NPRPA) provides that the State of Alaska receives 50% of royalties from the production of oil and gas on federal lands. This statute also directs that the State prioritize use of these funds by communities most impacted by development, funds which the State administers through the NPR-A Impact Grant Program. These revenues translate into community infrastructure and social services for the communities closest to the development projects.

The NPR-A Impact Fund has had a tremendous positive impact on North Slope communities. For example, over the past ten years, the village of Nuiqsut has received almost \$6.5 million in grants from the Impact Fund, which were used to support general government operations, youth center operations and maintenance, a boat ramp, and community center maintenance. The North Slope Borough, the regional municipal government for the North Slope, received nearly \$30 million in NPR-A Impact Grant Program funds over the past decade, which it used for services including school counselors, comprehensive community planning, and land management and permitting.

Comment Number: BOEM-EMAIL-32521-033513-2

Organization: Access Fund

Commenter: Erik Murdock

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

Climbing and Oil & Gas Conflicts

Recreational use of public land—and climbing in particular—often suffers from the industrial impacts of oil and gas developments. Examples of these conflicts include the massive oil and gas leases in the Moab area. The Mineral Leasing Act of 1920 (MLA) “reserves” federal public lands for economic uses and preservation of certain resources in service of the national interest. The MLA applies to all deposits of oil, natural gas, oil shale, coal, and other fossil fuels, as well as to certain fertilizers and applies to approximately 564 million acres of federal lands (Bureau of Land Management or US Forest Service lands usually). A permit to enter the public lands and explore for minerals must be obtained from the government. There is no right to “prospect” as there is under the Mining Law. Under the MLA the federal government grants the authority to drill and extract minerals by lease—typically 20 years for coal and 10 years for oil and gas. The government may place conditions on leases to ensure consistency with land management plans, and receives royalties which are distributed between the federal government, the states and local governments where the leases are located.

Several common conflicts between recreation and the activities authorized under the MLA and Mining law

include:

-The placement and design of industrial infrastructure and access roads can significantly impact climbing areas where climbers remain in the same place for extensive periods of time, and noise, dust, and congestion from nearby road traffic undermines the outdoor experience.

-Views of surrounding landscapes are an important component of any outdoor experience, including those from national parks. Poorly designed infrastructure—such as power lines and pipelines—can extensively degrade iconic views from climbing areas.

-Noise, smell, air quality concerns from industrial operations can also affect outdoor visitors including the potential for oil and gas spills.

-Speculative Oil and Gas Leasing of Low Potential Lands - Over 90 percent of over 200 million acres of public lands managed by the BLM remain available for leasing. The failure to update the Mineral Leasing Act of 1920—and related rules and policies—will lead to more speculative leasing, which casts a growing shadow over nearby public lands and impacts outdoor recreation management because land managers typically focus on leasing permits rather than outdoor recreation opportunities. A leasing update by the Interior Department could also mean instructing the BLM to fulfill its multiple-use mandate by providing staff and resources that can improve and manage recreation assets like climbing areas.

-Abandoned and At-Risk Oil and Gas Wells Cause Environmental Impacts – DOI has also failed to require adequate bonding for oil and gas projects, leading to abandoned or at-risk wells that can impact outdoor recreation. According to a new report by the National Wildlife Federation and Public Land solutions, at least 97 of at-risk well sites are within a mile of recreation sites, with many more are close to dispersed recreation locations such as mountain bike trails, climbing crags, and hunting and fishing areas. Abandoned, orphaned, and non-producing wells put our public lands, wildlife populations, clean air and drinking water at serious risk. DOI Department of Interior should require adequate bonding to prevent oil and gas companies from walking away from depleted or otherwise dry wells—leaving cleanup costs to taxpayers—and causing environmental impacts that impair recreation experiences such as climbing.

Policy Recommendations

DOI can address the above conflicts by reforming its leasing program and land use management practices in the following ways:

-Require extensive public participation from stakeholders and tribal interests during both leasing and permitting of oil and gas developments. State recreation directors can assist in this work by connecting stakeholder such as recreation interests with local communities and industry representatives.

-Limit the quantity and scope of competitive sales declaring high value recreation lands such as climbing areas as unavailable for leasing. A formal nomination process could better identify lands suitable for oil and gas developments and which should be protected for other multiple uses such as recreation.

-Formalize a new discretionary procedure that allows leases only when consistent with FLPMA and will not impair other multiple uses such as climbing and other recreation.

-End anonymous lease nominations and noncompetitive leasing to expose bad actors that abuse the system (leaving orphan wells, causing environmental damage) and end rampant speculation that often ties up public lands from other multiple uses such as recreation.

-Increase the 100-year-old 12.5% royalty rate and bring a better return to taxpayers for leasing public land.

-Strengthen bonding requirements to avoid the cost of reclamation being imposed on taxpayers and reduce the amount of abandoned and orphaned wells.

DOI can also require the use of key [Bold: effective planning tools] and [Bold: best management practices] to prevent impacts to outdoor recreation, including:

-Master development plans, unit agreements, development density limits, and phased leasing to limit oil and gas development footprints.

-Alternatives to pits, directional drilling, technologies that minimize methane leaking and flaring, and other strategies to prevent wasteful, unnecessary and harmful emissions, and reduce light pollution.

Comment Number: BOEM-EMAIL-32521-034219-5

Organization: Taxpayers for Common Sense

Commenter: Michael Maragos

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Minimum Bids

Onshore

The current minimum bid of \$2 per acre was set in 1987 and has not kept pace with inflation. Many bidders have taken advantage of the low rate. In 2019 and 2020 alone, more than 550 leases covering roughly 660,000 acres of federal land received the minimum bid. The low rate also incentivizes speculation, tying up federal land from other potential uses. A Government Accountability Office (GAO) report [Hyperlink: <https://www.gao.gov/assets/gao-21-138.pdf>] found that only 1.9 percent leases sold at the \$2 minimum bid from FY2003 to FY2009 ever entered production and generated royalties.

Had the minimum bid been \$5 per acre, taxpayers could have gotten \$2 million in additional revenue over the last two years. Had it been \$10 per acre, taxpayers could have gotten \$5 million in additional revenue. Raising the minimum bid for federal leases and pegging it to inflation would both prevent devaluation of federal exploration and development rights over time and better deter private interests from locking up federal land without developing it.

Offshore

In the Gulf of Mexico (GOM), where Outer Continental Shelf (OCS) leasing is focused, minimum bid levels have been updated at times, but are due for an increase. The Minerals Management Service (MMS) raised the minimum bid for all leases in water 400 meters deep or deeper to \$37.50 per acre by 2004. In 2011, the Bureau of Ocean Energy Management (BOEM) held the first sale with \$100 per acre as the minimum bid for leases in water 400 meters deep or deeper, where it has remained since. After a decade, BOEM should increase the minimum bid level again, at least to keep pace with inflation.

For leases in waters less than 400 meters deep, the minimum bid level has remained unchanged at \$25 per acre

since 1987. This means taxpayers are guaranteed less than half what they were for GOM leases more than three decades ago. BOEM needs to remedy the situation and consider raising the minimum bid level back to \$150 per acre for all GOM leases, where it was set in the 1980s.

Comment Number: BOEM-EMAIL-32521-034250-2

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

The problem: current practices tie up lands without producing energy or revenues.

Poor, indecisive and inefficient Interior management of oil and gas resources provides hidden subsidies to speculators who do not diligently pursue development. Because Interior often fails to actively manage public lands with dormant oil and gas leases for other public uses, it effectively denies the public—persons, organizations, and companies—the certainty they need to use these lands for beneficial economic, conservation, recreational or other purposes. When the federal agencies leave lands in limbo because of the remote possibility that a long dormant, low-value oil or gas lease might be developed some day, uncertainty reigns, and neither the public nor other industries can make long-term commitments to alternative uses of those lands. The economic, social and environmental benefits of those other uses are thus lost.

Below market royalty and rental rates, low minimum lease bids, inadequate bonds, lengthy and lax lease suspensions, unjustified reinstatements of lapsed leases, and leasing low potential lands encourages speculators to tie up federal lands often for decades—preventing decisions to either expeditiously develop the oil and gas resources for energy or, alternatively, maximize the benefits flowing from other uses of public lands. By subsidizing and enabling dormant leases, current practices tie up lands without producing energy or revenues for the American people and simultaneously preventing those lands from being used for other purposes. Scattered in checkboard fashion across the American West are neglected public lands not utilized for the greatest good because of Interior’s mismanagement and misguided subsidies for non-beneficial uses. Interior’s neglect of these lands fails the multiple use standard of federal law.

The solution: charging market rates and discouraging unproductive leasing will yield the right balance of uses and returns.

To provide the greatest benefit to the American public, Interior should incentivize the timely production of oil and gas from public leases by charging market rates at every stage of the leasing and production process, and also decisively managing land and resources to support the most appropriate combination of multiple uses. Federal leases are issued for terms (ten years) that are longer than those used by many states or private parties so the industry already has ample time to develop leased lands. Interior, as manager of all leases of public lands and minerals, should focus on making sure those leases are ended if they are not being used productively and ensure leases are yielding a fair return while they are tying up public lands. Accordingly, this petition asks Interior to more effectively meet the standards of multiple use management and a fair return of revenues to the public by:

1. Charging higher, market-tested royalty rates (such as those used by states and the private sector) instead of the inadequate, subsidy-providing 12.5% rate;
2. Increasing rental rates on federal leases to a level sufficient to incentivize oil and gas production so that the

percentage of federal leases that produce energy would rise well-above the current, unsatisfactory levels (e.g. only 50% in Rocky Mountain States);

3. Increasing minimum lease bids, as recommended by the Congressional Budget Office, to deter companies from purchasing leases for speculative purposes only;

4. Updating bonding requirements to reflect current costs associated with reclamation and restoration of lands used for oil and gas production;

5. Reforming lease suspension practices to establish rigorous standards guaranteeing that undeveloped oil and gas leases are either diligently placed into production or cancelled so that the land can be managed for other beneficial uses;

6. Updating lease reinstatement practices to require consistent and higher standards of justification for reinstating lapsed leases, with minimal tolerance for defaults on rental payments; and

7. Stopping the leasing of lands with low potential for oil and gas production and managing those lands for other purposes of greater benefit to the public.

The combination of these policies will generate millions of dollars annually for the American people, as well as states and local communities that benefit from federal oil and gas production. As numerous economic and fiscal studies indicate, higher royalty rates will generate large amounts of additional revenue with negligible impact on production. Indeed, several of the other changes proposed here will ultimately incentivize more timely production of oil and gas from federal lands and minerals, which raises the prospect for a net increase in energy production overall. Finally, and more importantly, a diversity of beneficial uses of federal land will expand as the waste and neglect of lands with dormant, speculative leases decline. Overall, better management of public lands will result in better uses in the right places, including renewable energy, recreation and conservation. More rigorous, decisive and efficient management will greatly increase the revenues and benefits to the American people from public lands and minerals.

Comment Number: BOEM-EMAIL-32521-034250-39

Organization:

Commenter: Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

vi. Congress should require Interior, prior to offering any tracts for oil and gas development, to analyze such tracts for their suitability and potential for renewable energy development, including development that can be integrated with agricultural or other sustainable uses. Interior should compare the relative total benefits and costs to society, including impacts on global warming, from using those tracts for either type of energy development. Interior will hold public meetings and hearings of its findings from its comparison on the different energy development options for these tracts and will issue a decision choosing the best course of action for each tract.

This step is necessary given the:

- overarching importance to society of reducing the pace of climate change,
- evolving knowledge concerning human-caused climate change and its impacts, and
- rapid changes in the technology of renewable energy systems and their declining costs.

Without an explicit energy planning step as recommended here, the implications of changing climate and energy conditions will not be applied on a timely and effective basis to choices being made for the use of federal lands for various energy purposes. Failing to do so can have serious, if not disastrous, consequences for humankind.

Comment Number: BOEM-EMAIL-32521-034546-5

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

IV. Fiscal reforms.

Onshore oil and gas leasing fiscal policies must be updated. The current decades-old system denies tax payers fair market value for the commercial development of publicly-owned oil and gas resources. Failure to modernize this system means that revenue generating policies have not kept pace with inflation and have fallen well behind the policies of most states.

a. Royalty rates.

BLM should increase royalty rates. The Royalty rate of 12.5% is significantly lower than rates imposed by states and private landowners, and raising rates will have a negligible impact on production. Many western states have strengthened their fiscal policies in order to provide a fair return to taxpayers, and in doing so have seen no significant negative effect on production on state lands. For example, Texas charges a royalty rate of 25% while both North Dakota and New Mexico charge 18.75%. The GAO has concluded that increased royalty rates could generate an additional \$20 to \$38 million in revenues for the federal government and states per year. [Footnote 43: GAO, Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue (June 2017), available at <https://www.gao.gov/assets/gao-17-540.pdf>.]

The Mineral Leasing Act requires a royalty “at a rate not less than 12.5%” for leases issued competitively. [Footnote 44: For non-competitively-issued leases, the royalty rate is fixed at a flat 12.5 percent by statute (30 U.S.C. § 226(c) and 30 U.S.C. § 352 (acquired lands)), although 43 C.F.R. § 3103.3-1 allows a 16 2/3% rate on noncompetitive leases reinstated under § 3108.2-3, plus an additional 2 percentage-point increase added for each succeeding reinstatement. Legislation would be required to make other changes to the royalty rate for non-competitively issued leases; 30 U.S.C. 226(b)(1)(A); 30 U.S.C. § 352 (applying that requirement to leases on acquired land)).] This language is repeated in BLM’s regulations at 43 C.F.R. § 3103.31. BLM can increase royalty rates by changing these regulations via a rulemaking. However, the statute and the regulations require a royalty at a rate “no less than 12.5%,” rather than creating a flat rate of 12.5% (as seen with non-competitively issued leases). Therefore, BLM has the authority to increase royalty rates when issuing or renewing individual leases. The benefit of undergoing a rulemaking would be to put in place a standard minimum royalty rate across all leases.

b. Rental rates and minimum lease bids.

BLM should increase its rental rates and minimum lease bids, neither of which have been raised since 1987. The onshore rental rate is currently \$1.50 an acre for the first five years, and then \$2.00 an acre for the next five years. The minimum lease bid is currently \$2.00 an acre. Both rental rates and minimum lease bids can be increased via

the rulemaking process, and BLM should ensure these rates keep pace with inflation so the benefits to the taxpayer are not eroded over time.

Comment Number: BOEM-EMAIL-32521-034585-37

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Federal law requires DOI to produce a full and fair return to the public. Yet, compared to how states manage oil and gas leasing, the federal government gives industry at least a third of the value owed to the taxpayers—with billions of dollars lost over time. The current program encourages irresponsible leasing and lacks the transparency necessary for the public to be meaningfully included in land use decisions. The GAO, the government’s financial watchdog, has repeatedly raised concerns that BLM’s fiscal policies are high risk.

BLM has a legal obligation to modernize its revenue-generating policies for onshore oil and gas development to ensure taxpayers are not unwittingly subsidizing damaging climate change. Under FLPMA, BLM must ensure that American taxpayers “receive fair market value of the use of the public lands and their resources.” [Footnote 83: 43 U.S.C. § 1701(a)(9).] This requirement is also found in the MLA, which demands regular adjustments to royalty and rental rates and minimum bids, in order to “enhance financial returns to the United States.” [Footnote 84: 30 U.S.C. § 226(b)(1)(B); see also id. §§ 226(b)(1)(A), 226(d) (authorizing royalty and rental rates increases).] Thus, BLM has a clear duty to update its revenue- generating policies and must do so now, given how outdated those policies have become and the significant amount of revenue that is not going to American taxpayers.

Significant additional details are included in a 2017 APA Petition submitted by TWS and other NGO partners, attached to these comments as Appendix B, and two white papers written by Dan Bucks, [Footnote 85: Dan Bucks is the former Montana Director of Revenue and former Executive Director of the Multistate Tax Commission.] A Fair Return for the American People--Increasing Oil and Gas Royalties from Federal Lands, and Fiscal Responsibility in the Management of Oil and Gas Leases on Federal Lands, attached to these comments as Appendices C.1 and C.2, respectively.

1. BLM should increase the royalty rate and set a new floor for the rate.

The onshore oil and gas royalty rate is currently 12.5 percent, which has not changed since 1920. All of the major oil and gas producing states in the West provide higher royalty rates than the federal government’s onshore rate. For example, Texas has a rate of 25 percent while both North Dakota and New Mexico charge 18.75 percent.

Congress never intended for onshore royalty rates to remain stagnant. That is why onshore royalties are set “at a rate of not less than 12.5 percent.” [Footnote 86: 30 U.S.C. § 226(b)(1)(A) (emphasis added); 43 C.F.R. § 3103.3-1. For non-competitively-issued leases, the royalty rate is fixed at a flat 12.5 percent by statute (30 U.S.C. § 226(c) and 30 U.S.C. § 352 (acquired lands)). Legislation would be required to change the royalty rate for non-competitively issued leases.] This rate represents a floor which Interior must adjust upward as oil and gas production rises and to avoid the oil and gas industry enjoying windfall profits that rightfully belong to the American people. For instance, in 2009, Interior raised the offshore royalty rate from 12.5 percent to 18.75 percent in response to rising oil prices. [Footnote 87: Congressional Research Service, Mineral Royalties on Federal Lands: Issues for Congress, 4 (Jan. 2015), available at: https://www.everycrsreport.com/files/20150119_R43891_3bd50f51ada1b53821153ce674b442bc7df659de.pdf.]

However, even though onshore oil production has nearly doubled since 2008, the onshore royalty rate has not changed. [Footnote 88: Office of Natural Resources Revenue, Production Data, available at <https://revenuedata.doi.gov/downloads/>]

Note that as detailed in Section II(b) of these comments, BLM should adopt a climate fee for oil and gas production for any new leasing that occurs, tiered to the social cost of greenhouse gases and capturing full lifecycle GHG emissions costs. One mechanism for adopting a climate fee is through an increased royalty rate. Should BLM choose to adopt a climate fee through an increased royalty rate, BLM should ensure that the increased royalty rate is set at a level that is adequate both to provide a fair return to the public and to address the climate pollution consequences of oil and gas development and use.

RECOMMENDATIONS:

- BLM should increase the onshore royalty rate to a minimum of 18.75 percent to capture fair market value—this should be the floor for an increased royalty rate. BLM should also adopt a climate fee, and one potential method for doing so is to further increase the royalty rate, as detailed in Section II(b) of these comments.
- Support passage of Senator Rosen and Senator Grassley’s bill to increase royalty rates, rental rates and minimum bids, the Fair Return for Public Lands Act of 2021 (S. 624), as well as the passage of Representative Porter’s legislation, the Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021 (H.R. 1517), and Rep. Levin’s Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503). Among other fiscal reforms, these bills would increase the onshore royalty rate from 12.5 percent to 18.75 percent. Note that as described above, an 18.75 percent royalty rate should be considered the floor for an increased royalty rate.

Comment Number: BOEM-EMAIL-32521-034585-38

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

2. BLM should increase the rental rate and reduce standard lease periods.

BLM has a similar duty to increase rental rates. All federal leases are “conditioned upon payment . . . of a rental not less than \$1.50 acre per acre” for the first five years and \$2.00 per acre for the remaining years. [Footnote 89: 30 U.S.C. § 226(d) (emphasis added).] The federal onshore rental rate is currently \$1.50/acre for the first five years and then \$2.00/acre for the next five years; these rates have not been updated since 1987. These rates are well below what is currently needed to get fair market value for the use of public lands and to limit the speculation that is currently plaguing the oil and gas program.

It is also important to look at lease lengths and rental rates charged by states and the private sector because they are better at managing for due diligence. Texas, for example, charges \$5 per acre for its initial 3-year primary lease period, and then increases the rate to \$25 per acre under a lease extension to encourage diligent development.

RECOMMENDATIONS:

- BLM should conduct a rulemaking to increase rental rates at a minimum to \$3.00/acre for the first two years and

\$5.00/acre for the next three years, and \$25 per acre for any extension period, which should be limited to two years if development on the lease has begun. (All rates should be indexed to inflation.)

-BLM should adjust the standard lease period to be five years (two years exploratory work and three years development) with the potential for a two-year extension if development on the lease has begun.

-Support passage of Senator Rosen and Senator Grassley's bill to increase royalty rates, rental rates and minimum bids, the Fair Return for Public Lands Act of 2021 (S. 624), as well as the passage of Representative Porter's legislation, the Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021 (H.R. 1517), and Rep. Levin's Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503). Among other fiscal reforms, these bills would increase the rental rate from \$1.50/acre for the first five years and \$2.00/acre for the remainder of the lease, to \$3.00/acre for the first five years and \$5.00/acre for the remainder.

Comment Number: BOEM-EMAIL-32521-034585-39

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

3. BLM should increase the minimum bid amount and evaluate all bids with a market value test.

BLM must increase minimum bids, which are encouraging wasteful speculation by industry. Under the MLA, minimum bids must be adjusted to "enhance financial returns to the United States." [Footnote 90: 30 U.S.C. § 226(b)(1)(B).] Yet, the minimum bid for a competitive lease is just \$2.00 per acre. This is well-below the level needed to deter companies from purchasing leases for speculative purposes. According to the Congressional Budget Office (CBO), over one-quarter of competitive leases sold for the minimum bid between 2003 and 2012. [footnote 91: CBO, Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Lands at 18 (April 2016).] A separate analysis found that over half of the companies that hold federal leases in the Rocky Mountain states were not even recognized as "active" operators by state oil and gas commissions. [Footnote 92: Jayson O'Neill, Rigged: Industry already has the keys to the kingdom, Western Values Project (June 21, 2017), available at: <http://westernvaluesproject.org/industry-already-has-the-keys-to-the-kingdom/>.] Not only would higher minimum bids help deter these companies from tying up public lands to the detriment of other multiple-use activities, like conservation and outdoor recreation, but they would also generate more revenue for taxpayers—the CBO estimated that raising the minimum bid to \$10 per acre for auctions and requiring the same amount for non-competitive parcels would increase net federal income by an estimated \$50 million over 10 years. [Footnote 93: CBO, Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Lands at 32.]

RECOMMENDATIONS:

- BLM should conduct a rulemaking to increase minimum bids to between \$5.00 to \$16.00/acre and index rates to grow with inflation to help reduce speculative leases. DOI should reestablish procedures for reliably estimating market values to encourage diligent development on 100% of leases. DOI should be directed to evaluate all bids to determine if they represent fair market value and to reject bids that, although above the \$16 minimum, fail a market value test.

- Support passage of Senator Rosen and Senator Grassley's bill to increase royalty rates, rental rates and minimum bids, the Fair Return for Public Lands Act of 2021 (S. 624), as well as the passage of Representative Porter's legislation, the Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021 (H.R. 1517), which

would increase the national minimum bid from \$2.00/acre to \$5.00 or \$10.00/acre and index to inflation.

-Support passage of Representative Levin's bill to modernize oil and gas policies, the Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503), which would increase the national minimum acceptable bid amounts to \$5 per acre and require the Secretary of Interior to adjust national minimum bid amounts for inflation at least once every four years.

Comment Number: BOEM-EMAIL-32521-034585-7

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Impose a net zero GHG emissions obligation on producers and lessees for all new oil and gas development—including new wells on existing leases—through compensatory mitigation, using tools such as a climate fee.

- Place a climate fee on any new or renewed oil and gas leases, and new development on existing leases, to address the climate pollution costs of oil and gas development. This kind of fee is within DOI's discretion under existing statute and regulation and will reduce emissions while simultaneously increasing revenue. The fee amount should be tiered to the scientifically and economically supported social cost of greenhouse gases, capturing the full lifecycle of emissions costs.

Comment Number: BOEM-EMAIL-32521-035678-5

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Other Sections: 16

Comment Excerpt Text:

B. Immediate Administrative Actions on Oil and Gas Valuation and Rates of Payment.

There are certain obvious and discrete deficiencies in current oil and gas practices that should be an immediate priority for correction. The prior Administration enacted amendments to the Office of Natural Resources Revenue (ONRR) 2016 Valuation Rule that gave an odd assortment of royalty revenue concessions to the oil and gas industry based on the false premise that they would fulfill the purposes of now-repealed Executive and Secretarial Orders aimed at boosting production oil and gas production on federal lands. The process for adopting these changes to the 2016 Valuation Rule was rushed and deeply flawed. Further, these orders called for increasing fossil fuel production without due regard for impacts on climate change, public health, and multiple use management of federal lands. President Biden wisely revoked these prior orders because they were incompatible with new Executive Orders protecting public health and the environment and addressing climate change. Thus, the prior Administration's amendments to the 2016 Valuation Rule cannot stand and should be reversed.

For several years, numerous public and private reports have documented the Interior Department's failure to update royalty rates, minimum lease bid payments, and acreage rental rates that are set far below what is needed to achieve a market value return for the public. The result is that the America people and their states and communities are being enormously shortchanged. These rates need to be increased as soon as possible.

It is unwise and unnecessary to wait to the end of the oil and gas review process to take immediate action to correct these problems. Accordingly, Interior should undertake the following immediate actions:

1. Rescind the January 15, 2021, valuation rule amendments adopted at the last minute by former Administration because they were the product of an inadequate process and are entirely incompatible with the new Administration's policies on protecting the environment and addressing climate change.

2. Promptly increase, as a step toward fiscally responsible management of fossil fuel production, rates of payments that apply to oil and gas production as follows:

a. Raise onshore and offshore royalty rates to market rate levels for new leases and any other leases where rates are subject to modification. A good indicator of market rates for royalties are the rates that states charge for oil and gas production on state lands. The current median level of state royalty rates is 19.375% unweighted for production. If weighted for state production on state lands, the median rate would be even higher—most likely at or above 20%—because the highest royalty rates tend to occur in the states with the highest level of production, such as Texas and New Mexico. Interior should calculate a rolling three-year median of top state royalty rates weighted by production and use those results as a guide to adjusting federal royalty rates on a regular basis. This exercise would most likely result in a current increase in federal royalty rates to approximately 20% for new leases.

Interior should also adopt a rule establishing a periodic evaluation of royalty rates (perhaps every three to five years) that would include, but not be limited to, comparing federal royalty rates with production-weighted median of state rates and also private rates if available and estimating trends in the producer and owner share of the value of the minerals produced given changing technology. The rule would require Interior to adjust royalty rates for new leases in response to the analysis.

b. Raise minimum bids per acre for onshore fossil fuel leases to at least \$20 or as high as \$100 to focus production on the most productive resources and to discourage speculative leasing. Previous research by the Taxpayers for Common Sense, adjusted for inflation, supported setting minimum bids no lower than \$15 per acre. [Footnote 2: Taxpayers for Common Sense, "The Cost of Speculation in Federal Oil and Gas Leases," October 3, 2017. This author has made the inflation adjustment from the time period of the source data used by the Taxpayers for Common Sense in the report and is entirely responsible for any errors in doing so.] A new and more extensive report by the GAO presents data that supports setting minimum bids at \$100 per acre to discourage speculation and achieve well-targeted, efficient production and royalty revenues. [Footnote 3: U.S. General Accountability Office, "Oil and Gas: Onshore Competitive and Non-Competitive Lease Revenues," GAO-21-138, November 2020, at: <https://www.gao.gov/assets/gao-21-138.pdf>] Most significantly, the GAO report presents factual data showing that leases granted with bonus bids below \$20 but above \$2 were only marginally more productive than those issued at the \$2 minimum. Thus, this evidence casts serious doubt on setting any minimum bids at less than \$20 per acre. Further, the report also provides some support for setting the bids at or closer to \$100 per acre as opposed to a lower number. Accordingly, \$20 to \$100 per acre are the acceptable bookends for new minimum bid levels in order to focus production on higher quality resources and reduce speculative leasing.

Whatever the new minimum bid level Interior adopts, it should adopt a rule providing for an annual adjustment in the minimum bid to reflect inflation, and that adjust bid level would apply to new leases issued after the adjustment.

c. Increase annual rental rates for leases to \$15 an acre or more as the initial base rate for oil and gas leases. It is often recommended that rental rates be structured over the life of a lease to encourage diligent development. Thus, a discount of the base rental rate, such as one-third, might be applied in the early years of a lease (e.g., the first three years), and the rate should be progressively and significantly increased over the last five years of a ten-year lease. That is a reasonable idea. However, an even better idea might be to offer the early period discount as a

rebate to be paid as a rental credit in the fourth and fifth years of the lease provided that the lessee has completed certain exploration and preliminary development steps within the first three years. That would prevent a rental discount from being wasted on leases where no diligent development occurs. Also, a rather steep rise in rental rates in the final years of a lease is justified as a further incentive for development.

Again, Interior should adopt a rule requiring an annual adjustment to the acreage rental rates to reflect inflation. The rule could require that the inflation apply to all leases issued after the adoption of the inflation adjustment rule. That would include leases in effect after the original adoption of the rule as well as the new leases issued each year. That is just in maintaining the real economic value of the rents due the public during the life of all the affected leases.

Why should Interior adjust bid and acreage rental rates for inflation annually? Very simply, Interior has a regrettable history of failing to increase these various rates even though Congress has granted full authority to do so in response to changing economic conditions. As a result, Interior allows the real dollar amount of these rates to erode. Decades will go by without Interior using its authority to increase dollar rates for lease bids and rentals, thus effectively giving a hidden, but growing subsidy to producers in real terms over time. The \$2 per acre minimum bid set in 1987 is worth only about 86 cents today. Interior's failure to keep rates updated for inflation has forced Congress to intervene every several decades only to reset them to the same real economic level it had set decades before. Interior has a minimal duty to the American people to update dollar rates for inflation. Thus, Interior should maintain the real economic value of lease and rental payments and update these rates annually for inflation.

The percentage royalty rates also need to be updated regularly for changing technology and trends in payments to state government and private royalty owners. Producers are entitled to receive a share of the value of oil and gas produced that covers their costs of extraction plus a reasonable rate of return. The remaining share of the value is the economic rent due to the owners of the resource—in this case, the American people. As the technology of production improves over time, the percentage share of value due to producers decreases, and the share due to the owners increases. States and private parties have kept up with these changing trends, while the federal government has not done so. Hence, periodic reviews are needed to increase royalty rates to reflect the impact of any improved technology and reduced costs of production.

The recommendations above cover the immediate actions necessary to restore and update the traditional structure of payments made to the public for fossil fuel production on federal lands. Beyond these traditional forms of payments, additional financial measures are needed to address issues of environmental and public health damages and the value lost due to reductions in other beneficial uses of federal lands. The structure of these additional charges is described in Section D. Further, this entire financial structure and other policies for the management of fossil fuel production on federal lands should be developed and kept up to date through mechanisms of robust public participation. There is a vital and long overdue need for greater transparency and public engagement in Interior's decision-making. Thus, these recommendations turn next in Section C to the task of developing strong institutional mechanisms through which Interior can welcome the public as its primary partner in decision-making concerning the fossil fuel production on federal lands.

Comment Number: BOEM-EMAIL-32521-035678-7

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Comment Excerpt Text:

D. Require Payments for Environmental Harm and the Loss of Value from Decreased Multiple Uses of Federal

Lands Leased for Oil and Gas Purposes.

As described in Section A, a full and fair return to the public requires not simply that the public be paid royalties, lease bids, and acreage rentals at market value, but it also requires that public also be protected from or compensated for any diminished value arising from environmental harm and the loss of alternative uses of the public lands. To the degree that any such harm and loss of use values cannot be properly eliminated, the public should be compensated through the following payments determined in consultation with the Public Interest Advisory Committee.

1. Interior should determine and add charges per barrel of oil and cubic foot of natural gas payable with royalties when oil or gas production occurs to reimburse the public for the production-related adverse environmental costs to society due to:

a. emissions from all leases of carbon, methane and other substances that contribute to climate change or widespread adverse public health consequences, and

b. local environmental, public health and social impacts identified for specific leases.

The charges applicable to all leases should be based on existing, reliable studies of these costs combined with further analysis Interior may judge necessary. Interior should identify local environmental and social costs on a lease-by-lease basis from site specific assessments and environmental impact analyses. All identified environmental and social costs of production, whether global or local, should be converted to charges per volume of oil or gas produced. The additional charge for environmental and social impacts will be included in lease terms at the time leases are offered for public sale.

2. Interior should add annual charges per acre for the loss of value from diminished multiple uses over the life cycle of the lease. Interior should, through appropriate research, establish the average value forgone from alternative, beneficial uses of lands in each region for conservation, recreation, wildlife habitat, alternative energy development and other uses due to oil and gas leasing. Interior should establish rules to calculate and add site-specific estimates of additional lost value from multiple uses as identified for the lease parcel in site specific assessments and NEPA evaluations. The average value lost per region over the lease period plus the site-specific additional losses of value will be translated into a per acre amount due and payable either with the lease rental payments as a charge for the loss of value from diminished multiple uses or separately after production ceases. However, unlike rental payments, this charge will continue to be due and payable on a periodic basis during lease suspensions and reclamation of the production site because the loss of multiple uses continues through the entire life cycle of the oil and gas activity, including those time periods. The established amount of charges for the loss of value from diminished multiple uses will be included in lease terms at the time leases are offered for public sale.

3. Interior should consider increasing the minimum bid level to incorporate the option value of a lease to account for uncertainties related to future oil and gas prices and environmental and social costs. This measure is another step toward achieving a full and fair return to the public and providing a financial incentive for potential lease bidders to incorporate public objectives in their private decision-making.

These adjustments to royalties, acreage rental payments and minimum bids are all necessary and appropriate to ensuring a full and fair return to the public.

Comment Number: BOEM-EMAIL-32521-035678-9

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other
Classification: Substantive

Comment Excerpt Text:

F. Valuation Rules Should Be Strengthened to Become More Transparent, Less Subject to Producer Discretion to Understate Reported Values, and Consistent in Their Application of Valuation Principles.

The 2016 Valuation Rule represented a major improvement in Interior’s valuation practices for fossil fuels produced on federal land. Unfortunately, the prior Administration’s 2020 effort to amend these rules undermined some of the progress made in the 2016 Rule and introduced unjustified revenue concessions to industry that were inconsistent with sound valuation principles. Hopefully, the new Administration will rescind these rules.

The 2016 Valuation Rule represented a transition away from the federal government relying primarily on producer reporting of gross proceeds—a method that allows too much discretion to producers to understate mineral values, overstate deductions, and creates complex ambiguities in royalty calculations that are difficult to correct in audits. That is especially the case in non-arm’s length situations where producer sales prices for oil or gas do not reflect market values and, indeed, may be manipulated to understate royalty payments. The 2016 Valuation Rule, especially for non-arm’s length situations relies more extensively on either (a) indexing methods or (b) improved reporting where the producer is asked to use as a starting point the first arm’s length sale of a product.

Indexing is a method that relies on objective aggregate statistics to determine the market value of fossil fuels produced. It has the virtue of eliminating most producer discretion and generating transparent results that can be publicly reported because mineral values are no longer based on proprietary calculations. In general, indexing should be expanded as (a) sources of aggregate statistics are verified as being valid and capable of generating statistically mineral values and (b) Interior becomes expert in applying the method accurately and effectively. In general, carefully developing high quality index methods can increasingly serve the public in achieving a full and fair return and can also support public disclosure of mineral values and royalty payments.

Unfortunately, the prior Administration’s 2020 amendments hastily pressed forward with an option of allowing arm’s length producers of natural gas to use indexing on an optional basis that could be switched back and forth with proceeds reporting every two years. That proposal encouraged producers to game the reporting system by switching reporting methods on a frequent basis for their own advantage. The also did not guarantee that indices being used by producers would be statistically reliable and valid. Indexing is not yet fully developed for non-arm’s length producers, so it was premature to make it available in arm’s length situations, especially on a frequent, optional basis. Moving forward prematurely will only discredit the careful development of accurate and objective indexing systems for valuing fossil fuels.

The 2020 amendments also sought to revive the so-called “Deepwater Policy” for offshore production which allows certain deductions for what in reality are gathering costs that violate the principle that such costs should not be deductible by producers. This change was wrong on its own terms. Worse yet, this failure to apply valuation principles consistently only encourages industry to pursue future concessions that similarly are inconsistent with established standards for valuing production for royalty purposes. Every bad exception to valuation principles only encourages additional and potentially more serious exceptions in the future that deny the public a fair return on the minerals they own.

The question of how Interior can ensure that it is valuing minerals to achieve a full and fair return to the public is a large subject that can produce lengthy commentary and analysis. This brief discussion here of how best to value fossil fuels on public lands is aimed at making one simple point. Interior has been making progress in improving its valuation methods and it needs to continue doing so. That progress is best achieved through a careful and fully open, public discussion of valuation improvements through the Advisory Committee. An open and careful process

conducted through this committee whose only interest is the public interest can help achieve two critical outcomes. It can make a topic of vital importance that now seems to be an obscure and arcane—valuation policy—understandable to the public. Secondly, it can help Interior make continued progress in valuing minerals in a consistent and accurate manner that helps produce a full and fair return for the American people and with the results in terms of mineral values and royalty payments being transparently reported to the public. Without this type of mechanism for public engagement and discussion, the progress that Interior has been making can be undermined as was the case with the unfortunate 2020 amendments to the 2016 Valuation Rule. Valuation policies are too important to be left to obscure negotiations between oil and gas producers and Interior staff. It is time to bring these policies out into the sunshine and to allow the public that owns the minerals help determine how they should be valued.

Beyond this recommendation regarding how Interior can continue to best improve its mineral valuation practices, this author is prepared to respond to a variety of questions about the substance of valuation policies and procedures and their methods of application.

Comment Number: BOEM-EMAIL-32521-036716-1

Organization: University of Colorado Law School

Commenter: Mark Squillace and others

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

1. **Raise Annual Rental Fees to Minimize Speculation:** Federal oil and gas leases are conditioned on the payment of “not less than \$1.50 per acre per year for the first through the fifth years of the lease and not less than \$2 per acre per year for each year thereafter.” 30 U.S.C. § 226(d). Low rental rates encourage speculation and tie up public lands for many years with an encumbrance that limits the use of public lands for other purposes, even where development prospects for the lease are low. The BLM’s should design its rental policy to insure prompt development or relinquishment of the lease. To that end, we recommend that the BLM propose an initial rental fee of at least \$10 per acre per year for the first three years. A higher initial rental fee will discourage speculative bidding on leases since the annual cost of holding the lease will be much higher. After the first three years, we recommend an escalation clause that significantly increases the rental fee for every successive year that the lease is not developed. For example, after the initial three-year period where the rental fee was \$10/acre/year, the rental fee might be increased to \$20/acre/year in year four, \$30/acre/per year in year five and so on so that by year ten, the annual rental fee would be \$80/acre/year. Escalating rental fee clauses have been used by the Interior Department for certain shallow offshore leases [Footnote 1: OIL AND GAS LEASING: Interior Could Do More to Encourage Diligent Development, GAO 09-74 (October 2008).] but they should become routine and applied to all federal leases to the fullest extent possible

Higher rental fees with an escalation clause would promote diligent development of oil and gas leases and strongly disincentivize holding leases, and especially noncompetitive leases, for speculative purposes. To be sure, this could lead to fewer leases, but the higher rental fees could well result in a net increase in revenues for the federal and state governments. The new rental policy should be carefully drafted so that lessees cannot escape higher rental fees simply by filing an APD for a lease that the lessee is not prepared to use once it is approved. To enforce this policy, the BLM might require back payment of rental fees if the operator fails to develop a lease promptly after an APD is approved.

2. **Royalties Should be Raised to the High Side of Market Prices:** The Mineral Leasing Act of 1920 requires lessees to pay a royalty rate of “not less than 12.5%” of the value of production. 30 U.S.C. § 226(b)(1)(A). The BLM has not increased this rate since 1920 when it was first adopted, even as many states and the offshore oil and gas program have adopted much higher royalty rates. [Footnote 2: See OIL, GAS, AND COAL ROYALTIES:

Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue, GAO17-540, at pp. 8, 21 (June 2017).] In 2017, a GAO report noted that increased royalties might modestly dampen production but would increase revenues significantly. More specifically, the GAO talked with “officials from Colorado [20% royalty] and Texas [25% royalty] [and were told] that they ... raised their state royalty rates without a significant effect on production on state lands.” [footnote 3: Id. at p. 21]

The GAO study looked at royalty rate increases of 16.67%, 18.75%, and 22.5%. And it specifically noted a CBO estimate indicating “that if the royalty rate for onshore oil and gas parcels were raised from 12.5 percent to 18.75 percent, net federal revenue would increase by \$200 million over the first 10 years, and potentially by much more over the following decade, depending on market conditions.” [Footnote 4: Id at p. 22.] If the BLM is serious about ramping down production and maximizing federal and state revenues then it should set a minimum royalty rate at the higher end of these figures, – at least 20% – for all federal oil and gas leasing – onshore and offshore.

3. Increase Minimum Bids to Limit Speculation: The Mineral Leasing Act requires that: [t]he national minimum acceptable bid [for competitive oil and gas leases] shall be \$2 per acre [until December 22, 1989.] Thereafter, the Secretary ... may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands.

Despite its clear authority to do so, the BLM has never increased the minimum bid price above the \$2/acre threshold, and many leases are being sold for this amount. Like low minimum rental payments, low minimum bids encourage speculation and burden our public lands with leases, many of which may never be developed. Yet, because these leases encumber public lands, the BLM is constrained in its ability to make the land available for other purposes, including, for example, renewable energy projects. The minimum bid should be raised substantially, perhaps to as much as \$100/acre. This would ensure that lease sales would attract only those operators who are serious about developing the lease. [Footnote 5: See OIL AND GAS: Onshore Competitive and Noncompetitive Lease Revenues, GAO-21-138, (November 2020). The GAO found that “competitive leases with high bonus bids—above \$100 per acre—represented a small portion of the total number of competitive and noncompetitive leases (about 17 percent) but accounted for the majority of revenues (about 74 percent) Further, competitive leases with high bonus bids were more likely to produce oil and gas and began producing earlier in their 10-year primary term than other competitive and noncompetitive leases.” Id. at p. 10.]

While 30 U.S.C. § 226(a)(1)(B) appears to authorize the BLM to raise minimum bids on “all leases,” 30 U.S.C. § 226(c)(1) has been construed to require issuance of a noncompetitive lease to the first qualified applicant who applies within two years of an unsuccessful competitive auction, upon the payment of a mere \$75 application fee. No minimum payment is required. The Chairman of the House Natural Resources Committee recently criticized these noncompetitive leases for tying up public lands even though “[o]nly 1.2 percent of those noncompetitive leases ended up producing oil and gas.” [Footnote 6: See On Heels of BLM Oil and Gas Lease Sale, Chair Grijalva and Rep. Lowenthal Release GAO Report Showing Extent of Outdated Industry Giveaways, (House Natural Resources Committee December 14, 2020).] While the \$75 application fee might be raised substantially that alone is not likely to deter applicants for these noncompetitive leases. On the other hand, higher annual rental fees with an escalation clause, along with a strong commitment from the BLM to put up for auction only those lands with a high potential for development, could go a long way to overcoming the problem with noncompetitive leases.

Comment Number: BOEM-EMAIL-32521-036716-4

Organization: University of Colorado Law School

Commenter: Mark Squillace and others

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

6. Bonds Should Reflect the Full Cost of Third-Party Reclamation:

The Mineral Leasing Act requires the Secretary to promulgate regulations adopting – such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease.

30 U.S.C. § 226(g). According to a 2019 report from the GAO, “[b]onds held by BLM have not provided sufficient financial assurance to prevent orphaned oil and gas wells.” [Footnote 11: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells, GAO-19-615 (September, 2019)] To address this concern, the GAO recommended that the BLM increase bonding amounts to better reflect reclamation and closure costs. [Footnote 12: Id at 24.] The BLM has yet to act on this recommendation. It should do so promptly, and when it does, it must ensure that bond amounts reflect the full cost of hiring third-party contractors to carry out the reclamation. The BLM should also avoid bonding schemes that allow self-bonding or bonding pools that have proved inadequate in other situations, especially for an industry like oil and gas that is prone to bankruptcies. Experience with bonds for coal mining operations under the Surface Mining Control and Reclamation Act (SMCRA) demonstrate that even large, established companies can encounter financial problems that can compromise self-bonding and other creative bonding arrangements.

Comment Number: BOEM-EMAIL-32521-036813-3

Organization: Shell Offshore Inc.

Commenter:

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

II. Imposing higher royalty rates in the U.S. GOM in lieu of a national carbon price would reduce GOM production while increasing GHG emissions to the detriment of American workers and the environment.

Since 2008, newly-issued U.S. deepwater GOM leases have been assessed at the highest royalty rate in the entire U.S. federal estate (first at 16.67% in 2008, then 18.75% for every year thereafter), and two BOEM-sanctioned studies have found U.S. government take in the federal OCS is not globally competitive among peer regimes.

The 2018 Comparative Analysis of the Federal Oil and Gas Fiscal Systems: Gulf of Mexico International Comparison, [Footnote 9: Link: 2018 Comparative Analysis of the Federal Oil and Gas Fiscal Systems: Gulf of Mexico International Comparison (boem.gov)] commissioned by the Interior Department and conducted independently by IHS Markit, assessed the U.S. deepwater GOM against competing peer groups. The report found that “When the entire range of government take is taken into account, Brazil, Guyana, and Mexico outperform the U.S.” [Footnote 10: Id. at 16] This is significant given that Mexico, Brazil, and Guyana all represent relatively new deepwater regimes which are already competing for capital, workforce, and assets.

These findings echo a previous Interior Department study, conducted by the Obama Administration in 2011. That report found,

The wide ranges of government takes between 53% for profitable projects to 86% for marginal projects in

Deepwater GOM suggests a highly regressive fiscal system that penalizes marginal fields. [Footnote 11: Link: 2011 Comparative Assessment of the Federal Oil and Gas Fiscal System [boem.gov] at P. 5] [Emphasis added.]

...

The GOM is an attractive investment environment; however it is also among the most expensive next to Alaska and other arctic environments. As exploration and production move beyond 5,000 feet, which seems to be the area with the greatest growth potential in the GOM according to EIA and DOI, achieving desirable rates of return is going to be quite challenging. [Footnote 12: Id. at 60] [Emphasis added.]

...

[T]he GOM nominal royalty rate is already higher than all offshore oil and gas jurisdictions outside the United States. [Footnote 13: Id. at 133.]

These assessments are further supported by BSEE's public data showing a substantial decline in new U.S. deepwater GOM well starts and platform installations. Specifically, in the past 10 years deepwater operators have drilled only 1,172 new wells and installed only 13 new platforms compared to 1,871 new wells and 31 new platforms in the preceding 10 years. [Footnote 14: <https://www.data.bsee.gov/>]

To be abundantly clear, this commentary is not intended to suggest that U.S. deepwater GOM royalty rates should be reduced per se; instead, it presents strong evidence that royalty increases in the U.S. deepwater GOM would compound upon an already challenged fiscal regime against global peers. In turn, with at least some production no longer being extracted in the U.S. deepwater GOM in lieu of these other more fiscally competitive fiscal regimes, the remaining U.S. and global demand would be met by overseas shipments with worse Scope 1, 2, and 3 emissions footprints and risks of incidents during transit.

For instance, during the Interior Department's March 25th Forum, a panelist raised the concept of levying higher royalty rates on federal oil and gas production in lieu of a national carbon tax, leaving production on state lands and private lands unburdened and unassessed for their own GHG impacts. The panelist indicated that this would be a less efficient but somehow "analogous" method compared with a national carbon tax to capture the externalities associated with hydrocarbon production. However, this piecemeal approach is still fundamentally flawed as it would implement a disjointed and incomplete system for achieving the nation's climate ambitions. This is because assessing a carbon price on one fraction of the nation's production ignores, and thereby unfairly advantages, the GHG emissions of some production based merely on where that production is geographically located and whether it is a foreign, federal, state, or private lease. Instead, the proper focus should be reducing emissions by bolstering the lowest GHG-intensive production and avoiding replacing those hydrocarbons with higher GHG-intensive production.

To expand, policies that target the production of hydrocarbons rather than emissions would discourage innovation and limit the ability of the U.S. to meet the demands of its own economy. Companies such as Shell are investing in new technologies to reduce their emissions, such as Carbon Capture, Utilization, and Storage (CCUS) and low carbon fuels for multiple sectors. A royalty regime that fails to account for these investments and reductions in the lifecycle of our GHG emissions discourages these investment decisions and creates new barriers to our shared net-zero emissions ambitions. As the century unfolds, we expect oil demand to decline, but even in the year 2100 under a "1.5C" scenario, global oil demand is estimated to be 20.8 Mmbbd—similar to the global use in 1960. Furthermore, it is entirely possible that the lowest cost opportunities to meet this demand will continue to exist in the U.S., perhaps from yet-to-be-developed fields using efficient low-cost production techniques that aren't available today. One need only consider the rapid expansion of horizontal drilling and the economic production of Light Tight Oil (Shales) to appreciate the potential for innovation in hydrocarbon production, as well as the incredible engineering deployed to achieve deepwater exploration and production in the U.S. GOM since 1978.

A proposal to raise royalty rates and other costs on U.S. deepwater GOM oil and gas leases would be counterproductive, increasing GHG emissions by disincentivizing production of lower GHG-intensive volumes while incentivizing, and thereby substituting, production of higher GHG volumes. Instead we encourage the Interior Department to pursue policies that encourage investments in new GHG-reducing technologies—such as streamlining the permitting of facilities that deploy CCUS technologies in the OCS, streamlining leasing, permitting, and the installation of offshore renewable energy, infrastructure—and working with Congress and the White House to implement a national carbon pricing scheme. Shell has long supported an economywide U.S. carbon price as the most effective way to reduce U.S. GHG emissions when coupled with appropriate complementary policies that drive innovation and support infrastructure development. Even a sectoral approach to carbon price may have merit if well-designed and applied consistently across the entire sector. However, selectively applying a carbon price or climate-related regulatory burden to select oil and gas assets (such as increasing royalty rates on solely federal leases) will produce distortions that will negatively impact the competitiveness of the U.S. economy without yielding desired reductions in global emissions.

Shell strongly encourages the U.S. federal government to impose a robust and transparent carbon price to drive decarbonization across the economy in line with the U.S. net-zero 2050 ambitions.

Comment Number: BOEM-EMAIL-32521-036937-2

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 1.2 12

Comment Excerpt Text:

Interior should pursue concurrent action on three fronts to restore rationality to the leasing program. First, the agency should revise management plans to curtail leasing and prioritize conservation and other beneficial uses, with a goal of achieving zero, net-zero, or net-negative emissions by 2030. Second, Interior should strengthen mitigation requirements on any fossil-fuel extraction that occurs including restoring restrictions on methane pollution, groundwater contamination, and oil-spill risk and considering greenhouse gas offsets on fossil-fuel extraction. And third, Interior should adjust the fiscal terms of new and modified leases to account for the costs of climate change and ensure a fair return to taxpayers. Additional detail on these recommendations is provided below and in the attached Policy Integrity report from September 2020 titled “A New Way Forward on Climate Change and Energy Development for Public Lands and Waters.” [Footnote 6: Jayni Hein, Inst. for Pol’y Integrity, A New Way Forward on Climate Change and Energy Development for Public Lands and Waters (2020), available at <https://policyintegrity.org/publications/detail/a-new-way-forward-on-climate-change-and-energy-development-for-public-lands-and-waters>]

For any reforms that Interior pursues, it will be critical for the agency to support those reforms with strong analysis that adequately assesses both beneficial and adverse impacts. Because good analysis takes time, Interior should begin assembling its analytical tools as soon as possible including developing an improved energy substitution model that corrects the myriad failures of its existing MarketSim model. [Footnote 7: See *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736–40 (9th Cir. 2020) (detailing fundamental flaws in the MarketSim model and vacating Bureau of Ocean Energy Management’s approval of an offshore oil drilling and production facility in the Beaufort Sea for its reliance thereon)] The second section of these comments discusses the numerous analytical improvements that Interior should consider to support reforms to the leasing program. Policy Integrity plans to publish additional materials in the coming months on how Interior can legally and economically support long-overdue reforms.

Comment Number: BOEM-EMAIL-32521-036937-20

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

(3) If any new fossil fuel leasing occurs, adjust the fiscal terms of new and modified leases—royalty rates, minimum bids, and rental rates—in order to account for climate change costs and earn a fair return to taxpayers, such as through implementing a carbon adder;

Comment Number: BOEM-EMAIL-32521-036937-8

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Interior Should Increase Royalties, Rental Fees, Minimum Bids, and Bonding Requirements to Ensure a Fair Return to Taxpayers

Despite being required to receive “fair market value” for both onshore [Footnote 33: 43 U.S.C. § 1701(a)(9) (requiring BLM to “receive fair market value of the use of the public lands”).] and offshore [Footnote 34: Id. § 1344(a)(4) (“Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.”).] lands, Interior has hardly adjusted financial terms in decades even though our understanding of climate change has greatly expanded and inflation has made those financial terms more favorable for developers. Interior should update these lease terms as part of its programmatic evaluation.

The royalty rate may be the most important term to adjust as the royalty payments make up roughly 90% of federal revenues from the leasing program. [Footnote 35: See Revenue, Natural Resources Revenue Data, <https://revenuedata.doi.gov/?tab=tab-revenue>.] Despite broad authority to adjust royalty rates, [Footnote 36: Resource-management statutes set floors for royalty rates but give the agency wide latitude to set rates above those minimums. See 30 U.S.C. § 226(b)(1)(A) (setting minimum royalty rate of 12.5 percent of onshore oil and gas revenues); 43 U.S.C. § 1337 (a)(1) (setting minimum royalty rate of 12.5 percent of offshore oil and gas revenues).] Interior has rarely deviated from the statutory minimums, causing federal royalty rates to fall well below those imposed by other jurisdictions. [Footnote 37: For instance, the federal onshore oil and gas royalty rate of 12.5 percent (the statutory minimum) is less than the royalty rate imposed by many states for production of oil and gas on state-owned land. Many states impose royalty rates ranging from 16.67 to 20 percent. CONGRESSIONAL BUDGET OFFICE, Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Lands 9 (2016), <https://perma.cc/SEMb7-PNA5>. Texas imposes a 25 percent royalty rate. Ctr. for W. Priorities, Royalties and Public Revenues from Energy Development on American Lands, <http://westernpriorities.org/wp-content/uploads/2015/07/Royalties-Public-Revenues-from-Energy-Development-on-American-Lands.pdf>.] This causes two problems. First, because royalties are set so low, they deprive federal and state governments of potentially substantial royalty revenue, even accounting for an expected production decline from a royalty rate increase. [Footnote 38: See Prest & Stock, *supra* note 5, at 2 (finding that a royalty surcharge of 39% would maximize revenue and increase annual royalty receipts by \$6.2 billion)] And second,

since federal royalty rates are set well below the social costs of extraction, they impose an externality on the public and cause producers to take insufficient environmental precaution. [Footnote 39: See *id.* at 15 (showing that a royalty surcharge based on the social cost of carbon would decrease emissions while increasing revenue).]

A significantly higher royalty rate set to internalize climate externalities by incorporating the social cost of greenhouse gases—sometimes called a “carbon adder”—would both reduce greenhouse gas emissions and increase royalty revenue. [Footnote 40: *Id.*] One recent analysis, for instance, found that an additional 44% royalty charge (on top of existing base royalty rates) would be appropriate to internalize the climate costs of oil and gas extraction assuming a social cost of carbon based on a 2 percent discount rate. [Footnote 41: Prest & Stock, *supra* note 5, at 4. The social cost of greenhouse gases was first used in federal policymaking starting in 2010 at the recommendation of an interagency working group composed of experts from twelve federal agencies and White House offices, including the Council on Environmental Quality (“Working Group”). The Working Group was disbanded by the Trump administration in 2017, and later reestablished by President Biden through Executive Order in January 2021. Exec. Order No. 13,990 § 5(b), 86 Fed. Reg. 7037 (Jan. 25, 2021). At the moment, the Working Group recommends a central discount rate of 3 percent, producing an estimate of \$51 per ton of carbon dioxide released in 2020. Interagency Working Group on the Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide – Interim Estimates under Executive Order 13,990, at 5 (2021). In February 2021, however, the Working Group acknowledged that this valuation “likely underestimate[s] societal damages from [greenhouse gas] emissions” due to the high discount rate, and that a discount rate of 2 percent or lower is likely more appropriate for intergeneration effects. *Id.* at 4, 16–22. The Working Group is currently reevaluating its estimates and expects to revise the social- cost valuations by January 2022. *Id.* at 1. For cross-agency consistency and to minimize legal risk, Interior should apply the central social cost valuations endorsed by the Working Group as part of any carbon adder.] That same analysis found that a 44% carbon adder would increase royalty revenue by \$6.1 billion annually while decreasing aggregate carbon

Dioxide emissions (after accounting for leakage) by 42 million metric tons per year. [Footnote 42: Prest & Stock, *supra* note 38, at 17 tbl.3] A carbon adder could alternatively be imposed as a set fee based on greenhouse gas emissions, as opposed to as a set percentage of revenues. [Footnote 43: A fee tied directly to carbon emissions would most optimally internalize climate damages, since it would not depend on the confounding factor of the resource price. Although royalties are traditionally calculated as a percentage of sale revenues, a carbon fee could also be legally justified as a form of compensatory mitigation.]

Interior should also revisit minimum bids and rental fees, both of which are set very low and, in many cases, have not been updated in decades. The minimum bid for onshore oil and gas leasing has been set at \$2 per acre since 1987, [Footnote 44: 30 U.S.C. § 226(b)(1)(B).] while rental rates, also last updated in 1987, are only \$1.50 per acre for each of the first five years of the lease term and just \$2 per acre annually thereafter. [Footnote 45: 30 U.S.C. § 226(d). Although the MLA provides these amounts as minimums, BLM regulations set annual rents at these statutory-minimum amounts. 43 C.F.R. § 3103.2-2(a).] At bare minimum, these fees should be adjusted for nearly 35 years of inflation (and subsequently be adjusted for inflation every year thereafter). Interior should also consider increasing these fees to account for option value. Option value is the informational value of delay, [Footnote 46: *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 610 (D.C. Cir. 2015) (“[W]aiting [to extract] . . . has benefits, including what is referred to as informational value. More is learned with the passage of time: Technology improves. Drilling becomes cheaper, safer, and less environmentally damaging. Better tanker technology renders oil tanker spills less likely and less damaging. The true costs of tapping . . . energy resources are better understood as more becomes known about the damaging effects of fossil fuel pollutants.”).] and by receiving the long-term option to drill—allowing them to assess drilling and economic conditions and delay extraction until the optimal time—fossil-fuel producers receive a substantial benefit from the government. [Footnote 47: As of the end of fiscal year 2020, nearly half of the over 26.6 million acres of federal land locked up in oil and gas leases—over 12.7 million acres—was lying idle without production. Compare Oil and Gas Statistics, BUREAU OF LAND MGMT. tbl. 2, <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas- statistics>, with *id.* tbl. 6. Companies engage in the practice of speculative leasing and sitting on low-

potential lands for multiple reasons. First, companies often have a “perverse incentive ... to sit on undeveloped federal land,” since by having subsurface reserves as assets on a balance sheet, a company can “immediately improve its overall financial health, boost its attractiveness to shareholders and investors, and even increase its ability to borrow on favorable terms.” CTR. FOR AM. PROGRESS, *Oil and Gas Companies Gain by Stockpiling America’s Federal Land* 3 (2018), <https://www.americanprogress.org/issues/green/reports/2018/08/29/455226/oil-gas-companies-gainstockpiling-americas-federal-land/>. Second, although there is frequently “little evidence that much oil or gas is easily accessible,” buyers may be “hoping that the land will increase in value nonetheless, because of higher energy prices, new technologies that could make exploration and drilling more economical or the emergence of markets for other resources hidden beneath the surface.” Eric Lipton & Hiroko Tabuchi, *Energy Speculators Jump on Chance to Lease Public Land at Bargain Rates*, N.Y. TIMES (Nov. 27, 2018), <https://www.nytimes.com/2018/11/27/business/energy-speculators-public-land-leases.html>. In other words, buyers are considering option value—as rational economic actors do when assessing market value] As producers derive substantial value for the option to extract, Interior should place a premium on that option by raising minimum bids and rental fees. Additionally, Interior should reform the leasing process to reduce uncompetitive bidding by taking a hard look at lands nominated by developers before approving them for lease. [Footnote 48: The percentage of leases being given away through noncompetitive sales “surged in the first year of the Trump administration to the highest levels in over a decade” and now “make up a majority of leases given out by the federal government” in numerous states. I]

Finally, interior should increase bonding fees to provide adequate insurance against environmental contamination in the case of abandonment or bankruptcy. The Mineral Leasing Act provides that Interior shall require “an adequate bond ... to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations.” [Footnote 49: 30 U.S.C. § 226(g).] Yet current requirements—which also have not been adjusted in decades (despite inflation)—are far too low to ensure complete restoration. For instance, while the average BLM bond totaled \$2,122 on a per-well basis in 2018, actual clean-up costs for abandoned onshore wells average between \$20,000– \$145,000. [Footnote 50: Gov’t Accountability Office, *Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells* 6, 11 (2019)] Without financial incentive to remediate, developers abandon hundreds of wells on federal land every year [Footnote 51: *Id.* at 14. In total, it is estimated that approximately 3 million wells are orphaned nationwide on federal, state, and private land. Silvio Marcacci, *Plugging Abandoned Oil Wells Is One ‘Green New Deal’ Aspect Loved by Both Republicans and Democrats*, FORBES (Sept. 21, 2020), <https://www.forbes.com/sites/energyinnovation/2020/09/21/plugging-abandoned-wells-the-green-new-deal-jobs-plan-republicans-and-democrats-love/?sh=556c2c8f2e10>—saddling taxpayers with the cleanup cost while contributing substantially to greenhouse gas pollution. [Footnote 52: EPA estimates that unplugged oil and gas wells nationwide (on federal, state, and private land) release 7 million metric tons of methane per year. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2008*, at 3-101 to -102 (2020).] Thus, BLM should raise bondage requirements to reflect actual cleanup costs.

Comment Number: BOEM-EMAIL-32521-037440-11

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

9. Any drainage as determined by an independent petroleum engineer or as found in Item #8 would require a lease with the appropriate Etcheverry Partnership requiring a 25% royalty on our pooled portion of minerals. We object to any pooled agreement with the 12.5% Federal Royalty.

Comment Number: BOEM-EMAIL-32521-037440-2

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

2.The leases that were awarded on the three Federal Lease Parcels underneath our deeded land ranged in value from \$11, \$22, \$33 per acre. These small bonuses hardly reflect large potential oil and gas reserves. This means that 1856.51 Acres of Green Energy potential surface area that will generate millions of dollars in taxes for the Federal Government will be halted for a pittance of lease bonus payments received from the Federal Leases. These leases are not in an active drilling area. Any wells that might be drilled would be considered wildcats. The prospects of future royalties being paid to the Federal Government on these lands are minimal. The future royalties, if any, would be significantly less than taxes generated from wind and solar. a.SOLUTION: Require that any Federal Oil/Gas bonus and Annual lease payments start at a minimum of \$250/Acre. This will ensure that there is a real interest in drilling instead of obtaining leases with the winning bidder's main objective being brokering or selling the lease. This is proven by the lack of any major oil and gas company winning the bid. The bonus payment paid to the Federal Government is a pittance of what the land could generate in Green Energy revenue taxes over 40-50 years. Decline curves on oil or gas production would pay small royalties to the Federal Government after 4-7 years. b.SOLUTION: As mentioned in the attached letter, fix the current Federal Oil and Gas lease to reflect current market conditions: a 25% Royalty, and a maximum 3-year lease with a continual drilling clause. This will ensure that there is a real interest in drilling a lease, and that a real oil and gas company is seeking to secure the lease to drill it.

Comment Number: BOEM-EMAIL-32521-037855-11

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Raise lease fees based on a fair market value evaluation; lease fees should be re-evaluated every five years; and in between 5-year reviews, the cost of leases should be adjusted annually based on inflation.

Comment Number: BOEM-EMAIL-32521-037855-4

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Core Principle #2: The federal mineral estate belongs to the American people, not the extraction industry. It is time for the Department to put the public interest ahead of the industry's interest.

For far too long, DOI fossil fuels management practices and procedures have been designed for the convenience and benefit of the extraction industry, not to protect the public interest. However, the public (i.e., the American taxpayer) deserves a fair return on the exploitation of publicly owned, non-renewable energy resources that DOI manages on the public's behalf. The public also deserve a fair opportunity to comment on federal leasing policies and proposals; and lessees (not the public) must be held fully accountable for cleanup and reclamation costs related to drilling or mining activities. In practical terms, this means among other things:

-Implement comprehensive program reforms that clearly put the interests of the American people above that of the oil and gas and mining industries;

-Leasing fees must be raised to reflect fair market value;

Comment Number: BOEM-TRANS-32521-000039-2

Organization: Natural Resources Law Center at University of Colorado Law School

Commenter: Mark Squillace

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

You know, we basically, Nada pointed this out in the beginning, we charge \$1.50 excuse me, \$2 for the 6 to ten years, 1.50 for the five years of a rental fee, and what that does, really, is encourage speculation. I think it's highly problematic to have rental fees that are so low. If we increase rental fees to something like \$10 an acre, we would really, I think, see far less leasing going on, but the revenues would likely remain as high or maybe even higher than they are now. I don't think we would need to worry about distinguishing between competitive and noncompetitive leases as long as we were charging a sufficient fee. I would also say what we ought to do is having an escalating rental fee, \$10 for the first three years, but you would ratchet that up over time to discourage companies from holding on to leases that they're not likely to develop. If they don't develop, at least revenues would be coming to the Government. I think that would be a way to address some of the problems that we have right now with all of these stale leases on the public lands.

Comment Number: BOEM-TRANS-32521-000039-3

Organization: Natural Resources Law Center at University of Colorado Law School

Commenter: Mark Squillace

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Regarding royalties, I would remind everybody about a 2017 GAO. Their conclusion was that a modest there would probably be a modest decline in the amount of leasing that happened with increased royalty rates, but that would be more than made up for in terms of revenues, because of the higher kinds of royalty rates, it seems to me the BLM could easily justify a 20% royalty rate on federal lands. I know more complicated formulas, I think Ryan may be talking about some of that in his talk, I'll just leave that there. Regarding minimum bid, currently, it's \$2 an acre. I think you could easily increase that, maybe to as much as \$100 an acre, trying to encourage speculation would be the key here, and we wouldn't have people interested in not developing their resources.

Section 9 - Permitting/Exploration, Development, and Drilling Plans (for example, offshore exploration, development, and production plans; onshore applications for permits to drill)

Comment Number: BOEM-EMAIL-32521-018389-27

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Policies to Improve Environmental Analysis for Exploration and Development Plans and Permits to Drill:

BOEM and BSEE often approve exploration and development plans as well as grant permits to drill without doing the thorough and demanding environmental review that NEPA requires. The Trump administration also implemented policies to expedite such approvals without full analysis. BOEM and BSEE should adopt new procedural requirements and policies for environmental analysis and review of development permits as well as exploration and development plans, such as requiring full NEPA analysis on applications for permits to drill. Such analysis would give regulators more information and allow adoption of tailored conditions on activities at specific drill sites. Environmental analysis should also include attention to the nation's increasing export of crude oil. Ensuring more specific attention to exports in NEPA analyses of new exploration or drilling would allow Interior to understand, for example, if production from a lease is contributing to the national oil supply or is being exported (or allowing other oil to be exported).

Comment Number: BOEM-EMAIL-32521-018389-4

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Reform Permitting Practices (infra at pp. 27–35) – Interior must thoroughly evaluate production and development on existing leases and develop a program to transition away from fossil fuels. As part of that process, we recommend that Interior:

- Adopt regulations to curb methane emissions;
- Develop regulations to limit development;
- Adopt regulations to improve safety;
- Adopt regulations to address offshore pipelines;
- Implement policies to improve environmental analysis related to permits to drill and exploration/development plans;
- Institute reforms to decommissioning practices and financial assurances;
- Make changes to royalties to increase revenues;
- Adopt stronger air quality regulations in the Gulf of Mexico; and
- Address crude oil exports.

Comment Number: BOEM-EMAIL-32521-019020-2

Organization: International Association of Drilling Contractors

Commenter: Matthew Giacona

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

II. Leasing & Permitting Moratoria Create Widespread Business Planning Uncertainty and Push Hydrocarbon Production to Less Environmentally Regulated, Competing Foreign Markets

Despite assertions that the Administration's actions to-date are immaterial in terms of impact on the domestic oil and gas landscape, it is substantially likely that the uncertainty caused by the current restriction of leasing and permitting activities will severely impact long-term U.S. energy production and push production to less environmentally regulated markets, particularly production in the Gulf of Mexico. This cause-and-effect relationship was recently highlighted in comments by Ramanan Krishnamoorti, Chief Energy Officer for the University of Houston, who noted that the Administration's leasing and permitting moratorium means "new exploration drilling and production for the foreseeable future is unlikely to happen" in the Gulf. As noted in the timeline below, the amount of time between first exploration and final production of an oil or gas well can be over 14 years. Consequently, a temporary pause today will likely present downward pressures on production for years to come:

[See attachment for figure titled Federal Onshore Field Exploration & Potential Production Timeline]

Additionally, as the world's population and demand for energy increase, the ability for products like cleaner U.S. natural gas to act as bridge fuels for coal, solid fuels, and biomass could be lost as demand is merely shifted to competing foreign markets. The hydrocarbons extracted in these markets are often dirtier on a per-unit basis than their U.S. counterparts, and thus run counter the goal of moving the world forward to overall lower emissions, something the industry and drilling contractors take very seriously. As an example, studies have estimated the average upstream carbon intensity of crude oil in Russia to be 1,688 grams CO₂eq./MJ, compared to 824 grams CO₂eq./MJ in the United States. [Footnote 5: S. Masnadi et al. (2018, August 31). Global carbon intensity of crude oil production. <https://www.osti.gov/pages/servlets/purl/1485127/>] According to recent analysis by PwC, regulatory uncertainty created by leasing and permitting pauses means "investment in deep water development capabilities will likely go to the regions that have alternate exploitation opportunities and fewer regulatory constraints." [footnote 6: M. & S. Jozwiakowski (2021, April 14). Who Wins if the USA Gulf of Mexico Loses Out? https://www.rigzone.com/news/who_wins_if_the_usa_gulf_of_mexico_loses_out-14-apr-2021-165161-article/?rss=true/] At a time in which the Administration looks to bolster jobs and recover the economy, it is perplexing that the Department of Interior would pursue policies that have great potential to shift demand for energy products away from the United States, toward less-regulated markets. IADC suggests that DOI undertake its intended assessment of the federal oil and gas program concurrent with unabated leasing practices that have, until recently, proven to be exercised with the necessary prudence and oversight that have ensured the proper stewardship of federal lands.

Comment Number: BOEM-EMAIL-32521-019746-3

Organization: ConocoPhillips

Commenter: Fennessey Karl

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

ConocoPhillips recognizes the need for regulation, and we support a stable, consistent regulatory regime based on sound science and economics. We support a permit review process that ensures a thorough analysis of actions that impact the environment and natural resources, as required by existing statutes including the NEPA and Endangered Species Act (ESA). We believe that such a regulatory process can promote strong environmental stewardship without imposing overly prescriptive, duplicative or impractical requirements that not only delay

investments and have a low benefit-cost value for the environment and stakeholders, but also unnecessarily burden already resource-constrained agencies. We also note that the federal mineral acreage in our lease holding portfolio is governed by the Mineral Leasing Act and the Naval Petroleum Reserve Production Act - both of which provide for other public uses consistent with oil and gas development. Together, the governing statutes of NEPA and ESA complement the obligations under the MLA and NPR-A to ensure the BLM satisfies its multi-use mandates on public lands.

We emphasize that, from our experience, BLM field offices are best positioned to make important decisions regarding local impact. We encourage the BLM to solicit input from surface users with longstanding track records of responsible federal surface use. ConocoPhillips also works in consultation with local stakeholders in addressing frontline impacts through our regular stakeholder relations consultative process. For example, earlier this year, we signed an agreement with the DOI regarding the Theodore Roosevelt National Park, under which ConocoPhillips owns mineral rights to oil and gas. We committed to the DOI that we would locate all oil and gas infrastructure outside the Park, so that visitors could not see any Elkhorn Ranch Unit oil and gas activities when visiting the park.

Comment Number: BOEM-EMAIL-32521-020638-2

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Next, OCSLA states, as part of the process for developing a leasing program, that the “Timing and location of exploration, development, and production of oil and gas among the oil- and gas- bearing physiographic regions shall be based on a consideration” of various factors. The plain language of this section and the use of the term shall make clear that leasing is a requirement. The factors themselves demonstrate that the current, 2017-2022 leasing program actually fails to meet the statutory intent because it provides an unreasonably narrow scope of leasing areas. According to the statute, among other things, the timing and location of leasing shall be based upon an “equitable sharing of developmental benefits and environmental risks among the various regions.” There are 26 planning areas for leasing in the U.S outer Continental Shelf, yet the current program as implemented has confined leasing to only two of the 26 areas. Surely an equitable sharing of the benefits and risks would require exploration, development, and production to occur in more than two of the 26 areas. The use of the term “shall” -- read in conjunction with the balance of the factors provided in this section of the statute -- makes clear the statutory directive for continued leasing.

Comment Number: BOEM-EMAIL-32521-020638-7

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

-In order to explore for oil and gas resources in federal offshore waters, companies must first purchase a lease, or contract, to obtain the right to explore for and produce offshore oil and gas resources. Leases are divided into 3 mile by 3 mile tracts (5,760 acres) and are generally for a term of 10 years. Companies purchase leases by bidding in an auction on the property, with the highest qualified bidder receiving the lease. The minimum bid for a lease is about \$250,000. Once a company obtains a lease, it pays rental fees as long as oil and natural gas are not being

produced on the property. Once a lease goes into production, companies then pay royalties of between 12.5 and 18.75% of the total amount received in payment for the oil and gas sold on the market.

-The government offers leases at periodic lease sales, within which the government identifies all of the leases that are available for purchase.

-In order for the government to have a lease sale in an offshore area, the offshore area must first be included in the OCS Leasing Program that covers a period of 5 years. There are 26 different offshore areas (referred to as planning areas), and the government goes through a robust process before finalizing the OCS Leasing Program. There are 5 steps in the process of developing the program, including comprehensive environmental reviews and opportunities for public input.

-Once a Leasing Program is finalized, the Department of the Interior then goes through a robust process prior to holding the lease sales that have been identified in the period covered by the program.

-After receiving a lease, companies must go through many steps prior to exploring for oil and natural gas. There must be an environmental assessment, the approval of an exploration plan, and approval of drilling permits which must adhere to strict environmental rules.

-If the exploration phase is successful and oil or natural gas is found in quantities sufficient for economic development of the field, then companies must go through several steps prior to actual production and marketing of oil and gas. Companies must obtain approval of development and production plans, deepwater operations plans, and consistency determinations for coastal zone management certifications. Many additional approvals are also required by law.

The March lease sale and corresponding leasing program that has been paused were subject to a statutorily prescribed and robust review as part of the process for developing the 2017-2022 OCS leasing program. This included multiple environmental reviews and a separate analysis and document that specially considered the greenhouse gas impacts of the leasing program, as well as several rounds of public comment periods. The current review is redundant. Furthermore, pursuant to statute and regulation, Interior should be in the process of completing the development of the offshore leasing program for 2022-2027, which provides the Department with an opportunity to complete another comprehensive review consistent with the law.

Comment Number: BOEM-EMAIL-32521-021182-10

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Production Will Shift to Foreign Sources, and The Gulf of Mexico Will Be Developed By Mexico

Whatever occurs with domestic energy policy related to the Gulf of Mexico, the fact remains that other countries offer rights to explore, develop, and produce in the offshore. Restricting production in the Gulf of Mexico will not end the production of oil; it will only shift the production to countries like Russia, China, and Iran. When it comes to the Gulf of Mexico, we have seen investment shift to the Mexican side of the region. Mexico is already producing energy adjacent to state and federal waters belonging to the United States and is actively bidding out and considering additional acreage. We believe that a slowdown or cessation of activities in American waters would be little less than a “unilateral disarmament” that would cost us one of the most productive and safe regions

for energy development in the country while other countries eagerly step in to tap greater global market share and power.

Comment Number: BOEM-EMAIL-32521-025899-11

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

5. The Secretary has, and in places will need to exercise, discretion to deny permits that will authorize new oil and gas development in sensitive ecosystems that are already susceptible to the effects of climate change and serve as natural barriers to sea-level rise, such as the Florida Everglades

There are situations where oil exploration and development of private mineral rights takes place beneath federally owned and managed lands. In such cases, federal leases are not required, but the federal government determines whether to issue permits for oil and gas activities. One such situation occurs in the Everglades' Big Cypress National Preserve, a national park unit, which is a "split estate" where the federal government owns the surface of the preserve and private corporate entities own the oil and gas beneath the surface.

Congress created Big Cypress National Preserve to conserve and protect the "natural, scenic, hydrologic, floral and faunal, and recreational values" of the Big Cypress watershed and to provide for its enhancement and public enjoyment. [Footnote 44: Pub. L. 93-440, § 1, 88 Stat. 1258 (Oct. 11, 1974), 16 U.S.C. § 690f(a), An Act to Establish Big Cypress National Preserve, as Amended by P.L. 100-301, The Big Cypress National Preserve Addition Act] The National Park Service "envision[s] the preserve as a nationally significant ecological resource" and "a primitive area where ecological processes are restored and maintained and where cultural sites are protected from unlawful disturbance." [Footnote 45: U.S. Department of Interior, National Park Service, Big Cypress National Preserve, General Management Plan and Final Environmental Impact Statement, Volume I, at iii (January 27, 1992) (hereinafter, "GMP/EIS").] The Big Cypress basin provides approximately 42% of the water flowing into Everglades National Park and is a vast hydrologic network—among the least altered remaining in South Florida. [Footnote 46: *Id.* at 1.] State and federal agencies are spending billions of dollars on projects to restore the Everglades. [Footnote 47: See Mike Vogel, Florida Trend, Restoring the Florida Everglades: Where things stand (January 27, 2021), <https://www.floridatrend.com/article/30605/restoring-the-florida-everglades-where-things-stand>; New York Times Editorial Board, Biden's Chance to Save the Everglades (March 27, 2021), <https://www.nytimes.com/2021/03/27/opinion/biden-environment-everglades-florida.html>.] The preserve is also home to a wide array of important species and critically endangered animals.

Although there are two legacy oil drilling sites in Big Cypress National Preserve, the private mineral owners' lessee, Burnett Oil Company, wants to expand oil drilling and develop an entirely new area of the preserve, consisting of wetlands and namesake cypress trees. Burnett Oil Company's activities have already caused extensive damage to wetlands and endangered species habitats in the preserve during its first phase of oil exploration. [Footnote 48: See NRDC, et al. letter to Noah Valenstein, Secretary Florida Department of Environmental Protection re: Burnett Oil Company, Inc.'s Section 404 Clean Water Act/Environmental Resource Permit application nos. 323836-004 and 397879-002 to facilitate new oil drilling in the Big Cypress National Preserve (February 3, 2021), <https://www.nrdc.org/sites/default/files/letter-oil-drilling-big-cypress-20210203.pdf>.] It has not yet completed the required compensatory wetland mitigation or the monitoring required by its National Park Service access permit. [Footnote 49: See *id.*] This is only the first of four planned phases of oil exploration. Once complete, all four phases would encompass 366-square miles (234,000 acres), or one-third of the Preserve. [Footnote 50: Burnett Oil Co., Inc. et al., Nobles Grade 3-D Seismic Survey, Big Cypress National Preserve and Big Cypress National Preserve Addition Plan of Operations at 1 (Dec. 2014), available at

<https://parkplanning.nps.gov/document.cfm?parkID=352&projectID=53498&documentID=66527>

The same oil company has applied with the National Park Service seeking an operations permit to drill for oil. It has also applied for permits to fill in wetlands to build new oil well pads and access roads under Florida's Section 404 Clean Water Act permitting program. [Footnote 51: Burnett Oil Company, Inc. has submitted two applications to the Florida Department of Environmental Protection seeking Clean Water Act § 404 permits to fill in wetlands in Big Cypress National Preserve for oil well pads and access roads (Application Nos.: 323836-004 and 397879-002). It has also submitted related materials to obtain operating permits from the National Park Service, but the Service has not yet released this information to the public] The Environmental Protection Agency (EPA), at the final hour of the Trump administration, approved the state of Florida's application to assume this permitting program. [Footnote 52: 85 Fed. Reg. 83,553 (Dec. 22, 2020).] There is federal court litigation challenging the approval, [Footnote 53: *Center for Biological Diversity v. U.S. Environmental Protection Agency*, Case No.: 21-cv-119 (D.D.C. January 14, 2021).] and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Indians of Florida have raised concerns about cultural and archaeological resources located in the two proposed new oil drilling sites. One new oil well is proposed adjacent to a Miccosukee Tribe of Indians of Florida reservation.

This rush to process permit applications to accommodate oil drilling in the early days of the Biden-Harris Administration could jeopardize the DOI's comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices, including potential climate and other impacts associated with oil and gas activities. The Administration is also working on strengthening Tribal consultation and Nation-to-Nation relationships, [Footnote 54: The White House, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>.] and, therefore, the concerns expressed by the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida must be heard and addressed. Further, Everglades restoration was highlighted in the Biden Administration's infrastructure plan to maximize the resilience of land and water resources to protect communities and the environment. [Footnote 55: The White House, FACT SHEET: The American Jobs Plan (March 31, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>.] New oil development in the ecosystem would thwart restoration efforts.

The National Park Service has the authority not to permit new oil drilling in Big Cypress National Preserve “[i]n order to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed . . . and to provide for the enhancement and public enjoyment thereof” as contemplated by Congress in the preserve's enabling act. [Footnote 56; 16 U.S.C. §§ 698i(a)-(b).] More generally, the Organic Act requires the National Park Service to “promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” [Footnote 57: 54 U.S.C. §100101] Collectively, these laws empower the National Park Service to reject oil and gas exploration and development activities that would conflict with other resources in the preserve.

The proposed oil extraction activities in Big Cypress National Preserve serve as one example of the harms of continued fossil fuel permitting in sensitive ecosystems and near vulnerable communities. Here, it would be detrimental to the preserve's purposes—including the protection of cultural sites—and impair the preserve for the enjoyment of future generations. New oil development in the Everglades would also be inconsistent with President Biden's initiatives to combat the climate crisis; protect public health; conserve our lands, waters, and biodiversity; and deliver environmental justice. A lock-in of additional fossil fuel infrastructure on federal lands for decades to come, particularly in the Everglades—an ecosystem that is currently undergoing Federally funded restoration—is contrary to the Administration's commitments to climate action and a move toward a just

transition to clean energy alternatives to fossil fuels. Therefore, the Department of the Interior should take a hard look at how continued permitting of oil and gas development in sensitive ecosystems and near vulnerable communities like the Everglades' Big Cypress National Preserve—and in and near other similarly situated national park units and national wildlife refuges—to ensure that new fossil fuel exploration and development approvals would not jeopardize these initiatives.

Comment Number: BOEM-EMAIL-32521-026571-6
Organization: Multiple Gulf Advocacy Organizations
Commenter: Dustin Renaud
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

-Deny permits for fracking on existing offshore leases. Fracking increases the risk of oil spills, earthquakes, and deepens the climate crisis. Fracking effluent is toxic and contaminates the Gulf of Mexico.

Comment Number: BOEM-EMAIL-32521-034546-6
Organization: National Wildlife Federation and multiple other Public Advocacy Groups
Commenter: Mary Greene
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive
Other Sections: 7
Comment Excerpt Text:
V. Permitting reforms.

As part of this review, DOI should consider several changes to its permitting process. These changes will help increase public participation and transparency, and help to ensure BLM is meeting its obligations under the multiple use mandate.

a. Applications for permits to drill.

BLM should increase transparency and public participation in its process for approving applications for permits to drill (APDs). The Mineral Leasing Act, as amended by Federal Onshore Oil and Gas Leasing Reform Act and current BLM regulations require that, at least 30 days prior to approval, BLM post information about APDs for public inspection [Footnote 45: 43 C.F.R. § 31623(g).] This information must be posted “in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau.” [Footnote 46: Id] BLM is not required to post this information electronically or in any more publicly accessible format beyond “the office of the authorized officer.” Regulations do not require any form of public participation beyond the posting of this notice. BLM should amend its regulations, and Onshore Order 1 to include a requirement that this information is posted electronically such that it is easier for the public to access. BLM should also include a public participation period for APDs such that the public can weigh in on the environmental review, conditions of approval, stipulations, and other aspects of APDs aimed at minimizing the impact of development on public lands.

b. Lease suspensions.

BLM should improve its monitoring and oversight of its lease suspension process, and it should make this process more open to the public. Under the current system, BLM state offices delegate monitoring responsibilities to field

offices. However, there are no policies or regulations in place outlining procedures for monitoring suspensions, and field offices are not required to provide information in the federal online dataset (LR2000) about why a suspension is granted. [Footnote 47: GAO, BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures (June 2018), available at <https://www.gao.gov/assets/gao-18-411.pdf>.] As a result, field offices have disproportionate discretion of lease suspension monitoring, and BLM state and headquarter offices have little ability to oversee this monitoring. For example, in many instances, a BLM state level or headquarters official would have to obtain a copy of an official lease file, many of which are only in hard copy, from the regional office in order to determine the reason a lease suspension was granted. BLM must update its regulations and policies to ensure better monitoring and oversight of the lease suspension process. To do so, it should start by implementing the recommendations of the 2018 GAO report:

-the Director of BLM should include a data field in the lease suspension database to record the reasons for suspensions.

-The Director of BLM should develop official agency procedures for monitoring oil and gas lease suspensions, including when to conduct monitoring activities.

-The Director of BLM should require cognizant officials in headquarters and state offices to conduct top-level reviews of field offices' monitoring of oil and gas lease suspensions, as well as of official lease files and databases to ensure they are current and complete.

-As BLM updates or replaces LR2000, the Director of BLM should ensure the development of mechanisms, such as standardized summary reports on lease suspensions, to assist cognizant officials in headquarters and state offices with oversight of field offices' monitoring efforts. [Footnote 48: Id]

The BLM should also update regulations to ensure transparency and to protect the public's interest. To do so, the BLM should include a public notice and comment requirement for all applications for lease suspensions filed, and it should allow for state director review of all lease suspension decisions. Finally, all decisions to issue a suspension must be accompanied by a statement concluding that the suspension is in the interest of conservation of natural resources, and that the lessee has exercised due care and diligence, as required by the Mineral Leasing Act.

Comment Number: BOEM-EMAIL-32521-034585-41

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

1. Ensure permitting incorporates climate change in decision- making processes and public lands are managed for multiple uses.

DOI has the authority to affect where and how development occurs on new and valid existing leases through imposing conditions of approval and other measures available through the APD process. DOI should use this authority to allow permitting only to the extent consistent with multiple use, sustained yield, the emissions management framework (detailed in Section II(a) of these comments), and protection of important conservation values, cultural resources, and other important resources and values. As described in Sections II(a) and (b) of these comments, DOI also has the authority to require that all new fossil fuel development achieve net zero greenhouse gas emissions, including at the development stage.

RECOMMENDATIONS:

- Issue guidance requiring DOI to use all available authorities to ensure public lands are managed for multiple use and the full mitigation hierarchy is applied in permitting decisions, including a requirement that new fossil fuel development achieves net zero greenhouse gas emissions.

Comment Number: BOEM-EMAIL-32521-035316-16

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

VIII. Offshore Leasing and Development Considerations

A. Outer Continental Shelf Lands Act (OCSLA)

The OCSLA has overwhelmingly served the national interest well for decades. As stated in the OCSLA, “the outer Continental Shelf is a vital national resource held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner that is consistent with the maintenance of competition and other national needs.” OCSLA clearly endorses a leasing program that is broad in scope and includes continued leasing in the various OCS planning areas, subject to appropriate environmental safeguards. API and its members feel strongly that OCSLA’s purposes and national policy promoting competitive offshore leasing cannot legally be ignored.

Comment Number: BOEM-EMAIL-32521-035316-21

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

IX. Onshore Leasing and Development Considerations

DOI’s review should also recognize the unique environmental framework for operating on federal lands, which includes but is not limited to any location-specific constraints incorporated into in an area-wide Record of Decision (ROD) after robust environmental reviews and stakeholder engagement processes, BLM rules and standards, as well as applicable federal and state environmental laws. The following sections spotlight noteworthy EPA, state, and industry efforts which DOI may wish to recognize as part of its process.

The totality of this comprehensive framework enhances the industry’s ability to carry out operations for safe and environmentally responsible exploration and production activities on lands administered by state and federal authorities, including production via the use of hydraulic fracturing and horizontal drilling in unconventional plays. To this end, it is significant that BLM rules and standards for drilling and production require all operations on federal land to comply with state and local regulations to protect life, property, and the environment. While structured to meet the specific hydrology, geology, production volumes, and unique features of the state,

regulations in the 33 oil and gas producing states are comprehensive. These requirements include extensive monitoring requirements, which further validate that ongoing oil and natural gas production activity in a planning area avoid impacts to water resources, air, and the surrounding surface environment.

Furthermore, industry standards and practices work in combination with federal and state regulations to provide an additional layer of environmental protection. Formulated by the industry's standard-setting program, these recommended practices cover all aspects of the industry's work and are consistently updated as a part of the industry's ongoing effort toward continued improvement of operations. These considerations were all considered in the recent judicial affirmance of BLM's 2017 hydraulic fracturing rule.

A. Protection of Groundwater Resources

Hydraulic fracturing in the United States has been conducted for over seven decades. During this time industry has developed techniques for improving well drilling, cementing, and casing to protect freshwater sources, restrict fluids to the intended zone and enable efficient hydrocarbon production. The primary means of ensuring that underground sources of drinking water are protected is by carefully casing the well with steel pipe and cementing it into place to create a tight seal. Several redundant layers of steel casings and cement sheaths are sequentially installed to provide layers of protection. After installation, the cement is tested to evaluate its strength and seal. [Footnote 48: http://www.api.org/~media/Files/News/Infographics/Cementing_A_Seal_For_Safety.pdf (outlining not in the original)] Well integrity is a top priority for the industry in protecting subsurface water resources and is carried forward in compliance with state and local requirements. EPA initiated a study in 2010 intended to investigate the potential impacts of hydraulic fracturing on water resources. EPA publicly released the Draft Assessment Report titled Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources on June 4, 2015 with a topline conclusion of "no systemic widespread impacts from hydraulic fracturing." The final SAB reviewed study was released in December of 2016.

The Groundwater Protection Council ("GWPC") – an organization whose members consist of state ground water regulatory agencies working together toward the comprehensive protection of the nation's ground water supplies – released a third edition report in 2017 titled "State Oil and Natural Gas Regulations Designed to Protect Water Resources." It provides a compiled list of regulatory elements such as permitting, well integrity, hydraulic fracturing, well plugging, pits, tanks and spill management and describes the regulatory framework under which oil and natural gas field operations are managed at the state level. [Footnote 49: https://www.gwpc.org/sites/gwpc/uploads/documents/publications/State_Regulations_Report_2017_Final.pdf]

B. Protection of Surface Waters

Industry also carefully manages water at the surface at all stages of operations. This applies throughout the water cycle and includes sourcing, transportation and use as well as treatment, reuse, or disposal. Technological, and in certain cases, state regulatory advances have allowed producers to minimize use of fresh water sources in favor of non-potable, lower quality water or produced water. Water reuse within the oil and natural gas industry is also encouraging development of more efficient, more mobile water treatment technologies that could eventually be scaled and utilized by other industries.

The federal government creates framework environmental laws that often prescribe regulatory minimum thresholds for states to follow. For example, the Clean Water Act ("CWA") applies to oil and natural gas operations, particularly where water resource protection, and in certain cases, restoration is concerned. Under the federal structure, states are authorized to be the primary stewards and regulators of their water. Most states have extensive water quality and quantity regulations overseen by a wide range of agencies and include key program areas to support the CWA's "fishable, swimmable" goals for all surface waters in the state. These programs assess the quality of the surface waters, set standards for protection of the waters, and establish plans to bring impaired waters back into attainment with water quality goals.

For instance, EPA allows states, tribes, and/or territorial governments to implement the National Pollutant Discharge Elimination System (“NPDES”) permit program. Oil and natural gas operators manage stormwater and other wastewater discharges from their sites by acquiring NPDES permits. Operators must seek coverage under construction and operating permits; prepare compliant Stormwater Pollution Prevention Plans (“SWPPP”); and implement best management plans (“BMPs”) and controls (including routine inspections and testing of upstream discharge points) to prevent impacts to receiving water bodies. The NPDES program further requires permits and engineering and other controls (including routine inspections and testing) for any discharge of wastewater from oil and natural gas sites.

A separate provision of the CWA defines requirements for oil pollution prevention. Regulation requires oil and natural gas operators prepare Spill Prevention, Control, and Countermeasures plans, implement controls, and establish BMPs to prevent impacts to receiving water bodies from tanks and other structures that hold oil on site.

Comment Number: BOEM-EMAIL-32521-035527-15

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Exploration/Development

At the exploration and development stages, changes should focus on improving safety and preparedness and ensuring that operators pay their fair share and fund needed inspections and science.

-Codify safety regulations developed and finalized during the Obama administration: the 2010 Drilling Safety Rule, SEMS I (2010), SEMS II (2013), Well Control Rule, Arctic Standards Rule.

-Direct a revision of the regulations governing exploration, which do not provide sufficient guidance.

-Eliminate the thirty-day window for approval of exploration plans; clarify that an EIS is possible at the exploration stage and that an exploration plan should not be deemed submitted until the NEPA process is complete.

-Lower the threshold at which the Secretary of the Interior is required to disapprove an exploration or development plan such that disapproval is required if the plan would probably cause unwarranted damage to the marine, coastal, or human environment or if there is not enough information to determine possible damage.

-Raise royalty rates to ensure that operators pay the true cost of operations including externalities like the cost of greenhouse gas emissions.

-Implement specific requirements for monitoring, protection of marine mammal populations, and data availability in areas in which seismic testing is allowed.

-Add public right of action for enforcement of MMPA’s incidental take provisions.

-Increase funding, including fees on operators, to better provide for:

-necessary safety inspections;

-development of spill prevention and response technologies; and

- hiring, training, and deployment of agency (BOEM, BSEE, NOAA) safety inspectors, scientists, engineers, etc.
- Establish regional advisory bodies to provide citizen oversight of oil and gas activities (such as the Prince William Sound Regional Citizens' Advisory Committee –<http://www.pwsrca.org/>)

Comment Number: BOEM-EMAIL-32521-036716-2

Organization: University of Colorado Law School

Commenter: Mark Squillace and others

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

4. The BLM Should Strengthen Lease and Permit Stipulations Where Necessary to Protect the Environment. The BLM has established general environmental standards for oil and gas development through regulations adopted after public notice and an opportunity for public comment. Nonetheless, in many circumstances, site-specific assessments are required to identify, design, and impose additional environmental conditions. This is appropriately done through stipulations on individual leases and permits. [Footnote 7: The BLM publication Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (known as “the Gold Book”) assists operators in understanding the requirements for environmentally responsible oil and gas operations on federal lands] The BLM should use such stipulations to flesh out regulatory standards; for example, the BLM could require as a condition of a lease or permit that an operator adopt particular practices to capture methane. While the federal district court in Wyoming invalidated the BLM methane capture rules, [Footnote 8: Wyoming v. U.S. Dep’t of Interior, No. 2:16-CV-0285-SWS (D. Wyo. Oct. 8, 2020) (Order vacating 2016 Rule).] this decision does not necessarily prevent the BLM from requiring methane capture as a condition for granting a lease or an APD. The U.S. Supreme Court has made clear that federal agencies are free to make policy choices either through rules or orders. [Footnote 9: A permit or lease is a kind of “order” as defined by the Administrative Procedure Act. 5 U.S.C. § 551(6).] See Securities and Exchange Comm’n v. Chenery Corp., 332 U.S. 194 (1947).

Section 10 - Decommissioning

Comment Number: BOEM-EMAIL-32521-018389-28

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Decommissioning Reforms: BOEM should develop robust regulations to govern the decommissioning process. Significant environmental and financial risks are placed on taxpayers and the federal government from decommissioning oil and gas infrastructure. Under existing regulations, lessees are supposed to furnish bonds when submitting an exploration plan for the lease (or prior to transfer of a lease with an approved plan) to ensure funds are available to cover the costs of decommissioning in the event the lessees go bankrupt [Footnote 159: 30 C.F.R. § 556.901]. However, bonds are insufficient to cover all costs of decommissioning that can amount to hundreds of millions of dollars for each structure used for deep-water activities [Footnote 160: . Not only does this shortfall pose a financial risk to the federal government and taxpayers, but it also creates a risk to the

environment and communities that rely on the Gulf.

In 2015, the Government Accountability Office (“GAO”) found that BOEM’s and BSEE’s existing financial assurance regulations and procedures for decommissioning liability posed significant financial risks to the federal government and taxpayers, and identified several important actions to improve the system [Footnote 161: GAO, Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities 2 (2015), <https://www.gao.gov/assets/gao-16-40.pdf>.] The GAO identified two main problems: (1) data limitations that prevented the agencies from effectively estimating decommissioning costs and tracking decommissioning liabilities; and (2) inadequate procedures for obtaining financial assurances [Footnote 162: *Id.* at 16–22, 28–31]. In late 2020, BOEM released and then withdrew a proposed rule to address financial assurances for decommissioning that falls far short of what is needed. BOEM and BSEE should take this opportunity to develop and implement new regulations that would actually address problems with the current structure.

In particular, Interior should explore and enact measures to expeditiously raise additional financial assurances—ideally in the form of bonds or other securities—to cover the existing shortfall. Interior also should develop and implement other practices and regulations to ensure sufficient supplemental bonding. This should include implementing the GAO’s recommendations, as well as potentially a plan to allot lessees an appropriate amount of credit to partially cover their decommissioning liabilities. Interior should minimize the use of waivers, which can be based on inappropriate measures of financial strength and often cannot account for changed circumstances, such as commodity price shifts or transfers of assets BOEM and BSEE should also implement the GAO’s recommendations on data collection and management. Finally, Interior should consider whether it is appropriate to restructure the offshore agencies to create a new agency— independent from BOEM and BSEE—focused on managing and implementing decommissioning. As part of the analysis, Interior should consider the need for post- decommissioning monitoring of plugged wells by a dedicated agency [Footnote 163: See Seo, *supra* note 137].

Comment Number: BOEM-EMAIL-32521-019979-4

Organization: Western Leaders Network

Commenter: Jessica Pace

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7 8 2

Comment Excerpt Text:

During this review, we encourage the administration to consider the following recommendations, including adopting a mandate for the program that recognizes that leasing is not mandatory and should only be allowed if and when consistent with the multiple-use principle; ensuring that environmental justice and equity are factors in the review and reform efforts; eliminating speculative leasing practices; closing loopholes that place the burden of reclamation costs on taxpayers and private landowners; updating fiscal policies so that companies pay fair rates for development; and pursuing reforms with the objective of achieving a clean and renewable energy future.

Comment Number: BOEM-EMAIL-32521-035316-20

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

F. Bonding and Financial Assurance

A comprehensive review of the federal oil and gas program should include a review of the bonding and financial assurance regime; to that end, API reiterates its prior position that it is both unreasonable and legally questionable to retroactively impose increased burdens on entities that no longer have any privity with the federal government through relying on the financial wherewithal of predecessor interest owners instead of current interest owners, and through arguably expanded imposition of joint and several liability to predecessors. What is more, a failure to address the bonding and financial assurance issue perpetuates and prolongs a risk to the environment, as current operators have little or no incentive to responsibly maintain or decommission their aging assets.

API commends BOEM and BSEE for their collective efforts to undertake a rulemaking addressing the complicated issues surrounding bonding and financial assurance; a rulemaking is the appropriate vehicle. However, API members generally disagree with the agencies' 2020 proposed approach [Footnote 46: <https://www.federalregister.gov/documents/2020/10/16/2020-20827/risk-management-financial-assurance-and-loss-prevention>] of reducing financial assurance and decommissioning liability obligations for current OCS lease and grant interest holders and correspondingly shifting these burdens to entities that formerly held those interests. The result of that approach would be less financial assurance for currently conducting OCS oil and gas activities. Predecessors also unquestionably bear no liability for lease obligations accrued after assigning that lease. However, API supports the 2020 proposed approach to issue decommissioning orders first to all current owners, and then—only in the event all current owners fail to perform their decommissioning obligations—to the predecessors in reverse chronological order through the chain of title. [Footnote 47: See API's 2019 Comment Letter to DOI which contains more detail on the merits of RCO: <https://www.regulations.gov/document/DOI-2017-0003-0266>]

Lastly, and as with most subjects in this comprehensive review of the federal oil and gas program, the Interior Department need not institute a pause on new leasing to optimize policy improvements on the bonding and financial assurance regime.

Comment Number: BOEM-EMAIL-32521-036813-4

Organization: Shell Offshore Inc.

Commenter:

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

III. BOEM should revise its risk management, financial assurance, and loss prevention program to ensure that current owners sufficiently assure their decommissioning obligations, and BSEE should timely, orderly, and consistently enforce current owners' outstanding decommissioning obligations.

With hundreds of platforms and thousands of wells sitting idle in the U.S. GOM, there is tremendous opportunity for the Interior Department to support energy industry jobs, protect the environment, and ensure that US taxpayers are not saddled with debt to decommission any legacy oil and gas wells located in federal waters. By improving its policies around offshore decommissioning, the Interior Department can also expeditiously implement tangible actions toward achieving the Biden Administration's national policy objectives. However, as with most subjects in this comprehensive review of the federal oil and gas program, the Interior Department need not institute a pause on new leasing to optimize policy improvements on the bonding and financial assurance regime.

For the better part of a decade, BOEM, BSEE, and their predecessor agencies have sought various ways to determine whether, when, and how the government should seek financial assurance from offshore lessees for any

outstanding decommissioning obligations. This regulatory uncertainty has led to thousands of wells and scores of platforms sitting “temporarily abandoned” beyond their useful life and without adequate financial assurance; in turn, lessees are filling the void via their private transactions, some of which involve individual corporate entities being established solely to compartmentalize these liabilities into thinly-capitalized ventures.

Previous proposals as recent as the Interior Department’s 2020 Proposed Rule on Risk Management, Financial Assurance, and Loss Prevention (2020 Proposed Rule) [Footnote 15: <https://www.federalregister.gov/documents/2020/10/16/2020-20827/risk-management-financial-assurance-and-loss-prevention>] included concepts that, if enacted, could allow thinly capitalized leaseholders to ignore, evade, and redirect their financial responsibility to distant predecessors and the US Taxpayer. This makes no sense and could be easily remedied by revising the risk management, financial assurance, and loss prevention program to the following effect:

- Require lessees to promptly decommission their “idle iron” consistent with current regulations and policies;
- Establish a revised policy to decommission-in-place end-of-life infrastructure where it would augment or preserve marine habitat created by these structures and the fisheries dependent upon them [Footnote 16: Shell’s comments to the 2020 Notice of Proposed Rulemaking can be found at <https://www.regulations.gov/comment/BSEE-2018-0017-0008>; Shell also supports API’s comments found at <https://www.regulations.gov/document/DOI-2017-0003-0266>];
- Specifically, issue a regulation on financial assurance that [Footnote 17: Shell supports the OOC’s comments found at <https://www.regulations.gov/comment/BOEM-2018-0033-0029>; Shell also notes that properly decommissioned facilities that remain in the OCS often support diverse and robust marine habitats, and that many communities along the Gulf Coast rely on these decommissioned facilities to meet their commercial and recreational fishing needs. Coast rely on these decommissioned facilities to meet their commercial and recreational fishing needs.]:
- Requires sufficient financial assurance to ensure current owners (1) carry out their decommissioning liabilities, and (2) responsibly maintain their OCS assets;
- Requires current owners to provide financial assurance based on their own financial wherewithal and not allow them to rely on the financials of predecessor lessees, operating rights owners, or holders of rights-of-way and rights-of-use and easements;
- Prioritizes obtaining financial assurance from the highest risk leaseholders by utilizing public and implied credit ratings, and allowing only those entities with “investment-grade” credit ratings to self-insure and to be third-party guarantors;
- For “non-investment grade” lessees, require security when the net present value of the remaining proved reserves of a lease is less than three times the value of the present and future decommissioning obligations. Where there are unsecured obligations on properties that currently meet these criteria, DOI should require security via a phased approach;
- Avoids requiring owners and co-owners to post redundant security that is issued to the benefit of the U.S. Government;
- Maintains those provisions in the 2020 Proposed Rule that would improve the financial assurance program, such as provisions that would (1) remove financial assurance criteria that has been difficult to administer and not reliably indicative of an entity’s likelihood to default, such as “unencumbered net worth in the United States,” “trade references,” and “business stability” as an operator in the oil and gas industry, (2) tailor indemnification to

the specific obligations that will be guaranteed by the guarantor (e.g., “decommissioning obligations” instead of “all obligations”), and (3) issue decommissioning orders in reverse chronological order through the chain of title in the event all current owners fail to perform their decommissioning; and

-Pursues INCs, civil penalties, and disqualification against current owners that repeatedly fail to timely perform their decommissioning obligations.

Section 11 - Energy Needs/Future Climate Scenarios/Substitutions

Comment Number: BOEM-EMAIL-32521-018389-31

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Address Crude Oil Exports: Since the United States lifted its 40-year ban on crude oil exports, exports have skyrocketed. Crude oil exports from the Gulf were negligible until 2017 but have shot up from 292,000 barrels per day in 2017 to more than 3 million barrels a day in January 2021, the last month for which data is provided [Footnote 171: Petroleum & Other Liquids, EIA, <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCREXP32&f=M>.] In other words, in the course of four years, nearly 3 million barrels of oil per day that otherwise would have gone to domestic refineries have been diverted overseas through exports. These exports provide benefits to the global fossil fuel industry, but impose steep costs to Gulf communities.

In response the current surplus of domestic oil, companies have also submitted a series of applications to construct massive offshore export terminals off the Texas and Louisiana coast to accommodate the international export of huge quantities of crude oil onto Very

Large Crude Carriers (VLCCs) under the authority of the Deepwater Port Act.¹⁷² Each of the proposals has the capacity to load and export as much as 2 million barrels per day [Footnote 173: proposed deepwater fossil fuel export facilities along the Gulf Coast with pending applications include: Bluewater (1.92 million barrels per day (MMbbl/d) crude oil export capacity, sited approximately 15 miles off San Patricio County, Texas coast with Texas onshore components); GulfLink (1 MMbbl/d crude oil export capacity, sited approximately 30 miles off the Brazoria County, Texas coast with Texas onshore components); Sea Port Oil Terminal (SPOT) (2 MMbbl/d crude export capacity, sited approximately 30 miles off Freeport, Texas coast with Texas onshore components); Blue Marlin (1.92 MMbbl/d crude oil export capacity, sited 99 miles off Cameron Parish, Louisiana coast with onshore components in Texas); and West Delta LNG (the only proposed deepwater liquefied natural gas export facility, which has a capacity of 900 million standard cubic feet per day, and sited approximately 11 miles off Plaquemines Parish, Louisiana coast)]. of fracked crude largely produced in Texas’s Permian Basin [Footnote 174: Pending Applications, U.S. Dep’t of Transp. Mar. Admin., <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/pending-applications> (last visited Apr. 14, 2021); Jordan Blum, Energy Transfer applies for Blue Marlin Offshore Port for Gulf crude exports, S&P GLOB. MK.T INTEL. (Nov. 19, 2020), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/energy-transfer-applies-for-blue-marlin-offshore-port-for-gulf-crude-exports-61361310>]. With little domestic demand for the crude, [Footnote 175: Eunice Bridges, US crude export growth hangs in the balance, ARGUS MEDIA (Feb. 25, 2021),

<https://www.argusmedia.com/en/news/2187036-us-crude-export-growth-hangs-in-the-balance>.] the sole purpose

of these projects—to grow oil and gas industry profits—is entirely at the expense of our climate, Gulf coast ecosystems, and frontline communities that have long-served as sacrifice zones for the fossil fuel industry. These projects would lock-in new and expanded fossil fuel production, and transport and processing infrastructure, thereby perpetuating fossil fuel dependence for decades to come. Individually and together, the projects' contributions to global climate change and environmental injustice undermine the national interest, our commitments in the Paris Agreement, and the Biden Administration's commitment to tackling these crises as outlined in E.O. 14008. The Maritime Administration and the Coast Guard are currently reviewing these permit applications under their joint authority to permit such projects.

Although Interior does not have direct authority to approve or deny these export terminal applications, the Deepwater Port Act specifically provides for Interior to transmit comments to the Maritime Administration and the Coast Guard related to Interior's expertise or statutory responsibilities pursuant to any Federal law [Footnote 176: 33 U.S.C. § 1504(e)(1)]. Interior should consider how to use all of its authorities to oppose these export terminals that threaten climate, wildlife, and local communities.

Comment Number: BOEM-EMAIL-32521-018769-2

Organization: U.S. PIRG and Environment America

Commenter: Len Montgomery

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The evidence is clear: the costs to everyday Americans are too high of continued leasing, especially as we face a world in which renewable energy is on the rise. Today, America produces almost four times as much renewable electricity from the sun and wind as it did in 2010. Wind, solar and geothermal power provide more than 10 percent of our nation's electricity. With renewable energy prices falling and new energy-saving technologies developing rapidly, a future without dirty, dangerous fossil fuels is on the horizon. [Footnote 6: Tony Dutzik and Jamie Friedman, Frontier Group, and Emma Searson, Environment America Research & Policy Center, *Renewables on the Rise: A decade of progress toward a clean energy future*, 2020] Our public lands and waters will be part of this future: Nineteen of the 29 states with offshore wind potential could produce more electricity from offshore wind than they used in 2019. While we will not and should not develop all of this potential, offshore wind will be a crucial part of the U.S.'s clean energy transition. [Footnote 7: Bryn Huxley-Reicher, Frontier Group and Hannah Read, Environment America Research & Policy Center, *Offshore Wind for America: The promise and potential of clean energy off our coasts*, March 2021] Aiding in that transition must be the focus of any federal energy policy moving forward.

Comment Number: BOEM-EMAIL-32521-025138-1

Organization: Center for Energy Science and Policy, George Mason University

Commenter: Richard Kauzlarich

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

For the U.S. to accomplish its climate objectives, it must advance an energy vision that addresses climate change while ensuring economic prosperity. This vision must be based on a hybrid energy approach incorporating energy sources such as natural gas.

Executive orders

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whitehouse.gov%2Fbriefing-room%2Fpresidential-actions%2F2021%2F01%2F27%2Fexecutive-order-on-tackling-the-climate-crisis-at-home->

and-

abroad%2F&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764396678%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C1000&sdata=bC8SH%2BRmi%2Bq%2FQvPoAuR0tSOvphLPs0pj6W2Sk%2FRJYjw%3D&reserved=0> emerging from the Administration include provisions for a "carbon pollution-free energy sector" by 2035. The Department of Interior's comprehensive review of the federal oil and gas program is critical to improve stewardship of public lands and waters, create jobs, and build a just and equitable energy future. Here are four recommendations that could guide the interim report that the Department of Interior will produce later this summer.

First, acknowledge that natural gas is a cleaner alternative to coal in the short to medium term. The historical shift from coal to natural gas in the electric power sector has been a game-changer. The U.S. is a leader in curbing greenhouse gas emissions to prevent climate change, cutting

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fnewsreleases%2Flatest-inventory-us-greenhouse-gas-emissions-and-sinks-shows-long-term-reductions-0&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764406630%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C1000&sdata=BjiZx%2FTEla%2FBTueUGMgBrWjJfJINTqmcglGx69zCzSrE%3D&reserved=0>> energy-related CO2 emissions. In fact, the Energy Information Administration recently found

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.eia.gov%2Ftodayinenergy%2Fdetail.php%3Fid%3D45836&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764406630%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C1000&sdata=6gskrqEQrY7MLJmt9RfX%2FWMCHYjH6kl2e2zXg%2F4qRY%3D&reserved=0>> that "U.S. electric power sector emissions have fallen 33% from their peak in 2007 because less electricity has been generated from coal and more electricity has been generated from natural gas." Market forces did that. It is why the Biden administration should keep its eye on a process for decarbonization rather than trying to ban fossil fuel production. Working with private-sector energy partners is necessary to encourage markets to continue this trend in the future while protecting public lands and waters

These market forces are also responsible for renewable energy's increasing share of electric power generation. A recent report by the Progressive Policy Institute concludes

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.progressivepolicy.org%2Fpressrelease%2Fhow-natural-gas-can-play-a-long-term-role-in-meeting-growing-demand-and-decarbonization-goals%2F&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764416594%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C1000&sdata=KTRxwA2buJOTs4%2BazPFoF03XZNGQoMOJVimXULH%2BRW4%3D&reserved=0>> that natural gas plays an indispensable role in meeting climate goals and supporting renewable energy expansion. Achieving a clean energy target by 2035 is feasible if the new energy and climate team embraces natural gas's advantages as a transition fuel in a hybrid energy system. Otherwise, they risk setting back hard-fought efforts to lower greenhouse gas emissions over the last decade.

Comment Number: BOEM-EMAIL-32521-025138-3

Organization: Center for Energy Science and Policy, George Mason University

Commenter: Richard Kauzlarich

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Now is the time to scrutinize the policy regarding the leasing of federal lands. This review must consider a critical facet of the leasing program: the impact a leasing ban on gas would have on coal consumption. An American Petroleum Institute analysis found

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.api.org%2Fnews-policy-and-issues%2Fexploration-and-production%2Ffederal-leasing-and-development-ban-study&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764426543%7CUnknown%7CTWFpbGZsb3d8eyJWljoImMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=pu9UCIwKgh9RGagI0QrJt6si7jyF4QkvAOy8kzuQGV8%3D&reserved=0>> that a leasing ban would increase U.S. coal use by 15% by 2030. Any action regarding leasing must be a step forward for the American economy and climate action that reduces coal demand.

Third, Biden officials must encourage the U.S. energy sector to support the American Jobs Plan

<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whitehouse.gov%2Fbriefing-room%2Fstatements-releases%2F2021%2F03%2F31%2Ffact-sheet-the-american-jobs-plan%2F&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764426543%7CUnknown%7CTWFpbGZsb3d8eyJWljoImMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=wflNep7sTkx8gN7QIR1Qd%2BTtMDQE%2B0lpVPL12bMgHEQ%3D&reserved=0>> that the Administration recently announced. Fixing America's infrastructure, rejuvenating its electric grid, and revitalized manufacturing now require energy now. Not all of that will be clean energy. Not only must that energy support the electrical power sector but the manufacturing and industrial sectors as well. Until U.S. businesses can develop alternatives, carbon-based inputs

<<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fweb.mit.edu%2Febm%2Fwww%2FPublications%2FCarbon%2520Intensity%2520of%2520Manufacturing.pdf&data=04%7C01%7Cenergyreview%40ios.doi.gov%7C1fd4dd3d81744cf0d7f908d8fdf5a3fa%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C637538578764436501%7CUnknown%7CTWFpbGZsb3d8eyJWljoImMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=PPerUWBvOHj4DHTLfAHIMMkRy2E8EjPbwQNM%2FPRcqCM%3D&reserved=0>> will be required to produce the asphalt, cement, steel, and other metals necessary for infrastructure renewal and short-term job creation.

Comment Number: BOEM-EMAIL-32521-025899-15

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Even as DOI considers how to facilitate a transition in its oil and gas program that phases out production of those resources, DOI faces a tremendous opportunity to reimagine energy production on federal public lands. In December 2020, Congress passed, as part of the year-end Consolidated Appropriations Act of 2021, a provision setting a renewable energy siting goal of 25 gigawatts on federal lands by 2025. [Footnote 61: Consolidated Appropriations Act of 2021, Public Law No. 116-260, at § 3104(b), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.] This represents a more than 100 percent increase in the amount of energy currently generated from renewable energy projects located on federal public lands. [Footnote 62: According to the Bureau of Land Management, solar, wind, and geothermal projects located on federal public lands currently represent an installed generating capacity of just over 11 gigawatts. BLM, Renewable Energy: New Energy for America, available at <https://www.blm.gov/programs/energy-and-minerals/renewable-energy>.]

While the opportunities for expanding renewable energy generation this goal presents can spur local job growth

and facilitate, to a degree, the economic transition discussed above, it is critical to note that the siting of utility scale renewable energy projects comes with its own significant environmental effects. Therefore, while we urge DOI to consider the viability and opportunity of significantly expanding deployment of large-scale renewable projects on federal public lands, we also urge that the agency adopt a framework such as the “Smart from the Start” concept, which seeks to balance the need for renewable energy development with meaningful considerations for natural resource and cultural impacts, which should be avoided to the greatest degree possible. [Footnote 63: See Kelly, Kate and Delfino Kim, Smart from the Start: Responsible Energy Development in the Southern San Joaquin Valley, Defenders of Wildlife, 2012, available at https://defenders.org/sites/default/files/publications/smartfromthestartreport12_print.pdf]

Comment Number: BOEM-EMAIL-32521-026500-2

Organization: State of Louisiana, Office of the Governor

Commenter: John Bel Edwards

Commenter Type: State Governors and State Agencies

Classification: Substantive

Comment Excerpt Text:

Taking a wider view, the 2018 USGS report Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005 14, often cited to indicate that fossil fuel production from federal lands and offshore amounts to 25 percent of carbon emissions, shows that figure is primarily derived from calculating emissions from industrial consumption, electricity production and consumption for transportation.

Put simply, the carbon emissions are primarily a factor of how the fuel is consumed, not of how it is supplied. Reducing domestic supply would not change the demand for this consumption - it would only alter where it was supplied from.

History has shown us that, lacking an affordable and available alternative, demand for oil is inelastic and does not respond in the short term to changes in supply. Previous oil shocks have indicated that the behavior of the consumer is what increases or decreases demand, and the market will naturally fill whatever supply is needed. When artificial constraints are put on supply, it leads to increased price and additional financial pressure on everyday working men and women. Only the reduction of that demand will result in the corresponding reduction in the combustion levels - but the associated emission levels will be lower so long as OCS production is helping fill that demand during transition to cleaner energy sources.

Should the U.S. reduce its own production, there are enough countries in the world that would supply oil to meet the unaltered demand. There is a strong case to make that, while the transition to renewables is ongoing, the OCS is a far better (and greener) source of traditional energy than shifting toward greater reliance on imported fuels and feedstocks that are likely to have been produced and transported in a much less environmentally responsible manner.

In the last year of the President Obama's Administration, DOI published the report OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon. DOI noted, "The report concludes that America's OHO emissions will be little affected by leasing decisions under BOEM's 2017- 2022 OCS Oil and Gas Leasing Program ("2017-2022 Program") and could, in fact, increase slightly in the absence of new OCS leasing." Further, it provides that, "foreign sources of oil will substitute for reduced OCS supply, and the production and transport of that foreign oil would emit more GHGs."

Comment Number: BOEM-EMAIL-32521-026500-4
Organization: State of Louisiana, Office of the Governor
Commenter: John Bel Edwards
Commenter Type: State Governors and State Agencies
Classification: Substantive

Comment Excerpt Text:

A financially stable offshore traditional fuels industry is also important in helping Louisiana and the nation in taking next steps in moving toward renewables, especially when it comes to offshore wind energy. The infrastructure and expertise needed to build out an offshore wind energy economy will depend heavily upon leveraging the overlapping resources and skill sets currently supported by the existing offshore oil and gas industry. That offshore oil and gas industry and the infrastructure required to support it - including ports, roads, highly specialized vessels, skilled mariners and associated supply chains - is vital to the success of any domestic offshore wind or other offshore renewable energy business. The technologies and services needed to support offshore renewable projects will not be economically viable on their own - they will need the existing offshore energy economy to sustain them until fledgling industries such as offshore wind are more widespread and mature.

Comment Number: BOEM-EMAIL-32521-026571-4
Organization: Multiple Gulf Advocacy Organizations
Commenter: Dustin Renaud
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

-Acknowledge that the actual energy needs of the nation require a phase- out of fossil fuels to prevent catastrophic climate change. Additionally, the industry is in decline as shown by the lack of industry enthusiasm when President Trump offered millions of acres of the Gulf for leasing and only a fraction of that was bid on. Moreover, the nation can and must shift to clean energy, and rapidly transition to electric vehicles as the Executive Order directs.

Comment Number: BOEM-EMAIL-32521-035678-1
Organization: Public Revenues Consulting
Commenter: Dan Bucks
Commenter Type: Other
Classification: Substantive

Comment Excerpt Text:

As you and President Biden have noted, the nation and world face the challenge of adapting our economies and energy systems to the existential threat posed by climate change. Oil and gas production will continue during the transition to a new energy future. The Department of the Interior can lead the nation forward in meeting this challenge by making critical, strategic changes to its oil and gas program now. The recommendations submitted here are designed to help Interior make those changes.

As noted in the comments, a critical step will involve Interior forging a transparent, meaningful and effective partnership with the American people to align the oil and gas program with the public interest. As Secretary, you have an opportunity to make an historic change in the relationship between the Department and the people it is intended to serve. Seizing that opportunity is critical to meeting the challenges we face as a nation.

Comment Number: BOEM-EMAIL-32521-035709-8
Organization: Environmental Defense Center
Commenter: Rachel Kondor
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

II. The Department Should Consider Clean Energy Options.

In order to “best meet national energy needs” under OSCLA, as well as under the laws managing federal lands, the Department should also consider how clean energy alternatives are ramping up and may offset the need for additional drilling. Alternatives like conservation, energy efficiency, transmission improvements, and renewable energy projects can assist with meeting our nation’s energy needs, while minimizing the environmental harms of fossil fuel development. We urge the Department to work with stakeholders to appropriately site and design renewable energy development, including commercial-scale renewable energy projects, in areas where impacts and conflicts can be avoided and mitigated. 43 U.S.C. § 1337(p)(1)(C).

10 <https://www.nrdc.org/sites/default/files/americas-clean-energy-frontier-report.pdf>

Comment Number: BOEM-EMAIL-32521-036813-1
Organization: Shell Offshore Inc.
Commenter:
Commenter Type: Energy Exploration and Production Companies and Associations
Classification: Substantive

Comment Excerpt Text:

The U.S. deepwater GOM is a unique basin in the federal portfolio of lands and waters, and is uniquely situated to help the U.S. and the world achieve their climate ambitions and to drive the energy transition without compromising other U.S. national policy objectives, such as national security, economic resiliency, environmental protection, safe operations, and shared multiple uses. Therefore, Shell believes the U.S. Government should maximize its access to these needed domestic volumes, while ensuring their lifecycle greenhouse gas emissions are minimized and/or mitigated wherever feasible.

Comment Number: BOEM-EMAIL-32521-036937-23
Organization: Institute for Policy Integrity at New York University School of Law
Commenter: Max Sarinsky
Commenter Type: Universities/Colleges/Academia
Classification: Substantive

Comment Excerpt Text:

(6) Remove inefficient barriers to renewable energy production on federal lands, both onshore and offshore, such as by using RMPs and Designated Leasing Areas to identify more areas with strong renewable energy potential and low environmental conflict, improving timely permitting, retraining displaced fossil fuel workers to work in renewable energy, identifying more offshore Wind Energy Areas, and establishing a taskforce to streamline offshore wind permitting; and

Comment Number: BOEM-EMAIL-32521-037159-2

Organization: Natural Resources Defense Council and Earthjustice

Commenter: Loomis Becca

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

A. A Null Schedule Five-Year Program Best Meets National Energy Needs

OCSLA supports an argument that a null schedule five-year program comports with OCSLA if the Secretary decides that such a program best meets the nation's energy needs. [Footnote 18: 43 U.S.C. § 1344(a). The 2021 Solicitor's Opinion argues that a leasing program proposing no sales does not fulfill the statutory requirements to prepare and maintain a leasing program. Solicitor's Opinion, *supra* note 10, at 2. However, the proposed schedule must be one that the Secretary determines best meets national energy needs; thus, if the Secretary determines that a null schedule does that, the statute authorizes the Secretary to maintain such a program. By preparing and publishing a null schedule program, the Secretary fulfills OCSLA's requirement to "maintain" a leasing program] It affords the Secretary broad discretion to determine the level of leasing activity that will meet energy needs. The statute directs the Secretary to create a leasing program consisting of a schedule of lease sales "indicating...the size, timing, and location of leasing activity which [the Secretary] determines will best meet national energy needs." [Footnote 19: 43 U.S.C. § 1344(a) (emphasis added).] There is no comma before the word "which," indicating that the clause beginning with "which" is a restrictive relative clause. A restrictive relative clause contains information that is "essential to the meaning of the sentence." [Footnote 20: *NACS v. Bd. of Governors of Fed. Reserve Sys.*, 746 F.3d 474, 487 (D.C. Cir. 2014) (quoting *The Chicago Manual of Style* 250 (14th ed. 2003)).] In contrast, a descriptive or nonrestrictive relative clause can be omitted from the sentence without loss of essential meaning. In the statutory provision at issue in *NACS*, as in OCSLA section 18(a), "Congress introduced the clause at issue with the word 'which' but failed to set it aside with commas." The D.C. Circuit held that this was a restrictive clause (looking also to other aspects of the statute). *Id.* at 487-489.] Thus, the Secretary's determination as to what leasing activity will best meet national energy needs is an essential consideration in the preparation of a leasing schedule.

Moreover, although OCSLA requires leasing programs to best meet national energy needs for the five-year period following approval, past Secretaries have necessarily looked at longer-term national energy needs. [Footnote 21: 2017-2022 Leasing Program, *supra* note 8, at 1-3 ("the decision maker can consider national energy needs over the long-term, 40-70 years into the future"); BOEM, Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012-2017 (June 2012), at 100 (forecasting energy needs to 2035), https://www.boem.gov/sites/default/files/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/2012-2017_Five_Year_Program/PFP%2012-17.pdf; BOEM, 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (Jan. 2018), at 1-5 (the "OCS Program is designed to enable the decisionmaker to consider national energy needs over the long-term (40-70 years into the future)"), <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2019-2024/DPP/NP-Draft-Proposed-Program-2019-2024.pdf>.] Offshore drilling projects have "long lead times" and "extended li[ves]," [Footnote 22: BOEM, Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012-2017 (June 2012), at 100] so looking only at a five-year period will not accurately capture the impact of OCS leasing on national energy production and needs. [Footnote 23: This longer-term approach has never been challenged in court. The D.C. Circuit in *Center for Sustainable Economy* generally supported DOI's approach, which included "project[ing] [OCS fuel demand] out to 2035." 779 F.3d at 607 (rejecting petitioner's claim that Interior must track the proportion of OCS energy consumed domestically versus in foreign markets).]

Energy production projections demonstrate that the United States does not need new offshore leasing to meet its energy needs. In its most recent forecast, the U.S. Energy Information Administration ("EIA") projected that

federal offshore oil production, which comprises the majority of federal offshore production, [Footnote 24: BOEM, Oil and Gas Energy, <https://www.boem.gov/oil-and-gas-energy#:~:text=Offshore%20Federal%20production%20in%20FY,of%20domestic%20natural%20gas%20production> (last accessed Mar. 18, 2021). In fiscal year 2019, offshore federal oil production comprised 16 percent of all domestic oil production, whereas offshore federal gas production comprised only 3 percent of domestic natural gas production.] will decrease over the next few decades, so that by 2050, federal offshore oil production will be just 70 percent of 2019 production levels. [Footnote 25: EIA, Annual Energy Outlook 2021, tbl. 14 (under “Crude Oil,” “Production (million barrels per day),” and “Lower 48 Offshore,” select “Federal.” Under “Crude Oil,” “Production (million barrels per day),” and “Alaska,” select “Federal Offshore”), <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=14-AEO2021&cases=ref2021&sourcekey=0> (accessed March 4, 2021).] And this projection is even without taking into account the potential adoption of additional new state or federal policies promoting electric vehicles [Footnote 26: The EIA analysis includes existing policies concerning electric vehicles but not new policies that are likely to be enacted in the future] or transitioning buildings and industry towards cleaner energy options, which would further cut the country’s oil needs. [Footnote 27: Analysis conducted by NRDC using Evolved Energy’s PATHWAYS+RIO model of various clean energy technology pathways. This modeling will be detailed in a forthcoming issue brief to be published on March 29, 2021] Moreover, federal offshore oil production projections also decline in EIA’s low-oil price scenario, by 43 percent, indicating that opportunities for development in the long-term diminish even more under a likely economic outlook.

The transportation sector accounts for about 70 percent of all petroleum consumed in the United States. [Footnote 28: Office of Energy Efficiency & Renewable Energy, FOTW #1094: The Transportation Sector Consumes More Petroleum than All Other Sectors Combined, Dept. of Energy (August 12, 2019), <https://www.energy.gov/eere/vehicles/articles/fotw-1094-august-12-2019-transportation-sector-consumes-more-petroleum-all>.] It is virtually certain that state and federal policies promoting zero-emissions vehicles (ZEV) will further decrease oil demand. Eleven states have adopted California’s ZEV mandate for light-duty vehicles, requiring ZEV sales or credits to account for 22 percent of state automaker sales by 2025. If these eleven states adopt California’s more recent commitment of 100 percent ZEV sales by 2035, [Footnote 29: Office of Gov. Gavin Newsom, Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars & Drastically Reduce Demand for Fossil Fuel in California’s Fight Against Climate Change (Sept. 23, 2020), <https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/>.] national EV sales will reach 33 percent of automaker sales in 2030 and 47 percent in 2035. California has also adopted a rule requiring all new medium- and heavy-duty truck sales to be zero-emission by 2045, [Footnote 30: Id] and other states are expected to follow suit. [Footnote 31: In July 2020, California and a coalition of 15 states and Washington, D.C. signed a Memorandum of Understanding (MOU) committing to accelerate the adoption of zero-emission technology, with a target of 100 percent zero-emission new medium and heavy-duty truck sales by 2050. Cal. Air Resources Bd., 15 states and the District of Columbia join forces to accelerate bus and truck electrification (July 14, 2020), <https://ww2.arb.ca.gov/news/15-states-and-district-columbia-join-forces-accelerate-bus-and-truck-electrification>.] Furthermore, the Biden administration plans to replace the federal fleet with electric vehicles [Footnote 32: Michael Wayland, Biden plans to replace government fleet with electric vehicles, CNBC (Jan. 25, 2021), <https://www.cnbc.com/2021/01/25/biden-plans-to-replace-government-fleet-with-electric-vehicles.html>.] and is expected to enact other policies promoting electric vehicles. These policy shifts will significantly decrease domestic oil demand and likely reduce domestic production beyond the EIA projections.

Based on the country’s decreasing demand for oil and the anticipated shifts towards electric vehicles over the coming years and decades, new federal offshore leasing is unnecessary for meeting the nation’s energy needs. NRDC and Earthjustice therefore urge the Secretary to prepare a null schedule leasing program.

Additionally, a null schedule leasing program will avoid the opportunity cost associated with increased offshore

drilling. Energy development capital should be directed towards the development and expansion of renewable energy sources and other clean energy technologies, not towards expensive and environmentally risky offshore drilling projects. Oil markets are highly volatile and unpredictable; renewable and clean energy technologies are a safer, more reliable investment. Finally, since expanded oil development is incompatible with the transition to a clean energy system the Administration and many states have laid out, new leasing could result in large stranded assets in the future.

A recent D.C. Circuit case concerning the 2012-2017 Leasing Program suggested that DOI is not required to authorize new leasing during every five-year period. In *Center for Sustainable Economy v. Jewell*, the court wrote:

“Section 18 requires Interior to schedule the leasing of OCS mineral resources at the time that best meets national energy needs. Interior could authorize new leasing this year, next year, or in fifty years. Every day that Interior waits has a cost insofar as valuable fuel that could be used today instead lies dormant. But waiting also has benefits, including what is referred to as informational value. More is learned with the passage of time: Technology improves.” [Footnote 33: 779 F.3d 588, 610 (D.C. Cir. 2015) (internal citations omitted).]

Although this statement may speak to delaying leasing for a given region, as opposed to delaying all OCS leasing, its logic supports a null schedule leasing program. If DOI is authorized to delay leasing for a given region because the informational value of delay exceeds the value of fossil fuel development for the next five years, the agency should logically be authorized to independently reach the same conclusion for every OCS region.

Comment Number: BOEM-EMAIL-32521-037433-4

Organization:

Commenter: Tom Magness

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

The United States is a global leader in energy and halting new oil and gas development on federally owned lands will cause us to forfeit that position and allow OPEC, Russia and Middle Eastern countries to rush in and fill the void. As a Nation, we have had energy security and independence as critical goals for decades. Now that we have obtained this position, it is no time to forfeit these advantages.

Madam Secretary, as a Commander in the Army Corps of Engineers, I have had to make decisions that measure the needs of the Nation and impact on our Environment. It is possible to make decisions that advance the considerations for both. I invite you to please reconsider the moratorium on oil and gas leases on federal lands, as it is critical to our allies abroad and our country's domestic energy security at home.

Comment Number: BOEM-TRANS-32521-000039-1

Organization: Natural Resources Law Center at University of Colorado Law School

Commenter: Mark Squillace

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Before I begin, I just want to acknowledge something that secretary Haaland mentioned at the beginning, which is just that we are probably going to be living with oil and gas development for the foreseeable future, but I think

what she also recognized is that we need to be thinking about how we're going to ratchet down oil and gas development in light of climate change and the concerns that that has raised for us. And I think that really should be what informs the interior department as they are considering their policies. If you think about what happened in the coal industry, it was predictable that coal was going to decline as rapidly as it did, yet no one took responsibility for trying to manage that decline in a methodical and responsible way, and I think the same kind of writing is on the wall a bit for the oil and gas industry, seeing this big movement toward electrification that is likely to affect oil prices in particular going forward, it's just important that we be thinking strategically about how to manage this decline in a way that I think is most responsible.

Section 12 - Protected Areas/30 by 30

Comment Number: BOEM-EMAIL-32521-018389-15

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Along with the Gulf Region, BOEM and BSEE should end new leasing in the Alaska OCS. Alaska is experiencing climate change more intensely than any other place in the United States. The Arctic region, for example, is warming at three times the rate of the rest of the planet, with dire consequences for ice-dependent marine species such as walruses and polar bears.

Alaska's waters are remote, far from infrastructure, and subject to ice hazards (even in a warming climate). A spill in these waters could not effectively be contained or cleaned. Due to the region's remoteness, difficult operating procedures, and high cost of infrastructure, any oil and gas discovered and produced in Alaska's waters also would take decades to come to market, by which time we must be well on our way to transitioning from fossil fuels. All these factors make clear that the administration should put in place long-term protections for Alaska's OCS from offshore oil leasing.

President Obama broadly recognized that Alaska's waters are too valuable and sensitive for offshore oil leasing. Over the course of his presidency, he permanently placed millions of acres of its OCS off limits to oil and gas leasing.

In the Arctic Ocean, President Obama withdrew the vast majority of the Chukchi and Beaufort seas from leasing [Footnote 72: President Obama, Memorandum on Withdrawal of Certain Portions of the United States Arctic OCS from Mineral Leasing, 2016 Daily Comp. Pres. Docs. 860 (Dec. 20, 2016); President Obama, Memorandum on Withdrawal of Certain Areas of the United States OCS Offshore Alaska from Leasing Disposition, 2015 Daily Comp. Pres. Docs. 1, 1 (Jan. 27, 2015)]. His withdrawals cited "irreplaceable values" of these waters "for marine mammals, other wildlife, wildlife habitat, scientific research, and Alaska Native subsistence use," their "critical importance . . . to subsistence use by Alaska Natives as well as for marine mammals, other wildlife, and wildlife habitat," and explained that they are "[t]eeming with biological diversity" and "part of one of the last great marine wildernesses." The White House also found that "Alaska Native communities of the North Slope depend largely on the natural environment, especially the marine environment, for food and materials" and that this "environment is integrally linked with the cultural and spiritual values of these communities." [Footnote 73: The White House, Fact Sheet: President Obama Protects 125 Million Acres of the Arctic Ocean (Dec. 20, 2016)].

The President's withdrawal also found "[A]ny potential Arctic offshore production would only occur around the middle of this century." "These timelines," a White House fact sheet pointed out, "would only bring significant new oil and gas resources into the market at a time when the United States and its international partners must be

transitioning to alternative energy sources.”

The President permanently withdrew over 32 million acres in Bristol Bay, citing “principles of responsible public stewardship,” “subsistence use by Alaska Natives, wildlife, wildlife habitat, and sustainable commercial and recreational fisheries, and to ensure that the unique resources of Bristol Bay remain available for future generations.” [Footnote 74: President Obama, Memorandum on Withdrawal of Certain Areas of the United States OCS from Leasing Disposition, 2010 Daily Comp. Pres. Docs. 1, 1 (Dec. 16, 2014)].

The President also withdrew permanently another 25 million acres of ocean in the Bering Strait as part of his establishment of the Northern Bering Sea Climate Resilience Area [Footnote 75: President Obama, Executive Order 13754, North Bering Sea Climate Resilience, 2016 Daily Comp. Pres. Docs. 836 (Dec. 9, 2016)]. The President created the area in response to an Alaska Native tribal request for action “to protect the health of the marine ecosystems of the Northern Bering Sea and Bering Strait while maintaining opportunities for sustainable fishing and sustainable economic development.”

On his first day in office, President Biden reaffirmed President Obama’s withdrawals, emphasizing his administration’s commitment to “reduce greenhouse gas emissions,” “bolster resilience to the impacts of climate change,” and “restore and expand our national treasures.” [Footnote 76: 86 Fed. Reg. 7037 (Jan. 20, 2021)]. Many of the factors that led President Obama to withdraw these areas permanently from oil leasing apply equally to the areas that President Obama left unwithdrawn, including in the relatively near-shore Beaufort Sea and Cook Inlet. In implementing President Biden’s commitment to lead the nation to a clean energy future, Interior should support protection of the remaining areas offshore Alaska left unwithdrawn by President Obama. As discussed below, the first step in this process should be to forego Cook Inlet lease sale 258 for the reasons articulated in President Obama’s withdrawals of other areas offshore Alaska and those described in scoping comments dated October 13, 2020 [Footnote 77: Letter from S. Emile to W. Cruickshank Re: Scoping on Cook Inlet Lease Sale 258; Docket No. BOEM-2020-0018 (Oct. 13, 2020) (describing Cook Inlet’s unique wildlife habitats, human subsistence uses, and checkered safety history of drilling in the region), <https://www.regulations.gov/comment/BOEM-2020-0018-0036>].

78 43 U.S.C. § 1344(a)]. More broadly, Interior should recommend and support permanent protection of all OCS areas offshore Alaska.

Comment Number: BOEM-EMAIL-32521-019955-12

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Conduct a programmatic review of the federal fossil fuel program to arrive at a course forward consistent with the United States’ goal of limiting climate change to 1.5 degrees Celsius and President Biden’s goal to protect 30% of US lands and waters by 2030. [Footnote 38: 86 FR 7619 (January 27, 2021)] Expediently operationalize the recommendations in the review utilizing enduring mechanisms such as rulemakings, programmatic RMP amendments, and mineral withdrawals.

Comment Number: BOEM-EMAIL-32521-019955-16

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Fully reverse the aggressive changes made in the last four years to promote fossil fuel development in America's Arctic. The Refuge oil and gas program is subject to an independent review under Section 4 of E.O. 13990. Withdraw the Arctic Refuge oil and gas leasing program Record of Decision and work with Congress to remove the drilling mandate in the Tax Act. Withdraw the Reserve's Integrated Activity Plan (IAP) and develop new regulations and an amended IAP that limit the oil and gas program in the Reserve to its current footprint. Look for opportunities to assist Arctic communities and the state of Alaska during a transition period, recognizing that oil will continue to flow for decades from lands already leased and developed.

-To the degree federal lands are implicated in rapidly shifting to a non-carbon dependent global energy system, ensure that renewable energy development minimizes impacts to native ecosystems and imperiled wildlife and is closely integrated with the President's 30x30 initiative, a global initiative designed to stem habitat and species loss before we reach a tipping point in species' extinction. This means, among other things, expeditiously investing in landscape scale planning and stakeholder outreach to identify the lands and waters with high habitat value for imperiled species that should be permanently protected and those with high potential for renewable energy.

Comment Number: BOEM-EMAIL-32521-019955-2

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 3 1.2

Comment Excerpt Text:

Conduct a programmatic review of the federal fossil fuel program to arrive at a course forward consistent with the United States' goal of limiting climate change to 1.5 degrees Celsius and President Biden's goal to protect 30% of US lands and waters by 2030. [Footnote 2: 86 FR 7619 (January 27, 2021)] Expeditiously operationalize the recommendations in the review utilizing enduring mechanisms such as rulemakings, programmatic RMP amendments, and mineral withdrawals.

Comment Number: BOEM-EMAIL-32521-019955-6

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 13

Comment Excerpt Text:

Comprehensively address oil and gas activity on National Wildlife Refuge lands, which are dedicated to conserving and restoring fish, wildlife and plants and their habitats. This includes plugging abandoned wells and restoring sites to productive native wildlife habitat and addressing nonfederal minerals within refuges where development poses the greatest risks to refuge resources.

Comment Number: BOEM-EMAIL-32521-019955-8

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Finally, while it is clear from the science that we need a rapid shift to a non-carbon dependent global energy system, we must ensure to the degree federal lands are implicated that renewable energy development minimizes impacts to native ecosystems and imperiled wildlife and is closely integrated with the President's 30x30 initiative, a global initiative designed to stem habitat and species loss before we reach a tipping point in species' extinction. This means, among other things, expeditiously investing in landscape scale planning and stakeholder outreach to identify the lands and waters with high habitat value for imperiled species that should be permanently protected and those with high potential for renewable energy.

Comment Number: BOEM-EMAIL-32521-030652-3

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Fossil fuel development from public lands currently accounts for nearly a quarter of the United States' greenhouse gas emissions. Those greenhouse gases contribute in large part to the climate impacts that are negatively affecting all national parks and public lands. As such, it is the responsibility of the Department to design the future oil and gas leasing program as one in which all fossil fuel development is phased out. As an interim step, the Department should achieve net-zero emissions from federal lands and waters by 2030, in coordination with other departments as applicable. To achieve this interim step, the Department will need to aggressively promote renewable energy, promote policies that mitigate systemic problems related to environmental justice, and prioritize a just transition for workers and communities dependent on the fossil fuel industry. This will need to be done in a way that promotes national park resilience and nature-based solutions while promoting adaptive planning and management. Additionally, the Department must ensure that leasing and development that does continue to occur does not negatively impact communities already shouldering the burden of negative impacts of oil and gas development.

Comment Number: BOEM-EMAIL-32521-032355-19

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

AMERICA'S ARCTIC NEEDS PROMPT ACTION AND LONG-TERM PROTECTION.

Nowhere is the present threat of climate change more evident than in the Arctic. The region is warming at three times the rate of the rest of the planet, and its shorelines are eroding, permafrost melting, and sea-ice disappearing. America's Arctic—the millions of acres of federal lands and waters that are still largely undeveloped—is also an obvious place in which to align public land management with the urgent need to tackle the climate crisis. Oil and gas activities compound the stresses Arctic wildlife is already experiencing due to climate change. Due to the region's remoteness and harsh conditions, it would take decades for any new oil and gas to come to market, well past when our energy sources will have to have shifted from oil. The immense investments required to develop and transport any Arctic oil would tend to lock in production for years to come, further increasing the climate costs of such development.

Onshore, America's Arctic is managed as the National Petroleum Reserve—Alaska (the Reserve) in the west and as the Arctic National Wildlife Refuge in the east. Both areas are under threat from oil and gas leasing and

development decisions made by the past administration. Both represent important opportunities for this administration to manage in a manner that furthers its climate and conservation goals.

Despite its misleading name, the Reserve contains much more than petroleum. Its 23 million acres are a globally important ecological resource and support the traditional cultural practices of Alaska Native people living in the region. It is home to tens of thousands of caribou, provides critical denning habitat for imperiled polar bears, and contains some of the most important migratory bird habitat in the world. Additional oil leasing and development in the Reserve would threaten these values and could add billions of tons of CO₂ to the atmosphere.

This comprehensive review of the federal oil and gas program must include the Reserve and should inform a new future direction for management for the Reserve that would end new oil and gas leasing, terminate existing leases as necessary, and limit activities on other existing leases to meet climate imperatives and protect the surface values of the Reserve, consistent with the Interior Department's authority under 42 U.S.C. § 6506a(b) and 43 C.F.R. § 3131.2(b).

Comment Number: BOEM-EMAIL-32521-032355-20

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

While this review is ongoing, the administration should take immediate action to rescind two last-minute, unlawful Trump administration actions. First, the December 31, 2020 Integrated Activity Plan, a management plan that opens the vast majority of the Reserve to oil and gas leasing. Second the October 26, 2020, record of decision approving ConocoPhillips' Willow project, a massive project that would include five drill sites, hundreds of miles of roads, ice roads, and pipelines, and other infrastructure and which would add 260 million metric tons CO₂ to the atmosphere over its 30-year life. Both of these decisions were rushed through and violated NEPA, the Endangered Species Act, and other environmental laws in numerous ways.

In the Arctic National Wildlife Refuge, even before it completes its broader review, the administration must undertake swift action pursuant to President Biden's day-one Executive Order 13990 to protect the coastal plain, the Refuge's biological heart, from the last administration's actions to relegate the area to oil and gas extraction. Specifically, it should rescind the August 17, 2020, record of decision adopting an oil and gas program that opened the entire coastal plain to oil and gas leasing and seismic surveying. It should also cancel the leases issued pursuant to the January 6, 2021, lease sale implementing the program. These decisions were rushed through in violation of bedrock environmental laws and without adequate public or tribal engagement. The administration also should prioritize working with Congress to repeal at the first opportunity the 2017 Tax Act rider that opened the coastal plain to oil and gas leasing.

The coastal plain is no place to drill for oil. To the Gwich'in people, the area is sacred as the calving and nurse grounds for the Porcupine caribou herd on which they have relied for thousands of years. It provides critical denning habitat for the threatened Southern Beaufort Sea population of polar bears, one of the most imperiled polar bear populations, and nesting grounds for millions of migratory birds that travel to all 50 states and six continents. Further, proposed oil development on the coastal plain would produce an estimated 10 billion barrels of oil over the next several decades, all of which would exacerbate climate change and frustrate efforts to transition away from fossil fuel.

Comment Number: BOEM-EMAIL-32521-035897-1

Organization: Conservation Voters of South Carolina

Commenter: Cassie Ratliff

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

On behalf of our members and supporters, we thank you for pausing all new offshore oil and gas leasing and conducting a thorough review of the broken oil and gas leasing system. This review process is an important step toward protecting our coastal communities from the threats of dirty and dangerous offshore drilling.

Now, we call on the Department of Interior to reform our country's oil and gas leasing system and chart a new path forward so that our public lands, coasts, and waters work for all people and local communities, not just the oil and gas companies. We ask you to consider:

-prioritizing environmental protection over issuing new leases and permits,

-appropriately siting renewable energy and encouraging energy efficiency to offset the need for additional fossil fuel development; and

-permanently protecting lands and waters that are of economic, cultural, and ecological significance to the communities that surround them.

We also urge the Administration and Congress to permanently protect South Carolina's coast - and the families and businesses that depend on it - from offshore drilling once and for all.

Comment Number: BOEM-EMAIL-32521-036336-10

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

The Department, BLM, and U.S. Fish and Wildlife Service all have broad authority to recommend and require application of the full mitigation hierarchy, including compensatory mitigation. We urge the Department to update its mitigation policies to align with agency mandates, goals for climate change, 30x30 and other initiatives, and do so in a way that garners the support of a range of stakeholders, sets high standards to ensure fairness and certainty, and yields durable policy outcomes. Specifically, we recommend the following:

1. Rescind BLM Instruction Memorandum (IM) 2019-018 – “Compensatory Mitigation” (December 6, 2018) and replace with an IM establishing a balanced approach to mitigation.
2. Adopt of policies that, as appropriate, encourage or require mitigation for all aspects of public lands planning and management by updating and readopting the BLM Mitigation Manual (H- 1794, 2016) and BLM Mitigation Handbook (H-1794-1, 2016).
3. Adopt new policies (e.g., regulations) that clarify BLM's authority to encourage or require, as appropriate, mitigation in public lands planning and management, including meaningful consultation with cooperating

agencies, including State fish and wildlife agencies and affected Tribal and local governments (e.g., land use planning, use authorization, right-of-way authorization).

Comment Number: BOEM-EMAIL-32521-036433-1

Organization: Center for Biological Diversity and 107 Additional Public Interest Groups

Commenter: Jacki Lopez

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

America's first national preserve, part of the National Park system — Big Cypress National Preserve — is under imminent threat from oil development. [Footnote 1: Burnett Oil Company, Inc. has submitted two applications to the Florida Department of Environmental Protection seeking Clean Water Act § 404 permits to fill in wetlands in Big Cypress National Preserve for oil well pads and access roads (Application Nos.: 323836-004 and 397879-002). It has also submitted related materials to obtain operating permits from the National Park Service, but the Service has not yet released this information to the public.] We ask that you deny Burnett Oil Company, Inc.'s requests to drill for oil in the Preserve. The proposed oil extraction activities would be detrimental to the Preserve's purposes and impair the Preserve for the enjoyment of future generations. [Footnote 2: 36 C.F.R. § 9.30(a) governing activities concerning non-federally owned oil and gas within National Park System units requires activities to be "conducted in a manner consistent with the purposes for which" the unit was created, "to prevent or minimize damage to the environment and other resource values," and to ensure the unit is "left unimpaired for the enjoyment of future generations."] New oil development in the Everglades would also be inconsistent with President Biden's initiatives to combat the climate crisis; protect public health; conserve our lands, waters, and biodiversity; and deliver environmental justice.

Congress created Big Cypress National Preserve to conserve and protect the "natural, scenic, hydrologic, floral and faunal, and recreational values" of the Big Cypress watershed and to provide for its enhancement and public enjoyment. [Footnote 3: Pub. L. 93-440, § 1, 88 Stat. 1258 (Oct. 11, 1974), 16 U.S.C. § 690f(a), An Act to Establish Big Cypress National Preserve, as Amended by P.L. 100-301, The Big Cypress National Preserve Addition Act.] The Preserve is an invaluable part of the Greater Everglades ecosystem, and home to threatened and endangered species like the Florida panther and Florida bonneted bat. It provides approximately 40% of Everglades National Park's water and recharges underlying aquifers. The Preserve is also home to a great number of cultural and archaeological resources and is utilized by the Miccosukee Tribe of Indians of Florida and Seminole Tribe of Florida for customary and traditional uses.

Yet the Preserve is threatened by new oil drilling. The Burnett Oil Company, Inc. is proposing a new oil well (Nobles Grade) south of Interstate 75 and the construction of an access road near a major entrance to the Preserve and the Florida National Scenic Trail. Another oil well, (Tamiami) is proposed less than 500 meters from Miccosukee Tribal Lands. [Footnote 4: See White House, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-ontribal-consultation-and-strengthening-nation-to-nation-relationships/>.] Both proposed well sites are located in wetlands and primary Florida panther habitat. These proposed oil wells and their associated land clearing, equipment storage, wetlands filling, hydrologic alterations, staging areas, access roads, drilling rigs, storage tanks, fuel tanks, water wells, disposal wells, reserve pits, grading, erosion, sedimentation, and potential oil spills— on their face— would be detrimental to the explicit purposes of the Preserve. [Footnote 5: Congress created the Preserve to "assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed" and to provide for its enhancement and public enjoyment. P.L. 93-440, An Act to Establish Big Cypress National Preserve, as Amended by P.L. 100-301, The Big Cypress National Preserve Addition Act (emphasis added).]

Moreover, the additional greenhouse gas emissions that would result from the oil development is an immediate threat to the Everglades, which is already grappling with climate change related sea-level rise. The Preserve currently acts as a critical carbon sink, and degradation due to oil extraction would weaken this natural first line of defense against rising seas and hurricanes.

Notably, Burnett Oil Company already caused extensive damage during its first phase of oil exploration within a 110-square mile area. [Footnote 6; <https://www.nrdc.org/sites/default/files/letter-oil-drilling-big-cypress-20210203.pdf>.] It has not yet completed the required mitigation or monitoring required by its National Park Service access permit. [Footnote 7: See *id.*] This is only the first of four planned phases of oil exploration. Once complete, all four phases would encompass 366 square miles, or one-third of the Preserve, which is larger than some national parks, such as Shenandoah, Zion, and Biscayne.

While the enabling statute for Big Cypress contemplates the exploration and extraction of oil, it also prohibits threatened uses that would be detrimental to the purposes of the Preserve. [Footnote 8: *Id.* at § (1)(c).] The damage caused by the first phase of oil exploration demonstrates that the Service cannot approve any oil drilling applications while assuring the Preserve’s “natural and ecological integrity in perpetuity.” [Footnote 9: 16 U.S.C. § 698i(a).]

We support President Biden’s campaign promise of “banning new oil and gas permitting on public lands and waters,” [Footnote 10: <https://joebiden.com/climate-plan/#>.] and the President’s forward-looking climate initiatives, including any analysis of “potential climate and other impacts associated with oil and gas activities on public lands.” [Footnote 11: The White House, Executive Order on Tackling the Climate Crisis at Home and Abroad, Section 208 (January 27, 2021) section 208.] Oil drilling inside a National Park unit like Big Cypress National Preserve conflicts with the Interior Department and National Park Service’s stewardship responsibilities. Protecting the Preserve from oil drilling would better serve President Biden’s goal of conserving at least 30 percent of our lands and waters by 2030. [Footnote 12: *Id.* section 216]

The Preserve is a vital part of the Everglades and must not be further degraded if we are to ensure our extensive investments in Everglades restoration will result in success. Please deny Burnett Oil Company’s applications to drill for oil in Big Cypress National Preserve.

Comment Number: BOEM-EMAIL-32521-036937-2

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 1.2 8

Comment Excerpt Text:

Interior should pursue concurrent action on three fronts to restore rationality to the leasing program. First, the agency should revise management plans to curtail leasing and prioritize conservation and other beneficial uses, with a goal of achieving zero, net-zero, or net- negative emissions by 2030. Second, Interior should strengthen mitigation requirements on any fossil-fuel extraction that occurs including restoring restrictions on methane pollution, groundwater contamination, and oil-spill risk and considering greenhouse gas offsets on fossil- fuel extraction. And third, Interior should adjust the fiscal terms of new and modified leases to account for the costs of climate change and ensure a fair return to taxpayers. Additional detail on these recommendations is provided below and in the attached Policy Integrity report from September 2020 titled “A New Way Forward on Climate Change and Energy Development for Public Lands and Waters.” [Footnote 6: Jayni Hein, Inst. for Pol’y Integrity, A New Way Forward on Climate Change and Energy Development for Public Lands and Waters (2020), available at <https://policyintegrity.org/publications/detail/a-new-way-forward- on-climate-change-and-energy-development->

for-public-lands-and-waters]

For any reforms that Interior pursues, it will be critical for the agency to support those reforms with strong analysis that adequately assesses both beneficial and adverse impacts. Because good analysis takes time, Interior should begin assembling its analytical tools as soon as possible including developing an improved energy substitution model that corrects the myriad failures of its existing MarketSim model. [Footnote 7: See *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736–40 (9th Cir. 2020) (detailing fundamental flaws in the MarketSim model and vacating Bureau of Ocean Energy Management’s approval of an offshore oil drilling and production facility in the Beaufort Sea for its reliance thereon)] The second section of these comments discusses the numerous analytical improvements that Interior should consider to support reforms to the leasing program. Policy Integrity plans to publish additional materials in the coming months on how Interior can legally and economically support long-overdue reforms.

Comment Number: BOEM-EMAIL-32521-036937-22

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

(5) For offshore public lands and waters, consider withdrawing areas of the Outer Continental Shelf from oil and gas leasing using Presidential authority;

Comment Number: BOEM-EMAIL-32521-036937-4

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

For onshore public lands, the Bureau of Land Management (“BLM”) should amend RMPs and consider the possibility of no new leasing and/or meeting a target of zero, net-zero, or net-negative emissions by 2030. These options are not mutually exclusive, and could be pursued in combination. The first alternative is consistent with President Biden’s campaign calls to “ban new oil and gas permitting on public lands and waters.” [Footnote 10: The Biden Plan for a Clean Energy Revolution and Environmental Justice, JoeBiden.com, <https://perma.cc/9UBA-UPHM>] The second alternative would sharply curtail new leasing and phase-out emissions from existing wells (which are typically subject to 5–10 year leases) by 2030. To meet a net-zero emissions goal, BLM should also consider using offsets in the form of carbon sequestration, reforestation, greater renewable energy production, and other strategies to reduce emissions within the planning area.

For offshore lands and waters, the Bureau of Ocean Energy Management (“BOEM”) should embark upon a new five-year planning process to develop a program that seeks to achieve net-zero greenhouse gas emissions in the medium-term, by roughly 2030, or at least a sharp reduction in greenhouse gas emissions. The Outer Continental Shelf Lands Act requires BOEM to weigh “the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone,” [Footnote 11: 43 U.S.C. § 1344(a)(3).] and provides broad discretion for the agency to account for “shift[s] with changes in technology, in environment, and in the nation’s energy needs.” [Footnote 12: *California ex rel. Brown v. Watt* (Watt I), 668 F.2d 1290, 1317 (D.C. Cir. 1981); see also *California ex rel. Brown v. Watt* (Watt II), 712 F.2d 584, 600 (D.C. Cir. 1983) (“[G]reat deference is afforded to the secretary in these areas.”).] While a complete restriction on offshore lease sales may face legal challenge, [footnote 13: See *Ctr. for Biological Diversity v. U.S. Dep’t of the Interior*, 563 F.3d 466,

485 (D.C. Cir. 2009) (explaining that “Congress has already decided that the OCS should be used to meet the nation’s need for energy,” and that BOEM’s duty under OCSLA is to “minimize[] the local environmental damage to the OCS,” but that “Interior simply lacks the discretion to consider any . . . effects that oil and gas consumption may bring about”).] a net-zero emissions approach (which entails a sharp curtailment in leasing plus mitigation and offsets of greenhouse gas emissions, as explained further below) is prudent. The administration should also withdraw sensitive or frontier areas (like the Arctic Ocean) [Footnote 14: See 43 U.S.C. § 1341(a) (“The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.”).] and/or refrain from offering any leases in certain planning areas. [Footnote 15: See, e.g., *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 603–07 (upholding Interior’s decision to not offer any lease sales in some planning areas in Alaska in the 2012-2017 leasing program).]

Section 13 - Orphan Wells/Remediation

Comment Number: BOEM-EMAIL-32521-018389-25

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-Regulations that will Improve Safety: BOEM and BSEE should promptly reinstate and strengthen the 2016 Well Control and Production Safety Rules. Interior is in the process of reviewing the previous administration’s roll back of numerous critical elements of these regulations, adopted in 2016 in response to the Deepwater Horizon catastrophe. As part of this review—and consistent with the Biden Administration’s approach to Build Back Better—Interior should not only reinstate the 2016 Well Control and Production Safety Rules, but should evaluate how to improve safety through additional measures, including a review to understand to degree to which the Deepwater Horizon Commission’s recommendations have been implemented. The need for oversight has only increased as companies drill in deeper waters and in increasingly hazardous conditions. For example, a recent news report details a disturbing “near miss” involving the Transocean Deepwater Asgard drill ship during hurricane Zeta in October 2020 [Footnote 155: Sharon Kelley, 2020’s Hurricane Zeta Nearly Caused ‘Another Deepwater Horizon Catastrophe’ in Gulf of Mexico, DESMOG (Apr. 5, 2021), <https://www.desmogblog.com/2021/04/05/hurricane-zeta-deepwater-horizon-asgard-transocean>]. The command and management breakdowns that led to this potentially disastrous situation could have resulted in a blowout even more catastrophic than Deepwater Horizon. [id] This incident highlights the need for far more oversight and reforms to operational and systems controls.

Comment Number: BOEM-EMAIL-32521-018389-26

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Regulations to Improve the Safety of Offshore Pipelines: Research shows that pipelines have much higher incidents of larger spill sizes. Offshore, a subsea pipeline fracture can go unnoticed for hours or even days [Footnote 157: See ABS Consulting Inc., *supra* note 11, at 11 tbl.7]. The recent October 11, 2017, subsea pipeline fracture that leaked 16,000 bbl (672,000 gal) of oil into the Gulf of Mexico was only discovered a day later

because the amount of oil leaving the company's wells was different from the amount of oil leaving its production system [Footnote 158: Christina Caron, How a 672,000-Gallon Oil Spill Was Nearly Invisible, NY TIMES (Oct. 29, 2017), <https://www.nytimes.com/2017/10/29/science/gulf-oil-spill-louisiana.html>.] The company estimates that the pipe fractured in the early morning hours on the first day, but no oil sheen was visible from the surface and therefore the pipeline continued to leak until the next day, when someone discovered the difference in oil quantity between the systems. This oil spill—which released approximately 672,000 gallons of oil—was the largest recorded since Deepwater Horizon, yet it went undetected for more than 24 hours because there were no visible traces and only a volume discrepancy on the order of hundreds of thousands of gallons was enough to alert the oil company. Oil pipeline “pinhole leaks” remain an ongoing and potentially significant risk. These leaks are small and can go undetected due to insufficient leak detection technology. Supervisory Control and Data Acquisition (“SCADA”) leak detection technology can only detect drops in pressure over one to two percent. Therefore, small leaks where pressure drops less than two percent of the pipeline's volume can go undetected for long periods of time.

BOEM and BSEE should develop better regulations to monitor and enforce the safety of offshore pipelines to ensure the number of spills and accidents are reduced. In particular, Interior should implement regulations that increase and improve inspections, improve leak detection systems, and improve decommissioning requirements for pipelines.

Comment Number: BOEM-EMAIL-32521-019020-4

Organization: International Association of Drilling Contractors

Commenter: Matthew Giacona

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

IV. Efforts to Address Orphaned Wells: Good Intentions with Little Projected Rig Workforce Benefits

For several years, lawmakers have proposed that creating federally funded programs to plug orphaned oil and gas wells could reverse unemployment trends in the natural gas and oil industry. IADC would like to clarify its position on this issue as well as remind the Department of several key facts surrounding this policy movement.

On June 1st, 2020, the House Natural Resources Committee's Subcommittee on Energy and Mineral Resources hosted a virtual forum titled, “Reclaiming Orphaned Oil and Gas Wells – Creating Jobs and Protecting the Environment by Cleaning Up and Plugging Wells.” During the Committee's virtual forum, Lynn Helms, Director of the North Dakota Department of Mineral Resources, asserted that job creation from a federally funded well-plugging program would likely amount to only around 1,300 jobs nationwide, with only 600 of those being in North Dakota. Similarly, Adrienne Sandoval, Director of the Oil and Conservation Division in New Mexico, testified that this program creates only 100 jobs in her state. Mr. Helms also asserted that these jobs would likely last about six months and at most three years. [Footnote 8: House Natural Resources Committee (2020, June 1). NR Dems Forum: Reclaiming Orphaned Oil and Gas Wells – Creating Jobs and Protecting the Environment by Cleaning Up and Plugging Wells. https://naturalresources.house.gov/hearings/reclaiming-orphaned-oil-and-gas-wells_creating-jobs-and-protecting-the-environment-by-cleaning-up-and-plugging-wells/]

Although IADC certainly supports the Administration's desire to address the growing issue of orphaned wells, as well as to assist laid-off natural gas and oil workers, IADC does not believe a federally funded well-plugging program is a viable long-term solution to assisting the tens of thousands of workers currently facing unemployment, let alone stem the tide of future losses that are likely to be created should the Administration continue to support indefinite leasing moratoria.

In addition, while a well plugging program might help approximately 1,300 laid off rig workers, or less than 1% of those that are out of work find temporary employment, it does nothing to help the drilling contractor companies who potentially can re-hire these workers once market conditions resume pre-COVID levels. The equipment and rigs used by drilling contractor companies are simply not the same equipment needed to plug an abandoned well. As such, the plugging of abandoned wells will not be performed by drilling contractor companies. IADC is not opposed to the idea of Congress proceeding with this type of program, but we want to be clear: it would not provide aid to the laid off rig worker, nor would it help drilling contractor companies in their time of significant need. As such, this program should not be heralded as a significant jobs boost to the drilling industry.

Comment Number: BOEM-EMAIL-32521-019684-9

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

Abandoned Wells

*The U.S. Congress should fund BLM to plug abandoned oil and gas wells on federal land, which could be justified as a jobs program in addition to reducing methane leaks. The value of bonds on new leases should also be increased to adequately cover the cleanup costs. Methane emissions from abandoned wells correspond to 1-13% of methane emissions from the energy sector in the U.S. inventory. In addition, methane leaks are a safety hazard and have caused several high-profile explosions. The U.S. General Accountability Office (GAO) has reported on the size of this problem on federal lands and indicated that operators' up-front bonds were too small to fully cover clean-up costs.

Comment Number: BOEM-EMAIL-32521-019746-5

Organization: ConocoPhillips

Commenter: Fennessey Karl

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

ConocoPhillips recognizes that orphaned wells on public lands are a source of emissions, and we support increasing minimum federal bonding requirements to prevent future orphaned wells. We recognize that BLM has the existing statutory authority to accomplish bonding increases through rulemaking without an additional legislative mandate. We also support federal funding solutions aimed at reducing the inventory of orphaned wells while creating jobs in the process.

Comment Number: BOEM-EMAIL-32521-019955-15

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Comprehensively address oil and gas activity on National Wildlife Refuge lands, which are dedicated to conserving and restoring fish, wildlife and plants and their habitats. The Service should continue to adhere to the

general prohibition against federal oil and gas development in national wildlife refuges, provide additional funding to the Service to locate and map orphaned wells on the NWRS, develop a database with information on each well's status, including ownership, properly plug orphaned wells and remove abandoned infrastructure, and reclaim and restore sites to productive wildlife habitat. Further, as part of its land acquisition program, the Service should consider acquiring nonfederal mineral interests prioritizing where development poses the greatest risks to refuge resources.

Comment Number: BOEM-EMAIL-32521-019955-6

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 12

Comment Excerpt Text:

Comprehensively address oil and gas activity on National Wildlife Refuge lands, which are dedicated to conserving and restoring fish, wildlife and plants and their habitats. This includes plugging abandoned wells and restoring sites to productive native wildlife habitat and addressing nonfederal minerals within refuges where development poses the greatest risks to refuge resources.

Comment Number: BOEM-EMAIL-32521-020687-14

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

As part of its review, DOI should also prioritize remediation and restoration of prior oil and gas leasing activities across the Reserve. Most of the orphaned wells on federal lands in Alaska are located within the Reserve, where the cost per well for remediation can exceed \$16 million. Restoration and remediation of orphaned and abandoned wells provides both an economic opportunity for employment in restoration and clean-up efforts and the opportunity for federal funding to accompany these remediation needs. We request that DOI consider the opportunities to remediate orphaned and abandoned wells in the Reserve as it considers a federal effort to plug these wells across the country. A focus on remediation and restoration as part of the federal oil and gas program has the potential to bring standardization to clean-up and pollution control, as well as the ability to create large numbers of jobs in communities such as those across the North Slope of Alaska.

Comment Number: BOEM-EMAIL-32521-020687-19

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

-A subsea shut-in device ("SSID") is not an adequate substitute for the ability to drill a relief well. Given the many uncertainties and inadequate data surrounding this technology, it is premature and irresponsible to suggest SSIDs are functionally equivalent to a same-season relief well. Without the ability to drill a same-season relief well, the failure of a blowout preventer and SSID could lead to a months-long uncontrolled release. Moreover, if an uncontrolled release occurred at the end of the drilling season, cleanup of oil under ice cover would be impossible. An uncontrolled well blowout like this would have devastating consequences for wildlife,

ecosystems, and the Alaska Native people who live in nearby coastal communities. There is no compelling justification for allowing operators to use SSIDs in place of the ability to drill a same-season relief well.

-There is no basis for removing the integrated operations plan (“IOP”) requirement. The IOP requirement was adopted in response to lessons learned from Shell’s disastrous 2012-2015 Arctic exploration program, and BOEM has failed to offer any reasoned explanation for removing the IOP requirement. The IOP requirement should be retained to help ensure such ill-conceived and reckless operations never occur again.

-The seasonal operating limits should remain in place. The existing rule imposes limits on operators based on the timing of expected seasonal ice encroachment. The proposed revisions would effectively extend the drilling season into times when ice conditions are more likely to be dangerous. Also, if an operator opts to use a second relief rig (rather than an SSID), the proposed revisions would eliminate the requirement to complete a relief well before the expected date of sea ice encroachment. Even if vessels are ice-rated, there is no evidence indicating operators will be able to effectively conduct response and cleanup operations in such challenging conditions. If such efforts are unsuccessful, a months-long uncontrolled release could extend through the winter. Given the severity of the consequences of a major oil spill in the Beaufort Sea or Chukchi Sea, the agencies should maintain the requirement that operators allow sufficient time to conduct well control and spill response operations before the seasonal encroachment of sea ice.

-The well control timing requirements should remain in place. The proposed revisions would weaken timing requirements related to well control measures, and they would allow operators to delay the staging of a relief rig (if they opt to use one instead of an SSID) until later in the drilling process. These changes would allow operators to wait until the last moment to stage important equipment, increasing the likelihood that they will be unable to deal with unforeseen events or logistical difficulties. To protect the sensitive Arctic marine environment and the people who rely on its abundance, the well control timing requirements should remain in place.

-BSEE should retain authority to limit pollution from water-based drilling muds and cuttings. Water-based drilling muds and cuttings can be hazardous, especially when they are discharged in areas where they may affect the subsistence resources relied on by Alaska Native communities. Through the proposed revision, BSEE would undermine its own authority and contravene its duty to prohibit such discharges when necessary. The concern regarding potential conflicts with EPA requirements is unfounded. It is routine for one agency, such as EPA, to impose baseline requirements, while another, such as BSEE, retains the ability to impose more stringent pollution prevention requirements when appropriate. The proposed changes to the rule with respect to water-based drilling muds and cuttings should be rejected.

For the reasons discussed above and in AWL’s prior joint comments, BSEE and BOEM should withdraw the proposed revisions to the Arctic Drilling Rule and leave the existing rule unchanged.

Comment Number: BOEM-EMAIL-32521-023161-27

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendations — Orphan Well Plans and Prioritization

At a minimum, states need to know the current condition of each orphaned well and the likelihood of leaks coming into contact with people, water supplies or other sensitive areas. Most states have policies in place to

provide some basic prioritization of their orphan wells for cleanup. However, immediate emergencies created by leaks are often the primary factor determining when an orphaned well is plugged. While it is important to address these immediate and dangerous threats, states with more robust and transparent prioritization plans can give regulators, state legislatures and community members a much better understanding of the true scope of the problem, how much it will cost to plug and reclaim these wells, and whether the state has enough funding to fully address their known orphan wells. States can do a better job of addressing their orphan well crisis when they can fully analyze what is needed to plug and reclaim each well.

If states monitor air emissions from orphaned wells, they can prioritize the worst leaks for cleanup and reduce the greatest threats to our climate. Research has shown that the majority of methane emissions from abandoned wells can be mitigated by addressing just 5-10% of so-called ‘super-emitter’ wells. [Footnote 69: Stanford News, Stanford study of abandoned oil and gas wells reveals new ways of identifying and fixing the worst methane emitters. Link: <https://news.stanford.edu/2016/11/14/study-abandoned-oil-gas-wells-reveals-new-ways-fixing-worst-methane-emitters/>]

Regulators should develop or update prioritized plans for cleanup of orphaned wells with public input and based on leaks or emissions, proximity to residents, environmental justice criteria, threat to water supply, impacts to wildlife and environment, conflict with current land use and other risk factors, as well as well location (to take advantage of any economies of scale).

Regulators should monitor air emissions from documented orphaned wells in order to appropriately prioritize wells for plugging and reclamation.

Plugging best practices (based on the best technical data) should be set in regulations and reviewed and updated frequently. Plugged wells must be inspected on site.

Current State Practices to Prioritize Orphan Well Cleanup:

The policies described below are some of the better policies currently in place, but no state regularly monitors air emissions from orphaned wells to prioritize ‘super-emitters’ for plugging and reclamation.

Colorado regulators prioritize known orphan wells into low, medium, and high-priority categories based on risk factors, including population density and urbanization, environmental factors, years in service, active spills, stormwater issues, noxious weeds, wildlife/livestock/vegetation impacts, surface equipment, bradenhead pressure, mechanical integrity test data, and history of venting or leaking. [Footnote 70: COGCC, Annual Comprehensive Orphan Wells and Orphaned Sites List as Directed by Executive Order D 2018-12, July 1, 2020. Link: https://cogcc.state.co.us/documents/reg/Enforcement/Orphan_Wells/COGCC_Orphaned_Well_Sites_List_20200701.pdf]

Ohio regulators inspect known orphaned wells and determine the risk these wells pose on public health, human safety and the environment. They have developed a Risk Evaluation Matrix to determine risk based on the condition of a well (what is leaking and how much) and what could come in contact with what is leaking (public and environmental factors). [Footnote 71: Ohio Dept of Natural Resources, Division of Oil and Gas Resources Management Orphan Well Program Plugging Expansion Presentation. Link: http://www.sooga.org/uploads/ODNR_OWP_Presentation.pdf]

Pennsylvania uses a well scoring sheet [Footnote 72: Pennsylvania Department of Environmental Protection Office of Oil and Gas Management Well Scoring Sheet. Link: https://pioga.org/wp-content/uploads/2019/05/Well-Plugging-Workshop_DEP-scoring-sheet.pdf] to assess a variety of environmental and health risks to rank their orphaned wells. The Pennsylvania Department of Environmental Protection completed a study of a representative sample of orphaned and plugged legacy wells (historically drilled wells that

have been plugged or abandoned) to better understand factors that affect legacy well integrity and estimate GHG and methane emissions from these wells. Ultimately, they used this information to better quantify the plugging liabilities for these wells. [Footnote 73: The Geological Society of America, P ennsylvania Legacy Well Integrity and Emissions Study. Link: <https://gsa.confex.com/gsa/2017NE/webprogram/Paper290348.html>]

Texas ranks wells for plugging to ensure that those wells posing the greatest threat to public safety and the environment are plugged first. The priority system weighs a variety of factors in four categories including well completion, wellbore conditions, well location with respect to sensitive areas; and unique environmental, safety, or economic concerns. [Footnote 74: Railroad Commission of Texas, 2020 Oilfield Cleanup Program Annual Report. Link: <https://www.rrc.state.tx.us/media/jjhlaywd/2020-oilfield-cleanup-program-annual-report-fiscal-year-2020.pdf>]

Comment Number: BOEM-EMAIL-32521-023161-30

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Data Availability, Clarity and Transparency

Publicly available data on oil and gas wells shared by state regulators, including information on well status, current operator, bond amounts and the full liability for cleanup, is often out-of-date, incomplete and/or inaccessible. Yet, knowing the full extent of the orphan well crisis in each state, as well as the wells at higher risk of becoming orphaned (stripper, idle, temporarily abandoned) and potential taxpayer liability is critical to ensure that the policies in place are adequate to address the scale of the problem and put the responsibility on operators to clean up their wells, not on the state.

When operators are late filing required reports or payments, this can be a sign that their wells are at-risk of becoming orphaned because small operators who do not have the financial means to file for bankruptcy protection may simply close their doors when they cannot afford to continue. If state regulators are conducting frequent on-site inspections and permit reviews, they will have the best understanding of the true state of the industry and be able to better address well cleanup before time and lack of use make the process more complicated and costly. In many states, raising awareness about the negative environmental and fiscal impacts of orphaned wells has been key towards building the political support to get state agencies to collect the needed data and make it readily available to the public. Once that data is available, community organizations and others have been able to push state legislatures and regulatory agencies to enact some of the policies needed to address the current backlog of orphaned wells and attempt to prevent this crisis from worsening.

Recommendations — Public Information and Oversight:

Regulators should provide annual updates to the public and to state legislatures on the number of documented orphaned wells, the estimated number of undocumented orphaned wells, the number of wells at-risk of becoming orphaned, the number of idled wells and length of time in idle status, the number and cost of orphaned wells plugged and reclaimed, amount of financial assurance held per company and well, and potential taxpayer liability.

Regulators should provide public access to regularly updated databases that include clear and detailed information about the amounts of reclamation bonds or other financial assurance, and the wells and other infrastructure covered by those bonds.

Regulators should conduct on-site inspections at least once per year, and should verify operator and well status whenever required reports or payments are late.

Regulators should conduct regular reviews of well permits to ensure accurate data is being used.

Current State Public Information Practices:

The states below have better practices in place to provide public access to the information outlined in the above recommendations, however gaps still exist in the available information for long-term idle or legacy wells.

Colorado's Oil and Gas Conservation Commission (COGCC) has taken steps to make data fully accessible to the public. [Footnote 87: Western Resource Advocates, Making Great Strides towards Improving Public Access to Oil and Gas Data – Working Together with the Colorado Oil and Gas Conservation Commission. Link: <https://westernresourceadvocates.org/blog/making-great-strides-towards-improving-public-access-to-oil-and-gas-data-working-together-with-the-colorado-oil-and-gas-conservation-commission/>] The agency's online database provides detailed information relevant to reclamation including well status and bond amount. State regulators are also directed to release an annual report on the state orphaned well program [Footnote 88: COGCC, Fiscal Year 2020 Annual Report Orphaned Well Program. Link: https://cogcc.state.co.us/documents/library/Technical/Orphan/Orphaned_Well_Program_FY2020_Annual_Report_20200901.pdf] that includes updates on the progress and costs to plug and reclaim wells on the state's prioritized orphan well list, bond and surety amounts and state fund expenditures for to plug and reclaim orphan wells. Following the passage of groundbreaking legislation that changed COGCC's mission to regulate the industry rather than foster it, the agency will create a "first-of-its-kind cumulative impacts data gathering system with an annual reporting requirement to the public." [Footnote 89: Natural Gas Intelligence, Colorado's Updated Oversight of Oil, Gas Development Called 'Watershed Moment'. Link: <https://www.naturalgasintel.com/colorados-updated-oversight-of-oil-gas-development-called-watershed-moment/>]

Pennsylvania's Department of Environmental Protection (DEP) maintains a detailed list of cost estimates to plug wells in DEP's orphaned and abandoned [Footnote 90: Pennsylvania considers a well abandoned abandoned if it has not been used to produce, extract, or inject any gas, petroleum, or other liquid within the preceding 12 months, or the equipment necessary for production, extraction, or injection has been removed, or a dry well have has not been equipped for production within 60 days after drilling, re-drilling, or deepening.] well database including location, number of wells, high and low cost estimates, priority level, proximity to water supplies and people, Congressional and state legislative districts, miles to designated use streams and recreational area acres. [Footnote 91: Pennsylvania Dept of Environmental Protection, [Plugging_Projects_CFA_2_9_18](#)]

Texas regulators release quarterly and annual Oilfield Cleanup Reports that include progress on well plugging and site remediation, the number of orphaned and inactive wells, and oilfield cleanup fund expenditures. The annual reports also include projected funding needed for the next biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations. [Footnote 92: Texas Railroad Commission, Oil & Gas Regulation And Cleanup Fund. Link: <https://www.rrc.state.tx.us/oil-and-gas/environmental-cleanup-programs/oil-gas-regulation-and-cleanup-fund/>]

Wyoming's Oil and Gas Conservation Commission (WOGCC) Supervisor publishes a monthly report that includes a snapshot of APD, production, total bond amounts and idle well bonds being held, and number of orphan wells plugged and abandoned (PA) to-date for the year or in progress. [Footnote 93: https://drive.google.com/file/d/1JzQrSNxIPiqtMM_zayVkz1WLxMSNzzG4/view, WOGCC Supervisor's Report, January 2021. Link: https://drive.google.com/file/d/1JzQrSNxIPiqtMM_zayVkz1WLxMSNzzG4/view] WOGCC bi-annual reports to legislative committees provide an update on the orphan well plugging program, including the number of PA wells, wells under PA contract, and estimated and actual costs for each contract. [Footnote 94:

WOGCC Update Orphan Well/Reclamation & Recent APD Rule Change presentation to the Joint Minerals, Business, and Economic Development Committee, November 5, 2020. Link: <https://wyoleg.gov/InterimCommittee/2020/09-202011054-01OilGasPresentation.pdf>

Comment Number: BOEM-EMAIL-32521-023161-34
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Policy Recommendations:

- Regulators should have limited discretion to exempt infrastructure from reclamation requirements, such as at the request of surface owners or to protect sensitive areas.
- Regulators should require that bond amounts are adequate to ensure decommissioning and reclamation of all associated well infrastructure, including increased bonds or separate bonds for infrastructure that is expensive to reclaim, such as water impoundments, waste facilities, and pipelines.
- If oil and gas regulatory agencies do not set bonds at the full projected cost of reclamation, surface management agencies such as State Lands Offices should use their authority to require additional reclamation bonds to ensure that lands and waters within their jurisdiction are fully reclaimed.

Comment Number: BOEM-EMAIL-32521-023161-36
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Policy Recommendations:

- Wells that have not produced in paying quantities for six months should be considered idle.
- After a well is idle for one year, the operator should be required to either plug the well, return the well to production in paying quantities, or show legitimate cause for continued idle status.
- After a well is idle for a year, and every two years following, operators should be required to conduct a Mechanical Integrity Test with inspectors present.
- After a well is idle for three years, regulators should require operators to plug the well or return it to production

Comment Number: BOEM-EMAIL-32521-023161-37
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Policy Recommendations:

- If bonds are not already set at the projected cost to plug and reclaim wells, regulators should increase bond amounts to the projected cost of reclamation when wells are idled. Alternatively, idle wells should be assessed an

annual fee paid into an orphaned well cleanup fund. This is particularly important for operators who hold a large number or large percentage of idle wells.

- Operators with idle wells should be required to submit an idle well inventory management plan that includes a timeline to plug and reclaim idle wells. Approvals of new permits, well transfers and ongoing operations should be contingent on full compliance with an approved plan.

Comment Number: BOEM-EMAIL-32521-023161-38

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- States should require oil and gas companies to pay into a fund for orphan well cleanup, at a level that is sufficient to locate orphaned wells that are not yet mapped, address all orphaned wells, and provide a backstop for bonds that do not cover the full cost to plug and reclaim wells that are currently under permit but orphaned in the future.

Comment Number: BOEM-EMAIL-32521-023161-39

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Regulators should develop or update prioritized plans for cleanup of orphaned wells with public input and based on leaks or emissions, proximity to residents, environmental justice criteria, threat to water supply, impacts to wildlife and environment, conflict with current land use and other risk factors, as well as well location (to take advantage of any economies of scale).

- Regulators should monitor air emissions from documented orphaned wells in order to appropriately prioritize wells for plugging and reclamation.

Comment Number: BOEM-EMAIL-32521-023161-40

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Plugging best practices (based on the best technical data) should be set in regulations and reviewed and updated frequently. Plugged wells must be inspected on site.

Comment Number: BOEM-EMAIL-32521-023161-41

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- If bonds are not set at the actual cost of reclamation, regulators should require stripper wells or idle wells that are transferred to a new operator to be covered by bonds or fees that are sufficient to cover the full cost to plug and reclaim these wells.
- Regulators should have authority to hold previous operators in the chain of custody of an orphaned site responsible for covering the cost of plugging and reclaiming the site.
- Permits should not be transferable. New owners should be required to apply for a new permit, and regulators should only approve permits accompanied by financial assurance at the cost of reclamation.

Comment Number: BOEM-EMAIL-32521-023161-42

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Attorneys General Offices should intervene and strongly oppose proposals by oil and gas companies to offload the responsibility for reclaiming wells at the end of their profitable life onto the public through bankruptcy proceedings, and should rescind all permits for operators who orphan wells.

Comment Number: BOEM-EMAIL-32521-023161-44

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Regulators should provide annual updates to the public and to state legislatures on the number of documented orphaned wells, the estimated number of undocumented orphaned wells, the number of wells at-risk of becoming orphaned, the number of idled wells and length of time in idle status, the number and cost of orphaned wells plugged and reclaimed, amount of financial assurance held per company and well, and potential taxpayer liability.

Comment Number: BOEM-EMAIL-32521-023161-46

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Regulators should conduct on-site inspections at least once per year, and should verify operator and well status whenever required reports or payments are late.
- Regulators should conduct regular reviews of well permits to ensure accurate data is being used.

Comment Number: BOEM-EMAIL-32521-023161-47
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Current Regulatory Problem: Regulators sometimes do not record the locations of infrastructure associated with production

Policy Recommendations:

- Regulators should require information and reclamation plans for associated wellsite infrastructure (e.g., flowlines, surface equipment), as well as midstream infrastructure location and type.

Comment Number: BOEM-EMAIL-32521-023161-6
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Closing the Idle Well Loophole

We also urge the BLM to change its definition of “idle well” from a well that has been shut in or temporarily abandoned for seven years or longer to a well that has been shut in or temporarily abandoned for 12 months or longer, and to require bonds for these wells to be set at the full cost of reclamation as determined by a professional engineer. The BLM re-defined idle wells from “a well that has been shut-in or temporarily abandoned for 12 consecutive months or longer” [Footnote 6: See IM 2001-147, Well Review Definitions] to “a well that has been nonoperational for at least 7 consecutive years and there is no anticipated beneficial use for the well.” [footnote 7: See IM 2007-192, Definitions for Spreadsheets] The new definition followed passage of the Energy Policy Act which, in Section 349, required the Secretary to establish a program to remediate, reclaim and close orphaned, abandoned or idled oil and gas wells, and established this much more lenient definition of idle well. However, we do not believe this definition for the purposes of a program that was never funded ties the BLM’s hands, and we urge the BLM to redefine idle well to the prior 12 month timeframe. By waiting seven years to even consider a well idle, the BLM is failing to fulfill its mandate under the Mineral Leasing Act to ensure timely reclamation, delaying action until it becomes even less likely that the operator will have the financial means to complete reclamation, and masking the true number of orphaned federal wells.

A specific example of these policies play out on the ground is the attached list of “non-compliant operators” from the Buffalo Field Office. Of these 19 operators, eight are listed by the Wyoming Oil and Gas Conservation Commission as having orphaned wells that were plugged - as far back as 2014 (Black Diamond, Continental, High Plains, Loral, Patriot, Pure Petroleum, Storm Cat and USA Exploration), [Footnote 8: See WOGCC Orphan Well Cost Summary at <https://wogcc.wyo.gov/resources/orphan-well-program>] while BLM still considers the same companies “non-compliant” operators and has yet to take action to address their 498 unplugged federal wells. (See attachment.)

A one year timeline for considering a well idle is more consistent with existing state policies. For example, North Dakota requires that: “A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six

months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site.” [Footnote 9: ND Century Code 38-08-04.1(12)]

Comment Number: BOEM-EMAIL-32521-024412-35

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Idled and Orphaned Wells

We support BLM’s review of its idled and orphaned wells program. To date, BLM has taken some steps to clarify certain procedures related to these wells but many problems remain. See, e.g., BLM, Instruction Memorandum No. 2020-006, Idled Well Reviews and Data Entry (Dec. 10, 2019). [Footnote 91: Available at <https://www.blm.gov/policy/im-2020-006>.] The GAO has previously recognized that idled wells pose a significant liability to BLM and, more importantly, U.S. taxpayers. See, e.g., GAO, Oil and Gas Wells, Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities, GAO-18-250 (May 2018). [Footnote 92: Available at <https://www.gao.gov/assets/gao-18-250.pdf>.] Moreover, the idled and orphaned wells program provides a unique opportunity for BLM to create jobs while also protecting our climate, water, and public lands.

To this extent, we provide the following recommendations for the agency’s consideration.

First, as defined in the Energy Policy Act of 2005, an “idled” well is one that has been nonoperational for at least seven years, and there is no anticipated beneficial use for the well. 42 U.S.C. § 15907(e). However, since oil and gas leases are issued by BLM with ten year lease terms, see 43 C.F.R. § 3120.2-1, too often it is the case that idled wells become “orphaned” as a result of having been designated as “idled” so late in their lease term. Inactive wells that are not reclaimed by the operators, have no identifiable liable party, and have bonds that are insufficient to cover the cost of reclamation are classified as “orphaned.” See West EcoSystems Technology, Inc., Inactive Oil and Gas Wells on Federal Lands and Minerals: Potential Costs and Conflicts at 1 (March 1, 2021) [hereinafter, “West EcoSystems Report”]. [Footnote 93: Available at https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2021/03-17-21_Inactive-Oil-and-Gas-Wells-on-Federal-Lands-and-Minerals-Report.]

To remedy this problem, BLM should establish policy that prioritizes, among other things, taking wells off the path to orphan status by identifying them as idled earlier in the process. This should include more frequent inspections, higher bond and reclamation costs to help pay for idled well clean-ups, [Footnote 94: See GAO, Oil and Gas, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells, GAO-19-615 (Sept. 2019) [hereinafter, “GAO Report 19-615”].] and agency guidance regarding how to identify potential idled wells earlier in their lease term. [Footnote 95: The Energy Policy Act of 2005 established the seven year timeframe before a well can be defined as “idled.” However, that fact does not prohibit the DOI from making recommendations to Congress as part of its review process such as eliminating the seven year requirement nor does it prohibit BLM from establishing guidance for identifying wells that may likely become idled in the future based on factors such as operators currently in bankruptcy proceedings or operators with significant amounts of existing idled wells. In fact, members of Congress have recently brought forward legislation to address many of these same—or similar—policy recommendations. See, e.g., H.R. 2415, To amend the Energy Policy Act of 2005 to require the Secretary of the Interior to establish a program to permanently plug, remediate, and reclaim orphaned wells and the surrounding lands and to provide funds to States and Tribal Governments to permanently plug, remediate, and reclaim orphaned wells and the surrounding lands, and for other purposes, (introduced April

8, 2021), <https://www.congress.gov/bill/117th-congress/house-bill/2415>.] (e.g., operators in bankruptcy proceedings, operators with high numbers of idled wells).

BLM should issue new agency policy in the form of an instruction memorandum, handbook, and/or manual update. Notably, BLM has already recognized the need to do so in IM 2020-006 when it stated, in relevant part: “the BLM will issue an orphaned well IM in the future with further details and instructions.” To date, to the best of our knowledge, BLM has not issued this orphaned well IM.

Second, to fully address the problems associated with idled and orphaned wells, BLM must make changes on both sides—that is, BLM must establish better policies to create jobs and take proactive steps to address idled wells while also taking steps to reduce the amount of orphaned wells in the first place. To achieve both objectives, BLM should increase bond and reclamation costs to hire additional inspectors and ensure that proper reclamation will occur. On this point, the GAO recently recommended that BLM “take steps to adjust bond levels to more closely reflect expected reclamation costs, such as by increasing regulatory minimums to reflect inflation and incorporating consideration of the number of wells on each bond and their characteristics.” GAO Report 19-615 at 24. According to the GAO:

BLM has historically had difficulties securing bond increases through bond reviews, and so additional steps may be needed to adjust bond levels to more closely reflect expected reclamation costs. We continue to believe a mechanism for BLM to obtain funds from oil and gas operators to cover the costs of reclamation for orphaned wells could help ensure BLM can completely and timely reclaim these wells, some of which have been orphaned for at least 10 years.

Id. at 25. GAO made this recommendation based on its conclusion that:

Bonds are not sufficient to prevent orphaned wells in part because they do not reflect full reclamation costs for the wells they cover. Bonds that are high enough to cover all reclamation costs provide complete financial assurance to prevent orphaned wells because, in the event that an operator does not reclaim its wells, BLM can use the bond to pay for reclamation. On the other hand, bonds that are less than reclamation costs may not create an incentive for operators to promptly reclaim wells after operations cease because it costs more to reclaim the wells than the operator could collect from its bond. The majority of bond values do not reflect reclamation costs in large part because most bonds—82 percent—remain at their regulatory minimum values [which] have not been adjusted since the 1950s and 1960s to account for inflation.

Id. at 14-16. GAO identified two additional bonding problems: (1) “Bond minimums are based on the bond category and do not adjust with the number of wells they cover, which can vary greatly,” and (2) “[b]ond minimums do not reflect characteristics of individual wells such as depth or location, but such characteristics can affect reclamation costs.” Id. at 16-17. GAO concluded that “[m]ore than 97 percent of these at-risk wells have bonds that would not fully reclaim the wells under our high-cost scenario,” id. at 18.

Third, BLM must issue a “data call” to all BLM state offices to fully understand the scope of the problem (e.g., how many wells, how long have they been idled). The EPA has estimated that there are approximately 3.2 million inactive oil and gas wells in the United States while a second report concluded that “[t]here are likely more wells that are orphaned or at risk of becoming orphaned than are currently identified by the [BLM].” West EcoSystems Report at 2. This conclusion is in accord with GAO’s finding that “BLM does not track the number of orphaned wells over time and so cannot identify how many wells became orphaned over specific time frames.” GAO Report 19-615 at 14.

Finally, BLM should prioritize its review of idled and orphaned wells based on their proximity to or impact on important resource values such as lands with wilderness characteristics, cultural and archaeological areas, ground and surface water resources, and wildlife habitat. GAO concluded that these wells threaten the environment:

Inactive wells have the potential to create physical and environmental hazards . . . For example, inactive wells that are not properly plugged can leak methane into the air or contaminate surface water and groundwater. Well sites that are not properly reclaimed can contribute to habitat fragmentation and soil erosion, and equipment left on-site can interfere with agricultural land use and diminish wildlife habitat.

GAO Report 19-615 at 6. See also West EcoSystems Report at 10-15 (describing the threats posed by such wells to aquifers, human health, the environment and recreation, among other resources).

In sum, the thousands of idled and orphaned wells on our public lands threaten the climate and environment and demand wide-ranging changes to BLM's existing policies and guidance.

Comment Number: BOEM-EMAIL-32521-027661-6

Organization: Alaska Wilderness League and Multiple Other Environmental Organizations

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

As part of its review, DOI should also prioritize remediation and restoration of prior oil and gas leasing activities across the Reserve. Most of the orphaned wells on federal lands in Alaska are located within the Reserve, where the cost per well for remediation can exceed \$16 million. Restoration and remediation of orphaned and abandoned wells provides both an economic opportunity for employment in restoration and clean-up efforts and the opportunity for federal funding to accompany these remediation needs. We request that DOI consider the opportunities to remediate orphaned and abandoned wells in the Reserve as it considers a federal effort to plug these wells across the country. A focus on remediation and restoration as part of the federal oil and gas program has the potential to bring standardization to clean-up and pollution control, as well as the ability to create large numbers of jobs in communities such as those across the North Slope of Alaska.

Comment Number: BOEM-EMAIL-32521-030652-5

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7 8

Comment Excerpt Text:

Any potential oil and gas leasing that continues in the near-term does so with an eye toward addressing historical inequities, curbing pollution and protecting taxpayers.

As we build toward an energy transition, we must address the fact that the current oil and gas leasing system is not only broken but has never been able to fully address the needs of the public. Since the system was instituted in 1987, 57% of all acres leased have been leased for \$2 or less with more than 90% of these leases no longer being active. We ask that the administration take the following measures:

-Increase royalty rates, annual rental rates and minimum lease bids for public lands that account for socio-

economic costs, climate costs and promote a sustainable energy transition toward democratic, renewable energy development

-Promote methane capture and phase out industrial methane, VOCs and attendant emissions on public lands through a managed decline within a five-year period

-Permanently plug orphaned wells and remediate and reclaim orphaned well sites on federal land while increasing bonding rates to ensure that industries are held accountable for the monitoring, plugging, remediation and restoration of any future wells

-End the practice of leasing low-potential lands by requiring the BLM to assess all lands' mineral development potential before offering those lands for lease and prohibiting leasing on any lands found to have low or no development potential. These assessments (known as Reasonably Foreseeable Development scenarios (RFDs)) must be updated regularly, and the updating process must be open to public input and participation

Comment Number: BOEM-EMAIL-32521-034546-7

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

c. Orphaned wells, bonding, and reclamation.

Any reform to the oil and gas leasing program must address the perpetual problem of abandoned and orphaned wells on public lands. DOI must fund a program to reclaim existing abandoned and orphaned wells on public, state, tribal, and private lands, and it must implement fiscal and policy reforms to ensure that American taxpayers do not bare the brunt of paying for this cleanup in the future.

Orphaned and abandoned wells pose serious health risks, and are a threat to wildlife and wildlife habitat. These wells leak carcinogenic gases such as methane, a greenhouse gas that is 84 times more potent than carbon dioxide in the first two decades of its release, and poses a significant risk of groundwater contamination. The Mineral Leasing Act requires the Secretary of Interior to issue rules to ensure “complete and timely” reclamation. [Footnote 49: 30 USC § 226(g).] Despite this obligation, reclamation of wells on public lands is neither complete, nor timely. A recent report released by the National Wildlife Federation and Public Lands Solutions identified 8,050 inactive oil and gas wells either orphaned or at risk of being orphaned on federal lands in Colorado, Montana, New Mexico, Utah, and Wyoming. Reclaiming these wells could cost up to \$1.2 billion dollars, and yet the federal government holds only an estimated \$17 million in bonds for this purpose. [Footnote 50: National Wildlife Federation & Public Lands Solutions, Inactive Oil & Gas Wells on Federal Lands & Minerals: Potential Costs and Conflicts (Mar. 2021) (identifying over \$1 billion in reclamation costs for 8,050 long-term inactive wells on federal lands), available at https://publiclandsolutions.org/wp-content/uploads/2021/03/03-17-21_Inactive-Oil-and-Gas-Wells-on-Federal-Lands-and-Minerals-Report.pdf.]

To address this problem the Department of Interior can take several steps. First, it should increase reclamation bond amounts. The amount of bond required for oil and gas leases has not been updated in over 60 years, and as a result the government is woefully underfunded to ensure that wells that have been orphaned are sufficiently reclaimed: the typical reclamation cost for a low-cost well is \$20,000 and \$145,000 for a high cost well, but the average value of a bond held by the BLM is only \$2,122 per well. GAO has repeatedly raised the alarms about the insufficiency of bonds to cover the cost of reclamation. [Footnote 51: GAO, Bonding Requirements and BLM

Expenditures to Reclaim Orphaned Wells (Jan. 2010), available at <https://www.gao.gov/assets/gao-10-245.pdf>.] Despite these reports, BLM has thus far failed to update its bonding requirements. BLM must initiate a rulemaking to increase bond rates such that they are more in line with the expected cost of reclamation. Along with increasing bonds, these regulations must create firm, enforceable timelines for idle wells that require companies to either continue producing on these wells, or to plug and abandon these wells after a certain period of time. BLM could also consider imposing a fee for idle wells.

DOI must also address the issue of existing orphaned wells on public lands. As stated, there are a number of orphaned wells on public lands. However, as shown in a 2019 GAO report, BLM does not adequately track the number of orphaned wells over time. This report identified 219 orphaned wells in 2017 and 44 new wells between 2017 and 2019. This is nearly double to 144 orphaned wells identified in a 2009 GAO report. [Footnote 52: Id.] DOI must address the inadequacies of tracking wells that are idle and orphaned such that the scope of the problem is fully understood. Finally, DOI needs to address the cost of reclaiming orphaned wells on public lands, and support Congressional legislation that not only increases bond amounts, but also creates an official orphaned well cleanup fund.

Comment Number: BOEM-EMAIL-32521-034585-40

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

4. BLM should amend and update reclamation bond amounts and requirements to adequately cover cleanup costs.

Orphaned oil and gas wells have been an issue for decades due to insufficient reclamation bond amounts that nearly always fall short of covering the actual cost of cleanup. Without dedicated funding to plug and reclaim them, the delayed and incomplete reclamation of oil and gas wells poses a significant liability for federal and state taxpayers and a growing threat to water resources, air quality, and wildlife habitat. According to a recent analysis, these impacts are profound; orphaned wells cause groundwater contamination and, in 2018, emitted 281 kilotons of methane—the climate equivalent of burning 16 million barrels of oil. [Footnote 94: Environmental Protection Agency, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018 (April 13, 2020), available at: <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf>.] Research shows that more than a quarter of unplugged wells may be leaking methane, a potent greenhouse gas. [Footnote 95: Hiroko Tabuchi, Fracking Firms Fail, Rewarding Executives and Raising Climate Fears, New York Times (October 13, 2020), available at: <https://www.nytimes.com/2020/07/12/climate/oil-fracking-bankruptcy-methane-executive-pay.html>.]

Inactive wells, also known as idle or shut-in wells, are another notorious problem. These wells are no longer producing oil or gas or serving other functional purposes like fluid injection or groundwater monitoring. In theory, many of these wells are just temporarily “turned off,” meaning they are capable of being re-engaged for production. Consequently, operators do not plug and reclaim them. However, in its 2019 report, the GAO identified long-inactive wells as those most at risk of becoming orphaned. [Footnote 96: United States Government Accountability Office, Report to Congressional Requesters, Oil and Gas: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells (September 2019), available at: <https://www.gao.gov/assets/gao-19-615.pdf>.] The GAO attempted to calculate how much BLM could be liable for based on the estimated cleanup costs of existing at-risk wells and found that \$46 million to \$333 million in cleanup costs would be needed, and that the vast majority of the wells’ bonds were insufficient to cover these costs. [Footnote 97: Id.] According to Carbon Tracker’s research, idle wells now outnumber producing wells in

most major oil and gas producing states. Thus, these at-risk wells could end up costing taxpayers tens, if not hundreds, of millions of dollars to clean up.

There is a clear need to begin addressing orphaned well cleanup and reclamation, improve the inventory and cataloging of idle and orphaned wells, and create good-paying union jobs to assist in reclaiming these orphaned wells as our country transitions out of the COVID-19 pandemic and into the clean energy economy of the future.

RECOMMENDATIONS:

- Conduct a rulemaking to update bond amounts to the expected cost of reclamation, curtail the use of blanket bonds, and update well definitions and associated regulations.
- Issue new policies that increase oversight of inactive wells and limit the ability of operators to indefinitely delay final reclamation.
- Support passage of Senator Bennet's Oil and Gas Bonding Reform and Orphaned Well Remediation Act (S. 4642). This bill will establish a new fund that will allow states, Tribes, and federal agencies to create jobs by identifying and reclaiming orphaned wells, as well as strengthening federal oil and gas bonding rules.
- Support passage of the Orphaned Well Cleanup and Jobs Act of 2021 sponsored by Representative Teresa Leger Fernández, which authorizes funds to identify, plug, and reclaim orphaned wells on federal lands, and directs DOI to create and administer a grant program to provide funds to states and Tribes to plug and reclaim wells on Tribal, state, and private lands.

Support passage of the Bonding Reform and Taxpayer Protection Act of 2021 (H.R.1505) (Rep. Lowenthal). This bill will set new national standards for financial assurances that better protect taxpayers and ensure timely and complete reclamation of oil and gas wells.

Comment Number: BOEM-EMAIL-32521-035527-10

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Regulations should also be changed to ensure oil spill response plans are subject to public review and comment. In addition, BOEM and BSEE should discard proposed changes to the 2016 Arctic Drilling Rule. [Footnote 1: Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf; Final Rule, 81 Fed. Reg. 46,478, 46,478-46,566 (July 15, 2016).] This rule, put in place after the Deepwater Horizon disaster and Shell's failed attempts to discover oil in the Beaufort and Chukchi seas, are commonsense provisions and should remain in place.

Comment Number: BOEM-EMAIL-32521-036716-5

Organization: University of Colorado Law School

Commenter: Mark Squillace and others

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

7. Develop a Program to Pay for the Safe Closure of Abandoned Well Sites. Using data from the EPA, Forbes recently reported as many as 3 million abandoned oil and gas wells across the United States. More than 2 million of these are “unplugged,” [Footnote 13: See Silvio Marcacci, Plugging Abandoned Oil Wells Is One ‘Green New Deal’ Aspect Loved By Both Republicans And Democrats, (Forbes, September 21, 2020). See also, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2016: Update Under Consideration for Abandoned Wells in Natural Gas and Petroleum Systems (EPA, June 2017).] leaking millions of tons of methane into the atmosphere. Forbes has suggested that a program to plug abandoned wells could attract bi-partisan support and the Biden Administration has recently proposed a \$16B program to reclaim abandoned mines and plug orphaned oil and gas wells as part of its \$2.3T infrastructure plan. [Footnote 14: Biden Infrastructure Plan Would Spend \$16 Billion to Clean Up Old Mines, Oil Wells (PBS, April 1, 2021).] If enacted, this program would go a long way toward addressing the problem of abandoned well sites and create thousands of jobs in the process. A joint study by the Center on Global Energy Policy at Columbia and Resources for the Future found that a program to plug 500,000 abandoned wells could create as many as 120,000 jobs. [Footnote 15: Jason Bordoff, Daniel Raimi, & Neelesh Nerurkar, Green Stimulus for Oil and Gas Workers: Considering a Major Federal Effort to Plug Orphaned and Abandoned Wells (July 20,2020).]

While Interior should move aggressively to support such a program, it should also recognize that an abandoned well clean-up program would best be funded not with taxpayer dollars, but rather through fees paid by the oil and gas industry. To that end, the Department of the Interior should take the lead in working with the Congress and other federal agencies to impose a modest fee on all (not just federal) oil and gas production. This would work like SMCRA’s Abandoned Mine Lands (AML) program but would fund the clean-up of abandoned well sites. A mere five cent tax on every barrel of oil production and every 10,000 cubic feet of gas production would likely yield about \$380M/year. [Footnote 16: The EIA estimates 10.9 million barrels of oil production per day in 2021 or about 3.98 billion barrels per year. A five-cent tax on each barrel would yield \$199M. The EIA estimates annual gas production in 2020 will be 36,175,276 million cubic feet. A five-cent tax on each 10,000 cubic feet of gas would yield about \$180.88M]

Designing and implementing a fee program will likely take time and plugging abandoned wells should begin as soon as possible as proposed in the Biden infrastructure bill. But this should not deter Interior from promoting a fee program would help compensate taxpayers for these costs and ensure a continuing stream of revenue to address ongoing and future problems with abandoned wells.

Leaking abandoned wells are an urgent problem and given the BLM’s expertise on oil and gas development and reclamation, and Interior’s experience through the Office of Surface Mining Reclamation and Enforcement with the AML program, it makes good sense for Interior to play a leadership role in an effort to generate reclamation funds from the industry that is causing this serious problem.

Comment Number: BOEM-TRANS-32521-000042-1

Organization: Natural Resources Law Center at University of Colorado Law School

Commenter: Mark Squillace

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

You know, there's a big problem I think a much bigger problem that has been acknowledged with abandoned oil and gas wells. I think mentioned earlier, I think Wendy threw out a 50,000 abandon wells number, that I think is what has been reported, Forbes recently did a report suggesting there were 3 million abandoned wells in the United States, two million of them unplugged, it's a serious climate problem, because many of these wells are leaking methane and causing serious kinds of economic dislocations, and I want to throw out this idea, which I

think is important, which is essentially having the interior department working with E.P.A. and other agencies and the industry, and ultimately with congress to maybe adopt something along the lines of the AML program under the surface mining act, so there's a fee imposed of course on coal, under the AML program. I did sort of a back of the envelope calculation of this, and now we're talking of course all oil and gas not just federal. You could impose a one Penny tax on every barrel of oil produce and a Penny tax on a million cubic feet of gas, and you would generate about \$80 million a year. You know, so if you went up to 5 cents, you would generate \$400 million a year, you're going to have to find some revenue stream to deal with this really overwhelming problem. It's a really serious problem. The good news it creates lots of jobs. And it does sort of deal with the point Brian was making about capturing some of the external cost, not just for the federal oil and gas, but oil and gas more broadly, which I think will be a good thing. So it's just sort of, you know, a little out of the box idea, but I think it's really worth thinking about ways in which we can deal with this very serious problem. I was encouraged, frankly, by what API said today in terms of their interest in addressing climate change, they hopefully could be an ally in setting up something like this, that's what I wanted to address

Section 14 - Regulatory Changes

Comment Number: BOEM-EMAIL-32521-018389-2

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Second, to ensure durable, consistent, and effective regulation and mitigation for existing oil and gas development, BOEM and BSEE should pursue regulatory and—if necessary—statutory amendments to hard-wire consideration of climate change and environmental protection in future decisions.

Comment Number: BOEM-EMAIL-32521-018389-23

Organization: Earth Justice and cosigners

Commenter: Steve Mashuda

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

E.O. 14008 calls on Interior to address its permitting practices along with its leasing practices. In order to reform its permitting process to respond to environmental and ecosystem impacts, environmental justice concerns, and climate change, Interior should focus on regulatory and other reforms to reflect and incorporate much more clear consideration of the climate imperative, a just transition to clean energy, and environmental protection in its overall regulation of offshore activities. These durable regulatory reforms to development practices will help ensure consistent application of the policy and discretionary executive actions discussed in these comments by future administrations.

Interior's ability to adopt new regulatory requirements that apply to existing leases (and that would govern any future consideration of leasing in subsequent administrations) gives it a powerful tool to better protect the environment from the risks and harms of oil development and, in the process, to ensure that the true costs of carbon and other pollution are factored into oil production. The governing statutes afford Interior wide authority to issue regulations to control the environmental impact of activity on leases. OCSLA "authorize[s] the [Interior Department], by valid regulations, to impose anywhere in the OCS all reasonable development and production

conditions it deems necessary to its stewardship of the OCS and administration of OCSLA.” [Footnote 148: Gulf Restoration Network v. Salazar, 683 F.3d 158, 170 (5th Cir. 2012) (citing 43 U.S.C. §§ 1334, 1351) (emphasis added)] “The case law interpreting § 1334 gives a broad scope to the phrase ‘prevention of waste and conservation of the natural resources,’ making clear that it extends to environmental protection.” [Footnote 149: Century Expl. New Orleans, LLC v. United States, 745 F.3d 1168, 1177 (Fed. Cir. 2014) (citation omitted)].

There is general agreement about the need to fight climate change and to ensure equity for the communities burdened most by pollution and climate change (e.g., human health and harms to fisheries) from oil development. There are significant opportunities to adopt new protections against these environmental harms from federal oil and gas development. These include:

Regulations to Curb Methane Emissions: Adopting comprehensive regulations to curb methane emissions from existing offshore operations is urgently needed. Recent studies have shown that existing operations in the Gulf of Mexico emit more than double EPA’s previous estimates—amounts twice those from onshore operations in the Bakken comparable to those from the San Juan basin—far more methane than previously thought [Footnote 150: Alan M. Gorchov Negron et al., Airborne Assessment of Methane Emissions from Offshore Platforms in the U.S. Gulf of Mexico, 54 ENV’T SCI. TECH. 5112, 5118 (Apr. 13, 2020),

<https://pubs.acs.org/doi/10.1021/acs.est.0c00179>]. While most of the effort to control fugitive methane emissions has so far been targeted at leakage from onshore facilities, these recent studies highlight the need—and opportunity—to achieve significant near-term reductions in greenhouse gas emissions from offshore facilities. As was the case with Interior’s regulation of onshore methane emissions, regulation to control emissions would need to begin with study and identification of the leak points. But after those are identified, there are numerous readily available control technologies or process changes that could be immediately applied to stop or curb these emissions.¹⁵¹ Because methane is such a powerful greenhouse gas and because capture prevents waste of a marketable product, such regulation also enjoys support from industry [Footnote 152: API and NOIA both stated they support improved methane capture and other efforts to reduce emissions at Interior’s Forum held on March 25. See also Andrew Baker, API Calls for Carbon Price in Sweeping Oil, Natural Gas Climate Plan, NAT. GAS INTEL. (Mar. 25, 2021), <https://www.naturalgasintel.com/api-calls-for-carbon-price-in-sweeping-oil-natural-gas-climate-plan/>.] Developing and adopting effective regulations should be a high priority for Interior.

Comment Number: BOEM-EMAIL-32521-019684-2

Organization: Columbia University Center on Global Energy Policy

Commenter: Marianne Kah

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Improve Legal Defensibility of Waste Prevention Rule

*Depending on the outcome of the appeal of the Wyoming case on the 2016 Rule, BLM may need to develop evidence that shows that the rule is a necessary and appropriate means of preventing waste, while the justification should still include health and environment co-benefits. The 2016 Rule had been vacated primarily on the grounds that BLM was not deemed to have the authority to protect the environment and regulate air emissions.

*If the appeal of the Wyoming case on the 2016 Rule does not resolve questions about BLM’s authority to protect the environment on federal lands, a clearer reference needs to be made in the new rule to BLM authority to protect the environment, air and atmosphere on federal lands under the Federal Land Policy and Management Act.

Comment Number: BOEM-EMAIL-32521-019726-2

Organization: Wilderness Society Action Fund and cosigners

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Turning to our substantive recommendations, we respectfully request that DOI consider taking the following actions, nearly all of which DOI has the authority to carry out administratively. We also encourage DOI to explore opportunities to codify reforms through changes to the Mineral Leasing Act (MLA) and other federal laws, including by working with members of Congress who are sponsoring oil and gas reform legislation. [Footnote 1: See, e.g., Fair Returns for Public Lands Act, 117th Cong. (2021) (strengthening the onshore program's fiscal framework, introduced by Sens. Rosen and Grassley); End Speculative Oil and Gas Leasing Act of 2021, S. 607, 117th Cong. (2021) (prohibiting leasing on low and no potential public lands, introduced by Sen. Cortez Masto); Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021, H.R. 1503, 117th Cong. (2021) (reforming several aspects of the onshore program, introduced by Rep. Levin); Ending Taxpayer Welfare for Oil and Gas Companies Act, H.R. 1517, 117th Cong. (strengthening the onshore program's fiscal framework, introduced by Rep. Porter); Leasing Market Efficiency Act, S. 4223, 116th Cong. (2020) (ending noncompetitive leasing, introduced by Sen. Tester); Oil and Gas Bonding Reform and Orphaned Well Remediation Act, S. 4642, 116th Cong. (2020) (strengthening the onshore program's bonding framework and funding orphaned well clean-up, introduced by Sen. Bennet)]

1. Establish a new mandate for the onshore program: BLM has traditionally administered the onshore program as if leasing and development were required. [Footnote 2: See, e.g., Testimony from Michael Nedd, Deputy Director, Operations, BLM, to the U.S. House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources (Mar. 12, 2019) (leasing "required by the Mineral Leasing Act."); Memorandum from DOI Inspector General, to Robert Abbey, Director, BLM 6 (Dec. 29, 2009) ("Kent Hoffman [Utah's Deputy State Director for Lands and Minerals] and the BLM USO Natural Resource Specialist both commented that BLM is required by law to hold a quarterly lease sale."), available at https://www.doioig.gov/sites/doioig.gov/files/BLM-Lease-Report_508.pdf.] However, federal courts have consistently ruled otherwise and held that oil and gas development is not the dominant use of public lands and must be weighed against other valid uses, including recreation, fish and wildlife conservation, and renewable energy development.[Footnote 3: See, e.g., N.M. ex rel. Richardson v. BLM, 565 F.3d 683, 710 (10th Cir. 2009) ("It is past doubt that the principle of multiple use does not require BLM to prioritize [oil and gas] development over other uses;") Nat'l Mining Ass'n v. Zinke, 877 F.3d 845, 872 (9th Cir. 2017) ("Nor does [multiple use] preclude the agency from taking a cautious approach to assure preservation of natural and cultural resources.").]

Recommendation: DOI should establish a new mandate for the onshore program that affirmatively recognizes oil and gas leasing as a discretionary action that should be authorized only when consistent with multiple use and sustained yield principles.

2. Guarantee robust public participation and tribal consultation: Public participation and tribal consultation are essential and required components of the decision-making process for oil and gas activity on public lands. After the Trump Administration tried to make public participation optional for leasing decisions, a federal court ruled that "the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales." [Footnote 4: W. Watersheds Project v. Zinke, 441 F. Supp. 3d 1042, 1076 (D. Idaho 2020)]

Recommendation: BLM should amend its oil and gas leasing regulations to require robust public participation and

tribal consultation during the leasing and permitting process. BLM should look to IM 2010-117 for guidance; however, robust public participation and tribal consultation should be mandatory, not optional, for all leasing and permitting decisions.

3. Limit the quantity and scope of competitive sales: The MLA does not require quarterly/regular lease sales. This is clear from its text, which says that public lands “may be leased” and that DOI has broad authority to declare lands “ineligible” and “unavailable” for leasing. [Footnote 5: 30 U.S.C. § 226(a), (b)(1)(A); see also *Udall v. Tallman*, 380 U.S. 1, 4 (1965) (“The Mineral Leasing Act . . . left the Secretary discretion to refuse to issue any lease at all on a given tract.”); *W. Energy Alliance v. Salazar*, 709 F.3d 1040, 1044 (10th Cir. 2013) (“The MLA, as amended by the Reform Act of 1987, continues to vest the Secretary with considerable discretion to determine which lands will be leased.”); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (“It is clear that the Secretary has broad discretion in this area. While the statute gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory.”); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) (“We have held that the [MLA] ‘allows the Secretary to lease such lands, but does not require him to do so. . . . The Secretary has discretion to refuse to issue any lease at all on a given tract.’ Thus refusing to issue the Deep Creek [oil and gas] leases would constitute a legitimate exercise of the discretion granted to the Interior Secretary under that statute.”)]

Recommendation: BLM should revise its oil and gas regulations to clarify that lease sales are not required and that it has broad authority to declare lands ineligible and unavailable for leasing. It may also be advisable to obtain a Solicitor’s Opinion on the MLA’s quarterly sale provision and BLM’s authority to declare lands ineligible and unavailable for leasing.

4. Switch to a “formal” nomination process: BLM has existing regulatory authority to employ a “formal” lease nominations process, which would allow BLM to strategically identify lands that are suitable for nomination. [Footnote 6: 43 C.F.R. § 3120.3-1.] Under the “informal” nominations process, which has been used since passage of the Federal Onshore Oil and Gas Leasing Reform Act in 1987, anyone can anonymously nominate any parcel of public land for leasing. As a consequence, over 110 million acres of public lands were nominated between 2011 and 2020, a land mass larger than the State of California. [Footnote 7: BLM, *Expressions of Interest By Calendar Year*, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>] Over the same period, just 11.4 million acres of leases received bids, underscoring the speculative nature of most lease nominations and the waste and inefficiency of the “informal” nominations process. [Footnote 8: BLM, *Acreage Offered at Competitive Lease Sale Auctions Since January 1, 2009*, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.]

Recommendation: BLM should consider using the “formal” nominations process set forth in its existing regulations. Further, BLM should revoke Instruction Memorandum (IM) 2014- 004, which authorizes anonymous lease nominations, and issue a new policy that requires anyone nominating public lands for leasing to disclose their identity as well as the identities of third parties who they are representing.

5. Develop and employ resource “screens:” BLM does not routinely screen nominated leases against criteria that are designed to eliminate conflicts with other uses and resources and to maximize taxpayer returns. The Federal Land Policy and Management Act and the MLA both authorize the use of screens, including “to prevent unnecessary or undue degradation” and “for the safeguarding of the public welfare.” [Footnote 9: 43 U.S.C. § 1732(b); 30 U.S.C. § 187.]

Recommendation: BLM should amend its leasing regulations to require the adoption of nationwide and state-specific screens that should be employed to eliminate and reduce conflicts with other uses and resources. These screens should be reevaluated and revised on an ongoing basis, but should include a prohibition on leasing lands with low or no oil and gas potential.

6. Ensure the public interest is served by noncompetitive leasing: Noncompetitive leases are rarely developed – in fact, GAO recently found that just 1 percent of noncompetitive leases issued between 2003 and 2009 entered production. [Footnote 10: GAO, Onshore Competitive and Noncompetitive Lease Revenues (Nov. 2020), available at <https://www.gao.gov/assets/gao-21-138.pdf>.] Even when undeveloped, these leases can and do burden other uses by limiting land use planning options and discouraging conservation designations. [Footnote 11: The Wilderness Society, No Exit: Fixing the BLM’s Indiscriminate Energy Leasing (June 2016), available at <https://www.wilderness.org/sites/default/files/media/file/Report-No%20Exit-Fixing%20BLM%20Leasing.pdf>.]

Recommendation: BLM should amend its oil and gas regulations to require a “public interest” determination prior to issuing noncompetitive leases. This determination should inform whether applicants for noncompetitive leases are “responsible” and “qualified” under 30 U.S.C. § 226(c)(1), and should evaluate such factors as the applicant’s ability to undertake development and compliance history, including whether the applicant has a history of failing to make rental or other payments. BLM should also create and maintain a publicly-accessible portal for noncompetitive lease offers (pre- and post-sale), and provide the public with at least 30 days to review and comment on noncompetitive lease offers.

7. Strengthen the onshore program’s fiscal framework: The onshore program’s fiscal framework is woefully outdated, does not guarantee a fair return to taxpayers, and fails to discourage speculators from hoarding idle, undeveloped leases. In fact, the onshore royalty rate of 12.5% has not changed in over 100 years, while rental rates and minimum lease bids are also decades-old. [Footnote 12: GAO, Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue (June 2017), available at <https://www.gao.gov/assets/gao-17-540.pdf>.] This has resulted in billions in lost revenues. [Footnote 13: Taxpayers for Common Sense, Royally Losing: Higher Royalties on State and Offshore Oil and Gas Production Reap Billions More than Drilling on Federal Lands (Feb. 2020), available at <https://www.taxpayer.net/wp-content/uploads/2020/02/TCS-Royally-Losing-2020.pdf>.] Further, because the program’s fiscal framework is so weak – rental rates, which are supposed to incentivize development, increase from just \$1.50/acre to \$2.00/acre after 5 years – speculators are able to stockpile hundreds of idle leases without ever putting them into production. [Footnote 14: Taxpayers for Common Sense, The Cost of Speculation in Federal Oil and Gas Leases (Oct. 2017) (identifying four characteristics of speculation), available at https://www.taxpayer.net/energy-natural-resources/locked-out-the-cost-of-speculation-in-federal-oil-and-gas-leases/#_ftn1; Center for American Progress, How Cheap Federal Leases Benefit Oil and Gas Companies (Aug. 2018), available at <https://www.americanprogress.org/issues/green/reports/2018/08/29/455138/cheap-federal-leases-benefit-oil-gas-companies>]

Recommendation: BLM should strengthen the onshore program’s fiscal framework by amending its oil and gas regulations to increase the royalty rate, rental rates, and minimum lease bids. In doing so, BLM should look to recent legislation from Senators Rosen and Grassley, as well as reports from CBO and GAO, for guidance. Also, BLM can likely increase rates – in particular, the royalty rate – on a lease-by-lease basis. Thus, BLM should issue a policy directive that requires the use of increased rates.

8. Strengthen the onshore program’s bonding and reclamation framework: The existing regulatory framework for inactive and orphaned wells is completely inadequate, as it lets industry shift millions in clean-up costs to taxpayers and fails to protect public lands, waters, and nearby communities from the impacts of aging and abandoned infrastructure. According to GAO, BLM has collected just \$204 million in reclamation bonds from industry, [Footnote 15: GAO, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells (Sept. 2019), available at <https://www.gao.gov/assets/gao-19-615.pdf>.] even though reclamation costs for all of the wells on federal lands could exceed \$6 billion. [Footnote 16: Center for Western Priorities, Reclaiming Oil and Gas Wells on Federal Lands: Estimate of Costs (Feb. 2018), available at <https://westernpriorities.org/wp-content/uploads/2018/02/Bonding-Report.pdf>; see also National Wildlife Federation & Public Lands Solutions, Inactive Oil & Gas Wells on Federal Lands & Minerals: Potential Costs and Conflicts (Mar. 2021) (identifying over \$1 billion in reclamation costs for 8,050 long-term inactive wells on

federal lands), available at https://publiclandsolutions.org/wp-content/uploads/2021/03/03-17-21_Inactive-Oil-and-Gas-Wells-on-Federal-Lands-and-Minerals-Report.pdf] GAO and DOI’s Inspector General have both repeatedly advised BLM to strengthen its oversight of inactive and orphaned wells, including by increasing bond amounts to reflect the actual costs of reclamation. [Footnote 17: GAO, Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells (Jan. 2010), available at <https://www.gao.gov/assets/gao-10-245.pdf>; GAO, BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability (Feb. 2011), available at <https://www.gao.gov/assets/gao-11-292.pdf>; DOI Office of the Inspector General, BLM Oil and Gas Bonding Procedures (Sept. 2012), available at <https://doioig.opengov.ibmcloud.com/sites/doioig.gov/files/BLM%20Oil%20and%20Gas%20Bonding%20Procedures.pdf>; DOI Office of the Inspector General, Bureau of Land Management’s Idle Well Program (Jan. 2018), available at https://www.doioig.gov/sites/doioig.gov/files/FinalEvaluation_BLMIdleWells_011718.pdf; GAO, Bureau of Land Management Needs to Improve Its Data and Oversight of Potential Liabilities (May 2018), available at <https://www.gao.gov/assets/gao-18-250.pdf>; GAO, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells (Sept. 2019).]

Recommendation: BLM should amend its oil and gas regulations to eliminate or minimize the use of blanket bonds and require that bonds be based on the full costs of plugging, abandonment, and reclamation. Further, BLM should issue new policies that increase oversight of inactive wells and limit the ability of operators to indefinitely delay final reclamation. Finally, BLM should work with Congress to obtain funds to clean-up orphaned wells and to authorize a user fee to cover additional reclamation costs, as recommended by GAO.

9. Limit participation by speculators and bad actors: BLM has broad authority to limit participation in the leasing process to “responsible qualified” bidders and cannot issue leases to companies that are violating “reclamation requirements and other standards . . . for any prior lease” [Footnote 18: 30 U.S.C. § 226(b)(1)(A), (g).] Yet, BLM does little to scrutinize the compliance records or development intentions/capabilities of participants in the oil and gas leasing process, which allows speculators and bad actors to freely obtain new leases.

Recommendation: BLM should amend its oil and gas regulations to establish criteria for determining “responsible qualified” bidders and to prohibit or limit participation by companies that violate reclamation and other environmental protection standards and fail to make rental and other required payments. Further, BLM should publicly post and regularly update the list of “Entities in Noncompliance with Reclamation Requirements of Section 17(g) of MLA,” which it is supposed to maintain under Handbook 3120-1 (Competitive Leases). [Footnote 19: BLM, H-3120-1 – Competitive Leases Appendix 4-1 (Feb. 2013), available at https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h3120.pdf.]

10. Strengthen oversight of lease suspensions: According to a recent GAO report, BLM is not providing “consistent and effective oversight” of lease suspensions. [Footnote 20: GAO, BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures (June 2018), available at <https://www.gao.gov/assets/gao-18-411.pdf>.] As a result, there are hundreds of leases that have been suspended for over a decade and that are not generating any revenues for taxpayers. In many cases, the original basis for these suspensions has long since gone away. These suspended leases also inhibit multiple-use management by saddling public lands with long-term, idle leases [footnote 21: The Wilderness Society, Land Hoarders: How Stockpiling Leases is Costing Taxpayers (Dec. 2015), available at <https://www.gao.gov/assets/gao-18-411.pdf>.]

Recommendation: BLM should amend its oil and gas regulations to require NEPA compliance and public participation prior to granting lease suspensions. Further, BLM should establish criteria to govern the evaluation of suspension applications, which should place the burden of justifying suspensions on applicants, particularly in cases where leases are nearing their expiration dates.

Comment Number: BOEM-EMAIL-32521-019955-7

Organization: Defenders of Wildlife

Commenter: Peter Nelson

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Fully reverse the aggressive changes made in the last four years to promote fossil fuel development in America's Arctic. The Refuge oil and gas program is subject to an independent review under Section 4 of E.O. 13990. Withdraw the Arctic Refuge oil and gas leasing program Record of Decision and work with Congress to remove the drilling mandate in the Tax Act. Withdraw the National Petroleum Reserve-Alaska (Reserve) Integrated Activity Plan (IAP) and develop new regulations and an amended IAP that limit the oil and gas program in the Reserve to its current footprint. Look for opportunities to assist Arctic communities and the state of Alaska during a transition period, recognizing that oil will continue to flow for decades from lands already leased and developed.

Comment Number: BOEM-EMAIL-32521-020306-2

Organization: Center for American Progress

Commenter: Jenny Rowland-Shea

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM should conduct rulemakings to reform revenue policy to ensure that taxpayers are fairly compensated, companies are held responsible for paying for cleaning up after themselves, and take into account effects on the climate. Congress should also address revenue in legislation.

Comment Number: BOEM-EMAIL-32521-020687-10

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Although leasing has occurred in the Reserve for some time, development has been more recent and has occurred in a compressed timeframe, all while annual lease sales have also been occurring. This has resulted in intense impacts during that short timeframe that will continue and compound in the future. Additional time and comprehensive studies are necessary to fully understand the severity of those impacts and ways to address them. Despite these serious impacts, the Trump Administration offered every single acre available for lease and later adopted a revised Integrated Activity Plan in 2020 that opened over 18 million acres of the Reserve to oil and gas leasing and rolled back protections for designated Special Areas and high-value resources. DOI should immediately rescind this disastrous Plan while it considers the future management of the Reserve.

Comment Number: BOEM-EMAIL-32521-020687-12

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We therefore ask the administration to implement a new management direction focused on meeting climate goals and protecting the extraordinary wildlife habitat and biodiversity values of the Reserve. DOI can accomplish this,

in large part, by adopting more protective regulations for the Reserve and conducting new land management planning, consistent with the new direction and regulations. DOI should undertake a careful review of the current regulations governing the Reserve to determine how they can be strengthened to protect the environmental resources of the Reserve and lessen the impacts of oil and gas development on communities and subsistence resources. The regulations and land management planning should aim to end new leasing in the Reserve; protect areas of ecological and cultural significance; minimize and mitigate the climate and environmental impacts of any existing or proposed oil and gas activities on existing leases; provide for termination or relinquishment of existing, non-producing leases to the extent consistent with the Naval Petroleum Reserves Production Act (NPRPA); increase reclamation and bonding requirements; and address how environmental reviews occur in the Reserve.

The most biologically-rich and recognized wildlife and wilderness values of the Reserve are not reliably, effectively, or permanently protected at this time, and these values should not be compromised. The oil and gas leasing program in the Reserve was authorized in 1980, but there has been no comprehensive review of the Reserve's guiding regulations since that time, despite the many changes to the landscape and development in and around the Reserve. The NPRPA provides broad authority and a statutory mandate for the Bureau of Land Management to provide maximum protection of areas with significant subsistence, recreational, fish and wildlife, or historical or scenic values, as well as the authority to condition, restrict, or prohibit activities as necessary to mitigate impacts. [Footnote 1: See, e.g., 42 U.S.C. § 6504(a); 42 U.S.C. § 6506a(b)] Implementation of a new management direction for the Reserve, including revised regulations that protect Reserve values and resources, is consistent with this statutory authority and with the urgent need to combat climate change, safeguard biodiversity, and address the serious impacts from oil and gas already occurring to communities on the North Slope.

Comment Number: BOEM-EMAIL-32521-023161-12

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 2

Comment Excerpt Text:

Ensuring the availability and quality of clean water for rural communities

The availability of fresh water is a growing concern in the increasingly deep and persistent drought seen across much of our region. The continued use of these resources by the oil and gas industry is incompatible with livable communities and other uses critical to human wellbeing such as farming and ranching. Most of the water used in our region is claimed by the agricultural industry — 60 percent compared to the one percent used by the oil and gas industry. But a key difference is that water used for hydraulic fracturing is usually used to extinction, removed permanently from the hydrologic cycle that supports all life on this planet. This is because the water used in hydraulic fracturing, when returned to the surface as flow-back and/or produced water, has become so contaminated that it must be disposed of, usually by being injected in underground disposal wells. This means that the freshwater used by the oil and gas industry can impact the total freshwater available much more dramatically than water used by other industries. In addition, spills can result in ground and surface water contamination. Soil contaminants can percolate over time into the underlying aquifer. And if well casings fail or vertical cracks are created that lead up to overlying aquifers, ground water can be contaminated by fracking.

In order to account for, and reduce, the incredible amount of scarce water used by the oil and gas industry, we urge the BLM to institute a system of cradle-to-grave management for water used by operators on federal lands, or operators using publicly owned water. The BLM should impose requirements on industry to reuse a percentage of the produced water from their wells to steadily decrease the industry's depletion of available fresh water. This will also reduce the volume of produced water disposed of in injection wells which treat underground aquifers as

waste dumps. There is good reason to believe many of these deep aquifers would be economical water sources to meet human needs in a future increasingly dominated by persistent drought and climate change. As an example, Mexico City has been working to develop an aquifer over a mile deep to support the needs of its growing population.

Comment Number: BOEM-EMAIL-32521-024412-13

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM Must Review and Modernize Unitization Regulations.

A. Current unitization regulations and policy lead to speculation.

Regulations and guidance governing the approval and management of federal oil and gas units are outdated and no longer adequately achieve the goals of the program. In some cases, the guidance exists only in draft form and has never been finalized. [Footnote 12: BLM’s regulations and guidance concerning units are contained in 43 C.F.R. § 3180, Draft BLM Manual § 3180, and Draft BLM Handbook H-3180-1. The regulations, like the MLA itself, require that units advance the public interest and conservation of natural resources. See 43 C.F.R. § § 3183.4(a).]

We support unitization in concept, but have seen the process devolve into one that fails to ensure proper conservation of natural resources [Footnote 13: As numerous cases make clear, the term “conservation of natural resources” as used in the MLA is construed broadly to encompass all environmental values. See, e.g., *Hoyle v. Babbitt*, 129 F.3d 1377, 1380 (10th Cir. 1997) (“conservation of natural resources” in Mineral Leasing Act includes avoidance of environmental harms); *Copper Valley Machine Works, Inc. v. Andrus*, 653 F.2d 595, 600-02 (D.C. Cir. 1981) (same).], fails to protect the public interest, and fails to ensure diligent development of federal oil and gas resources as required by the Mineral Leasing Act (MLA).

Today, oil and gas companies regularly use unitization to hold groups of leases beyond the primary term without complying with individual lease drilling obligations. Companies often pair late term unit requests with suspension requests to hold leases that were not diligently developed during the primary term.

A notable example occurred several years ago in western Colorado’s Thompson Divide. Two different oil and gas companies with dozens of undeveloped leases filed late term unit and suspension requests combined with a few last-minute drilling permit applications. The industry requests came near lease expiration after years of inactivity by the leaseholders. No effort was made to develop the leases when natural gas prices reached historic highs during the primary term. Instead, the requests were filed after prices fell near all-time lows and drilling in the area had effectively ceased altogether. Despite these clear indications that the companies were trying to hold the leases from expiring with the least possible investment, BLM acted as if it had to approve the requests. BLM’s refusal to deny the requests outright garnered extraordinary public interest and opposition. Local governments and members of the public got involved to expose this speculation and the issue ultimately became subject of administrative appeals and litigation. [Footnote 14: See generally TWS Report (discussing the leases and unit in more detail).]

The same tactics are employed by oil and gas companies throughout the country. Too often such speculation escapes public oversight because the process is not conducive to public participation. Unfortunately, with outdated regulations BLM allows industry manipulation of the unitization process to speculate on federal leases. BLM should undertake a thorough examination of how widespread speculative manipulation of these regulations

has become, and implement new guidance and regulations to ensure unitization is used to achieve the goals for which the tool was designed.

BLM's administration of outdated unitization regulations creates additional opportunities for speculation. Unit regulations, which were designed to ensure orderly and efficient development of pooled resources, are not well tailored for unconventional oil and gas development. The regulations originated, along with the correlative rights doctrine [Footnote 15: The term "correlative rights" is commonly defined as "the opportunity afforded... to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool; being an amount... so far as can practicably be obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas... under such property bears to the total recoverable oil or gas... in the pool, and for such purposes to use his just and equitable share of the reservoir energy." 14 H. Williams & C. Meyers, *Manual of Oil and Gas Terms* 199 (2009).], around the 1930s to rectify problems with the Rule of Capture—the dominant paradigm of the day. The Rule of Capture allowed drillers to produce all the oil and gas they could from a well regardless of whether that oil and gas originated under their lease or somewhere else. The Rule resulted in a race for possession by competitive operators, dense drilling along property lines, rapid depletion of reservoir pressure, and a loss of ultimate recovery. To combat these problems, unit regulations established a framework for development of multiple leases overlying a pooled resource as a single lease under a single operator.

Current BLM regulations make clear that unit boundaries should be justified by geologic explanation, "such as closing structural or stratigraphic contour, fault, or pinch-out." Handbook H-3180-1 at 3, § II(A)(2)(d). The guidance also says: "[t]he general intent of unitization is to pool mineral interest ownership in an entire geologic structure or area in order to provide for adequate control of operations so that exploration, development, and production can proceed in the most efficient and economical manner." *Id.* at § II, B (emphasis added). The same provision continues: "...a unit area should encompass only those lands considered necessary for the proper development of the unitized resources. An actual unit boundary may be established by honoring structural, stratigraphic, or other limiting geologic parameters. Administrative boundaries should not be used except in rare circumstances..." *Id.* (emphasis added). [Footnote 16: Interior documentation shows that "administrative boundaries" includes lease boundaries. See, e.g., *Sanguine, Ltd. v. Minerals Management Service*, MMS-94-0485-IND, 1997 WL 34843814, at 3 and n.3 (discussing MMS policy identifying a lease boundary as one of several "administrative boundaries.")] Clearly then, unitization is intended to reflect geologic resources and conform to the boundaries of those resources to ensure efficient and orderly development.

However, much contemporary oil and gas development is unconventional, meaning it targets oil and gas that is widely dispersed in rock and tight sand formations rather than pooled reservoirs. Tight sands and shale formations often underlie vast areas that are bigger than any federal unit. More and more, rather than approving units that track structural, stratigraphic, or other limiting geologic parameters, BLM approves requests for new unit agreements that track lease lines. Approving unit agreements along administrative boundaries rather than a pool of oil and gas is contrary to agency guidance. Doing so also often allows leaseholders to group undeveloped leases together late in the lease term and hold them beyond the primary term with reduced drilling obligations, even if the goal is not to pool ownership in an entire geologic structure or area. [Footnote 17: This practice was also the subject of great controversy recently in western Colorado. See, e.g., *Pitkin County, Town of Glenwood Springs, Town of Carbondale, Requests of SG Interests and Ursa Resources for Extension of Oil and Gas Lease Suspensions Currently Undergoing State Director Review* (Feb. 14, 2014) at 34-35, available at https://www.eenews.net/assets/2014/02/14/document_gw_04.pdf.]

BLM's regulation and management of oil and gas units has not kept up with changes in the industry. The regulations focus on pooled resources, while contemporary nonconventional drilling focuses on resources that are not pooled. Nonetheless, BLM continues to approve unit requests under dated regulations. Doing so undermines the efficacy of the program and enables industry speculation. None of this achieves the goals of the program: to ensure proper conservation of natural resources, to protect the public interest, and to ensure diligent development

of federal oil and gas resources.

Comment Number: BOEM-EMAIL-32521-024412-14

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

As discussed in more detail below, BLM should undertake a thorough review of the unitization program and work to revise/update existing regulations. While that review is underway, BLM should issue immediate guidance clarifying the agency's authority to deny unit proposals that appear to be speculative and are not accompanied by a clear showing of diligence. Immediate guidance should also clearly define critical terms that are not well defined in existing agency guidance. [Footnote 18: Specific terms that must be defined include "public interest" and "conservation of natural resources." This comment letter provides more detailed information on how those terms should be defined below] In addition to these important clarifications and so long as it is consistent with the recommendations herein and Biden Administration policies, the agency should confirm that Draft BLM Handbook H-3180-1 will be used as interim guidance while its review is underway.

BLM's review of the unitization process along with the rest of its oil and gas program should occur through a programmatic EIS. In that process, the agency should pay special attention to the abuse or misuse of the unit program by industry for purposes of speculation. In addition to a PEIS, the agency should undertake a new rulemaking process to update outdated rules, clarify BLM authority, and ensure that regulations governing unitization reflect contemporary circumstances and technology, protect the public interest and natural resources, and actually serve the intent of the unitization process.

Comment Number: BOEM-EMAIL-32521-024412-15

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

i. Public interest

To approve a unit agreement, BLM must determine the unit agreement is "necessary or advisable in the public interest." 30 U.S.C. § 226(m); 43 C.F.R. § 3183.4(a). Some assert that the "public interest" requirement means nothing more than complying with the diligent drilling provision in 43 C.F.R. § 3183.4(b), which says:

The public interest requirement of an approved unit agreement shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement.

(emphasis added.) This interpretation is incorrect. While the language of this regulation allows BLM to retroactively terminate a unit on public interest grounds where the operator is not diligently pursuing drilling, the "public interest" requirement is broader than that.

The term “public interest” must mean more than just diligently pursuing drilling operations, because those operations only commence after the unit is approved. BLM’s interpretation would essentially write the public interest requirement out of the statute and regulation at the unit approval stage. For “public interest” to mean anything when approving the unit, the term must be broader than just the subsequent commencement and diligent prosecution of drilling operations.

Furthermore, the “public interest” must be given the broad meaning it has in the context of the MLA. Under the MLA, BLM can consider non-mineral values in assessing the “public interest.” See, e.g., Frances Kunkel, 69 IBLA 205 (1982) (In case challenging decision not to issue leases in National Recreation Area, holding that “[t]he Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from operation of the Mineral Leasing Act.”); *Ctr. for Biological Diversity v. Salazar*, 623 F.3d 633 (9th Cir. 2010) (in land exchange with mining company, agency public interest determination under FLPMA was arbitrary and capricious without accurate assessment of environmental impacts); 30 U.S.C. § 187 (each lease “shall contain provisions . . . for the safeguarding of the public welfare”).

An IM should clearly and broadly define the “public interest” as used in unit regulations to include those things that effect the welfare or well-being of the general public. For example, BLM should make it clear that impacts to sensitive public lands and other environmental harms will be considered in assessing whether a unit would be in the “public interest.”

Further, proper definition of the public interest should include the provision of meaningful opportunities for public participation in the unitization process. At a minimum, approval of unitization agreements is subject to NEPA analysis, including consideration of extraordinary circumstances. See BLM NEPA Handbook, App. 4 § B.3, pg. 147. BLM must adhere to the “two goals” of NEPA, including informed decision making and public participation. Meaningful opportunities for public engagement should include a 30-day public comment period after the proposed unit agreement and draft NEPA documents are posted to ePlanning. BLM should accept public comments and take them into account prior to approving a unit. Participation in the process by filing comments on any new proposal should qualify members of the public as interested parties in agency decisions related to the unit. Interested members of the public who participate in agency decisions related to federal units should have opportunities to administratively challenge decisions that fail to comply with agency regulations and law.

Comment Number: BOEM-EMAIL-32521-024412-16

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Proper conservation of natural resources

To approve a unit agreement, BLM must find the unit serves the purpose of “more properly conserving natural resources.” 30 U.S.C. § 226(m); 43 C.F.R. § 3183.4(a). In practice BLM often focuses entirely on mineral resources in making a determination about proper conservation of natural resources. However, the standard should be interpreted broadly to include environmental protection, including consideration of surface resources.

A broad interpretation of “conservation of natural resources” comports with applicable caselaw. [Footnote 19: See N.13 supra; see also *S. Utah Wilderness All.*, 127 IBLA 331, 356 (1993) (“There is . . . little question that [BLM] could have refused to approve the commitment of the subject lease to the [] Unit unless it was expressly

accompanied by the acceptance of such surface use limitations as would [satisfy] the nonimpairment standards for that part of the leased land located within the boundaries of the WSA.”.)] Given that one of the purposes of unitization is to minimize harm to the land, it would make little sense if BLM could not consider such harms in making its discretionary decision on whether to approve a unit agreement.

To provide clarity, BLM should issue a new IM that clearly defines proper conservation of natural resources to include and require conservation of all natural resources, including surface resources. New unit proposals should require an explicit showing that unit development will conserve natural resources underground and above ground. [Footnote 20: Under the current regulations BLM and unit proponents seem to take it for granted that a unit will more properly conserve natural resources rather than requiring a showing of exactly how a proposal will do so. Further, both BLM and unit proponents commonly ignore the fact that this standard applies to both surface and mineral resources. BLM must consider how and whether a unit proposal will properly conserve federal minerals and surface resources, often public land resources, prior to approval of a unit, and the record should show clear evidence of such consideration.] Such showing could be made through a plan of operations or a master development plan prepared prior to approval of the unit, for example. This information should be made available for public review and comment.

Comment Number: BOEM-EMAIL-32521-024412-17

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Authority to deny unit proposals

While it must apply the standards discussed above, BLM’s unitization decision is discretionary. In exercising that discretion, BLM may refuse to approve the agreement or impose conditions to protect sensitive public lands. *S. Utah Wilderness All.*, 127 IBLA at 355-56; see also *Getty Oil Co. v. Clark*, 614 F. Supp. 904 (D. Wyo. 1985) (BLM can condition lease suspension on requirement that agency be allowed to deny all drilling). Moreover, the standard lease terms do not give the lessee a right to unitize. Instead, they give BLM the authority to require the creation of a unit. BLM Form 3100-11 § 3.

BLM’s new IM should clearly articulate BLM’s authority to deny unit proposals, especially any such proposals that are not supported by a clear showing of diligence. Evidence of speculative intent should be considered and listed as a rationale for properly rejecting a unit proposal. Such evidence should include requests that come late in the lease term and requests accompanied by or necessitating suspensions.

Any unit proposal that is not necessary or advisable in the public interest or that fails to properly conserve natural resources must also be denied.

Comment Number: BOEM-EMAIL-32521-024412-18

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM's new IM should provide guidance on approval of large unit proposals. Unit boundaries should be based on geological factors, not arbitrary lease boundaries. Larger units should not be approved if they follow lease lines rather than geologic reservoirs. And large unit proposals should not be approved at all without multiple obligation wells and aggressive drilling requirements. Too often industry has taken advantage of BLM's willingness to approve large units as a way to hold vast acreage under lease with reduced drilling obligations. In Utah, for example, BLM has approved units that are nearly 100,000 acres, which are based on legal boundaries (e.g., private and federal lands) rather than geological factors. See, e.g., BLM, Dragon Unit (UTU-090533X). [Footnote 21: Unit map available at https://www.blm.gov/sites/blm.gov/files/documents/files/UT_OandG_Dragon_Map.pdf.]

Comment Number: BOEM-EMAIL-32521-024412-19

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Unit suspensions

Any immediate guidance should clarify circumstances that justify suspensions and extensions of unit obligations. As it is, the Draft Handbook and Manual provide little guidance that is often ignored. For example, BLM's Manual Handbook provides that extensions of Section 9's drilling requirements may be granted for a reasonable period, "normally not to exceed 6 months, whenever matters beyond the reasonable control of the unit operator prevent that party from fulfilling its obligations." BLM Manual Handbook H-3180-1, II. I. In practice, however, Section 9 extensions are regularly used to suspend or extend drilling requirements beyond 6 months. Similarly, Section 25 suspensions often relieve operators from drilling obligations for years.

Immediate guidance should make clear that unit suspensions be granted for periods not to exceed one year, and include a presumption against granting multiple suspensions and/or extending suspensions. Such provisions are important to ensure unit operators and leaseholders are diligently pursuing development of federal minerals.

Both Section 9 and Section 25 suspensions should require a request from the operator that outlines a justification for suspension (i.e., explicit description of the reason that an operator is unable to comply with obligations despite exercise of due care and diligence) and evidence of due diligence. Requests for suspensions filed after applicable deadlines have passed should be rejected as a matter of policy.

As it is, under Section 25, BLM can acknowledge that a unit was suspended after the fact without even receiving a request. [Footnote 22: This was the case in BLM's mismanagement of the Huntsman Unit (COC 74403X) in western Colorado. The Huntsman Unit expired by its own terms before any unit suspension was requested or granted by the unit operator, and yet BLM improperly suspended the unit under Section 25. See Wilderness Workshop letter to BLM, Re: Huntsman Unit COC 74403X and Oil and Gas Leases COC 70002, 70006, 63886, 63888, 63889, and 78843 (Feb. 21, 2020), at 1-3 (attached as Ex. 1).] New guidance should require an operator to request a Section 25 suspension for unavoidable delay, and require that such request is filed within a month of such delay. Requests that come later than that should be denied. Any such request should clearly describe the justification for suspension and evidence of the operator's exercise of due care and diligence. Importantly, lease suspensions and lease suspension requests are independent from unit suspensions and cannot be used to justify a suspension under Section 25. [Footnote 23: Lease and unit suspensions are independent administrative actions. IBLA has rejected claims that lease suspensions also suspend the unit agreements. J.W. McTiernan, 136 IBLA

241, 246 (1996) (suspension of unitized leases does not mandate suspension of obligations to comply with requirements of the unit agreement. The only thing that could relieve a unit operator of those obligations is a unit suspension). Lease responsibilities are distinguishable from unit duties. Koch Exploration Co., 100 IBLA 352, 363-4 (1988) (Section 39 of the MLA provides no authority for suspension of obligations imposed by a unit agreement); see also Ruby Drilling Co., 119 IBLA 210, 214 (1991) (suspension of leases and of drilling obligations imposed by unit agreements involve unique considerations).]

Finally, BLM should clarify that unit suspensions, like all oil and gas-related suspensions, are subject to NEPA.

Comment Number: BOEM-EMAIL-32521-024412-20

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Lease extensions associated with unit management

Immediate guidance should make clear that unitized leases in their extended term cannot be extended unless it is through production. That means, if the lease is in its extended term and the unit terminates without unit obligation well(s) having been drilled diligently, the extended term leases do not qualify for two-year extensions. Too often in practice, BLM will grant two-year extensions even when drilling was not prosecuted diligently under a unit agreement. [footnote 24: For example, BLM recently granted a two-year extension on federal lease COC 70006 after termination of the Henderson Gulch Unit in western Colorado, despite clear evidence that diligent drilling was never pursued under the unit agreement. See Wilderness Workshop et al., “Amended request for State Director Review of Decision suspending operations and production on oil and gas lease COC 70006 and Request for State Director Review of the subsequent termination of that decision” (July 27, 2017), at 7-11 (attached as Ex. 2); see also Ex. 1 at 3]

Comment Number: BOEM-EMAIL-32521-024412-25

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM must also provide a clear definition for “unavoidable delay” in revised regulations. See 43 C.F.R. § 3186.1.25. Unavoidable delay is supposed to provide relief for unexpected events that leaseholders could not have anticipated. Too often, leaseholders claim unavoidable delay for items that were within their control, and too often BLM approves such requests. Updated regulations should make clear that unavoidable delay is unavailable for leaseholders and unit operators who wait until late in a lease or unit term to initiate planning, to request drilling applications, and/or to begin drilling. Late filings, often timed to support a request for relief, should very clearly be excluded from any “unavoidable delay” relief.

Revised regulations should also provide a clear definition of “for the purpose of more properly conserving natural resources.” This definition could logically be included in a revised 43 C.F.R. § 3180.0-5 or in 43 C.F.R. § 3183.4.

Again, such definition should require an explicit showing that unit development will conserve natural resources underground and above ground. [Footnote 29: See supra at 15-16] Such showing could be made through a plan of operations or a master development plan prepared prior to approval of the unit, for example. Such a showing should be available to the public during public comment periods.

Comment Number: BOEM-EMAIL-32521-024412-34

Organization: Southern Utah Wilderness Alliance

Commenter: Landon Newell

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8 7

Comment Excerpt Text:

Based on the foregoing, we recommend that BLM take the following actions.

-Stop all leasing of no and low potential lands. As part of its review process, BLM must (1) review and update, as necessary, its existing RFDS to accurately determine which areas contain no or low potential for leasing and development, and (2) amend its RMPs, as necessary, to close such areas to all future leasing. BLM must provide for public participation in the review and preparation of RFDS.

-Increase minimum competitive and noncompetitive bid rates and penalize operators for failing to place their existing leases into production. As part of its review process, BLM must take steps to disincentivize lease speculation including, but not limited to: (1) establishing higher minimum bid rates and lease rentals, and (2) penalize operators for stockpiling undeveloped leases. On the latter point, BLM should consider establishing annual rental and production royalty rates that increase throughout the lease term (e.g., production royalty of 18.5 percent for years 1-3, 25 percent for years 4-7, and even higher for years 8-10).

-Increase the costs associated with the processing and approval of drilling permits. As part of its review process, BLM must take steps to discourage operators from failing to develop their approved drilling permits. Operators drill only half of their approved permits, which amounts to a significant waste of taxpayer money and BLM resources. BLM must increase the costs associated with the processing and approval of drilling permits as well as establish other financial incentives to encourage operators to apply for drilling permits they intend to develop.

-Establish new policy that instructs BLM to manage lands for the protection of important resource values such as wilderness characteristics, even if the lands are encumbered by existing leases. Approximately half of all oil and gas leases are never developed. Thus, BLM should not decline to protect agency-identified resource values such as wilderness characteristics based on the fact that the lands are subject to oil and gas leases. If leases are developed then they will remain valid and authorized, consistent with existing law and policy. However, if they terminate without having been developed then the lands should be managed for other more legitimate uses.

-Establish new policy and procedures to screen all oil and gas lease nominations. BLM must have a strategy to identify lands that are suitable (or not) for nomination, including screening criteria such as no and low potential lands and foreseeable conflicts with other public land uses (e.g., conservation and recreation). This criteria must require BLM to screen all nominations early in the process to avoid having to defer leases after having already exhausted significant amounts of agency time and resources.

-Develop new guidance regarding lease reinstatements. The practice of reinstating leases that have been terminated for failure to pay the annual rental fee needs to be evaluated by BLM and much more stringent provisions for reinstatement should be put in place. By law, BLM is only to reinstate leases in cases in which the failure to timely submit the rental was “justified” or “not due to lack of reasonable diligence” by the lessee. BLM

should establish narrow and specific guidelines for when these criteria may be considered to be met.

Comment Number: BOEM-EMAIL-32521-025899-26

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

To better serve the public interest, we urge DOI to clarify and expand the opportunities for public engagement in the leasing and permitting process. Therefore, we suggest a rulemaking to amend regulations governing competitive leasing [footnote 92: See, e.g., 43 C.F.R. § 3120.3.] to specifically provide for opportunities for public notice and comment at all relevant stages of the leasing process, including sufficient timeframes (i.e., 30 days or longer) and numerous methods (i.e., mail, online, in person) for providing comments or protests.

Comment Number: BOEM-EMAIL-32521-025899-27

Organization: Natural Resources Defense Council

Commenter: Josh Axelrod

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Expand transparency in the lease nomination process

Similar to concerns raised above regarding noncompetitive leasing and leasing of low potential lands, DOI's current practice of allowing land managers to decide to utilize either a formal or informal lease nomination process [Footnote 93: 43 C.F.R. § 3120.3-1] may facilitate abuse of the system and undermine the ability of the public to monitor and participate in the leasing process. We therefore urge DOI to update current policies and practices by:

-Amending the regulations governing competitive leasing to prohibit the use of "informal" nomination processes. [Footnote 94: 43 C.F.R. § 3120.3 et seq.] As part of this process, we also urge DOI to require that the names and identities of parties gathered as part of a "formal" nomination process be disclosed to the public as early as practicable and in advance of the first opportunity for public participation related to the forthcoming lease sale.

-Formally rescind all applicable agency guidance (i.e. IM 2014-004) [footnote 95: BLM, Oil and Gas Informal Expressions of Interest, IM 2014-004, Oct. 28, 2013, available at <https://www.blm.gov/policy/im-2014-004>.] allowing the practice of informal nominations, especially any practices that could allow for those expressing interest in a lease avoid disclosing their identities and/or the identities of the parties they represent.

This foregoing list of reforms should not be considered exhaustive, but rather reflects areas of concern long identified by government watchdogs, civil society, frontline communities, scientists, and others. We also wish to reiterate that simply reforming elements of the existing oil and gas program will do little to shift the federal government's focus from facilitating production of the resources driving the global increase in temperature to the pressing task of confronting and acting boldly in the face of climate change. Therefore, we once again urge DOI to think of reforms in the context of first, what can be applied to existing operations or decisions made in regard to existing leases; and second, what can be done to expedite the end of new leasing and bring about an equitable and just end to the production of fossil fuels from federal public lands.

Comment Number: BOEM-EMAIL-32521-028864-11
Organization: Powder River Basin Resource Council
Commenter: Shannon Anderson
Commenter Type: Non-Energy Industry and Associations
Classification: Substantive

Comment Excerpt Text:

The Need for Timely & Effective Reclamation

DOI's lack of clear reclamation standards has allowed a piecemeal approach, where standards change from land use plan to land use plan, creating inconsistent reclamation requirements of different federal wells. DOI should adopt broad, uniform, performance-based standards that ensure all federal wells drilled meet acceptable minimum requirements for reclamation. This approach would allow operators to employ their considerable resources and expertise to achieve satisfactory reclamation. It would provide a consistent and more flexible standard across field offices and promote better and more frequent reclamation and potentially reduce operators' desire to shirk responsibilities if they find current reclamation requirements too prescriptive or rigid.

Importantly, certain oil and gas sites are more difficult to properly remediate. To fulfill mitigation requirements, DOI should consider establishing unsuitability-for-leasing criteria focused on insuring that remediation can be adequately completed, and additional design criteria to ensure that lease tract and APD design best align with remediation objectives.

The Need for Enhanced Enforcement

New regulations and requirements will only be as good as DOI's enforcement. It is paramount that this review considers new ways to better enforce and require compliance with existing and new regulatory standards.

Related to enforcement, DOI should adopt a "bad operator" standard that would preclude any new leases or permits to any company that is out-of-compliance with FLPMA, MLA, Clean Water Act, Clean Air Act, or any other environmental requirements at any well they operate, particularly in regards to their reclamation requirements. This type of requirement has long been standard for the coal mining industry under SMCRA (30 U.S.C. § 1260(c)), and it is something that could be adopted within the regulatory authority of DOI for oil and gas operators. In addition to environmental violations, this standard could be improved to prevent issuance of new permits to any operator with outstanding unpaid federal royalties or other federal payments owed to DOI.

Comment Number: BOEM-EMAIL-32521-028864-3
Organization: Powder River Basin Resource Council
Commenter: Shannon Anderson
Commenter Type: Non-Energy Industry and Associations
Classification: Substantive

Comment Excerpt Text:

The Need for DOI's Review: Restore the Multiple Use Mission of BLM

Over the past four years, and more broadly over the past four decades, the BLM has prioritized development of federal oil and gas resources above all other uses of public lands, reservation lands, and private fee surface lands overlying public minerals.

Our members in Wyoming ask you to restore the multiple use mission of the BLM and ensure that our air, water, land, and wildlife resources are prioritized and protected. This is needed on both federal surface land, managed by the BLM or other federal land managing agencies, and on split estate lands where federal oil and gas resources are developed.

As provided in the Federal Land Policy and Management Act (FLPMA), 17 U.S.C. § 1701, et seq., multiple use management does not require the balance of uses on every tract of public land, but rather a combination of resource conservation and uses to “best meet the present and future needs of the American people.” The notion that resource development must be balanced with conservation management is explicit in the definition of “multiple use.” 43 U.S.C. § 1702(c).

We encourage BLM to issue national-level guidance on multiple use prioritization to restore the mission and function of the agency to one that balances oil and gas development with protections of other natural resources. We further encourage you to expand the traditional concept of multiple use management to one that practically takes into account landscape, regional, or even global scale issues, such as climate change.

Beyond national-level guidance, a return to true multiple use protection will require numerous state-level and field office-level decisions. These will include resource management plan (RMP) amendments, making areas unavailable to leasing, adding new lease stipulations and conditions of approval (COAs) on permits, and ensuring proper siting of wells and associated infrastructure. Our organization and our members stand ready to participate in the processes necessary to implement this reform in Wyoming.

In summary, the need for DOI’s review arises from the current federal oil and gas leasing and development framework’s failure to fulfill DOI’s statutory mandates to protect the environment and provide a fair return to the American taxpayer. The purpose of the review must be to revise and update that framework in a manner that will (a) minimize the extent to which federal oil and gas contributes to the emissions that drive climate change; (b) ameliorate direct impacts to the environment where federal oil and gas is developed; and (c) maximize the value of this federal resource.

As explained in further detail below, in order to achieve this need and purpose and fulfill the multiple use mandate of the agency, DOI’s review must explore alternatives that will achieve the following overarching objectives:

- Delineating the full scope of greenhouse gas emissions associated with federal oil and gas leasing and development, including upstream, midstream and downstream emissions; and then reducing, mitigating, or eliminating these emissions to align with the Nation’s priorities and actions to address climate change;

- Identifying and fully presenting a detailed analysis of the direct adverse environmental impacts associated with federal oil and gas leasing and development and developing new regulations and policies to insure these impacts are minimized, including insuring proper reclamation; and

- Reforming the oil and gas leasing price structure to advance greenhouse gas emission reduction objectives, insure meaningful competition, and provide a transparent and fair return to taxpayers.

To encompass these issues, we recommend that the agency identify the following major federal action as the driver of consideration in the DOI’s review:

The proposed federal action is to provide a complete environmental analysis of, potential alternatives to, and mitigation measures associated with federal oil and gas leasing and development, as well as an informed basis for restructuring the regulatory and policy framework for federal oil and gas leasing and development with the

objectives of minimizing contributions to Greenhouse Gas emissions and other environmental harms, while maximizing returns to the American public.

Comment Number: BOEM-EMAIL-32521-029065-1

Organization: The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

Commenter: John Hiscock

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Specific to this letter and as later described, we recommend and ask for an immediate Secretarial moratorium for oil and gas leasing on federal lands within ten-mile-wide default national trail management corridors and also request the implementation of other measures to avoid incompatible activities that conflict with the nature and purpose of the National Trail System.

Comment Number: BOEM-EMAIL-32521-029065-10

Organization: The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

Commenter: John Hiscock

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The following recommendations are provided regarding the DOI oil and gas leasing program to ensure the protection of NTs.

(1) An immediate Secretarial moratorium on all proposals for oil and gas leasing under the control of DOI on federal lands (lands managed by BLM, USFS, United States Fish and Wildlife Service, and the Bureau of Reclamation) within a ten mile wide default NT Management Corridor should be enacted. No new oil and gas lease offerings, sales, or development permitting shall occur unless and until such time as the noted agency in jurisdictional land management control has completed a comprehensive inventory and assessment of NT resources, values and qualities including landscape settings, and recreational opportunities, and adopted Trail Management Corridors devised to protect these factors in their land management plans for each federal land management unit. Under these provisions, even if oil and gas lease offerings are offered in the future, they should only be offered after a finding that such activities “will not substantially interfere with the nature and purposes” of the geographically proximate Trail, and no new associated motor vehicle use shall be allowed in such oil and gas activities.

(2) A Secretarial order directing all BLM State Offices, District Offices, and Field Offices to revise or amend applicable resource management/land use plans ensuring full public participation and review, and fully incorporating trail inventory information and management processes in accordance with BLM Policy Manual 6280 regarding NTs. Land use plans of the NPS, USFWS, and USBR units crossed by NTs, should also acknowledge NTs and ensure that Trail inventories and land management processes are incorporated. The Secretary is also encouraged to advise the Secretary of Agriculture and USFS to do the same to fulfill NTSA requirements in similar fashion to BLM policy approach. These revisions or amendments shall be initiated

immediately and scheduled for completion within two years.

(3) DOI policy regarding NTs, including subsidiary agency policy, shall be revised to clarify that all portions of NTs on federal public lands are Federal protection components of said Trails, in accordance with the NTSA.

(4) It is recommended that DOI consider the review of all oil and gas leases issued relevant to and since the establishment of each NT to ensure that such were issued only after taking Trail Management Corridor protections into account, and if such considerations and protections were not taken into account DOI should consider adjustment of such leases to remedy degradation of NTs.

(5) Considerable concerns exist nationwide regarding the ensured reclamation of abandoned or closed oil and gas leasing sites. DOI shall strengthen measures to ensure reclamation of all oil and gas facilities previously, or henceforth appropriately authorized in extremely limited fashion, is conducted. Reclamation of any such sites in NT Trail Management Corridors should be required to restore all Trail resources, values, qualities including landscape setting, and recreational opportunities.

(6) Adopt and ensure early notification and invitation to volunteer NT partner organizations to consult once any proposals are initiated for oil and gas leasing on federal public lands. BLM Policy Manual 6280 already requires such involvement (in regard to all varieties of BLM actions), stating:

C. Notification Requirements

1. For projects that may adversely impact the National Trail, the National Trail Administrator, the BLM State Office National Trail lead, or leads (for multistate proposed actions and trails); and a primary National Trail partner organization representative (in accordance with applicable law) will be invited to attend preauthorization or pre-application meetings, as applicable. [Footnote 11: Manual 6280, p. 5-3]

All proposed oil and gas actions within default or finalized Trail Management Corridors shall be deemed to possibly adversely impact NTs and, therefore, activate this provision. In the past consultation regarding NHTs has routinely been focused on, or limited to National Historic Preservation Act, Section 106. That consultation should certainly take place, however, timely and pre-action DOI consultation should take place on matters governed by the NTSA as well.

(7) The Secretary shall strengthen DOI support agreements with volunteer Trail partner organizations with the goal of greater participatory input related to past and possible future oil and gas leasing, and other potentially adverse federal land allowances.

Comment Number: BOEM-EMAIL-32521-032355-14

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Third, BLM should defend its 2016 Waste Prevention Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016), which is currently on appeal in the Tenth Circuit Court of Appeals. BLM adopted its Waste Prevention Rule to limit the amount of publicly owned natural gas that is vented, flared, or leaked into the atmosphere and, therefore, not put to productive use. Although aimed at preventing waste, the Rule also would have significant climate and public

health benefits by reducing methane emissions and toxic air pollutants. Accordingly, BLM should seek reinstatement of the Rule by the appellate court.

Comment Number: BOEM-EMAIL-32521-033513-1

Organization: Access Fund

Commenter: Erik Murdock

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 3

Comment Excerpt Text:

Access Fund's primary concern regarding the current leasing system is that the Department of Interior (DOI) has long allowed oil and gas developments to dominate land use planning and use. This practice conflicts with the Federal Land Policy and Management Act (FLPMA) and the fundamental principle that outdoor recreation such as climbing is one of the “major” uses of public lands, alongside grazing, energy development, fish and wildlife, rights-of-way, and timber production. In addition, the Multiple Use Sustained Yield Act (MUSY) mandates that public resources are managed “so that they are utilized in the combination that will best meet the needs of the American people ...” and that renewable resources shall be managed in a manner that avoids “impairment of the productivity of the land.”

In other words, any primary use of federal public lands should not impair the productivity of another use. Federal law requires that energy development on federal land cannot impair the productivity of recreational use and associated economic activity. As the social and economic importance of outdoor recreation increases, it is critical that recreation assets such as climbing areas should be given the same level of consideration during land use planning as energy development. However, DOI has long facilitated rules and policies that prioritize oil and gas developments at the expense of other uses and the protection of invaluable natural and cultural resources.

Without a careful consideration of the interface between outdoor recreation and energy development, the benefits of outdoor recreation can be diminished. Resource extraction is certainly a valid and important use of federal lands, but the effects of industrial infrastructure (including access roads) on viewsheds, soundscapes, air quality, water quality, visitor safety, and sensitive cultural and natural resources need to be systematically analyzed and considered in order to satisfy FLPMA and MUSY, as well as protect America’s outdoor recreation economy and quality recreation opportunities for future generations.

This programmatic review of the federal onshore oil and gas leasing program is a rare opportunity for the Interior Department to modify their practices to better adhere to the mandate of FLPMA and protect unique outdoor recreation opportunities such as climbing.

Comment Number: BOEM-EMAIL-32521-033513-2

Organization: Access Fund

Commenter: Erik Murdock

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

Climbing and Oil & Gas Conflicts

Recreational use of public land—and climbing in particular—often suffers from the industrial impacts of oil and gas developments. Examples of these conflicts include the massive oil and gas leases in the Moab area. The Mineral Leasing Act of 1920 (MLA) “reserves” federal public lands for economic uses and preservation of certain resources in service of the national interest. The MLA applies to all deposits of oil, natural gas, oil shale, coal, and

other fossil fuels, as well as to certain fertilizers and applies to approximately 564 million acres of federal lands (Bureau of Land Management or US Forest Service lands usually). A permit to enter the public lands and explore for minerals must be obtained from the government. There is no right to “prospect” as there is under the Mining Law. Under the MLA the federal government grants the authority to drill and extract minerals by lease—typically 20 years for coal and 10 years for oil and gas. The government may place conditions on leases to ensure consistency with land management plans, and receives royalties which are distributed between the federal government, the states and local governments where the leases are located.

Several common conflicts between recreation and the activities authorized under the MLA and Mining law include:

- The placement and design of industrial infrastructure and access roads can significantly impact climbing areas where climbers remain in the same place for extensive periods of time, and noise, dust, and congestion from nearby road traffic undermines the outdoor experience.

- Views of surrounding landscapes are an important component of any outdoor experience, including those from national parks. Poorly designed infrastructure—such as power lines and pipelines—can extensively degrade iconic views from climbing areas.

- Noise, smell, air quality concerns from industrial operations can also affect outdoor visitors including the potential for oil and gas spills.

- Speculative Oil and Gas Leasing of Low Potential Lands - Over 90 percent of over 200 million acres of public lands managed by the BLM remain available for leasing. The failure to update the Mineral Leasing Act of 1920—and related rules and policies—will lead to more speculative leasing, which casts a growing shadow over nearby public lands and impacts outdoor recreation management because land managers typically focus on leasing permits rather than outdoor recreation opportunities. A leasing update by the Interior Department could also mean instructing the BLM to fulfill its multiple-use mandate by providing staff and resources that can improve and manage recreation assets like climbing areas.

- Abandoned and At-Risk Oil and Gas Wells Cause Environmental Impacts – DOI has also failed to require adequate bonding for oil and gas projects, leading to abandoned or at-risk wells that can impact outdoor recreation. According to a new report by the National Wildlife Federation and Public Land solutions, at least 97 of at-risk well sites are within a mile of recreation sites, with many more are close to dispersed recreation locations such as mountain bike trails, climbing crags, and hunting and fishing areas. Abandoned, orphaned, and non-producing wells put our public lands, wildlife populations, clean air and drinking water at serious risk. DOI Department of Interior should require adequate bonding to prevent oil and gas companies from walking away from depleted or otherwise dry wells—leaving cleanup costs to taxpayers—and causing environmental impacts that impair recreation experiences such as climbing.

Policy Recommendations

DOI can address the above conflicts by reforming its leasing program and land use management practices in the following ways:

- Require extensive public participation from stakeholders and tribal interests during both leasing and permitting of oil and gas developments. State recreation directors can assist in this work by connecting stakeholder such as recreation interests with local communities and industry representatives.

- Limit the quantity and scope of competitive sales declaring high value recreation lands such as climbing areas as unavailable for leasing. A formal nomination process could better identify lands suitable for oil and gas

developments and which should be protected for other multiple uses such as recreation.

- Formalize a new discretionary procedure that allows leases only when consistent with FLPMA and will not impair other multiple uses such as climbing and other recreation.

- End anonymous lease nominations and noncompetitive leasing to expose bad actors that abuse the system (leaving orphan wells, causing environmental damage) and end rampant speculation that often ties up public lands from other multiple uses such as recreation.

- Increase the 100-year-old 12.5% royalty rate and bring a better return to taxpayers for leasing public land.

- Strengthen bonding requirements to avoid the cost of reclamation being imposed on taxpayers and reduce the amount of abandoned and orphaned wells.

DOI can also require the use of key [Bold: effective planning tools] and [Bold: best management practices] to prevent impacts to outdoor recreation, including:

- Master development plans, unit agreements, development density limits, and phased leasing to limit oil and gas development footprints.

- Alternatives to pits, directional drilling, technologies that minimize methane leaking and flaring, and other strategies to prevent wasteful, unnecessary and harmful emissions, and reduce light pollution.

Comment Number: BOEM-EMAIL-32521-034219-8

Organization: Taxpayers for Common Sense

Commenter: Michael Maragos

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Rules as Taxpayer Safeguards

The BLM 2016 final rule titled “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” has faced a gauntlet of challenges from courts and the agency itself under the last administration and now stands vacated in large part. The underlying need for a rule to limit the waste of natural gas from production on federal lands and charge royalties on it remains urgent. Data obtained through Freedom of Information Act (FOIA) requests indicate operators reported wasting 260-290 billion cubic feet of gas on federal lands from FY 2010 to FY 2019. TCS estimates that gas was worth roughly \$1 billion, and the Office of Natural Resources Revenue (ONRR) collected royalties on just one third of it.

The standards reinstated in the absence of the 2016 Rule, the Notice to Lessees 4A (NTL-4A) written in 1979, created the current problem and cannot be left in effect. Providing certainty to operators and taxpayers and remedying the situation must be a top priority [Hyperlink: <https://www.taxpayer.net/energy-natural-resources/latest-ruling-on-methane-is-terrible-for-taxpayers/>] for the BLM. Given the sweeping effect of the October 2020 Wyoming District Court ruling, and the court’s misreading of the 2016 Rule, DOI should appeal the decision and seek to have the 2016 Rule reinstated before making any modifications necessary for its longevity.

At the very end of the previous administration, ONRR issued a final rule for federal oil and gas valuation that

would significantly reduce taxpayer receipts and undermine important valuation standards. When ONRR subsequently delayed the rule's effective date in February, TCS welcomed the action [Hyperlink: <https://www.taxpayer.net/energy-natural-resources/tcs-comments-on-costly-trump-era-rule-for-oil-gas-valuation/>] as an opportunity for the DOI and ONRR to reconsider the recent changes to valuation policy. The costly determination that deepwater gathering costs can be deducted from resource value, the reimposition of "soft caps" on allowances, the renewed availability of extraordinary processing allowances, many other provisions of the 2020 Rule, and ONRR's stated justifications for them are corrosive to the responsible management of taxpayer assets. TCS encourages ONRR to rescind the 2020 Rule and anticipates submitting more extensive comments for any such action.

Comment Number: BOEM-EMAIL-32521-034546-1

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

II. Land use planning reforms.

BLM can make changes to its land use planning regulations at 43 C.F.R., and it can revise its Land Use Planning Handbook (H-1601-1) to prevent the prioritization of oil and gas development on public lands, and to ensure that these lands are appropriately managed for multiple use.

a. Closing lands to oil and gas leasing.

BLM should close more lands to oil and gas leasing during land use planning. Historically, BLM has operated under the presumption that all lands not specifically closed by Congress or withdrawn by the President should be deemed eligible for leasing. [Footnote 4: National Research Council, Land Use Planning and Oil and Gas Leasing on Onshore Federal Lands 123 (1989) ("In the committee's judgment, the prior tradition of leasing upon request (as well as the policy direction from Department of the Interior leadership in the past several years favoring leasing of all available land) has led to a strong presumption in favor of leasing. That is, it is the committee's perception that the BLM and the Forest Service have been somewhat reluctant to make decisions that certain lands should not be leased for oil and gas."); Department of the Interior, Report to Secretary Ken Salazar Regarding the Potential Leasing of 77 Parcels in Utah 6 (2009) [hereinafter "Hayes Report"] ("[The Utah RMPs] adopted a broad planning level presumption that the large majority of available BLM lands should potentially be made available for oil and gas development, including lands with wilderness characteristics and lands immediately adjacent to the National Parks."), available at https://www.eenews.net/features/documents/2009/06/11/document_gw_02.pdf.] This practice overwhelmingly favors oil and gas development to the detriment of other public land uses and values, and is arguably contrary to the Federal Land Policy and Management Act's (FLPMA) multiple use mandate. As a result of this practice, 90% of land managed by the BLM are open to oil and gas leasing, leaving only 10% to be actively managed for other purposes. Compounding the problem is the fact that BLM routinely makes available lands for oil and gas development that, due to their low probability of ever being developed, would be far better suited for other uses.

FLPMA delegates authority to the Bureau of Land Management (BLM) to create and amend land use plans consistent with the principle of multiple use and sustained yield. [Footnote 5: 43 U.S.C. § 1712(c)(1).] While the statute requires BLM to adhere to multiple use principles, it does not require the BLM to open any lands to leasing that have not been specifically closed by Congress or the President. To the contrary, the multiple use mandate suggests that the BLM should also close certain lands to leasing that would be better managed for other values. Courts have long upheld the notion that FLPMA does not mandate the prioritization of development on

public lands. [Footnote 6: In *New Mexico ex rel. Richardson v. Bureau of Land Mgmt* BLM argued that it could not consider closing the entirety of the Otero Mesa to development because doing so would violate the concept of multiple use. The United States Court of Appeals for the 10th circuit flatly rejected this argument stating “It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses...accordingly, BLM's obligation to manage for multiple use does not mean that development must be allowed on the Otero Mesa. Development is a possible use, which BLM must weigh against other possible uses—including conservation to protect environmental values.” *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 710 (10th Cir. 2009).] A new land use planning process should be developed that embraces FLPMA’s multiple use mandate and more equitably balances public land values. In developing these plans, BLM must balance resource values, such as conservation, wilderness, recreation, and cultural with mineral resource needs.

As the Supreme Court stated in *Norton v. S. Utah Wilderness Alliance*, “[m]ultiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put . . .” [Footnote 7: *Norton v. S. Utah Wilderness Alliance*, 124 S. Ct. 2373, 2376 (2004) (citing FLPMA, 43 U.S.C. § 1702(c)).] FLPMA defines multiple use as:

“management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. [Footnote 8: 43 U.S.C. § 1702(c).]

Section 202 of FLPMA further defines criteria BLM must consider in the development and revision of land use plans. Among these criteria are the requirement that BLM:

- Give priority to the designation and protection of areas of critical environmental concern
- Consider present and potential uses of the public lands
- Consider the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values
- Weigh long-term benefits to the public against short-term benefits [Footnote 9: 43 U.S.C § 1712]

In short, BLM must carefully weigh the values of a wide variety of public land resources, and account for these values both now and in the future. Significantly, the definition of multiple use makes clear that BLM’s focus should not necessarily be on the greatest economic return, but instead should consider the relative values of all resources. Although a difficult task, the careful balancing required by FLPMA simply does not support a presumption in favor of oil and gas leasing over other uses. To this end, BLM should update its regulations and its land planning handbook to expand the scope of lands that can be closed to leasing at the land use planning stage. For example:

- New regulations should close lands to leasing with no to low potential for oil and gas development.

-New regulations should make clear that BLM has the discretion to close lands that would be better managed for uses other than oil and gas development. These may include lands with high value wilderness characteristics and critical wildlife habitat, lands with high value cultural resources, and lands with high value recreation access, or opportunities for increased recreational access.

As discussed below, decisions about what lands to lease can and should also be made at the lease sale stage. Indeed, given the resources and time required to develop new land use plans, as well as the number of land use plans currently in place, BLM must consider the cost and benefits of revising plans with the gains that can be made through regulatory changes to the lease sale process. We simply note that as land use plans are often in place for decades. Since all management actions must comply with the underlying plan, [Footnote 10: Id] a land use plan that more appropriately balances public land resources, including closing appropriate areas to oil and gas leasing, will have more durability.

b. Stipulations.

BLM must work with federal and state wildlife agencies, and other appropriate partners to ensure that stipulations in land use plans appropriately protect the resource they are designed to protect. For example, stipulations aimed at protecting big game should successfully limit impacts to these populations. However, big game stipulations often do not go far enough to prevent impacts in key habitat and production areas. In Colorado, for example, Colorado Parks and Wildlife, along with a number of other stakeholders, have long urged the BLM to add density stipulations to the timing stipulations and lease notices in place in big game winter range, concentration areas, winter habitat, production areas, and migration corridors. In response to this request in lease sale comments, BLM often responds that it is unable to apply stipulations to leases that are not included in the land use plan. [Footnote 11: See Northwest District Environmental Assessment, Response to Comments (December 2020) (“BLM adopts new stipulations through its planning decisions”), available at https://eplanning.blm.gov/public_projects/2000032/200383114/20031417/250037616/NWD_EA_Dec2020_Final.pdf.] Therefore, in coordination with wildlife agencies, and other appropriate partners, BLM should review land use plan stipulations. BLM need not rewrite every land use plan to ensure appropriate stipulations are in place. Instead, as has long been urged in Colorado, BLM can work on state-wide plan amendments to apply appropriate stipulations on a state by state basis.

Comment Number: BOEM-EMAIL-32521-034546-3

Organization: National Wildlife Federation and multiple other Public Advocacy Groups

Commenter: Mary Greene

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

III. Leasing Reform.

BLM’s leasing program has long favored oil and gas leasing over other uses of our public lands. There a number of reforms we recommend to provide greater balance in land management priorities and towards a broader concept of multiple use.

a. Discretion to lease land.

BLM should clearly establish that oil and gas leasing is (1) discretionary and not required by federal law; and (2) should only be allowed to the extent consistent with FLPMA’s multiple use and sustained yield principle. A Solicitor’s Opinion outlining this authority under FLPMA and the Mineral Leasing Act, combined with a

Secretarial Order announcing the mandate, will help DOI set the stage for implementing new regulations.

The Mineral Leasing Act clearly articulates BLM's discretion to lease or not lease lands. The Mineral Leasing Act states that "all lands subject to disposition under this chapter which are known, or believed to contain oil or gas deposits may be leased by the Secretary" (emphasis added) [Footnote 15: 30 U.S.C § 226.] Use of the word may indicates discretion. It creates no obligation on the part of the Secretary to lease lands subject to disposition. Rather, it creates the authority to lease if DOI so chooses. Further, despite BLM's practice of regularly leasing lands with no known potential for development, [Footnote 16: See e.g. <https://www.tu.org/energy/low-potential-lands-campaign/>.] the clause "which are known or believed to contain oil or gas deposits" arguably prohibits the Secretary from leasing lands which contain no recoverable oil or gas.

The Mineral Leasing Act requires that "[l]ease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary." [Footnote 17: 30 U.S.C. § 226(b)(1)(A).] Historically, BLM pointed to this language to suggest that lease sales are required. [Footnote 18: See e.g. See, e.g., BLM, Preliminary EA for the December 2020 Competitive Oil & Gas Lease Sale 10 (Aug. 2020) ("Offering quarterly oil and gas lease sales is mandated to the BLM"), available at https://eplanning.blm.gov/public_projects/2000032/200383114/20023959/250030163/NWD_EA_Dec2020_Comment.pdf; Testimony from Michael Nedd, Deputy Director, Operations, BLM, to the U.S. House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources (Mar. 12, 2019) ("Under the Department's commitment to responsible energy development, the BLM now consistently conducts quarterly lease sales, as required by the Mineral Leasing Act."); available at <https://www.doi.gov/ocl/blmpolicies-and-priorities>] This is not true. The lease sale is only required if eligible lands are available. The key is therefore whether eligible lands are available, and BLM has the discretion to determine whether eligible lands should be made available. The U.S. Supreme Court and other federal courts have consistently upheld the Secretary of Interior's discretion over timing and location of lease sales under the Mineral Leasing Act. [Footnote 19: In *Norton v Southern Utah Wilderness Alliance*, the Supreme Court held that "[a] land use plan, however, is a tool to project present and future use. Unlike a specific statutory command requiring an agency to promulgate regulations by a certain date, a land use plan is generally a statement of priorities; it guides and restrains actions, but does not prescribe them." Although the Court in *Norton* was not debating the issuance of a lease, the holding applies: even if lands are deemed eligible for oil and gas leasing in a land use plan, BLM is not required to lease these lands. *Norton S. Utah Wilderness Alliance*, 124 S. Ct. 2373, 2376 (2004) (citing FLPMA, 43 U.S.C. § 1702(c)).] The 10th Circuit in *McDonald v Clark* held that "[I]t is clear that the Secretary has broad discretion in this area. While the statute gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory." *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985).]

In making leasing obligations, BLM must comply with its obligations under FLPMA. For example, FLPMA requires that "[i]n managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." [Footnote 20: 43 U.S.C. § 1732(b) (2000).] Although FLPMA does not define "unnecessary or undue degradation" (UUD) two relevant cases have examined the requirements this standard imposes on BLM. The 10th Circuit in *Sierra Club v Hodel* held that the unnecessary or undue degradation standard "imposes a definite standard on the BLM." [Footnote 21: *Sierra Club v. Hodel*, 848 F.2d 1075 (10th Cir. 1988), overruled on other grounds, *Village of Los Ranchos of Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992).] While the Court provided little clarity as to the definite standard of undue degradation, the decision makes clear that the clause limits BLM's discretion, and opens the door for further claims to hold BLM to this standard. In *Mineral Policy Center v. Norton* the District court for the District of Columbia held that "FLPMA, by its plain terms, vests the Secretary of the Interior with the authority- and indeed the obligation-to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land." [Footnote 22: *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 42 (D.D.C. 2003).] Although the opinion pertains to the impact of mining on public lands, a logical extension of its holding suggests it should also apply to oil and gas development. Consistent with the holding in *Mineral Policy Center*, BLM must prevent oil and gas development from unduly harming or

degrading the public land, even if it means not issuing leases that may be profitable.

BLM must establish a leasing program that fully embraces its discretion under the Mineral Leasing Act, while at the same time acknowledges its obligations under FLPMA. BLM should implement new regulations and policies that would require a DOI decision maker to consider the relative value of all resources within a proposed lease, and to consider the impacts of oil and gas development on these resources, including water quality, air quality, wildlife habitat, wilderness, and recreation, before deciding whether or not to offer a lease. To do so, BLM must implement policies that require leases to be screened prior to lease sale.

Comment Number: BOEM-EMAIL-32521-034585-30

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

a. DOI should establish an overarching mandate for the oil and gas program recognizing that leasing is discretionary and allowed only to the extent consistent with multiple use, sustained yield, the emissions management framework, and protection of important conservation values, cultural resources, and other important resources and values.

DOI and BLM have traditionally administered the federal onshore oil and gas program as if leasing and development were required. However, federal courts have consistently ruled otherwise, holding that oil and gas development is not the dominant use of public lands and must be weighed against other valid uses. [Footnote 58: See, e.g., *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009)] As provided in FLPMA, multiple use management does not require the balance of uses on every tract of public land, but rather a combination of resource conservation and uses to “best meet the present and future needs of the American people.” [Footnote 59: 43 U.S.C. § 1701, et seq.,] The notion that resource development must be balanced with conservation management is explicit in the definition of “multiple use”:

[T]he management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; . . . the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. [Footnote 60: 43 U.S.C. § 1702(c) (emphasis added).]

Managing and planning for multiple use and sustained yield necessarily means that there must be a significant portion of public lands devoted to conservation in order to sustain public resources. Sustained yield does not support a focus on outputs from resource extraction or industrial uses. FLPMA specifically directs BLM to maintain in perpetuity “a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” [Footnote 61: *Id.* at § 1702(h).] Therefore, sustained yield requires BLM to sustain high-level yields of natural landscapes, scenic resources, clean air and water, wildlife, night skies, soundscapes, and opportunities for solitude, quiet-use, and primitive types of recreation. [Footnote 62: Courts have confirmed agency’s discretion and obligation to protecting environmental values. See *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 710 (10th Cir. 2009) (court rejected BLM’s argument that its

NEPA analysis did not need to include an alternative that closed Otero Mesa to oil and gas development because doing so would violate its multiple use mandate, stating “[d]evelopment is a possible use, which BLM must weigh against other possible uses – including conservation to protect environmental values.”.)]

RECOMMENDATIONS:

- DOI should establish an overarching mandate for the oil and gas program recognizing that leasing is discretionary and allowed only to the extent consistent with multiple use, sustained yield, the emissions management framework (detailed in Section II(a) of these comments), and protection of important conservation values, cultural resources, and other important resources and values. BLM should announce the overarching mandate as soon as possible as a clarification under existing authorities, consider seeking a Solicitor’s Opinion rightfully interpreting FLPMA, MLA, and NEPA to require this mandate, and codifying the mandate through rulemaking.

-Support Senator Bennet’s Public Engagement Opportunity on Public Lands Act of 2020 (S. 4641), and Representative Levin’s Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503). These bills include provisions that allot a reasonable time for public and stakeholder input, require shorter lease terms to ensure the leasing agent is working with the most current information, and ensure that other uses are considered for the land in question.

Comment Number: BOEM-EMAIL-32521-034585-43

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 15 1.2

Comment Excerpt Text:

Curbing methane emissions is a key component to achieving net zero emissions and combating the deleterious effects of climate change. We strongly urge BLM to support Rep. DeGette’s Methane Waste Prevention Act of 2021, [Footnote 99: H.R. 1492, 117th Cong. (2021), available at: <https://www.congress.gov/bill/117th-congress/house-bill/1492?q=%7B%22search%22%3A%5B%22H.R.+1492%22%5D%7D&s=1&r=1.>] and defend its 2016 Waste Prevention Rule, [Footnote 100: 81 Fed. Reg. 83,008 (Nov. 18, 2016),] currently on appeal in the Tenth Circuit Court of Appeals. [Footnote 101: Wyoming v. Department of Interior, No. 2:16-cv-00285-SWS (D. Wyo. Oct. 8, 2020), appealed Dec. 21, 2020, Wyoming v. U.S. Dep’t of the Interior, Nos. 20-8072 & 20-8073 (10th Cir.)] The Rule limits the amount of publicly owned natural gas that is wasted through venting, flaring, or leaking. Though aimed at preventing waste, the Rule would have substantial and immediate climate and public health benefits.

RECOMMENDATIONS:

- Defend the 2016 Waste Prevention Rule on appeal and immediately implement the Rule if it is upheld. Swift implementation of the Rule would ensure substantial and critical near-term reductions in methane waste.

- Support Representative DeGette’s Methane Waste Prevention Act of 2021 (H.R. 1492). This legislation led by Rep. DeGette, would codify long-overdue, widely agreed upon, common-sense standards to reign in excessive waste of vented and flared gas on public lands. By curbing unnecessary venting, flaring, and leaks at oil and gas facilities, this bill will help protect public health, reduce potent greenhouse gas emissions, and recoup millions of dollars owed to the American taxpayers.

Comment Number: BOEM-EMAIL-32521-035130-3

Organization: Institute for Energy Research

Commenter: Kenny Stein

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Suggested Approaches for Divining the Roots of Legitimate Problems in Federal Leasing

We have clearly demonstrated that something is awry in the federal energy leasing system. Here are additional numbers for reference, all of which were derived from DOI sources. The onshore federal mineral estate totals 700 million acres, according to the BLM [Hyperlinked: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about>]. In addition, the offshore mineral estate of the U.S. managed by DOI is 1.76 billion [Hyperlinked: <https://www.bsee.gov/sites/bsee.gov/files/fact-sheet/news-item/factsheet-ocs5-yearprogram.pdf>] acres, for a total of 2.46 billion acres. According to Public Land Statistics 1998 [Hyperlinked: [billion%20%5bHyperlinked:%20https://www.bsee.gov/sites/bsee.gov/files/fact-sheet/news-item/factsheet-ocs5-yearprogram.pdf%5d](https://www.bsee.gov/sites/bsee.gov/files/fact-sheet/news-item/factsheet-ocs5-yearprogram.pdf)], the total land area of the U.S. is 2,263,222,000 acres. By subtracting the 700 million acres of federal mineral estate we arrive at a total of 1,563,222,000 acres of non-federal mineral estate, which is only 39% of the total onshore and offshore subsurface area of the United States.

Thus, while the federal government owns 61% of the onshore and offshore mineral estate of the U.S., only 22% of the nation's oil and 12% of our natural gas comes from those federal lands and waters. It is incumbent on the DOI to understand why and to fix whatever is dissuading investors from leasing and developing them.

It cannot be royalties, as some have suggested, since royalties are sometimes higher on state and private lands, yet investors would much rather search for, discover, and produce oil there than on lower royalty federal lands. Also, federal oil and gas leases include "bonus bids," which represent an auction of the right to explore, develop and produce energy. For example, in 2018, a two-day lease sale in New Mexico brought in more revenue than all BLM oil and gas sales in 2017 combined. Revenue from the sale totaled \$972,483,619.50, of which roughly \$500 million was returned to New Mexico for its roads, schools, and public services. Royalties are added on top of these bids, once a discovery is made and developed, and production begins.

The paltry production numbers from federal lands – in comparison to state and private lands – prove royalties are not the problem. Increasing royalties would simply make federal leasing even more unattractive, since they are already under-performing their counterpart lands owned by states or in private hands. And while it does meet the desire of some to "keep it in the ground," depriving the federal, state and local governments and the American public the benefits of secure and affordable energy is not consistent with the stated purposes of this review.

It is also highly unlikely to be due to geological differences, since the predominance of federal lands are located in some of the most promising hydrocarbon potential areas in the U.S.

The answer is most likely to be the regulatory environment and uncertainty with the federal processes, which results in investors choosing even higher royalties in areas of less geological potential rather than trusting to the vagaries of a highly regulated and uncertain federal procedural labyrinth. In addition to a rigorous set of environmental conditions, which are generally replicated in conditions for drilling on both state and private lands, the federal leasing agreements also carry the additional burden of multiple entry points for opponents of federal leasing throughout the entire process. It becomes, quite literally, "life by permit," with each permit contestable by those outside the actual contract between government and private investor.

For someone dedicated to stopping a particular project, objections, appeals and litigation are simple tools to create

roadblocks for someone planning to invest in the project. The uncertainty of that process, combined with the certainty of having to meet payroll and loan payments and equipment rental schedules convince many operators to forego investment in federal lands, thus depriving the nation of the substantial energy and revenue federal land production would beneficially provide.

If the Department of Interior and Bureau of Land Management wish to ensure a fair return to the American public, the Department needs to streamline the regulatory environment on federal lands. The current process imposes a massive cost to the American public in the form of dramatically reduced production and economic activity as well as the waste of complying with federal red tape.

Our suggestion to the Department would be to commission an investigation to review the successful oil and gas leasing operations on both state and private lands and attempt to replicate them on the federal estate. An in-depth review of how they successfully protect the environment and the legacy of the land while providing for the needs of their people for both employment and revenue could prove useful to the Administration in fixing the admittedly broken system.

Comment Number: BOEM-EMAIL-32521-035316-27

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

XII. NEPA Reforms

As DOI conducts a comprehensive review of the federal oil and gas program, it should assess the National Environmental Policy Act's (NEPA) application to federal oil and gas activities. Since NEPA was enacted over 50 years ago, and particularly over the past decade, it is the collective experience of API and its members that the scope of NEPA reviews has expanded dramatically. With each step of the onshore oil and gas leasing and development process, an opportunity for NEPA analysis is presented, from resource management plans and land use plans, to lease sales and Applications for Permits to Drill (APDs). Offshore, NEPA reviews are conducted at multiple stages beginning with the Five-Year Program, leases sales, exploration, and development. Despite decades of Council on Environmental Quality (CEQ) guidance and related case law, the NEPA review process overall remains complex, time-consuming, and uncertain, which in turn reduces investment in the nation's energy resources and infrastructure.

However, recent changes made by the CEQ and DOI have codified best practices, made improvements to the overall efficacy of NEPA, and should continue to be implemented by DOI. One example is the removal of the requirement for agencies to separately assess "cumulative effects" rather than focusing on the reasonably foreseeable effects caused by a proposed action. This term does not appear in NEPA and has led to confusion, duplication of efforts, and waste of agency resources in ascribing unascertainable or irrelevant effects to oil and gas actions. As CEQ correctly points out that even determining what a cumulative effect is has led to "confusion," "been interpreted expansively[.]" and "result[ed] in excessive documentation about speculative effects[.]" [Footnote 68: 85 Fed. Reg. 1,707.] Additionally, API believes DOI should fully utilize categorical exclusions (CX's) that other agencies use for similar activities as a tool to satisfy NEPA obligations. CEQ's recent revisions to the definition of CXs and the reorganization of the regulations will provide greater clarity to DOI and promote more efficient NEPA reviews.

Furthermore, the new requirement that CXs be made available in a publicly searchable database help promote public transparency. [Footnote 69: § 1508.1(d) and recodified §§ 1501.4 and 1501.5(a), respectively] DOI has

also been a leader in institutionalizing process reforms to render NEPA documents more efficient and readable and should not backtrack to unproductive delays for the purpose of creating paperwork rather than informing agency actions.

DOI should also continue to promote efficiencies in the public commenting and engagement process through implementation of new provisions in §§ 1500.3(b), 1502.18, and 1501.5(d). These changes will result in more informative public comments, conserve agency resources, and cut down on speculative claims in litigation. Many agencies commonly deem comments not timely raised and information not provided to be forfeited, [Footnote 70: Certain statutory provisions, such as § 4(b) of the Endangered Species Act, require agency actions to be proposed and finalized on strict schedules that necessarily limit the time period for public comment. See also *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 733 (D.C. Cir. 1988) (holding a 15-day comment period not unreasonable under the circumstances). Agencies are generally free to ignore late filings. See, e.g., *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1059 (D.C.Cir.2001) (“An agency is not required to consider issues and evidence in comments that are not timely filed.”) (citing *Personal Watercraft Indus. Ass’n v. Dep’t of Commerce*, 48 F.3d 540, 543 (D.C.Cir.1995)). See also *Pub. Citizen [FULL CITE]*, 541 U.S. at 764 (“Persons challenging an agency’s compliance with NEPA must structure their participation so that it ... alerts the agency to the [parties’] position and contentions, in order to allow the agency to give the issue meaningful consideration.” (internal quotation and citation omitted)).] and this change will reaffirm and encourage this basic, orderly concept of administrative law. It will also help agencies remedy potential issues before they need to be litigated while continuing to provide robust analysis in line with NEPA requirements.

Comment Number: BOEM-EMAIL-32521-035527-11

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Regulations should require increased transparency: Regulatory changes can require Interior Department agencies to post—on a public website and in a timely manner—non-privileged information on exploration, permitting, inspections, monitoring and enforcement. Regulations can also ensure information on OCS incidents and near-misses is available to the public. We encourage the administration to consider re-starting efforts to join the Extractive Industries Transparency Initiative.

Comment Number: BOEM-EMAIL-32521-035527-4

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BOEM should initiate a rulemaking process to modernize and reform OCS regulations.

The Department of the Interior finalized the rules governing OCS oil and gas planning, leasing and exploration in the early 1980s. The planning and leasing rules have not been updated in any substantive way since that time. As a result, regulations governing OCS oil and gas activities have not kept pace with industry’s push to drill in deeper and more remote waters, technological advances or changes in policy priorities.

Congress gave the Interior Department considerable flexibility to interpret and implement the OCS Lands Act.

BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) can and should take advantage of this flexibility by updating regulations to reflect current priorities, including climate change and ocean acidification, consultation with Tribes and consideration of environmental justice issues.

BOEM and BSEE should launch a comprehensive effort to modernize and reform OCS regulations.

Comment Number: BOEM-EMAIL-32521-035527-6

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Clarify and improve implementation of the National Environmental Policy Act (NEPA): Changes should mandate proper consideration of climate change, ocean acidification and environmental justice impacts. Updated regulations can also clarify NEPA requirements for each stage of the OCS Lands Act process, and identify appropriate uses of tiering and categorical exclusions. Regulatory changes can also better define cumulative impacts analyses; require analysis of low- probability, high-risk events; and ensure environmental assessments are subject to meaningful public review and comment.

Comment Number: BOEM-EMAIL-32521-035695-4

Organization: Citizens Caring for the Future

Commenter: Kayley Shoup

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

During the review, we encourage the administration to embrace a number of solutions and reforms, which we have included below.

* A new mandate must be adopted for the oil and gas leasing program. The Bureau of Land Management (BLM) has long-operated under the belief that leasing is statutorily required and therefore should be elevated above other uses. The Interior Department must recognize that leasing is not in fact mandated by federal law, and that leasing on public lands should be allowed only if and when consistent with the principle of multiple use, which is necessary for managing public lands for the long-term needs of future generations.

Comment Number: BOEM-EMAIL-32521-036336-10

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 12

Comment Excerpt Text:

The Department, BLM, and U.S. Fish and Wildlife Service all have broad authority to recommend and require application of the full mitigation hierarchy, including compensatory mitigation. We urge the Department to update its mitigation policies to align with agency mandates, goals for climate change, 30x30 and other initiatives, and do so in a way that garners the support of a range of stakeholders, sets high standards to ensure fairness and

certainty, and yields durable policy outcomes. Specifically, we recommend the following:

1. Rescind BLM Instruction Memorandum (IM) 2019-018 – “Compensatory Mitigation” (December 6, 2018) and replace with an IM establishing a balanced approach to mitigation.
2. Adopt of policies that, as appropriate, encourage or require mitigation for all aspects of public lands planning and management by updating and readopting the BLM Mitigation Manual (H- 1794, 2016) and BLM Mitigation Handbook (H-1794-1, 2016).
3. Adopt new policies (e.g., regulations) that clarify BLM’s authority to encourage or require, as appropriate, mitigation in public lands planning and management, including meaningful consultation with cooperating agencies, including State fish and wildlife agencies and affected Tribal and local governments (e.g., land use planning, use authorization, right-of-way authorization).

Comment Number: BOEM-EMAIL-32521-036336-4

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 15

Comment Excerpt Text:

We urge the issuance of a Secretarial Order that places a moratorium on offering oil and gas leases on lands classified as low or no potential and to initiate rulemaking that will establish this policy in regulation. Additionally, we note that Senator Cortez Masto (D-NV) has reintroduced the End Speculative Oil and Gas Leasing Act of 2021, legislation that would revise the Mineral Leasing Act to prohibit leasing “if the Federal land is designated in the applicable reasonably foreseeable development scenario as having low or no potential for development of oil or gas resources.” Enacting the suggested moratorium on leasing in low and no potential areas would maintain the status quo while this legislation advances through the legislative process.

Comment Number: BOEM-EMAIL-32521-036336-8

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

There is a lack of consistency in field office’s regarding the applicability of federal lease stipulations to non-federal surface where there is split estate, and how split estate non-federal surface lands are addressed during the federal planning and development process. We recommend that WO issue clear policy guidance that outlines:

1. A process for evaluating and disclosing during land management planning and project-specific NEPA, the impacts to split estate non-federal surface lands from oil and gas development.
2. Legal authority and applicability of federal lease stipulations to development on non-federal surface lands.
3. Requirements for the most effective stipulation(s) be applied to protect resources.

Issue a new proposed rule for regulations governing federal oil and gas resources on National Forest System lands

(FS-2020-0007).

We recognize EO 14008 requires consultation with the Secretary of Agriculture. With respect to the United States Forest Service (USFS), the agency's 36 CFR part 228, Subpart E regulations covering oil and gas leasing and development are woefully out of date and the agency was right to initiate rulemaking in 2018. However, we have significant concerns with the proposed rule issued on September 1, 2020. Notably, under the proposed rule the Forest Service would abdicate its role providing consent for individual leases to be offered. Additionally, the proposed rule is a missed opportunity to address additional issues that would help bring balance back to management of oil and gas resources.

Specifically, a new proposed rule should:

1. Maintain preexisting USFS consent to lease requirements.
2. Require that the most effective stipulation(s) be applied to the lease to protect resources.
3. Require conditions of approval at the APD stage to avoid and minimize impacts to site-specific resource values.
4. Continue public notification requirements and the ability for the USFS to provide oversight and review of a Surface Use Plan of Operations prior to final approval.
5. Remove from consideration the leasing and nomination of any USFS lands with low or negligible oil and gas potential.
6. Reform the use of lease suspensions.
7. Provide clarity on use of Section 390 categorical exclusions and require evaluation of extraordinary circumstance prior to approving the use of any categorical exclusion.
8. Reform unitization policies and evaluate non-competitive leasing.
9. Prevent lands closed or otherwise unavailable for leasing from being nominated.

We recommend that the Administration reconsider this rulemaking in order to fully consider the 35,000 public comments the agency received and issue a new proposed rule that fully addresses these and other issues that the public has raised.

Comment Number: BOEM-EMAIL-32521-036534-6

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 15

Comment Excerpt Text:

There is legislation introduced in this congress and last - including Senator Bennet's S. 4642, Oil and Gas Bonding Reform and Orphaned Well Remediation Act of 2020; Representative Lowenthal's H.R. 1505 Bonding Reform and Taxpayer Protection Act of 2021; and Representative Leger Fernandez's H.R. 2415 Orphan Well Clean up and Jobs Act of 2021 - which increase bonding rates, provide funds to reclaim orphan wells on federal, state, private and tribal lands, and in some cases, legislate idle well fees for those wells not producing but that are not being remediated. While HAF strongly supports this legislation,[Hyperlinked:

<http://www.hispanicaccess.org/images/docs/PolicyRecommendations2021.pdf>] the Department of the Interior should not wait for congressional action. The BLM has the authority today to increase bonding rates, and push for greater reclamation on these sites.

Comment Number: BOEM-EMAIL-32521-036936-2

Organization: American Alpine Club

Commenter: Amelia Howe

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Speculative Leasing is Detrimental to Outdoor Recreation + Rural Economies

As many states in the West begin a transition away from extraction-based economies, outdoor recreation offers a sustainable and viable reprieve for rural communities. In 2019 outdoor recreation generated 2.1 percent of current-dollar gross domestic product (GDP), or roughly \$459.8 billion. [Footnote 5: Bureau of Economic Analysis Outdoor Recreation Satellite Account US and States 2019 <https://www.bea.gov/news/2020/outdoor-recreation-satellite-account-us-and-states-2019>] Additionally, the outdoor recreation industry provides 5.2 million direct jobs [Footnote 6: Outdoor Industry Association 2019 Report <https://outdoorindustry.org/advocacy/>] and these numbers continue to grow each year. As it is currently written, the Mineral Leasing Act of 1920 has led to increased speculation on public lands that have minimal potential for future drilling, negatively impacting potential recreation development opportunities in communities. Of the 200 million acres of public lands managed by the BLM, only 10 percent of these are protected from speculative leasing due to National Monument status, leaving 90 percent available for leasing [Footnote 7: Public Lands Solutions How Speculative Oil + Gas Leasing is Threatening Economic Growth in the American West <https://publiclandsolutions.org/wp-content/uploads/2020/01/PLS-LPL-Report91.pdf>]. Currently, the leasing process allows for developers to lease parcels for \$2 an acre or less and the lease-holder can hold the parcels for up to 10 years. Because the current leasing system does not require the developer to prove the land will be economically viable, many of the leased parcels have low or no development potential and could have instead been used for recreation or conservation purposes. The leasing process must be reformed in order to maximize each parcel's potential for use viability, at times meaning the land should be removed from leasing potential and set aside for conservation. When the Mineral Leasing Act was written, recreation was not taken into consideration, but today, with the growth of outdoor activities like climbing, hiking, and OHV travel, it is an increasingly important use to factor into the equation. We hope the DOI will:

- Utilize management practices that emphasize multiple-use ethics with a renewed focus on human-powered recreation and conservation opportunities in order to help achieve 30% protection of public lands and waters by 2030

- Ensure there is a fair return to taxpayers for development on public lands. Raise leasing prices accordingly, and return those funds to conservation efforts on DOI managed parcels and mitigation projects for frontline and gateway communities

- Prohibit leasing of new land until unused and non-producing parcels are assessed, and if appropriate, released. Of the more than 26 million acres under lease to the oil and gas industry, nearly 13.9 million (or 53 percent) of those acres are unused and non-producing [Footnote 8: White House Fact Sheet: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>].

- Reinstate protections of culturally significant public lands such as Bears Ears and Grand Staircase-Escalante

National Monuments to ensure these lands are protected from future oil and gas development.

Comment Number: BOEM-EMAIL-32521-037427-2

Organization: Public Land Solutions

Commenter: Jason Keith

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 15

Comment Excerpt Text:

1. Speculative Oil and Gas Leasing of Low Potential Lands Threatens Economic Growth in the American West

Multiple use practices on public lands must be balanced, and the needs of western communities, which are increasingly dependent on outdoor recreation and non-extractive activities for economic growth, need an update of our country's oil and gas leasing laws. It is time to update our oil and gas laws and eliminate oil and gas leasing of public lands with low and no development potential, allowing those areas to better serve nearby communities and residents through the high quality of life that comes with proximity to lands in their natural state.

Currently, 90 percent of the more than 200 million acres of public lands managed by the Bureau of Land Management remain available for leasing. Only about 10 percent of BLM lands are officially protected from leasing via specific conservation designations. The failure to update the Mineral Leasing Act of 1920—and related rules and policies—will lead to more speculative leasing, which casts a growing shadow over nearby public lands and discourages recreation investments. This dynamic will stunt growth and leave communities with increasingly diminished chances for capturing the full benefits of a developing outdoor economy.

To date, less than half of the 26.6 million acres of public lands leased to the oil and gas industry is currently in production—so there are already millions of acres under lease and available now for oil and gas development. Indeed, several thousand approved drilling permits remain unused. In addition, there is a significant opportunity cost to the BLM when it comes to managing these low and no potential leases; many places seeking to improve their recreation assets on BLM lands need recreation staffers and planners to help them execute locally supported plans. Yet, if the BLM is forced to use the bulk of its staff resources to lease low and no potential lands, other multiple uses get left behind, creating a lose/lose situation that could be corrected by updating the way we lease lands across the West.

Such an update to our leasing system could be achieved through congressional action, like the bill End Speculative Oil & Gas Leasing Act of 2020 which would largely end the leasing of low and no potential lands. An leasing update by the Interior Department could also mean instructing the BLM to fulfill its multiple-use mandate by providing staff and resources that can improve and manage recreation assets to meet the economic development and business recruitment goals of local communities. BLM already has clear authority to prohibit or limit leasing on lands with low or no drilling potential and should consider updating its leasing rules and policies to accomplish this goal.

Comment Number: BOEM-EMAIL-32521-037427-5

Organization: Public Land Solutions

Commenter: Jason Keith

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

II. Solutions and Policy Recommendations

As noted above, competing uses can sometimes diminish the recreation experience. Key legislative and administrative reforms can address the problems outlined above. In addition, there exist several planning tools, best practices, improved technologies, and public engagement strategies that federal land managers and local communities adjacent to federal lands can employ to safeguard recreation resources and support lasting recreation economies.

-Limit the quantity and scope of competitive sales and exercise the BLM's broad authority to declare lands ineligible and unavailable for leasing, especially those that have valuable other multiple uses such as recreation.

-Establish a new mandate for the onshore program that affirmatively recognizes oil and gas leasing as a discretionary action that should be authorized only when consistent with multiple use and sustained yield principles.

-Guarantee robust public participation and tribal consultation during the leasing and permitting process.

-End the practice of anonymous lease nominations and begin a formal nomination process allowing BLM to better identify those lands that are suitable for nomination and those that are better suited for other multiple uses. Changing this policy will also avoid inefficient speculative leasing that will expose the identities some of the worst industry actors that regularly abuse the leasing system and fail to comply with environmental protection regulations and bonding requirements.

-Reform the practice of noncompetitive leasing, which rarely results in actual oil and gas production and often burdens other uses by limiting land use planning options and discouraging conservation designations and other productive uses such as recreation.

-Increase royalty rates to ensure a fair return to taxpayers and discourage speculation. The onshore royalty rate of 12.5% has not changed in over 100 years, and rental rates and minimum lease bids are also decades-old. Modernizing this fiscal framework—consistent with recent bipartisan legislation proposed by Senators Rosen and Grassley—will modernize this antiquated aspect of the leasing system.

-Strengthen bonding requirements to address problems related to inactive and orphaned wells, requiring the industry to be responsible for the millions in clean-up costs now pushed onto taxpayers. Better bonding and fewer abandoned wells will also improve the environmental quality of many communities which will also facilitate economic development for other productive sectors such as outdoor recreation.

The Interior Department should also aggressively implement effective planning tools that can help effectively balance energy development and the need to protect and enhance recreation opportunities. Some measures that BLM can use (and has already successfully used) to protect recreational resources include:

-Utilize master development plans and unit agreements in areas where a significant amount of new drilling is expected; the BLM can require that operators and lessees coordinate construction of new roads, rigs and other infrastructure to minimize impacts to recreation resources and the broader landscape. Where oil and gas operators are accessing a common reservoir of minerals, BLM can require, or operators can voluntarily agree, to "unitize" their leases and reduce the amount of wells and other infrastructure required.

-In recreational areas open to energy development, BLM should require development density limits for well pads, production facilities, pipelines and utilities to protect recreational uses and experiences.

-Require phased leasing and developments to prioritize new leasing and energy development authorizations on lands with industry interest and high potential for successful energy development but a low level of other multiple uses such as recreation.

The Interior Department should also require best practices and improved technologies after the planning stage when development proposals are made to limit impacts to nearby recreational resources. These best management practices, which can and should be evaluated at the development stage given BLM's broad authority and obligation to manage for outdoor recreation and other multiple uses, are all techniques that allow for smaller surface disturbance and less pollution. A range of options is available to federal land managers and oil and gas developers to minimize their impacts on local communities and other public land uses, including:

-Alternatives to pits used to store hydraulic fracturing fluids, produced water, and other drilling materials, containment tanks or closed loop drilling systems.

-Directional drilling to minimize surface occupancy and consolidate drill rigs and pumps as a means of limiting surface impacts.

-Technologies that minimize methane leaking and flaring to prevent wasteful, unnecessary and harmful emissions, and reduce light pollution.

-Other strategies to limit air, noise, and water pollution, and to limit visual impacts.

-Engaging the public and key stakeholders early and often in planning for energy development to optimize multiple land uses and foresee and address potential conflicts with energy development. BLM should prioritize community workshops bringing together a wide range of stakeholders to discuss proposed plans for local energy developments.

-Support state recreation directors, who lead projects related to economic development in their states, can coordinate with state energy departments and better incorporate the recreation economy needs of their communities.

Comment Number: BOEM-EMAIL-32521-037855-15

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Summary comment: The intent and cumulative effect of all of the above proposed changes would be to shrink the leasing of the federal onshore mineral estate to only that which is necessary and appropriate to protect America's national security and economic interests; and to minimize adverse environmental impacts of leasing that does continue to occur. Once the proposed changes have been made, BLM should incorporate them into an updated version of the "Gold Book – Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development," which was last updated in 2007 [Footnote 23:

<https://www.blm.gov/sites/blm.gov/files/uploads/The%20Gold%20Book%20-%204th%20Ed%20-%20Revised%202007.pdf>]. Or, if not updated, the outdated Gold Book should be revoked.

Comment Number: BOEM-EMAIL-32521-037855-20

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 7

Comment Excerpt Text:

REFORM THE OUTER CONTINENTAL SHELF (OCS) OIL AND GAS LEASING PROGRAM MANAGED BY BOEM

Background: In 2011, after a review of the 2010 Deepwater Horizon disaster in the Gulf of Mexico, the Department divided the functions of the former Minerals Management Service and assigned them to three newly created agencies, which included: the Bureau of Ocean Energy Management (BOEM), which manages development of U.S. Outer Continental Shelf (OCS) energy and mineral resources in an environmentally and economically responsible way. BOEM administers both the OCS oil and gas exploration and development program under the Outer Continental Shelf Lands Act [Footnote 30: <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Outer-Continental-Shelf/Lands-Act-History/Outer-Continental-Shelf-Lands-Act.pdf>]; and the OCS renewable energy program under the Energy Policy Act of 2005 [Footnote 31: <https://www.govinfo.gov/content/pkg/BILLS-109hr6enr/pdf/BILLS-109hr6enr.pdf>].

We recommend that BOEM take the following actions to reform the OCS oil and gas program:

- Impose an immediate moratorium on issuing new leases under the current five-year OCS leasing program.
- In general, limit future leasing to locations with established oil and gas leasing operations; and do not initiate new leasing adjacent to states that formally object to it because of the risks it creates to thriving tourism, commercial fishing, and other sustainable coastal economies that depend upon unpolluted marine waters and clean beaches.
- Prepare and issue a new draft proposed program (DPP) for FY 2023-2028 that includes the following provisions:
 - The new DPP must comply with the balancing requirements of Section 18(a)(3) of OCSLA, which requires the Secretary to render decisions on the timing and location of OCS leasing that strike a balance between the potential for environmental damage, the potential for discovery of oil and gas, and the adverse impact on the coastal zone.
 - Only necessary and appropriate lease opportunities should be offered; and these should be focused in areas with the greatest production potential with relatively limited environmental risk.
 - Information provided in the 2019-2024 DPP identified areas with by the greatest production potential to be the Central Gulf of Mexico (GOM), Chukchi Sea (AK), Western GOM, and Beaufort Sea (AK). Of these, the Central GOM and Western GOM are currently the most extensively leased, with over 50,000 wells drilled (DPP Sections 4.3.1 and 4.3.2).
 - The new DPP should clearly identify planning areas with relatively limited production potential or relatively high environmental and social costs; and such areas should be excluded from proposed leasing in order to “strike a balance” between the potential for environmental damage and the potential for discovery of oil and gas.
 - The new DPP should include coastal buffer(s) to accommodate concerns such as military use, fish and marine mammal migration and other near-shore uses, and be universally applied to all planning areas with populated shorelines.
 - A variety of other mitigation measures should also be considered including: avoidance of OCS oil and gas

activities in ALL environmentally important areas (EIAs); temporal closures or restrictions to avoid conflicts with fish and wildlife during nesting/birthing/young rearing periods and migrations; and restrictions on the use of seismic air guns at certain times and in certain locations to protect marine mammals.

-The new DPP should be responsive to state concerns in accordance with Section 19(c) of OCSLA, which states: “The Secretary shall accept (emphasis added) recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.” By any reasonable interpretation of the statute, BOEM should accept any state’s formal request to be excluded from OCS leasing; and then focus proposed leasing in areas with existing leases that have their respective state’s support.

Comment Number: BOEM-EMAIL-32521-037855-8

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In general, DOI should conduct a systematic review of all applicable BLM internal policy guidance. Make revisions, as needed, so that internal policies for managing the oil and gas program put “conservation” and the “public interest” first.

Specifically, BLM has the authority to make the following changes as soon as possible:

1. Revoke and replace Instruction Memorandum (IM) 2014-004 [Footnote 13: <https://www.blm.gov/policy/im-2014-004>], “Oil and Gas Informal Expressions of Interest.” This IM authorized anonymous expressions of interest (EOI’s), i.e., parcel nominations, which allows unidentified individuals or companies to “game the system” by requesting that BLM offer leases on specific parcels with low competitive interest. If/when there are no offers during the competitive sale, the nominator can then acquire the lease(s) noncompetitively at bargain basement prices. In general, BLM should eliminate the use of “informal” EOI’s altogether and rely upon the “formal” nominations process set forth in existing BLM regulations. This would require anyone nominating public lands for leasing to disclose their identity as well as the identities of third parties who they are representing. There simply is no public benefit in allowing the industry to remain anonymous when submitting nominations for lease parcels.
2. Revoke and replace IM 2018-03 [Footnote 14: <https://www.blm.gov/policy/im-2018-034>], “Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews.” This IM drastically altered parcel review procedures that had been in effect since 2010 under IM 2010-117. Among other things, the IM 2018-034 imposed an artificial deadline of 6 months on BLM offices to complete parcel previews from the date of receipt of an expression of interest (EOI) to awarding leases; state offices could no longer rotate quarterly lease sales by field office; lease issuing offices could no longer “defer” leasing public lands in locations with an out-of-date or otherwise inadequate resource management plan/EIS or “RMP” (incredibly, the IM directed BLM to presume the outdated RMP is a valid basis for current leasing decisions); reduced public comment opportunities on lease sales from “30 days required” to “may be allowed” (typically resulting in comment periods of only 0-15 days); reduced formal protest periods for lease sale notices from 30 day to 10 days; and eliminated the use of master leasing plans (MLPs) in locations where leasing could cause multiple-use or natural/cultural resource conflicts, such as when adjacent to national parks and refuges, wilderness areas, and significant cultural and archeological sites.

The net effect of these “streamlining” changes is that BLM state and field offices have less time to conduct parcel

reviews and related NEPA processes, while offering leases over a broader (i.e., state- wide rather than district-wide) area every quarter. These measures, in effect, have compelled BLM staff to cut corners in various steps of the parcel review process. The net result has been less thorough and more flawed parcel reviews that have been prepared with significantly less public involvement. IM 2018-034 is the epitome of freezing the public out of having a say in the management of public lands!

IM 2018-034 should be replaced with a new IM that includes the following provisions:

- A mandatory minimum 30-day public comment period on lease sale proposals;

- A 30-day protest period for lease sale notices;

- Deferral of proposed leasing in locations lacking up-to-date RMP's;

- Formal structured collaboration with neighboring agencies that manage specially protected resources such as national parks and refuges, wilderness areas; and significant cultural and archeological sites.

- Note: Under IM 2010-117, MLPs provided a “process” for such interagency collaboration; however, we are not convinced it was the most efficient way to accomplish it. In practice, MLPs took years to prepare and few were ever completed (a notable exception was the Moab MLP). Therefore, we recommend that DOI re-evaluate the MLP process to determine if it should be reinstituted as it was or revised significantly to make it a more effective and efficient process.

3. Review and update, as needed, IM 2019-014 [Footnote 15: <https://www.blm.gov/policy/im-2019-014>], “Oil and Gas Bond Adequacy Reviews.”

This IM directs each BLM field office administering an oil and gas program to perform bond adequacy reviews on all bonds at least every five (5) years or earlier when warranted. In practice, this means bond reviews should target one-fifth (20%) of the total active bonds for adequacy each FY.

At the core of this issue is that BLM's bonding and reclamation framework for dealing with inactive and orphaned wells is completely inadequate, as it lets the industry shift millions in clean-up costs to taxpayers and fails to protect public lands, waters, and nearby communities. A 2019 GAO study [Footnote 16: <https://www.gao.gov/assets/gao-19-615.pdf>] found that the average value of bonds held by BLM for oil and gas wells was only \$2,122. The same study found that while BLM does not estimate reclamation costs for all wells, it has estimated reclamation costs for thousands of wells whose operators have filed for bankruptcy. Based on an analysis of those estimates, GAO identified two cost scenarios: low-cost wells typically cost about \$20,000 to reclaim, and high-cost wells typically cost about \$145,000 to reclaim.

The numerical implications of GAO's findings are mind-boggling! The average bond collected by BLM (\$2,122) would cover only about 10% of the actual cost for reclaiming a “low-cost well”; and only 1.5% of reclaiming a “high-cost well”. How on God's green earth is that putting the public interest first?

Recommendations:

- In principle, reclamation bonds should cover the actual estimated cost for well-plugging, abandonment, and reclamation; or at least minimally cover the typical cost of reclaiming a “low-cost” well (i.e., \$20,000); and

- Operators who fail to fulfill reclamation requirements in a timely manner should lose their leasing privileges until all outstanding requirements have been completed.

Revising internal BLM policies, such as the above IM's, is only the beginning of comprehensive reforms needed in the fossil fuels leasing program. Regulatory changes are also needed, which we will discuss in the section below.

Section 15 - Legislative Recommendations

Comment Number: BOEM-EMAIL-32521-019946-1

Organization: Nevada Conservation League

Commenter: Paul Selberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The practice of oil and gas leasing dates back to one-hundred years ago, after the passage of the Mineral Leasing Act of 1920, which established a system where private corporations could lease U.S. public lands for the extraction of fossil fuels. Today, the Bureau of Land Management (BLM) Nevada holds oil and gas lease auctions four times per year, offering up the state's public lands to private oil and gas companies. In the last four years, the BLM offered up over 2.5 million acres of Nevada's public lands with nearly 75 percent of the land sold at the minimum bid. Oil and gas leasing is a bad deal for Nevada, forcing us to auction off vast amounts of our outdoor spaces at a price that does not retain the true value of our public lands, amidst the fact that the state rarely produces oil and gas to begin with.

We are grateful to Senator Cortez Masto for introducing critical legislation to reform this antiquated system. The process of speculative leasing on low-potential lands wastes resources and leaves areas 'locked up' in the hands of private businesses that could be otherwise used to help fight the climate crisis through conservation, outdoor recreation, or clean energy development. Senator Cortez Masto's End Speculative Oil and Gas Leasing Act seeks to put an end to careless leasing, prevent unnecessary destruction of public land, and ensure more effective use of taxpayer dollars. As recently as 2019, Nevada faced oil and gas leasing threats to the Ruby Mountains -- one of our state's natural treasures and rural economic drivers. Senator Cortez Masto worked alongside local businesses, indigenous leaders, outdoor recreationists, and environmental advocates to fight to protect this valuable Nevada land with the Ruby Mountains Protection Act to withdraw the Ruby Mountains from any eligibility for oil and gas leasing. But the fight isn't over. Nevadans are urging Congress to adopt both bills to ensure the protection of Nevada's Ruby Mountains and other natural spaces are preserved for generations to come.

Comment Number: BOEM-EMAIL-32521-020306-1

Organization: Center for American Progress

Commenter: Jenny Rowland-Shea

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Congress should end the noncompetitive leasing program. The costs to taxpayers and the agency far outweigh any benefits that come from providing the oil and gas industry around-the-clock, cheap access to America's public lands. Short of eliminating noncompetitive leasing altogether, BLM should increase leasing and rental rates for non-competitive leases and release a quarterly report on noncompetitive oil and gas leasing with details including where and when parcels were leased and by whom.

Comment Number: BOEM-EMAIL-32521-020306-5

Organization: Center for American Progress

Commenter: Jenny Rowland-Shea

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

*Congress should address the potential impact to states from the long-term decline of fossil fuel activity and revenues on public lands due to the global shift away from fossil fuels. Congress must offer an opportunity for energy-producing states to separate their budgets from an industry in decline in order to build back better with sustainable and diverse economies. To do so, Congress must extricate state budgets from unsustainable and unpredictable fossil fuel markets by ending revenue sharing and decoupling fossil fuel energy production on federal lands and waters. At the same time, there must be enhanced investments in energy producing states and rural communities and an equitable transition for the workers, communities, and states that will pay the price for the oil and gas industry's legacy of pollution, financial recklessness, and insufficient investment.

Comment Number: BOEM-EMAIL-32521-023161-10

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM should support passage of Sen. Bennet's and Rep. Levin's bills to codify the public's right to participate in the decision-making process for oil and gas lease sales.

Comment Number: BOEM-EMAIL-32521-023161-13

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In addition, BLM should support passage of:

-HR 3604, titled Safe Hydration Is an American Right in Energy Development, or SHARED Act, which would require operators to report fracking's impact on water quality,

-HR 4007, the FRESHER Act, Focused Reduction of Effluence and Stormwater Runoff Through Hydrofracking Environmental Regulation Act, which would mandate a study of the completion technique's effect on stormwater runoff, and

-The FRAC Act, Fracturing Responsibility and Awareness of Chemicals Act, which would authorize the Environmental Protection Agency to regulate unconventional drilling. The act also would require chemical components used in drilling to be disclosed.

Comment Number: BOEM-EMAIL-32521-023161-7

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Legislative Recommendations

-Support passage of legislation to amend definition of idle well established in Sec. 349 of the Energy Policy Act of 2005, such as Rep. Lowenthal's bill, Bonding Reform and Taxpayer Protection Act - H.R.1505, which would also eliminate nationwide bonding and update statewide and lease wide bond amounts.

-Support passage of Sen. Bennet's bill, the Oil and Gas Bonding Reform and Orphaned Well Remediation Act - S. 4642 (2020, not yet reintroduced), which updates bond amounts to better meet the cost of reclamation, and creates an official orphaned well clean-up fund of approximately \$3 billion dollars.

-Support Congressional enactment of a fee on industry to fund plugging, reclamation and remediation of orphaned wells going forward.

Comment Number: BOEM-EMAIL-32521-023161-8

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 3

Comment Excerpt Text:

Prioritizing Public Health and Minimizing Air Emissions

BLM must prioritize public health and safety protection. Importantly, the agency should work with EPA to update air quality standards, improve air quality modeling and monitoring, and eliminate non-emergency venting and flaring at federal oil and gas wells. Achieving the standards of the 2016 Waste Prevention Rule should be a priority, at minimum. BLM should support passage of Rep. DeGette's Methane Waste Prevention Act of 2021.

Comment Number: BOEM-EMAIL-32521-034585-21

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Support Senator Bennet's Public Engagement Opportunity on Public Lands Act of 2020 (S. 4641), and Representative Levin's Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503). These bills include provisions that allot a reasonable time for public and stakeholder input, require shorter lease terms, and ensure that other uses are considered for the land in question.

Comment Number: BOEM-EMAIL-32521-034585-33

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

d. Significantly constrain noncompetitive leasing and support legislative efforts to abolish the practice.

Noncompetitive leasing is a prime example of government inefficiency that wastes time and taxpayer resources, which could instead go to improving wildlife habitat, trail maintenance, or other resource management needs. Noncompetitive leasing imposes high fiscal, administrative, and opportunity costs when lands are no longer managed to support other fundamental uses, such as conservation or recreation.

Data clearly shows that the noncompetitive leasing system is broken. A Congressional Budget Office report found that, for parcels leased between 1996 and 2003 (all of which have reached the end of their 10-year exploration period), only three percent issued noncompetitively actually entered production. [Footnote 77: Congress of the United States, Congressional Budget Office (CBO), Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Lands (April 2016), available at: https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options.pdf.] Between 2009 and 2018, Americans only received \$4 million in revenue from leases through this backdoor process, amounting to just one-tenth of one percent of the federal government's total leasing revenue. [Footnote 78: Kate Kelly, Jenny Rowland-Shea, Nicole Gentile, Backroom Deals: The Hidden World of Noncompetitive Oil and Gas Leasing, Center for American Progress (May 23, 2019), available at: <https://www.americanprogress.org/issues/green/reports/2019/05/23/470140/backroom-deals/>.] More than half of noncompetitive leases sold, covering 1.6 million acres of public land, end up terminated by the BLM within two years— usually for non-payment of rental fees. [Footnote 79: The Wilderness Society, The Center for American Progress, America's Public Lands Giveaway: Oil and gas companies are paying bargain rates to acquire and sit on millions of acres (April 2020), available at: <https://storymaps.arcgis.com/stories/36d517f10bb0424493e88e3d22199bb3>.]

RECOMMENDATIONS:

- Amend 43 C.F.R. Subpart 3110 (Noncompetitive Leases) to require a “public interest” determination prior to issuing noncompetitive leases. This determination should inform whether applicants for noncompetitive leases are “responsible” and “qualified” under 30 U.S.C. § 226(c)(1) and should evaluate such factors as the applicant's development history, capabilities, and plans, and compliance history, including whether the applicant has a history of failing to make rental or other payments on other federal leases.
- Create and maintain a publicly accessible portal for noncompetitive lease offers (pre- and post-sale) and provide the public with at least 30 days to review and comment on noncompetitive lease offers.
- Support passage of Leasing Market Efficiency Act of 2020 (S. 4223), and The Restoring Community Input and Public Protections in Oil and Gas Leasing Act (H.R. 15013) (Rep. Levin) which among other reforms would end noncompetitive leasing.

Comment Number: BOEM-EMAIL-32521-034585-34

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

e. End speculative leasing: require BLM to assess mineral development potential and prohibit leasing of low or no

potential lands.

As mentioned above, the current system allows land to be offered for leasing regardless of its development potential or the presence of higher and better uses, like wildlife conservation, outdoor recreation, or watershed protection. This has resulted in millions of acres of public lands with low or no potential being leased for development. Furthermore, this practice generates little income to taxpayers and imposes significant fiscal, administrative, and opportunity costs when public lands are no longer managed to enhance other important uses like conservation and recreation. BLM has the authority and the duty to update its policies regarding leasing on low potential lands.

RECOMMENDATIONS:

- Issue guidance to close low and no potential lands to leasing in land use plans and not to include them in lease sales.
- Amend 43 C.F.R. § 3120.1-1 to prohibit leasing in lands identified in applicable land use plans as having low or no potential for development. To the extent that the applicable land use plan has not identified the development potential of nominated lands, preclude leasing in those lands until that plan is amended and includes this information.
- Support passage of Senator Cortez-Masto's End Speculative Oil and Gas Leasing Act (S. 607), which would end the practice of leasing low potential lands by requiring the BLM to assess all lands' mineral development potential before offering those lands for lease and prohibiting leasing on any lands found to have low or no development potential.

Comment Number: BOEM-EMAIL-32521-034585-43

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14 1.2

Comment Excerpt Text:

Curbing methane emissions is a key component to achieving net zero emissions and combating the deleterious effects of climate change. We strongly urge BLM to support Rep. DeGette's Methane Waste Prevention Act of 2021, [Footnote 99: H.R. 1492, 117th Cong. (2021), available at: <https://www.congress.gov/bill/117th-congress/house-bill/1492?q=%7B%22search%22%3A%5B%22H.R.+1492%22%5D%7D&s=1&r=1.>] and defend its 2016 Waste Prevention Rule, [Footnote 100: 81 Fed. Reg. 83,008 (Nov. 18, 2016),] currently on appeal in the Tenth Circuit Court of Appeals. [Footnote 101: Wyoming v. Department of Interior, No. 2:16-cv-00285-SWS (D. Wyo. Oct. 8, 2020), appealed Dec. 21, 2020, Wyoming v. U.S. Dep't of the Interior, Nos. 20-8072 & 20-8073 (10th Cir.)] The Rule limits the amount of publicly owned natural gas that is wasted through venting, flaring, or leaking. Though aimed at preventing waste, the Rule would have substantial and immediate climate and public health benefits.

RECOMMENDATIONS:

- Defend the 2016 Waste Prevention Rule on appeal and immediately implement the Rule if it is upheld. Swift implementation of the Rule would ensure substantial and critical near-term reductions in methane waste.

- Support Representative DeGette's Methane Waste Prevention Act of 2021 (H.R. 1492). This legislation led by Rep. DeGette, would codify long-overdue, widely agreed upon, common-sense standards to reign in excessive waste of vented and flared gas on public lands. By curbing unnecessary venting, flaring, and leaks at oil and gas facilities, this bill will help protect public health, reduce potent greenhouse gas emissions, and recoup millions of dollars owed to the American taxpayers.

Comment Number: BOEM-EMAIL-32521-035527-13

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Some of the problems with the current regime and the potential solutions were made evident in the wake of the Deepwater Horizon tragedy. Though some progress has been made by the Department of the Interior and industry, Congress has taken no action to address the shortcomings of OCSLA and related legislation.

Congress should take action to improve the management of offshore oil and gas activities. The list below has been compiled from recommendations made by the National Commission on the Deepwater Horizon and Offshore Drilling, legislation that has been introduced but never passed, and legal/scientific scholarship. The concepts for reform tier to the existing structure of OCSLA and are grouped according to the manner in which they would affect that process: general/structural, planning/leasing, exploration/development, and response/liability. Some of the proposed revisions listed below would require amendments to the Oil Pollution Act of 1990 (OPA 90); others would require small changes to the Clean Water Act or tax laws.

General/Structural

There are some fundamental problems with the current management regime, including its priority for development over sustainable management, lack of direction/opportunity for research and preparedness, and failure to require consideration of climate change impacts and the need to transition to renewable energy. Some of these challenges could be addressed through the following changes:

- Establish protection, maintenance, and restoration of coastal and ocean ecosystems as the paramount OCS policy objective and specify that extraction of mineral resources should be permitted only when consistent with that priority.

- Use some portion of the revenue generated from leasing and production to create a trust that would fund ocean research, monitoring and observing. This work could be used to facilitate planning, establish baselines, and promote protection, restoration and resilience of coastal and Great Lakes ecosystems.

- Require the Department of the Interior to consider the climate change impacts of decisions, including the cost of CO2 emissions from both authorized activities and downstream activities (e.g., burning extracted oil and gas).

- Require a full review—akin to the one started under the Obama administration for the coal leasing program—of the costs and benefits of the existing offshore oil and gas program. Such a review should include (among other things) climate change impacts, effects on the energy market, and impacts to the ocean.

- Codify the divisions of MMS into BOEM, BSEE and ONRR.

- Codify the requirement the four stages of OCSLA are a one-way ratchet, such that areas excluded in a preceding phase may not be considered in later stages.

-Strengthen and clarify National Environmental Policy Act (NEPA) practices in the OCS context, including ensuring appropriate use of tiering (reliance on previous NEPA analyses) and categorical exclusions (a way of bypassing NEPA analysis for actions that do not have significant impacts) and clarification of NEPA requirements for each stage of the OCSLA process (including explaining that an Environmental Impact Statement may be necessary at all four stages of the process).

-Amend the provision describing allowable uses of the Oil Spill Liability Trust Fund (OSLTF) to explicitly allow for OSLTF monies to be used for spill preparedness, including scientific research, monitoring and observing;

-increase funding for Coast Guard operations; and

-add NOAA to the list of agencies eligible to receive funding from OSTLF.

-Reinstitute the per-barrel tax at 10 cents per barrel with no sunset provision.

Comment Number: BOEM-EMAIL-32521-036336-4

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

We urge the issuance of a Secretarial Order that places a moratorium on offering oil and gas leases on lands classified as low or no potential and to initiate rulemaking that will establish this policy in regulation. Additionally, we note that Senator Cortez Masto (D-NV) has reintroduced the End Speculative Oil and Gas Leasing Act of 2021, legislation that would revise the Mineral Leasing Act to prohibit leasing “if the Federal land is designated in the applicable reasonably foreseeable development scenario as having low or no potential for development of oil or gas resources.” Enacting the suggested moratorium on leasing in low and no potential areas would maintain the status quo while this legislation advances through the legislative process.

Comment Number: BOEM-EMAIL-32521-036336-6

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Support legislative efforts to modernize oil and gas policies.

On March 9, 2021, the House Natural Resources Subcommittee on Energy and Mineral Resources held a hearing on five oil and gas reform bills (H.R. 1492, H.R. 1503, H.R. 1505, H.R. 1506, H.R. 1517), documenting the crucial need for legislation to protect taxpayers and better balance energy development with environmental stewardship. Additionally, Senators Grassley (R-IA) and Rosen (D-NV) have introduced the bipartisan Fair Returns for Public Lands Act (S.624), companion legislation to H.R. 1517. We urge the Administration to support these efforts, as well as the aforementioned End Speculative Oil and Gas Leasing Act, and seek every opportunity to enact these legislative proposals into law.

Enact legislation that will prevent energy development on sensitive public lands.

Two notable pieces of legislation have been introduced in the 117th Congress that would prohibit oil and gas leasing on some of the more important fish and wildlife habitat in the West. The bicameral Colorado Outdoor Recreation & Economy (CORE) Act (S. 173, H.R. 577), sponsored by Senator Bennet (D-CO) and Representative Neguse (D-CO), would protect over 400,000 acres of public land in Colorado, including the Thompson Divide, National Forest system lands that are home to native trout and robust herds of mule deer and elk. Similarly, the Ruby Mountains Protect Act (S. 609) would prevent oil and gas leasing on over 450,000 acres of the Humboldt-Toiyabe National Forest in Nevada, stunning public lands that are referred to as the “Swiss Alps of Nevada.” Protecting irreplaceable landscapes such as these should be central to the Administration’s energy strategy.

Comment Number: BOEM-EMAIL-32521-036534-6

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

There is legislation introduced in this congress and last - including Senator Bennet’s S. 4642, Oil and Gas Bonding Reform and Orphaned Well Remediation Act of 2020; Representative Lowenthal’s H.R. 1505 Bonding Reform and Taxpayer Protection Act of 2021; and Representative Leger Fernandez’s H.R. 2415 Orphan Well Clean up and Jobs Act of 2021 - which increase bonding rates, provide funds to reclaim orphan wells on federal, state, private and tribal lands, and in some cases, legislate idle well fees for those wells not producing but that are not being remediated. While HAF strongly supports this legislation,[Hyperlinked: <http://www.hispanicaccess.org/images/docs/PolicyRecommendations2021.pdf>] the Department of the Interior should not wait for congressional action. The BLM has the authority today to increase bonding rates, and push for greater reclamation on these sites.

Comment Number: BOEM-EMAIL-32521-037427-2

Organization: Public Land Solutions

Commenter: Jason Keith

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 14

Comment Excerpt Text:

1. Speculative Oil and Gas Leasing of Low Potential Lands Threatens Economic Growth in the American West

Multiple use practices on public lands must be balanced, and the needs of western communities, which are increasingly dependent on outdoor recreation and non-extractive activities for economic growth, need an update of our country’s oil and gas leasing laws. It is time to update our oil and gas laws and eliminate oil and gas leasing of public lands with low and no development potential, allowing those areas to better serve nearby communities and residents through the high quality of life that comes with proximity to lands in their natural state.

Currently, 90 percent of the more than 200 million acres of public lands managed by the Bureau of Land Management remain available for leasing. Only about 10 percent of BLM lands are officially protected from leasing via specific conservation designations. The failure to update the Mineral Leasing Act of 1920—and related rules and policies—will lead to more speculative leasing, which casts a growing shadow over nearby public lands and discourages recreation investments. This dynamic will stunt growth and leave communities with increasingly diminished chances for capturing the full benefits of a developing outdoor economy.

To date, less than half of the 26.6 million acres of public lands leased to the oil and gas industry is currently in production—so there are already millions of acres under lease and available now for oil and gas development. Indeed, several thousand approved drilling permits remain unused. In addition, there is a significant opportunity cost to the BLM when it comes to managing these low and no potential leases; many places seeking to improve their recreation assets on BLM lands need recreation staffers and planners to help them execute locally supported plans. Yet, if the BLM is forced to use the bulk of its staff resources to lease low and no potential lands, other multiple uses get left behind, creating a lose/lose situation that could be corrected by updating the way we lease lands across the West.

Such an update to our leasing system could be achieved through congressional action, like the bill End Speculative Oil & Gas Leasing Act of 2020 which would largely end the leasing of low and no potential lands. An leasing update by the Interior Department could also mean instructing the BLM to fulfill its multiple-use mandate by providing staff and resources that can improve and manage recreation assets to meet the economic development and business recruitment goals of local communities. BLM already has clear authority to prohibit or limit leasing on lands with low or no drilling potential and should consider updating its leasing rules and policies to accomplish this goal.

Comment Number: BOEM-TRANS-32521-000025-1

Organization: Natural Resources Defense Council

Commenter: Sharon Buccino

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

[Question from DOI: There's a lot of legislation that is sort of rolling around right now, and in terms of addressing some of the issues that you have all raised for certain authorities for oil and gas permitting and leasing at the department. Could each of you tell us sort of one area that you think would be useful for us if we're going to do some partnering on legislation to address some of these issues?]

Well, I'll start, since I just finished. If I had to pick one, I would say it's bonding, but even more importantly, the reclamation piece. And I know you are only talking about oil and gas today, but I'm reminded in looking at the statute that Governor Perries coal leasing, we were only supposed to allow coal mining where reclamation was possible, and for both coal and oil and gas, we owe it to the communities where this activity has happened to do that reclamation, and it's also a source of technical and good jobs, so that would be what I would identify.

Section 16 - Executive Actions

Comment Number: BOEM-EMAIL-32521-020687-6

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Coastal Plain Leasing Program and lease sale was the result of a rushed and unlawful process that ignored science, cut out the public, and marginalized front-line communities. Exploration and development under that program threaten this iconic landscape. The swift completion of the review called for in E.O. 13990 is essential to correct these errors and ensure that we preserve the Coastal Plain for our children's children and to respect the

Alaska Native cultures that have depended on these lands for generations. We look forward to working with you to do so.

Comment Number: BOEM-EMAIL-32521-035316-2

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

As an initial matter, the scope of DOI's request for information by April 15 and intended "interim report" this summer is unclear. The comment period was not accompanied by any Federal Register notice, scoping document, or other guidance. While Section 204 of Executive Order 14008 speaks to a pause on new federal leasing pending a review of "oil and gas permitting and leasing practices," remarks at the March 25 forum covered a broader range of issues. In an abundance of caution, these comments also address this broader range of issues. However, API is concerned that this review could morph into a free-ranging and unmanageable process that continues interminably. DOI should be mindful of this as the review progresses and ensure that any identified changes are made using required rulemaking processes under the Administrative Procedure Act. Oil and gas activities should also be permitted to continue pending deliberations of the details of any such regulatory efforts.

Comment Number: BOEM-EMAIL-32521-035678-4

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Comment Excerpt Text:

One additional note on the recommendations presented here: they are based on the assumption that they can generally be accomplished in some manner by executive action. However, a legal review should occur to determine if this assumption is accurate in any given case. The recommendations are focused on executive action largely because the current oil and gas review and leasing pause were initiated by that means. Recommendations requiring action by Congress are generally not included here even though the goal of fiscally responsible management of fossil fuel resources can be advanced more thoroughly and durably by legislation. To the degree that the policy results described here either require or can be advanced more effectively by legislative action, such action should be pursued.

Comment Number: BOEM-EMAIL-32521-035678-5

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Other Sections: 8

Comment Excerpt Text:

B. Immediate Administrative Actions on Oil and Gas Valuation and Rates of Payment.

There are certain obvious and discrete deficiencies in current oil and gas practices that should be an immediate priority for correction. The prior Administration enacted amendments to the Office of Natural Resources Revenue (ONRR) 2016 Valuation Rule that gave an odd assortment of royalty revenue concessions to the oil and gas industry based on the false premise that they would fulfill the purposes of now-repealed Executive and Secretarial

Orders aimed at boosting production oil and gas production on federal lands. The process for adopting these changes to the 2016 Valuation Rule was rushed and deeply flawed. Further, these orders called for increasing fossil fuel production without due regard for impacts on climate change, public health, and multiple use management of federal lands. President Biden wisely revoked these prior orders because they were incompatible with new Executive Orders protecting public health and the environment and addressing climate change. Thus, the prior Administration's amendments to the 2016 Valuation Rule cannot stand and should be reversed.

For several years, numerous public and private reports have documented the Interior Department's failure to update royalty rates, minimum lease bid payments, and acreage rental rates that are set far below what is needed to achieve a market value return for the public. The result is that the America people and their states and communities are being enormously shortchanged. These rates need to be increased as soon as possible.

It is unwise and unnecessary to wait to the end of the oil and gas review process to take immediate action to correct these problems. Accordingly, Interior should undertake the following immediate actions:

1. Rescind the January 15, 2021, valuation rule amendments adopted at the last minute by former Administration because they were the product of an inadequate process and are entirely incompatible with the new Administration's policies on protecting the environment and addressing climate change.
2. Promptly increase, as a step toward fiscally responsible management of fossil fuel production, rates of payments that apply to oil and gas production as follows:

a. Raise onshore and offshore royalty rates to market rate levels for new leases and any other leases where rates are subject to modification. A good indicator of market rates for royalties are the rates that states charge for oil and gas production on state lands. The current median level of state royalty rates is 19.375% unweighted for production. If weighted for state production on state lands, the median rate would be even higher—most likely at or above 20%—because the highest royalty rates tend to occur in the states with the highest level of production, such as Texas and New Mexico. Interior should calculate a rolling three-year median of top state royalty rates weighted by production and use those results as a guide to adjusting federal royalty rates on a regular basis. This exercise would most likely result in a current increase in federal royalty rates to approximately 20% for new leases.

Interior should also adopt a rule establishing a periodic evaluation of royalty rates (perhaps every three to five years) that would include, but not be limited to, comparing federal royalty rates with production-weighted median of state rates and also private rates if available and estimating trends in the producer and owner share of the value of the minerals produced given changing technology. The rule would require Interior to adjust royalty rates for new leases in response to the analysis.

b. Raise minimum bids per acre for onshore fossil fuel leases to at least \$20 or as high as \$100 to focus production on the most productive resources and to discourage speculative leasing. Previous research by the Taxpayers for Common Sense, adjusted for inflation, supported setting minimum bids no lower than \$15 per acre. [Footnote 2: Taxpayers for Common Sense, "The Cost of Speculation in Federal Oil and Gas Leases," October 3, 2017. This author has made the inflation adjustment from the time period of the source data used by the Taxpayers for Common Sense in the report and is entirely responsible for any errors in doing so.] A new and more extensive report by the GAO presents data that supports setting minimum bids at \$100 per acre to discourage speculation and achieve well-targeted, efficient production and royalty revenues. [Footnote 3: U.S. General Accountability Office, "Oil and Gas: Onshore Competitive and Non-Competitive Lease Revenues," GAO-21-138, November 2020, at: <https://www.gao.gov/assets/gao-21-138.pdf>] Most significantly, the GAO report presents factual data showing that leases granted with bonus bids below \$20 but above \$2 were only marginally more productive than those issued at the \$2 minimum. Thus, this evidence casts serious doubt on setting any minimum bids at less than \$20 per acre. Further, the report also provides some support for setting the bids at or closer to \$100 per acre as

opposed to a lower number. Accordingly, \$20 to \$100 per acre are the acceptable bookends for new minimum bid levels in order to focus production on higher quality resources and reduce speculative leasing.

Whatever the new minimum bid level Interior adopts, it should adopt a rule providing for an annual adjustment in the minimum bid to reflect inflation, and that adjust bid level would apply to new leases issued after the adjustment.

c. Increase annual rental rates for leases to \$15 an acre or more as the initial base rate for oil and gas leases. It is often recommended that rental rates be structured over the life of a lease to encourage diligent development. Thus, a discount of the base rental rate, such as one-third, might be applied in the early years of a lease (e.g., the first three years), and the rate should be progressively and significantly increased over the last five years of a ten-year lease. That is a reasonable idea. However, an even better idea might be to offer the early period discount as a rebate to be paid as a rental credit in the fourth and fifth years of the lease provided that the lessee has completed certain exploration and preliminary development steps within the first three years. That would prevent a rental discount from being wasted on leases where no diligent development occurs. Also, a rather steep rise in rental rates in the final years of a lease is justified as a further incentive for development.

Again, Interior should adopt a rule requiring an annual adjustment to the acreage rental rates to reflect inflation. The rule could require that the inflation apply to all leases issued after the adoption of the inflation adjustment rule. That would include leases in effect after the original adoption of the rule as well as the new leases issued each year. That is just in maintaining the real economic value of the rents due the public during the life of all the affected leases.

Why should Interior adjust bid and acreage rental rates for inflation annually? Very simply, Interior has a regrettable history of failing to increase these various rates even though Congress has granted full authority to do so in response to changing economic conditions. As a result, Interior allows the real dollar amount of these rates to erode. Decades will go by without Interior using its authority to increase dollar rates for lease bids and rentals, thus effectively giving a hidden, but growing subsidy to producers in real terms over time. The \$2 per acre minimum bid set in 1987 is worth only about 86 cents today. Interior's failure to keep rates updated for inflation has forced Congress to intervene every several decades only to reset them to the same real economic level it had set decades before. Interior has a minimal duty to the American people to update dollar rates for inflation. Thus, Interior should maintain the real economic value of lease and rental payments and update these rates annually for inflation.

The percentage royalty rates also need to be updated regularly for changing technology and trends in payments to state government and private royalty owners. Producers are entitled to receive a share of the value of oil and gas produced that covers their costs of extraction plus a reasonable rate of return. The remaining share of the value is the economic rent due to the owners of the resource—in this case, the American people. As the technology of production improves over time, the percentage share of value due to producers decreases, and the share due to the owners increases. States and private parties have kept up with these changing trends, while the federal government has not done so. Hence, periodic reviews are needed to increase royalty rates to reflect the impact of any improved technology and reduced costs of production.

The recommendations above cover the immediate actions necessary to restore and update the traditional structure of payments made to the public for fossil fuel production on federal lands. Beyond these traditional forms of payments, additional financial measures are needed to address issues of environmental and public health damages and the value lost due to reductions in other beneficial uses of federal lands. The structure of these additional charges is described in Section D. Further, this entire financial structure and other policies for the management of fossil fuel production on federal lands should be developed and kept up to date through mechanisms of robust public participation. There is a vital and long overdue need for greater transparency and public engagement in Interior's decision-making. Thus, these recommendations turn next in Section C to the task of developing strong

institutional mechanisms through which Interior can welcome the public as its primary partner in decision-making concerning the fossil fuel production on federal lands.

Comment Number: BOEM-EMAIL-32521-036534-7

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 2

Comment Excerpt Text:

We were excited to see the President's FY2022 Budget Request include increased funding for reclamation and support for continued investments. These investments should also follow the promise made by the Biden campaign to provide at least 40% of funds to minority and socially disadvantaged communities - targeting these remediation funds in places like Farmington and Los Angeles to address the unequal impacts communities of color already face from development.

Section 17 - Other Impacts

Comment Number: BOEM-EMAIL-32521-023161-31

Organization: Western Organization of Resource Councils

Commenter: David Wieland

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Recommendation — Infrastructure Tracking:

In some instances, regulators do not record the locations of infrastructure associated with production. This has led to some high profile, dangerous incidents due to leaks from unknown oil and gas infrastructure near homes. Following a natural gas leak from a nearby pipeline that forced eight families in Arvin, CA to evacuate their homes for over eight months, California legislators directed agency officials to improve pipeline safety and mapping. [Footnote 95: California Legislative Information, AB 1420 text. Link: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1420] In April 2017, an explosion from a severed gas line in Firestone, CO killed two people and injured another. [Footnote 96: Colorado Public Radio, Colorado Announces \$18.25 Million Fine For 2017's Deadly Firestone Explosion. Link: <https://www.cpr.org/2020/03/12/colorado-firestone-explosion-fine-oil-and-gas-commission/>] In response to this disaster, state regulators began a multi-year process to improve safety [Footnote 97: The Denver Post, Hickenlooper signs order to release the locations of orphan wells, sets deadline to cap them. Link: <https://www.denverpost.com/2018/07/18/hickenlooper-executive-order-orphan-wells/>] and eventually enacted some of the most robust regulatory changes in the country.

Regulators should require information and reclamation plans for associated wellsite infrastructure (e.g., flowlines, surface equipment), as well as midstream infrastructure location and type.

State Policies on Mapping Pipelines:

The state policies discussed below highlight better current requirements for mapping pipelines, but these policies do not directly ensure that reclamation for all associated wellsite infrastructure is in place.

California established rules requiring that active, older pipelines near "sensitive areas" such as occupied buildings

must undergo mechanical integrity testing. [Footnote 98: CALIFORNIA CODE OF REGULATIONS, TITLE 14, CHAPTER 4. DEVELOPMENT, REGULATION, AND CONSERVATION OF OIL AND GAS RESOURCES. Link: https://www.conservation.ca.gov/calgem/for_operators/Documents/Pipelines-Facilities/Requirements-for-Oil-and-Gas-Pipelines.pdf] Agency officials are currently developing new regulations to require operators to submit mapping data on active pipelines in sensitive areas (within 300 feet of an occupied building) on an annual basis. [Footnote 99: California Dept of Conservation, Gas Pipeline Mapping: Pipeline Information Data Design (draft), May 16, 2019. Link: https://www.conservation.ca.gov/calgem/for_operators/Documents/Pipelines-Facilities/2019-05-GPMS-Draft-Specifications.pdf]

Colorado regulators require operators to provide GIS data for all off-location flowlines, crude oil transfer lines, and produced water transfer systems. [Footnote 100: COGCC, Flowlines-GIS data. Link: https://cogcc.state.co.us/maps.html%23/gis_flowlines]

Comment Number: BOEM-EMAIL-32521-023551-4
Organization: State of Utah, Department of Agriculture and Food
Commenter: Redge Johnson
Commenter Type: State Governors and State Agencies
Classification: Substantive

Comment Excerpt Text:

Additionally, prolonged administrative restrictions could cripple the funding source for land and water conservation efforts and maintenance of Utah's national park facilities, which are directly tied to oil and gas revenues thanks to the passage of the Great American Outdoors Act. [Footnote 12: Great American Outdoors Act, <https://www.nps.gov/subjects/legal/great-american-outdoors-act.htm>] As of 2019, national park units in Utah need \$225.2 million to address deferred maintenance. [Footnote 13; The Pew Charitable Trusts. Accessed on March 15, 2021. <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2018/national-park-deferred-maintenance-needs?year=2019&state=utah&park=>] Additionally, BLM offices across the state have eleven projects planned this year that are also tied to national oil and gas royalties. [Footnote 14: Great American Outdoors Act (GAOA) FY21 Project List. <https://www.doi.gov/sites/doi.gov/files/doi-fy21-gaoa-dm-projects.pdf>]

Comment Number: BOEM-EMAIL-32521-028864-6
Organization: Powder River Basin Resource Council
Commenter: Shannon Anderson
Commenter Type: Non-Energy Industry and Associations
Classification: Substantive

Comment Excerpt Text:

The Need for Public Health & Safety Protection

DOI must for the first time effectively prioritize public health and safety protection. Importantly, the agency should work with EPA to update air quality standards, improve air quality modeling and monitoring, and minimize venting and flaring at federal oil and gas wells.

BLM should also consistently enforce compliance with the quarter-mile setback from homes contained within Lease Notice #1. BLM must clarify that this federal setback trumps any smaller state setback requirements.

BLM's quarter-mile setback is more consistent with the scientific research studying health and safety impacts of wells located too close to where people live and work.

Comment Number: BOEM-EMAIL-32521-032355-18

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

2. Adopt regulations banning or substantially restricting hydraulic fracturing on all new leases to protect groundwater and surface resources. New restrictions are particularly warranted given that BLM lacks regulations suitable for operations on modern hydraulically fractured wells. When it adopted its 2015 hydraulic fracturing rule, BLM recognized that the agency's existing 1980s-era regulations were inadequate and that additional measures were necessary to comply with BLM's statutory duties as a federal land manager. [Footnote 60: BLM stated that the requirements of the 2015 rule were "necessary to enable the BLM to meet its statutory obligations" under the Mineral Leasing Act, to "prevent unnecessary or undue degradation" under FLPMA, and to "manage public lands using the principles of multiple use and sustained yield" as required by FLPMA. U.S. Bureau of Land Mgmt., Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16,128, 16,154 (Mar. 26, 2015); see also U.S. Bureau of Land Mgmt., Environmental Assessment for BLM Hydraulic Fracturing Rule (2015) at 4–5.] The 2015 rule, however, never took effect due to litigation by industry trade associations and certain states. [Footnote 61: See U.S. Bureau of Land Mgmt., Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule, 82 Fed. Reg. 61,924, 61,925 (Dec. 29, 2017) (summarizing history of litigation).] As a result, BLM is operating under decades-old regulations it has acknowledged do not satisfy the MLA or FLPMA.

In particular, filings related to the 2015 hydraulic fracturing rule, and subsequent litigation, strongly suggest there is widespread noncompliance with the requirement in Onshore Order No. 2 that operators must construct wells to isolate and protect all groundwater meeting the definition of usable water. See *WildEarth Guardians v. BLM*, 457 F. Supp. 3d 880 (D. Mont. 2020); Sept. 25, 2017 Western Energy Alliance and IPAA comments on proposed rescission of 2015 hydraulic fracturing rule at 83-84 (estimating that compliance with existing requirement would cost operators \$173 million per year for additional well casings). BLM should take steps to require that all usable waters— regardless of depth—be identified and isolated during well construction before further drilling operations are permitted.

3. In addition, new requirements for the management and disposal of produced water should be adopted. Produced water represents an enormous waste stream that is not well understood or managed. [Footnote 62: U.S. Env'tl. Prot. Agency, Management of Exploration, Development and Production Wastes: Factors Informing a Decision on the Need for Regulatory Action, at 5-29–5-30 (Apr. 2019), https://www.epa.gov/sites/production/files/2019-04/documents/management_of_exploration_development_and_production_wastes_4-23-19.pdf; U.S. Env'tl. Prot. Agency, Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States, at 7-1–7-44 (2016), <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>.]

Comment Number: BOEM-EMAIL-32521-032355-21

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

THE COMPREHENSIVE REVIEW MUST ADDRESS THE COAL PROGRAM.

A. The Interior Department’s Federal Fossil Fuel Strategy Must Adopt Near-Term and Long-Term Measures to Address the Climate and Non-Climate Impacts of Federal Coal.

The Department’s efforts to reform its policy on fossil fuel production on federal public lands must include both immediate and long-term action to address federal coal production if the Biden administration is to meet its commitment “to avoid the most catastrophic impacts of [the climate] crisis.” [Footnote 63: Exec. Order 14008] In kicking off its comprehensive review of fossil fuel leasing, the Department recognized that “[f]ossil fuel extraction on public lands accounts for nearly a quarter of all U.S. greenhouse gas emissions.” [Footnote 64: U.S. Dept. of Interior, Fact Sheet: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future (Jan. 27, 2021), <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands> (citing USGS 2018, *supra* note 8).] A substantial portion of these emissions—greater than 10 percent of all U.S. greenhouse gas emissions as of 2014—stem from the mining and burning of federal coal. [Footnote 65: BLM 2017 Coal Report, *supra* note 20, at 5-31.] Although coal production from federal lands has declined in recent years, coal remains a significant share of U.S. fossil fuel production and energy generation and is projected to increase in coming years. [Footnote 66: U.S. Energy Info. Admin., Fossil Fuel Production Expected to Increase Through 2022 But Remain below 2019 Peak (Jan. 15, 2021), <https://www.eia.gov/todayinenergy/detail.php?id=46496> (noting that “increases in natural gas prices are expected to reduce natural gas consumption for electricity generation, which will result in an increased share for coal . . . in the electricity generation mix”)] Thus, any failure to address federal coal production would allow the continuation of significant greenhouse gas emissions from federal public lands. Moreover, the interdependence of market forces affecting coal and natural gas for electricity generation requires the Department’s attention to both fuel types to realize the full climate benefit from reforms. [Footnote 67: *Id.*; see also BLM 2017 Coal Report, *supra* note 20, at 5-18 (“The availability and the price of natural gas is one of the single biggest drivers of US coal demand.”).]

The Department has already recognized the urgent imperative to address greenhouse gas emissions from federal coal development, but it has not ceased to issue new coal leases or otherwise enact needed reforms to the federal coal program. In January 2016, Interior Secretary Sally Jewell announced a pause on new coal leasing pending the completion of a programmatic environmental impact statement. [Footnote 68; U.S. Sec’y of Interior, Order No. 3338: Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016), <https://perma.cc/UVX4-YMBW>.] The Secretary directed BLM to consider reforms to the federal coal program to address, among other things, concerns that: 1) federal coal leases do not generate a fair return for American taxpayers; 2) federal coal leasing is inconsistent with needed greenhouse gas emissions reductions to meet our nation’s commitments under the Paris climate agreement; and 3) the current Federal coal leasing program may not adequately account for externalities related to Federal coal production, including environmental and social impacts.

As a first step in the comprehensive review ordered by Secretary Jewell, the Department and BLM in January 2017 issued a scoping report that identified a need for reforms to federal coal leasing. “This need is a part of the BLM’s stewardship role as a proprietor and sovereign regulator, which is charged by Congress with managing and overseeing mineral development on the public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the public lands; the protection of their scientific, historic, and environmental values; and compliance with applicable environmental laws.” [Footnote 69: BLM 2017 Coal Report, *supra* note 20, at 6-2.]

To this end, the scoping report concluded that the federal coal “program must ensure appropriate alignment with US climate goals and adequately reflect the impact of the program on climate change” and “reducing greenhouse

gas emissions from coal use worldwide is critical to addressing climate change.” [Footnote 70: Id. at 6-3-6-4] And further, “there is a need for program reform to better protect the nation’s other natural resources (e.g., air, water, and wildlife).” [Footnote 71: Id. at 6-4.] The Department determined that the pause on new coal leasing should remain in effect until such reforms could be studied to avoid “locking in for decades the future development of large quantities of coal under current rates and terms that the PEIS may ultimately determine to be less than optimal.” [Footnote 72: U.S. Sec’y of Interior, Order No. 3338, *supra* note 68.]

Despite the clearly identified the need to cease coal leasing pending consideration of measures to address the federal coal program’s climate, social, environmental and financial impacts, in March 2017, the Trump administration lifted the coal-leasing pause and ceased the Department’s review of the coal program. [Footnote 73: U.S. Sec’y of Interior, Order No. 3348: Concerning the Federal Coal Moratorium (March 29, 2017), https://www.doi.gov/sites/doi.gov/files/uploads/so_3348_coal_moratorium.pdf.] BLM subsequently issued numerous new leases, including a single lease for more than 30 million tons of federal coal in Utah for the Alton coal mine. [Footnote 74: U.S. Bureau of Land Mgmt., Lifting the Pause on the Issuance of New Federal Coal Leases for Thermal (Steam) Coal, Final Environmental Assessment, at 18 (Feb. 25, 2020) (Coal Pause Repeal EA), https://eplanning.blm.gov/public_projects/nepa/122429/20013717/250018737/Lifting_the_Pause_for_Coal_Final_EA.pdf.] BLM’s most recent lease sale was January 15, 2021—just five days before President Biden took office. [Footnote 75: U.S. Bureau of Land Mgmt., Press Release: BLM North Dakota Coal Lease Sale Jan. 15 (Jan. 4, 2021), <https://www.blm.gov/press-release/blm-north-dakota-coal-lease-sale-jan-15> (last visited Apr. 13, 2021).] Dozens of coal lease applications remain pending, representing tens of thousands of acres and more than a billion tons of coal. [Footnote 76: Coal Pause Repeal EA, *supra* note 74, at 9, 18-19] Thus, federal coal leasing remains a substantial threat to the progress needed to meet the extraordinary challenge posed by climate change, protect natural resources on federal public land, and make progress toward environmental justice. The Department and BLM must take near-term and long-term action to meet the Biden Administration’s commitments in each of these areas. [Footnote 77: Exec. Order No. 13990: Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>; see also EO 14008]

B. The Department Has Ready Tools to Make Significant Near-Term Progress Toward Reducing the Climate and Non-Climate Impacts of Federal Coal Production.

The Department and BLM have ready tools to reduce the negative impacts of federal coal production, with the target of phasing out federal coal production altogether as necessary to avert the most catastrophic impacts of climate change. As to the Department’s authority, the Department acknowledged in the Coal PEIS Scoping Report that “[t]he Secretary of the Interior is authorized to lease coal as she finds ‘appropriate and in the public interest.’ [30 U.S.C. § 201(a)(1)]. Consideration of the implications of Federal coal leasing for climate change, as an extensively documented threat to the health and welfare of the American people, falls squarely within the factors to be considered in determining the public interest.” [Footnote 78: BLM 2017 Coal Report, *supra* note 20, at ES-2.] As for the appropriate exercise of that authority to address climate change and other environmental and socioeconomic impacts from coal production, the Department has solicited public input and identified numerous tools, [Footnote 79: Id. at 6-2-6-32] including ending new federal coal leasing. [Footnote 80: Id. at 6-32]

The Department can and should take actions in the near term to reduce the climate change impacts of federal coal production at the same time it studies longer-term measures to eliminate those impacts. We urge the Department to take the following immediate actions that do not require study in a comprehensive review:

1. Pause new leasing. As an immediate first step, the Secretary should rescind Secretarial Order 3348 that ended the coal-lease pause, thereby reinstating Secretary Jewell’s pause embodied in Secretarial Order 3338. This would prevent BLM from issuing major new leases or lease modifications while the Department prepares to enact a new

moratorium that includes essential additional protections. However, in reinstating the coal leasing pause, the Department should eliminate all exceptions in Section 6 of Secretary Jewell’s order, and thereby preclude emergency leasing, 43 C.F.R. § 3425.1-4, and leases for which a record of decision previously issued but was vacated by a federal court.

2. Cancel unlawfully issued existing leases. The Department should cancel existing coal leases that federal courts have remanded to BLM based on inadequate NEPA compliance. See 43 C.F.R. § 3108.3(d) (leases may be cancelled if “improperly issued”). These include recently remanded leases for the Alton coal mine in Utah and the Spring Creek coal mine in Montana, see *Utah Physicians for a Healthy Env’t v. BLM*, No. 2:19-cv- 00256-DBB, 2021 WL 1140247, at *1 (D. Utah Mar. 24, 2021) (Alton mine); *WildEarth Guardians v. Bernhardt*, No. 17-cv-00080-BLG-SPW, 2021 WL 363955, at *12–13 (D. Mont. Feb. 3, 2021) (Spring Creek mine), as well as all leases for which a federal court may in the future find BLM’s NEPA review to have been unlawful.

3. Deny royalty rate reductions. The Department should immediately deny or suspend action on applications for royalty rate reductions. [Footnote 81: See U.S. Bureau of Land Mgmt., *BLM Wyoming Previously Granted and Pending Royalty Rate Reduction (RRR) Applications* (revised Oct. 27, 2020), https://www.blm.gov/sites/blm.gov/files/BLM%20Wyoming%20Previously%20Granted%20and%20Pending%20RRR%20Applications_Revised%2010-27-20.pdf (last visited Apr. 13, 2021).] Although the Secretary is authorized to grant such reductions “for the purpose of encouraging the greatest ultimate recovery of coal,” the statute specifically allows the Secretary to exercise his or her judgment to determine whether such reductions are “necessary ... in order to promote development.” 30 U.S.C. § 209. Because “promot[ing]” federal coal development would be inconsistent with national climate commitments, no new royalty rate reductions should be granted.

4. Revise royalty rates to address climate externalities for leases subject to renewal.

The Department’s Office of Natural Resources Revenue (ONRR) should immediately proceed with rulemaking to rescind the 2020 regulations for the valuation of federal coal, oil and gas royalties. [Footnote 82: ONRR, *ONRR 2020 Valuation Reform and Civil Penalty Rule*, 86 Fed. Reg. 4,612 (Jan. 15, 2021).] In this rulemaking, ONRR should adopt valuation methodologies that appropriately incorporate into royalty rates the social cost of carbon and social cost of methane, which were recently republished by the federal government’s Interagency Working Group on Social Cost of Greenhouse Gases (IWG) and will be updated in January 2022. [Footnote 83: IWG, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates under Executive Order 13990* (Feb. 2021), https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.] The updated royalties would apply to existing federal coal leases at the time such leases are renewed. [Footnote 84: 30 U.S.C. § 207(a) (providing that “rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended”); see also BLM 2017 Coal Report, *supra* note 20, at ES-8 (noting that a “royalty adder to account for carbon-based environmental and societal costs of coal production and use” would be phased in over time through application to new leases and renewed leases).]

5. Include appropriate stipulations in renewed leases to alleviate burdens on coal communities and workers. Dozens of federal coal leases are coming to the end of their primary 20-year term between 2021 and 2025, including leases at almost every large coal mine in the Powder River Basin. At the end of such term, “rentals and royalties and other terms and conditions of the lease will be subject to readjustment.” [Footnote 85: BLM needs only to provide a one-page “Notice of Intent to Readjust the Lease” before the 20-year anniversary date of the lease; the lease readjustment process—including notice of the proposed new terms and conditions—may extend beyond the anniversary date. See *W. Fuels-Utah, Inc. v. Lujan*, 895 F.2d 780, 783 (D.C. Cir. 1990).] 30 U.S.C. § 207(a). In addition to including adjusted royalty rates in renewed leases, as discussed above, BLM should revise other terms and conditions of the lease to protect coal communities and workers. First, BLM should condition

lease renewals on compliance with the requirement in the Surface Mine Control and Reclamation Act (SMCRA) “to reclaim surface areas as contemporaneously as possible with the surface coal mining operations.” 30 U.S.C. § 1202(e). As the Western Organization of Resource Councils (WORC) has documented, 37 percent of all area mined for coal since 1977 remains unreclaimed. [Footnote 86: WORC, Planning for Coal’s Decline: The Need to Prioritize Coal Mine Reclamation in the Western United States, at 11 (Jan. 2020), http://www.worc.org/media/WORC_Report_Planning_For_Coals_Decline-web.pdf.] While unmet reclamation obligations blight coal communities, appropriate reclamation creates jobs that can mitigate the impact of layoffs from mine closures and reduced production. [Footnote 87: *Id.* at 6] Second, BLM should evaluate whether worker protections, such as re- training programs and security for pensions, may be added to existing leases at the time of readjustment to ameliorate the impact of job losses from coal mine declines and closures.

C. The Department Must Include Federal Coal in Its Comprehensive Fossil Fuel Review and Long-Term Strategy.

In addition to the immediate actions outlined above, the Department should incorporate federal coal leasing and production into its comprehensive fossil fuel review and long-term strategy. Indeed, as noted above, the Department has already identified the need for a comprehensive review of the federal coal program. As stated in the Coal PEIS Scoping Report:

The last time the Federal coal program received a comprehensive review was in the mid-1980’s, and most of the existing regulations which were promulgated in the late 1970’s, have been only slightly modified since that time. Further, the direct, indirect, and cumulative impacts of the Federal coal program have not been fully analyzed under NEPA in over 30 years. As described in Secretarial Order 3338, this has led to calls from a variety of stakeholders, including the GAO, OIG, members of Congress, interested stakeholders, and the public for review of many facets of the Federal coal program. [Footnote 88: BLM 2017 Coal Report, *supra* note 20, at 6-1–6-2]

The need to comprehensively analyze the impacts of and necessity for federal coal leasing remains. Moreover, because the market for federal coal is interdependent with the market for gas for electricity generation (i.e., any reduction in the use of one fuel would likely increase use of the other), it would be nonsensical to evaluate the impacts of these fossil fuels separately.

Comment Number: BOEM-EMAIL-32521-035527-16

Organization: Ocean Conservancy

Commenter: Andrew Hartsig

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Response/Liability

The Deepwater Horizon was the first big spill to occur under the OPA 90 regime put in place after the Exxon Valdez disaster. The spill made apparent some very significant problems. To address them, the following steps could be taken:

-Increase or eliminate the \$75 million limit on damages for oil spills and consider higher liability limits for frontier areas and increased penalties for damage or loss of National Wildlife Refuge assets.

-Impose greater financial responsibility requirements, including insurance requirements, for OCS operations and facilities.

-Mandate public review and comment on oil spill response plans and ensure that oil spill response plans are

available to the public after they are approved.

- Create substantive spill response requirements for offshore oil and gas operations that include:
 - proven response capacity under real-world conditions;
 - preparation of a response gap analysis;
 - realistic assessment of recovery and remediation; and
 - planning for a worst-case discharge (very large oil spill).
- Direct a comprehensive evaluation of oil spill risks and response capacity, including response gaps and the efficacy and other impacts of existing methods like in situ burning and dispersants.
- Clarify that BSEE has the authority to disapprove inadequate spill response plans and that the agency may evaluate alternative response mechanisms and the efficacy of proposed response requirements (this would address the problem made apparent by a Ninth Circuit holding that the existing requirements are a mere checklist and that the agency lacks discretion to examine the proposed plan or options to it).
- Establish Arctic-specific standards (akin to those in place for exploration) to ensure that companies address unique challenges of operating in the Arctic.
- Amend the National Contingency Plan to provide for more opportunities for state and local input.
- Require public review of preliminary assessments, injury assessments and restoration planning funded through the Natural Resource Damage Assessment process.
- Eliminate (or raise significantly) the cap on one-time, per-incident payouts under OSLTF.

Comment Number: BOEM-EMAIL-32521-036313-9

Organization: Independent Petroleum Association of New Mexico

Commenter: Jim Winchester

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Increased Delays

IPANM members believe an additional, significant problem will be the certain, future, federal government delays that will be forthcoming to all aspects of the oil & natural gas regulatory structure. As already demonstrated by the Biden administration's recent March 19th DOI directive, the authority to review and approve specific permits now rests in Washington, D.C., away from the local, regional BLM offices. This policy will continue to introduce uncertainty and delays for companies involved in the development of existing federal leases. There are already backlogs and delays in the approval process for APD's, sundries and rights of way. Thus, the March 19th DOI directive only exasperates the situation. In short, federal submittals will continue to face delays due to the bureaucratic paper (or email) shuffle. Instead, DOI should be working to provide adequate staffing in the local BLM offices, and give those local officers the authority to address the backlogs which currently exist.

These delays, and the inevitable federal fee increases, will disproportionately hit smaller operators hardest, whereby fewer staff exist to handle the associated work hour increases to properly submit, monitor, and protest consequential operational decisions.

For those operators who wish not to endure the federal bureaucracy in New Mexico, the decision is simple: produce oil & natural gas elsewhere, out of state and off federal lands. For Southeast New Mexico operators, that will exacerbate the one-way flow of jobs and equipment out of New Mexico to the less costly private acreage in the Texas Permian.

Comment Number: BOEM-EMAIL-32521-036336-9

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

In most of the United States, neither State nor Federal agencies are providing information on violations by oil and gas operators in a transparent, easily accessible, or comprehensive way. Reporting on violations provides an important indicator of how well companies are managing environmental risks. We recommend a centralized spill database that is searchable with the ability to sign up for incident notifications. There should also be a requirement for companies to notify landowners, State, local and Tribal governments and businesses when incidents occur on or near their property or water resources. Permit applications and federal lease nominations should be automatically rejected from companies with a pattern of noncompliance. Under current law, the BLM must deny leases to any operator who is out of compliance with reclamation requirements, but this is not mandatory for other types of violations.

Comment Number: BOEM-EMAIL-32521-036937-11

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Interior Can Highlight Option Value as a Benefit of Any Leasing Curtailment

Option value is the informational value of delaying a decision. The value associated with the option to delay can be large in light of the uncertainty and near-irreversibility associated with leases for mineral development, especially when there is a high degree of uncertainty about price, extraction costs, and the social and environmental costs imposed by drilling. [Footnote 84: Michael Livermore, *Patience Is an Economic Virtue: Real Options, Natural Resources, and Offshore Oil*, 84 U. COLO. L. REV. 581, 589–614 (2013).] And courts have held that Interior must assess option value when considering mineral leasing. [Footnote 85: *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 610 (D.C. Cir. 2015) (recognizing that there is a “tangible present economic benefit to delaying the decision to drill for fossil fuels to preserve the opportunity to see what new technologies develop and what new information comes to light,” and explaining that this option value “can be quite substantial, especially for tracts that are only marginally profitable at current prices” and so yield little present economic benefit if leased now).] Yet while BOEM assessed option value in its most recent five-year plan, BLM does not account for option value at any stage (either regional planning or leasing).

More consistent and rigorous consideration of option value would help both BLM and BOEM to support any curtailment on leasing, along with policies such as raising rental fees that deter speculation. Both BLM and BOEM should build upon the analysis that BOEM has conducted in the past. For instance, while BOEM did consider option value with respect to environmental, social, and technological uncertainty in determining when to

schedule certain lease sales during the five-year assessment period, [Footnote 86: Bureau of Ocean Energy Management, 2017–2022 Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program 8-10 (2015) (deferring lease sales in the leases sales in the Beaufort and Chukchi Seas until later in the five-year OCS period due, in part, to an option value analysis). Lease sales in those regions were removed from the final program for unrelated reasons. Bureau of Ocean Energy Management, 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program S-2 to S-3 (2016).] it did not appear to include those option values as part of its determination of whether to schedule those lease sales to begin with since they did not factor into the “hurdle price” analysis. [Footnote 87: *Id.* at 10-6 (“BOEM does not quantify the quasi-option value of each of these uncertainties given difficulties in quantifying the informational value of delay and lack of well-established methods to quantify such considerations.”).] To the extent feasible, Interior should quantify option value using available economic tools. [Footnote 88: For further discussion of well-established methodologies that Interior can use to fully capture option value, see Institute for Policy Integrity, Comments on the Draft Proposed 2017-2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program App’x C (Mar. 30, 2015).]

But even if a quantitative analysis is not feasible, a strong qualitative analysis of option value can strongly support curtailing fossil-fuel leasing. Option value is particularly high when the decision involves irreversibility or a high degree of uncertainty. [Footnote 89: Office of Mgmt. & Budget, Circular A-4 at 39 (2003) (“The costs of being wrong may outweigh the benefits of a faster decision. This is true especially for cases with irreversible ... investments.”).] For fossil-fuel leasing, irreversibility is high because resource extraction (and the consequences flowing from it) is very difficult to prevent once a leasing decision is made. [Footnote 90: Livermore, *supra* note 83, at 593–94.] Uncertainty is also quite high, with various dimensions of uncertainty including effects on the environment (including climate change) and the pace of technological development. [Footnote 91; *Id.* at 605–14.] Accordingly, option value provides strong support for curtailing fossil-fuel leasing until further information is available. This is particularly true in environmentally sensitive regions like the Arctic, where uncertainty surrounding effects on species or oil-spill risk can be particularly high.

Comment Number: BOEM-EMAIL-32521-036937-6

Organization: Institute for Policy Integrity at New York University School of Law

Commenter: Max Sarinsky

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

Moreover, Interior should use the planning and leasing processes to facilitate renewable energy generation on public lands and waters. Federal lands and waters offer vast potential for renewable energy development: President Biden has called for the doubling of offshore wind energy generation by 2030, [Footnote 18: Exec. Order No. 14,008 § 207.] and many public lands are well suited to wind and solar development as well. To unleash this potential, both BLM and BOEM should identify areas with strong renewable potential and expand on the use of programmatic environmental impact statements to facilitate renewable development. As part of this assessment, Interior should evaluate the possibility of siting renewable-energy projects as a means to help revitalize communities that stand to suffer adverse localized effects from a reduction in fossil-fuel development. [Footnote 19: See, e.g., Nikki Springer & Alex Daue, Key Economic Benefits of Renewable Energy on Public Lands (2020) (highlighting economic benefits of renewable-energy generation on federal lands and potential for continued development).] Interior should also consider efforts to improve timely permitting of solar and wind development, including potentially revising its rule on competitive terms for leasing public lands for solar and wind energy. [Footnote 20: See Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections, 81 Fed. Reg. 92,122 (Dec. 19, 2016). Common criticisms of this rule include: a fee structure that may be too costly for renewables, especially as compared to fossil fuels; a capacity fee that may favor solar PV over wind energy without adequate justification; and a capacity fee that charges companies for the total capacity of the leasehold, not the amount of power actually

being generated]

Comment Number: BOEM-EMAIL-32521-037440-6

Organization:

Commenter: Dell Morgan

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

3. We object to the fact that the value of our entire ranch consisting of over 30 Sections (30 Square Miles) will suffer major monetary depreciated value by the additional roads, power lines, pad sites, tank batteries, drilling activities, well and pipeline maintenance, et al that future oil and gas activities would bring to this deeded land referenced above. A future sale of our ranch would severely lower the price that we would receive because of any ongoing or future possible oil and gas operations on the proposed leased mineral acreage. We protest the loss of monetary value of our property because of this lease sale.

Comment Number: BOEM-TRANS-32521-000040-2

Organization: Harte Research Institute for Gulf of Mexico Studies at Texas A&M University

Commenter: David Yoskowitz

Commenter Type: Universities/Colleges/Academia

Classification: Substantive

Comment Excerpt Text:

So is there a model or models for a path forward that considers the science of climate change, the impacts of policy and management decisions on the environment and economies and communities and can show success of implementation? I think there's two relevant examples for that in what we're discussing here today. The first is the extremely successful regional ocean partnership, the Gulf of Mexico alliance, as an example. It was established in 2004 by the Gulf state Governors in response to President Bush's ocean action plan. Significant and important partnerships with the federal agencies, industry, environmental NGOs, the success of the alliance has stemmed from the willingness to work together to address the most pressing issues around community resilience, marine debris, wildlife, fisheries, habitat management, just to name a few of those irons. The Gulf of Mexico alliance is not unique, though, there are other regional ocean partnerships such as the Northeast regional ocean council, west coastal lines. These partnerships provide the opportunity to address these important issues such as climate change and energy development in a holistic manner, built in, ready to go. My second example is a flower garden sanctuary. Cooperation between the same type of stakeholders that made the Gulf alliance and regional partnership so successful with energy development and commercial fishing activities surrounding sanctuary, it has flourished. Through its sanctuary advisory council agencies, industries, environmental NGOs and academia are at the table to do the heavy lifting, but also expansion, the model proved itself successful again when the sanctuary was recently expanded to almost three times its previous size. All of this is to highlight the positive impact that a thoughtful, inclusive process with all stakeholders can result in lasting and meaningful solutions to our most pressing environmental economic and social issues. It's not easy. It's very challenging. It can be very messy, but the payoff is just not to sustain but enhance the natural environment our communities and economies is significant. In close, I would encourage the Department of Interior and the larger federal family as it moves down the path to address climate change and the shared management of our environmental and natural resources to one, build even stronger relationships with the regional ocean partnerships and similar entities that can help chart and support a plan that is equitable, efficient and will last, and second, continue to invest, but at a greater rate in understanding the complex and integrated nature of our coasting communities, and our natural resources through the environmental studies program as an example

Section 18 - Additional Groups to Outreach/Coordinate

Comment Number: BOEM-EMAIL-32521-019934-2

Organization: OCS Governors Coalition

Commenter: Meg Bankston

Commenter Type: State Governors and State Agencies

Classification: Substantive

Comment Excerpt Text:

We would like to thank you for offering a virtual forum highlighting stakeholder discussions and input on the programmatic review. As governors who are directly affected by the federal oil and gas program, we encourage you to consider, in addition to stakeholder input, direct consultation with the affected governors. Those of us who live and work along the coasts have valuable insight and expertise on these critical environmental and economic issues.

The Outer Continental Shelf Lands Act (OCSLA) specifically calls for consultation with governors during the planning process. The importance of this consultation is clear. Having direct input in the review process is critical to serving our constituents and state economies.

While a long-term, globally-competitive plan for offshore energy development and environmental stewardship is being created, we ask that offshore leasing opportunities be allowed to continue. More specifically, we request that offshore oil and gas lease sales occur in 2021, and that efforts to properly develop our offshore resources move forward. The programs in place today ensure that the U.S. Gulf of Mexico production is the safest and most environmentally responsible – and lowest carbon – oil and gas development anywhere on Earth. Limiting the Gulf and Alaska operations would mean increasing development of energy in other countries, increasing emissions and worsening our global environment, all while making the U.S. less competitive and hindering the Administration’s goals of (re)building infrastructure, jobs and strong economic growth.

Every state is unique and there is no “one size fits all” solution for anything. As the Department formulates its interim report, we urge you to consult with the individual states to recognize our unique views and needs.

Comment Number: BOEM-EMAIL-32521-020685-4

Organization: Keystone Energy Board

Commenter: Mallory Huggins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

STAKEHOLDER ENGAGEMENT

Public lands are for everyone. All land management planning should consider and act upon the input of local communities and the broader public – this includes Indigenous populations and others who have historically been harmed by land conservation and development on lands. Those who stand to be most affected by public lands decisions must be able to provide input into and influence that decision.

Our recommendations:

- Define and clearly communicate the roles and decision-making power of stakeholders.

- Engage Black, Indigenous, and people of color leaders and organizations as decision makers, not just advisors.
- Ensure that scoping periods and other opportunities for engagement are announced outside the Federal Register, including in local news and radio announcements.
- Offer many different avenues for engagement, including through mail, email, web forums, phone, in person, video conferencing, etc.
- Ensure that engagement events – both online and in-person – are accessible and comfortable for participants by providing basic tools and services, including translation, interpretation, refreshments, child care, and ample time and opportunity for all participants to be heard.
- Incorporate the stakeholder engagement recommendations in President Obama’s Presidential Memorandum on Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters [Hyperlink: <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/presidential-memorandum-promoting-diversity-and-inclusion-our-national>].

SENSE OF URGENCY

The climate crisis and the consequences of inaction continue to have devastating impacts on our communities, economies, and ecosystems. We must take bold action now.

Our recommendations:

- Listen to the stories of communities and individuals who are already experiencing acute impacts from the climate crisis through adverse health impacts from environmental racism, pollution, visible changes to landscapes and weather patterns, and climate migration.
- Develop and implement a plan to track and reduce emissions from public lands, recognizing that the United States’ ability to meet its recommitment to the Paris Agreement will require us to leverage the climate mitigation and adaptation potential of our public lands.

Comment Number: BOEM-EMAIL-32521-020687-15

Organization: Alaska Wilderness League

Commenter: Kelsie Rudolph

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We encourage DOI to take steps in each of these processes to ensure transparent and inclusive public participation and to ground its decision making in both science and traditional knowledge. DOI should engage in meaningful, collaborative consultation with impacted Tribes that fulfills federal trust responsibilities and ensures Tribes are in leadership roles and have the resources necessary to aid in the protection and preservation of their lands and resources. Another overarching element of the review should be for DOI to use all available tools to address the economic impact to Arctic communities for a just and equitable transition away from fossil fuels.

Comment Number: BOEM-EMAIL-32521-021056-1
Organization: Business Alliance for Protecting the Pacific Coast
Commenter: Vipe Desai
Commenter Type: Non-Energy Industry and Associations
Classification: Substantive

Comment Excerpt Text:

We appreciate the Department of Interior's efforts to bring in a diverse set of voices at the March 25th forum to help inform the upcoming report on the nation's oil and gas leasing program, but we were disappointed that coastal businesses like ours were not invited to provide testimony. Our businesses are inextricably linked to clean beaches and a healthy ocean. As job creators, we understand that a robust and productive coastal economy is dependent on a clean and healthy ocean; simply put, the threats posed by new offshore drilling are business threats. The oil and gas leasing program on the Outer Continental Shelf has a direct impact on the thousands of business owners and hundreds of thousands of jobs that power our thriving coastal economy. Though we could not give our unique perspective, multiple speakers during the forum made it clear: offshore drilling is far too risky to bring to our coastal economies.

Comment Number: BOEM-EMAIL-32521-023161-1
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive
Other Sections: 5 8 6

Comment Excerpt Text:

WORC's members are all too familiar with the impacts of the federal oil and gas leasing program. The boom and bust production of these public resources has resulted in great wealth for a few, financial ruin for others, and irreparable environmental damage for all. As we prepare for what is likely to be the ultimate bust of this industry, the Department has a final opportunity to do justice to the communities and the ecosystems that have been most impacted by this program. As production declines, we specifically ask the department to prioritize:

1. Ensuring that the sale of public oil and gas accounts for the full cost of production, including the real cost of freshwater use, environmental impacts of waste streams, the contribution to the climate crisis, the disproportionate impact to low-income communities and people of color, particularly Indigenous people, and the complete plugging, reclamation and remediation of sites.
2. Working with the Administration to ensure continued dignified employment and opportunity for those who live in communities with oil and gas extraction.
3. Requiring a fair return on publicly owned resources while decoupling the ability of our state and counties to provide basic infrastructure and social services from federal royalties.
4. Leading an efficient yet open, inclusive, and transparent process for public participation and input including meaningful engagement with communities impacted by federal oil and gas leasing—allottees, split estate residents, tribal members, and other frontline communities.

Comment Number: BOEM-EMAIL-32521-023161-9
Organization: Western Organization of Resource Councils
Commenter: David Wieland
Commenter Type: Public Interest and Non-Governmental Organizations
Classification: Substantive

Comment Excerpt Text:

Strengthening the NEPA process and environmental review

Public participation in leasing decisions is required by NEPA and FLPMA. However, for many years, BLM provided few, if any, opportunities for public input prior to leasing. This stemmed from BLM's belief that leasing was a pre-development transaction that did not cause environmental impacts and, therefore, did not trigger the public participation (and other) requirements of NEPA.

We urge BLM to require multiple opportunities for meaningful public participation during the decision-making process for every oil and gas lease sale. In particular, BLM should post applications for permit to drill (APD) on eplanning or some other publicly accessible website and prior to approving an APD, allow for a public comment and or protest period.

Comment Number: BOEM-EMAIL-32521-023551-1

Organization: State of Utah, Department of Agriculture and Food

Commenter: Redge Johnson

Commenter Type: State Governors and State Agencies

Classification: Substantive

Comment Excerpt Text:

Meaningful coordination between State and Federal partners is critical for effective management of the oil and gas leasing program and must be included in your comprehensive review. Local needs and desires should be factored into the administration's handling of the Nation's oil and gas leasing program since local communities will be most directly affected by the associated socioeconomic and environmental impacts.

The virtual meeting held on March 25, 2021, was an important initial step in ensuring that federal planning efforts be coordinated with State and local planning efforts in accordance with law. [Footnote 3: 43 U.S.C. § 1701(a)(2).] Department of Interior remains bound by the Federal Land Policy and Management Act (FLPMA) to make decisions that are consistent with, to the maximum extent possible, State and County Resource Management Plans. [Footnote 4: 43 U.S.C. 1712(c)(9).] Additional meetings should be held to ensure that State, Tribal, and local governments and other stakeholders have had meaningful opportunities to engage with our federal partners.

If the goal of the virtual forum on March 25 was aimed at increasing shared understanding, the meeting should have engaged all affected stakeholders. Leaving out important stakeholders from the consultation and communication loop is counterproductive as it deepens divisiveness and impedes policy development. Interaction to increase shared understanding, when opinions differ, takes time and resources, yet the benefits of capturing the concerns and ideas of all affected stakeholders outweigh its costs, both from a social and environmental sense.

Department of Interior outreach to stakeholders on the federal oil and gas leasing program could promote collaboration, innovation, and fairness regarding oil and gas extraction on public lands. The State, as a good faith partner, wishes to make a contribution to finding a balanced solution including safeguarding Utah's public lands while maintaining reasonable access to essential natural resources. As you well know, opinions on oil and gas leasing on public lands are as diverse as Utah's magnificent landscapes. The State appreciates your heritage and personal experiences that inform your decision-making as Secretary. The State is concerned with safeguarding its natural resources, archeological artifacts, and cultural heritage for future generations, and brings valuable perspectives to this issue. Protection of sensitive environmental and archeological resources and reasonable mineral extraction are not mutually exclusive.

Comment Number: BOEM-EMAIL-32521-026571-2

Organization: Multiple Gulf Advocacy Organizations

Commenter: Dustin Renaud

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Ensure restoration, resilience, and recovery of the Gulf of Mexico environment and coast and the communities in the Gulf South. We call on you to create a process for public engagement with impacted communities in the Gulf South, including frontline communities, environmental organizations, and fisherfolk who are at the heart of the Gulf economy.

-Prioritize the restoration of coastal wetlands that provide shoreline protection from storms and have been destroyed by the oil industry; address the disproportionate burden of pollution that low-income and communities of color experience; and revive healthy food and fisheries in the region.

-Consult impacted frontline and Indigenous communities on how restoration and recovery funds from the Deepwater Horizon BP Disaster are being spent, and develop robust ecological and environmental justice criteria through a public process for how the remaining funds are disbursed.

-Create a Gulf of Mexico Resources Advisory Council to advise resource management for the Gulf Coast and its waters, including representatives from non-governmental environmental groups, Indigenous, fishing, and environmental justice interests.

-This process should be centered on protecting Gulf coast communities through climate adaptation and restore ecosystems damaged by the oil and gas industry, including from the BP Disaster, ongoing contamination of the waters through the release of fracking effluent into waters, and the land subsidence that is further exacerbated by oil extraction.

Comment Number: BOEM-EMAIL-32521-028864-7

Organization: Powder River Basin Resource Council

Commenter: Shannon Anderson

Commenter Type: Non-Energy Industry and Associations

Classification: Substantive

Comment Excerpt Text:

The Need for Landowner Notice & Consultation in Leasing & Development

DOI needs to treat surface landowners with property above federal oil and gas resources as a partner in its actions. The agency should engage and consult landowners in all stages of development through lease notices, consent of leasing, onsite inspections and analyses to determine well and infrastructure placement, and reclamation.

Comment Number: BOEM-EMAIL-32521-030652-2

Organization: National Parks Conservation Association

Commenter: Matthew Kirby

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 4

Comment Excerpt Text:

The natural and cultural resources that national parks protect do not stop at park borders. Rather, parks act as

anchors in interwoven cultural landscapes and ecosystems for wildlife, water, air, and people. As such, management decisions regarding lands outside of park boundaries can have far-ranging impacts on those resources that exist within the park. Where it comes to oil and gas development, the Department often has dual management authority over both the park resources as well as the oil and gas resources. The Department must elevate as a priority the protection of park resources over the multiple-use mandate to develop oil and gas resources. In some places, such as Chaco Culture National Historical Park, this will mean permanently banning any new future oil and gas development on the surrounding landscape. The Department should determine which park landscapes qualify for a permanent moratorium as well as ensure that all other park landscapes have elevated study consideration required prior to leasing.

This task can be accomplished by an additional layer of needed analysis as well as requiring consent from the relevant park superintendent(s) before an oil and gas lease is offered within a specified landscape surrounding any national park unit. That analysis should include:

- Formal consultation with the applicable superintendent(s) regarding the impact of the proposed sale on natural, cultural, and historic resources; visitor use and enjoyment of park resources; and the cumulative impacts of the proposed sale on National Park Service resources
- Consideration of the effects of the proposed sale on wildlife migration corridors and habitat connectivity
- Consideration of the effects of the proposed sale on tourism and recreational opportunities on and off the applicable Park Service land and water, through consultation with affected recreational user groups
- A viewshed analysis with respect to all potential points of view within the affected Park Service land or water
- Consultation with relevant agencies to evaluate the direct, indirect, and cumulative impacts of development on the air quality, including visibility impairment, of affected Park Service land and water to ensure compliance with all applicable air quality requirements
- Consultation with relevant agencies to evaluate the impacts of development on water quality and groundwater resources, including subterranean geologic resources which lend themselves to groundwater supply and ecological integrity of the park and surrounding landscapes
- Compliance with the applicable requirements of section 306108 of title 54, United States Code, taking into consideration the means by which the proposed sale may impact historic property, historic objects, traditional cultural properties, archaeological sites, or cultural landscapes
- Thorough tribal and traditional community consultation pursuant to Section 106 of the National Historic Preservation Act regarding Traditional Cultural Properties, sacred sites, and other traditional-use areas
- In any case in which an application for a permit to drill on affected BLM land is approved, the State Director or each State in which the affected BLM land is located shall ensure compliance with applicable BLM and NPS best management practices to reduce light pollution

The federal estate is put on a trajectory to phase oil and gas production out of its portfolio with an eye toward scientific integrity, socio-economic impacts, and climate action

Comment Number: BOEM-EMAIL-32521-032355-8

Organization: Earth Justice and Multiple Additional Public Advocacy Groups

Commenter: Tom Delehanty

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

The Interior Department Should Develop and Implement a Comprehensive Climate Strategy in Compliance with NEPA.

We support the development of a comprehensive strategy for bringing the federal oil and gas and coal programs into conformity with the Paris Agreement. That plan should include a carbon budget for total emissions from the programs, combined with binding and enforceable requirements to keep the government within that budget. Our recommendations for such a comprehensive strategy are described below.

To be effective, the strategy must include federal coal along with oil and gas. The U.S. Geological Survey reports that coal accounts for a large percentage of total greenhouse gas emissions associated with fossil fuels produced on federal lands. [Footnote 30: USGS 2018, *supra* note 8, at 7 Table 1.] Attempting to address federal oil and gas, but not coal, would require the Department to address climate with one hand tied behind its back and would not comply with FLPMA.

In developing new management directives, the Department should follow a transparent and public process, and must fully comply with NEPA. At the same time, the urgency of the climate crisis demands that Interior adopt and implement these measures as promptly as possible. In particular, many measures described below—such as steps to mitigate impacts from existing leases and rescission of certain decisions by the prior administration—should be taken quickly, and with NEPA analysis appropriate for those decisions. While other steps may require broader NEPA analyses that are regional or national in scope, the Department should dedicate the resources to comply with NEPA and adopt those measures as promptly as possible.

Comment Number: BOEM-EMAIL-32521-034585-5

Organization: The Wilderness Society (TWS)

Commenter: Alex Daue

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

- Ensure inclusive processes that fully engage and guarantee participation of Tribal Nations, the general public, environmental justice communities, communities financially dependent on fossil fuel development, and other stakeholders in decision-making concerning oil and gas development, including this comprehensive review.

Comment Number: BOEM-EMAIL-32521-035416-10

Organization: Center for Biological Diversity

Commenter: Miyoko Sakashita

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

7. The Secretary should consult with the National Marine Fisheries Service and Fish and Wildlife Service threatened and endangered species and their habitats.

Numerous species and habitats protected under the Endangered Species Act are affected by the national offshore oil and gas leasing program. Section 7(a)(2) of the Endangered Species Act requires federal agencies to “insure

that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species . . . determined . . . to be critical ” [Footnote 412: 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a)] To accomplish this goal, agencies must consult with the delegated agency of the Secretary of Commerce or Interior whenever their actions “may affect” a listed species. [Footnote 413: Id] We urge Interior to consult with the National Marine Fisheries Service and the Fish and Wildlife Service to guide an approach that conserves and promotes the recovery of threatened and endangered species.

Comment Number: BOEM-EMAIL-32521-035678-6

Organization: Public Revenues Consulting

Commenter: Dan Bucks

Commenter Type: Other

Classification: Substantive

Comment Excerpt Text:

C. Create a Full and Open Partnership with the American People to Manage Oil and Gas Production on Federal Lands in the Public Interest.

The most important means of ensuring that oil and gas production on federal lands serves the public interest is to bring the public into the decision-making process in meaningful and effective ways. The American people are the owners of these federal resources. Yet, the combination of excessive secrecy and the absence of adequate institutional mechanisms for public participation largely deny the public a voice proportionate to their ownership interest. The new Administration should act decisively to make the public full partners in the management of oil and gas resources on federal lands. The following are key measures in establishing this partnership with the public.

1. Provide the public—the owners of the oil and gas resources on federal land—a quarterly public report on a lease-by-lease basis listing the amount of oil and gas production, the value of that production and all lease bid payments, royalties and rents paid. The public has a right to know this information. The absence of this information is the greatest single barrier to public knowledge and engagement in decision-making regard oil and gas production on federal lands. Without this information, the public cannot participate in evaluating whether or not it is receiving the financial returns it should from the resources they own. The secrecy surrounding these matters should end. Providing this report would represent the first step in inviting the public to become partners with the Department of Interior on federal oil and gas issues.
2. Establish a “Full and Fair Return Public Interest Advisory Committee” to work with Interior on all issues of leasing and managing federal lands for fossil fuel production with the purpose of ensuring that the public interest is properly served. Membership on the Advisory Committee would be limited to experts and citizens who have no financial or other ties or affiliations with the producer industries. Interior should consult with this committee on all matters affecting the return the public receives from fossil fuel production on federal lands, including financial returns, protection from environmental and public health damages, and access to such lands for multiple and sustainable uses.
3. Working with the Advisory Committee, Interior should also establish a research program that allows academic researchers access to confidential fossil fuel leasing and production information to study relevant issues of public interest regarding the management of these resources. The study reports would be public documents, but the confidentiality of source information used for those reports would remain protected from disclosure. This program of academic research would be patterned after practices in the Treasury Department that allows academic researchers to access confidential taxpayer information to study issues of broad public interest.

4. As Professor Mark Squillace proposed in the public forum on the oil and gas program review, Interior should incorporate stipulations in federal oil and gas leases to specify measures that protect the public interest with regard to production activities. These stipulations would, for example, specify practices and procedures to protect the environment and prevent the loss of the use of the land for other purposes. In addition, these stipulations—because they are designed to protect the public—should be disclosed to the public along with any reports concerning compliance by producers with those stipulations. Opportunities should be provided to the public generally and through the Advisory Committee to comment on lease stipulation policies and practices.

5. Interior should review all its procedures to insert, wherever feasible, public participation opportunities—comment periods, hearings, working groups and other processes—into significant points of leasing and production decision-making. For example, proposed lease suspensions should be subject to public comment as a matter of agency rules. In any instance where there is doubt or ambiguity in the need for transparency or public participation, those matters should be resolved in favor of greater openness and participation.

2021 marks the beginning of a new century of Interior’s management of the nation’s vast and valuable public lands. It cannot be emphasized enough the degree to which Interior under this new Administration should seize the opportunity to direct a paradigm shift in public land decision-making to dramatically increase transparency and public participation. The past century of Interior’s management of public lands has too often trampled the public interest because of excessive secrecy, neglect, cozy relationships with producer interests, and even corruption. As the second century of Interior’s stewardship of public lands begins, the public should be brought in as a full, meaningful and effective partner into public lands decision-making. “Full, meaningful and effective partnership” means that public should have every opportunity to ensure that the public interest in a full and fair return from public lands, in a clean and healthy environment, and in sustainable uses of these lands for current and future generations prevails over any private interests seeking contrary results.

Comment Number: BOEM-EMAIL-32521-036336-7

Organization: Backcountry Hunters and Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

Commenter: Corey Fisher

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Bring more transparency to oil and gas leasing and development.

Detailed information about lands under existing lease, lease nominations, the location of split estate minerals and the applicability of federal lease stipulations to non-federal surface, leases under suspension, areas withdrawn or closed to leasing, and areas with major constraints on surface use is difficult for the public to find and analyze. This creates hurdles for the public, preventing meaningful productive engagement in federal mineral leasing and oil and gas development decisions for public lands.

To further daylight energy leasing and development practices on BLM administered minerals, and to make it easier for the public to engage in the leasing process, we encourage the BLM to develop and make publicly available standardized geospatial information about federal minerals, including the following information:

1. The location of split estate minerals.
2. Leases that are under suspension.

3. Areas with major constraints on surface use, such as no surface occupancy and controlled surface use.
4. Federal minerals withdrawn or closed to leasing.
5. Lease nominations.
6. Consistent parcel numbers that identify and track parcels throughout the scoping, environmental analysis and lease sales.

Additionally, we recommend creating an online transparency dashboard of oil and gas programs for each of the BLM state offices. The dashboard could contain specific GIS information and easily accessible maps regarding lease and unit locations co-identified with tenure and terms. The information should be presented in such a manner that someone without expertise in oil and gas policy can look, with a reasonable level of granularity, at current and proposed activities on federal lands. Individuals should be able to identify lands proposed for leasing, the current lease holder, when the lease was issued and will expire, stipulations contained in the lease, if/when the lease or unit is scheduled for development, and opportunities to engage in decision-making process, such as commenting on applications to drill (APD) and participating in on-site visits.

Lastly, we encourage the BLM to revoke and replace BLM IM 2014-004 (Oil and Gas Informal Expressions of Interest) with a new policy that requires companies and individuals who nominate public lands for leasing to identify themselves, as well as any parties who they represent.

Comment Number: BOEM-EMAIL-32521-036365-6

Organization: Wyoming County Commissioners Association

Commenter: Jim Wilcox

Commenter Type: Local Government

Classification: Substantive

Comment Excerpt Text:

a. NEPA requires the Department to follow a specific process, including providing for public comment, before taking an action like the oil and gas leasing moratorium.

NEPA requires, among other things, that an agency provide the public, including state and local governments, the opportunity to comment on a proposed action that may significantly affect the human environment. [Footnote 6: 40 C.F.R. § 1503.1.] Additionally, NEPA, along with its implementing regulations and guidance, directs agencies to work with cooperating agencies, such as counties, when developing environmental analyses. [footnote 7: 40 C.F.R § 1501.8; George T. Frampton, Council on Environmental Quality, Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (July 28, 1999).]

Wyoming counties routinely serve as cooperating agencies in the NEPA process, providing special expertise on social, cultural, historical, economic and other aspects of proposed plans and actions. Specifically, counties almost always serve as cooperating agencies on revisions or amendments to the Bureau of Land Management's resource management plans. In recent years, counties have been cooperators on updates to Resource Management Plans (RMP) in the Kemmerer, Pinedale, Rawlins, Buffalo, Casper, Bighorn Basin and Lander Field Offices and on the Wyoming Greater Sage-grouse RMP amendments.

Counties also cooperate on more discrete planning and project-level analyses, especially those involving oil and gas development. For example, Campbell, Converse, Johnson, Natrona, Niobrara and Platte Counties served as cooperating agencies on the Converse County Oil and Gas Project and Sublette County was a cooperator on the

Pinedale Anticline Oil and Gas Exploration and Development Project and the Normally Pressured Lance Natural Gas Development Project.

Through the investment of their own time and resources, counties help federal agencies effectively plan for the management of public lands. An oil and gas moratorium unravels the work counties and their constituents dedicate to developing plans for federal lands over decades in violation of federal law and policy. That the Department's action prohibits development rather than permits it is immaterial.

Comment Number: BOEM-EMAIL-32521-036517-2

Organization: Rocky Mountain Wild

Commenter: Alison Gallensky

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

We also have some suggestions to improve the public engagement process for oil and gas lease sales based on our work. These suggestions specifically support expert engagement and additional changes are needed to support engagement by the impacted public.

1. Provide a formal nomination process that allows BLM to strategically identify lands available for nomination [Footnote 1: 43 C.F.R. § 3120.3-1]. Further, BLM should revoke Instruction Memorandum (IM) 2014-004, which authorizes anonymous lease nominations, and issue a new policy that requires anyone nominating public lands for leasing to disclose their identity as well as the identities of third parties who they are representing.
2. Provide opportunities for public participation at all phases of the lease sale analysis process including scoping, draft environmental assessment or equivalent, and sale notice.
3. Provide sufficient time for comments and protests. BLM should revoke shortened timeframes for public engagement in Instructional Memorandum 2018-034.
4. Include access to interactive maps and share geospatial data in both GIS (shapefile) and Google Earth (kml/kmz) formats at all phases and make these available at the start of the comment or protest period.
5. Allow flexibility in how comments and protests can be submitted including but not limited to electronic submission (currently protests in some states must be mailed or faxed).
6. Provide schedules well in advance of the public engagement deadlines for upcoming lease sales.
7. Issue press releases for all opportunities for public engagement and provide a way for members of the public to subscribe to these press releases.
8. The scheme for identifying lease sale parcels (parcel ids and/or serial numbers) typically changes in the sale notice from the identification used in earlier phases. Protests should not be dismissed when parcel ids or serial numbers are used from earlier phases.
9. Protests should not be dismissed because the protester did not submit comments earlier in the process.

Comment Number: BOEM-EMAIL-32521-036534-3

Organization: Hispanic Access Foundation

Commenter: Shanna Edberg

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

BLM must do more to listen to communities' input - especially communities of color - and halt development when communities are against or it undermines other important conservation, access, and climate goals. If development is not halted, we must still plan for and companies must provide resources for remediation in advance, so we are not leaving a legacy of pollution for the next generation. DOI should be working to proactively invite and solicit feedback from all community members. That includes taking actions like:

-Extending comment periods;

-Expanding public notice across all forms of media and in multiple languages;

-Providing translation and interpretation services, not only in Spanish but in the language(s) of the community; Holding open public forms in communities who live near potential development, from the beginning of planning stages;

-Provide grants and technical assistance by increasing target resources to aid and empower minority, low-income, and tribal population to ensure public participation; and

-Work with HAF and other groups that maintain strong relationships with communities to publicize opportunities to comment and proactively invite us to the table.

Comment Number: BOEM-EMAIL-32521-036835-4

Organization: Colorado Farm and Food Alliance

Commenter: Pete K

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Other Sections: 4

Comment Excerpt Text:

5. Regular and robust public, community involvement and Tribal consultation is critical at every stage of oil and gas and coal-mining planning, leasing, and development.

Comment Number: BOEM-EMAIL-32521-036936-3

Organization: American Alpine Club

Commenter: Amelia Howe

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

Practice Inclusive Stakeholder Engagement

Public lands are for everyone, and all people should have access to information about management decisions made on these lands. DOI's management and planning practices should be transparent and widely communicated

in order to ensure the broader public has an opportunity to weigh in. Those who stand to bear the weight of decisions made on public lands must be prioritized when seeking input. This includes direct outreach to Indigenous and Tribal populations as well as other groups and frontline communities who have been historically left out of the conversation and in turn, harmed by conservation and development tactics on public lands. In order to ensure inclusive stakeholder processes we believe DOI should:

- Engage Black, Indigenous, and people of color leaders and organizations as decision makers, not just advisors to management processes

- Identify ways that authentic consultation and co-management with Tribal stakeholders can be prioritized

- Clearly define “stakeholder” in public engagement efforts to ensure input from a wide range of perspectives

- Establish a transparent process to evaluate and publicly communicate decisions made about public lands, including the rationale behind those decisions, and their implications for each individual stakeholder group

- Ensure that scoping periods and other opportunities for engagement are announced outside the Federal Register, including in local news and radio announcements in rural communities

Offer various avenues for engagement, including through mail, email, web forums, phone, in person, video conferencing, etc.

- Ensure that engagement events are accessible and comfortable for participants by providing basic tools and services, including translation, interpretation, refreshments, child care, and ample time and opportunity for all participants to be heard

Comment Number: BOEM-EMAIL-32521-037855-5

Organization: Coalition to Protect America's National Parks

Commenter: Philip Francis

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

There should be a minimum mandatory 30-day public comment period on all lease sale proposals; a minimum 30-day protest period;

Comment Number: BOEM-TRANS-32521-000020-2

Organization: Ocean Conservancy

Commenter: Michael LeVine

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

First, the Government must think about all of this through the lens of the need to expedite transitions, catastrophic impact from climate change, and planning for and implementing this, the Government must include tribes as true partners, work with indigenous people, coastal communities and others.

Comment Number: BOEM-TRANS-32521-000042-2

Organization: Natural Resources Law Center at University of Colorado Law School

Commenter: Mark Squillace
Commenter Type: Universities/Colleges/Academia
Classification: Substantive

Comment Excerpt Text:

Right, and my most direct experience has been with the Gulf of Mexico alliance, and of course, the various components of DOI have been very much involved in the alliance, have supported it financially, the various priority issue areas, but have also added a lot to the management and science discussions that take place there. I think the benefit of the regional ocean partnerships is that you have a constituency and a stakeholder base already there, you know, that reaches into not only state and other federal agency, but also as I said, environmental NGOs, academic science community, local, which I think is really important here, local Government officials as well, and so as you move out, as DOI and the other federal family agencies move out, on, you know, developing, you know, new rules, new policy, new management actions, engaging that community at the beginning and heavily, is going to make the uptake of that much easier to go, and so I think that's the benefit. Is that relationship is there, and to take advantage of those relationships.

Section 19 - Other comments

Comment Number: BOEM-EMAIL-32521-018572-6

Organization:

Commenter: Chris Lish

Commenter Type: Individual/General Public

Classification: Substantive

Comment Excerpt Text:

Immediately reinstate President Obama's coal leasing moratorium. Burning coal mined from public lands contributes an estimated 10% of U.S. carbon emissions.

Comment Number: BOEM-EMAIL-32521-020638-16

Organization: National Ocean Industries Association

Commenter: Richard England

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

In summary, there is nothing to suggest that the current system for federal offshore leasing is not working to best benefit the public, the government, and Americans throughout the country. The federal offshore fiscal system, through the use of auction-style bonus bids, ensures that the government and the American taxpayer continue to receive fair market value. Any changes to leasing and fiscal terms would likely impact the level of bonus bids and the overall competitiveness of the U.S. offshore region. The U.S. offshore is a region that competes with other offshore regions throughout the world. The U.S. offshore has been able to effectively compete with other regions based upon the current system that is in place. With more than \$120 billion flowing to the federal treasury since 2000, supporting vital funding for the LWCF, urban parks and national parks, and with more than 300,000 jobs supported annually, producing the lowest carbon barrels, among other factors, there is little to no support or justification for significant changes to the federal offshore oil and gas leasing program. Adverse changes to U.S. offshore federal oil and gas leasing could jeopardize the tremendous positive benefits providing by offshore production and result in a shift in those benefits to other regions of the world, all to the detriment of U.S. employment, economic, energy, national and environmental security. In order to retain these important benefits,

Interior should move promptly to proceed with offshore leasing under the 2017-2022 program and complete development of the 2022-2027 in a timely manner.

Comment Number: BOEM-EMAIL-32521-035316-18

Organization: American Petroleum Institute

Commenter: Holly Hopkins

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

D. Technological Innovation

Another benefit of sustained and expansive U.S. energy policy in the Gulf of Mexico is that the U.S. oil and natural gas industry has become the world leader in offshore technology development. This is particularly true in terms of deepwater exploration, drilling, and development operations. This includes everything from the materials used in offshore operations, the development of software and control systems to manage operations, the development, production, and deployment of modern drillships and production facilities to bring energy to market, and the design and manufacture of blowout prevention equipment systems, subsea safety valves and other equipment. The U.S. must continue policies that foster exploration and development activities in new OCS areas so that we remain on the forefront of area-specific technology development rather than leave this to other countries.

Comment Number: BOEM-EMAIL-32521-035334-2

Organization: Terra Energy Partners

Commenter: Michael Jewell

Commenter Type: Energy Exploration and Production Companies and Associations

Classification: Substantive

Comment Excerpt Text:

Terra therefore urges the Department of Interior to recognize the considerable operational differences and environmental implications between the production of oil and the production of natural gas from federal lands as this administration evaluates its goals and the steps it will take to reach those goals. Further, each basin creates unique issues and unique characteristics that must be considered when the administration is planning for the future of public lands in those areas. Operating in the Piceance Basin requires a recognition of the maturity of the basin, and one that blends into a broader use of that land with respect. Truly, a one size fits all approach cannot work.

Comment Number: BOEM-EMAIL-32521-036835-3

Organization: Colorado Farm and Food Alliance

Commenter: Pete K

Commenter Type: Public Interest and Non-Governmental Organizations

Classification: Substantive

Comment Excerpt Text:

4. Oil and gas and coal companies should be held liable for impacts on public lands, local communities and health. Area governments, States, landowners, and taxpayers should be indemnified from the harms caused by companies operating on federal lands and minerals.

Appendix A: Counts of Submissions that Addressed All Issue Categories

The table below indicates the number of submissions that addressed each issue. The first set of counts (1st column of counts) indicates how many unique submissions (including transcript comments and one representative or “master” version of the form letter) addressed an issue, while the second set of counts (2nd column) includes all letters analyzed (including form letter copies, bundles and petitions).

Issue Number	Issue Text	Unique Submissions	Total Submissions (including form copies)
1	Greenhouse Gas Emissions/Climate	0	0
1.1	Technologies or strategies to reduce emissions on facilities or through other means	36	693
1.2	SC-GHG	755	111,449
2	Environmental Justice, underserved communities	30	2,108
3	Other Environmental Considerations (not climate or EJ)	53	17,765
4	Tribal Considerations	40	28,342
5	Jobs/Unions	83	22,827
6	Revenues	47	35,776
7	Leasing Strategy (for example, Onshore Resource Management Plans, Offshore National Program, leasing pause or moratorium)	2,509	147,341
8	Fiscal Terms/Fair Market Value/Royalties/Bonding	68	7,139
9	Permitting/Exploration, Development, and Drilling Plans (for example, offshore exploration, development, and production plans; onshore applications for permits to drill)	28	28
10	Decommissioning	6	6
11	Energy Needs/Future Climate Scenarios/Substitutions	45	15,266
12	Protected Areas/30 by 30	13	4,597
13	Orphan Wells/Remediation	40	497
14	Regulatory Changes	31	31
15	Legislative Recommendations	13	13
16	Executive Actions	8	8
17	Other Impacts	23	23
18	Additional Groups to Outreach/Coordinate	58	6,401
19	Other comments	49	13,886

From: [Stork, Allison J](#)
To: [Sanchez, Alexandra L](#)
Subject: Fw: Comment Summary from March 25 DOI Forum
Date: Wednesday, December 1, 2021 8:42:57 PM
Attachments: [3-Week Comment Period -Summary Report of Suggestions 6.8.21.docx](#)

Hi Alexandra,

Here is the report provided by the contractor.

Thanks,
Allison

Allison Stork
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Amanda and the Comprehensive Review Teams,

The contractor has finished the summary of the submissions to the three-week unofficial comment period that followed the March 25, 2021 DOI Forum on the Federal Oil and Gas Program. The report speaks for itself, but you will find various breakdowns of the 155,050 comments that were submitted, by commenter category (Governors, tribes, Agencies, Unions, NGOs, Industry, General Public, etc.), by location (onshore/offshore/both), etc. as well as summaries of the substantive comments themselves.

Special thanks to Allison Stork, the COR on this contract, who went above and beyond to ensure the quality and timely delivery of this product. Please feel free to share it with anyone you think will be interested (the folks at BLM come to mind), and let me know if you have questions.

Wright Jay Frank
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Appendix C:
Summary of Public Comments from the
March 25, 2021 Forum

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Abbreviations and Acronyms

APD	Applications for permits to drill
BLM	Bureau of Land Management
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
DPP	Draft Proposed Program
EPA	U.S. Environmental Protection Agency
FLPMA	Federal Land Policy and Management Act
GAO	U.S. Government Accountability Office
GHG	Greenhouse Gas
GOMESA	Gulf of Mexico Energy Security Act
IAP	Integrated Activity Plan
IM	BLM Instruction Memorandum
IOP	Integrated Operations Plan
LDAR	Leak Detection and Repair Systems
MLA	Mineral Leasing Act
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
ONRR	Office of Natural Resources Revenue
OSLTF	Oil Spill Liability Trust Fund
PEIS	Programmatic environmental impact statement
RMP	Resource Management Plan
ROD	Record of Decision

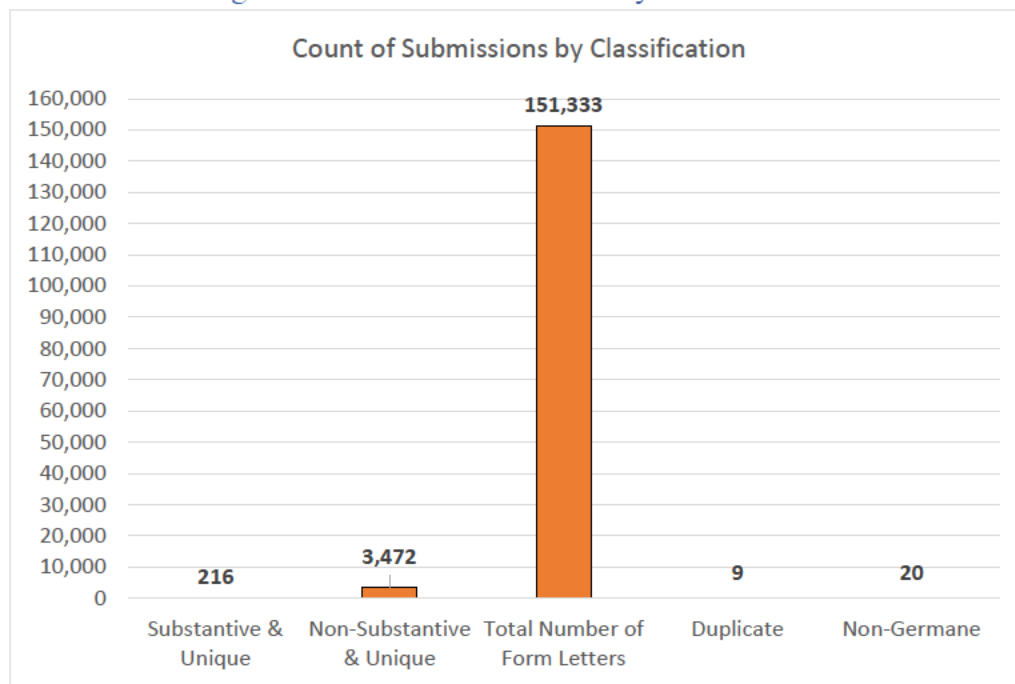
1. Introduction

On March 25, 2021, the Department of the Interior (“the Department”) hosted a virtual public forum as part of the Department’s comprehensive review of the Federal oil and gas program, as called for in [Executive Order 14008](#). The forum featured several panels to highlight perspectives from invited participants, including industry representatives, unions, environmental justice organizations, natural resource advocates, Indigenous organizations, academics, and other experts.

To help inform the Department on next steps and outline recommendations for the Department and United States Congress to improve stewardship of public lands and waters, create jobs, and build a just and equitable energy future, a public comment period was opened from March 25, 2021 through April 15, 2021. Members of the public were asked to submit comments and additional information to inform the Department’s interim report at energyreview@ios.doi.gov.

Through April 15, 2021, 155,050 public comments were received, including individual comments, comments submitted as part of mass mail campaigns, petitions, and oral comments submitted during the virtual meeting. Of the comments received, 3,688 were identified as unique, 151,333 were part of 28 different mass mail campaigns and petitions and 29 comments were either duplicate or not germane. The Figure 1 below displays the count of all submissions received by classification.

Figure 1: Count of Submissions by Classification



The figures and table below display the types and counts of stakeholders who provided public comments. Although comments were received across these commenter types, this summary report is not intended to be an exhaustive discussion of all unique comments received. Rather, today's report provides only a high-level summary of suggestions and recommendations provided by commenters to the Department, Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Safety and Environmental Enforcement (BSEE) and Congress. Similarly, it should not be assumed that the footnotes provided throughout the summary reflect an exhaustive list of commenters making each recommendation. The summaries are organized by commenter type and then by issue topic.

Figure 2 displays the type of submissions (unique, form letter copies received via email, and form letter copies received through bundled campaigns) received within each commenter type.

Figure 2: Type of Submissions by Commenter Type

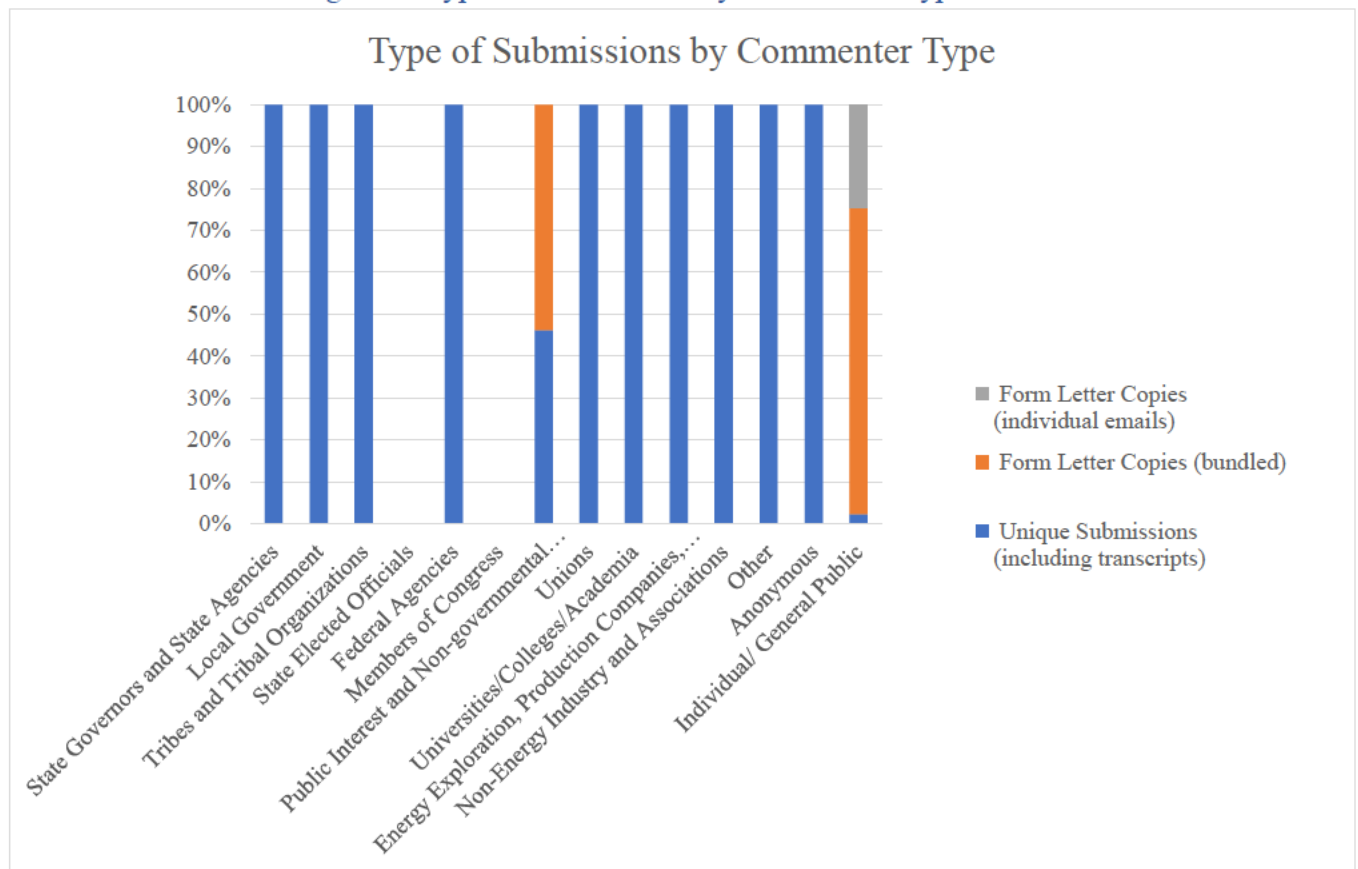


Table 1 displays the count of submissions received by commenter type, including the count of unique submissions, form letter copies, and total comments received by commenter type.

Table 1: Counts of Comments by Commenter Type

Commenter Category	Unique Submissions	Form Letter Copies	Total # of Commenters
State Governors & State Agencies	5	0	5
Local Government (including Mayors, City Council members, County Commissioners)	3	0	3
Tribes & Tribal Organizations	16	0	16
State Elected Officials	0	0	0
Federal Agencies	2	0	2
Members of Congress	0	0	0
Public Interest & Non-governmental Organizations	92	107	199
Unions	5	0	5
Universities/Colleges/Academia	11	0	11
Energy Exploration & Production Companies & Associations	39	0	39
Non-energy Industry & Associations	9	0	9
Other	2	0	2
Anonymous	2	0	2
Individual/ General Public	3,502	151,226	154,728
Totals	3,688	151,333	155,021

Figure 3 displays the distribution of unique submissions by commenter type.

Figure 3: Count of Unique Submissions by Commenter Type

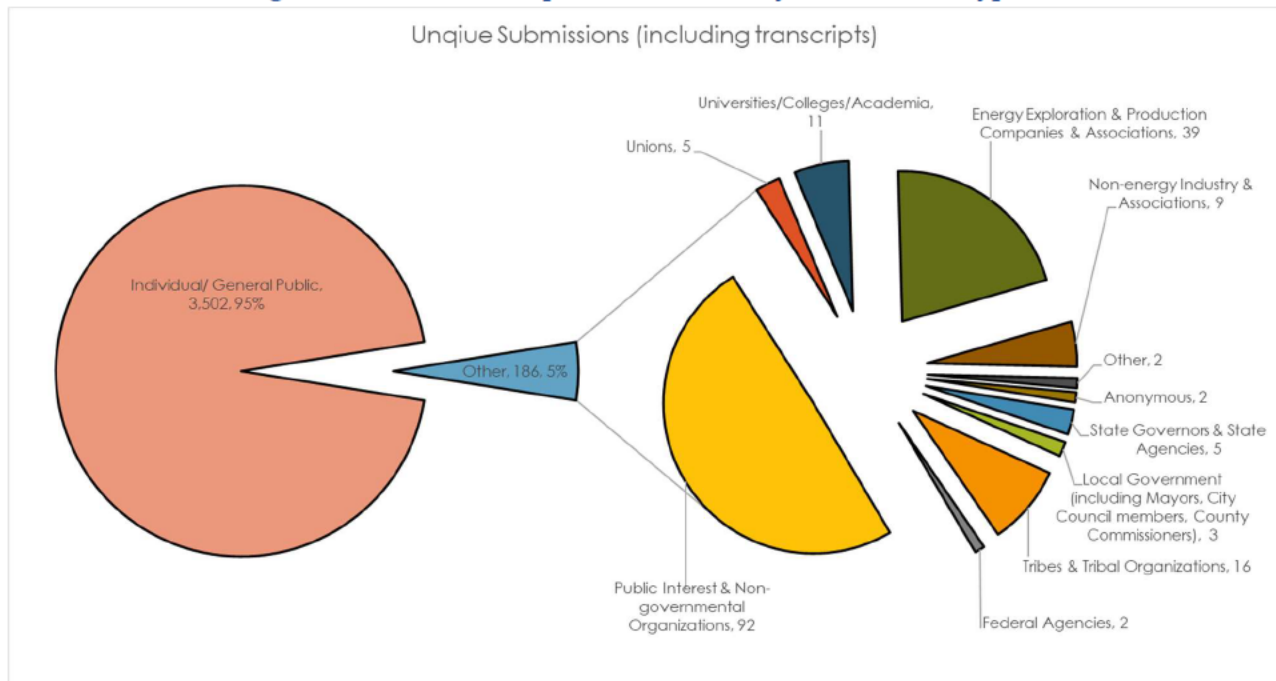
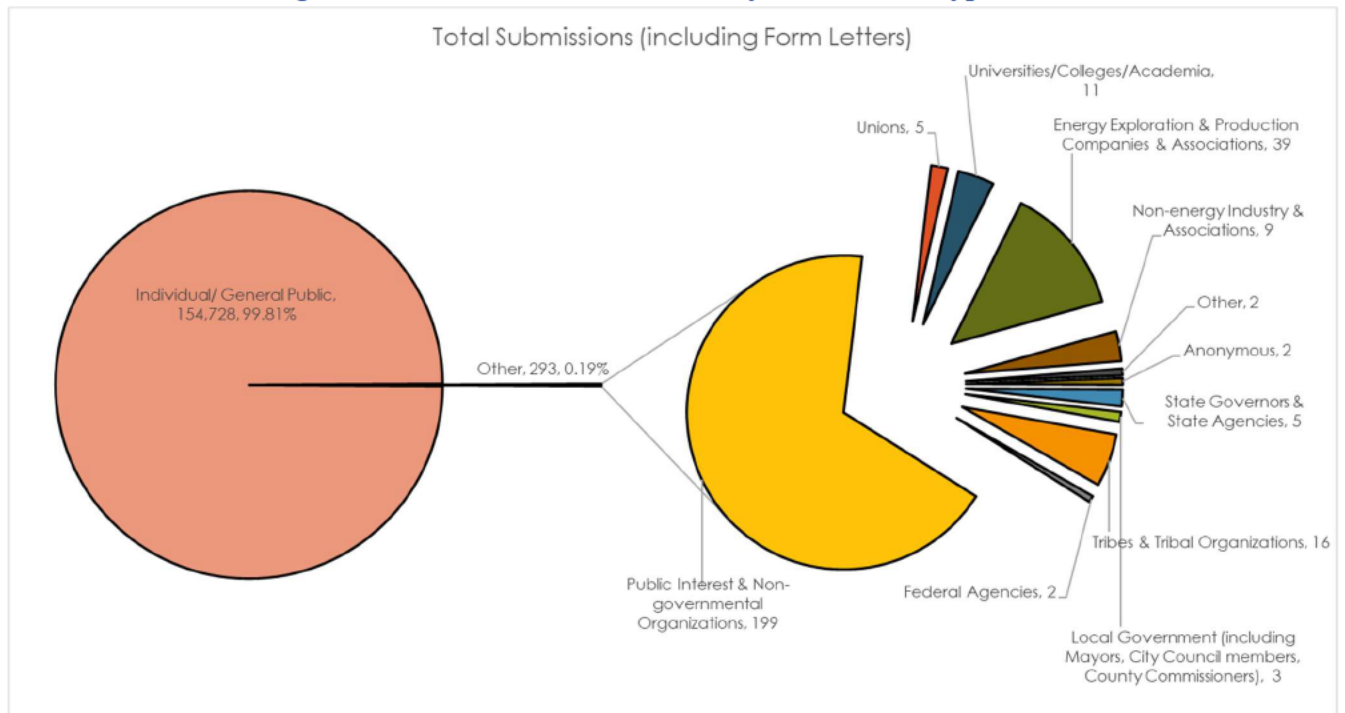


Figure 4 displays the distribution of all submissions by commenter type.

Figure 4: Count of All Submissions by Commenter Type



The public provided comments related to onshore and offshore activities. Table 1 displays the count of submissions which address either onshore, offshore, or both onshore and offshore activities.

Table 2: Counts of comments discussing onshore and offshore activities.

Activity Discussed	Unique Submissions	Total Submissions (unique and form letter copies)
Onshore	71	13,438
Offshore	36	15,644
Both onshore and offshore	206	122,251

2. Comments from State Governments

2.1. Jobs/ Unions

- BOEM should work on building a path to economic recovery from the COVID-19 pandemic, including identifying ways to create jobs, provide relief for families and businesses, and replenish Gulf of Mexico Energy Security Act (GOMESA) funds.¹

2.2. Energy Needs/ Future Climate Scenarios/ Substitutions

- Foreign countries would supply oil to meet U.S. energy needs if the United States were to reduce its own production. While the transition to renewables is ongoing, the outer Continental Shelf (OCS) could be a better, and greener, source of traditional energy compared to greater reliance on imported fuels and feedstocks, for which production and transportation could be much less environmentally responsible.²
- A financially stable, offshore traditional fuels industry would be important in helping States move toward renewables, including offshore wind energy. “The infrastructure and expertise needed to build out an offshore wind energy economy will depend heavily upon leveraging the overlapping resources (ports, roads, highly specialized vessels, skilled mariners and associated supply chains) and skill sets currently supported by the existing offshore oil and gas industry.”³

2.3. Other Impacts

- Prolonged administrative restrictions could severely impact funding sources, which are tied to oil and gas revenues due to the Great American Outdoors Act, for land and water conservation efforts and maintenance of Utah’s National Park System facilities.⁴

2.4. Additional Groups to Outreach/ Coordinate

- The Outer Continental Shelf Lands Act (OCSLA) requires consultation with State governors during the planning process. BOEM should consult with State governors to recognize their States’ unique views and needs regarding offshore energy development.⁵
- Local needs and desires should be factored into the Department’s oil and gas leasing program since local communities will be most directly affected by the associated socioeconomic and environmental impacts.⁶

¹ State of Alabama, Office of the Governor; State of Louisiana, Office of the Governor.

² State of Louisiana, Office of the Governor.

³ State of Louisiana, Office of the Governor.

⁴ State of Utah, Department of Agriculture and Food.

⁵ OCS Governors Coalition; State of Alabama, Office of the Governor.

⁶ State of Utah, Department of Agriculture and Food.

- The Department is required by the Federal Land Policy and Management Act (FLPMA) to make decisions that are consistent with, to the maximum extent possible, State and County resource management plans (RMP). Additional meetings should be held to ensure that States, Tribes, local governments, and other stakeholders have meaningful opportunities to engage with the Department. The Department's outreach and coordination with stakeholders could promote collaboration, innovation, and fairness regarding oil and gas extraction on public lands and make Federal agencies aware of how Federal policy is going to affect local communities.⁷

3. Comments from Local Governments

3.1. Leasing Strategy

- Providing regular lease sales allows developers to efficiently explore and produce resources in a way that limits surface impacts. The opportunity to bid on Federal parcels regularly is important in the context of complex landownership patterns where the checkerboard and split States makes oil and gas leasing challenging.⁸

3.2. Additional Groups to Outreach/ Coordinate

- Counties almost always serve as cooperating agencies on revisions or amendments to the BLM RMPs, including planning and project-level analyses involving oil and gas development. An oil and gas moratorium unravels the work counties, and their constituents, dedicate to developing plans for Federal lands over decades in violation of Federal law and policy.⁹

4. Comments from Tribes and Tribal Organizations

4.1. Environmental Justice

- An "equitable share of Federal resources from Executive Order 14008" should be set aside for disadvantaged communities in Alaska.¹⁰

4.2. Tribal Consultation

- Standardize Tribal consultation between different States, bureaus, districts, and regional offices involved in oil and gas leasing development.¹¹

⁷ State of Utah, Department of Agriculture and Food.

⁸ Wyoming County Commissioners Association.

⁹ Wyoming County Commissioners Association.

¹⁰ Alaska Federation of Natives; All Pueblo Council of Governors.

¹¹ Pueblo of Acoma.

- For the Greater Chaco Region, Tribal consultation was insufficient.¹²
- Ensure that Tribal cultural resource studies are conducted prior to BLM's decision about oil and gas leasing development.¹³
- Integrate the review processes required under the National Historic Preservation Act (NHPA) Section 106 and the National Environmental Policy Act (NEPA). Information gathered during the NHPA Section 106 review about cultural resources should be considered during the NEPA review. BLM should consult with Tribes throughout both the NHPA and NEPA review processes.¹⁴
- Although a representative from the Alaska Federation of Natives participated in the public forum, the Department should consult representatives from Alaska's North Slope communities.¹⁵
- Host specific "government-to-government consultation" with Tribes regarding oil and gas development on public lands.¹⁶
- The Federal consultation process violates the United Nations Declaration on the Rights of Indigenous Peoples' principle of free, prior, and informed consent.¹⁷
- BLM should recognize Tribes' right to regulate energy resources on Tribal lands. Self-governance of Tribal lands is also helpful in managing sacred cultural sites.¹⁸
- Clarity in communication with the Department, such as where to find the Dear Tribal Leader letters or how to use the Federal Register. Department representatives should visit Alaska to see the entirety of the land.¹⁹
- Expedited timeframes prevent meaningful Tribal participation.²⁰

4.3. Jobs/ Unions

- Oil and gas leasing has a positive economic impact, including a ripple-effect to other industries.²¹

4.4. Revenues

- Oil and gas leasing increases State and local government revenues. The revenues allow the local governments to invest in infrastructure, utilities, and other public services.²²

¹² Pueblo of Acoma; All Pueblo Council of Governors.

¹³ Pueblo of Acoma; Santa Clara Pueblo; All Pueblo Council of Governors.

¹⁴ Pueblo of Acoma; Santa Clara Pueblo; All Pueblo Council of Governors.

¹⁵ Arctic Slope Regional Corporation.

¹⁶ Santa Clara Pueblo.

¹⁷ All Pueblo Council of Governors; National Congress of American Indians.

¹⁸ National Congress of American Indians.

¹⁹ Alaska Federation of Natives.

²⁰ All Pueblo Council of Governors.

²¹ Arctic Slope Regional Corporation.

²² Arctic Slope Regional Corporation.

4.5. Leasing Strategy

- Pause lease sales and development until completion of the Greater Chaco Region RMP amendment. Withdraw development from ten miles of critical area surrounding the Chaco Culture National Historical Park.²³
- Withdraw development from Tribes' critical areas.²⁴
- Withdraw Secretarial Order 3355, which was used by BLM to justify expediting decision making for the oil and gas program, and Secretarial Order 3389, which required NHPA Section 106 process to also proceed on an expedited timeline.²⁵
- Remove “imposed and rigid timeframes” so that internal guidance will be more consistent with Executive Order 13990.²⁶

4.6. Fiscal Terms/ Fair Market Value/ Royalties/ Bonding

- Native Alaskan communities on the North Slope benefit from the royalties of oil and gas development, as provided by the Naval Petroleum Reserves Production Act, which supports public infrastructure and social services.²⁷

5. Comments from Universities

5.1. Technologies or strategies to reduce emissions on facilities or through other means

- Take a multi-step legal approach to restoring regulations on methane emissions and flaring, including:

Flaring:²⁸

- Join the appeal of the “Wyoming case” that vacated the 2016 Waste Prevention Rule (“the 2016 Rule”).
- Reverse the Trump Administration’s appeal of the California ruling that vacated the Rescission of the 2016 Rule.
- Once the appeals process for the Wyoming case is completed, initiate a new rulemaking process to strengthen the 2016 Rule.

²³ Pueblo of Acoma; Santa Clara Pueblo; All Pueblo Council of Governors.

²⁴ Santa Clara Pueblo; All Pueblo Council of Governors.

²⁵ Santa Clara Pueblo.

²⁶ All Pueblo Council of Governors.

²⁷ Arctic Slope Regional Corporation.

²⁸ Columbia University Center on Global Energy Policy.

- Since there are many marginal wells and small operators, at a minimum, routine flaring should be banned for all producers regardless of size. The policy should be phased in over multiple years.
- Equipment standards should be provided for flares, while still allowing innovative technology that improves performance. Recommended standards include:
 - Efficiency standard for flares;
 - Required reporting of the content of emissions from flares;
 - Requirement that flares be lit; and
 - Required detection of unlit flares along with a device that automatically reignites them.

Leak Detection:²⁹

- “Organize a third-party subscription-based regional methane emissions leak detection system on Federal land that includes all the operators and wells within a region to take advantage of the best available technology and take advantage of scale and lower costs. These regional leak detection and repair (LDAR) systems should be managed and staffed by a third party.”
- “A leak detection system could include satellites, ground sensors, drones, helicopters or airplanes.”
- “Cost-sharing in proportion to production would help defray the cost of modern [LDAR] for small operators and marginal wells.”
- “Those who join the service would have the advantage of third-party certification of their emissions levels. If operators refuse to join, their emissions data would still be captured and published by this system, but they will also need to comply with the 2016 Rule’s LDAR requirements on their own and explain significant differences with the subscription system data.”

Emissions Reporting:³⁰

- Encourage the use of innovative technology to make emissions reporting simpler for the operators and more timely and more transparent for BLM and the public.
- Encourage the use of innovative technology such as sensors and satellites.
- The regional LDAR should be the primary way to confirm companies comply with methane emissions rules.
- Publish the emissions data collected from both company-reported data and from regionally collected emissions subscription-service data in an easy-to-use format, making the data more transparent to the Department, the companies, and the public. Companies would need to explain substantial differences between reported and third party collected regional emissions data.

²⁹ Columbia University Center on Global Energy Policy.

³⁰ Columbia University Center on Global Energy Policy.

- Companies should be required to report emissions from flaring, venting and methane leaks separately. Today, some State regulations do not distinguish between venting and flaring (e.g., Texas).
 - Establish a portal for all emissions reporting agencies for electronic reporting. A central coordinator should work to reduce overlap and make sure the best technology is used to measure emissions.
- Under the provisions on “Pneumatic Controllers and Pumps” of the 2016 Waste Prevention Rule, assess what can be done about intermediate bleed controllers because they are responsible for 88 percent of the emissions from pneumatic controllers.³¹

5.2. Social Cost of Carbon-GHG

- The Department should estimate the net greenhouse gas (GHG) impacts of any reform and apply the social cost of GHG to assess the scale and magnitude of those benefits and should update the social cost valuations pursuant to future updates from the Working Group.³²
- Revise management plans to curtail leasing and prioritize conservation and other beneficial uses, with the goal of achieving zero, net-zero, or net-negative emissions by 2030. The Department should assemble analytical tools to assess the impacts of reforms and develop an improved energy substitution model that corrects the myriad failures of the existing MarketSim model. The MarketSim model should account for the likelihood that domestic fossil-fuel demand will decline over the long term from efforts to reduce GHG emissions. As the Department revises the model, it should also review other technical limitations, perform updates, and test the model accuracy against theoretical and known scenarios.³³
- Strengthen mitigation requirements on methane pollution, groundwater contamination, and oil-spill risk for fossil fuel extraction that does occur on Federal lands and waters and consider GHG offsets on fossil fuel extraction.³⁴
- Use best practices when developing policies around the appropriate treatment of GHG emissions, including the use of the Interagency Working Group’s Social Cost of Carbon and Social Cost of Methane approach used in environmental impact statements.³⁵

5.3. Environmental Justice

- Environmental justice benefits should be included in any cost-benefit analysis. Analyze the impact of the existing emissions or flaring and new rules on low-income groups and native communities.³⁶

³¹ Columbia University Center on Global Energy Policy.

³² Institute for Policy Integrity at New York University School of Law.

³³ Institute for Policy Integrity at New York University School of Law.

³⁴ Institute for Policy Integrity at New York University School of Law.

³⁵ Institute for Policy Integrity at New York University School of Law.

³⁶ Columbia University Center on Global Energy Policy.

5.4. Other Environmental Considerations

- The Department should assess and fairly balance the environmental and economic impacts of any reforms through strong analyses and in a manner than conforms to NEPA requirements to avoid revisions by future administrations.³⁷
- Revise the MarketSim model used to assess the energy market during analyses to reflect reasonable assumptions about long-term trends of fossil fuel and renewable energy generation. Consider including an option value, the informational value of delay, as a benefit of any decision to curtail leasing.³⁸

5.5. Jobs/Unions

- Partner with other Federal agencies such as the Department of Energy and Department of Labor to identify locations for job training programs in areas that transition from fossil fuel production to renewable energy production sites.³⁹

5.6. Leasing Strategy

- Increase the rate of tract development by shortening primary terms for onshore oil and gas leases to no more than five years. This will require an act of Congress to amend the Mineral Leasing Act of 1920 (MLA).⁴⁰
- Increase the minimum bid per acre to be more aligned with the policies adopted by State agencies. This can be implemented by BLM via the administrative rulemaking process.⁴¹
- Terminate the non-competitive leasing program. Eliminating the non-competitive leasing program will require a statutory amendment to the MLA.⁴²
- To better fulfill its statutory multiple-use and sustained yield mission, the Department can adopt leasing policies that are like those of major oil producing States, such as Louisiana, New Mexico, North Dakota, and Texas.⁴³
- Through rulemaking, substantially increase bond amounts to where firms credibly cover the proper wells' plugging and abandonment at the end of their useful life. This approach will also protect taxpayers from paying decommissioning costs and protect public health from the hazards imposed by abandoned wells.⁴⁴
- BLM and the Department should tighten standards for lease suspensions and undertake a systematic and periodic review of all existing lease suspensions and reassess whether suspensions should be terminated.⁴⁵

³⁷ Institute for Policy Integrity at New York University School of Law.

³⁸ Institute for Policy Integrity at New York University School of Law.

³⁹ Institute for Policy Integrity at New York University School of Law.

⁴⁰ Energy Policy Institute at the University of Chicago.

⁴¹ Energy Policy Institute at the University of Chicago.

⁴² Energy Policy Institute at the University of Chicago.

⁴³ Energy Policy Institute at the University of Chicago.

⁴⁴ Energy Policy Institute at the University of Chicago.

⁴⁵ University of Colorado Law School, Institute for Policy Integrity at New York University School of Law.

- Relatedly, BLM should tighten its regulations at 43 CFR at 43 CFR § 3103.4-4 to ensure written and public documentation of lease suspensions with an explanation of the reasons for the suspension, the expected duration of the suspension, and the procedures that the BLM will follow to ensure prompt termination of the suspension when the conditions that formed the basis for it no longer exist.⁴⁶
- Consider reviving landscape-level planning for the Department agencies and a new landscape level planning rulemaking, paying attention to selecting priority areas for conservation, restoration, and renewable energy development.⁴⁷

5.7. Fiscal Terms/ Fair Market Value/ Royalties/ Bonding

- To ensure that BLM meets its statutory responsibilities and better align Federal onshore oil and gas leasing policy with those used by State agencies, BLM could raise the Federal royalty rate to substantially increase taxpayers' returns, reduce the standard lease term to speed the rate at which resources are developed, and increase Federal bonding requirements.⁴⁸
- To address issues related to mineral leases that transact below market value or do not transact at all, and firms that sit on marginal tracts for a decade and preclude the land use by others and impose administrative costs, BLM should:
 1. Shorten primary terms for onshore oil and gas leases to no more than five years, aligned with the policies adopted by State agencies and leases observed in private markets;
 2. Increase the minimum bid per acre to be more aligned with the policies adopted by State agencies; and
 3. Terminate or reform the non-competitive leasing program.⁴⁹
- The minimum bid offered should increase from \$2 per acre to \$100 per acre.⁵⁰
- The Department should adjust the fiscal terms of new and modified leases to account for the costs of climate change and ensure a fair return to taxpayers.⁵¹

Royalties:

- BLM can increase the share of Federal oil and gas resources that leads to revenue for taxpayers rather than profits for oil and gas firms by setting higher royalty rates, eliminating royalty deductions, and increasing the minimum bid in its lease auctions. The negative impacts of a higher royalty rate on development and production can be mitigated by shortening the lease term from ten years to five years and by eliminating the BLM's non-competitive leasing process, though these changes require statutory amendments.⁵²

⁴⁶ University of Colorado Law School.

⁴⁷ Institute for Policy Integrity at New York University School of Law.

⁴⁸ Energy Policy Institute at the University of Chicago.

⁴⁹ Energy Policy Institute at the University of Chicago; Institute for Policy Integrity at New York University School of Law.

⁵⁰ Natural Resources Law Center at University of Colorado Law School, University of Colorado Law School.

⁵¹ Institute for Policy Integrity at New York University School of Law.

⁵² Energy Policy Institute at the University of Chicago.

- Increase the Federal onshore royalty rate. The statutory minimum royalty rate is 12.5 percent of oil and gas leases. This royalty rate falls below that used in major oil producing States for leases on State-owned land.⁵³
- An increase of royalty rates on new leases should be considered if leasing on Federal lands resumes after the 60-day moratorium. The current 12.5 percent royalty rate has not changed for 100 years and higher rates can be observed on private and many States' lands.⁵⁴
- A 20 percent royalty rate on Federal lands can be justified. A modest decline in leasing would be made up in terms of revenue.⁵⁵ BLM should increase the minimum royalty rate to at least 20 percent for all Federal oil and gas onshore and offshore leasing.⁵⁶
- "To determine how much the royalty rate can increase without shutting off a large portion of new production, BLM should assess the competitiveness of Federal leases. Any economic impacts could be partially offset by ensuring there were sufficient BLM personnel to avoid major delays in permitting."⁵⁷
- Simplify royalty valuation by eliminating deductions. Office of Natural Resources Revenue (ONRR) could use a liquidly traded, transparent price index, such as West Texas Intermediate or Brent for oil or Henry Hub for natural gas, as the benchmark for all produced oil and gas. With this approach, daily prices can be independently verified by third parties and the markets would be difficult to manipulate.⁵⁸
- ONRR could eliminate deductions for transportation costs, price differentials, or product quality. Potential drilling partners may bid less in certain mineral lease auctions, but the winners of those auctions will end up paying more in royalties."⁵⁹
- The Department can consider a higher royalty rate that internalizes climate externalities by incorporating the social cost of GHG. This carbon adder could be imposed as a set fee based on GHG emissions, as opposed to a set percentage of revenues.⁶⁰

Bonds:

- Strengthen bonding requirements to protect the environment and public health. BLM can increase its bond requirement by administrative rulemaking, without requiring new statutory authority.⁶¹
- As recommended in a 2019 U.S. Government Accountability Office (GAO) report, BLM should increase its bonding amounts.⁶²

⁵³ Energy Policy Institute at the University of Chicago.

⁵⁴ Columbia University Center on Global Energy Policy.

⁵⁵ Natural Resources Law Center at University of Colorado Law School.

⁵⁶ University of Colorado Law School.

⁵⁷ Columbia University Center on Global Energy Policy.

⁵⁸ Energy Policy Institute at the University of Chicago.

⁵⁹ Energy Policy Institute at the University of Chicago.

⁶⁰ Institute for Policy Integrity at New York University School of Law.

⁶¹ Energy Policy Institute at the University of Chicago.

⁶² Natural Resources Law Center at University of Colorado Law School.

- The value of bonds on new leases should be increased to adequately cover the cleanup costs of abandoned wells.⁶³ The BLM should ensure that an increase in bond amounts reflects the full cost of hiring third-party contractors to carry out reclamation.⁶⁴ The 2019 GAO report indicated that operators' up-front bonds were too small to fully cover clean-up costs, leading taxpayers with the cost to manage orphaned wells.⁶⁵
- Avoid bonding schemes that allow self-bonding or bonding pools that have proved inadequate in other situations.⁶⁶

Rental Fees:

- Increase rental fees to \$10 per acre. Although this may result in less leasing, revenues are not expected to decrease. Distinguishing between competitive and noncompetitive leases is not needed if a sufficient fee is charged. Alternatively, an escalating rental fee (e.g., \$10 for the first three years), would discourage companies from holding leases that they are not likely to develop.⁶⁷
- BLM should increase the annual rental fee to minimize speculation. An initial rental fee should be set for at least \$10 per acre per year for the first three years. After the initial three years, BLM should include an escalation clause that significantly increases the rental fee for every successive year that the lease is not developed.⁶⁸
- The rental policy should be drafted so that lessees cannot escape higher rental fees by filing an application for permit to drill (APD) for a lease that the lessee will not utilize. To enforce this policy, BLM should require back payment of rental fees if the operator fails to develop a lease promptly.⁶⁹
- The Department should adjust the rental fees to at least account for inflation and should consider increasing fees to account for option value that incorporates the informational value of delay.⁷⁰

5.8. Permitting/Exploration, Development, and Drilling Plans

- BLM could consider using stipulations on individual leases and permits to flesh out regulatory standards such as requiring particular practices for methane capture.⁷¹

⁶³ Columbia University Center on Global Energy Policy; Energy Policy Institute at the University of Chicago; University of Colorado Law School; Institute for Policy Integrity at New York University School of Law.

⁶⁴ University of Colorado Law School.

⁶⁵ Energy Policy Institute at the University of Chicago.

⁶⁶ University of Colorado Law School.

⁶⁷ Natural Resources Law Center at University of Colorado Law School.

⁶⁸ University of Colorado Law School.

⁶⁹ University of Colorado Law School.

⁷⁰ Institute for Policy Integrity at New York University School of Law.

⁷¹ University of Colorado Law School.

5.9. Energy Needs/ Future Climate Scenarios/ Substitutions

- The Department should think strategically about how to manage the decline of oil and gas industry as actions are taken to thwart climate change will impact oil and gas prices.⁷²
- The Department should:
 - Acknowledge that natural gas is a cleaner alternative to coal in the short to medium term.
 - Consider a leasing ban on gas and the impact on coal consumption.
 - Officials with the Biden Administration must encourage the U.S. energy sector to support the American Jobs Plan that will require energy to implement.⁷³
- Remove inefficient barriers to renewable energy production on Federal lands, both onshore and offshore, such as by using RMPs and Designated Leasing Areas to identify more areas with strong renewable energy potential and low environmental conflict, improving timely permitting, retraining displaced fossil fuel workers to work in renewable energy, identifying more offshore Wind Energy Areas, and establishing a taskforce to streamline offshore wind permitting.⁷⁴

5.10. Protected Areas/30 by 30

- The Department should revise management plans to curtail leasing and prioritize conservation with the goal of achieving zero, net-zero, or net- negative emissions from 2030. To reach a net-zero emissions goal, BLM should consider using offsets in the form of carbon sequestration, reforestation, greater renewable energy production, and other strategies to reduce emissions.⁷⁵

5.11. Orphan Wells/ Remediation

- Offshore wells should also be included in the program. More research is needed on how much methane leakage there may be from idle offshore wells in the Gulf of Mexico.⁷⁶
- Plugging of abandoned oil and gas wells on Federal lands should be funded by Congress, which could be justified as a jobs program in addition to reducing methane leaks.⁷⁷
- The Department should work with Congress, the U.S. Environmental Protection Agency (EPA), other agencies, and industry to adopt an oil and gas leasing program plan like the Abandoned Mine Lands program under the Surface Mining Act, where there is a fee imposed on coal. A one penny tax charged on every barrel of oil produced would

⁷² Natural Resources Law Center at University of Colorado Law School.

⁷³ Center for Energy Science and Policy, George Mason University.

⁷⁴ Institute for Policy Integrity at New York University School of Law.

⁷⁵ Institute for Policy Integrity at New York University School of Law.

⁷⁶ Columbia University Center on Global Energy Policy.

⁷⁷ Columbia University Center on Global Energy Policy.

generate about \$80 million per year. Similarly, a tax of 5 cents would generate \$400 million per year.⁷⁸

5.12. Regulatory Changes

- Improve legal defensibility of the Waste Prevention Rule. “Depending on the outcome of the appeal of the Wyoming case on the 2016 Rule, BLM may need to develop evidence that shows that the rule is a necessary and appropriate means of preventing waste. A clearer reference may be needed in the new rule to provide BLM authority to protect the environment on Federal lands under the FLPMA.”⁷⁹
- The Department should reestablish and strengthen mitigation regulations put in place during the Obama Administration to reduce methane waste, minimize groundwater contamination from hydraulic fracturing, and reduce the risk of catastrophic oil spills from offshore drilling and utilize cost-benefit analyses as a starting point for regulatory reform.⁸⁰
- Consider applying stronger GHG mitigation and offset requirements at the permitting or leasing stage as a form of compensatory mitigation.

5.13. Other Impacts

- BOEM is encouraged to build a stronger relationship with regional ocean partnerships and similar entities that can help chart and support a plan that is equitable, efficient, and sustainable as it addresses climate change and the shared management of environmental and natural resources. BOEM should invest, at a greater rate, in understanding the complex and integrated nature of coastal communities and natural resources through environmental studies programs.⁸¹
- BOEM and BLM should build upon recent analysis of option value and include a rigorous consideration of option value in leasing decisions. The Department should also work to either quantify or qualify option value using available economic tools.⁸²
- The Department should use the planning and leasing processes to facilitate renewable energy generation on public lands and waters. BOEM and BLM can identify areas with strong renewable potential and expand on the use of PEIS to facilitate such development.⁸³
- The Department should evaluate the possibility of siting renewable-energy projects to help revitalize communities impacted by reduced fossil fuel production. Consider efforts to improve timeliness of permitting of solar and wind development.⁸⁴

⁷⁸ Natural Resources Law Center at University of Colorado Law School; University of Colorado Law School.

⁷⁹ Columbia University Center on Global Energy Policy.

⁸⁰ Institute for Policy Integrity at the New York University School of Law.

⁸¹ Harte Research Institute for Gulf of Mexico Studies at Texas A&M University.

⁸² Institute for Policy Integrity at the New York University School of Law.

⁸³ Institute for Policy Integrity at the New York University School of Law.

⁸⁴ Institute for Policy Integrity at the New York University School of Law.

5.14. Additional Groups to Outreach/ Coordinate

- BOEM should engage with regional ocean partnerships at the beginning of development of new rules to keep communications open with a range of stakeholders and improve management.⁸⁵

6. Comments from Energy Exploration and Production Companies and Associations

6.1. Technologies or strategies to reduce emissions on facilities or through other means

- The Department should develop a regulatory framework that streamlines approval for projects designed to further reduce emissions, including advanced commingling production designs, which can reduce methane emissions and surface disturbance.⁸⁶
- The Department should develop regulations that allow for future production on Federal lands to pair with and complement other emissions-reducing technologies, such as carbon capture utilization and storage.⁸⁷
- The Department should regulate methane from new and existing sources and preserve a State's ability to adapt implementation to local conditions.⁸⁸
- The Department should collaborate with industry leaders to reduce methane emissions.⁸⁹
- The Department should not “replicate the Waste Prevention Rule promulgated by the Obama Administration and overturned by the District Court of Wyoming, as it incorrectly granted air quality authority to BLM and circumvented the Clean Air Act. Methane regulation is best left to the states and EPA.”⁹⁰

6.2. Social Cost of Carbon-GHG

- The Department should not include the social cost of GHG in the royalty rate because of the scientific uncertainty in calculating its magnitude and the susceptibility of its magnitude to policy level assumptions.⁹¹

⁸⁵ Natural Resources Law Center at University of Colorado Law School.

⁸⁶ American Exploration and Production Council.

⁸⁷ American Exploration and Production Council.

⁸⁸ ConocoPhillips.

⁸⁹ Western Energy Alliance.

⁹⁰ Western Energy Alliance.

⁹¹ Petroleum Association of Wyoming.

6.3. Environmental Justice, Underserved Communities

- The Department should expand Federal oil and gas development to advance environmental justice goals in rural and disadvantaged communities.⁹² Although most of the impacts related to oil and gas leasing are felt in western States, western State elected representatives, rural county commissioners, or local representatives were not invited to the stakeholder forum on March 25, 2021. For the Department to address environmental justice as it relates to President Biden’s plans to reduce or eliminate oil and natural gas from Federal lands, the panel held on March 25, 2021 should have focused on communities near and affected by Federal oil and gas development.⁹³
- Climate solutions for public lands must consider impacts to emissions, wildlife, the community, and the economy. The Department should:
 - Clearly and broadly define “stakeholder” in public engagement efforts to ensure input from a wide range of perspectives;
 - Establish a process to evaluate and publicly communicate decisions made about public lands, including the rationale for those decisions, and implications for each stakeholder group;
 - Be more transparent about resource allocations by requiring the development and public release of a RMP for every national park and monument within five years of establishment and require an update every five years;
 - Audit the skill sets and expertise of career staff to ensure that, as staffing gaps from the prior Administration and BLM are addressed, staff is carefully rebalanced with diverse voices and perspectives; and
 - Honor the perspectives of environmental justice leaders and communities by providing guidance and support to the Department’s bureaus to realize the protections of NEPA.⁹⁴
- The Department should support and implement the following environmental justice principles:
 - “Increased racial, national origin and socioeconomic diversity of all stakeholders involved in the environmental policy development process.
 - Development of enhanced risk communication tools and increased usage of those tools to inform businesses and communities on how to manage and/or reduce risks in operation areas.
 - Development and application of the best and publicly available scientific methods to define the relationship between chemical stressors, non-chemical stressors, and social determinants of health.

⁹² Western Energy Alliance.

⁹³ Western Energy Alliance.

⁹⁴ Keystone Energy Board.

- Use of community monitoring as a tool to better understand sources of emissions and potential impacts and mitigation measures.
- The development of improved decision-making tools.”⁹⁵

6.4. Tribal Considerations

- “The U.S. conservation movement historically has benefitted from the forced and/or coercive displacement of Indigenous and non-Indigenous peoples. The Department should:
 - Issue a statement with actionable items on the relationship between public lands and colonization, with acknowledgement of the ways that public lands have been places restricted to people with privilege.
 - Incorporate historical knowledge into land management practices, both in the form of Indigenous conservation practices and Federal land management strategies that respect landscapes, objects, and plant and animal life held sacred by Indigenous peoples.
 - Measure the cumulative impacts of climate change caused by fossil energy development on public lands and demonstrated by adverse impacts to communities, landscapes, and wildlife on or near public lands.
 - Continue to distinguish between inclusive stakeholder engagement with the general public and government-to- government consultation with Tribal Nations.
 - Identify ways that co-management with Tribal stakeholders can be prioritized in DOI land management practices.”⁹⁶
- While the indigenous panel had a representative for Native American rural communities with Nicole Borromeo of the Alaska Federation of Natives, the voice of Indian allottees was not included. The Department should ensure their voices are included in future discussions.⁹⁷

6.5. Jobs/Unions

- The oil and gas industry provides substantial direct and indirect benefits to American workers. The Department should consider the entirety of the oil and gas industry’s economic impact, not exclusively royalty rates.⁹⁸
- To provide relief to energy workers, the Department should promote a data-driven approach to leasing and permitting that emphasizes an all-of-the-above national energy

⁹⁵ American Petroleum Institute.

⁹⁶ Keystone Energy Board.

⁹⁷ Western Energy Alliance.

⁹⁸ American Exploration and Production Council.

portfolio and continues to fund critical State and local government functions and conservation programs.⁹⁹

6.6. Revenues

- In addition to increasing global emissions, a prolonged leasing halt and slowdown of permitting would burden low-income families and indigenous communities by removing a major source of revenue. Without continued oil and gas industry investment on the North Slope, the ability of its communities to maintain critical infrastructure and basic public services and amenities would diminish.¹⁰⁰
- It will be more difficult to ensure funding for America's conservation and environmental stewardship programs without continued and robust oil and gas production in the Gulf of Mexico.¹⁰¹
- Restricting production in the Gulf of Mexico will not end the production of oil; it will only shift the production to countries like Russia, China, and Iran. A slowdown or cessation of activities in U.S. waters would be little less than a "unilateral disarmament" that would cost the U.S. one of the most productive and safe regions for energy development in the country while other countries eagerly step in to tap greater global market share and power. Historically, the offshore oil and gas industry has been an important generator of revenues for Federal, State, and local governments,¹⁰² and western leaders have strongly and consistently opposed a move to ban oil and natural gas leasing in western States, as the decision would be harmful.¹⁰³
- The oil and gas program generates revenue, even when there is no activity on leases. The Department should be cognizant of the resources Federal land operators put into developing a lease.¹⁰⁴

6.7. Leasing Strategy

- The Department should consider the environmental protections afforded through State regulatory schemes.¹⁰⁵
- The Department should continue to lease in Central and Western areas of the Gulf of Mexico. Leasing in the Gulf is critical to the investment and technological innovation required to maintain the attractiveness of this region, reduce carbon emissions, and continue to contribute to U.S. economy.¹⁰⁶

⁹⁹ International Association of Drilling Contractors.

¹⁰⁰ ConocoPhillips.

¹⁰¹ National Ocean Industries Association.

¹⁰² National Ocean Industries Association, Western Energy Alliance.

¹⁰³ Western Energy Alliance.

¹⁰⁴ Petroleum Association of Wyoming.

¹⁰⁵ American Exploration and Production Council.

¹⁰⁶ BP.

- The Department should have one Gulf-wide sale a year to allow a focused and targeted opportunity for companies to access new leases while reducing the number of Federal lease sales that BOEM would conduct.¹⁰⁷
- The Department should consider heightened scrutiny of potential operators' ability to meet long-term financial obligations attached to a lease. This would strengthen mitigation efforts against the risk of premature abandonment of properties and subsequent uncertainty around decommissioning liability. The Department should revisit the financial assurance rule that strengthens financial and provides clear guidelines on predecessor liability, preferably in reverse chronological order.¹⁰⁸
- Improvements that could be made to the lease sale process more effective include:
 - Implementing an electronic means of bidding and Geophysical Data and Information System submittal, which would help streamline the process and eliminate the need for in person travel to the BOEM office or the risk of losing documents via courier services; and
 - Automating the tabulation of bid count and amounts to reduce costs and time spent reviewing the bidding documents.¹⁰⁹
- BLM decisions on surface occupancy of Federal lands should consider oil and gas development in adjacent lands owned by non-BLM entities, including States, Tribes, and private landowners.¹¹⁰ Most shale and tight gas straddles Federal and non-Federal land and it is not possible to pursue oil and gas development without Federal lands.¹¹¹ Due to this patchwork of landownership, the Federal leasing moratorium may stifle development of resources on private lands in western States.¹¹²
- The OCSLA requires a balanced approach between “economic, social, and environmental values” and oil and gas development, but leasing is required. The OCSLA states that “management of the outer Continental Shelf shall be conducted,” meaning that oil and gas leasing is mandatory.¹¹³ As such, the ban on lease sales not “not legally permissible and upends the decades of stability and industry confidence in the DOI leasing program.”¹¹⁴
- The Department should continue leasing under competitive terms, which promotes “energy security, national security, climate change solutions, environmental protection, safety, conservation programs, affordable energy, economic recovery, and job growth.”¹¹⁵
- The current review process is redundant to the current review process in place. The Department should proceed with the current 2017-2022 leasing program and re-

¹⁰⁷ BP.

¹⁰⁸ BP.

¹⁰⁹ BP.

¹¹⁰ ConocoPhillips.

¹¹¹ Canary, LLC.

¹¹² North Dakota Petroleum Council; Canary, LLC; Western Energy Alliance.

¹¹³ National Ocean Industries Association; Texas Alliance of Energy Producers.

¹¹⁴ American Petroleum Institute.

¹¹⁵ National Ocean Industries Association.

commence lease sales. Additionally, the Department should focus its efforts on the statutorily mandated development of the 2022-2027 oil and gas leasing program.¹¹⁶

- The Department should recognize that the current offshore and onshore leasing systems discourage lease stockpiling and that leased lands and waters are still available for multiple uses in most cases.¹¹⁷
- The Department should allow oil and gas companies to pursue new, competitive leases to “test innovative geologic concepts and to employ advancements in drilling and production technology.” Without access to new leases, companies will invest overseas.¹¹⁸
- BLM should make New Mexico’s Federal lands available under a balanced, multi-use program. The ongoing moratorium and potentially future permanent moratoriums will reduce overall barrel production in New Mexico due to the natural production decline of existing wells. While New Mexico’s oil and gas production are minimal on the global scale, it generates 17 percent of the State of New Mexico’s wealth. BLM should not impose a “flawed, socio-economic trade-off [...] on the backs of New Mexican citizens.”¹¹⁹
- BOEM should hold the scheduled, region-wide lease sales for the Gulf of Mexico for the remainder of the 2017-2022 Five-Year Plan. BOEM should also consider holding only one annual, instead of biannual, lease sale for the next Five-Year Plan.¹²⁰ The Department should avoid using misleading language and loaded rhetoric, including:
 - “The industry has stockpiled millions of acres of leases on public lands;” and
 - “It is time to restore balance on America’s public lands.”

6.8. Fiscal Terms/Fair Market Value/Royalties/Bonding

- Royalty rates remain substantial from offshore oil and gas development, and it is important that the Department continue to find the proper balance between attracting necessary capital while at the same time bringing revenue back to American taxpayers.¹²¹
- The Department should impose a robust and transparent carbon price to drive decarbonization across the economy, in line with the U.S. net-zero 2050 ambitions.¹²²

6.9. Permitting/Exploration, Development, and Drilling Plans

- The Department should undertake the Federal oil and gas program assessment concurrent with unabated leasing practices.¹²³

¹¹⁶ National Ocean Industries Association.

¹¹⁷ American Petroleum Institute.

¹¹⁸ American Petroleum Institute.

¹¹⁹ Independent Petroleum Association of New Mexico.

¹²⁰ Shell Offshore, Inc.

¹²¹ National Ocean Industries Association; American Petroleum Institute.

¹²² Shell Offshore, Inc.

¹²³ International Association of Drilling Contractors.

- BLM should solicit input from surface users with longstanding track records of responsible Federal surface use.¹²⁴
- There are 26 planning areas for leasing in the U.S. OCS, yet the current program as implemented has confined leasing to only two of the 26 areas. An equitable sharing of the benefits and risks would require exploration, development, and production to occur in more than two of the 26 areas. The term “shall” clearly state the statutory directive for continue leasing.¹²⁵
- Pursuant to statute and regulation, The Department should be in the process of completing the development of the offshore leasing program for 2022-2027, which provides the Department with an opportunity to complete another comprehensive review.¹²⁶
- A slowdown or cessation of activities in American waters, such as the Gulf of Mexico, would cost the United States a productive and safe region for energy development while other countries step in.¹²⁷
- The Department cannot legally ignore OCSLA’s purposes and national policy promoting competitive offshore leasing.¹²⁸
- The Department’s review of the Federal program should also recognize the unique environmental framework for operating on Federal lands, which includes any location-specific constraints incorporated into in an area-wide Record of Decision (ROD) after robust environmental reviews and stakeholder engagement processes, BLM rules and standards, as well as applicable Federal and State environmental laws.¹²⁹

6.10. Decommissioning

- A comprehensive review of the Federal oil and gas program should include a review of the bonding and financial assurance regime, and it is both unreasonable and legally questionable to retroactively impose increased burdens on entities that no longer have any privity with the Federal government through relying on the financial wherewithal of predecessor interest owners instead of current interest owners, and through arguably expanded imposition of joint and several liability to predecessors. The Department need not institute a pause on new leasing to optimize policy improvements on the bonding and financial assurance regime.¹³⁰
- BOEM should revise its risk management, financial assurance, and loss prevention program to ensure that current owners sufficiently assure their decommissioning

¹²⁴ ConocoPhillips.

¹²⁵ National Ocean Industries Association.

¹²⁶ National Ocean Industries Association.

¹²⁷ National Ocean Industries Association.

¹²⁸ American Petroleum Institute.

¹²⁹ American Petroleum Institute.

¹³⁰ American Petroleum Institute.

obligations, and BSEE should timely, orderly, and consistently enforce current owners' outstanding decommissioning obligations.¹³¹ BOEM and BSEE should:

- Require lessees to promptly decommission their “idle iron” consistent with current regulations and policies;
- Establish a revised policy to decommission-in-place end-of-life infrastructure where it would augment or preserve marine habitat created by these structures and the fisheries dependent upon them;
- “Specifically, issue a regulation on financial assurance that:
 - Requires sufficient financial assurance to ensure current owners (1) carry out their decommissioning liabilities, and (2) responsibly maintain their OCS assets;
 - Requires current owners to provide financial assurance based on their own financial wherewithal and not allow them to rely on the financials of predecessor lessees, operating rights owners, or holders of rights-of-way and rights-of-use and easements;
 - Prioritizes obtaining financial assurance from the highest risk leaseholders by utilizing public and implied credit ratings, and allowing only those entities with ‘investment-grade’ credit ratings to self-insure and to be third-party guarantors;
 - For ‘non-investment grade’ lessees, require security when the net present value of the remaining proved reserves of a lease is less than three times the value of the present and future decommissioning obligations. Where there are unsecured obligations on properties that currently meet these criteria, the Department should require security via a phased approach;
 - Avoids requiring owners and co-owners to post redundant security that is issued to the benefit of the Federal government; and
 - Maintains those provisions in the 2020 Proposed Rule that would improve the financial assurance program, such as provisions that would (1) remove financial assurance criteria that has been difficult to administer and not reliably indicative of an entity’s likelihood to default, such as ‘unencumbered net worth in the United States,’ ‘trade references,’ and ‘business stability’ as an operator in the oil and gas industry, (2) tailor indemnification to the specific obligations that will be guaranteed by the guarantor (e.g., ‘decommissioning obligations’ instead of ‘all obligations’), and (3) issue decommissioning orders in reverse chronological order through the chain of title in the event all current owners fail to perform their decommissioning.”¹³²

¹³¹ Shell Offshore, Inc.

¹³² Shell Offshore, Inc.

6.11. Energy Needs/Future Climate Scenarios/Substitutions

- The Gulf of Mexico is a unique basin in the Federal portfolio of lands and waters and is uniquely situated to help the U.S. and the world achieve climate goals and to drive the energy transition without compromising other U.S. national policy objectives. Therefore, the Department should maximize its access to these needed domestic volumes, while ensuring GHGs are minimized and/or mitigated wherever feasible.¹³³

6.12. Orphan Wells/Remediation

- A Federally funded program to plug orphaned oil and gas wells is not a long-term solution and the Department should not consider this program as a significant jobs boost to the drilling industry.¹³⁴
- BLM should increase minimum Federal bonding requirements to prevent orphaned wells through rulemaking.¹³⁵

6.13. Regulatory Changes

- “DOI should continue to promote efficiencies in the public commenting and engagement process through implementation of new provisions in §§ 1500.3(b), 1502.18, and 1501.5(d). These changes will result in more informative public comments, conserve agency resources, and cut down on speculative claims in litigation.”¹³⁶

6.14. Executive Actions

- While Section 204 of Executive Order 14008 speaks to a pause on new Federal leasing pending a review of “oil and gas permitting and leasing practices,” remarks at the March 25th public forum covered a broader range of issues. The Department should be mindful of the scope and length of their review and ensure that any identified changes are made using required rulemaking processes under the Administrative Procedure Act.¹³⁷

6.15. Other Impacts

- The authority to review and approve specific permits rests with the Department, away from the local and regional BLM offices. This policy will continue to introduce uncertainty and delays for companies involved in the development of existing Federal

¹³³ Shell Offshore, Inc.

¹³⁴ International Association of Drilling Contractors.

¹³⁵ ConocoPhillips.

¹³⁶ American Petroleum Institute.

¹³⁷ American Petroleum Institute.

leases. The Department should provide adequate staffing in the local BLM offices, and give those local officers the authority to address the backlogs which currently exist.¹³⁸

6.16. Additional Groups to Outreach/Coordinate

- Those who stand to be most affected by public lands decisions must be able to provide input into and influence that decision. The Department should:
 - Define and clearly communicate the roles and decision-making power of stakeholders;
 - Engage Black, Indigenous, and people of color leaders and organizations as decision makers, not just advisors;
 - Ensure that scoping periods and other opportunities for engagement are announced outside the Federal Register, including in local news and radio announcements;
 - Offer many different avenues for engagement, including through mail, email, web forums, phone, in-person, and video conferencing;
 - Ensure that engagement events, both online and in-person, are accessible and comfortable for participants by providing basic tools and services, including translation, interpretation, refreshments, childcare, and time and opportunity for all participants to be heard;
 - Listen to the stories of communities and individuals who are already experiencing acute impacts from the climate crisis through adverse health impacts from environmental racism, pollution, visible changes to landscapes and weather patterns, and climate migration; and
 - Incorporate the stakeholder engagement recommendations in President Obama's Presidential Memorandum on Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters.¹³⁹

6.17. Other comments

- Adverse changes to offshore Federal oil and gas leasing could jeopardize the positive benefits provided by offshore production and result in a shift in those benefits to other regions of the world, all to the detriment of U.S. employment, economic, energy, national and environmental security. The Department should proceed with offshore leasing under the 2017-2022 program and complete development of the 2022-2027 in a timely manner.¹⁴⁰

¹³⁸ Independent Petroleum Association of New Mexico.

¹³⁹ Keystone Energy Board.

¹⁴⁰ National Ocean Industries Association.

- The Department should continue policies that foster exploration and development activities in new OCS areas so that the oil and gas industry remain on the forefront of technology development for offshore drilling.¹⁴¹
- The Department must understand and recognize the operational differences and environmental implications between the production of oil and the production of natural gas from Federal lands as it evaluates its goals.¹⁴²

7. Comments from Non-Energy Industry

7.1. Social Cost of Carbon-GHG

- Permanently end new leasing for offshore drilling and invest in clean renewable offshore energy to advance ambitious and durable climate action that protects coastal economies, creates jobs, and benefits everyone.¹⁴³
- BLM should develop appropriate methodologies to calculate GHG emissions associated with the entire fuel cycle for Federally leased oil and gas, including extraction, processing, transportation, refining, and combustion.¹⁴⁴
- The Department should work to quantitatively monetize the impacts of GHG emissions associated with leased oil and gas using the U.S. Environmental Protection Agency (EPA) social cost of methane and the Interagency Working Group's social cost of carbon methodologies, as well as the U.S. Geological Survey carbon database. Explore alternatives to mitigate those impacts and ensure that leased oil and gas does not stand as an obstacle to GHG emission reduction goals. In coordination with other appropriate agencies, the Department should determine how much of U.S. GHG emissions should be permitted to come from Federal oil and gas leasing.¹⁴⁵
- Once a "Carbon Budget" is developed, BLM should take account of existing leases and then allocate any remaining budget to new leasing based on a revised leasing framework.¹⁴⁶
- BLM should consider incorporating the life-cycle costs of GHG emissions into the royalty rates charged for access to Federally leased oil and gas. BLM should also consider the relevant alternatives associated with where the money raised by such fees should be allocated, including payment for carbon mitigation or other efforts to reduce GHG emissions elsewhere; assisting oil and gas employees displaced by reductions in Federal oil and gas leasing or assisting States with lost revenue; or supporting oil and gas

¹⁴¹ American Petroleum Institute.

¹⁴² Terra Energy Partners.

¹⁴³ Business Alliance for Protecting the Pacific Coast.

¹⁴⁴ Powder River Basin Resource Council.

¹⁴⁵ Powder River Basin Resource Council.

¹⁴⁶ Powder River Basin Resource Council.

reclamation projects in areas where operators have not fulfilled their reclamation obligations.¹⁴⁷

7.2. Other Environmental Considerations

- It is imperative that, as soon as practicable, the Department completes the Programmatic Environmental Impact Statement (PEIS) and moves forward with revising its regulations necessary to carry out the decisions made by the NEPA process. Any proposed regulatory or other reforms should require notice and comment be issued concurrently with the Final PEIS.¹⁴⁸

7.3. Revenue

- Consider developing new operating standards that promote real-time, continuous independent monitoring. Economic benefits of new standards including:
 1. Ensuring that natural gas remains in the pipe, allowing more revenues will flow to Federal, State, and local entities;
 2. Allowing the Federal government to lead production of the cleanest energy products available in the U.S. and set the stage for a market in differentiated natural gas products; and
 3. The cleaner products command a higher price in the marketplace, leading to higher royalty payments.¹⁴⁹

7.4. Leasing Strategy

- Update policies like those below as they indirectly subsidize oil and gas development at the expense of American taxpayers:¹⁵⁰
 - Lease suspensions: inappropriate use of lease suspensions and unitization allows industry to hold leases indefinitely without production.
 - Lease reinstatements: current agency guidance does not provide clear direction for staff to evaluate and approve or deny reinstatements to ensure consistency with the MLA and agency regulations.
 - Leasing low potential lands: outdated planning guidance leads BLM to make most Federal minerals available to leasing in land use plans, regardless of the likelihood of development and in conflict with multiple use management and fiscal responsibility.
 - Leasing all oil and gas resources under a surface parcel: unlike private landowners, Department leases all oil and gas resources under a surface parcel, rather than leasing a specific formation slated for development.

¹⁴⁷ Powder River Basin Resource Council.

¹⁴⁸ Powder River Basin Resource Council.

¹⁴⁹ Project Canary.

¹⁵⁰ Powder River Basin Resource Council.

7.5. Fiscal Terms/ Fair Market Value/ Royalties/ Bonding

- Require reclamation bonds that adequately cover plugging and reclamation costs of wells. Like wells bonded under the underground injection control program of the Safe Drinking Water Act, bonds should be site-specific, full-cost bonds, or \$13 per foot.¹⁵¹
- Update definitions and mechanisms to properly track and review bond adequacy and well status. BLM should seek consistency with States like Wyoming to better track idle and orphan wells.¹⁵²
- BLM has a duty to update its revenue-generating policies, including more accurately compensate the American taxpayer for the value and cost of the oil and gas resources being leased.¹⁵³
- BLM should increase Federal onshore royalty rates because they are lower than the rates used by every major western oil and gas producing State and commonly charged by private mineral owners. BLM should consider other mechanisms to enhance financial return, including net profit sharing or royalty bidding.¹⁵⁴

7.6. Permitting/ Exploration, Development, and Drilling Plans

- New operating standards for natural gas development on public lands should contain the following concepts:
 - Real-time, Continuous Monitoring of Emissions:
 - Hold operators to account for any leaks by requiring real-time, continuous monitoring of emissions at the wellhead/production pad.
 - Utilize existing technology to monitor the carbon and methane intensity of production.
 - Require real-time access to, and sharing of, data with Federal and State agencies by independent third parties to ensure the veracity of data.
 - Operational Elements:
 - Engineering controls – require the highest level of standards for well development, including casing and cement, monitoring, and maintenance.
 - Well control excellence (drilling and completions) – require well operators to display well control competency and emergency response capability, ensuring that a well control incident during both drilling and completions operations can be addressed in a timely fashion.
 - Operational impacts – ensure that development plans mitigate environmental and community disturbance through proper engineering controls and communication channels, including biodiversity considerations, channels for public input, and noise/dust/light mitigation.

¹⁵¹ Powder River Basin Resource Council.

¹⁵² Powder River Basin Resource Council.

¹⁵³ Powder River Basin Resource Council.

¹⁵⁴ Powder River Basin Resource Council.

- Emergency response – ensure that an operator must show demonstrable engagement in emergency response by providing training program requirements and emergency response plan, or equivalent, that outlines various stakeholders and their respective responsibilities.
- Spill mitigation and response – utilize the highest industry standards in spill mitigation and response through appropriate risk mitigation and availability of relevant spill response equipment by operators.
- Water stewardship – focus on responsible water stewardship using recycled water and the completion of periodic water impact analysis.
- Reclamation and abandonment – demonstrate the capability to, or have a plan, to successfully reclaim affected surface areas and commit to plug and abandonment operations.¹⁵⁵
- Require phased development of oil and gas resources and prioritize phased development as an option to better address the on-the-ground impacts of Federal oil and gas development.¹⁵⁶

7.7. Regulatory Changes

- Restore the multiple use mission of the BLM and ensure that air, water, land, and wildlife resources are prioritized and protected. This is needed on both Federal surface land, managed by the BLM or other Federal land managing agencies, and on split State lands where Federal oil and gas resources are developed.¹⁵⁷
- Revise and update that Federal oil and gas leasing and development framework in a manner that will minimize the extent to which Federal oil and gas contributes to the emissions that drive climate change; ameliorate direct impacts to the environment where Federal oil and gas is developed; and maximize the value of this Federal resource.¹⁵⁸
- Explore alternatives that will achieve the following overarching objectives:¹⁵⁹
 - Delineating the full scope of GHG emissions associated with Federal oil and gas leasing and development, including upstream, midstream, and downstream emissions; and then reducing, mitigating, or eliminating these emissions to align with the Nation’s priorities and actions to address climate change;
 - Identifying and fully presenting a detailed analysis of the direct adverse environmental impacts associated with Federal oil and gas leasing and development and developing new regulations and policies to ensure these impacts are minimized, including insuring proper reclamation; and
 - Reforming the oil and gas leasing price structure to advance GHG emission reduction objectives, ensure meaningful competition, and provide a transparent and fair return to taxpayers.

¹⁵⁵ Project Canary.

¹⁵⁶ Powder River Basin Resource Council.

¹⁵⁷ Powder River Basin Resource Council.

¹⁵⁸ Powder River Basin Resource Council.

¹⁵⁹ Powder River Basin Resource Council.

- During its review, BLM should provide a complete environmental analysis of, potential alternatives to, and mitigation measures associated with, Federal oil and gas leasing and developments. BLM should have an informed basis for restructuring the regulatory and policy framework for Federal oil and gas leasing and development. Objectives should include minimizing contributions to GHG emissions and other environmental harms, while maximizing returns to the American public.¹⁶⁰
- Adopt a “bad operator” standard that would preclude any new leases or permits to any company that is out-of-compliance with FLPMA, MLA, Clean Water Act, Clean Air Act, or any other environmental requirements at any well they operate.¹⁶¹

7.8. Other Impacts

- Adopt broad, uniform, performance-based standards that ensure all Federal wells drilled meet acceptable minimum requirements for reclamation. Consider establishing, “unsuitability-for-leasing criteria focused on insuring that remediation can be adequately completed, and additional design criteria to ensure that lease tract and APD design best align with remediation objectives.”¹⁶²
- Prioritize public health and safety protection through coordination with the EPA to update air quality standards, improve air quality modeling and monitoring, and minimize venting and flaring at Federal oil and gas wells.¹⁶³
- Consistently enforce compliance with the quarter-mile setback from homes contained within Lease Notice #1, including clarifying that this Federal setback overrules any smaller State setback requirements.¹⁶⁴

7.9. Additional Groups to Outreach/ Coordinate

- Engage with coastal businesses during the comprehensive review. Coastal businesses are linked to ocean and beach health and understand that a robust and productive coastal economy is dependent on a healthy environment.¹⁶⁵
- Engage and consult landowners in all stages of development through lease notices, consent of leasing, onsite inspections, and analyses to determine well and infrastructure placement and reclamation.¹⁶⁶

¹⁶⁰ Powder River Basin Resource Council.

¹⁶¹ Powder River Basin Resource Council.

¹⁶² Powder River Basin Resource Council.

¹⁶³ Powder River Basin Resource Council.

¹⁶⁴ Powder River Basin Resource Council.

¹⁶⁵ Business Alliance for Protecting the Pacific Coast.

¹⁶⁶ Powder River Basin Resource Council.

8. Comments from Public Interest and Non-Governmental Organizations

8.1. Technologies or strategies to reduce emissions on facilities or through other means

- With its authority under the MLA, BLM should require lessees to mitigate climate impacts of oil and gas development. BLM should consider alternatives such as requiring net-zero emissions for drilling permits.¹⁶⁷
- The Department should publish data related to GHG emissions from oil and gas development on public lands and waters.¹⁶⁸
- The Department should create achievable goals to reach carbon neutrality on public lands and waters by 2040, measure the cumulative impacts of climate change caused by energy development on public lands and demonstrated by adverse impacts to communities, landscapes, and wildlife on or near public lands, and transition the public lands energy portfolio from extractive to renewable where appropriate.¹⁶⁹

8.2. Social Cost of Carbon-GHG

- The Department should cease oil and gas development to keep global warming temperatures below 2° Celsius and prevent environmental damage from climate change.¹⁷⁰
- The Department is legally required to cease Federal fossil fuel leasing under FLPMA, as the Department is not currently meeting its statutory mandates under FLPMA. The current oil and gas programs violate the FLPMA in that oil and gas leasing on Federal lands contributes to GHG emissions and climate change and “risks causing permanent impairment to the quality of the environment and productivity of public lands.”
- Due to the adverse effects of climate change, the Department should reduce oil and gas extraction on Federal lands and waters to only that which is necessary to support national security and economic interests during the transition to renewable energy.¹⁷¹
- BLM should develop a comprehensive strategy for limiting carbon pollution from fossil fuel development, which includes adopting a carbon budget to meet obligations under the Paris Agreement.¹⁷²

¹⁶⁷ Earth Justice and Multiple Additional Public Advocacy Groups.

¹⁶⁸ American Alpine Club.

¹⁶⁹ American Alpine Club.

¹⁷⁰ Earth Justice and cosigners; Coalition to Protect America’s National Parks; Southern Utah Wilderness Alliance; Defenders of Wildlife.

¹⁷¹ Coalition to Protect America’s National Parks.

¹⁷² Earth Justice and Multiple Additional Public Advocacy Groups.

- The Department should ensure that “decisions concerning fossil fuels are consistent with climate targets moving forward” through rigorous analysis, or a climate test, which the Department can apply to all decision-making. The climate test would “determine whether agency actions are consistent with limiting global warming to 1.5° Celsius above pre-industrial levels.” The climate test would quantify the impacts of an oil and gas project through environmental, economic, and social modeling. The Department should also quantify the economic impact and the social cost of GHGs, including methane and carbon. Analyzing the social cost of GHGs would provide the Department with a dollar amount of the climate impacts.¹⁷³

Net-zero emissions

- The Department should require net-zero emissions as a condition for approval of applications for permits to drill on Federal lands.¹⁷⁴
- BLM should require that a no new leasing alternative and a net-zero fossil fuel emissions alternative be considered in all land use planning.¹⁷⁵
- The Department should establish a framework to achieve net-zero GHG emissions on public lands and waters by 2030 and cease fossil fuel development on public lands and waters by 2050. Additional recommendations within this goal include:
 - “Develop a measurement protocol for GHG emissions from Federal lands consistent with climate science;
 - Develop a dashboard that will provide the information needed to manage publicly owned energy resources in a manner consistent with climate and other Department goals;
 - Develop tools necessary to populate the dashboard, including calculating volumes of fossil fuels and associated upstream and downstream pollution from existing leases, methods to estimate the carbon consequences of nominated and approved leases and Reasonably Foreseeable Development scenarios in planning documents, and other key metrics;
 - Adopt a Federal net zero obligation at the national level and in land use planning, and impose a net zero obligation on lessees at the leasing and permitting stages, including new wells on existing leases, through compensatory mitigation using tools such as a climate fee;
 - Research and consider developing a lease buyback program;
 - Support legislation and appropriations as needed;
 - Regularly disclose progress toward meeting emissions targets to the public;

¹⁷³ Natural Resources Defense Council.

¹⁷⁴ Natural Resources Defense Council; Earth Justice and Multiple Additional Public Advocacy Groups

¹⁷⁵ The Wilderness Society.

- Use the social cost of GHG to evaluate impacts from oil and gas planning, leasing, and development and to inform decisions for the oil and gas program, including establishing a climate fee; and
- Integrate the social cost of GHG into all its oil and gas policies.”¹⁷⁶

Accounting for climate change

- BLM should consider the “urgency of the climate crisis” in decision-making about oil and gas leasing on Federal lands.¹⁷⁷ Similarly, BOEM should ensure that its decision-making processes account for climate change, ocean acidification, and other environmental impacts from oil and gas activities.¹⁷⁸
- When considering oil and gas development permits, the Department should account for the “lag time” between changes to the environment from the oil and gas development and the warming effect.¹⁷⁹
- The Department should consider the climate change impacts to southeastern States.¹⁸⁰
- GHG emissions have significant negative public health effects. In rulemakings, the Department should “quantify GHG emissions to disclose the public health impacts of a proposed action.”¹⁸¹

Other suggestions

- The Department should rescind the Trump Administration’s revised Integrated Activity Plan (IAP), which opened 18 million acres of the Reserve to oil and gas leasing.¹⁸²
- The current estimate of the social cost of carbon is \$51 per ton, which underestimates the environmental and health harms caused by carbon emissions and should be revised upward.¹⁸³ BLM should require that “royalties on all new leases include a charge for the social cost of carbon.” BLM should also increase the minimum bid amount for leases offered at competitive auction.¹⁸⁴
- The Department should reinstate the 2016 Waste Prevention Rule.¹⁸⁵
- Limiting oil and gas production on Federal lands and waters would increase GHG emissions because demand for these energy resources will remain high, and transportation of other energy sources to meet that demand will make the policy counterproductive in reducing GHG emissions.¹⁸⁶

¹⁷⁶ The Wilderness Society.

¹⁷⁷ Colorado Farm and Food Alliance.

¹⁷⁸ Ocean Conservancy.

¹⁷⁹ Environmental Defense Center.

¹⁸⁰ Southern Environmental Law Center.

¹⁸¹ Natural Resources Defense Council.

¹⁸² Alaska Wilderness League and Multiple Other Environmental Organizations.

¹⁸³ Center for Biological Diversity

¹⁸⁴ Earth Justice and Multiple Additional Public Advocacy Groups.

¹⁸⁵ Natural Resources Defense Council; The Wilderness Society.

¹⁸⁶ Global Energy Institute and the U.S. Chamber of Commerce.

- Due to the severe consequences of GHG emissions and climate change on the National Petroleum Reserve-Alaska caused by offshore drilling, BOEM, BSEE, and ONRR should undertake a thorough review of OCS energy policy.¹⁸⁷
- BOEM should strengthen its existing air quality regulations for offshore oil and gas facilities. BOEM should consider the regulations that were originally proposed by the Obama Administration, which would have required operators to demonstrate that emissions do not contribute to air quality violations.¹⁸⁸

8.3. Environmental Justice

- Consider environmental justice and equity when reviewing the program.¹⁸⁹ The Department should conduct an environmental justice review of the oil and gas leasing program to “address the racial discrimination that is center to oil and gas operations.”¹⁹⁰
- Executive Order 12898 requires Federal agencies to consider environmental justice and the “adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.” Communities along the coast of the Gulf of Mexico, particularly Native communities, are vulnerable to adverse impacts from offshore drilling. For example, these communities experience higher rates of cancer and asthma and are disproportionately impacted by pollution and sea-level rise. The Department should include Native communities as “collaboration partners.”¹⁹¹
- The Gwich’in people rely on the Porcupine Caribou Herd of the Coastal Plain of Alaska for sustenance. Oil and gas development on the Coastal Plain threatens to disrupt the caribou herd’s habitat and the Gwich’in way of life.¹⁹² Similarly, oil and gas development is disrupting Nuiqsut villages and subsistence.¹⁹³
- The use of fresh water by the oil and gas industry for hydraulic fracking threatens the availability and quality of clean water for rural communities. The lack of fresh water increases the severity of droughts and undermines other economic efforts, including farming and ranching. BLM should institute a system of “cradle-to-grave management for water used by operators on Federal land.”¹⁹⁴
- Offshore drilling threatens South Carolina’s fisheries and local communities, such as the Gullah Geechee, who depend on subsistence fishing.¹⁹⁵
- The Department must consult with frontline and fenceline communities and workers who experience the worst health impacts from oil and gas development. Frontline

¹⁸⁷ Alaska Wilderness League.

¹⁸⁸ Earth Justice and cosigners.

¹⁸⁹ Western Leaders Network.

¹⁹⁰ Deep South Center for Environmental Justice.

¹⁹¹ Earth Justice and cosigners.

¹⁹² Alaska Wilderness League.

¹⁹³ Alaska Wilderness League and Multiple Other Environmental Organizations.

¹⁹⁴ Western Organization of resource Councils.

¹⁹⁵ Conservation Voters of South Carolina.

communities are “those that have experiences systemic socioeconomic disparities as well as those that will be impacted first and hardest by the climate crisis.” Fenceline communities are “those living immediately adjacent to fossil fuel refinement who experience environmental injustice and increased negative public health impacts from fossil fuel development.” The Department should establish an advisory committee made up of stakeholders and members of frontline and fenceline communities to consult during oil and gas development.¹⁹⁶

- “The PEIS should analyze and disclose the impacts of Federal fossil fuel leasing and permitting on vulnerable populations and public health” because adverse effects of climate change are exacerbated for vulnerable populations.¹⁹⁷
- Onshore drilling happens primarily in Latino, Black, and Indigenous communities, which exposes residents to toxic emissions and spills. As a result, public health effects disproportionately effect these minority populations. Investment funds should support socially disadvantaged communities.¹⁹⁸
- BLM should “prioritize decreasing the nature gap and avoid developing the lands closes to minority communities.”¹⁹⁹
- The Department should ensure that the transition from fossil fuels to renewable energy occurs in an equitable way.²⁰⁰

8.4. Other Environmental Considerations

- The Department should initiate a PEIS process of the Federal oil and gas leasing program.²⁰¹ A PEIS will provide the Department will the framework for effective public engagement and comprehensive, “sufficient analytical breadth” to consider all the impacts of the oil and gas leasing program. To maintain timeliness and efficiency in the PEIS, the Department should limit its review to the following issues:
 - “An analysis of DOI’s legal mandates for stewardship of public resources;”
 - “An analysis of DOI’s discretion to determine the best uses, including non-use or non- development, of public resources;”
 - “An analysis of the near-term, medium-term, and long-term economic, social, and environmental effects on communities, States, and regions” effected by the moratorium on new leasing;
 - “An analysis of the near-term, medium-term, and long-term opportunities for DOI to work in partnership with other Federal agencies, Tribal, State, and local governments and other key stakeholders, to facilitate a rapid, just, equitable,

¹⁹⁶ The Wilderness Society.

¹⁹⁷ Natural Resources Defense Council.

¹⁹⁸ Hispanic Access Foundation.

¹⁹⁹ Hispanic Access Foundation.

²⁰⁰ National Parks Conservation Association; Earth Justice and cosigners.

²⁰¹ Wilderness Society Action Fund and cosigners; Western Organization of Resource Council; Natural Resources Defense Council; Coalition to Protect America's National Parks.

stable, and prosperous transition for communities whose economic livelihoods remain linked, to a significant degree, to ongoing oil and gas development and production from Federal public lands;”

- “The development, in coordination with other relevant Federal agencies, of a carbon budget for Federal public lands, that determines the fair share of remaining U.S. emissions, under a 1.5° Celsius warming scenario, that could come from activities on Federal public lands;” and
- “The development of a government-to-government consultative framework for identifying how the work and analysis outlined above can be informed and influence by Tribal governments and their own resource management practices and goals.”²⁰²
- The Department should conduct a programmatic review of the Federal fossil fuel program and identify pathways consistent with the goal of limiting global warming to 1.5° Celsius and President Biden’s 30x30 initiative.²⁰³ The programmatic review should be completed within one year.²⁰⁴
- In its review, BOEM should consider the potential environmental benefits of ceasing offshore fracking.²⁰⁵
- In its review, the Department should consider prioritizing environmental protection over oil and gas development, encouraging energy efficiency to offset any need for additional fossil fuel development, and permanently protecting certain lands and waters.²⁰⁶
- BOEM should develop comprehensive regulation to address the environmental and public health risks posed by offshore fracking in the Gulf of Mexico. BOEM should evaluate the following impacts:
 - “Oil spills and accidents;
 - Noise and vessel traffic;
 - Air emissions;
 - Greenhouse gas emissions;
 - Upstream impacts from refineries, petrochemical factories, and other facilities;
 - Impacts of climate change in the region; and
 - Impacts to environmental justice communities, including creation of new jobs focused on sustainability and conservation.”²⁰⁷
- The Department must properly analyze and consider the costs associated with major oil spills to wildlife, the environment, and coastal economies.²⁰⁸
- The Department must strengthen oversight of offshore drilling safety and thoroughly investigate ways to improve weak regulatory environment and industry’s track record,

²⁰² Natural Resources Defense Council.

²⁰³ Defenders of Wildlife.

²⁰⁴ The Wilderness Society.

²⁰⁵ Center for Biological Diversity.

²⁰⁶ Environmental Defense Center.

²⁰⁷ Earth Justice and cosigners.

²⁰⁸ Center for Biological Diversity.

including reversing the Trump administration’s rollback of the Well Control Rule and Production Safety Systems Rule.²⁰⁹

- Increase transparency in the environmental review process.²¹⁰
- BLM should work with EPA to “update air quality standards, improve air quality modeling and monitoring, and eliminate non-emergency venting and flaring at Federal oil and gas wells.” BLM should also prioritize meeting the standards set in the 2016 Waste Prevention Rule.²¹¹
- The comprehensive review should address non-climate impacts of the Federal oil and gas leasing program, including wildlife such as the Gunnison sage-grouse.²¹²
- Leasing Federal land for oil and gas development conflicts with the FLPMA and the Multiple Use Sustained Yield Act by impairing the use of those lands for public recreational activities. The Department should use a programmatic review of the onshore leasing program to “modify their practices to better adhere to the mandate of FLPMA and protect unique outdoor recreation opportunities.”²¹³
- Under the FLPMA and BLM Instruction Memorandum (IM) 2010-117, oil and gas development on public lands must be balanced with other uses of the land, as there is no preference for oil and gas development over uses such as habitat conservation or outdoor recreation. BLM should update its onshore oil and gas leasing program “to ensure that the agency is meeting its broader obligations to the American people.”²¹⁴
- The Department should establish a “clearly defined process for the comprehensive review” and identify reforms that can be completed through Departmental guidance or Instruction Memorandum, rulemaking, and legislation.²¹⁵
- BLM should implement new directions focused on protecting wildlife and other natural resources on the National Petroleum Reserve – Alaska.²¹⁶
- As directed by E.O. 13990, BLM should review the Arctic National Wildlife Refuge Coastal Plain Leasing Program to protect the land which is culturally important to the Arctic Indigenous peoples.²¹⁷
- The Department should consider climate change when preparing its Five-year leasing program. A null schedule five-year program would best meet the nation’s energy needs and combat climate change.²¹⁸
- BSEE should commission an independent review of the 2018 revision of the Oil and Gas Production Safety Systems rule and the 2019 revision of BSEE’s OCS Blowout Preventer and Well Control rule.²¹⁹

²⁰⁹ Southern Environmental Law Center.

²¹⁰ U.S. PIRG and Environment America.

²¹¹ Western Organization of Resource Councils.

²¹² Earth Justice and Multiple Additional Public Advocacy Groups.

²¹³ Access Fund.

²¹⁴ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

²¹⁵ The Wilderness Society.

²¹⁶ The Wilderness Society.

²¹⁷ The Wilderness Society.

²¹⁸ Natural Resources Defense Council and Earthjustice.

²¹⁹ Coalition to Protect America's National Parks.

- Re-align BLM leasing program priorities and practices with applicable statutory mandates and the core principle of “conservation is required” first instead of its traditional thinking of “leasing is required.”²²⁰

8.5. Tribal Considerations

- The Department should collaborate and consult with Tribes impacted by oil and gas development.²²¹ The United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous Peoples have the right to give or withhold “free, prior and informed consent” to projects and policies affecting their lands and peoples.²²² The Department should prioritize consultation with Tribes and other communities disproportionately and adversely affected by oil and gas development.²²³
- The Department should address the economic impact to Arctic communities of a transition away from fossil fuels.²²⁴

8.6. Jobs/Unions

- Lifting the pause on leasing in Federal waters will help ensure that regions, such as the Gulf of Mexico, continue to benefit from the economic and environmental benefits associated with offshore energy lease sales, and will support the multiple use management approaches that have served the country well.²²⁵
Ending new leasing will not cause economic harm, rather it will support a transition to a sustainable clean energy economy. BOEM and BSSE can create more jobs with clean energy substitutions. E.O. 14008 suggests that BOEM and BSSE create well-paying union jobs which employs former offshore drilling workers through decommissioning projects reclaiming abandoned and orphaned wells.²²⁶
- The Department should establish a plan to equitably transition workers and communities who are dependent on oil and gas employment and economic activity.²²⁷ This plan should include profitable jobs, healthcare, housing, and food security for families and communities dependent on oil and gas development.²²⁸ The State of Colorado established an Office of Just Transition, which released an action plan to transition the State away from coal development in a way that supports coal workers and communities. The

²²⁰ Coalition to Protect America's National Parks.

²²¹ Alaska Wilderness League and Multiple Other Environmental Organizations; National Parks Conservation Association; Earth Justice and Multiple Additional Public Advocacy Groups; The Wilderness Society; Ocean Conservancy; Rocky Mountain Wild; Colorado Farm and Food Alliance.

²²² National Parks Conservation Association.

²²³ Center for Biological Diversity.

²²⁴ Alaska Wilderness League and Multiple Other Environmental Organizations.

²²⁵ National Ocean Policy Coalition.

²²⁶ Earth Justice and cosigners.

²²⁷ Western Organization of Resource Councils; Natural Resources Defense Council; National Wildlife Federation and multiple other Public Advocacy Groups; Food and Water Watch; Montana Wilderness Association.

²²⁸ Multiple Gulf Advocacy Organizations.

Department should consider this model when establishing a plan for oil and gas workers.²²⁹

- Underserved communities along the Gulf of Mexico should be the “first beneficiaries of renewable energy job opportunities and clean energy infrastructure investments.” BOEM should ensure that the costs of this transition are paid for by offshore oil and gas developers in the Gulf of Mexico.²³⁰

8.7. Revenues

- BOEM should commence new rulemakings to update its royalty, bid and rental rates.²³¹
- The Department should prioritize:²³²
 - Ensuring that the sale of public oil and gas accounts for the full cost of production, including the real cost of freshwater use, environmental impacts, contribution to climate change, impacts to low-income communities and people of color, and plugging, reclamation and remediation of sites.
 - Requiring a fair return on publicly owned resources while decoupling the ability of our state and counties to provide basic infrastructure and social services from Federal royalties.
- BLM’s oil and gas program should adequately compensate taxpayers for the use of public lands and minerals. Taxpayers are not adequately compensated for the leasing of public lands and minerals and are harmed by BLM’s longstanding position to elevate leasing and development as the “dominant” use of public lands.²³³
- All revenue streams and processes of the Department’s program, from minimum bids and non-competitive leasing to royalties and bonding, must be carefully reexamined to guarantee this program returns fair and reasonable value to the U.S. taxpayer.²³⁴
- To fulfill recommendations by the GAO, the Department should establish a continuous process to “evaluate the oil and gas fiscal system as a whole,” with measures that include:
 - Establishing an Office of Natural Resource Revenue Analysis to conduct studies of leasing and bid practices, royalty and rental rates, resources measurement practices, valuation policies, among other topics; and
 - Periodically reevaluating its natural resource revenue policies.²³⁵
- Similarly, Congress should establish a Joint Committee on Natural Resource Revenue to strengthen its oversight of natural resource revenue policy. This joint committee between the U.S. Senate Energy and Natural Resources Committee and the U.S. House Natural Resources Committee should evaluate the effectiveness of the Department’s policies. Congress should enact transparency laws that require reporting

²²⁹ National Wildlife Federation and multiple other Public Advocacy Groups.

²³⁰ Southern Environmental Law Center.

²³¹ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society.

²³² Western Organization of Resource Councils.

²³³ Southern Utah Wilderness Alliance.

²³⁴ Colorado Farm and Food Alliance.

²³⁵ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society.

- of revenues paid, production levels, and mineral values on public lands for each lease.²³⁶
- “Congress may authorize funds from the Federal share of any revenues arising from oil and gas leases to be used by Interior to defray costs of developing the new leasing system including but not limited to the expert analysis and studies required for that purpose.”²³⁷
 - The Department should design a fair market value leasing system that would operate within production regions, as approved by Congress. The system would operate as follows:²³⁸
 - Threshold conditions for tracts to qualify for leasing, evaluated as most suitable for oil and gas development, minimize value foregone from the loss of alternative beneficial uses, are not better suited to renewable energy development, and that are subject to conditions that minimize harm to the public. The Department should be required to develop analytical methods, rules and procedures to effectively and consistently apply these conditions.
 - Basic starting points for minimum bids, lease periods, rental, and royalty rates. The basic lease terms would be continued forward from the transitional lease period. These terms would include:
 - \$15 per acre minimum bids subject to adjustment biennially for inflation and the minimum royalty rate of 18.75 percent or more if adjusted through the permanent and continuous royalty review process describe above.
 - Standard lease period would be five years with the potential for a two-year extension if development on the lease has begun.
 - Rental rate would be \$3 per acre for the first two years, \$5 per acre for the next three years, and \$25 per acre for any extension period. These rates would be updated for inflation by the Department biennially.
 - The Department would evaluate rules and procedures for increasing the \$15 minimum bid level to incorporate the option value of a lease to account for uncertainties related to future oil and gas prices and environmental and social costs.
 - “Charge for loss of value from diminished multiple uses over the life cycle of the lease. Interior will establish rules to calculate and add site-specific estimates of additional lost value from multiple uses as identified for the lease parcel in site specific assessments and NEPA evaluations. The average value lost per region over the lease period plus the site-specific additional losses of value will be translated into a per acre amount due and payable with the lease rental payments as a charge for the loss of value from diminished multiple uses. The charge will continue to be due and payable on a periodic basis during lease suspensions and reclamation of the production site because the

²³⁶ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society.

²³⁷ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

²³⁸ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

loss of multiple use continues through the entire life cycle of the oil and gas activity, including those time periods. The established amount of charge for the loss of value from diminished multiple uses will be included in lease terms at the time leases are offered for public sale.”

8.8. Leasing Strategy

General recommendations on leasing strategy

- The Department should lift the pause on leasing activity in Federal waters. The multi-use management approach employed has served the Gulf of Mexico and is a casebook example of how commercial and recreational interests can thrive alongside one another.²³⁹
- The leasing pause should be kept in place until the review is complete and new management directives are fully implemented.²⁴⁰
- In order to fully assess the need for new permits and protect the environment, the Secretary should consider instituting a longer pause on new leasing on public lands onshore.²⁴¹
- Maintain the pause on oil and gas leasing. While the Department conducts its comprehensive review, start to address a transition towards zero emissions from Federal lands.²⁴²

Recommendations for Congress

- Congress should enact a moratorium on new Federal onshore oil and gas leases until the Executive Branch completes implementation of reforms of the oil and gas leasing program to achieve a full and fair return to the American people. Once Congress determines the Executive Branch has completed its review, promulgated rules, and revised administrative practices to implement a new oil and gas leasing system, the moratorium can be lifted. Reforms should include minimizing the value foregone from alternative beneficial uses of the land and the costs of damages to the public from oil and gas production and should be designed to allow for limited, new oil and gas leases to be issued competitively to experienced oil and gas producers as necessary to maintain operating conditions in current, producing oil and gas fields (i.e., “transitional leases”). These leases would only be offered on terms during the period of the moratorium until the Department completes work on a new leasing program and Congress lifts the moratorium.²⁴³

²³⁹ National Ocean Policy Coalition.

²⁴⁰ Earth Justice and Multiple Additional Public Advocacy Groups.

²⁴¹ Environmental Defense Center.

²⁴² Defenders of Wildlife.

²⁴³ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society.

- The following changes should become effective on the starting date of the recommended moratorium put in place by Congress, and would apply to transitional leases and to future leases after Congress lifts the leasing moratorium:²⁴⁴
 - Adopt a requirement that lessees for future oil and gas leases have a fiduciary responsibility to act in the public interest in the conduct of all of its leasing activities. Lessees would be required to resolve conflicts between the private interest and the interest of the public in favor of the latter. The Department should adopt sufficient rules and procedures to require disclosure by the lessee of information to ensure that the lessee is fulfilling its fiduciary responsibilities.
 - Increase the current minimum bids to \$15 per acre to prevent speculative activity and encourage diligent development. Congress should require the Interior Secretary to adjust this minimum bid level biennially for inflation. Evaluate all bids to determine if they represent fair market value and to reject bids that, although above the \$15 minimum, fail a market value test.
 - Lease terms should be set at three years with the potential for a two-year extension if development is underway. The rental rate would be set at \$5 per acre for the first three years and \$25 per acre during an extension. The Department should be required to adjust rental rates for inflation biennially.
 - Congress should set the minimum onshore royalty rate for leases at 18.75 percent. This rate matches the Federal offshore rate and more nearly approaches market value royalty rates as best indicated by the 19.375 percent median of state public land royalty rates. Congress should require the Department to, “compile data annually on the median top state royalty rates weighted by volume of oil and natural gas production and to evaluate increasing the Federal onshore rate to conform to this median state rate through by rule or congressional action.”
 - Establish a public registry of companies qualified to nominate and bid on parcels for oil and gas leasing. The Department should expand standards for qualifying bidders after the transition period, to allow entry of new firms that demonstrate the necessary technical expertise and access to capital to successfully conduct diligent production on Federal lands in compliance with all applicable Federal requirements.
 - Accept bids for transitional leases only within established areas of existing production and within sufficiently proximity to existing, producing wells such that only minimal, new infrastructure would be required. Nominations would include a publicly available justification as to why the proposed lease would be essential to maintaining existing operations.
 - All sealed lease bids would be opened and disclosed publicly after the close of the bidding. Interior will evaluate the highest bids for their adequacy in relation to market value information. During the transition period, the relevant market value information would include a comparison with prior lease bids in the area of the

²⁴⁴ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society.

parcels offered for lease. Interior would be required to reject any bid that it determines to not achieve market value.

- “Congress should repeal and prohibit noncompetitive leasing because it is inherently incapable of achieving fair market value for the public, invites manipulation of the leasing process, and results in speculation instead of production.”
- Congress should allow Interior to grant lease suspensions under only carefully defined circumstances and should limit lease suspensions to three years or less. Further, a suspension should be granted only after public notice and an opportunity for public comment prior to a decision. All lease suspensions, the rationale for the suspension, and their terms should be maintained as a public record.
- Congress should reform the reclamation process for oil and gas wells by requiring bonding sufficient to realistically cover the costs of reclamation and shall provide for maximum feasible transparency and public participation in developing bonding regulations and implementing reclamation plans.
- Congress should reverse its action in 2017 overturning the U.S. Securities and Exchange Commission rules, implementing the Cardin-Lugar provisions of the Dodd-Frank Act, on transparency in extractive industry payments to governments. Further, the Department should be required to rejoin the Extractive Industries Initiative.
- The Department should propose the establishment of oil and gas production regions based on geologic basins for oil and gas, shared infrastructure, common environmental characteristics, and other relevant factors. The Department should develop a report evaluating and ranking the regions for their suitability and potential for oil and gas development, value of alternative beneficial uses for Federal lands in those regions; suitability and potential for renewable energy development; and risks of environmental and social harm to the public from oil and gas production.²⁴⁵
- The Department should offer tracts on a flexible schedule.²⁴⁶
- Mandate for the oil and gas leasing program that “leasing is not mandatory and should only be allowed if and when consistent with the multiple-use principle.”²⁴⁷
- Reinstate the Department and BLM mitigation policies and establish a robust mitigation program that requires no net loss of conservation value and full mitigation of climate impacts.²⁴⁸
- Reissue and improve Secretarial Order 3330 – Improving Mitigation Policies and Practices of the Department of the Interior; DOI Manual 600 DM 6 – Landscape-Scale Mitigation Policy; BLM Mitigation Handbook H-1974-1; and Solicitor’s Opinion M-37039. Incorporate these mitigation policies into oil and gas decision-making in land use planning, leasing, and permitting to ensure no net loss of conservation value, and fully

²⁴⁵ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society

²⁴⁶ Alex Daue, Dan Bucks, Powder River Basin Resource council Marjorie West, Leland, The Wilderness Society

²⁴⁷ Western Leaders Network.

²⁴⁸ The Wilderness Society (TWS).

address impacts to cultural resources, recreation, and other resources and values on public lands.²⁴⁹

- Before preparing a new five-year program, Solicitor’s Opinion M-37062 should be withdrawn by the Solicitor’s office. The Solicitor’s Opinion erroneously interpreted OCSLA to prohibit implementing a no new leasing policy through a null schedule five-year program or through lease sale cancellation.²⁵⁰
- The Secretary should adopt a null schedule five-year program consistent with U.S.C. § 1344(a) and § 1344(a)(1)-(4).²⁵¹
- BLM should adjust the standard lease period to be five years (two years exploratory work and three years development) with the potential for a two-year extension if development on the lease has begun.²⁵²
- BOEM should prepare and issue a new draft proposed program (DPP) for FY 2023-2028 that includes the following provisions:²⁵³
 - Compliance with the balancing requirements of Section 18(a)(3) of OCSLA.
 - Only necessary and appropriate lease opportunities should be offered; and these should be focused in areas with the greatest production potential with relatively limited environmental risk.
 - Clearly identify planning areas with relatively limited production potential or relatively high environmental and social costs; and such areas should be excluded from proposed leasing in order to “strike a balance” between the potential for environmental damage and the potential for discovery of oil and gas.
 - Include coastal buffer(s) to accommodate concerns such as military use, fish and marine mammal migration and other near shore uses, and be universally applied to all planning areas with populated shorelines.
- The Department should refrain from issuing any leases under the current program and begin the process of developing the next program that aligns with the considerations envisioned by OCSLA.²⁵⁴
- The Secretary should cancel the remaining proposed lease sales in the existing five-year program, including Lease Sale 258 for the Cook Inlet, lease sales 257 and 259, and 261 for the Gulf of Mexico. Past lease sales have been cancelled for both environmental and economic reasons.²⁵⁵
- Prohibit leasing or other activities in specific portions of the OCS either permanently or for a period of time and/or prohibit the Secretary of Interior from issuing leases on OCS lands that are adjacent to states that have prohibited OCS oil and gas activities.²⁵⁶

²⁴⁹ The Wilderness Society (TWS).

²⁵⁰ Natural Resources Defense Council and Earthjustice.

²⁵¹ Natural Resources Defense Council and Earthjustice.

²⁵² The Wilderness Society (TWS).

²⁵³ Coalition to Protect America’s National Parks.

²⁵⁴ Environmental Defense Center.

²⁵⁵ Natural Resources Defense Council and Earthjustice.

²⁵⁶ Ocean Conservancy.

- BOEM should limit future leasing to locations with established oil and gas leasing operations. New leasing adjacent to states that formally object to it should not be initiated because of the risks it creates to thriving tourism, commercial fishing, and other sustainable coastal economies that depend upon unpolluted marine waters and clean beaches.²⁵⁷
- The Department should consider permanent protections for important ecological areas (onshore and offshore) with additional designations of national monuments, national parks, marine sanctuaries, and other types of Federal protected areas.²⁵⁸
- Considerations should be made for permanent withdrawal of certain areas from offshore leasing pursuant to Section 12 of OCSLA.²⁵⁹
- The Administration and Congress should permanently protect South Carolina's coast from offshore drilling.²⁶⁰
- BOEM should exclude the Mid- and South Atlantic Planning Areas from oil and gas activity to protect the region's natural resources and coastal communities.²⁶¹
- BOEM must consider the following factors outlined in Section 18 of OCSLA § 1344(a)(2)(A)–(H) when determining the timing and location of offshore oil and gas exploration, development, and production: the laws, goals, and policies of affected States, competing uses of the sea and seabed, and relative environmental sensitivity and marine productivity. BOEM must consider these factors, among others, and must develop its leasing program “so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.” (see 43 U.S.C. § 1344(a)(3)).²⁶²
- Develop and implement a plan that will phase out existing offshore oil and gas drilling in the Gulf of Mexico, Southern California, and Cook Inlet.²⁶³
- Work with Congress to make sure there are permanent protections in the Gulf, and in all Federal waters, including: making the Moratorium on the Eastern Gulf of Mexico Planning area permanent; issuing statutes that allow for no new offshore leasing to be codified into the law through legislative changes; providing funding for infrastructure to keep communities safe, including early warning systems, enhanced evacuation procedures, raising of roads, and a rapid replacement of essential infrastructures such as bridges, levees, sea walls, water pumps, and sewage treatment facilities; and Congress must reinstate the crude oil export ban.²⁶⁴
- To reduce the risk of continued production in the Gulf of Mexico from existing shallow water operations, BOEM should (1) catalog the remaining expected production and life span of these operations; (2) ensure that they are financially and technically ready for decommissioning; (3) ensure safe operations as they wind down, and (4) avoid or deny

²⁵⁷ Coalition to Protect America's National Parks.

²⁵⁸ Environmental Defense Center.

²⁵⁹ Environmental Defense Center.

²⁶⁰ Conservation Voters of South Carolina.

²⁶¹ Southern Environmental Law Center.

²⁶² Southern Environmental Law Center.

²⁶³ Multiple Gulf Advocacy Organizations.

²⁶⁴ Multiple Gulf Advocacy Organizations.

unwarranted lease extensions. These operations are a source of disproportionate risk to coastal communities.²⁶⁵

- Require a specific level of baseline science, monitoring and observing in areas before exploration or development can proceed.²⁶⁶
- Require a threshold level of infrastructure (e.g., ports, response assets) before leasing is allowed in OCS areas.²⁶⁷
- The new lease plan should ensure it is not operating at odds to a progressive energy future, which several states and other countries are working to achieve.²⁶⁸
- There is no need for the Department to offer additional acres for sale because, 1. there is an imbalance between the supply of offshore leases and the demand for additional offshore oil, 2. the demand and prices for oil are falling, and 3. industry maintains a large stockpile of undeveloped leases in the Gulf OCS.²⁶⁹
- BOEM should end new leasing and adopt a five-year plan with no new scheduled lease sales. The Department should recommend that President Biden use Section 12(a) of OCSLA to permanently withdraw all unleased areas of the OCS from leasing.²⁷⁰
- The Department should revise the OCS Oil and Gas Leasing Program to offer no new leases based on numerous scientific and economic analyses, including those by Federal agencies, that show that, “the assumption of perfect substitution in GHG analyses for U.S. oil and gas production is unfounded and unreasonable, and dramatically misrepresents the carbon pollution and climate impacts from oil and gas leasing.”²⁷¹
- Although the OCSLA requires the Secretary to prepare and maintain a leasing program that includes a schedule of proposed lease sales, [Footnote 140: 43 U.S.C. § 1344(a)] it does not mandate the Secretary proceed with the actual lease sales proposed in that program. The Department has regularly canceled, delayed, or failed to proceed with individual lease sales specified in leasing programs. The Secretary should use discretion to forego the remaining four lease sales contained in the existing leasing program that runs through 2022.²⁷²
- BLM can adopt a regional or national RMP amendment, or national regulation, that dramatically reduces the acreage of public lands open to leasing. Closing most Federal lands to new leasing would be an effective tool for implementing BLM’s duty to address climate change.²⁷³
- The new five-year program process should analyze the environmental impacts of development, and national interests considering climate change, to demonstrate that the Department should not offer new lease sales offshore in the next five years.²⁷⁴

²⁶⁵ Earth Justice and cosigners.

²⁶⁶ Ocean Conservancy.

²⁶⁷ Ocean Conservancy.

²⁶⁸ Environmental Defense Center.

²⁶⁹ Earth Justice and cosigners.

²⁷⁰ Earth Justice and cosigners.

²⁷¹ Center for Biological Diversity.

²⁷² Earth Justice and cosigners.

²⁷³ Earth Justice and Multiple Additional Public Advocacy Groups.

²⁷⁴ Earth Justice and cosigners.

- BOEM and BSEE should adopt a phased-development regulatory strategy to limit the amount of additional development that could be approved on existing leases in a given time period. Recommendations include the Department establishing an aggregate carbon budget over a time-limited period for production from Federal oil and gas leases and approve only those new permits that would not cause any exceedance of the carbon budget. The Department could also base the phased-development system on limits on the total number of wells that can be operating in particular geographic areas or limit the total amount of air pollution emitted in a particular area – which could be strengthened by the adoption of a methane rule or air quality regulation.²⁷⁵
- The Department should take a proactive management approach that sets clear timetables and parameters for existing and planned oil and gas activities on Federal public lands.²⁷⁶ Representatives from the following Federal agencies and their relevant departments should be active partners in bringing a shift in resource development and utilization: EPA, Department of Labor, Department of Energy, Department of Agriculture, Department of Commerce, Department of Health and Human Services, and Department of Transportation.
- The Department should include compensatory mitigation in its oil and gas leasing program by reasserting the authority of its agencies (through a Solicitors Memorandum as well as a Secretarial Order followed by agency level Informational Memoranda) to require compensatory mitigation. Reasserting this authority will ensure that the use and harm of public lands is mitigated or offset by environmentally protective measures.²⁷⁷
- The Department should work with Congress to ensure important reforms lead to sustainable policy change for existing Federal oil and gas development. Working with Congressional leaders, the Department should, “support and help shape, as appropriate, the legislation that is required to allow the agency to advance certain reforms for which it does not current have sufficient legal authority;” and “support and help shape, as appropriate, legislation that will make permanent regulatory changes for which the agency already possesses legal authority to act.”²⁷⁸
- The Department should immediately update oil and gas lease terms including royalty, rental, and bonding rates; increase the minimum bid for both onshore and offshore leases; issue stronger rules for waste prevention and valuation; dramatically improve transparency systems; better prioritize which lands should be made available for lease and which are more appropriate for other uses; lease valuable land strategically; and limit all reclamation, pollution, and climate liabilities associated with Federal oil and gas development.²⁷⁹

²⁷⁵ Earth Justice and cosigners.

²⁷⁶ Natural Resources Defense Council.

²⁷⁷ National Wildlife Federation and multiple other Public Advocacy Groups.

²⁷⁸ Natural Resources Defense Council.

²⁷⁹ Taxpayers for Common Sense.

- BLM's policies on bonding rates, lease suspensions and reinstatements, and leasing low potential lands are providing subsidies to the oil and gas industry and encourage speculative holding of dormant leases.²⁸⁰
- The BLM should assess administrative fees to recoup costs of running the program, such as a filing fee for an expression of interest. The fees would help deter casual speculators and shift some of the costs of administering lease sales to the oil and gas industry, instead of taxpayers.²⁸¹
- The Department should more effectively meet the standards of multiple use management and a fair return of revenues to the public by:²⁸²
 - Charging higher, market-tested royalty rates (such as those used by states and the private sector) instead of the inadequate, subsidy-providing 12.5 percent rate;
 - Increasing rental rates on Federal leases to a level sufficient to incentivize oil and gas production so that the percentage of Federal leases that produce energy would rise well-above the current, unsatisfactory levels (e.g., only 50 percent in Rocky Mountain States);
 - Increasing minimum lease bids, as recommended by the Congressional Budget Office, to deter companies from purchasing leases for speculative purposes only;
 - Updating bonding requirements to reflect current costs associated with reclamation and restoration of lands used for oil and gas production;
 - Reforming lease suspension practices to establish rigorous standards guaranteeing that undeveloped oil and gas leases are either diligently placed into production or cancelled so that the land can be managed for other beneficial uses;
 - Updating lease reinstatement practices to require consistent and higher standards of justification for reinstating lapsed leases, with minimal tolerance for defaults on rental payments; and
 - Stopping the leasing of lands with low potential for oil and gas production and managing those lands for other purposes of greater benefit to the public.
- The following series of improvements to the five-year planning and leases stage of the OCSLA process should be implemented:²⁸³
 - Eliminate area-wide leasing unless there is compelling reason to use it. Make the default smaller sales in high-value areas to increase competition and facilitate environmental analyses.
 - Codify the requirement to charge rent for leases for the period of time they are unused and to increase the amount of rent as an incentive to develop or relinquish leases.
 - Direct a wholesale revision of planning and leasing regulations, which are inadequate and have not changed substantively since being implemented in the early 1980s.

²⁸⁰ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

²⁸¹ Center for American Progress.

²⁸² Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

²⁸³ Ocean Conservancy.

- Clarify the Section 18 balancing process by:²⁸⁴
 - Establishing standards for the net-benefits calculation;
 - Providing guidance on the interaction between the set of three broad factors described in 43 USC § 1344(a)(1) and the eight more specific factors enumerated in 43 USC § 1344(a)(2);
 - Requiring more robust consideration and prioritization of environmental factors and clarifying that the health of marine ecosystem should be a priority consideration; and
 - Requiring explicit recognition that exploration and development carries different risks in different regions.
- The Department should cancel leases that were issued in violation of NEPA, the FLPMA, or other laws, “limit lease suspensions and unitization abuses that extend the lives of leases long past their primary term, and defend its 2016 Waste Prevention Rule, 81 Fed. Reg. 83,008.”²⁸⁵
- BLM should issue “instruction memoranda, and potentially regulations, to restrict suspensions of operations and production and abuses of unitization plans that allow operators to hold non-producing leases for decades.”²⁸⁶
- The Administration should evaluate the Department’s unitization policies and consider actions such as a Secretarial Order or rulemaking to address the inappropriate extension of lease life.²⁸⁷
- As mandated by statute, BLM should take actions to ensure the ultimate recovery of resources as well as deliver a fair return for taxpayers on those resources. To do so, BLM should adjust its leasing practices to market conditions. Strategic leasing would focus the BLM’s limited resources. Holding extensive lease sales in Nevada, for example, where production is limited, bidding is minimal, and noncompetitive leases are common, is irresponsible. Regions where lease sales consistently fail to recoup administration costs should be abandoned.²⁸⁸

Data collection and tracking

- BLM should improve data collection and transparency, including tracking the costs associated with administering a lease.²⁸⁹
- The Department and BLM should review their systems for providing transparency into the Federal oil and gas programs. The availability of documentation and data for offshore leasing proves that such transparency is possible. The LR2000 records management system needs an overall to make data accessible and allow for improved quality of the data, enhanced content and communicating with other data systems. The National Fluids

²⁸⁴ Ocean Conservancy.

²⁸⁵ Earth Justice and Multiple Additional Public Advocacy Groups.

²⁸⁶ Earth Justice and Multiple Additional Public Advocacy Groups.

²⁸⁷ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited

²⁸⁸ Taxpayers for Common Sense.

²⁸⁹ Center for American Progress.

Lease Sale System is a good first step toward centralizing lease sale preparation and administration information but also leaves more to be desired.²⁹⁰

- RevenueData.gov is a valuable resource that is continually improving however, the availability of data on an annual interval is a shortcoming of the platform because all the major oil and gas producing states produce production data monthly. An example system to consider is the Colorado Oil & Gas Conservation Commission and New Mexico Oil Conservation Division.

Outreach and engagement

- BLM should initiate a rule making to require multiple opportunities for public participation during the decision-making process for every oil and gas lease sale. The comment periods should include at least 30 days to review and comment on draft NEPA compliance documents and at least 30 days to review and protest proposed lease parcels.²⁹¹
- The Department should lead an efficient yet open, inclusive, and transparent process for public participation and input including meaningful engagement with communities impacted by Federal oil and gas leasing.²⁹²
- As part of the lease sale review process, BLM should reinstate sections I and III of “BLM IM 2010-117.” This will allow meaningful consultation with cooperating agencies, including State fish and wildlife agencies, and affected Tribal and local governments.²⁹³
- To meet climate goals and protect the extraordinary wildlife habitat and biodiversity values of the National Petroleum Reserve–Alaska (“Reserve”), the Department can adopt more protective regulations for the Reserve and conduct new land management planning, consistent with the new direction and regulations. A careful review of the current regulations governing the Reserve can be done to determine how they can be strengthened to protect the environmental resources of the Reserve and lessen the impacts of oil and gas development on communities and subsistence resources.²⁹⁴
- Withdraw approval of the Willow Master Development Plan based on issues with its legality, climate implications, and consistency with the public interest. Following withdrawal, the Department should initiate a new, thorough process to evaluate whether and how to approve the proposed Project. Willow is inconsistent with the Administration’s goals of addressing climate change, environmental justice, and biodiversity conservation.²⁹⁵
- BLM should follow its abandoned BLM Planning 2.0 which considers cumulative impacts of assumed future development of leases before they are offered for sale. The current process for lease sales (i.e., receipt of an expression of interest for a specific parcel, review of local RMP documentation to determine availability for oil/gas

²⁹⁰ Taxpayers for Common Sense.

²⁹¹ National Wildlife Federation and multiple other Public Advocacy Groups.

²⁹² Western Organization of Resource Councils.

²⁹³ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

²⁹⁴ Alaska Wilderness League and Multiple Other Environmental Organizations.

²⁹⁵ Alaska Wilderness League and Multiple Other Environmental Organizations.

development and any conflicts with other values and resources followed by inclusion with any relevant stipulations in a lease sale) is fundamentally flawed because it addresses the question of whether to lease a parcel in a one-at-a-time approach.²⁹⁶

- The effects of oil and gas development are numerous on values the Department is meant to protect for future generations under FLPMA. Therefore, there is an imperative, supported by the text of the MLA and subsequent amendments, for oil and gas leasing to be viewed in the context of present and future conditions. The Department has inherent discretionary authority to decide what lands are “eligible” and “available.” The discretionary determination around eligibility of lands for leasing must be considered in the context of “duty of care” for future generations (as termed by FLPMA) and in the context of climate change and the emissions caused and facilitated by ongoing Federal oil and gas leasing.²⁹⁷

Leasing low potential lands

- The Department should issue a new policy that prevents making lands with low and no development potential eligible for leasing in land use plans and available for leasing at auction. The policy should incorporate provisions from Senator Cortez Masto’s bill.²⁹⁸
- Deprioritize oil and gas leasing in low potential areas to narrow the scope of lands eligible for leasing and create efficiencies consistent with Federal law.²⁹⁹
- Because the Department does not require detailed screening or requirements for identifying lands with low or potential for development, millions of acres are currently under lease with little change of being used to produce saleable volumes of oil or gas.³⁰⁰ The Department should:
 - Amend its regulations applicable to competitive leases to clarify that only lands with a high potential for development will even be considered by the agency for future lease sales.
 - Issue guidance to relevant regional offices that prohibits, to the extent possible under existing legal and regulatory authorities, the leasing of any lands where the applicable RMP has not identified the development potential of nominated lands.
 - Revise the Land Use Planning Handbook (H-160101) to clarify that Federal public lands with low or no oil and gas development potential should not be offered or considered for leasing.
- BLM’s handbook for fluid minerals planning (Handbook H-1624-1) directs BLM to assign lease stipulations and other management prescriptions to protect competing resources and mitigate unwanted impacts from drilling and development. However, when applied, the handbook often produces illogical management prescriptions that

²⁹⁶ Western Organization of Resource Councils.

²⁹⁷ Natural Resources Defense Council.

²⁹⁸ Citizens Caring for the Future.

²⁹⁹ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

³⁰⁰ Natural Resources Defense Council.

- result in significant resource conflicts. BLM's guidance for considering and making decisions based on development potential in land use planning must be updated to take a more comprehensive approach to oil and gas allocations.³⁰¹
- If BLM is required to assess all lands' mineral development potential before offering those lands for lease and prohibiting leasing on any lands found to have low or no development potential, this would end the practice of leasing low-potential lands. Reasonably Foreseeable Development scenarios must be updated regularly, and the updating process must be open to public input and participation.³⁰²
 - To prevent leasing cheap leases to public lands that have little or no oil and gas potential, BLM must use its authority to require the development of RFDs before making public lands available for lease.³⁰³
 - BLM plans should set out a framework for oil and gas development that supports closing lands to leasing where development is unlikely to occur.³⁰⁴
 - Consider basing oil and gas lease sales on a "List of Lands Available for Competitive Nominations," as authorized by BLM regulations.³⁰⁵
 - "BLM should amend 43 C.F.R § 3120.1-1 (lands available to competitive leasing) to prohibit leasing and lease extensions in lands identified in applicable land use plans as having low or no potential for oil and gas development. If a land use plan has not identified development potential of a nominated parcel, regulations should require BLM to update the plan prior to issuing any lease."³⁰⁶
 - Leasing should cease on lands of low production potential and high environmental risk to protect natural and cultural resources, such as units of the national park system, the national trail system, and the national wildlife refuge system; designated wilderness areas; designated critical habitat for Federally-listed threatened or endangered species; areas of critical environmental concern; and significant cultural and archeological sites.³⁰⁷ Further, establish automatic no leasing (NL) or no surface occupancy (NSO) stipulations of at least 5 miles (and up to 10 miles if circumstances warrant) from the boundaries of any of the specially protected resource areas listed above.

Noncompetitive leasing

- BLM should end noncompetitive leasing because it is unnecessary, wastes taxpayer resources and burdens public lands with idle leases.³⁰⁸ Further, noncompetitive leases rarely produce oil or gas or generate meaningful revenues for taxpayers.³⁰⁹ Information about leases that sell noncompetitively is generally not made available to the public and

³⁰¹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁰² National Parks Conservation Association.

³⁰³ Montana Wilderness Association.

³⁰⁴ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁰⁵ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁰⁶ National Wildlife Federation and multiple other Public Advocacy Groups.

³⁰⁷ Coalition to Protect America's National Parks.

³⁰⁸ Western Organization of Resource Councils; Citizens Caring for the Future.

³⁰⁹ Western Organization of Resource Councils.

so there is no oversight or even awareness about public lands that are leased through this process.³¹⁰

- Attorney's General Offices should strongly oppose proposals by oil and gas companies to walk away from responsibility for reclaiming wells at the end of life onto the public through bankruptcy proceedings. Similarly, regulatory should deny new permits and leases and suspend or rescind existing permits and leases for operators who do not plug and reclaim wells completely or in a and timely manner.³¹¹
- Regulatory agencies should aim to protect public interest and ensure complete and timely reclamation.³¹²
- States should budget for the full amount needed to fulfill all responsibilities. Fees on permits should be established to fund regulatory programs.³¹³
- The Department should require more stringent screening of non-competitive leases and improve transparency in the non-competitive leasing process by:³¹⁴
 - Amending the regulations governing noncompetitive leases to clarify and promote the public interest in receiving a fair return for publicly owned resources and responsible resource development. Factors to consider, and included in updated applicable regulatory updates, include the applicant's development history, capabilities, development plans, access to capital or financing, and compliance history.
 - To improve transparency and end secretive practices surrounding noncompetitive leasing, the Department should develop and maintain a publicly accessible portal containing information relating to parcels available for noncompetitive leasing, offers made on noncompetitive leases, and the outcome of these offers. To the extent allowable, the public should also be notified of lands made available for noncompetitive leasing, offers received, and leases offered, and should be given the opportunity to provide comment.
 - If no competitive bids are submitted, the parcels should not be available for lease for the next five years.³¹⁵
- Amend the term of competitive leases from "a primary term of 10 years" to "an initial term of 5 years with an option to renew it for an additional 5 years." If the lessee takes no tangible steps to use the initial 5-year term of the lease, then the cost of the lease should automatically double for the second term.³¹⁶

Lease Suspensions:

³¹⁰ Southern Utah Wilderness Alliance.

³¹¹ Western Organization of Resource Councils.

³¹² Western Organization of Resource Councils.

³¹³ Western Organization of Resource Councils.

³¹⁴ Natural Resources Defense Council.

³¹⁵ Coalition to Protect America's National Parks.

³¹⁶ Coalition to Protect America's National Parks.

- Because BLM’s procedures and policies for reviewing and approving requests for lease suspensions of operations and production have not been updated for more than three decades, BLM must review and modernize oil and gas lease suspensions.³¹⁷
- Because the BLM Manual 3160-10 does not direct BLM on how to manage currently suspended leases, BLM rarely evaluates the status of actively suspended leases to determine whether suspensions should be lifted, allowing suspensions to remain in place long after the circumstances that originally justified the suspension no longer exist. This outdated guidance contributes to BLM’s failure to recover revenue for Federal resources and ensure producers are diligently developing leased lands.³¹⁸
- BLM should update criteria for granting suspensions request that includes clear criteria for when the agency does and does not have discretion to grant a suspension request. BLM should also establish a monitoring and tracking system for suspensions that has more explicit guidance on when and how monitoring occurs. A verification system to ensure regular oversight and report to DC in a publicly available format should also be incorporated into the suspended lease management strategy.³¹⁹
- BLM should be required to post documentation of lease suspension request and decisions, including on its NEPA log and dashboard available via state office websites. A summary of lease suspensions should be included in the BLM’s annual reporting of oil and gas statistics, as well.³²⁰
- BLM should evaluate the need for a NEPA review, including whether categorical exclusions are appropriate for individual suspensions, applying the “extraordinary circumstances” criteria, and if any of those criteria are met, then an environmental assessment or environmental impact statement must be prepared.³²¹
- BLM should update its respective Handbook and Manual (See BLM, Manual 3160-10 – Suspension of Operations and / or Production, Rel. 3-150 (March 13, 1987) (“Manual 3160-10”); BLM Handbook 3103-1, Oil and Gas Adjudication Handbook, Fees, Rentals, and Royalty (Revised 1995) (“Handbook 3103”). The current Manual 3160-10 and Handbook 3103 do not address the many problems identified in GAO Report 18-411. BLM’s guidance should provide examples of when suspensions are or are not warranted.³²²
- BLM should clarify the review and monitoring procedures for existing lease suspensions, including:³²³
 - Establishing timelines for State Offices to ensure compliance with the recommendations.
 - Instructions for lifting suspensions where no valid reasons exist to continue the suspension.

³¹⁷ Southern Utah Wilderness Alliance; Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³¹⁸ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³¹⁹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³²⁰ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³²¹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³²² Southern Utah Wilderness Alliance.

³²³ Southern Utah Wilderness Alliance.

- Reviews should be prioritized based on the age of suspensions and whether the suspended leases are in BLM-identified lands with wilderness characteristics, culturally significant areas, and specially designated wildlife areas.
- As required by Permanent Instruction Memorandum No. 2019-0007 Monitoring and Review of Lease Suspensions End of First Quarter of Every Calendar Year (March 31st) (June 14, 2019), regularly review suspended leases to ensure that lease suspensions in effect are warranted. If a review determines a suspension is not warranted, then BLM should promptly lift the suspension and notify the lessee(s).
- Extensions of existing suspensions of operations and production should be strongly discouraged and disfavored as a matter of BLM policy.
- BLM State Offices should regularly review and evaluate lease suspensions and provide timely reports to the Washington Office in a publicly available format.
- A lessee should have to demonstrate that its request for suspension is justified. BLM should approve suspensions very infrequently, including requests based on the unforeseeable and unreasonable delay or inaction of a third-party Federal or state agency that has permitting authority over a part of a proposed action. However, a suspension request may be approved by BLM when it is based on unforeseeable and unavailable events beyond the control of the lessee.³²⁴
- Issue guidance directing authorized officers to include justification and rationale on the record how a suspension is in the interest of conservation of natural resources and how the lessee has exercised due care and diligence to avoid the need for a suspension.³²⁵
- BLM's relevant State Offices should review all suspension requests prior to their approval. A presumption of permissibility should not exist if BLM determines the suspension request can be attributed to unreasonable delay or inaction on part of the lessee. This should be limited to requests based on unreasonable delay or inaction on part of BLM, and suspensions based on a Federal court or Interior Board of Land Appeal decision.³²⁶
- BLM must reaffirm and clarify that it is agency policy that NEPA analysis and public participation are required prior to approving any request for suspension of operations and production.³²⁷
- Support Representative Levin's Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021 (H.R. 1503). This legislation includes provisions that allot a reasonable time for public and stakeholder input, require shorter lease terms to ensure the leasing agent is working with the most current information, and ensure that other uses are considered for the land in question.³²⁸

³²⁴ Southern Utah Wilderness Alliance.

³²⁵ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

³²⁶ Southern Utah Wilderness Alliance.

³²⁷ Southern Utah Wilderness Alliance.

³²⁸ The Wilderness Society (TWS).

- Establish a process with public notice and the opportunity for comment via web portal for all applications for lease suspension filed under 43 CFR § 3165.1, and clearly provide the public with the opportunity for state director reviews of any lease suspensions that are issued.³²⁹
- Eliminate lease suspension loopholes that allow bad actors to hold on to leases indefinitely by: identifying and ending suspensions that are no longer justified and should have expired years ago; issuing new policy and training to inform future lease suspensions, and ensure suspensions are only granted when truly needed and end in a timely manner; issuing a new policy requiring NEPA compliance and greater opportunities for public participation, transparency (including annual reporting) and oversight of both new suspension requests and existing suspensions; and issuing administrative guidance, such as updating IM No. 2019-007.³³⁰
- Under 43 U.S.C. § 1334(a)(1) of the OCSLA, the Department should evaluate the climate and environmental benefits of a managed phase out of offshore oil and gas. The phase out should consider a multi-year plan to suspend activities under existing leases (and ultimately cancel the leases). Each of the planning areas with Federal leases is eligible for a suspension and cancellation due to their environmental risks and damage - Offshore drilling takes a heavy toll on Gulf Coast communities and the environment. In the Pacific, the activities threaten the California marine and coastal environment. Leases in the Arctic Ocean pose dangers to Arctic wildlife and communities.³³¹
- Specifically, the Department should pay particular attention to undeveloped leases the agency issues without a proper account of climate impacts, including leases issued pursuant to the Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, and 256; Lease Sale 244 in Cook Inlet; and numerous leases in the Arctic Ocean, including the leases now held by Hilcorp, Alaska LLC pursuant to Lease Sale 144 that Hilcorp sought to develop via its Liberty project.³³²
- Develop a geospatial database of all existing suspensions, so the public and the BLM itself is aware of their location and reasoning.³³³

Lease stockpiling:

- BLM must revise policies that enable industry to stockpile leases to the detriment of other resources, such as by issuing guidance that clarifies existing leases should not affect management decisions particularly in areas that are unlikely to be developed. BLM's leasing program has allowed industry to cheaply stockpile millions of acres of public lands with little or no benefit to U.S. taxpayers, and have also prevented BLM

³²⁹ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

³³⁰ The Wilderness Society (TWS).

³³¹ Center for Biological Diversity.

³³² Center for Biological Diversity.

³³³ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

from managing the leased lands for other important uses such as protection of wilderness character values.³³⁴

High conflict leasing:

- In the interest of resource efficiency and multiple use management, BLM should evaluate practices leading to high conflict leasing and implement new policies to reduce those conflicts.³³⁵ Policies to reduce high conflict leasing include: 1. Prohibit leasing low potential lands with other resources values, and 2. Only lease in the vicinity of existing development.³³⁶
- The offering of new leases should focus on public lands near existing oil and gas development because leases offered in such areas sell for higher competitive bids and are more likely to be put into producing status compared to parcels located in remote, undeveloped regions.³³⁷

Expressions of interest

- Eliminate anonymous expressions of interest.³³⁸
- Because of BLM's lease nomination process, anyone can anonymously, and at no cost, nominate any parcel of public land for leasing. BLM must establish policies to screen the nominated leases to eliminate conflicts before they arise. The current process is inefficient and consumes enormous amounts of BLM resources.³³⁹
- Initiate and improve the nomination process by amending regulations at 43 C.F.R. Part 3120 to include a formal nomination process, where BLM develops a list of lands that may be nominated for a particular sale. BLM should employ this formal system and rescind regulations and policies allowing for informal nominations.³⁴⁰
- BLM should revoke BLM IM 2014-004, that allows for entities to anonymously nominate parcels, and implement a policy that requires individuals who nominate lands to identify themselves, and the parties they represent.³⁴¹
- Pursuant to 43 U.S.C § 1734 BLM should establish a new filing fee for lease nominations to create some assurances that a company nominating a lease intends to bid on the parcel during the lease sale.³⁴²
- BLM should update the lease sale screening and nomination process as follows:³⁴³
 - Amend 43 CFR § 3120.1-1 (lands available to competitive leasing) to require nationwide and state-specific leasing screens, which should be

³³⁴ Southern Utah Wilderness Alliance.

³³⁵ Southern Utah Wilderness Alliance.

³³⁶ Southern Utah Wilderness Alliance.

³³⁷ Southern Utah Wilderness Alliance.

³³⁸ Coalition to Protect America's National Parks; Center for American Progress.

³³⁹ Southern Utah Wilderness Alliance.

³⁴⁰ National Wildlife Federation and multiple other Public Advocacy Groups.

³⁴¹ National Wildlife Federation and multiple other Public Advocacy Groups.

³⁴² National Wildlife Federation and multiple other Public Advocacy Groups.

³⁴³ The Wilderness Society (TWS).

reevaluated and adjusted, as necessary, on an ongoing basis (e.g., annually).

- Revoke and replace BLM IM 2014-004 (Oil and Gas Informal Expressions of Interest) with a new policy that requires companies and individuals who nominate public lands for leasing to identify themselves, as well as any parties who they represent.
- Support passage of Senator Rosen and Grassley’s bill, the “Fair Return for Public Lands Act” (S. 624) to impose a lease nomination fee and Representative Levin’s “Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021” (H.R. 1503), and Representative Porters’ “Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021” (H.R. 1517) to end anonymous lease nominations and impose a lease nomination fee.
- Establish criteria for identifying “responsible qualified bidders” to be used to limit or prevent participation in the leasing process by companies or individuals: “with a history of failing to make timely rental payments; that operate a significant number of inactive wells; that are violating Federal or state reclamation requirements on other leases; whose operations are violating Federal or state air or water quality standards; that have outstanding well liabilities attached to their company or a subsidiary; or that lack the technical or economic resources to diligently explore for and develop oil and gas resources.”³⁴⁴
- Require nominees and potential bidders to demonstrate adherence to leading climate emissions and risk disclosure protocols.³⁴⁵
- Publish and regularly update the list of “Entities in Noncompliance with Reclamation Requirements of Section 17(g) of MLA,” which BLM is to maintain under its Competitive Leases Handbook.³⁴⁶
- Support Representative Lowenthal’s “Transparency in Energy Production Act” (H.R. 1506).³⁴⁷

Lease Reinstatement

- BLM should develop new guidance regarding lease reinstatements. BLM needs to reevaluate the practice of reinstating leases that have been terminated for failure to pay the annual rental fee and much more stringent provisions for reinstatement should be put in place. By law, BLM is only to reinstate leases in cases in which the failure to timely submit the rental was “justified” or “not due to lack of reasonable diligence” by the lessee. BLM should establish narrow and specific guidelines for when these criteria may be met.³⁴⁸

³⁴⁴ The Wilderness Society (TWS).

³⁴⁵ The Wilderness Society (TWS).

³⁴⁶ The Wilderness Society (TWS).

³⁴⁷ The Wilderness Society (TWS).

³⁴⁸ Southern Utah Wilderness Alliance.

- Because the guidance is outdated, BLM is permitting oil and gas leases that have been terminated to be reinstated without sufficient basis, providing the oil and gas industry with an extra opportunity to retain leases at the expense of diligent development, and frequently in situations where industry has intentionally defaulted on rental payments because of low prices, only to apply for reinstatements when prices increase.³⁴⁹
- Class I reinstatements should be generally unavailable.³⁵⁰
- Regarding Class II reinstatements, the failure to pay rent on time should only rarely be excused as having occurred because of inadvertence. Define “inadvertence” to mean “not duly attentive.”³⁵¹
- Reinstated leases should not have their terms extended or royalty rates reduced.³⁵²

Accounting for climate change

- Reform the oil and gas program with a roadmap that includes a goal of achieving net zero GHG emissions from fossil fuels on public lands and waters by 2030 and no fossil fuel development on public lands and waters by 2050. Conduct this comprehensive review through the lens of the climate crisis and Department’s stewardship responsibilities over public lands, waters, and their resources.³⁵³
- Because Executive Order 14008 directs BOEM to reconsider its leasing program in light of climate change, environmental and ecosystem concerns, environmental justice considerations, and the advancement of a clean energy economy, BOEM should use its authority under Section 18 of the OCSLA to end new leasing. This can be done by foregoing any proposed lease sales, adopting a new five-year program that does not offer any lease sales for the next five-year period, and to recommend permanent withdrawals of areas from OCS leasing under Section 12(a) of OCSLA.³⁵⁴
- The onshore oil and gas program should be brought into conformity with the United States climate commitments, including the Paris Agreement commitments, by halting new onshore oil and gas leasing. Halting new leasing is within the legal authority of the Department under FLPMA, which allows the Interior Secretary to withdraw Federal lands from extractive uses such as mineral leasing for time-limited periods and allows large-scale land withdrawals for up to 20 years. The withdrawal should include lands that present the greatest concerns for future carbon emissions, including those designated as having “high potential” for future oil and gas development.³⁵⁵ If the Department reforms the oil and gas program, any new onshore leasing in the future should require that development on new leases achieve “net zero” carbon emissions, or set a royalty rate that accounts for the social cost of carbon produced on each lease.

³⁴⁹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁵⁰ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁵¹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁵² Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁵³ The Wilderness Society (TWS).

³⁵⁴ Earth Justice and cosigners.

³⁵⁵ Earth Justice and Multiple Additional Public Advocacy Groups.

- The Department should use its full authority to mitigate carbon emissions from development of existing leases because addressing new leases alone would not bring the Federal oil and gas program into alignment with national climate goals. BLM can use its administrative and litigation authority to eliminate leases to reduce the size of the problem. For example, BLM can cancel leases that were improperly issued, leases that have been remanded to BLM for further consideration or others on appeal or otherwise remain in litigation.³⁵⁶

8.9. Fiscal Terms/ Fair Market Value/ Royalties/ Bonding

- Raise lease fees based on a fair market value evaluation. Lease fees should be re-evaluated every five years and in between 5-year reviews, the cost of leases should be adjusted annually based on inflation.³⁵⁷
- Congress should require the Department to, “establish a new, competitive onshore oil and gas leasing system that ensures the consistent receipt of fair market value for the public from oil and gas; preserves alternative beneficial uses of the land or reimburses the public for losses of the value of those uses; specifically compares and substitutes, when superior on a cost-benefit basis, renewable energy leases for oil and gas leases (including screening for environmental and cultural resource conflicts); and minimizes harm to the public in all major forms.” The new onshore oil and gas leasing system should maximize transparency and public participation throughout the process.³⁵⁸
- Congress should require the Department to establish charges per barrel of oil and cubic foot of natural gas payable with royalties when oil or gas production occurs to reimburse the public for the production-related adverse environmental costs to society from (a) carbon and methane emissions and other national or global impacts applicable to all oil and gas leases and (b) local environmental and social impacts identified for specific leases. The charges should be applicable to all leases and be based on established studies of these costs combined with further analysis that the Department may judge necessary.³⁵⁹
- Congress should require the Department to, “identify local environmental and social costs on a lease-by-lease basis from site specific assessments and environmental impact analyses. All identified environmental and social costs of production, whether global or local, should be converted to charges per volume of oil or gas produced. The additional charge for environmental and social impacts will be included in lease terms at the time leases are offered for public sale.”³⁶⁰
- Prior to offering any tracts for oil and gas development, Congress should require the Department to analyze such tracts for their suitability and potential for renewable energy

³⁵⁶ Earth Justice and Multiple Additional Public Advocacy Groups.

³⁵⁷ Coalition to Protect America’s National Parks.

³⁵⁸ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁵⁹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶⁰ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

development, including development that can be integrated with agricultural or other sustainable uses. The Department will hold public meetings and hearings of its findings from its comparison on the different energy development options for these tracts and will issue a decision choosing the best course of action for each tract.³⁶¹

- The Department should receive bids for tracts offered for oil and gas leasing on a sealed bid basis with bids publicly disclosed at the close of bidding. Congress should require the Department to require sufficient reporting from the oil and gas industry of information necessary for analyzing the market value of leases. The Department could use a combination of approaches to establish an effective minimum bid value for each parcel. Where it employs inter-tract leasing, the value estimates can be a check on the reasonableness of the bidding results. Where the Department receives too few bids to have confidence in inter-tract leasing, it can decide to use its estimates of value instead.³⁶²
- If bids fail, the Department could hold a second-round leasing of parcels where, for a short period after an auction, qualified bidders would be able to lease any tracts in the area for which bids were rejected because they were below the effective minimum bid level for that auction.³⁶³
- After implementation steps for the fair market value leasing system are complete, Congress should evaluate the readiness of the department to operate the new system and the analysis. Congress may take action in reinstating leasing for one or more production regions on a schedule of its determination. It may also modify the boundaries and number of production regions as it sees fit.³⁶⁴
- “Congress should establish a buyout program for unexpired leases issued before the effective date of the leasing moratorium that have not produced oil or gas for ten years or more. Congress should consider authorizing funds from the Federal share of any oil and gas or renewable energy leases for this purpose.”³⁶⁵
- “Congress should levy a capital gains tax at a rate of 90% on speculative gains from trading Federal oil and gas leases to recoup revenue improperly lost to the American people due to defective leasing procedures.”³⁶⁶

Royalties

- End the practice of royalty relief.³⁶⁷
- Adjust royalty rates to account for environmental harms caused by oil and gas development.³⁶⁸

³⁶¹ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶² Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶³ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶⁴ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶⁵ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶⁶ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁶⁷ U.S. PIRG and Environment America.

³⁶⁸ U.S. PIRG and Environment America; Nevada Conservation League; Western Leaders Network.

- Increase royalty rate because the royalty rate of 12.5 percent is significantly lower than rates imposed by states and private landowners. Raising the rates will not impact production, as western states have demonstrated.³⁶⁹
- The Department should increase the 100-year-old 12.5 percent royalty rate and bring a better return to taxpayers for leasing public land.³⁷⁰
- The Department should implement two changes to address royalties and increase revenues: (1) reverse policies that make it easier for companies to get substantial royalty relief; (2) increase royalties or implement a carbon adder or carbon tax to increase revenues.³⁷¹
- BLM should issue a rulemaking that sets the royalty rate to at least 18.75 percent, while allowing the Secretary of the Interior the discretion to raise the rate according to market conditions, without further rulemaking.³⁷²
- The Department should raise the minimum royalty rate for onshore oil and gas leases to at least 18.75 percent, which is in line with royalty rates charged for offshore production. The Department should issue agency-wide guidance to do so immediately.³⁷³
- BLM should consider establishing annual rental and production royalty rates that increase throughout the lease term (e.g., production royalty of 18.5 percent for years 1-3, 25 percent for years 4-7, and even higher for years 8-10).³⁷⁴
- BLM should charge higher, market-tested royalty rates, such as those used by States and the private sector, with 18.75 percent as the minimum rate for onshore development. This would match the current offshore rate the current middle range of State royalty rates.³⁷⁵
- Increase royalty rates, annual rental rates, and minimum lease bids for public lands that account for socio-economic costs, climate costs and promote a sustainable energy transition toward democratic, renewable energy development.³⁷⁶
- Support passage of Senator Rosen and Senator Grassley’s bill to increase royalty rates, rental rates and minimum bids, the “Fair Return for Public Lands Act of 2021” (S. 624), as well as the passage of Representative Porter’s legislation, the “Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021” (H.R. 1517), and Representative Levin’s “Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021” (H.R. 1503).³⁷⁷

Climate fee

- Adopt a climate fee that accounts for the climate pollution costs of oil and gas development, tiered to the social cost of GHG. The climate pollution price or “climate

³⁶⁹ National Wildlife Federation and multiple other Public Advocacy Groups.

³⁷⁰ Access Fund; Public Land Solutions.

³⁷¹ Earth Justice and cosigners.

³⁷² Center for American Progress.

³⁷³ Natural Resources Defense Council.

³⁷⁴ Southern Utah Wilderness Alliance.

³⁷⁵ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

³⁷⁶ National Parks Conservation Association.

³⁷⁷ The Wilderness Society (TWS).

fee” is an additional price placed on a unit of oil, gas, or coal produced or sold based on each ton of carbon, estimated to be emitted from the production of the unit.³⁷⁸ Existing authority gives the Department discretion to incorporate a climate fee into royalty rates. Alternatively, implement a climate fee as compensatory mitigation.

- Place a climate fee on any new or renewed oil and gas leases, and new development on existing leases, to address the climate pollution costs of oil and gas development. The fee amount should be tiered to the scientifically and economically supported social cost of GHG, capturing the full lifecycle of emissions costs.³⁷⁹

Bonds

- To reflect the true cost of reclamation and plugging that is consistent with the recommendations offered by the GAO and prevent damage to habitat and species by discouraging operators from walking away from inactive wells or failed well plugs, bond rates should be increased.³⁸⁰
- BLM should update current rules to set bonding requirements based on the number of wells that would need to be reclaimed. Requirements should be based on realistic reclamation and cleanup costs.³⁸¹ Lessees who fail to restore sites in a timely manner should be excluded from further leasing until they have fulfilled their restoration obligations.³⁸²
- Eliminate blanket bonds that are not tied to the projected cost of reclamation and require site-specific reclamation bonds that will fund the full projected cost to plug and reclaim all of an operator’s wells and associated sites.³⁸³
- Until bonds are set at the actual cost of reclamation, establish bond amounts that increase as the factors that contribute to reclamation cost increase, including the number of wells, well depth, location, the amount and nature of surface disturbance, facilities, and infrastructure to be reclaimed.³⁸⁴
- Bond amounts should be reviewed annually, and minimum bond amounts should be increased every three years based on the consumer price index or actual plugging costs.³⁸⁵
- BLM should review bonds at least once each year to index them for inflation and/or to determine whether changes in bond amounts are warranted due to changes in the well operation. When a well stops producing, or any time well ownership is transferred, bonds should be reviewed immediately to ensure that bond amounts will cover the full costs of reclamation.³⁸⁶

³⁷⁸ The Wilderness Society (TWS).

³⁷⁹ The Wilderness Society (TWS).

³⁸⁰ Defenders of Wildlife.

³⁸¹ Center for American Progress, Natural Resources Defense Council; Coalition to Protect America’s National Parks.

³⁸² Coalition to Protect America’s National Parks.

³⁸³ Western Organization of Resource Councils.

³⁸⁴ Western Organization of Resource Councils.

³⁸⁵ Western Organization of Resource Councils.

³⁸⁶ Western Organization of Resource Councils.

- Current blanket bonds are insufficient to ensure that reclamation occurs, particularly if spills occur. As a result, these sites are at risk of going unreclaimed and posing risks to public health and safety and the environment and impeding other uses of the land.³⁸⁷
- Regulators should have limited discretion to exempt infrastructure from reclamation requirements, such as at the request of surface owners or to protect sensitive areas.³⁸⁸
- Require that bond amounts be adequate to ensure decommissioning and reclamation of all associated well infrastructure, including increased bonds or separate bonds for infrastructure that is expensive to reclaim, such as water impoundments, waste facilities, and pipelines.³⁸⁹
- If oil and gas regulatory agencies do not set bonds at the full projected cost of reclamation, surface management agencies, such as State Lands Offices, should require additional reclamation bonds to ensure that lands and waters within their jurisdiction are fully reclaimed.³⁹⁰
- Acceptable forms of financial assurance should include surety bonds, letters of credit, or cash deposits compared to less secure options such as self-bonding and equipment liens. These less secure options should be eliminated.³⁹¹
- The public should have access to regularly updated databases that include detailed information about the amounts of reclamation bonds or other financial assurance, and the wells and other infrastructure covered by those bonds.³⁹²
- To ensure reclamation occurs, BLM should require individual bonds for all oil and gas operations, or operators set at the estimated cost of reclamation, and to be estimated by professional engineers in a form that covers the full cost of performing all reclamation tasks based on site-specific analyses.³⁹³
- The BLM should discontinue use of statewide and nationwide blanket bonds regardless of the base minimum bond amount.³⁹⁴
- BLM should apply full-cost bonding to all operators, regardless of current financial status.³⁹⁵
- Minimum bond amounts are inadequate for managing potential liability and do not serve as an incentive to encourage operators to comply with reclamation requirements and the cost to reclaim a well site.³⁹⁶

Rent

³⁸⁷ Western Organization of Resource Councils.

³⁸⁸ Western Organization of Resource Councils.

³⁸⁹ Western Organization of Resource Councils.

³⁹⁰ Western Organization of Resource Councils.

³⁹¹ Western Organization of Resource Councils.

³⁹² Western Organization of Resource Councils.

³⁹³ Western Organization of Resource Councils.

³⁹⁴ Western Organization of Resource Councils.

³⁹⁵ Western Organization of Resource Councils.

³⁹⁶ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

- Increase rental rates and minimum lease bids via the rulemaking process to ensure the rates keep up with inflation and the benefits to the taxpayer are not eroded over time.³⁹⁷
- Current rental rates of \$1.50 per acre for the first five years of a lease and \$2.00 per acre after are too low and should be increased.³⁹⁸
- BLM should conduct a rulemaking to increase rental rates at a minimum to \$3.00 per acre for the first two years and \$5.00 per acre for the next three years, and \$25 per acre for any extension period, which should be limited to two years if development on the lease has begun. (All rates should be indexed to inflation.)³⁹⁹
- The BLM should consider a requirement that a company must comply with the terms of its existing leases, including rental payments, in order to lease more public land.⁴⁰⁰
- The Department should consider increasing its regulations governing rental rates based on inflation or another metric the agency determines to be adequate.⁴⁰¹
- Increase rental rates on Federal leases to a level that would incentivize oil and gas production so that the percentage of Federal leases that produce energy would rise well above the current levels.⁴⁰²
- Raising the minimum bid for Federal onshore leases would prevent devaluation of Federal exploration and development rights over time, and better deter private interests from locking up Federal land without developing it.⁴⁰³
- BOEM should raise the minimum bid level back to what it was in the 1980s, \$150 per acre for all offshore Gulf of Mexico leases.⁴⁰⁴
- Increase minimum lease bids to deter companies from purchasing leases for speculative purposes only.⁴⁰⁵ “Raising the minimum bid in an auction to \$10 per acre and requiring that same amount to be paid for parcels leased noncompetitively would boost net Federal income by an estimated \$50 million over 10 years, Congressional Business Office estimates.”
- Support passage of Senator Rosen and Senator Grassley’s bill to increase royalty rates, rental rates and minimum bids, the “Fair Return for Public Lands Act of 2021” (S. 624), as well as the passage of Representative Porter’s bill, the “Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021” (H.R. 1517), and Representative Levin’s “Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021” (H.R. 1503). Among other fiscal reforms, these bills would increase the rental rate from \$1.50 per acre for the first five years and \$2.00 per acre for the remainder of the lease, to \$3.00 per acre for the first five years and \$5.00 per acre for the remainder.⁴⁰⁶

³⁹⁷ National Wildlife Federation and multiple other Public Advocacy Groups.

³⁹⁸ Center for American Progress.

³⁹⁹ The Wilderness Society (TWS).

⁴⁰⁰ Center for American Progress.

⁴⁰¹ Natural Resources Defense Council.

⁴⁰² Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

⁴⁰³ Taxpayers for Common Sense.

⁴⁰⁴ Taxpayers for Common Sense.

⁴⁰⁵ Alex Daue, Dan Bucks, Powder River Basin Resource Council Marjorie West, Leland, The Wilderness Society.

⁴⁰⁶ The Wilderness Society (TWS).

8.10. Permitting/Exploration, Development, and Drilling Plans

- BOEM and BSEE should adopt new procedural requirements and policies for review of development permits as well as exploration and development plans, such as requiring full NEPA analysis on applications for permits to drill. Such analysis would give regulators more information and allow adoption of tailored conditions on activities at specific drill sites.⁴⁰⁷
- As part of the reform of permitting practices, the Department should:⁴⁰⁸
 - Adopt regulations to curb methane emissions;
 - Develop regulations to limit development;
 - Adopt regulations to improve safety;
 - Adopt regulations to address offshore pipelines;
 - Implement policies to improve environmental analysis related to permits to drill and exploration/development plans;
 - Institute reforms to decommissioning practices and financial assurances;
 - Make changes to royalties to increase revenues;
 - Adopt stronger air quality regulations in the Gulf of Mexico; and
 - Address crude oil exports.
- The Department should review how continued permitting of oil and gas development in sensitive ecosystems and near vulnerable communities, like the Everglades' Big Cypress National Preserve—and in and near other similarly situated national park units and national wildlife refuges—to ensure that new fossil fuel exploration and development approvals would not jeopardize these initiatives.⁴⁰⁹
- Deny permits for fracking on existing offshore leases to avoid increased risk of oil spills, earthquakes, and worsened climate crisis.⁴¹⁰
- BLM should increase transparency and public participation in its process for approving APDs. BLM should amend its regulations, and “Onshore Order 1” to include a requirement that this information be posted electronically such that it is easier for the public to access. BLM should also include a public participation period for APDs so the public can consider environmental reviews, conditions of approval, stipulations, and other aspects of APDs aimed at minimizing the impact of development on public lands.⁴¹¹
- “Issue guidance requiring the Department to use all available authorities to ensure public lands are managed for multiple use and the full mitigation hierarchy is applied in permitting decisions, including a requirement that new fossil fuel development achieves net zero GHG emissions.”⁴¹²
- The Department should create a publicly accessible transparency dashboard to track oil and gas permitting, including the information currently provided as well as additional

⁴⁰⁷ Earth Justice and cosigners.

⁴⁰⁸ Earth Justice and cosigners.

⁴⁰⁹ Natural Resources Defense Council.

⁴¹⁰ Multiple Gulf Advocacy Organizations.

⁴¹¹ National Wildlife Federation and multiple other Public Advocacy Groups.

⁴¹² The Wilderness Society (TWS).

details such as the number of APDs that have been approved but have not yet been used.⁴¹³

- To ensure that operators pay their fair share and fund needed inspections and science, changes should focus on improving safety and preparedness, including:⁴¹⁴
 - Codify safety regulations developed and finalized during the Obama administration (i.e., the 2010 Drilling Safety Rule, SEMS I (2010), SEMS II (2013), Well Control Rule, Arctic Standards Rule).
 - Eliminate the 30-day window for approval of exploration plans;
 - Prohibit the use of “conditional approvals.” If an operator cannot meet established standards, its exploration plan should be denied.
 - Clarify that an environmental impact statement is possible at the exploration stage and that an exploration plan should not be deemed submitted until the NEPA process is complete.
 - Lower the threshold at which the Secretary of the Interior is required to disapprove an exploration or development plan such that disapproval is required if the plan would probably cause unwarranted damage to the marine, coastal, or human environment or if there is not enough information to determine possible damage.
 - Implement specific requirements for monitoring, protection of marine mammal populations, and data availability in areas in which seismic testing is allowed.
 - Add public right of action for enforcement of Marine Mammal Protection Act’s incidental take provisions.
- Increase funding, including fees on operators, to better provide for:⁴¹⁵
 - necessary safety inspections;
 - development of spill prevention and response technologies; and
 - hiring, training, and deployment of agency (BOEM, BSEE, National Oceanic and Atmospheric Administration) safety inspectors, scientists, engineers, etc.
- Establish regional advisory bodies to provide citizen oversight of oil and gas activities.⁴¹⁶

8.11. Decommissioning

- Close loopholes that “place the burden of reclamation costs on taxpayers and private landowners.”⁴¹⁷
- The Department should explore and enact measures to expeditiously raise additional financial assurances to cover existing shortfalls during the decommissioning process.⁴¹⁸

⁴¹³ The Wilderness Society (TWS).

⁴¹⁴ Ocean Conservancy.

⁴¹⁵ Ocean Conservancy.

⁴¹⁶ Ocean Conservancy.

⁴¹⁷ Western Leaders Network.

⁴¹⁸ Earth Justice and cosigners.

- The Department should develop and implement other practices and regulations to ensure sufficient supplemental bonding, including allotting lessees an appropriate amount of credit to partially cover their decommissioning liabilities.⁴¹⁹
- The Department should consider the need for post- decommissioning monitoring the plugged wells by a dedicated agency.⁴²⁰
- The Department should consider restructuring the offshore agencies to create a new agency focused on managing and implementing decommissioning.⁴²¹

8.12. Energy Needs/ Future Climate Scenarios/ Substitutions

- BOEM should support the transition to renewable energy, specifically offshore wind. Nineteen of the 29 States with offshore wind potential could produce more electricity from the offshore wind than total electricity used by those States in 2019.⁴²²
- In response to the current surplus of domestic oil, companies have applied to construct offshore export terminals to accommodate the international export of crude oil. The Department should transmit comments to the Maritime Administration and the U.S. Coast Guard and consider how to use all its authorities to oppose the crude oil export terminals that threaten climate, wildlife, and local communities.⁴²³
- The Department should consider the viability and opportunity of deploying large-scale renewable projects on Federal public lands, while considering natural resources, impacts to the environment, and cultural impacts.⁴²⁴
- The nation must shift to clean energy, and rapidly transition to electric vehicles. The Department should acknowledge that the energy needs of the nation require a phase-out of fossil fuels to prevent catastrophic climate change.⁴²⁵
- Based on the country’s decreasing demand for oil, the Department should prepare a null schedule leasing program.⁴²⁶

8.13. Protected Areas/30 by 30

- In accordance with President Biden’s 30 by 30 initiative, the Department should:
 - “Achieve net-zero emissions from all Federal lands and waters by 2030;”⁴²⁷
 - Update mitigation practices and align with agency mandates such as rescinding BLM IM 2019-018 “Compensatory Mitigation” and replacing it with an IM establishing a balanced approach to mitigation;⁴²⁸

⁴¹⁹ Earth Justice and cosigners.

⁴²⁰ Earth Justice and cosigners.

⁴²¹ Earth Justice and cosigners.

⁴²² U.S. PIRG and Environment America.

⁴²³ Earth Justice and cosigners.

⁴²⁴ Natural Resources Defense Council; Environmental Defense Center.

⁴²⁵ Multiple Gulf Advocacy Organizations.

⁴²⁶ Natural Resources Defense Council and Earthjustice.

⁴²⁷ National Parks Conservation Association.

⁴²⁸ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

- Conduct a programmatic review of the Federal fossil fuel program;⁴²⁹ and
- Ensure that renewable energy development minimizes impacts to native ecosystems and imperiled wildlife.⁴³⁰
- The Department should recommend and support permanent protection of all OCS areas of offshore Alaska.⁴³¹
- The Department should withdraw the Arctic Refuge oil and gas leasing program ROD and remove the drilling mandate in the Tax Act.⁴³²
- The Department should withdraw the Reserve's IAP⁴³³ and develop new regulations and an amended IAP that limit the oil and gas program in the Reserve and look for opportunities to assist Arctic communities and Alaska during the transition period.⁴³⁴
- The Department should end oil and gas leasing in the Reserve, terminate existing leases as necessary, and limit activities on other existing leases to meet climate imperatives and protect the surface values of the Reserve.⁴³⁵
- The Department should invest in landscape scale planning and stakeholder outreach to identify the lands and waters with high habitat value for imperiled species that should be permanently protected and those with high potential for renewable energy.⁴³⁶
- The Department should comprehensively address oil and gas activity on National Wildlife Refuge lands.⁴³⁷
- The Department should permanently protect the coast of South Carolina from offshore drilling.⁴³⁸
- Due to the detrimental environmental impacts, the Department should deny Burnett Oil Company Inc's request to drill for oil in the Big Cypress National Preserve.⁴³⁹

8.14. Orphan Wells/Remediation

General recommendations

- “BOEM and BSEE should reinstate and strengthen the 2016 Well Control and Production Safety Rules.”⁴⁴⁰
- BOEM and BSEE should discard proposed changes to the 2016 Arctic Drilling Rule.⁴⁴¹

⁴²⁹ Defenders of Wildlife.

⁴³⁰ Defenders of Wildlife.

⁴³¹ Earth Justice and cosigners.

⁴³² Defenders of Wildlife.

⁴³³ Earth Justice and Multiple Additional Public Advocacy Groups, Defenders of Wildlife.

⁴³⁴ Defenders of Wildlife.

⁴³⁵ Earth Justice and Multiple Additional Public Advocacy Groups.

⁴³⁶ Defenders of Wildlife.

⁴³⁷ Defenders of Wildlife.

⁴³⁸ Conservation Voters of South Carolina.

⁴³⁹ Center for Biological Diversity and 107 Additional Public Interest Groups.

⁴⁴⁰ Earth Justice and cosigners.

⁴⁴¹ Ocean Conservancy.

- “There is no basis for removing the integrated operations plan (“IOP”) requirement. The IOP requirement was adopted in response to lessons learned from Shell’s disastrous 2012-2015 Arctic exploration program, and BOEM has failed to offer any reasoned explanation for removing the IOP requirement. The IOP requirement should be retained to help ensure such ill-conceived and reckless operations never occur again.”⁴⁴²
- The Department should consider the opportunities to remediate orphaned and abandoned wells in the Reserve.⁴⁴³
- Given the severity of the consequences of a major oil spill in the Beaufort Sea or Chukchi Sea, the agencies should maintain the requirement that operators allow sufficient time to conduct well control and spill response operations before the seasonal encroachment of sea ice.⁴⁴⁴
- “To protect the sensitive Arctic marine environment and the people who rely on its abundance, the well control timing requirements should remain in place.”⁴⁴⁵
- The Department should have limited discretion to exempt infrastructure from reclamation requirements, such as at the request of surface owners or to protect sensitive areas.⁴⁴⁶
- The Department should require that bond amounts be adequate to ensure decommissioning and reclamation of all associated well infrastructure, including increased bonds or separate bonds for infrastructure that is expensive to reclaim, such as water impoundments, waste facilities, and pipelines.⁴⁴⁷
- If oil and gas regulatory agencies do not set bonds at the full projected cost of reclamation, surface management agencies such as State Lands Offices should use their authority to require additional reclamation bonds to ensure that lands and waters within their jurisdiction are fully reclaimed.⁴⁴⁸
- “Attorneys General Offices should intervene and strongly oppose proposals by oil and gas companies to offload the responsibility for reclaiming wells at the end of their profitable life onto the public through bankruptcy proceedings and should rescind all permits for operators who orphan wells.”⁴⁴⁹
- “BOEM and BSEE should develop better regulations to monitor and enforce the safety of offshore pipelines to ensure the number of spills and accidents are reduced.”⁴⁵⁰
- “BSEE should retain authority to limit pollution from water-based drilling muds and cuttings.”⁴⁵¹

⁴⁴² Alaska Wilderness League.

⁴⁴³ Alaska Wilderness League, Alaska Wilderness League and Multiple Other Environmental Organizations.

⁴⁴⁴ Alaska Wilderness League.

⁴⁴⁵ Alaska Wilderness League.

⁴⁴⁶ Western Organization of Resource Councils.

⁴⁴⁷ Western Organization of Resource Councils, The Wilderness Society (TWS).

⁴⁴⁸ Western Organization of Resource Councils.

⁴⁴⁹ Western Organization of Resource Councils.

⁴⁵⁰ Earth Justice and cosigners.

⁴⁵¹ Alaska Wilderness League.

- Regulators should require information and reclamation plans for associated wellsite infrastructure (e.g., flowlines, surface equipment), as well as midstream infrastructure location and type.⁴⁵²

Idle wells

- The BLM re-defined idle wells from “a well that has been shut-in or temporarily abandoned for twelve consecutive months or longer” to “a well that has been nonoperational for at least seven consecutive years and there is no anticipated beneficial use for the well.” BLM should change its definition of “idle well” from a well that has been shut in or temporarily abandoned for seven years or longer to a well that has been shut in or temporarily abandoned for twelve months or longer, and to require bonds for these wells to be set at the full cost of reclamation as determined by a professional engineer.⁴⁵³
- Wells that have not produced in paying quantities for six months should be considered idle.⁴⁵⁴
- After a well is idle for one year, the operator should be required to either plug the well, return the well to production in paying quantities, or show legitimate cause for continued idle status.⁴⁵⁵
- After a well is idle for a year, and every two years following, operators should be required to conduct a Mechanical Integrity Test with inspectors present.⁴⁵⁶
- After a well is idle for three years, regulators should require operators to plug the well or return it to production.⁴⁵⁷
- Regulators should increase bond amounts to the projected cost of reclamation when wells are idled. Alternatively, idle wells should be assessed an annual fee paid into an orphaned well cleanup fund. This is particularly important for operators who hold a large number or large percentage of idle wells.⁴⁵⁸
- Operators with idle wells should be required to submit an idle well inventory management plan that includes a timeline to plug and reclaim idle wells. Approvals of new permits, well transfers and ongoing operations should be contingent on full compliance with an approved plan.⁴⁵⁹
- BLM should establish policy that prioritizes taking wells off the path to orphan status by identifying them as idled earlier in the process. This should include more frequent inspections, higher bond, and reclamation costs to help pay for idled well clean-ups, and

⁴⁵² Western Organization of Resource Councils.

⁴⁵³ Western Organization of Resource Councils.

⁴⁵⁴ Western Organization of Resource Councils.

⁴⁵⁵ Western Organization of Resource Councils.

⁴⁵⁶ Western Organization of Resource Councils.

⁴⁵⁷ Western Organization of Resource Councils.

⁴⁵⁸ Western Organization of Resource Councils.

⁴⁵⁹ Western Organization of Resource Councils.

agency guidance regarding how to identify potential idled wells earlier in their lease term.⁴⁶⁰

- To fully address the problems associated with idled and orphaned wells, BLM should establish better policies to create jobs and take proactive steps to address idled wells while also taking steps to reduce the number of orphaned wells in the first place. To achieve both objectives, BLM should increase bond and reclamation costs to hire additional inspectors and ensure that proper reclamation will occur.⁴⁶¹
- BLM must issue a “data call” to all BLM state offices to fully understand the number of wells, and how long they have been idled.⁴⁶²
- BLM should prioritize its review of idled and orphaned wells based on their proximity to or impact on important resource values such as lands with wilderness characteristics, cultural and archaeological areas, ground and surface water resources, and wildlife habitat.⁴⁶³
- The Department should issue new policies that increase oversight of inactive wells and limit the ability of operators to indefinitely delay final reclamation.⁴⁶⁴

Orphan wells

- States should require oil and gas companies to pay into a fund for orphan well cleanup to locate orphaned wells that are not yet mapped, address all orphaned wells, and provide a backstop for bonds that do not cover the full cost to plug and reclaim wells that are currently under permit but orphaned in the future.⁴⁶⁵
- “Regulators should develop or update prioritized plans for cleanup of orphaned wells with public input and based on leaks or emissions, proximity to residents, environmental justice criteria, threat to water supply, impacts to wildlife and environment, conflict with current land use and other risk factors, as well as well location.”⁴⁶⁶
- “Regulators should monitor air emissions from documented orphaned wells in order to appropriately prioritize wells for plugging and reclamation.”⁴⁶⁷
- Plugging best practices should be set in regulations and reviewed and updated frequently. Plugged wells must be inspected on site.⁴⁶⁸
- The Department should increase reclamation bond amounts. The amount of bond required for oil and gas leases has not been updated in over sixty years, and as a result the

⁴⁶⁰ Southern Utah Wilderness Alliance.

⁴⁶¹ Southern Utah Wilderness Alliance.

⁴⁶² Southern Utah Wilderness Alliance, National Wildlife Federation and multiple other Public Advocacy Groups.

⁴⁶³ Southern Utah Wilderness Alliance.

⁴⁶⁴ The Wilderness Society (TWS).

⁴⁶⁵ Western Organization of Resource Councils.

⁴⁶⁶ Western Organization of Resource Councils, The Wilderness Society (TWS).

⁴⁶⁷ Western Organization of Resource Councils.

⁴⁶⁸ Western Organization of Resource Councils.

government is woefully underfunded to ensure that wells that have been orphaned are sufficiently reclaimed.⁴⁶⁹

- The Department should address the cost of reclaiming orphaned wells on public lands and support Congressional legislation that not only increases bond amounts, but also creates an official orphaned well cleanup fund.⁴⁷⁰
- The Department should support passage of Senator Bennet’s “Oil and Gas Bonding Reform and Orphaned Well Remediation Act.” This bill will establish a new fund that will allow States, Tribes, and Federal agencies to create jobs by identifying and reclaiming orphaned wells, as well as strengthening Federal oil and gas bonding rules.⁴⁷¹
- The Department should also support passage of the “Orphaned Well Cleanup and Jobs Act of 2021” sponsored by Representative Teresa Leger Fernández, which authorizes funds to identify, plug, and reclaim orphaned wells on Federal lands, and directs the Department to create and administer a grant program to provide funds to States and Tribes to plug and reclaim wells on Tribal, State, and private lands.⁴⁷²
- When oil and gas wells are improperly plugged or abandoned, they can leak methane into the air or contaminate surface water and groundwater. The Department should locate and map orphaned wells on Nation Wildlife Refuge lands, develop a database with information on each well’s status, properly plug orphaned wells and remove abandoned infrastructure, and reclaim and restore sites to productive wildlife habitat.⁴⁷³
- Permanently plug orphaned wells and remediate and reclaim orphaned well sites on Federal land while increasing bonding rates to ensure that industries are held accountable for the monitoring, plugging, remediation and restoration of any future wells.⁴⁷⁴

Well transfers

- “If bonds are not set at the actual cost of reclamation, regulators should require stripper wells or idle wells that are transferred to new operators to be covered by bonds or fees that are sufficient to cover the full cost to plug and reclaim these wells.”⁴⁷⁵
- “Regulators should have authority to hold previous operators in the chain of custody of an orphaned site responsible for covering the cost of plugging and reclaiming the site.”⁴⁷⁶
- Permits should not be transferable. Instead, new owners should be required to apply for a new permit, and regulators should only approve permits accompanied by financial assurance at the cost of reclamation.⁴⁷⁷

⁴⁶⁹ National Wildlife Federation and multiple other Public Advocacy Groups.

⁴⁷⁰ National Wildlife Federation and multiple other Public Advocacy Groups.

⁴⁷¹ The Wilderness Society (TWS).

⁴⁷² The Wilderness Society (TWS).

⁴⁷³ Defenders of Wildlife.

⁴⁷⁴ National Parks Conservation Association.

⁴⁷⁵ Western Organization of Resource Councils.

⁴⁷⁶ Western Organization of Resource Councils.

⁴⁷⁷ Western Organization of Resource Councils.

Public information and oversight

- The Department should provide annual updates to the public and to state legislatures on the number of documented orphaned wells, the estimated number of undocumented orphaned wells, the number of wells at-risk of becoming orphaned, the number of idled wells and length of time in idle status, the number and cost of orphaned wells plugged and reclaimed, amount of financial assurance held per company and well, and potential taxpayer liability.⁴⁷⁸
- The Department should also provide public access to regularly updated databases that include clear and detailed information about the amounts of reclamation bonds or other financial assurance, and the wells and other infrastructure covered by those bonds.⁴⁷⁹
- The Department should conduct on-site inspections at least once per year and should verify operator and well status whenever required reports or payments are late.⁴⁸⁰
- The Department should conduct regular reviews of well permits to ensure accurate data is being used.⁴⁸¹

8.15. Regulatory Changes

General recommendations

- The Department should establish a new mandate for the onshore program that affirmatively recognizes oil and gas leasing as a discretionary action that should be authorized only when consistent with multiple use and sustained yield principles.⁴⁸²
- BOEM should initiate a rulemaking process to modernize and reform OCS regulations to reflect current priorities, including climate change and ocean acidification, consultation with Tribes and consideration of environmental justice issues. Regulatory changes can also better define cumulative impacts analyses and ensure environmental assessments are subject to meaningful public review and comment.⁴⁸³
- BLM should consider using the formal nominations process and revoke IM 2014-004.⁴⁸⁴
- BLM should amend its oil and gas regulations to require a public interest determination prior to issuing noncompetitive leases. This determination should inform whether applicants for noncompetitive leases are responsible and qualified under 30 U.S.C. § 226(c)(1) and should evaluate such factors as the applicant's ability to undertake development and compliance history, including whether the applicant has a history of failing to make rental or other payments. BLM should also create and maintain a publicly

⁴⁷⁸ Western Organization of Resource Councils.

⁴⁷⁹ Western Organization of Resource Councils.

⁴⁸⁰ Western Organization of Resource Councils.

⁴⁸¹ Western Organization of Resource Councils.

⁴⁸² Wilderness Society Action Fund and cosigners; Citizens Caring for the Future; Public Land Solutions.

⁴⁸³ Ocean Conservancy.

⁴⁸⁴ Wilderness Society Action Fund and cosigners.

accessible portal for noncompetitive lease offers and provide the public with at least 30 days to review and comment on noncompetitive lease offers.⁴⁸⁵

- BLM can make changes to its land use planning regulations, and it can revise its Land Use Planning Handbook (H-1601-1) to prevent the prioritization of oil and gas development on public lands, and to ensure that these lands are appropriately managed for multiple use, such as:
 - Creating new regulations that should close lands to leasing with no to low potential for oil and gas development; and
 - Creating new regulations that should make clear that BLM has the discretion to close lands that would be better managed for uses other than oil and gas development. These may include lands with high value wilderness characteristics and critical wildlife habitat, lands with high value cultural resources, and lands with high value recreation access, or opportunities for increased recreational access.⁴⁸⁶
- The Department should commission an investigation to review the successful oil and gas leasing operations on both state and private lands and attempt to replicate them on the Federal estate. An in-depth review of how they successfully protect the environment and the legacy of the land while providing for the needs of their people for both employment and revenue could prove useful to the Administration.⁴⁸⁷
- The Department should issue an IM from the Washington Office to guide oil and gas leasing and development activities on Federal lands in the interim. The IM should provide direction to continue to defer new leasing in Field Offices where:
 - The applicable BLM RMP or other Federal surface agency land management planning document making resource allocation decisions (Federal Planning Document) is undergoing revision;
 - The mineral leasing portions of an RMP or other Federal Planning Document has not been updated for twenty years or more; or
 - An RMP or other Federal Planning Document has been objected to or protested by a Tribal, State, or local government citing unmitigated concerns over impacts to natural resources, including wildlife and fisheries, from oil and gas development.
- The Department should issue a proposed rule for regulations governing Federal oil and gas resources on Nation Forest System lands. Specifically, a new proposed rule should:
 - “Maintain preexisting U.S. Forest Service (USFS) consent to lease requirements;
 - Require that the most effective stipulation(s) be applied to the lease to protect resources;

⁴⁸⁵ Wilderness Society Action Fund and cosigners.

⁴⁸⁶ National Wildlife Federation and multiple other Public Advocacy Groups.

⁴⁸⁷ Institute for Energy Research.

- Require conditions of approval at the APD stage to avoid and minimize impacts to site-specific resource values;
- Continue public notification requirements and the ability for the USFS to provide oversight and review of a Surface Use Plan of Operations prior to final approval;
- Remove from consideration the leasing and nomination of any USFS lands with low or negligible oil and gas potential;
- Reform the use of lease suspensions;
- Provide clarity on use of Section 390 categorical exclusions and require evaluation of extraordinary circumstance prior to approving the use of any categorical exclusion;
- Reform unitization policies and evaluate non-competitive leasing; and
- Prevent lands closed or otherwise unavailable for leasing from being nominated.”⁴⁸⁸
- BLM should update the “Gold Book – Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development,” which was last updated in 2007.⁴⁸⁹
- BOEM should take the following actions to reform the OCS oil and gas program:
 - “Impose an immediate moratorium on issuing new leases under the current five-year OCS leasing program;
 - Limit future leasing to locations with established oil and gas leasing operations; and do not initiate new leasing adjacent to states that formally object to it because of the risks it creates to thriving tourism, commercial fishing, and other sustainable coastal economies that depend upon unpolluted marine waters and clean beaches;
 - Prepare and issue a new DPP for FY 2023-2028 that includes the following provisions:
 - The new DPP must comply with the balancing requirements of Section 18(a)(3) of OCSLA, which requires the Secretary to render decisions on the timing and location of OCS leasing that strike a balance between the potential for environmental damage, the potential for discovery of oil and gas, and the adverse impact on the coastal zone.
 - Only necessary and appropriate lease opportunities should be offered; and these should be focused in areas with the greatest production potential with relatively limited environmental risk.
 - Information provided in the 2019-2024 DPP identified areas with by the greatest production potential to be the Central Gulf of Mexico (GOM), Chukchi Sea (AK), Western GOM, and Beaufort Sea (AK). Of these, the Central GOM and Western GOM are currently the most extensively leased, with over 50,000 wells drilled

⁴⁸⁸ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁴⁸⁹ Coalition to Protect America's National Parks.

- The new DPP should clearly identify planning areas with relatively limited production potential or relatively high environmental and social costs; and such areas should be excluded from proposed leasing in order to “strike a balance” between the potential for environmental damage and the potential for discovery of oil and gas.
 - The new DPP should include coastal buffer(s) to accommodate concerns such as military use, fish and marine mammal migration and other near shore uses, and be universally applied to all planning areas with populated shorelines.
 - The new DPP should be responsive to state concerns in accordance with Section 19(c) of OCSLA.”⁴⁹⁰
- BLM should revoke and replace IM 2014-004 which authorized anonymous expressions of interest.⁴⁹¹
- BLM should revoke and replace IM 2018-034 “Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews” with a new IM that includes the following provisions:
 - A mandatory minimum 30-day public comment period on lease sale proposals;
 - A 30-day protest period for lease sale notices;
 - Deferral of proposed leasing in locations lacking up to date RMP’s; and
 - Formal structured collaboration with neighboring agencies that manage specially protected resources such as national parks and refuges, wilderness areas, and significant cultural and archeological sites.⁴⁹²
- BLM should review and update, as needed, IM 2019-014 “Oil and Gas Bond Adequacy Reviews” which directs each BLM field office administering an oil and gas program to perform bond adequacy reviews on all bonds at least every five years or earlier when warranted.⁴⁹³

Environmental protection

- To ensure durable, consistent, and effective regulation and mitigation for existing oil and gas development, BOEM and BSEE should pursue regulatory amendments to hard-wire consideration of climate change and environmental protection in future decisions, such as comprehensive regulations to curb methane emissions from existing offshore operations.⁴⁹⁴
- BLM should institute a system of cradle-to-grave management for water used by operators on Federal lands, or operators using publicly owned water. BLM should impose

⁴⁹⁰ Coalition to Protect America's National Parks.

⁴⁹¹ Coalition to Protect America's National Parks.

⁴⁹² Coalition to Protect America's National Parks.

⁴⁹³ Coalition to Protect America's National Parks.

⁴⁹⁴ Earth Justice and cosigners.

requirements on industry to reuse a percentage of the produced water from their wells to steadily decrease the industry's depletion of available fresh water.⁴⁹⁵

- BLM should issue a new IM that clearly defines proper conservation of natural resources to include and require conservation of natural resources, including surface resources. New unit proposals should require an explicit showing that unit development will conserve natural resources underground and above ground.⁴⁹⁶
- BLM should defend its 2016 Waste Prevention Rule which is currently on appeal in the Tenth Circuit Court of Appeals. Although aimed at preventing waste, the Rule also would have significant climate and public health benefits by reducing methane emissions and toxic air pollutants. Accordingly, BLM should seek reinstatement of the Rule by the appellate court.⁴⁹⁷
- At the end of the Trump Administration, the ONRR issued a final rule for Federal oil and gas valuation that would significantly reduce taxpayer receipts and undermine important valuation standards. The provisions of the 2020 Rule, and ONRR's stated justifications for them, are corrosive to the responsible management of taxpayer assets. The Department should rescind the 2020 Rule.⁴⁹⁸
- The Department should require the use of key effective planning tools and best management practices to prevent impacts to outdoor recreation, including master development plans, unit agreements, development density limits, and phased leasing to limit oil and gas development footprints, and alternatives to pits, directional drilling, technologies that minimize methane leaking and flaring, and other strategies to prevent wasteful, unnecessary, and harmful emissions, and reduce light pollution.⁴⁹⁹
- BLM should review land use plan stipulations by working on state-wide plan amendments to apply appropriate stipulations on a State-by-State basis.⁵⁰⁰
- "The Department and BLM should re-establish prioritization of future oil and gas leasing outside of priority sage-grouse habitat and issue immediate guidance to field offices."⁵⁰¹
- Outdoor recreation offers a sustainable and viable reprieve for rural communities. The leasing process must be reformed in order to maximize each parcel's potential for use viability and at times set aside for conservation. The Department should:
 - "Utilize management practices that emphasize multiple-use ethics with a renewed focus on human-powered recreation and conservation opportunities in order to help achieve 30 percent protection of public lands and waters by 2030.
 - Ensure there is a fair return to taxpayers for development on public lands. Raise leasing prices accordingly, and return those funds to conservation efforts on

⁴⁹⁵ Western Organization of Resource Councils.

⁴⁹⁶ Southern Utah Wilderness Alliance.

⁴⁹⁷ Earth Justice and Multiple Additional Public Advocacy Groups; The Wilderness Society (TWS).

⁴⁹⁸ Taxpayers for Common Sense.

⁴⁹⁹ Access Fund.

⁵⁰⁰ National Wildlife Federation and multiple other Public Advocacy Groups.

⁵⁰¹ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

Department-managed parcels and mitigation projects for frontline and gateway communities;

- Prohibit leasing of new land until unused and non-producing parcels are assessed, and if appropriate, released; and
- Reinstate protections of culturally significant public lands such as Bears Ears and Grand Staircase-Escalante National Monuments to ensure these lands are protected from future oil and gas development.”⁵⁰²
- Measures that BLM can use to protect recreational resources include:
 - Utilize master development plans and unit agreements in areas where a significant amount of new drilling is expected; BLM can require that operators and lessees coordinate construction of new roads, rigs, and other infrastructure to minimize impacts to recreation resources and the broader landscape. Where oil and gas operators are accessing a common reservoir of minerals, BLM can require, or operators can voluntarily agree, to ‘unitize’ their leases and reduce the number of wells and other infrastructure required.
 - In recreational areas open to energy development, BLM should require development density limits for well pads, production facilities, pipelines, and utilities to protect recreational uses and experiences.
 - Require phased leasing and developments to prioritize new leasing and energy development authorizations on lands with industry interest and high potential for successful energy development but a low level of other multiple uses such as recreation.”⁵⁰³

Mitigation

- The Department should adopt policies that encourage or require mitigation for all aspects of public lands planning and management by updating and readopting BLM Mitigation Manual and BLM Mitigation Handbook.⁵⁰⁴
- The Department should adopt new policies that clarify BLM’s authority to encourage or require mitigation in public lands planning and management, including meaningful consultation with cooperating agencies, including State fish and wildlife agencies, and affected Tribal and local governments.⁵⁰⁵

Royalty Rates

- BLM should strengthen the onshore program’s fiscal framework by amending its oil and gas regulations to increase the royalty rate, rental rates, and minimum lease bids. BLM should look to recent legislation from Senators Rosen and Grassley, as well as reports

⁵⁰² American Alpine Club.

⁵⁰³ Public Land Solutions.

⁵⁰⁴ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵⁰⁵ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

from Congressional Budget Office and GAO, for guidance. Also, BLM should issue a policy directive that requires the use of increased rates.⁵⁰⁶

Wells and Remediation

- “BLM should amend its oil and gas regulations to eliminate or minimize the use of blanket bonds and require that bonds be based on the full costs of plugging, abandonment, and reclamation. Further, BLM should issue new policies that increase oversight of inactive wells and limit the ability of operators to indefinitely delay final reclamation. Finally, BLM should work with Congress to obtain funds to clean-up orphaned wells and to authorize a user fee to cover additional reclamation costs, as recommended by GAO.”⁵⁰⁷

Lease Sales

- BLM should amend its oil and gas regulations to establish criteria for determining “responsible qualified” bidders and to prohibit or limit participation by companies that violate reclamation and other environmental protection standards and fail to make rental and other required payments.
- BLM should publicly post and regularly update the list of “Entities in Noncompliance with Reclamation Requirements of Section 17(g) of MLA,” which it is supposed to maintain under Handbook 3120-1.⁵⁰⁸
- BLM does not routinely screen nominated leases against criteria that are designed to eliminate conflicts with other uses and resources and to maximize taxpayer returns. The FLPMA and the MLA both authorize the use of screens, including “to prevent unnecessary or undue degradation” and “for the safeguarding of the public welfare.” BLM should amend its leasing regulations to require the adoption of nationwide and state-specific screens that should be employed to eliminate and reduce conflicts with other uses and resources.⁵⁰⁹
- BLM should revise its oil and gas regulations to clarify that lease sales are not required and that it has broad authority to declare lands ineligible and unavailable for leasing. BLM may also want to obtain a Solicitor’s Opinion on the MLA’s quarterly sale provision and BLM’s authority to declare lands ineligible and unavailable for leasing.⁵¹⁰
- A leasing update by the Department could mean instructing the BLM to fulfill its multiple-use mandate by providing staff and resources that can improve and manage

⁵⁰⁶ Wilderness Society Action Fund and cosigners.

⁵⁰⁷ Wilderness Society Action Fund and cosigners.

⁵⁰⁸ Wilderness Society Action Fund and cosigners.

⁵⁰⁹ Wilderness Society Action Fund and cosigners.

⁵¹⁰ Wilderness Society Action Fund and cosigners; National Wildlife Federation and multiple other Public Advocacy Groups; The Wilderness Society (TWS).

recreation assets to meet the economic development and business recruitment goals of local communities⁵¹¹

- The leasing of lands with no or low potential for oil and gas development violates FLPMA and the MLA. Also, existing RFDs and RMPs do not accurately reflect development potential. BLM should stop all leasing of no and low potential lands. As part of its review process, BLM must (1) review and update, as necessary, its existing RFDs to accurately determine which areas contain no or low potential for leasing and development, and (2) amend its RMPs, as necessary, to close such areas to all future leasing. BLM must provide for public participation in the review and preparation of RFDs.⁵¹²
 - The Department should issue a Secretarial Order that places a moratorium on offering oil and gas leases on lands classified as low or no potential and to initiate rulemaking that will establish this policy in regulation.⁵¹³
- BLM should develop new guidance regarding lease reinstatements. The practice of reinstating leases that have been terminated for failure to pay the annual rental fee needs to be evaluated by BLM and much more stringent provisions for reinstatement should be put in place. By law, BLM is only to reinstate leases in cases in which the failure to timely submit the rental was “justified” or “not due to lack of reasonable diligence” by the lessee. BLM should establish narrow and specific guidelines for when these criteria may be considered to be met.⁵¹⁴
- The Department should amend the regulations governing competitive leasing to prohibit the use of “informal” nomination processes. As part of this process, the Department should require that the names and identities of parties gathered as part of a “formal” nomination process be disclosed to the public as early as practicable and in advance of the first opportunity for public participation related to the forthcoming lease sale.⁵¹⁵
- The Department should formally rescind all applicable agency guidance (i.e., IM 2014-004) allowing the practice of informal nominations, especially any practices that could allow for those expressing interest in a lease avoid disclosing their identities and/or the identities of the parties they represent.⁵¹⁶
- The Department should limit the quantity and scope of competitive sales declaring high value recreation lands such as climbing areas as unavailable for leasing. A formal nomination process could better identify lands suitable for oil and gas developments and which should be protected for other multiple uses such as recreation.⁵¹⁷

⁵¹¹ Public Land Solutions.

⁵¹² Southern Utah Wilderness Alliance.

⁵¹³ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵¹⁴ Southern Utah Wilderness Alliance.

⁵¹⁵ Natural Resources Defense Council.

⁵¹⁶ Natural Resources Defense Council.

⁵¹⁷ Access Fund.

- The Department should formalize a new discretionary procedure that allows leases only when consistent with FLPMA and will not impair other multiple uses such as climbing and other recreation.⁵¹⁸
- “BLM should implement new regulations and policies that would require a Department decision maker to consider the relative value of all resources within a proposed lease, and to consider the impacts of oil and gas development on these resources, including water quality, air quality, wildlife habitat, wilderness, and recreation, before deciding whether or not to offer a lease. To do so, BLM must implement policies that require leases to be screened prior to lease sale.”⁵¹⁹
- There is a lack of consistency in field offices regarding the applicability of Federal lease stipulations to non-Federal surface where there is split estate, and how split estate non-Federal surface lands are addressed during the Federal planning and development process. The Washington Office should issue clear policy guidance that outlines:
 - “A process for evaluating and disclosing during land management planning and project-specific NEPA, the impacts to split estate non-Federal surface lands from oil and gas development.
 - Legal authority and applicability of Federal lease stipulations to development on non-Federal surface lands.
 - Requirements for the most effective stipulation(s) be applied to protect resources.”⁵²⁰

Unitization

- With outdated regulations, BLM allows industry manipulation of the unitization process to speculate on Federal leases. BLM should undertake a thorough examination of how widespread speculative manipulation of these regulations has become and implement new guidance and regulations to ensure unitization is used to achieve the goals for which the tool was designed. BLM’s review of the unitization process along with the rest of its oil and gas program should occur through a PEIS. In addition, the agency should undertake a new rulemaking process to update outdated rules, clarify BLM authority, and ensure that regulations governing unitization reflect contemporary circumstances and technology, protect the public interest and natural resources, and serve the intent of the unitization process.⁵²¹
- BLM should issue a new IM that articulates BLM’s authority to deny unit proposals, especially any such proposals that are not supported by a clear showing of diligence. “Evidence of speculative intent should be considered and listed as a rationale for properly rejecting a unit proposal. Such evidence should include requests that come late in the

⁵¹⁸ Access Fund.

⁵¹⁹ National Wildlife Federation and multiple other Public Advocacy Groups.

⁵²⁰ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵²¹ Southern Utah Wilderness Alliance.

lease term and requests accompanied by or necessitating suspensions. Any unit proposal that is not necessary or advisable in the public interest or that fails to properly conserve natural resources must also be denied.”⁵²²

- BLM’s new IM should provide guidance on approval of large unit proposals. Unit boundaries should be based on geological factors, not arbitrary lease boundaries, and larger units should not be approved if they follow lease lines rather than geologic reservoirs.⁵²³
- BLM should provide guidance to clarify circumstances that justify suspensions and extensions of unit obligations. Immediate guidance should make clear that unit suspensions be granted for periods not to exceed one year and include a presumption against granting multiple suspensions and/or extending suspensions. Such provisions are important to ensure unit operators and leaseholders are diligently pursuing development of Federal minerals.⁵²⁴
- BLM should issue guidance that makes clear that unitized leases in their extended term cannot be extended unless it is through production. That means, if the lease is in its extended term and the unit terminates without unit obligation well(s) having been drilled diligently, the extended term leases do not qualify for two-year extensions.⁵²⁵
- BLM must also provide a clear definition for “unavoidable delay” in revised regulations. Updated regulations should make clear that unavoidable delay is unavailable for leaseholders and unit operators who wait until late in a lease or unit term to initiate planning, to request drilling applications, and/or to begin drilling. Late filings, often timed to support a request for relief, should very clearly be excluded from any “unavoidable delay” relief.⁵²⁶

Permitting

- BLM should increase the costs associated with the processing and approval of drilling permits. As part of its review process, BLM must take steps to discourage operators from failing to develop their approved drilling permits. Operators drill only half of their approved permits, which amounts to a significant waste of taxpayer money and BLM resources. BLM must increase the costs associated with the processing and approval of drilling permits as well as establish other financial incentives to encourage operators to apply for drilling permits they intend to develop.⁵²⁷

Revenue

⁵²² Southern Utah Wilderness Alliance.

⁵²³ Southern Utah Wilderness Alliance.

⁵²⁴ Southern Utah Wilderness Alliance.

⁵²⁵ Southern Utah Wilderness Alliance.

⁵²⁶ Southern Utah Wilderness Alliance.

⁵²⁷ Southern Utah Wilderness Alliance.

- BLM should conduct rulemakings to reform revenue policy to ensure that taxpayers are fairly compensated, companies are held responsible for paying to clean up after themselves, as well as take into account climate effects.⁵²⁸

Public Participation

- “BLM should amend its oil and gas regulations to require NEPA compliance and public participation prior to granting lease suspensions. Further, BLM should establish criteria to govern the evaluation of suspension applications, which should place the burden of justifying suspensions on applicants, particularly in cases where leases are nearing their expiration dates.”⁵²⁹
- BLM should look to IM 2010-117 for guidance and amend oil and gas leasing regulations to require robust public participation and Tribal consultation during the leasing and permitting process.⁵³⁰
- An IM should clearly and broadly define the “public interest” as used in unit regulations to include those things that effect the welfare or well-being of the general public. For example, BLM should make it clear that impacts to sensitive public lands and other environmental harms will be considered in assessing whether a unit would be in the “public interest.” Further, the definition of “public interest” should include the provision of meaningful opportunities for public participation in the unitization process, such as a 30-day public comment period after the proposed unit agreement and draft NEPA documents are posted.⁵³¹
- The Department should suggest a rulemaking to amend regulations government competitive leasing to specifically provide for opportunities for public notice and comment at all relevant stages of the leasing process, including sufficient timeframes and numerous methods for providing comments.⁵³²
- The Department should adopt and ensure early notification and invitation to volunteer National Trails partner organizations to consult once any proposals are initiated for oil and gas leasing on Federal public lands.⁵³³
- The Department should strengthen support agreements with volunteer Trail partner organizations with the goal of greater participatory input related to past and possible future oil and gas leasing, and other potentially adverse Federal land allowances.⁵³⁴
- The administration should consider re-starting efforts to join the Extractive Industries Transparency Initiative. Regulatory changes can require Interior Department agencies to post non-privileged information on exploration, permitting, inspections, monitoring, and

⁵²⁸ Center for American Progress.

⁵²⁹ Wilderness Society Action Fund and cosigners.

⁵³⁰ Wilderness Society Action Fund and cosigners.

⁵³¹ Southern Utah Wilderness Alliance.

⁵³² Natural Resources Defense Council.

⁵³³ The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

⁵³⁴ The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

enforcement. Regulations can also ensure information on OCS incidents and near misses is available to the public.⁵³⁵

Protected Areas

- The Department should withdraw the Arctic Refuge oil and gas leasing program ROD and work with Congress to remove the drilling mandate in the Tax Act.⁵³⁶
- The Department should withdraw the National Petroleum Reserve-Alaska (Reserve) IAP and develop new regulations and an amended IAP that limit the oil and gas program in the Reserve to its current footprint.⁵³⁷
- The Department should adopt more protective regulations for the Reserve and conduct new land management planning. It should also review current regulations governing the Reserve to determine how they can be strengthened to protect environmental resources and lessen the impacts of oil and gas development on communities and subsistence resources. “The regulations and land management planning should:
 - aim to end new leasing in the Reserve;
 - protect areas of ecological and cultural significance;
 - minimize and mitigate the climate and environmental impacts of any existing or proposed oil and gas activities on existing leases;
 - provide for termination or relinquishment of existing, non-producing leases to the extent consistent with the Naval Petroleum Reserves Production Act (NPRPA);
 - increase reclamation and bonding requirements;
 - and address how environmental reviews occur in the Reserve.”⁵³⁸
- The Department should offer an immediate Secretarial moratorium for oil and gas leasing on Federal lands within ten-mile-wide default national trail management corridors and request the implementation of other measures to avoid incompatible activities that conflict with the nature and purpose of the National Trail System.⁵³⁹
- The Department should offer a Secretarial Order directing all BLM State Offices, District Offices, and Field Offices to revise or amend applicable resource management/land use plans ensuring full public participation and review, and fully incorporating trail inventory information and management processes in accordance with BLM Policy Manual 6280 regarding National Trails.⁵⁴⁰
- The Department should revise policy regarding National Trails, including subsidiary agency policy, to clarify that all portions of National Trails on Federal public lands are

⁵³⁵ Ocean Conservancy.

⁵³⁶ Defenders of Wildlife.

⁵³⁷ Defenders of Wildlife; Alaska Wilderness League.

⁵³⁸ Alaska Wilderness League.

⁵³⁹ The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

⁵⁴⁰ The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

Federal protection components of said Trails, in accordance with the National Trails System Act.⁵⁴¹

- It is recommended that the Department consider the review of all oil and gas leases issued relevant to and since the establishment of each National Trail to ensure that such were issued only after taking Trail Management Corridor protections into account, and if such considerations and protections were not taken into account the Department should consider adjustment of such leases to remedy degradation of National Trails.⁵⁴²
- Considerable concerns exist nationwide regarding the ensured reclamation of abandoned or closed oil and gas leasing sites. The Department shall strengthen measures to ensure reclamation of all oil and gas facilities previously, or henceforth appropriately authorized in extremely limited fashion, is conducted. Reclamation of any such sites in National Trail Management Corridors should be required to restore all Trail resources, values, qualities including landscape setting, and recreational opportunities.⁵⁴³

8.16. Legislative Recommendations

Proposed Legislation

- Congress should adopt legislation that would protect Nevada’s Ruby Mountains and other public lands, such as Senator Cortez Masto’s “End Speculative Oil and Gas Leasing Act,” which would end certain leasing practices and establish protections for public lands.⁵⁴⁴
- Congress should enact legislation that will prevent energy development on sensitive public lands such as the bicameral “Colorado Outdoor Recreation & Economy (CORE) Act” (S. 173, H.R. 577), sponsored by Senator Bennet and Representative Neguse, and the “Ruby Mountains Protect Act” (S. 609).⁵⁴⁵
- The Department should support Representative DeGette’s “Methane Waste Prevention Act of 2021” (H.R. 1492), which would codify long-overdue, widely agreed upon, common-sense standards to reign in excessive waste of vented and flared gas on public lands. By curbing unnecessary venting, flaring, and leaks at oil and gas facilities, this bill will help protect public health, reduce potent GHG emissions, and recoup millions of dollars owed to the American taxpayers.⁵⁴⁶
- BLM should support passage of Senator Bennet’s and Representative Levin’s bills to codify the public’s right to participate in the decision-making process for oil and gas lease sales.⁵⁴⁷ In addition, BLM should support passage of:

⁵⁴¹ The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

⁵⁴² The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

⁵⁴³ The Partnership for the National Trails System (PNTS), the Old Spanish Trail Association (OSTA), et al.

⁵⁴⁴ Nevada Conservation League; Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵⁴⁵ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵⁴⁶ The Wilderness Society (TWS); Western Organization of Resource Councils.

⁵⁴⁷ Western Organization of Resource Councils; The Wilderness Society (TWS).

- H.R. 3604, the “Safe Hydration is an American Right in Energy Development,” or SHARED Act, which would require operators to report fracking’s impact on water quality;
- H.R. 4007, the FRESHER Act, “Focused Reduction of Effluence and Stormwater Runoff Through Hydrofracking Environmental Regulation Act,” which would mandate a study of the completion technique’s effect on stormwater runoff; and
- The FRAC Act, the “Fracturing Responsibility and Awareness of Chemicals Act,” which would authorize the EPA to regulate unconventional drilling. The Act also would require chemical components used in drilling to be disclosed.⁵⁴⁸
- The Department should support passage of legislation to amend definition of idle well established in Sec. 349 of the Energy Policy Act of 2005, such as Representative Lowenthal’s bill, “Bonding Reform and Taxpayer Protection Act” (H.R.1505), which would also eliminate nationwide bonding and update statewide and lease wide bond amounts.⁵⁴⁹
- The Department should support passage of Senator Bennet’s bill, the “Oil and Gas Bonding Reform and Orphaned Well Remediation Act” (S. 4642), which updates bond amounts to better meet the cost of reclamation and creates an official orphaned well clean-up fund of approximately \$3 billion dollars.⁵⁵⁰
- The Department should support passage of “Leasing Market Efficiency Act of 2020” (S. 4223), and the “Restoring Community Input and Public Protections in Oil and Gas Leasing Act” (H.R. 15013) from Representative Levin which among other reforms would end noncompetitive leasing.⁵⁵¹
- The Department should support passage of Senator Cortez-Masto’s “End Speculative Oil and Gas Leasing Act” (S. 607), which would end the practice of leasing low potential lands by requiring the BLM to assess all lands’ mineral development potential before offering those lands for lease and prohibiting leasing on any lands found to have low or no development potential.⁵⁵²
- The Department should support Representative Lowenthal’s “Bonding Reform and Taxpayer Protection Act of 2021” (H.R. 1505) and Representative Leger Fernandez’s “Orphan Well Clean up and Jobs Act of 2021” (H.R. 2415).⁵⁵³

Other suggestions for Congress and the Department

- Congress should end the noncompetitive leasing program, while BLM should increase leasing and rental rates for non-competitive leases and release a quarterly report on noncompetitive oil and gas leasing with details including where and when parcels were leased and by whom.⁵⁵⁴

⁵⁴⁸ Western Organization of Resource Councils.

⁵⁴⁹ Western Organization of Resource Councils.

⁵⁵⁰ Western Organization of Resource Councils; Hispanic Access Foundation; Public Land Solutions.

⁵⁵¹ The Wilderness Society (TWS).

⁵⁵² The Wilderness Society (TWS).

⁵⁵³ Hispanic Access Foundation.

⁵⁵⁴ Center for American Progress.

- Congress should address the potential impact to states from the long-term decline of fossil fuel activity and revenues on public lands due to the global shift away from fossil fuels. Congress must extricate state budgets from unsustainable and unpredictable fossil fuel markets by ending revenue sharing and decoupling fossil fuel energy production on Federal lands and waters. At the same time, there must be enhanced investments in energy producing states and rural communities.⁵⁵⁵
- The administration should work with Congress on legislation that permanently overhauls the nation's OCS energy policy to address threats posed by climate change and ocean acidification, issues of Tribal sovereignty, disproportionate impacts to Black, Indigenous, and other communities of color, and other challenges.⁵⁵⁶
- Congress should take action to improve the management of offshore oil and gas activities such as:
 - Establish protection, maintenance, and restoration of coastal and ocean ecosystems as the paramount OCS policy objective and specify that extraction of mineral resources should be permitted only when consistent with that priority.
 - Use some portion of the revenue generated from leasing and production to create a trust that would fund ocean research, monitoring and observing.
 - Require the Department to consider the climate change impacts of decisions, including the cost of CO2 emissions from both authorized activities and downstream activities
 - Require a full review of the costs and benefits of the existing offshore oil and gas program. Such a review should include climate change impacts, effects on the energy market, and impacts to the ocean.
 - Codify the divisions of Mineral Management Service into BOEM, BSEE and ONRR.
 - Codify the requirement the four stages of OCSLA are a one-way ratchet, such that areas excluded in a preceding phase may not be considered in later stages.
 - Strengthen and clarify NEPA practices in the OCS context, including ensuring appropriate use of tiering and categorical exclusions and clarification of NEPA requirements for each stage of the OCSLA process
 - Amend the provision describing allowable uses of the Oil Spill Liability Trust Fund (OSLTF) to:
 - explicitly allow for OSLTF monies to be used for spill preparedness, including scientific research, monitoring, and observing;
 - increase funding for Coast Guard operations; and
 - add National Oceanic and Atmospheric Administration to the list of agencies eligible to receive funding from OSTLF.
 - Reinstitute the per-barrel tax at 10 cents per barrel with no sunset provision.⁵⁵⁷

⁵⁵⁵ Center for American Progress.

⁵⁵⁶ Ocean Conservancy.

⁵⁵⁷ Ocean Conservancy.

- Congress should introduce legislation detailing reclamation, which would also be a source of technical jobs for local communities.⁵⁵⁸
- The Department should support Congressional enactment of a fee on industry to fund plugging, reclamation and remediation of orphaned wells going forward.⁵⁵⁹
- The Department should also work with Congress to shape and advance legislation that will create good-paying jobs outside of extractive industry.⁵⁶⁰

8.17. Executive Actions

- The swift completion and review called for in E.O. 13990 is essential to correct errors and ensure that the Coastal Plains are preserved for future generations.⁵⁶¹
- The Presidents FY2022 Budget Request included increased funding for reclamation and support for continued investments. The budget should provide 40% of funds to minority and socially disadvantaged communities that need remediation.⁵⁶²

8.18. Other Impacts

Infrastructure and accidents

- In some instances, regulators do not record the locations of infrastructure associated with production. This has led to some high profile, dangerous incidents due to leaks from unknown oil and gas infrastructure near homes. Regulators should require information and reclamation plans for associated wellsite infrastructure, such as flowlines, and surface equipment, as well as midstream infrastructure location and type.⁵⁶³
- To address the significant problems caused by the Exxon Valdez oil spill, the Department should:⁵⁶⁴
 - Increase or eliminate the \$75 million limit on damages for oil spills and consider higher liability limits for frontier areas and increased penalties for damage or loss of National Wildlife Refuge assets.
 - Impose greater financial responsibility requirements, including insurance requirements, for OCS operations and facilities.
 - Mandate public review and comment on oil spill response plans and ensure that oil spill response plans are available to the public after they are approved.
 - Create substantive spill response requirements for offshore oil and gas operations that include:
 - proven response capacity under real-world conditions;
 - preparation of a response gap analysis;

⁵⁵⁸ Natural Resources Defense Council.

⁵⁵⁹ Western Organization of Resource Councils.

⁵⁶⁰ Western Organization of Resource Councils.

⁵⁶¹ Alaska Wilderness League.

⁵⁶² Hispanic Access Foundation.

⁵⁶³ Western Organization of Resource Councils.

⁵⁶⁴ Ocean Conservancy.

- realistic assessment of recovery and remediation; and
 - planning for a worst-case discharge (very large oil spill).
- Direct a comprehensive evaluation of oil spill risks and response capacity, including response gaps and the efficacy and other impacts of existing methods like in situ burning and dispersants.”
- Clarify that BSEE has the authority to disapprove inadequate spill response plans and that the agency may evaluate alternative response mechanisms and the efficacy of proposed response requirements
- Establish Arctic-specific standards to ensure that companies address unique challenges of operating in the Arctic.
- Amend the National Contingency Plan to provide for more opportunities for state and local input.
- Require public review of preliminary assessments, injury assessments and restoration planning funded through the Natural Resource Damage Assessment process.
- Eliminate (or raise significantly) the cap on one-time, per-incident payouts under OSLTF.
- The Department should organize a centralized spill database that is searchable with the ability to sign up for incident notifications. There should also be a requirement for companies to notify landowners, State, local and Tribal governments, and businesses when incidents occur on or near their property or water resources. In addition, permit applications and Federal lease nominations should be automatically rejected from companies with a pattern of noncompliance.⁵⁶⁵

Water resources

- The Department should adopt regulations banning or substantially restricting hydraulic fracturing on all new leases to protect groundwater and surface resources, specifically because BLM lacks regulations suitable for operations on modern hydraulically fractured wells.⁵⁶⁶
- The Department should also implement new requirements for the management and disposal of produced water, which represents an enormous waste stream that is not well understood or managed.⁵⁶⁷

Coal Production

- The Department’s efforts to reform its policy on fossil fuel production on Federal public lands must include both immediate and long-term action to address Federal coal production, specifically, phasing out production altogether to avert catastrophic climate change impacts. The Department should:⁵⁶⁸

⁵⁶⁵ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵⁶⁶ Earth Justice and Multiple Additional Public Advocacy Groups.

⁵⁶⁷ Earth Justice and Multiple Additional Public Advocacy Groups.

⁵⁶⁸ Earth Justice and Multiple Additional Public Advocacy Groups.

- Rescind Secretarial Order 3348 that ended the coal-lease pause and eliminate all exceptions in Section 6 of Secretary Jewell’s order, and thereby preclude emergency leasing, 43 C.F.R. § 3425.1-4, and leases for which a ROD previously issued but was vacated by a Federal court;
- cancel existing coal leases that Federal courts have remanded to BLM based on inadequate NEPA compliance;
- deny or suspend action on applications for royalty rate reductions;
- proceed with rulemaking to rescind the 2020 regulations for the valuation of Federal coal, oil, and gas royalties;
- Include appropriate stipulations in renewed leases to alleviate burdens on coal communities and workers; and
- incorporate Federal coal leasing and production into its comprehensive fossil fuel review and long-term strategy.

8.19. Additional Groups to Outreach/Coordinate

- The Department should ensure transparent and inclusive public participation, and engage in meaningful, collaborative consultation with impacted Tribes.⁵⁶⁹ The Department should also use all available tools to address the economic impacts to Arctic communities for a just and equitable transition away from fossil fuels.⁵⁷⁰
- BLM should require multiple opportunities for meaningful public participation during the decision-making process for every oil and gas lease sale. In particular, BLM should post APD on “eplanning” prior to approving an APD and allow for a public comment and or protest period.⁵⁷¹
- The Department should create a process for public engagement with impacted communities in the Gulf South, including frontline communities, environmental organizations, and fisherfolk who are at the heart of the Gulf economy. The Department should:⁵⁷²
 - “Prioritize the restoration of coastal wetlands that provide shoreline protection from storms and have been destroyed by the oil industry; address the disproportionate burden of pollution that low-income and communities of color experience; and revive healthy food and fisheries in the region.
 - Consult impacted frontline and Indigenous communities on how restoration and recovery funds from the Deepwater Horizon BP Disaster are being spent and develop robust ecological and environmental justice criteria through a public process for how the remaining funds are disbursed.
 - Create a Gulf of Mexico Resources Advisory Council to advise resource management for the Gulf Coast and its waters, including representatives from

⁵⁶⁹ Alaska Wilderness League; Western Organization of Resource Councils; Earth Justice and Multiple Additional Public Advocacy Groups; The Wilderness Society (TWS); Colorado Farm and Food Alliance; American Alpine Club; Ocean Conservancy.

⁵⁷⁰ Alaska Wilderness League.

⁵⁷¹ Western Organization of Resource Councils.

⁵⁷² Multiple Gulf Advocacy Organizations.

non-governmental environmental groups, Indigenous, fishing, and environmental justice interests.”

- The Department should determine which park landscapes qualify for a permanent moratorium and ensure that other park landscapes have elevated study consideration required prior to leasing. This can be accomplished by requiring consent from the relevant park superintendent(s) before an oil and gas lease is offered within a specified landscape surrounding any national park. That analysis should include:⁵⁷³
 - Formal consultation with the applicable superintendent(s) regarding the impact of the proposed sale on natural, cultural, and historic resources; visitor use and enjoyment of park resources; and the cumulative impacts of the proposed sale on National Park Service resources
 - Consultation with relevant agencies to evaluate the direct, indirect, and cumulative impacts of development on the air quality of affected Park Service land and water to ensure compliance with all applicable air quality requirements
 - Consultation with relevant agencies to evaluate the impacts of development on water quality and groundwater resources, including subterranean geologic resources which lend themselves to groundwater supply and ecological integrity of the park and surrounding landscapes
 - Tribal and traditional community consultation pursuant to Section 106 of the NHPA regarding Traditional Cultural Properties, sacred sites, and other traditional-use areas.
- Numerous species and habitats protected under the Endangered Species Act are affected by the national offshore oil and gas leasing program. The Department should consult with the National Marine Fisheries Service and the Fish and Wildlife Service to guide an approach that conserves and promotes the recovery of threatened and endangered species.⁵⁷⁴
- The Department should create an online transparency dashboard that contains specific GIS information and easily accessible maps regarding lease and unit locations co-identified with tenure and terms. Individuals should be able to identify opportunities to engage in decision-making process, such as commenting on APDs and participating in on-site visits.⁵⁷⁵
- The Department should improve the public engagement process for oil and gas lease sales by the following:
 - Providing a formal nomination process that allows BLM to strategically identify lands available for nomination.⁵⁷⁶
 - Providing opportunities for public participation at all phases of the lease sale analysis process including scoping, draft environmental assessment or equivalent, and sale notice.⁵⁷⁷

⁵⁷³ National Parks Conservation Association.

⁵⁷⁴ Center for Biological Diversity.

⁵⁷⁵ Backcountry Hunters & Anglers, Theodore Roosevelt Conservation Partnership, and Trout Unlimited.

⁵⁷⁶ Rocky Mountain Wild.

⁵⁷⁷ Rocky Mountain Wild.

- Providing sufficient time for comments and protests. BLM should revoke shortened timeframes for public engagement in IM 2018-034.⁵⁷⁸
- Including access to interactive maps and share geospatial data in both GIS and Google Earth formats at all phases and make these available at the start of the comment or protest period.⁵⁷⁹
- Allowing flexibility in how comments and protests can be submitted including but not limited to electronic submissions.⁵⁸⁰
- Providing schedules well in advance of the public engagement deadlines for upcoming lease sales.⁵⁸¹
- Issuing press releases for all opportunities for public engagement and provide a way for members of the public to subscribe to these press releases.⁵⁸²
- Not dismissing protests when parcel ids or serial numbers are used from earlier phases, or when the protester did not submit comments earlier in the process.⁵⁸³
- Providing translation and interpretation services, not only in Spanish but in the language(s) of the community; Holding open public forms in communities who live near potential development, from the beginning of planning stages;⁵⁸⁴
- Providing grants and technical assistance by increasing target resources to aid and empower minority, low-income, and Tribal population to ensure public participation;⁵⁸⁵
- Working with Hispanic Access Foundation and other groups that maintain strong relationships with communities to publicize opportunities to comment and proactively invite us to the table.⁵⁸⁶
- Engaging Black, Indigenous, and people of color leaders and organizations as decision makers, not just advisors to management processes;⁵⁸⁷
- Clearly defining “stakeholder” in public engagement efforts to ensure input from a wide range of perspectives;⁵⁸⁸
- Ensuring that engagement events are accessible and comfortable for participants by providing basic tools and services, including translation, interpretation, refreshments, childcare, and ample time and opportunity for all participants to be heard.⁵⁸⁹

⁵⁷⁸ Rocky Mountain Wild.

⁵⁷⁹ Rocky Mountain Wild.

⁵⁸⁰ Rocky Mountain Wild; American Alpine Club.

⁵⁸¹ Rocky Mountain Wild.

⁵⁸² Rocky Mountain Wild.

⁵⁸³ Rocky Mountain Wild.

⁵⁸⁴ Hispanic Access Foundation.

⁵⁸⁵ Hispanic Access Foundation.

⁵⁸⁶ Hispanic Access Foundation.

⁵⁸⁷ American Alpine Club.

⁵⁸⁸ American Alpine Club.

⁵⁸⁹ American Alpine Club.

- Providing a minimum mandatory 30-day public comment period on all lease sale proposals and a minimum 30-day protest period.⁵⁹⁰

8.20. Other comments

- Impose an immediate moratorium on all coal mining activity on public lands until a comprehensive review of the program is completed.⁵⁹¹
- “Oil and gas and coal companies should be held liable for impacts on public lands, local communities and health. Area governments, States, landowners, and taxpayers should be indemnified from the harms caused by companies operating on Federal lands and minerals.”⁵⁹²

9. Other Commenters

9.1. Leasing Strategy

- The Department should reform its oil and gas lease suspension process. Lease suspensions exempt lessees from rental payments, thus denying the public of revenue. Lease suspensions also do not require development of oil and gas resources and encourage lease speculation, which effectively creates a “cost-free extension of leases.” The Department should make the lease suspension process more transparent, through measures such as:
 - Requiring public notice, comment period, and notification of decision of suspension requests;
 - Limiting suspensions to three years, with automatic expiration; and
 - Requiring “extraordinary justification” for lease suspensions and including public participation in such requests.⁵⁹³
- The Department should reform its oil and gas leasing process. Previous administrations offered tracts with low suitability for oil and gas development, resulting in dormant leases that prevent alternative uses of those lands for the public benefit. The Department should:
 - Offer leases only for tracts of land most suitable for oil and gas development, are not suited to renewable energy development, and which minimize the harm to the public, such as through carbon and methane emissions;
 - Establish a public registry of companies qualified to bid on oil and gas leases, with strict requirements for what qualifies and disqualifies companies from bidding;

⁵⁹⁰ Coalition to Protect America's National Parks.

⁵⁹¹ Coalition to Protect America's National Parks.

⁵⁹² Colorado Farm and Food Alliance.

⁵⁹³ Public Revenues Consulting.

- Conduct all leases through a sealed bid process to more likely achieve market value for the leases;
- Consider requiring parties that nominate parcels for leasing to submit a minimum bid with the nomination, as means to prevent manipulation of a competitive lease into the non-competitive category; and
- Employ lease auction procedures to better achieve market value, such as by establishing an “effective minimum bid” that is above the statutory minimum and incorporates option values.⁵⁹⁴

9.2. Fiscal Terms/ Fair Market Value/ Royalties/ Bonding

- The Department should increase rates of payments, including:
 - Raise onshore and offshore royalty rates to market values, such as by incorporating the median rate that States charge for oil and gas production on State lands;
 - Periodically evaluate royalty rates, potentially every three to five years, which would include comparing Federal royalty rates with State and private rates;
 - Regularly update royalty rates to reflect changing technology and trends in payments to States and private royalty owners;
 - Raise minimum bids per acre for onshore fossil fuel leases to at least \$40 per acre, or as high as \$100 per acre, in order to focus on development of the most productive parcels of land and discourage speculation;
 - Raise rental rates for leases to \$15 per acre and provide rebates to lessees who complete certain diligent development steps in the first three years of a ten-year lease; and
 - Annually adjust acreage rental rates to reflect inflation.⁵⁹⁵
- The Department should use indexing as a method to determine the market value of fossil fuels, which would eliminate subjective calculations of mineral values by producers and ensure that the public receives a fairer return in royalty payments. The Department should continue improving its valuation methods with transparent discussions through the Public Interest Advisory Committee.⁵⁹⁶
- In addition to royalties, the Department should add charges per barrel of oil and cubic foot of natural gas to reimburse the public for adverse environmental impacts due to carbon and methane emissions and “local environmental, public health and social impacts identified for specific leases.”⁵⁹⁷
- The Department should add annual charges per acre for the “loss of alternative uses of the public lands.” The Department should research the average forgone value of public

⁵⁹⁴ Public Revenues Consulting.

⁵⁹⁵ Public Revenues Consulting.

⁵⁹⁶ Public Revenues Consulting.

⁵⁹⁷ Public Revenues Consulting.

lands when not used for conservation, recreation, or alternative energy development. Unlike rental payments, this charge should be due on a periodic basis throughout the lifecycle of oil and gas activity, including during lease suspensions and reclamation.⁵⁹⁸

- The Department should increase the minimum bid level to account for uncertainties related to future environmental and social costs.⁵⁹⁹

9.3. Energy Needs/Future Climate Scenarios/Substitutions

- The Department can lead the nation forward in meeting the challenge of adapting the economy and energy systems to the threat of climate change. The Department should make strategic changes to its oil and gas program and align the oil and gas program with the public interest.⁶⁰⁰

9.4. Executive Actions

- Although the current oil and gas review and leasing pause was initiated by executive action, the Department should conduct a legal review to determine if recommended changes to the leasing program can be accomplished by executive action, or if changes require action by Congress.⁶⁰¹
- The Department should rescind the Trump Administration's amendments to the Office of Natural Resources Revenue 2016 Valuation Rule ("2016 Valuation Rule") because the amendments are based on Executive Orders and Secretarial Orders which have since been repealed by the Biden Administration.⁶⁰²

9.5. Other Impacts

- Promulgate rules to protect air quality and prepare a PEIS, pursuant to NEPA, with a "strategic targeted focus on data collection, assessment, and review specific to the cumulative impacts in the Central Gulf of Mexico OCS region."⁶⁰³

9.6. Additional Groups to Outreach/ Coordinate

- The Department should increase transparency and expand public participation in the oil and gas leasing process through the following measures:

⁵⁹⁸ Public Revenues Consulting.

⁵⁹⁹ Public Revenues Consulting.

⁶⁰⁰ Public Revenues Consulting.

⁶⁰¹ Public Revenues Consulting.

⁶⁰² Public Revenues Consulting.

⁶⁰³ Operation Homecare.

- Provide the public a “quarterly report on a lease-by-lease basis listing the amount of oil and gas production, the value of that production and all lease bid payments, royalties and rents paid;”
- Establish a Full and Fair Return Public Interest Advisory Committee, with membership of experts and citizens without affiliations to oil and gas producers, to work with the Department to ensure that the public receives fair financial return and is protected from environmental and public health damages;
- Establish a research program that allows academics to access confidential leasing program information to study issues of public interest;
- Stipulate specific measures that protect public interest, such as procedures to protect the environment, in oil and gas leases; and
- Incorporate public participation into leasing decision-making wherever feasible.⁶⁰⁴

10. Comments from Individuals

10.1. Technologies or strategies to reduce emissions on facilities or through other means

- The Department should develop a comprehensive strategy for addressing and limiting the carbon pollution stemming from Federal fossil fuel development.⁶⁰⁵
- The Department should withdraw the most sensitive Federal lands and waters from oil and gas lease sales and require net-zero carbon emissions from new leasing on Federal lands and waters.⁶⁰⁶
- The Department should end Federal fossil fuel leases and require that Federal agencies that fund, authorize, or permit fossil fuel activities analyze the indirect GHG emissions impacts of those activities.⁶⁰⁷
- The Department should not rely on other countries such as Russia and India for energy needs in order to reduce the carbon footprint of the United States.

10.2. Other Environmental Considerations

- The Department should undertake a full and rigorous environmental impact study, which will verify warnings from scientists that there is not room for fossil fuel development if the planet is to be preserved.⁶⁰⁸

⁶⁰⁴ Public Revenues Consulting.

⁶⁰⁵ C. Lish.

⁶⁰⁶ C. Lish.

⁶⁰⁷ J. Lopez.

⁶⁰⁸ C. Lish.

- The Department should strengthen health, safety, and environmental protections such as regulations that limit methane that oil and gas operations can release into the air.⁶⁰⁹
- Any horizontal drilling and subsequent fracking on a Federal lease should be analyzed by an independent geologist and geophysicist to ascertain that there would be no “drainage from our deeded minerals offsetting the Federal leases.”⁶¹⁰
- The Department should complete an environmental impact study on deeded acreage above where Federal minerals are located to evaluate how any oil and gas activities would affect the surface, surface water and the subterranean water or animals that use the designated area.⁶¹¹

10.3. Jobs/Unions

- The Department should consider the long-term average economic benefits that the oil and gas industries bring in local communities and not just the selective boom year statistics.⁶¹²

10.4. Leasing Strategy

- The Biden Administration and the Department should turn this temporary moratorium into a permanent ban.⁶¹³
- BLM should not automatically extend leases, and any lease extension should undergo public comment and NEPA review before being extended.⁶¹⁴
- The BLM has considered lease offerings a “paper exercise” that does not lead to any action. Because of this view, leases are often issued with known resource issues that must be analyzed and reviewed under NEPA once a drilling plan or application is received. Instead of allowing these resource concerns to go unaddressed, the BLM should weigh the impacts under the assumption a lease will be developed in some manner.⁶¹⁵
- The Department should prohibit Federal oil and gas leases underneath privately deeded surface lands so as not to interfere with other potential uses of the private land.⁶¹⁶
- The Department should also prohibit Federal oil and gas leases within a 25-mile radius of any existing or proposed green energy project, such as wind and solar farms.⁶¹⁷

⁶⁰⁹ C. Lish.

⁶¹⁰ D. Morgan.

⁶¹¹ D. Morgan.

⁶¹² T. Jones.

⁶¹³ C. Lish; L. Montgomery.

⁶¹⁴ T. Jones.

⁶¹⁵ T. Jones.

⁶¹⁶ D. Morgan.

⁶¹⁷ D. Morgan.

- Before a lease is finalized, BLM should certify that it is in full compliance with all Federal and state laws and regulations including NEPA and FLPMA.⁶¹⁸
- In order to prevent speculative nomination and leasing of Federal lands by brokers and entities, the Department should require that the entity leasing the minerals cannot assign or sell until the land is drilled.⁶¹⁹

10.5. Fiscal Terms/Fair Market Value/Royalties/Bonding

- The Department should ensure a fair return to taxpayers by increasing the amount that private corporations pay to lease Federal lands and waters for fossil fuel development, including by setting royalty rates that account for the true social and environmental costs of the carbon produced on these leases.⁶²⁰
- The Department should raise the royalty rate from 12.5 percent to 25 percent, with a maximum 3-year lease and continual drilling clause.⁶²¹
- The Department should require that any Federal oil and gas bonus and annual lease payments start at a minimum of \$250 per acre.⁶²²

10.6. Energy Needs/Future Climate Scenarios/Substitutions

- The Department should reconsider the moratorium on oil and gas leases on Federal lands, as it is critical for domestic energy security.⁶²³

10.7. Other Impacts

- The value of private lands will suffer major monetary depreciated value by the additional roads, power lines, pad sites, tank batteries, drilling activities, well and pipeline maintenance, and more, that future oil and gas activities would bring to the land. Property should not lose monetary value because of lease sales. Also, property owners require annual payments for damages caused by leasing and any use of the surface.⁶²⁴
- The Department should immediately reinstate President Obama's coal leasing moratorium.⁶²⁵

⁶¹⁸ D. Morgan

⁶¹⁹ D. Morgan.

⁶²⁰ C. Lish.

⁶²¹ D. Morgan.

⁶²² D. Morgan.

⁶²³ T. Magness.

⁶²⁴ D. Morgan

⁶²⁵ C. Lish.