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September 22, 2023

Tracy Stone-Manning
Director
Bureau of Land Management
U.S. Department of the Interior, Director (630)
Attention: 1004-AE80
1849 C Street, NW, Room 5646
Washington, DC 20240

RE: Comments on BLM's proposed rulemaking on Fluid Mineral Leases and Leasing Process, 88 Fed. Reg. 47562 (July 24, 2023); RIN 1004-AE80

Dear Director Stone-Manning:

The Bureau of Land Management's (BLM) proposed Fluid Mineral Leases and Leasing Process rule (proposed rule) would increase costs on American energy development and production, further exacerbating energy inflation, while going even farther than the increased costs passed in the Inflation Reduction Act (IRA) and upending the bond market, particularly for small producers. Western Energy Alliance appreciates the opportunity to comment on the rule, but strongly recommends that BLM focus the rule on implementing relevant provisions of the IRA and remove provisions of the rule such as the bonding requirements that even Congress was not willing to pass. The Department of the Interior (DOI) recently admitted to Congress that there are only 37 orphan wells on federal lands and there have been only 40 calls on bonds over the last decade, which equates to 0.04% of the 89,350 wells on federal lands currently and four bond calls a year. These numbers clearly demonstrate that the proposed bonding provisions are an arbitrary and capricious solution to a problem that doesn't exist.

Western Energy Alliance (the Alliance) is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for nearly 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. The majority of independent producers are small businesses, with an average of fourteen employees.

The Alliance is a strong advocate for access to federal lands for oil and natural gas development, providing testimony to Congress regarding the federal oil and gas program on a regular basis, and routinely commenting on BLM's quarterly lease sales across the West. Additionally, the Alliance is an active advocate in the courtroom, supporting BLM's decisions to lease federal lands for oil and natural gas development and challenging BLM when it fails to provide statutorily required access to federal lands, among other issues.

Executive Summary

The proposed rule seeks to codify this administration's continued narrative that operators are not diligently developing their valid existing federal leases. The proposed rule recommends imposing penalties for not developing within the first five years of the primary term of the lease, restricting availability of lease extensions and suspensions for any reason, and restricting extensions for applications for permit to drill (APD) with no attention to potential delays on BLM's side such as, litigation, delays in carrying out National Environmental Policy Act (NEPA) procedures, rights-of-way delays, and others. Further, throughout the proposed rule, BLM demonstrates its interpretation of the Mineral Leasing Act of 1920 (MLA) that the Secretary has full discretion and no mandate to offer parcels for lease. The reality is that the MLA mandates "[l]ease sales shall be held for each State where eligible lands are available at least quarterly…"[1]

With the proposed rule, BLM is largely discouraging all operators from leasing and developing federal oil and natural gas. BLM is pricing small family-owned businesses and entrepreneurs out of the process, which will discourage business growth and hurt the American public. Changes in bonding requirements, increased fees, added reporting procedures, and shorter permit durations place undue burdens on smaller operators compared to their larger counterparts. These, with the addition of IRA-mandated expression of interest (EOI) fees, higher bonus bids, higher royalty rates, and increased annual rental rates collectively raise operational costs on federal lands, deterring participation especially by small businesses in lease sales.

The uncertainty of obtaining a federal lease is also of great concern. BLM proposes to codify preference criteria to review any nominated parcel, adding additional hurdles to federal leasing. Disregarding the fact that an EOI is a statement of probability of oil and natural gas, the preference criteria allow BLM to not offer a parcel based on its own determination of potential based on outdated or partial data. The preference criteria further allow BLM to circumvent its own planning and public processes and not offer a parcel based on other resource considerations already addressed through lease stipulations and land use restrictions.

Finally, for the reasons stated below, the Alliance requests that BLM perform a NEPA analysis of the proposed rule, including a full public comment process, in order to fully understand the potential impacts of the rulemaking.

Legal Background

The MLA authorizes BLM to issue oil and natural gas leases for the development and use of public lands. The Federal Land Policy and Management Act (FLPMA) contains an express declaration of Congressional policy that BLM manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals, [and other commodities] from the public lands."[2]

[1] 30 U.S.C. § 226(b)(1)(A).
[2] 43 U.S.C. § 1701(a)(12).

Once BLM decides to offer a lease for sale and accepts the prospective lessee's payment for that lease, the lease constitutes a binding contract between the parties that governs the leased minerals' development.[3] The lease's terms, conditions, and stipulations that are established prior to the lease sale operate as contractual limitations on BLM's authority to restrict the lessee's subsequent leasehold development activities.[4]

Consequently, the exercise of BLM's retained regulatory authority is subject to the requirement that subsequent limitations imposed upon the lessee must be consistent with existing development rights.[5] BLM must ensure that any new regulations stay within the bounds of its statutory authority.

Proposed Bonding Increases Designed to Address a Problem that BLM has the Flexibility to Fix

The proposed bonding provisions suffer from the flawed assumption that bonds are the only source of funding available to plug and abandon wells and reclaim well sites. In fact, it is the operators and lessees who are under obligation for the full cost of plugging and abandoning wells and reclaiming well sites, and these companies are not released from liability until BLM has determined they have properly done so. Companies assume the obligation when they acquire a lease and begin development. Successor companies assume the obligation when they acquire another company's assets. Struggling companies are often acquired, so at-risk wells, as identified by the Government Accountability Office (GAO), do not necessarily become orphaned wells.[6]Bankruptcies almost always result in continuous liability for the assets, whether through restructuring or sale of the assets. In addition, when companies acquire new federal leases that have existing orphan wells on them, oftentimes the acquiring companies plug and reclaim orphan wells before moving forward with new wells.

When a company sells or transfers its federal assets, it maintains its liability to plug and abandon any well, and reclaim any well site, that it operated or used during the term of its lease should a future company default.[7] Thus, there is very low risk of a well on federal lands becoming orphaned. BLM rarely needs to access a bond in order to plug a well.

If bond levels are raised too high, they tie up significant amounts of capital in an unproductive capacity, adding another cost that, in combination with the numerous other costs of operating on federal lands and newly imposed through IRA and this rule, lead to less development and less production. The

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[3] *Mobil Oil Exploration & Producing S.E., Inc. v. United States*, 530 U.S. 604, 607–08 (2000); *Anadarko Prod. Co.*, 66 IBLA 174, 176 (1982) (citing *United States v. Ohio Oil Co.*, 163 F.2d 633 (10th Cir. 1947)).
[4] *See* 43 C.F.R. § 3101.1-3; *cf. Mobil Exploration*, 530 U.S. at 615–18 (finding the terms of the government's lease contract limit the application of subsequent environmental laws and regulations).
[5] 43 U.S.C. § 1701 note (h) (mandating that "[a]ll actions by the Secretary concerned under this Act shall be subject to valid existing rights.").
[6] *Oil and Gas: Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells*, Government Accountability Office, September 2019; *Oil and Gas: Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities*, GAO, May 2018.
[7] 43 C.F.R. § 3106.7-2.

bonding provisions in the proposed rule would raise costs unnecessarily for the vast majority of companies who are responsible in fulfilling their reclamation obligations.

The real issue is, of course, fly-by-night operators who do not operate responsibly as do Alliance members. Yet BLM already has and utilizes policies that give it the flexibility to set higher bond amounts for at-risk companies, as well as impose more stringent interim and final reclamation requirements, implement additional bonding reviews, and develop other measures to limit the risk to the U.S. taxpayer.

BLM's Focus on Orphan Wells is Misguided

The proposed rule's bonding requirements and much of the focus of the preamble relates to addressing orphan wells. Based on BLM's focus on orphan wells throughout, it would seem that there are thousands of orphan wells on federal lands that will cost taxpayers billions of dollars to plug and abandon.

In fact, as of November 2022 the BLM itself estimated there were only 37 orphaned oil and natural gas wells on BLM-managed lands.[8] Further, in the past decade, BLM has only pulled 40 bonds to plug orphan wells on lands managed by the BLM.[9]

BLM's utter focus on addressing orphan wells through proposed increased bonds and other revisions aimed at finding noncompliant operators is arbitrary, capricious, and not based in fact. BLM must recognize its own facts: orphan wells are not the crisis it implies, and addressing orphan wells on federal lands is not the taxpayer emergency BLM leads the public to believe based on the preamble and proposed rules.[10] BLM's approach is disingenuous and misleading.

The Alliance is concerned that BLM's focus on orphan wells is not only misguided but could have the unintended consequence of encouraging bad actors to walk away from their responsibilities on federal lands, knowing that the BLM is ready and waiting to address abandoned wells. Further, the high bonding requirements could cause low-producing wells to become uneconomic, increasing the risk of abandonment. Small companies would be at particular risk, as the high bonding amounts could significantly reduce their access to the surety market at reasonable rates, creating a situation where the rule itself could result in increased numbers of orphan wells.

There is not a crisis of orphaned wells on federal lands. A 2019 GAO report identified 296 orphan wells on public lands, or only 0.3% of the then-current 96,356 federal wells.[11] Conversely, a 2021 Interstate Oil and Gas Compact Commission (IOGCC) report found that there were 92,198 orphan wells nationwide.[12] The IOGCC report estimates there are between 310,000 and 800,000 undocumented orphan wells, i.e., wells drilled before the 1950s when modern regulatory systems were established. These historic wells

[8] "Deputy Secretary Tommy Beaudreau's responses to Questions for the Record, Letter to Senator Joe Manchin," June 22, 2023.
[9] *Id.,* Response to Question 2 from Senator Barrasso.
[10] *See* Preamble, 1. Reducing Taxpayer Exposure to Reclamation-Related Liabilities, 88 Fed. Reg. 47565.
[11] GAO, 2019.
[12] *Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies*, IOGCC, 2021, p. 2.

are located in states where U.S. production first began, for example, Pennsylvania, and not on federal lands. The fact that there are so few orphan wells on federal lands compared to nationwide numbers is a testament to BLM's management of federal lands and to the companies that operate on them. The fact that with this rule, BLM is conflating the problem of orphan wells nationally with those on federal lands not only is arbitrary and capricious, but frankly does a disservice to BLM fluid minerals career employees who have so successfully kept orphan well numbers so low on federal lands.

Minimum Bonding Amounts Would Impact Small Businesses the Greatest

BLM proposes to raise minimum bond amounts beyond what many responsible, good small operators will be able to afford. BLM proposes a minimum individual lease bond of $150,000 and a minimum statewide bond of $500,000. As icing on the cake, BLM proposes removing unit operator bonds and nationwide bonds, which will require most companies to be at a statewide bonding level. [13] We find it ironic that BLM, a federal agency overseeing a federal program, proposes to end the option for nationwide bonds because they are too difficult to manage on a national level. If that truly is the case, how is BLM able to manage the federal oil and gas leasing program at all? Further, companies have only one year upon rule finalization to update their individual lease bonds, two years to update statewide bonds, and three years to convert nationwide bonds to statewide bonds.

BLM provides no assurances as to what the required bonding amount will be for an operator. While the proposed rule is clear that the proposed numbers are *minimum*, there is no set maximum. Further, the proposed rule fails to provide any objective standards. The proposed rule does, however, indicate in the preamble that, for an individual lease bond, BLM "would require the minimum bond amount to be sufficient to reclaim two wells…"[14] Further, "BLM will increase the statewide bond amount for operators with more than seven wells tied to the bond."[15] Indeed, "[t]he new minimum statewide bond amount would provide sufficient coverage for an operator starting operations with a statewide bond," meaning a bond for leases but no wells? Extrapolated for a real world example, an operator with 500 wells would be required to obtain a $35,500,000 bond;[16] an operator with 100 wells would be required to obtain a $7,100,000 bond, and an operator with only 20 wells would be required to obtain a $1,420,000 bond. These amounts are prohibitively large for small operations.

The revised bonding requirement would significantly impact small operators due to both the substantial cost hikes and limitations on accepted securities. The 20-fold increase in statewide bond value and 15-fold increase in individual lease bonds pose difficulty for small operators, regardless of a phased implementation. BLM's assumption that all operators can access the surety bond market at 1 to 3.5% annual premiums is inaccurate.[17] Operator-specific factors like company age and financial status

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[13] In Section 3104.40 BLM proposes to remove the unit operator's bond and replace it with a surface owner protection bond. This bond requirement was formerly covered under 43 C.F.R. § 3171.19 and is only necessary if the operator is unable to secure a surface use agreement.

[14] 88 Fed. Reg. 47581.

[15] 88 Fed. Reg. 47581.

[16] BLM estimated its statewide bond minimum of $500,000 based on seven wells, with an average cost of $71,000 per well to plug and abandon and reclaim the well site, rounded up to the nearest $50,000. 88 Fed. Reg. 47581.

[17] 88 Fed. Reg. 47609, Section VII.B. "[B]ecause the bonds would cost an estimated 1 to 3.5 percent of the bond value…the annual cost to secure a bond would not be material…"

influence the ability to qualify for uncollateralized bonds. Many small companies will likely only be able to access the surety market at rates of 6 to 7% plus large amounts of collateral. BLM's economic assessment of the rule is incorrect to assume 1 to 3.5%.

Further, if BLM finalizes the rule to remove letters of credit (LOC) and certificates of deposit (CD), companies have less flexibility to fund the bonds. These alternative security options have never been a concern before and should not be eliminated now.

The Alliance is concerned about BLM's flawed reasoning for removing the option of a LOC or CD fails. BLM has not shown that the surety mechanisms are not working and must therefore be removed. BLM simply states that they are "difficult to manage."[18] However, BLM has not considered that the smaller operator's actual difficulty in obtaining another form of surety far outweighs BLM's "difficulty" in managing LOCs and CDs.

While BLM's Regulatory Flexibility Act analysis looks at the proposed revisions to bonding, it entirely fails to look at the broader impact and financial implications of all rule revisions combined. Instead of increasing minimum bond rates through rulemaking, BLM should utilize the flexibility it already has to continue bond adequacy reviews and liability assessments, and should consider outsourcing its data collection and monitoring functions in order to be better aware when there is actual risk of an operator walking away. Based on the facts available, there is no immediate need for BLM to require full cost bonding for operators. BLM has the discretion it needs to ensure it is requiring sufficient bonding without raising minimum bonding amounts.

Alternatives to Bond Increases for Addressing Orphan Wells

Instead of increasing minimum bond requirements, BLM should be looking at alternative means for industry to contribute to addressing orphan and idle wells. BLM could follow state examples in taking funds already provided by industry through fees and royalties and direct those funds into reclamation programs.

The State of Utah, for example, has an Orphan Well Program funded by a .002% levy on the value of production. The fund pays for plugging and reclamation of wells where there is no surety in place or where the surety is insufficient to cover plugging and reclamation costs.[19]

In Wyoming, the state has plugged approximately 4,713 orphaned wells on state and private lands, paid for in part by a state-created conservation tax operators pay to the Wyoming Oil and Gas Conservation Commission on their production.[20]

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[18] 88 Fed. Reg. 47580 ("The BLM is proposing to remove CDs because they are difficult to manage: the face of these instruments do not include the BLM's required language that Secretarial approval is required prior to redemption of the CD by any party. The BLM is proposing to remove LOCs because the BLM has found it is difficult for banks to include the BLM's requirements in LOCs.").

[19] Utah Orphan Well Program.

[20] Wyoming Oil and Gas Conservation Commission Orphan Well Program.

With all of the fees BLM is already collecting and proposes to collect via this rulemaking, it should be able to use some of those monies for an orphan well program instead of increasing bonding to an amount that will directly lead to additional federal orphan wells. Even before all these fees were put in place, the oil and natural gas industry returned $55 for every dollar BLM spent administering the federal oil and gas program.[21] In fact, the $8.6 billion in onshore royalties, rents, and bonuses that oil and natural gas companies paid in 2022 covers BLM's entire budget appropriation of $1.6 billion.

The Economic Analysis is not Comprehensive and Thus, Overly Misleading

The Alliance is concerned that the Regulatory Impact Analysis (RIA) prepared in connection with the proposed rule misses the mark. As provided, the RIA is almost exclusively an analysis of the anticipated effects of the proposed updates to the bonding requirements. There is no detailed analysis of the proposed rule's implementation of IRA-required increases in royalty rates, rentals, and minimum bids. Nor is there detailed analysis addressing BLM's proposed "improvements to the stewardship of public lands" revisions.

Executive Order 12866 provides that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) will review all significant rules. Executive Order 13563 additionally calls on the regulatory system to use "the best, most innovative, and least burdensome tools for achieving regulatory ends."[22] As acknowledged by BLM, OIRA determined the proposed rule is economically significant.[23]

Economically significant actions proposed by an agency must, among other things, undergo "a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of potentially effective and reasonably feasible alternatives."[24] Further, economically significant actions are those actions the OIRA has determined are "likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."[25]

In Wyoming alone, industry's minimum bonding requirement estimates exceed $100 million, affirming that the proposed rule is an economically significant action. And while the discussion regarding a benefit to bonding agencies is nice, that benefit comes to the great detriment of the oil and natural gas industry which cannot be ignored.

BLM claims to have reviewed the proposed rule consistent with Executive Orders 12866 and 13563 and determined that the rule "would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or

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[21] Office of Natural Resources Revenue (ONRR) 2022 revenue data for oil and natural gas divided by BLM's $156,537,000 total FY2022 actual appropriation, from *Budget Justifications and Performance Information, Fiscal Year 2024, Bureau of Land* Management, DOI.

[22] *See* 88 Fed. Reg. 47608.

[23] 88 Fed. Reg. 47608.

[24] "Regulations and the Rulemaking Process," OIRA, Reginfo.gov.

[25] *Id.*

Tribal governments or communities."[26] Based on the narrow scope of BLM's economic review, the Alliance disagrees. At best, the RIA is incomplete. It performed a minimalist analysis to avoid the transparency and detailed review required for the Executive Orders, the Regulatory Flexibility Act (RFA), and the Congressional Review Act, among others.

The Alliance believes that BLM must complete a full RIA instead of the singularly focused RIA attached to the proposed rule. Federal statute and regulation requires a full analysis and actual transparency.

The Cumulative Impacts of BLM's New and Increased Fees will Deter New Federal Leasing
The Alliance is concerned that the new and increased fees and royalty rate will price many smaller operators out of federal lands. And for the mid-sized to larger operators, adding the additional fees to an already regulatory-intensive process makes federal leases much less desirable.

Alliance Questions the Authority for the Multiple Fee Proposals

As an initial matter, the Alliance questions BLM's authority to adjust many of its proposed new fees and fee increases.

BLM proposes to add additional new fixed fees and increase existing fees for certain processing and filing fees that go beyond what Congress passed in IRA. These fees include:

- New fixed fees for designation of successor operator, unit agreement applications, subsurface storage agreement applications, unit agreement expansion applications, and formal lease nominations.[27]

- Fee increases for name changes, corporate mergers, transfers to heirs and devisees (to include dissolutions and sheriff's deeds), competitive lease applications, leasing under rights-of-ways, class I lease reinstatements, and geophysical exploration permits.

For many of these fees, BLM also proposes adding an automatic inflation provision in order to not have to do additional future rulemakings to raise such fees. However, BLM cannot make automatic inflation adjustments without statutory authority to do so. As BLM itself explains in the preamble, FLPMA proscribes "reasonableness factors" that BLM must consider when deciding the amount of a reasonable processing fee.[28] Nowhere within the FLPMA reasonableness factors is there an ability to adjust for inflation. If BLM wants to proscribe fixed fees and wants the opportunity to increase the fees at a later date, it will need to undergo another FLPMA reasonableness factor test to do so.

BLM must review its proposed fees and fee increases to understand its authority to impose such fees, as well as its authority to increase the fees, if any. For example, IRA amended the MLA to establish a $5 per

[26] 88 Fed. Reg. 47608.
[27] 88 Fed. Reg. 47568 (summary).
[28] 88 Fed. Reg. 47569 (citing Section 304(b) of FLPMA).

acre fee for EOIs, with the ability to adjust the fee through a regulatory process. Automatic adjustments to account for inflation are not authorized.

BLM's Existing Analysis Fails to Account for Multiple Costs Operators Already Incur to Develop Their Leases

BLM's economic analysis disregards the multiple costs that operators have taken on in order to timely obtain an approved APD. Where the proposed rule and its underlying analysis discusses new and increased costs as part of a process for developing a lease, the discussion misses the fact that operators now contract third parties to perform services that BLM staff specialists had historically performed. These services include, but are not limited to:

- archeology surveys (40-acre block and linear surveys)
- wildlife studies including ESA studies, migration studies, sensitive species studies
- view shed analysis
- air quality analysis including direct emissions, indirect emissions, greenhouse gas, regional haze
- water shed analysis
- Clean Water Act Storm Water Construction Permitting.

Additionally, in certain areas in New Mexico and elsewhere, additional reviews, such as botany studies and cave and Karst assessments are required, which were services that BLM historically provided but now requires the operator to pay a third party. As BLM considers the cumulative impact of IRA and additional new and increased fees, it must recognize the additional costs operators are paying in order to obtain approved permits.

Proposal to Encourage Diligent Development of Federal Leases is Ironic

It is ironic that BLM includes a proposal to "incentivize diligent development of leased resources…"[29] With all of the language in the proposed rule aimed at discouraging companies from wanting to obtain federal leases in the first place, a proposal aimed at "encouraging" development seems inconsistent. Instead of encouraging development by providing incentives to develop such as timely approving permits or otherwise being proactive in assisting companies in the regulatory review process, BLM proposes to further punish operators for holding federal leases.

The proposal defines diligent development as when a company, at the end of the fifth year of the lease term, (a) has established actual production in paying quantities on the lease; (b) has established allocated production in paying quantities on the lease; (c) has filed a complete APD; (d) has extended the lease term by committing it to an oil and natural gas agreement; or (e) has filed a Notice of Intent to undertake geophysical exploration. If one of those conditions has not been met, the lease would be subject to a supplemental escalating rental rate of an additional $1 per acre, or fraction thereof, for each lease year between the sixth and tenth lease years until the diligent development obligation is met.[30] We question BLM's justification for using additional fees as a way to increase development, while simultaneously introducing filing fees for every action needed to actually develop a lease. We

[29] 88 Fed. Reg 47566.
[30] 88 Fed. Reg. 47577.

recommend that the final rule allows BLM flexibility in assessing these fees for situations where BLM itself is the source of delay, such as not timely completing NEPA analysis, or where litigation is preventing the company from moving forward.

BLM must look at the facts. At the end of FY 2022, there were about 34,409 leases in effect, 23,631 producing, and only 10,778 nonproducing leases, which is a 69% utilization rate.[31] Sixty nine percent of leases are in production, despite the fact that the Alliance is in court defending over 5,900 leases from litigation by environmental groups. Most of these nonproducing leases cannot be further developed until the courts resolve the litigation. Factoring in the litigation, only 28,509 of those 34,409 acres are available for development, which indicates a practical utilization rate of 83%, a very high rate since other leases may be tied up in the NEPA process, awaiting permit approvals or adjacent leases, and otherwise working their way through the federal approval process.

BLM could solve much of the utilization "problem" itself if it just completed the corrective NEPA as ordered in various court rulings so that these nearly 6,000 leases could be developed. Instead of moving forward with a punitive rule that actually makes development on federal lands more difficult, BLM could issue its supplemental analyses that the Alliance understands are in draft form and just waiting to be released. The Alliance strongly encourages BLM to prioritize that corrective NEPA over this punitive rule.

Additionally, BLM has a number of EOIs from industry that are not being processed but which are adjacent to leased lands that operators seek to acquire in order to effectively and efficiently develop oil and gas resources adjacent to or infill of existing producing fields. With regard to unleased lands in a communitization agreement, BLM has an obligation to timely process these lands and offer them for lease.[32] With the ability to drill one- to three-mile lateral wells in some areas, companies need to put together a lease position in an area before initiating development. Operators nominate lands they are interested in developing that may be part of a larger patchwork of federal, state and fee leases in order to form a full development unit that best accesses the resources while minimizing surface disturbance. BLM's delay in processing many of these EOIs stalls a company's ability to put these lease positions together. *See* Figure 1. Moving forward with regular leasing would increase the utilization rate further. Further, the aforementioned litigated leases typically occur in units with other active federal leases—as well as state and fee leases—all of which cannot be developed until courts resolve those various leasing lawsuits. *See* Figure 2.

Figure 1 illustrates the difficulty operators have in creating a full development unit where unleased tracts that are subject to submitted EOIs existing within a greater development position. Figure 1, similar to Figure 2 below, illustrates how an unleased tract within a larger development unit, as well as a tract subject to litigation, can prevent an operator from efficiently drilling areas with long reach lateral wells from a single pad. Both options leave minerals stranded as an operator likely will not come back to drill the remaining tracts should the unleased parcel become available later, or if the operator does return, it will likely create a greater surface footprint with additional new disturbance.

[31] 88 Fed. Reg. 47564.
[32] *BLM Communitization Policy Manual,* BLM, July 7, 1988.

Figure 1

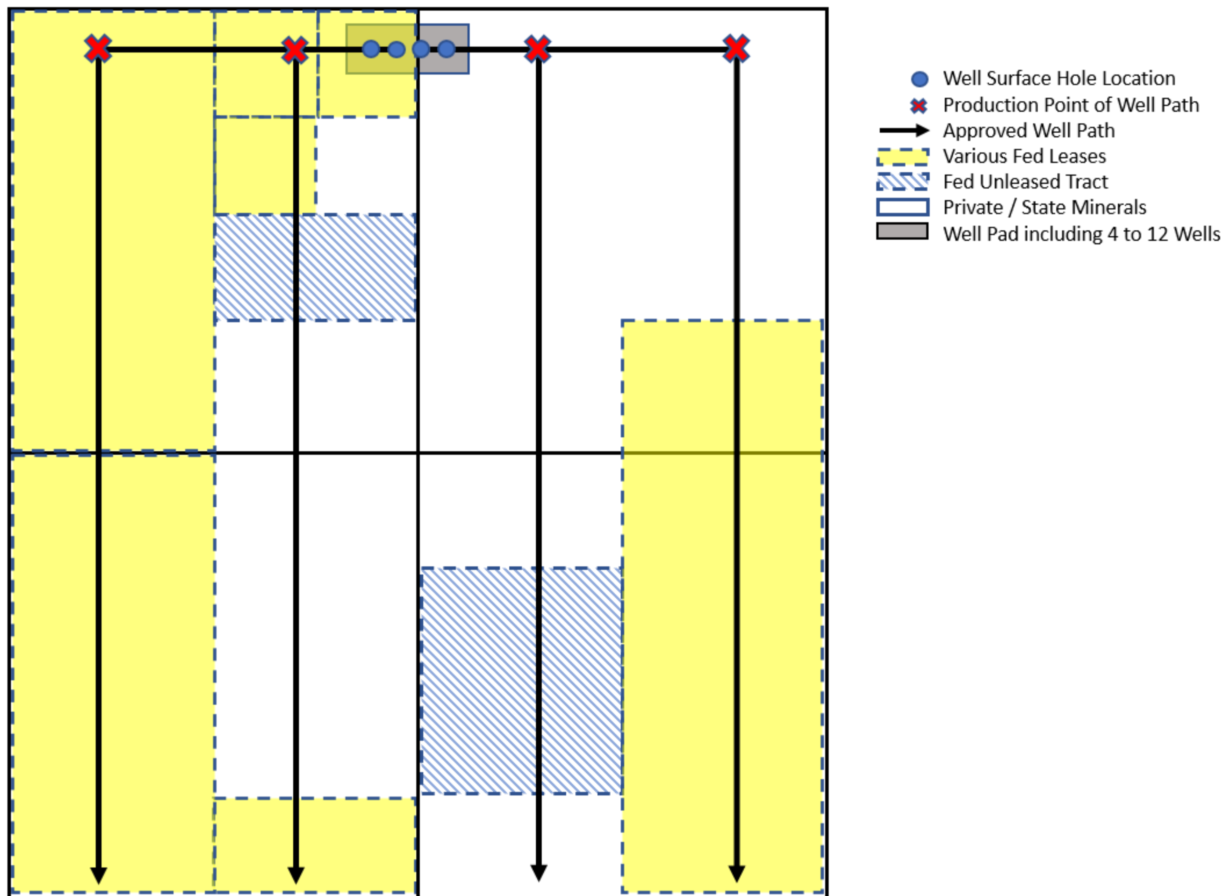
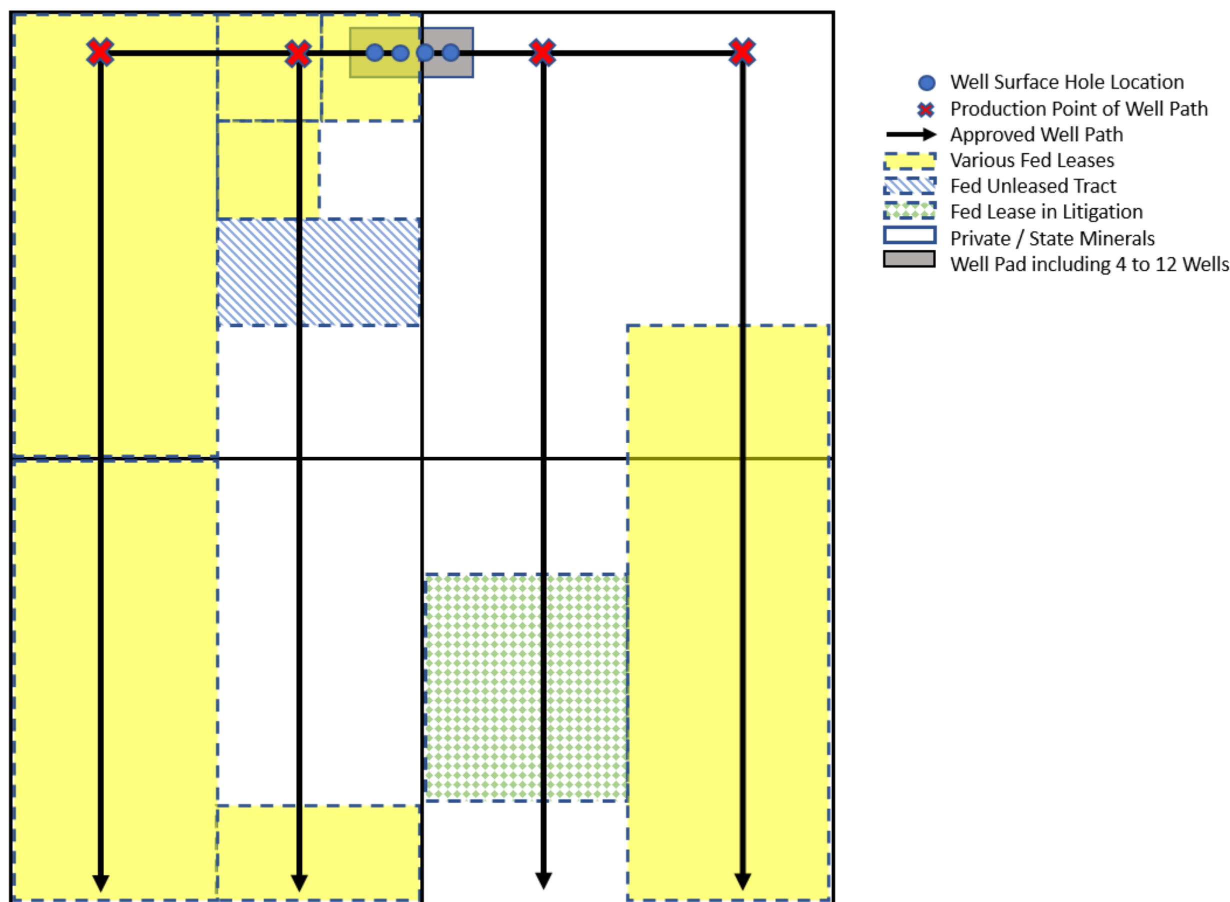


Figure 2, similar to Figure 1, illustrates how an unleased tract within a larger development unit, as well as a tract subject to litigation, can prevent an operator from efficiently drilling areas with long reach lateral wells. In both scenarios, an operator may be forced to not drill a tract or drill a shorter lateral well, resulting in significant waste.

Figure 2



Finally, the Alliance requests that BLM propose rules to implement the NEPA provisions from the Fiscal Responsibility Act relating to timelines, page length, etc., as the NEPA analysis on many projects is another source of delay for development. BLM should not propose fines and fees to incentivize development in early stages of a lease when its own policies, procedures, and lack of action are largely impeding industry's ability to timely develop its leases.

Leases Sold Before the IRA but Issued After the IRA Should Retain Pre-IRA Royalty Rates

The Alliance rejects the idea that the new royalty rate and fees will apply to leases sold prior to the IRA effective date but which have not yet been issued. For instance, leases sold at the December 2020 Wyoming lease sale have not yet been issued as BLM is still working to resolve a protest on the sale, which was well before the passage of IRA and the development of this proposed rule. Companies bid on those parcels with the understanding of the then-existing royalty rate and fees that were in effect at the time of the lease sale. Those same companies should not now be penalized with higher royalty rates and fees because BLM did not timely resolve the protest. BLM should not apply the new royalty rate and fees in these types of situations. Instead, BLM should revise its proposed rule such that all leases sold before August 16, 2022, instead of all leases issued, should retain the rate in the applicable regulations at the time of the lease sale.

BLM's Expression of Interest Fee Proposal is not Equitable

The Alliance is concerned that the proposed revisions to EOIs and the associated fees for submitting an EOI are not equitable. It often takes BLM several years to offer nominated acreage for sale, resulting in millions of nominated acres being regularly deferred. Additionally, BLM regularly neglects to offer nominate acreage for sale at all. Because of this, requiring the nomination fee to be paid at time of nomination would hold up millions of dollars of capital in a nonproductive capacity. Importantly, the EOI fee discourages small businesses that do not have the discretionary budget of large companies from participating in federal lease sales.

In order to ensure BLM's action does not hold significant capital in potential leases which companies cannot develop for extended periods of time, if at all, the rule should stipulate that the $5 per acre EOI fee is payable by the winning bidder at the time the nominated acreage is offered at auction. Further, often companies other than the nominating company ultimately prevail as the highest bidder at auction. To guard against too much acreage being nominated without sufficient interest, which was the original intent of the fee, the EOI fee should be payable by the nominating party in the event the offered parcel receives no bids.

Since the IRA is unclear on when the EOI fee is to be paid, should BLM persist with requiring it to be paid at the time of nomination, the EOI fee should be refundable to the nominator should another entity acquire the lands at sale. In that case, the winning bidder would pay the nomination fee and the original nominator would get the fee refunded.

Further, there is the potential that multiple nominators nominate the same parcels, with BLM collecting duplicate fees. In order to reduce duplicate nominations and duplicate fees, the rule should indicate that BLM shall inform a duplicate nominator that the acreage has already been nominated and refund any fees paid on the overlapping lands.

BLM Should Perform NEPA on the Proposed Rules

In light of the economic burden the proposed rules will cause on oil and gas operators, and on state economies, BLM should be required to perform a NEPA analysis on the portions of the proposed rule which are outside of the IRA. The OIRA website shows the proposed rule as "Major: Undetermined."[33] The only method to determine if the proposed rules are major or not is for BLM to conduct an environmental assessment (EA), as it did in 2016 when the Obama Administration released new BLM measurement rules: 43 C.F.R. § 3173 (Site Security), § 3174 (Measurement of Oil) § 3175 (Measurement of Gas). The EA is the prescribed method that allows all stakeholders to participate from scoping through the Decision Record.

Further, federally administered lands do not pay property taxes due to their sovereign entity status and are therefore an economic burden on western states unless the mineral extractive industries are active. The OIRA website shows that it held seven different meetings, six with environmental groups and one with industry. However, it does not reflect any meetings with state, county, and local governments.[34] States receive 49% of all rents, bonuses and royalties from BLM-administered lands within the

[33] Reginfo.gov RIN 1004-AE80, OIRA.
[34] Reginfo.gov, EO 12866 RIN 1004-AE80, OIRA.

applicable state. In Wyoming, for example, the federal government manages over 18 million acres of land, and in fiscal year 2023, the Payment in Lieu of Taxes program paid Wyoming $34,307,901, which equates to $1.91/acre, much less than the revenues from the oil and natural gas program in a normal year.[35] The proposed rules ignore the economic benefit of oil and gas development to local schools, hospitals, and infrastructure as they impose new and additional administrative fees and burdens on the industry.

Codifying Leasing IMs is Inappropriate

The proposed rule incorporates ideas and language drafted for a series of BLM instruction memoranda (IMs) related to leasing, parcel review, and public participation. The Alliance is concerned that on one hand, BLM favors a more open process by setting specific timelines for public participation in order to facilitate public comment, yet on the other hand BLM is drafting rules to allow it to make leasing decisions behind closed doors. The Alliance asks BLM to ensure that the public, including the Alliance and members of industry—are allowed full opportunity to review and provide comment on leasing decisions. This includes decisions on whether to offer certain parcels for lease.

IM 2023-010: Oil and Gas Leasing – Land Use Planning and Lease Parcel Reviews

The proposed rule codifies portions of IM 2023-010 related to public comment periods and posting timeframes.[36] While not directly pasted into the proposed rule, Instruction Memorandum 2023-010 sets forth the process that will be used for lease parcel reviews, including increased public participation and site-specific NEPA analysis. The Alliance understands the importance of public input in certain BLM decision-making, yet struggles with whether and how public input will be provided during the lease parcel review process. The IM states BLM will include interest groups and individuals in the lease review process. Further clarification needs to be provided for this, if codified, such as how BLM will determine which groups and individuals will participate in the lease parcel review process. Industry certainly has an interest in lease parcels; will trade groups such as the Alliance and other industry groups be included in the process as an interest group?

Directing Oil and Gas Leasing to Appropriate Locations; Codifying IM 2023-007: Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales

BLM expresses a desire to "direct oil and gas leasing to appropriate locations" by codifying preference criteria first developed as IM 2023-007. This IM, based on recommendations in the DOI report[37] and not IRA, sets forth the criteria BLM will use to determine if a parcel is of high or low preference for leasing. First in the IM and now in the proposed rules, BLM has explained that it will base a leasing decision on parcel proximity to existing oil and natural gas development, habitat or connectivity areas, historic properties, recreation or other important uses or resources, and potential for development (giving preference to lands with high potential).[38]

The Alliance is concerned that based on the IM guidance and preamble discussion, parcels that have any of the criteria other than for oil and natural gas potential will be ranked as low preference and

[35] *Fiscal Year 2023 Payments in Lieu of Taxes*, DOI, 2023, p. 18.
[36] *See* 88 Fed. Reg. 47591; IM 2023-010.
[37] *Report on the Federal Oil and Gas Leasing Program*, DOI, November 2021.
[38] 88 Fed. Reg. 47565.

automatically deferred or not leased. While the Alliance recognizes that some of the parameters may be partially objective or based in science, in certain circumstances, others are unnecessary with the vast advancements in subsurface drilling, especially the parameter based on oil and natural gas potential.

Making leasing decisions based on BLM's current understanding of an area's potential for oil and natural gas development is not only arbitrary and capricious, it also undermines the spirit of the lease stipulations in resource management plans (RMPs), under which those leasing decisions occur.

BLM Must Follow Proper Procedure to Withdrawal Lands from Leasing

Under FLPMA, minerals exploration and production, including oil and natural gas development, is one of the principal uses of the public lands.[39] The Alliance is concerned that the preference criteria as proposed in the rule and as is being implemented through IM 2023-007 constitute a *de facto* withdrawal under FLPMA.[40]

BLM cannot prioritize alternative uses of lands over mineral development without a more thorough evaluation and process. In order to withdraw lands from leasing, Congress requires the Secretary of the Interior follow a number of procedures, including providing the public notice of its intent to withdraw through publication in the Federal Register.[41] Further, a withdrawal cannot exceed 20 years in duration, and can be denied by Congress.[42] The Alliance is concerned that BLM's proposed rule to remove leasing as an option for certain lands circumvents FLPMA's withdrawal procedures and is unauthorized.

The Fact of an EOI Indicates a Parcel is not "Low Potential"

The Alliance recognizes BLM's efforts to address "speculative leasing and wasteful development practices"[43] through this rulemaking. However, using illusory "low potential" designations to not lease or defer parcels will undermine new leasing altogether, especially in exploratory areas. While many leases are not quickly produced for the many aforementioned reasons, operators take seriously the EOIs they submit and do not front the capital for bonus and rentals—and now an EOI fee—without some reasonable risk assessment that they will develop that resource themselves or sell the lease to a willing operator. This represents the reality of the upstream oil and natural gas business and the manner in which new plays are discovered and developed.

The EOI itself represents a declaration from the nominee that the nominated area holds some level of potential for future oil and natural gas development and the $5 per acre fee, added via IRA, grounds this declaration through a monetary commitment. By deferring or not leasing parcels in the name of ending "speculative leasing" BLM may well be deterring the discovery of the next great U.S. oil and natural gas basin.

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[39] 43 U.S.C. § 1702(l).
[40] *See* 43 U.S.C. §§ 1702(j) (defining "withdrawal"), 1714(l)(1) (referencing withdrawals resulting from closure of lands to leasing under the MLA).
[41] 43 U.S.C. § 1714(b)(1).
[42] 43 U.S.C. § 1714(c)(1).
[43] 88 Fed. Reg. 47563.

As stated earlier, locating prospective reserves is one of the fundamental tasks of oil and natural gas operators who allocate their resources carefully to invest in only those parcels that are likely to provide meaningful returns. Should a parcel actually be "low potential," it is highly unlikely BLM would ever receive an EOI for that area. The mere fact that parcels are nominated represents compelling evidence of their potential and, as such, should not be deemed as low potential.

While oil and natural gas potential geospatial data in many RMPs are many decades old, even more contemporary data do not necessarily reflect realistic potential. If the oil and natural gas technological advancements achieved over the last few decades have taught us anything, it is that areas once thought to contain no marketable oil and natural gas can almost transform quickly into our most prolific producing domestic basins. The Bakken and Three Forks formations in North Dakota and the Bone Spring and Wolfcamp formations in New Mexico and Texas, are just a few examples.

Ironically, many of the parcels deferred in recent lease sales were done so based on "low potential" even though those parcels exist within or are adjacent to existing development fields, effectively rendering meaningless the "low potential" designation. For example, in Wyoming BLM recently deferred certain parcels because it deemed the parcels to be low preference due based on outdated geological data. In fact, many of the parcels nominated by industry fall within existing oil and natural gas units and/or are adjacent to existing leases and production.

With existing appropriate lease stipulations applied via RMPs, such as Controlled Surface Use, No Surface Occupancy and Timing Limitation Stipulations, BLM can effectively mitigate impacts in sensitive areas, such as species habitat. It is completely unreasonable to defer parcels that do not meet every single non-energy criterion listed in the IM and proposed for Section 3120.41(f), particularly without consideration to subsurface capabilities and adequate investigation to ensure the determination is correct.[44]

Equally important, arbitrary deferral of parcels will increase, not reduce, the surface disturbance that results from oil and natural gas development. For example, due to the land ownership patterns in the West and the extensive scope of the federal government's surface and mineral holdings, it is virtually impossible for companies to operate in an efficient and environmentally protective manner without reliable access to federal surface and mineral leases. Restricting the number of federal parcels available denies companies the flexibility to optimize recovery and minimize environmental impact. Rather than promoting more efficient development from ideally placed surface locations using longer horizontal wells, operators would have to construct additional pads and drill additional wells to access and develop adjacent leased resources.

Prioritization Near "Proven Development" Eliminates the Ability for New Exploration

The proposed rule's preference criteria giving more weight to parcels near existing development disadvantages new exploratory areas for which companies may wish to take risks by drilling exploratory wells. This is especially harmful to small businesses and may deter them from developing on BLM lands. It also ensures a smaller amount of revenue to be collected by the BLM in exploratory areas. Without continued exploration, America misses out on the discovery of new resources that new technologies

[44] 88 Fed. Reg. 47637.

enable. It was not many years ago that the Bakken in North Dakota or the Permian in New Mexico were considered low potential. New exploration and the application of advances in horizontal drilling and hydraulic fracturing turned these areas into some of the most prolific in the world.

BLM's Proposal to Defer or Not Consider EOIs Without Public Input is Problematic

Finally, BLM does not have the authority to apply preference criteria to EOIs in a vacuum. Through BLM's statutory framework under FLPMA and the MLA, it employs a multi-step process for managing its lands, including the federal oil and gas program. BLM first develops an RMP for a resource planning area, which provides long-term goals and objectives for management of those public lands.[45] RMPs are analyzed in Environmental Impact Statements (EISs), prepared according to NEPA's guidelines.[46] Once BLM issues an RMP, subsequent, more focused decisions implementing specific projects must conform to the plan.[47] BLM cannot subvert the FLPMA land use management process through this rule.

BLM employs a three-stage decision-making process for managing public lands for oil and natural gas leasing and development.[48] First, as part of the RMP process, which involves multiple opportunities for public review and comment, BLM assesses the presence of minerals and other resources on public lands and determines which areas will be open to oil and natural gas development and what protective stipulations should apply to future leases.[49] Mineral potential is one of the factors considered in whether an area is open or closed to oil and natural gas development. In the second stage, which is relevant here, BLM reviews proposed leases under NEPA and other statutes and holds competitive oil and natural gas lease sales on a quarterly basis, as required by the MLA.[50] Lands offered for leasing include lands identified in EOIs, which can only be nominated if they are for lands already identified as open to leasing under the relevant RMP.[51]

The preference criteria as provided in the proposed rule make no connection between the management decisions in BLM's RMPs and the evaluation of EOIs. The rule is unclear how management decisions in the relevant RMPs should inform evaluation of the EOIs, if at all. This proposal circumvents the RMP process and BLM's statutory direction. As written, the proposed rule could allow BLM to deny an EOI that an RMP designates as open for leasing with little justification and no public process.

Pursuant to NEPA, BLM cannot make leasing decisions without the opportunity for public review and comment. This applies to BLM's review and consideration of EOIs as management decisions in RMPs were developed through a public process with public involvement and transparency. The preference criteria, as proposed and as found in the IM, have no public involvement nor transparency. The public, including industry and the party nominating the lands for consideration, should have full opportunity to provide feedback when BLM proposes deferring or foregoing consideration of a nominated parcel. As

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[45] 43 U.S.C. § 1712(a).
[46] *See* 43 C.F.R. § 1601.0-6.
[47] *See* 43 U.S.C. § 1712(e); 43 C.F.R. § 1610.5-3(a).
[48] *See Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1151-52 (10th Cir. 2004).
[49] 43 C.F.R. § 1601.0-5(n).
[50] 30 U.S.C. § 226(b)(1)(A); *see* 43 C.F.R. pt. 3120; 43 C.F.R. § 3120.1-2(a).
[51] 43 C.F.R. § 3120.1-1(a), (e).

BLM is well aware, precluding the public from an opportunity to review and provide public input on a leasing decision is cause for litigation.

APD Terms Should be Set at Four Years, With an Option for Reasonable Extension
The Alliance generally supports BLM's option to extend the initial APD term from two to three years but recommends that BLM strongly consider establishing four-year terms for APDs), which would enable the efficiency BLM expressed it wants to achieve in the preamble, as well as provide consistency for industry. In recent years, BLM has begun to request specific information from companies attempting to extend an approved APD past the initial two-year term. As BLM recognizes, these information requests are further bogging down the permitting process and creating new uncertainty that APDs will not be available when they are needed. Simply setting a four-year term, with extensions for extenuating circumstances, would result in more efficiency and reduce paperwork processing.

The Alliance believes that if BLM would simply process permits in a timelier manner in the first place, companies would not need to build up extensive APD inventories years in advance. Instead, because of uncertainty in the federal permitting process, including other associated approvals such as ROWs, NEPA delays, other potential complications, as well as the threat of litigation, there should be the continued opportunity to extend an APD for extenuating circumstances.

The Alliance appreciates the criteria under which BLM may extend the term of an APD nearing its expiration and offers the following section to improve that language. The proposed rule contains requirements that a well be drilled to depth or an operator must have BLM approval on a plan to drill to depth. While the Alliance understands the intention of not allowing operators to only set surface casing and then drill to depth later, there should be more flexibility. There are multiple scenarios that could cause an operator to be in the process of drilling a well toward the end of the term of an APD that should be able to be considered in order to allow drilling up to and through the APD expiration without actual authorized officer approval. A demonstration of need for additional time should be sufficient.

Drilling plans include multiple considerations. There are timing stipulations and weather restrictions for pad development and drilling and completion operations. There may also be a need for cultural and species surveys or potentially even site-visits by cultural experts and wildlife biologists to ensure adequate preservation. Rights-of-way need to be obtained, takeaway of crude oil, natural gas, and any produced water needs to be addressed. Facilities need to be constructed. Drill rigs and crew need to be contracted, as do completion services. There are multiple contracts and hundreds of thousands of dollars that potentially go into each well pad. While the BLM proposed rule simplifies the process, it must be realistic that an approved APD does not mean an operator can actually go out the next day and start drilling a well. BLM must recognize and understand the need for flexibility.

Shortening the potential duration of an approved APD changes the way companies will need to prepare. Smaller companies, with longer capital procurement timelines and limited planning flexibility, require the full four-year permit option to implement efficient development.

Finally, the Alliance requests that any change in terms to APDs should apply only to those APDs approved and issued subsequent to the publication of a final rule and should not apply to existing APDs.

All existing APDs were approved with the terms outlined in the current regulations and a retroactive change to those terms could significantly impair a company's ability to utilize current approved APDs.

Waivers, Exceptions and Modifications Criteria Unduly Limits Field Office Flexibility

The Alliance is concerned that BLM's proposed changes to existing regulations regarding use of waivers and modifications would unduly burden field offices and restrict BLM's discretion to offer them as well as now exceptions.[52] Instead of continuing to allow the authorized officer discretion to grant a waiver, exception or modification (WEM) based on a determination that "proposed operations would not cause unacceptable impacts,"[53] the proposed rule requires public review when a requested change to a lease term or stipulation is "substantial or *involves a major concern to the public*."[54] Such "major concern" could be an exception to a big game or similar timing stipulation that is not necessary based on on-the-ground conditions and recent survey data submitted to justify the requested exception.

The provisions to narrow the use of WEMs seem not to be based on actual data. For example, several environmental groups sent a letter to BLM complaining about the percentage of timing stipulation exceptions that Wyoming BLM has approved for greater sage-grouse over the past four years.[55] Here, the groups failed to acknowledge the stringent requirements that must be met to receive an exception, including compensatory mitigation, as required through the state's executive order on the species, and robust recent surveys of habitat and species data, which are thoroughly vetted by the state and BLM wildlife biologists. BLM should recognize in this rule how field offices already strictly apply WEMs.

Although approximately 90 percent of the 127 applications for timing exceptions submitted over the past four years were granted, that is only about 114 exceptions, or 29 per year on average. With 3,441 APDs approved in Wyoming over those four years, granting 114 exceptions is a measly 3%. Further, those 29 annual exceptions temporarily affect just 1% of the 2,342 leks in the state in any given year. [56]

As shown from the numbers, the operators do not ask for exceptions merely for the fun of it. They request exceptions when unplanned or extraordinary circumstances shift development schedules, such as to allow an operation to timely commence or provide an additional few days to finish an operation such as drilling or completion, or when safety concerns arise. Importantly, many requested exceptions to timing limitation stipulations are based on real-time wildlife survey data collected up to the day that exception was requested. Prolonging the consideration period for a 30-day public comment period could undermine the veracity of that data. More importantly, wildlife conditions could change during that prolonged time, compromising the exception request altogether.

By allowing an exception, defined as "a limited exemption, for a particular site within the leasehold, to a stipulation,"[57] BLM is not putting a species or other special status area at risk. The Alliance supports

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[52] The Proposed Leasing Rule adds "exceptions" to the regulations for the first time. *See* 88 Fed. Reg. 47574.

[53] Section 3103.14, 88 Fed. Reg. 47574.

[54] *Id.*

[55] "Letter to Tracy Stone-Manning, Director, BLM" American Bird Conservancy, et. al., March 6, 2023.

[56] *Sagebrush Conservation Strategy- Challenges to Sagebrush Conservation*, Remington, T.E., Deibert, P.A., Hanser, S.E., Davis, D.M., Robb, L.A., and Welty, J.L., USGS, 2021.

[57] 88 Fed. Reg. 47620.

BLM's proposed definition as it comports well with the realistic circumstances in which operators pursue exceptions: limited exemptions anchored in recent survey or other data to justify the request that often requires a quick and nimble response based on timing limitation stipulations.

Further there are several benefits that result from timing stipulation exceptions, as BLM often requires additional mitigation efforts, studies, and permanent conservation credits. When appropriate and authorized, short-term activity within important habitat provides the benefit of permanent conservation easements for sage-grouse. In addition, exceptions to timing stipulations often result in more consistent development schedules, reducing truck traffic associated with multiple equipment mobilizations that would be required without the utilization of exceptions. BLM should ensure that field offices continue to have full discretion to grant WEMs under the proposed rules.

Suspension of Operations and/or Production Should not be Limited to One Year
The proposed rule codifies existing policy contained in IM 2023-12 that a request for suspension based on a pending APD be submitted no less than 90 calendar days before lease expiration.[58] While this makes sense as a general guideline, BLM should allow flexibility in this deadline where an operator has been diligently working with BLM and other state and federal agencies on preparing an APD but is unable to get the APD submitted within this timeframe due to reasons beyond its control.

Further, the proposed rule unduly limits the possible duration of a suspension, stating that where an operator requests a suspension, "[a]pproved suspensions will not exceed 1 year." The proposed rule then states that if more than a year is needed, an operator will need to ask for an extension before the suspension expires. On the other hand, where BLM directs the suspension, such extension can exceed one year. The Alliance believes that all suspensions, whether operator initiated or not, should have the option to extend beyond a year without needing to ask for an extension. When APDs in some areas take more than a year to process and where some suspension requests take months to get approved, it makes no sense to unnecessarily limit the duration of a suspension. BLM should be able to authorize a suspension to be effective until it is no longer needed, whether a year or beyond as applicable.

Additional Section by Section Review
The Alliance provides the additional section-by-section review in brief.

Section 3101.12 – Surface Use Rights - BLM is proposing to change the existing 200-meter relocation and 60-day disturbance rule to 800 meters and 90 days, respectively, based on horizontal drilling. A pad is a pad, regardless of the type of well proposed.

Section 3101.13 – Stipulations and Information Notices - Subparagraph (a) is a new paragraph and not supported by existing statute. It states: "[W]hen developing stipulations, the BLM would consider the sensitivity and importance of potentially affected resources and any uncertainty concerning the present or future condition of those resources." This is a very subjective standard and opens the door to include new stipulations that were not addressed in an underlying planning document.

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[58] 88 Fed. Reg. 47595.

Section 3101.51 – General Requirements – Adds language "Regardless of whether the lands are acquired or public domain lands, the BLM will not lease lands when a surface management agency objects to leasing or withholds its consent." This provision previously only applied to acquired lands and as written here is not supported by statute.

Section 3106.10 – Transfers, general – Subparagraph (a) removes terms such as "stratigraphic equivalent, pools, reservoirs, wellbores and references to unnamed formations occurring at a specific depth within a specific well, as they are not definitive and introduce ambiguity not the boundaries which lease rights are split." Certainly, some of the removed terms are ambiguous; however, wellbore assignments are not ambiguous. Wellbores have API Numbers which have bottom hole data and are within approved drilling and spacing units which specify the acreage being drained by the wellbore.

Section 3106.20 – Qualifications of assignees and transferees – Requires that new lease holders "must comply with the provisions of 43 CFR 3102 and post any bond that may be required. Only responsible and qualified lessees may own, hold or control an interest in a lease." While similar language is in the current 43 CFR 3106.20, the Alliance is concerned that this language would apply to lessees even when there is a designated operator who would hold the relevant bond. BLM must clarify that the new bonding requirements are only for operators and not all lessees, assignees and transferees.

Section 3106.60 – Bond Requirements – Following a transfer or assignment, the proposed rule provides that "if bond coverage continues to be required, a proper bond that will cover any obligations arising under the lease to the same extent as the assignor's or transferor's bond." The Alliance requests BLM clarify that if the transfer or assignment does not include a wellsite—producing, shut-in, or idled—the applicable leaseholder should not have to post a bond.

Section 3107.22 – Cessation of Production – The proposed language changes the current 60-day time period from notice from the authorized officer to 60 days from the date production actually ceased. The Alliance is concerned that this change may cause confusion and unintended consequences as the operator of the well may not be the same as the record title owner and timely notice of a cessation of production may not be received to remedy the non-production and preserve the lease.

Section 3120.61 – Competitive auction – The proposed rule provides that during a competitive auction, the "winning bid will be the highest bid by a responsible and qualified bidder..." Considering the current online bidding system, BLM should require EnergyNet to change its format to allow the parcel to remain open until bidding ceases. Under the current system the parcel is awarded to the highest bidder at the time the parcel times out. BLM cannot demonstrate that it awarded the parcel to the highest bidder.

Section 3120.63 – Award of lease – The proposed rule updates subparagraph (d) to state: "BLM will not issue a lease unit resolves all protests covering the lands to be leased." This is a new provision which is not supported in statute and BLM does not explain why it is necessary. Further, subparagraph (e) states: "[i]f the BLM cannot issue the lease within 60 days, the BLM may reject the offer." The Alliance is concerned that the preamble indicates that BLM could reject a lease offer if the protest is not timely

resolved *and* the bidder chooses to decline the lease.[59] The proposed language, however, would allow BLM to terminate the lease without the bidder's consent.

The Proposed Rules Will Disincentivize Future Federal Development

The proposed rule contains significant measures designed at impeding, impairing, and overall disincentivizing oil and natural gas development on federal land. The proposed rules would reduce necessary flexibility in decision making at the local and state BLM levels, remove transparency and public participation, and may discourage companies from utilizing their non-developed existing leases or nominating additional lands for future development. Further, the proposed rule appears designed to fix problems that the facts show do not exist.

We urge BLM to reduce the scope of its rulemaking to only address necessary changes as relate to recent legislation instead of the overreaching proposals contained in this first public draft. As provided, the proposed rule is overbroad, illegal, and lacks facts and analysis required by the Administrative Procedures Act.

The Alliance appreciates the opportunity to provide comments on the proposed rule. Please do not hesitate to contact me should you have any questions regarding the Alliance's comments and concerns.

Sincerely,

Kathleen M. Sgamma
President

[59] 88 Fed. Reg. 47592.