WESTERN ENERGY ALLIANCE

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Nada Wolff Culver
Deputy Director, Policy and Programs
Bureau of Land Management
1849 C St NW
Washington, DC 20240

Christine J. H. Kymn
Natural Resources & Environment Branch Chief
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Re: BLM Oil and Natural Gas Leasing Rule

Dear Ms. Culver and Ms. Kymn:

We understand BLM is promulgating an oil and natural gas rule to codify changes made to the onshore fluid minerals leasing program through the Inflation Reduction Act (IRA). It is our understanding that this rule will incorporate provisions included in instruction memoranda (IMs) (IM 2023-006 through IM 2023-012) BLM released in November 2022. We recommend the rule focus on the provisions contained in IRA and not include supplemental provisions based on recommendations of the Department of the Interior's November 2021 Report on the Federal Oil and Gas Leasing Program (DOI Report). We write to share our concerns regarding language in the IMs and request a dialogue to discuss those with you in more detail.

In general, we are concerned the IMs will result in regulatory uncertainty based on the significant discretion afforded BLM and the inclusion of "public interest" as a basis for all oil and natural gas leasing actions. While we recognize and support the importance of public participation in certain BLM decision-making, the IMs provide scant detail on how BLM will gauge and incorporate public interest and the value that input will provide in lease parcel reviews, as well as application for permit to drill (APD) extensions, lease reinstatements and suspensions of operations/production. As such, further clarification needs to be provided on the items BLM will take into consideration when deciding these actions, and how public interest will be determined and incorporated into the process.

Further, the increased analyses and data collection required by BLM to implement IRA will necessitate additional time and manpower to administer the oil and natural gas leasing program. With this in mind, does BLM have plans to increase or rededicate staffing, particularly at the field office level, to ensure BLM will be able to meet its responsibilities

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under IRA, the IMs and the upcoming oil and natural gas rule? We are very concerned that BLM is creating a "paralysis by analysis" environment.

We offer the following feedback to address specific concerns with the IMs:

IM 2023-006: Implementation of Section 50265 in the Inflation Reduction Act for Expressions of Interest for Oil and Gas Lease Sales

This IM explains the formula BLM will use to determine if it is meeting IRA requirements that BLM offer for lease at least one acre for every two acres nominated via expressions of interest (EOIs) submitted during the preceding year. We have significant concern with how the EOI acreage formula will be applied under this IM, particularly because it allows BLM to count deferred acreage more than once. We disagree with BLM's reasoning that it will count acres originally listed during the scoping period of the leasing environmental assessment (EA) process for sales, but then deferred and not offered on the final sale list, as meeting the criteria for the 50% threshold specified in IRA. Should BLM do so, it would not meet the IRA requirement for *offering* sufficient oil and natural gas acreage to meet the threshold to issue wind and solar rights-of-way. Deferred parcels not included in the final lease sale list should not be deemed as *offered* for purposes of meeting the IRA threshold; doing so would represent an extremely expansive interpretation of the statutory language that defies the plain-language logic of IRA. We recommend BLM make the National Fluids Lease Sale System more user-friendly so the public can track EOIs submitted within a fiscal year and understand whether or not the 50% threshold has been met.

Additionally, acreage that has been deferred once and then again included in subsequent scoping only to be deferred again should not be included in BLM's formula as additional acreage offered. In Wyoming, BLM included acreage in both the Q2 and Q3 2023 lease sale scoping lists that had been originally listed but then subsequently deferred from the 2022 lease sale. This action makes us question whether BLM will defer the same parcels in the final leasing EAs. BLM should not be counting acreage multiple times, especially if it intends to defer it.

Furthermore, acreage nominated by BLM for which industry has not expressed an interest should not be included in the EOI acreage formula. Locating prospective reserves is one of the fundamental tasks of oil and natural gas operators who allocate their resources carefully in only those parcels that are likely to provide meaningful returns. If industry has not submitted an EOI on a parcel, it means there is no interest in it. BLM should not pad its offered lease acreage numbers by offering parcels that lack material interest and are therefore unlikely to receive lease bids.

IM 2023-007: Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales

This IM, based on recommendations in the DOI report and not IRA, sets forth the criteria BLM will use to determine if a parcel is of high or low preference for leasing. BLM has identified it will base preference on 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). Parcels that have any one of the criteria are ranked as low preference and automatically deferred. While we agree some of the of the parameters are clear, some are unnecessary with the advancements in subsurface drilling. With existing lease stipulations applied via resource management plans, such as Controlled Surface Use, No Surface Occupancy and Timing Limitation Stipulations, BLM can effectively mitigate impacts in sensitive areas. It's completely unreasonable to defer parcels that don't meet every single criterion listed in this IM, particularly without consideration to subsurface capabilities and adequate investigation to ensure the determination is correct.

For example, Wyoming BLM deferred parcels because it deemed the parcels to be low preference due to the possibility of low potential for development based on outdated geological data. In fact, many of the parcels fall within existing oil and natural gas units and/or are adjacent to existing leases and production. As we 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 be "low potential," it's highly unlikely BLM would receive EOIs for that area. The mere fact that these parcels were nominated represents compelling evidence of the parcels' potential and, as such, should not be deemed as low potential without further investigation to ensure the data is current and correct.

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 Wyoming and other states and the extensive scope of the federal government's surface and mineral holdings across the west, 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.

IM 2023-008: Impacts of IRA to the Oil and Natural Gas Leasing Program

This IM summarizes the changes to BLM fiscal terms and the impact on pending leases. We have a few concerns with the IM, particularly with the EOI nonrefundable filing fee and the

new royalty rate and fees applying to leases sold prior to IRA that have still not been issued. With regard to the EOI nonrefundable fee, there should be time limits put in place for when the EOI will be processed. Industry is submitting this payment for a particular service and, as such, the work needs to be completed in a timely manner.

We contest the language in the IM that the new royalty rate and fees will apply to leases sold prior to IRA that have not yet been issued. For instance, leases sold at the December 2020 Wyoming lease sale have not yet been issued while BLM is working to resolve a protest on the sale, well before the passage of IRA and the development of this IM. Companies bid on those parcels with the understanding that the royalty rate and fees that were in effect at the time of the lease sale would be applied to the parcels and they should not be penalized for waiting for BLM to resolve the protest. BLM should not apply the new royalty rate and fees in these types of situations.

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

This IM sets forth the process that will be used for lease parcel reviews, including increased public participation and site-specific NEPA analysis. As stated above, while we understand the importance of public input in certain BLM decision-making, we struggle with how public input will be of value 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, such as how will BLM determine which groups and individuals will participate in this 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? Our concern is this will only add to the lease sale NEPA process, which was put in place as a mechanism to avoid litigation, however, it increased litigation significantly.

Lastly, site-specific NEPA is generally a term that is used with regard to the APD or project-EA level, and not generally at the leasing level. As such, it would be helpful for BLM to clarify how it will manage this process and the timing associated with site-specific NEPA at the leasing level.

Thank you for your consideration of these concerns. Please let me know if you have any questions and are available to discuss these questions and suggestions in more detail in the near future.

Sincerely,

Kathleen M. Sgamma
President