



August 10, 2017

Submitted via www.regulations.gov

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1859 C Street, NW
Mail Stop 7328
Washington D.C. 20240

Re: Bureau of Land Management Regulatory Reform, DOI-2017-0003-0003

Dear Secretary Zinke:

Western Energy Alliance appreciates the opportunity to provide public input on how the Department of the Interior (DOI) can improve implementation of regulatory reform initiatives and policies and identify regulations for repeal, replacement, or modification. The comments contained in this document specifically address regulatory reform at the Bureau of Land Management (BLM).

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independent, the majority of which are small businesses with an average of fifteen employees. Our members operate on public lands in the West, and therefore have a particular interest in BLM's management of these lands.

We appreciate that you have made American energy dominance a priority at DOI, and BLM plays a key role in ensuring that outcome is possible. The recommendations contained in these comments are the product of a comprehensive examination of federal onshore oil and gas processes, and are intended to provide an overview of current problems and possible solutions in BLM's management of federal lands for energy development. Alliance staff and members developed these recommendations through numerous meetings where we proceeded step-by-step through the onshore process as it is now conducted, identifying specific issues with and recommendations for the process from the time a parcel is nominated for lease to the point at which a drilling permit is issued.

In this letter we present two ideas for long-term reform regarding delegation to the states and reducing the federal nexus, which could get BLM reoriented back to its core mission of managing federal lands and away from redundant overlap with states. The subsequent sections are organized around the main processes of the federal onshore program and provide recommendations for reform over the short-, medium- and long-terms.

Our suggestions would provide regulatory certainty for oil and natural gas companies evaluating whether to operate on federal lands, which will in turn increase domestic



energy development and contribute to the goal of American energy dominance. The recommendations will also help address the problems of shrinking budgets and a lack of personnel resources at BLM by reducing unnecessary layers of red tape, while increasing royalties returned by oil and natural gas companies to federal and state governments.

Delegation to the States

While oil and natural gas production in the United States has increased dramatically over the last several years, the growth has occurred predominantly on private and state lands while federal lands have lagged far behind. States in the West with large amounts of public land are at a decided disadvantage compared to other parts of the country. Slow processing times and federal obstacles to production limit job creation and economic growth, particularly in rural communities.

BLM should work with Congress to delegate primary regulatory authority for well permitting and operations to the states where it is appropriate, and devote the resources it currently employs back to its core mission of managing federal lands. States have robust oil and natural gas regulatory frameworks that have been in place for decades. They have demonstrated an exemplary safety record, while also ensuring energy development can occur in a timely fashion. This delegation would allow BLM to focus on National Environmental Policy Act (NEPA) compliance.

The Interstate Oil & Gas Compact Commission (IOGCC), a multi-state government agency representing oil and natural gas producing states, has issued [a resolution](#) urging delegation to the states for the regulation of operations on federal public land. The IOGCC resolution sends a clear signal that states are prepared to take on the added responsibility for approving drilling and completion permits, rights-of-way, and inspections on federal lands.

The federal government is much less efficient than states in managing oil and natural gas development, taking more than 250 days to issue drilling permits compared to about 30 days on average for state agencies. Delegating primary authority to the states would ensure environmentally-responsible development is possible without the lengthy delays associated with the federal onshore process.

Federal Nexus

BLM's approach to the federal nexus is a prime example of regulatory overreach that results in development on state and private land being subject to the discretion of federal agencies. BLM is tasked with managing the public lands, but in practice its actions far too often burden private landowners simply because their land is located near federal lands or federal minerals.

BLM currently triggers the NEPA process for wells on private or state lands if any of the oil and natural gas resources being drilled are federally owned, even when it has a small mineral interest. Once BLM determines a private action has a federal nexus, the full gamut of federal reviews and processes apply, resulting in long delays to the development of private and state minerals, denying individuals and states their private property rights.

Using the federal nexus as a way for BLM to become involved in wells in which it has only a minority of the mineral interest is inappropriate, and the practice should be curtailed.

Once the federal nexus is triggered, other agencies such as the Environmental Protection Agency and the Fish and Wildlife Service become involved in the process. These agencies then attempt to inspect private land and impose restrictions on the landowners through laws such as the Endangered Species Act and the National Historic Preservation Act. When private landowners wisely refuse federal officials or tribal members access to their lands, BLM prevents the process from moving forward and companies are forced to delay or reconsider the plans for the project. That this can occur when only a minimal amount of federal minerals and no federal lands are involved in the project is clearly overreach for an agency tasked with managing public lands.

BLM should work with Congress on a bill to define a federal nexus as situations only where federal surface and/or a majority of federal minerals are being developed. The federal government would then receive royalties as any other minority mineral owner through a normal communitization or unitization agreement. Limiting BLM's regulatory authority to situations where there is a true federal nexus, i.e. when it has a majority mineral interest or surface ownership, will allow it to return to its mission of managing federal lands, rather than imposing onerous restrictions on mineral development underneath private and state lands.

Detailed Recommendations

The following sections are organized around the main processes of the federal onshore oil and gas program, i.e., leasing, environmental analysis under NEPA, and permitting. Each section highlights several challenges with BLM's current practices, and provides brief recommendations for improvements BLM could make. Some of these recommendations are simple and could be accomplished quickly, while others are more complex and require a longer timeframe, including legislation.

These sections are intended to provide an overview of the issues, rather than being a comprehensive examination of the minutiae of BLM's onshore oil and natural gas program. We are more than willing to provide further details or background on any and all of these issues if and when DOI and BLM wish to proceed with the suggested reforms. Since this docket is remaining open, we will also submit more detailed recommendations and analysis for several of our proposals as we develop them.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact us with any questions.

Sincerely,



Kathleen M. Sgamma
President



Leasing Process: Nominations

August 2017

Introduction: The leasing process starts when a company nominates a parcel in an area designated as open for oil and gas leasing by an existing Resources Management Plan (RMP). BLM reviews this expression of interest (EOI) to determine whether the parcel is available for leasing and conducts an Environmental Assessment (EA) pursuant to the National Environmental Protection Act to evaluate parcels it plans to lease.

Challenges:

1. Instruction Memorandum (IM) 2010-117 directed BLM to use a rotational lease sale schedule in each State Office, so that each field office has only one sale per year. As a result, nominated parcels are only available for leasing every twelve months at best, assuming parcels are not deferred for some reason, and two years or more may elapse between nomination and sale. The rotational schedule limits development in high interest areas such as the Carlsbad and Casper Field Offices because parcels are not offered for sale every quarter, even though EOIs are submitted and approved throughout the year, and wastes effort on lease sales for low-interest areas only where no leases may be sold at all. For multi-state State Offices like New Mexico and Montana/Dakotas, the rotational schedule means that fewer than four lease sales are held in those states, in violation of the Mineral Leasing Act which requires quarterly lease sales in every *state* where there is interest.
2. BLM frequently defers parcels in an entire planning area while updating the RMP, despite the existence of a previously-approved RMP that identifies acreage as open for leasing with applicable stipulations. Because RMPs regularly take five years or more to update, parcels are deferred for many years.
3. There is no transparency regarding why nominated parcels are not being offered for sale, i.e., deferred.
4. In reaction to a Colorado District Court ruling that applies only in Colorado, BLM instituted a nationwide policy to reveal the names of companies/individuals that nominate parcels, unless they withhold their identity. Because analysis and expense goes into nominations, that information is normally considered protected, confidential commercial information. Nominating entities have no choice but to withhold their identities, which creates a situation whereby BLM cannot coordinate with them, adding inefficiencies into the nominations process. BLM may bring parcels to sale for which there is no longer any interest simply because coordination is not possible.

Recommendations:

1. Rescind IM 2010-117 and conduct quarterly lease sales in each state with parcels from every field office where there is interest. Issue a memorandum to strike all references to IM 2010-117 in internal guidance documents. Each lease sale should offer parcels that have been approved throughout the state or from all states within the State Office region, rather than being limited those from specific field offices or states.
2. Follow the plain language of FLPMA, which states that RMPs are to be used for management decisions until such time as they are updated. Direct state offices to proceed with leasing under all existing RMPs and discontinue practice of deferring all parcels during RMP updates.
3. BLM should track lease nominations and deferrals in a standard manner and make the data publicly available and transparent. All deferrals should present a legitimate reason for deferral. An ongoing RMP amendment process cannot be identified as a legitimate reason.
4. Rescind IM 2014-004, Oil and Gas Informal Expressions of Interest and reinstate IM 2013-026, Confidential Handling of Oil and Gas Informal Expressions of Interest.

Leasing Process: Resource Management Plans



August 2017

Introduction: BLM develops Resource Management Plans (RMP) by planning area, typically associated with a single field office, as the guiding documents for managing land as required by the Federal Land Policy and Management Act (FLPMA). An RMP contemplates several resource uses in the area, including energy development, grazing, timber harvesting, and recreation, and designates certain areas as off limits to resource development.

Challenges:

1. RMPs take years to develop, in most cases five or more, and are updated via amendment every fifteen to twenty years. During an RMP amendment process, BLM frequently delays leasing decisions, rights of way, and applications for permit to drill based solely on the fact that the RMP is being updated. Parcels that would otherwise be available under the existing RMP are thus placed off limits to leasing and drilling for many years, despite the requirement in the Federal Land Policy and Management Act (FLPMA) that existing RMP be utilized for all land management decision making until such time as a new RMP is in place.
2. When BLM does lease parcels while an RMP is being updated, stipulations are often attached to leases which are not specified under the existing RMP. This occurs because BLM attempts to foretell the outcome of the amendment process and apply restrictions that may be applied under an amended RMP, whether or not those stipulations are eventually adopted. BLM also applies stipulations from newly updated RMPs to leases sold under previous RMPs in the form of Conditions of Approval (COA) attached to drilling permits, a clear violation of valid existing lease rights.
3. While BLM allows for substantial public input during the RMP development process, stakeholder concerns, particularly those from state and local governments and other entities that support development, are frequently ignored in final plans. BLM frequently exceeds statutory authority by imposing land use restrictions in RMPs in spite of significant public comment opposed to those restrictions. Further, public comments asking BLM to severely limit oil and natural gas leasing and development have been used by BLM as an excuse for ignoring FLPMA, which dedicated the public lands to multiple use and sustained yield, and identified mineral exploration and development as one of the principle uses. Due to the proliferation of these restrictions, resulting RMPs may violate FLPMA's multiple-use and sustained yield mandate.
4. BLM has established expansive wilderness areas in RMPs in violation of its multiple-use mandate and Congressional disapproval. Wilderness designations such as "lands with wilderness characteristics" end up being de facto wilderness designations that place large amounts of land completely off-limits to resource development, violating the Wilderness Act which requires an

act of Congress. These designations are frequently used for the specific purpose of foreclosing development rather than protecting areas that could truly be considered wilderness.

Recommendations:

1. Issue an IM specifying that State Directors and Field Office Managers must move forward with processing nominations in accordance with existing RMPs until amended RMP Records of Decision are signed, and end the practice of deferring lease parcels while RMPs are being amended. The IM should clearly state that ongoing RMP updates, amendments, supplements, or Master Leasing Plans are not legitimate reasons for lease deferral.
2. In an overall leasing IM or further guidance resulting from Secretarial Order 3354, specify that lease stipulations applied to any new leases must be based on existing RMPs only, rather than anticipating new stipulations that may be adopted in a future RMP amendment that has yet to be finalized. Also specify that COAs that likewise anticipate new stipulations contemplated for ongoing RMP amendments, supplements, or MLPs may not be applied to permits for existing leases.
3. When finalizing RMP amendments, ensure that public comments are sufficiently incorporated into the final plan, and only impose resource development restrictions that accord with FLPMA, the Mineral Leasing Act (MLA) and other statutory authority.

BLM should adhere to the principles established in the 2005 Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners. Many counties across the West have planning processes that are not given full consideration by BLM. BLM should improve the recognition and incorporation of state and local government land use plans, data, and policies in RMP amendments.

4. The Department of the Interior should rescind Secretarial Order 3310 on Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management. Congress has explicitly denied funding for the implementation of this order because the designation of “Wild Lands” is a violation of FLPMA’s multiple-use mandate, yet BLM still treats “lands with wilderness characteristics” as de facto wilderness. BLM should also rescind IM 2011-154, Requirements to Conduct and Maintain Inventory for Wilderness Characteristics and to Consider Lands with Wilderness Characteristics in Land Use Plans, and IM 2011-147, Identification of Areas with Broad Public Support for Possible Congressional Designation as Wilderness.

August 2017

Introduction: Interior Secretary Salazar created a new, redundant layer of NEPA analysis by establishing the Master Leasing Plan (MLP) policy in 2010. BLM has decided to develop MLPs for certain areas that supposedly require yet more NEPA analysis.

Challenges:

1. MLPs are duplicative and unnecessary. Resource Management Plans (RMP) already designate which areas are open to leasing and which are closed, and outline conditions for leasing where it is available. RMPs incorporate extensive public input and take many years to develop.
2. BLM defers parcels from leasing because an MLP is being developed for a certain area, despite the fact that those parcels are open to leasing under the existing RMP. The MLP development process takes several years, further delaying leasing and preventing the deployment of new or additional investment by oil and natural gas companies in those areas and reducing the associated jobs and economic benefits.
3. Instruction Memorandum 2010-117, which created the MLP process, established four criteria which must be met in order to proceed with an MLP: 1) the area must be substantially unleased; 2) there must be a majority of federal mineral interest; 3) the industry must have expressed interest in leasing; and 4) there are likely conflicts with air quality, cultural, or other natural resource values or proximity with national parks, wilderness areas, or other special designations. However, the IM also allowed for MLPs to proceed completely at the discretion of the State Director or Field/District Manager. That additional discretion has resulted in the development of MLPs that don't even meet these basic criteria, rendering the policy even more redundant and arbitrary than originally envisioned.
4. BLM uses the MLP process to attach conditions of approval (COA) for permits on existing leases, increasing costs, delays oil and natural gas development, and violating valid existing rights granted pursuant to the Federal Land Policy and Management Act.

Recommendations:

1. Rescind Instruction Memorandum (IM) 2010-117 and replace it with an IM that explicitly ends the MLP process and authorizes leasing pursuant to existing Resource Management Plans. Review of parcels for leasing eligibility would then continue to occur via the normal leasing process, which includes NEPA analysis for each lease sale, and BLM resources would not be wasted on a redundant layer of NEPA analysis.

2. Abandon all ongoing MLP efforts and respect all current RMPs. Proceed forward to sale with lease nominations that have been deferred while awaiting MLP completion. The IM rescinding the MLP process should also explicitly halt existing efforts by name, such as the San Rafael Desert and South Park MLPs.
3. If the MLP policy is sustained, remove the provision allowing for State Director discretion and require all four criteria to be met in order to proceed with an MLP. Further, require leasing to continue in an area where an MLP is being developed pursuant to the existing RMP and applicable stipulations and limitations.
4. If the MLP policy is sustained, issue an IM that requires BLM to recognize valid existing rights and not impose COAs in violation of those existing lease rights, and instructs state and field offices to discontinue the practice of attaching COAs to permits for existing leases in any future MLP.



Leasing Process: Protests

August 2017

Introduction: The public has the ability to comment on leasing both at the leasing EA stage and again following the release of a Notice of Competitive Lease Sale. The 30-day protest period enables the public to formally protest the inclusion of specific parcels in the sale. BLM must respond to legitimate concerns raised in protests, and often attaches additional stipulations to the parcels, or determines that the issues raised are already addressed in existing stipulations, and so informs the protesting entity. When BLM cannot resolve the issues raised, it often defers leases for further additional analysis or proceeds to sale and clears up the protests afterwards before issuing the leases to the winning bidder.

Challenges:

1. Environmental groups routinely challenge parcels offered for lease not because they have legitimate concerns with them, but because they are opposed to all oil and natural gas production. Protests cause extensive delays to leasing and often result in large numbers of parcels and acreage being deferred. They also give the protester standing to file lawsuits after lease issuance. The original intent of the protest process was to give the public the opportunity to identify environmental impacts of leases and express concerns. Instead, the protest process has morphed into a tool for obstructionist groups to oppose BLM's multiple-use mandate and stop leasing, while straining BLM resources.
2. Environmental groups frequently submit large protests that challenge all or a significant portion of the parcels BLM makes available in a lease sale. These protests frequently rely on broad arguments such as the impacts of oil and natural gas development on climate change, rather than specific, local issues with the parcels at question. Protests that rely on universal arguments, rather than parcel-specific issues, can be extremely lengthy documents that include hundreds of pages. Because BLM must respond to all issues addressed in the protests, the resolution period can last months, and sometimes results in the deferral of those parcels. The long-term deferral and failure to lease these parcels can prevent companies from assembling the necessary leasehold to proceed further with development.
3. In some instances, BLM proceeds to sale with parcels before protests are resolved. As a result, winning bidders, who are required to immediately pay the bonus amount and first-year rental, have capital tied up for months or even years waiting for BLM to clear the protests and issue the leases. When protests are upheld, leases are canceled and bidders reimbursed, but not until after needlessly tying up capital and delaying jobs and economic opportunity. Furthermore, states are also denied their leasing revenue. Leases that were purchased at a September 2016 sale in New Mexico were not issued until April 2017 because two environmental groups filed protests that totaled 1,281 pages, and BLM took months to respond to the protests. The seven-

month delay in issuing the leases resulted in [New Mexico's share of the proceeds](#), \$69.9 million, being withheld during a budget crisis. The Mineral Leasing Act requires that leases be issued within 60 days after receipt of lease payment.

4. In 2010, BLM reformed the leasing process, adding three additional layers of analysis onto the leasing process. The justification given by the Obama Administration was that the reforms would reduce the number of protests, making leasing more efficient and predictable. However, the policies did the opposite, lengthening the leasing process and creating further uncertainty while the percentage of protests actually rose from 41% in 2010 to 46% in 2015.

Recommendations:

1. Western Energy Alliance appreciates Secretarial Order 3354, which emphasizes the critical importance of American energy security and directs BLM to improve the federal onshore oil and natural gas leasing program. That demonstration of the political will to move forward with American energy dominance is a step in the right direction for countering obstructionist groups opposed to all oil and natural gas development on federal lands.
2. BLM should quickly dismiss protests that only address vague, general issues that do not actually pertain to the individual parcels. Since groups such as WildEarth Guardians repeatedly protest virtually every lease sale using the same boilerplate arguments, BLM should develop standard language to respond in kind, rather than spending months issuing a detailed response. Western Energy Alliance provided BLM with legal justification for every lease sale protested in the West in 2010 until it was clear BLM was not receptive. We are happy to provide that standard language to help BLM develop templates.
3. In an overall leasing IM or further guidance resulting from Secretarial Order 3354, BLM should clarify that it has a statutory duty under the Mineral Leasing Act to adjudicate lease protests and issue leases within sixty days after the sale is completed. When BLM offers parcels for sale that have unresolved protests, it must dedicate sufficient resources to resolving the protest in the statutory timeframe. Timely protest responses will give companies assurance that their capital will not be tied up indefinitely if they bid on BLM parcels, and it will ensure that states can set their budgets accordingly without fear of payments being held up for months at a time.
4. Rescind Instruction Memorandum (IM) 2010-117 and issue a memorandum that explicitly ends the MLP process. The politically-motivated IM has failed to reduce protests, so the additional layers implemented in the IM only serve to further delay leasing.

Introduction: National Environmental Policy Act (NEPA) analysis is required for all oil and natural gas projects that may impact the environment. BLM begins the NEPA process by determining what level of environmental analysis is necessary for a project, either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), depending on the size and scope of the project and whether it will have a significant impact on the environment or not.

Challenges:

1. The NEPA process is initiated for wells on private or state lands even when only a minority of the oil and natural gas resources being accessed are federal, using the “federal nexus” as a way for BLM to become involved in wells in which it has only a minority of interest and/or when the well is not on federal or tribal surface. As a result, BLM delays the development of private and state minerals, denying individuals and states their private property rights.
2. BLM uses the federal nexus to require tribal consultation for cultural artifacts on private land, even when there’s no federal public or tribal lands in the area and only a minority of federal minerals interests. When private landowners wisely refuse federal or tribal members to access their lands, it puts operators in a bind because BLM won’t let the process move forward. The assertion of tribal rights on private lands around the DAPL protest site is an example of why private landowners do not want cultural artifacts asserted as existing on their private lands. In the Powder River Basin in particular, BLM is conducting far-reaching tribal consultations for 23 tribes who do not have tribal lands in the area. These consultations can hold up project NEPA and APDs indefinitely.
3. BLM is not granting Categorical Exclusions (CX) when companies meet the requirements under Section 390 of the Energy Policy Act of 2005, particularly related to having an existing Environmental Impact Statement (EIS) or Environmental Assessment (EA) that analyzed drilling and is less than five years old. Because CXs are rarely granted, BLM is conducting redundant NEPA analysis that is unnecessary. In many situations BLM automatically requires another EA, rather than even considering a CX.
4. Even after determining that a CX applies for a project, BLM often determines that “extraordinary circumstances” apply and requires an EA or EIS. These decisions are arbitrary. If BLM decides an EIS or EA is necessary, there is no process for the project proponent to challenge the decision.
5. BLM does not provide consistent guidance to companies on how to best develop and describe their proposal in order to facilitate a timely and efficient NEPA analysis.

Recommendations:

1. BLM should work with Congress on a bill to limit the federal nexus to situations only where federal lands are involved and/or there is a majority of federal minerals. The federal government would then receive royalties as any other minority mineral owner through a normal pooling/unitization agreement.
2. BLM should issue an IM or other policy guidance to prevent field offices from requiring tribal consultation on private and state lands. The guidance should specify that a Class III Cultural Inventory approved by BLM provides the information necessary for NEPA clearance. The inventories must be conducted by appropriately credentialed archeological experts, which may be contractors.
3. BLM should follow existing law and utilize Resource Management Plans and their associated EISs, programmatic EAs/EISs, and project EAs/EISs that are all less than five years old, and grant CXs in all cases that meet the Energy Policy Act of 2005 criteria, rather than requiring redundant NEPA analysis. BLM's NEPA handbook already specifies that this is allowed, so simple direction to the state and field offices is all that is required.
4. BLM should establish clear criteria for what constitutes extraordinary circumstances and implement these criteria through an Instructional Memorandum and the NEPA handbook. BLM should also implement an appeal process to enable project proponents to challenge decisions regarding the level of environmental analysis required for a project.
5. BLM should provide proactive initial guidance to proponents when they announce projects that are likely to require an EA or EIS. A checklist should be provided by BLM that outlines the content needed to support BLM's review, and BLM should provide informal feedback on the checklist so the project description can be efficiently converted to the Proposed Action in the NEPA document. Early correspondence would serve as an initial test for potential significant impacts and would set the stage for the environmental analysis. Proactive coordination between BLM and the proponent would increase efficiencies and save time once the environmental analysis begins.

Introduction: An Environmental Assessment (EA) is developed in accordance with the National Environmental Policy Act (NEPA) for projects of a size and scope that are not anticipated to have a significant impact on the environment. As such, EAs often result in a Finding of No Significant Impact. However, should the EA lead to BLM’s determination that the proposed project’s impact is greater than originally anticipated, NEPA compliance may require the project be analyzed in an Environmental Impact Statement (EIS). EISs are often lengthy, detailed documents that typically take years to develop and specify the impacts of a project, and they may attach additional stipulations to project approval.

Challenges:

1. EAs are frequently required by BLM for projects already covered by existing NEPA documents or that meet the criteria for being granted Categorical Exclusions (CX) under Section 390 of Energy Policy Act of 2005 (EPAAct). In contravention of EPAAct, BLM is requiring duplicative NEPA for: 1) wells involving less than five acres of disturbance with total lease disturbance of less than 150 acres that already have site-specific NEPA; 2) new wells on pads drilled within the last five years; and 3) areas covered by an existing NEPA document that is five years old or less. As a result, oil and natural gas projects are delayed months and years while redundant NEPA analysis is conducted, in direct violation of statute.
2. BLM often needlessly lengthens the NEPA process by incorporating elements that are unnecessary and beyond the impacts and scope of a project. In some cases, BLM identifies potential impacts for which it has no data, and then significantly delays the project while it waits on studies to be completed and released. BLM frequently requests information that is not required for project-specific NEPA analysis just because it is beneficial for BLM to have. This information is collected at the company’s expense, even when it is unrelated to the project.
3. Council on Environmental Quality (CEQ) guidelines regarding NEPA timeframes are frequently exceeded by many years. CEQ guidelines state EAs should be completed in about six months and EISs should be completed in about eighteen months.
4. Even though companies often pay for contractors to develop project NEPA, in many cases to the tune of millions of dollars incurred over many years, these documents frequently go into a black hole without visibility on where they are in the development process or why there are substantial delays.
5. Many field offices lack experience developing oil and natural gas NEPA documents. Personnel turnover of NEPA coordinators often leads to sudden changes in the quality of NEPA documents or the requirements levied on operators. Inefficiencies result when new personnel must “recreate the wheel” rather than following an established template.

6. Due to the need to ensure the integrity of the NEPA analysis, a separation is maintained between BLM and/or the contractor conducting the analysis and the project proponent. This separation can still be maintained while involving the project proponent at key times, yet often BLM releases draft documents for public comment before the project proponent has seen them. Public comments will often identify issues which could have been addressed more quickly and efficiently beforehand by the proponent, enabling a more polished, complete draft to be prepared for public review and comment.
7. Federal courts have construed the requirements of NEPA to require more procedure and delay than Congress ever envisioned when enacting the statute. Because of the myriad requirements contained in regulations, policies and other guidance documents, it is very easy for environmental groups to find deficiencies in documents to exploit in court. When the documents are several thousands of pages with several thousands more pages of supporting studies, it is very easy to flyspeck BLM's analysis to find a supposed deficiency.
8. Since the release of a Presidential Memorandum regarding Mitigating Impacts on Natural Resources in November 2015, BLM has been imposing onerous compensatory mitigation requirements that significantly increase the cost of projects and exceed BLM's statutory authority. Orders from President Trump and Secretary Zinke in March 2017 overturned the previous administration's overarching mitigation framework, but field offices continue to implement an Instruction Memorandum from December 2016 that directs BLM to incorporate these mitigation measures into NEPA documents that are beyond BLM's authority and in violation of the Executive and Secretarial Orders.

Recommendations:

1. Field offices should use existing EISs or EAs rather than requiring redundant NEPA for projects. CXs should be used for all wells that meet EAct 2005 Section 390 criteria so that wells are not held up awaiting lengthy and redundant EAs to be completed. Any existing NEPA document, including EISs associated with RMPs and RMP Amendments, supplemental EISs, programmatic EAs/EISs, and project specific EAs/EIS, for which BLM analyzed drilling as a reasonably foreseeable activity should be used to meet the existing NEPA requirement. BLM should establish a process whereby operators can turn to the BLM state offices or the appropriate leadership in Washington when field offices arbitrarily deny the use of CXs.
2. NEPA documents should only identify known anticipated impacts from proposed projects, and should not incorporate or require information based on purely speculative impacts. Stipulations and restrictions attached to EISs should be developed in coordination with the project proponent and be based on operator-committed measures. BLM should also finalize EISs based on currently identifiable impacts, and should not postpone completion while it awaits new information to surface.

The scope of NEPA documents should be limited to information that is truly required for NEPA

compliance. Field offices should be directed to stop requesting ad hoc information not required by regulation, statute or official BLM policy.

3. When EAs exceed six months and EISs exceed eighteen months, BLM should assign strike teams to complete them. These strike teams should be composed of planning specialists, perhaps at the state office level, who have the expertise to move forward expeditiously with NEPA documents, as sometimes staff at the field office level are not as skilled in the NEPA process and focused on many different tasks.
4. BLM should inform project proponents at least every four to six weeks on where NEPA documents are in the process, the cause of delays, and what BLM is doing to move forward.
5. BLM should issue an Instruction Memorandum (IM) directing state and field offices to develop NEPA templates for both EAs and EISs, including questions related to on-the-ground factors in the states and planning areas that can be answered simply. The IM could also include a template for common aspects nationwide as a starting point.
6. BLM should provide project proponents with draft documents before the public. BLM should accept clarifications from companies and make any adjustments before they are published in the Federal Register for official public comment. Doing so would reduce the amount of work BLM must spend responding to public comments and allow for additional collaboration and problem solving between the project proponent and BLM, saving resources and time.
7. It will remain difficult to create legally defensible documents as long as they are so long and complex. Several policies enacted without Congressional mandate or a rulemaking process during the Obama Administration should be overturned, as they created more complexity and made planning documents even longer and more indefensible. The sage grouse plans and their associated IMs are a case in point, as is the mitigation IM, and policies or practices enacted for the now overturned Planning 2.0 rule. Many IMs Western Energy Alliance is recommending to overturn will help simplify and make NEPA documents more defensible. Reducing the complexity of policies will help reduce the length and complexity of NEPA documents and make them more legally defensible.

BLM should not be afraid to complete NEPA documents, and just prepare to robustly defend itself from the inevitable court challenges. Too often in the past, BLM simply held up NEPA documents to await further analysis, rather than asserting analysis meets the best-available-information standards in FLPMA.

BLM should also work with Congress on ways to limit opportunities for unaccountable groups to sue to stop energy projects that create jobs and economic opportunities. Supporting legislation to prevent the use of the Equal Access to Justice Act as a means of using taxpayer dollars to fund litigation from large environmental groups is one way. Another is reducing the statute of limitations for legal challenges to energy projects from six years to ninety days, the same timeline that energy developers and lessees must meet to challenge federal decisions.

8. Withdraw IM 2017-021. New IMs and policies regarding a workable mitigation framework that is reasonable and does not arbitrarily delay and deny energy projects must be carefully constructed and implemented. In the meantime, perhaps a limited scope IM could be issued instruct field offices to only require mitigation measures in NEPA documents that are consistent with Secretarial Order 3349. The IM and any mitigation policies developed should require field offices to recognize and credit a proponent's committed avoidance and minimization of impacts in determining the amount of mitigation required.

August 2017

Introduction: BLM must approve an Application for Permit to Drill (APD) before a company can begin drilling operations. The APD must include extremely detailed information, including the type, location, and plan for drilling the well.

Challenges:

1. BLM requires an APD for wells on private or state lands even when only a minority of the oil and natural gas resources being accessed are federal, using the “federal nexus” as a way for BLM to become involved in wells in which it has only a minority of mineral interest. Once the federal nexus is invoked, the full gamut of BLM processes apply, resulting in long delays to the development of private and state minerals, denying individuals and states their private property rights.
2. BLM uses the federal nexus to require tribal consultation for cultural artifacts on private land, even when there’s no federal public or tribal lands in the area and only a minority of federal minerals interests. When private landowners wisely refuse federal or tribal members to access their lands, it puts operators in a bind because BLM won’t let the process move forward. This leads to BLM deferring APDs until the consultation is complete, causing further delays. The assertion of tribal rights on private lands around the DAPL protest site is an example of why private landowners do not want cultural artifacts asserted as existing on their private lands.

Furthermore, BLM arbitrarily defines the Area of Potential Effects (APE) to incorporate a broad area of land so that the need to consult is triggered even when the actual cultural site is avoided. In the Powder River Basin in particular, BLM is conducting far-reaching tribal consultations for 23 tribes who do not have tribal lands in the area. These consultations can hold up project NEPA and APDs indefinitely.

3. BLM field offices arbitrarily add new requirements to APDs and require producers to conduct new and redundant analysis without a basis in law or regulation. Companies have been asked to perform extra cultural, wildlife, flood plain or other surveys, even after complying with existing regulations. Arbitrary requirements lengthen the APD processing time both for the operator and for BLM. Requirements vary greatly from field office to field office, further frustrating operators.
4. BLM frequently fails to meet the 30-day statutory deadline for permit approval set forth in the Energy Policy Act of 2005 (EPAAct). The federal government is much less efficient than states in managing energy development, taking an average of more than 250 days to issue drilling permits in 2016 compared to about 30 days on average for state agencies. Furthermore, federal permitting requirements are redundant with state requirements, as companies must also obtain

both federal and state permits for federal wells.

5. Lengthy APD timeframes often occur because BLM is conducting redundant NEPA analysis. BLM is not granting Categorical Exclusions (CX) when companies meet the criteria under Section 390 of the Energy Policy Act of 2005 and in many situations automatically requires another Environmental Assessment, rather than even considering a CX. In contravention of EAct, BLM is requiring duplicative NEPA for: 1) wells involving less than five acres of disturbance with total lease disturbance of less than 150 acres that already have site-specific NEPA; 2) new wells on pads drilled within the last five years; and 3) areas covered by an existing NEPA document that is five years old or less. As a result, APDs are delayed months and years awaiting redundant NEPA analysis, in direct violation of statute.
6. BLM moved to an online system known as the Automated Fluid Minerals Support System (AFMSS II) in 2016. The system has numerous flaws which slow down the ability to submit an APD, and the process flow for review and approval is inefficient. Entering the data is tedious, requiring detailed data entry for many unnecessary and inapplicable fields before the program allows a company to submit its APD. These additional requirements further delay the application process and in many cases are beyond the scope of Onshore Order 1 and the Resource Management Plan (RMP) stipulations for that lease. Glitches with the operating system also cause information to be lost and have to be re-entered, adding to the time it takes to complete the submission. Finally, BLM staff cannot work on multiple APDs simultaneously, so they must finish one before moving to the next.
7. There is a lack of transparency in the APD process, and companies cannot tell which APDs BLM is actively evaluating and which are held up in the queue. Because of long lead times, companies don't know if their permits will take two months or two years and they must request permits well in advance of when they actually plan to drill in order to stay ahead of their rigs. BLM does not have the reporting capability to create statistical timelines of the 24 different review steps in the database.
8. BLM's aggregate data about the onshore oil and gas program regarding APD timelines, and APDs spud but not drilled are collected inconsistently and released publicly just once a year, which does not give visibility to the ebb and flow as permits are approved and then get drilled. BLM's annually released chart on [APD processing times](#) is of dubious quality, as field offices track processing time very differently, and do not start and stop the clock in any consistent manner. Without consistent data, it is impossible for BLM to draw conclusions about the average amount of time spent by operators versus BLM, or even to have any confidence that the overall average processing time is valid. Poor data misleads the public.

Recommendations

1. BLM should work with Congress on a bill to limit the federal nexus to situations only where federal lands are involved and/or there is a majority of federal minerals. The federal

government would then receive royalties as any other minority mineral owner through a normal pooling/unitization agreement. The Interstate Oil & Gas Compact Commission (IOGCC), a multi-state government agency representing oil and natural gas producing states, has issued [a resolution](#) urging delegation to the states for approval of drilling permits on federal public land.

2. BLM should issue an IM or other policy guidance to prevent field offices from requiring tribal consultation on private and state lands. The guidance should specify that a Class III Cultural Inventory approved by BLM provides the information necessary to approve the APD. The inventories must be conducted by appropriately credentialed archeological experts, which may be contractors.
3. In an overall permitting IM or further guidance resulting from Secretarial Order 3354, BLM should direct field offices to follow established regulations and onshore orders when requesting information from operators for their APDs, and prohibit them from requiring extraneous analysis and surveys.
4. Congress and the Administration should work on legislation to delegate authority to state agencies for approving drilling and completion permits, leaving BLM free to focus on its core mission of managing federal lands and surface use. Short of legislation, BLM could enter into memoranda of understanding (MOU) with the states to delegate many downhole permitting aspects to the states, short of final official approval by BLM.
5. In an overall permitting IM or further guidance resulting from Secretarial Order 3354, BLM should direct all field offices to issue CXs when any of the Section 390 criteria are met. BLM's NEPA handbook already provides that direction, so a rewrite to it is not required. Environmental analyses for surface impacts should rely on the RMP and not require redundant analysis; permit applications should only need to restate the RMP's requirements.
6. AFMSS II should be simplified to only record basic information such as well location and company information, while allowing for attachments that provide the more detailed drilling and surface use plans. BLM should limit the amount of information required in an APD to what is set forth in federal regulations, specifically Onshore Order 1, and what is necessary to abide by lease stipulations. These documentation requirements should be consistent across field offices. Finally, BLM should accept applications through the old Well Information System or via paper copy until AFMSS II's glitches have been resolved.
7. If AFMSS II continues to be the sole system for processing APDs, companies should be able to query each of their APDs in the system and see where they are in the process. BLM should also provide a description of each of the 24 steps in the review process to help operators better understand what each step entails and provide a better sense of general timelines. Equipping operators with this knowledge of the system would allow them to identify when there may be a problem with the APD that could be resolved by operator outreach to BLM.

8. AFMSS II should be updated to enable BLM to track data regarding APD processing times in a consistent manner across all states, and make these data available in a consistent manner at the field office, state, and national level. Short of that system upgrade, BLM should release the raw data for APD processing times, and wells spud but not drilled, as it does for the basic leasing data and raw APD numbers. Doing so would make the data released annually on the Oil & Gas Statistics page consistent and better inform the public.