



June 30, 2016

Submitted via email: BLM_UT_PR_MAIL@blm.gov

BLM Price Field Office
125 South 600 West
Price, UT 84501

Re: Notice of Intent to Prepare a Master Leasing Plan, Amend the Resource Management Plans for the Price and Richfield Field Offices, and Prepare an Associated Environmental Assessment, Utah

Dear Sir/Madam:

Western Energy Alliance appreciates the opportunity to submit scoping comments on the Bureau of Land Management's (BLM) Master Leasing Plan (MLP) for the San Rafael Desert. However, we do not believe it is appropriate for BLM to prepare an MLP at this time, and we respectfully request BLM refrain from further development of any such plan.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in Utah and across the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

We are concerned about the MLP for several reasons. The introduction of Master Leasing Plans in 2010 marked a major change to the planning process for oil and natural gas development which was neither necessary nor appropriate. BLM is also currently updating its resource management planning (RMP) process through the Planning 2.0 initiative, a highly interrelated effort. Like MLPs, the Planning 2.0 effort will add additional layers of National Environmental Policy Act (NEPA) analysis, and the Planning 2.0 effort will have significant bearing on all BLM planning documents, including MLPs. Therefore, MLPs should not proceed forward while the planning process is being updated.

The development of the MLP is of questionable need, purpose, and legality. The Price and Richfield RMPs were completed in 2008, with significant public input and agency effort over a multi-year period. The Secretary of the Interior created the new MLP process in 2010, adding another unnecessarily lengthy process that will further constrain and impede mineral development on federal lands.

Given the lengthy public comment opportunity afforded attendant to the 2008 Price and Richfield RMPs, the need to create another lengthy public process is unclear. The uncertainty affiliated with possible overlapping constraints applied to any development will also be substantial. The RMPs already provide constraints on development, and there

is no need to further restrain development or place restrictions on how development can occur.

Any ambiguity in the MLP regarding the application of constraints to valid existing rights will likely result in added legal review to settle questions of how far new constraints can be applied to operations on pre-existing leases, or valid existing rights, and how far legal operating rights granted with leases can be modified or constrained. BLM is subject to an express statutory and regulatory mandate to protect valid existing lease rights, which precludes BLM from rendering leasehold development uneconomic by imposing restrictions that unreasonably conflict with existing development rights.¹

Western Energy Alliance is further concerned that BLM continues to develop and implement MLPs despite a lack of legal authority. BLM adopted its MLP planning process as an Instruction Memorandum (IM) in private, without involving the public.² Yet the Federal Land Policy and Management Act (FLPMA) establishes a congressional requirement to develop, and standards for the content of, BLM RMPs.³ BLM regulations establish a clear and precise process for developing and amending those RMPs.⁴

The 2010 IM amends and alters these regulations by adding new standards and requirements, without a public process. For example, the IM establishes new criteria for when an MLP should be prepared.⁵ Unlike the regulations governing the development and revision of RMPs, the IM deems that certain leasing recommendations are not appealable or protestable decisions.⁶

The Administrative Procedures Act (APA) requires agencies to adhere to three steps when they promulgate rules: (1) give the public notice of the proposed rulemaking in the Federal Register; (2) afford “interested persons an opportunity to participate ... through submission of written data, views, or arguments”; and (3) explain the rule ultimately adopted.⁷ None of that happened for the 2010 IM, which was adopted with no public process. BLM must address the legality of its reliance upon the MLP policy before issuing a final MLP that may be subject to immediate invalidation given that IM 2010-117 was not issued in compliance with the APA.

Furthermore, BLM is currently undergoing a separate rulemaking which may dramatically alter its management of public lands. The Planning 2.0 initiative, as BLM refers to it, has been a massive undertaking which will have far-ranging consequences for oil and natural gas development on public lands. The effort seeks to overhaul the planning process, and it

¹ 43 U.S.C. § 1701 note (h); 43 U.S.C. § 1610.5-3(b) (requiring BLM to recognize valid existing lease rights); *Conner v. Burford*, 848 F.2d 1441, 1449-50 (9th Cir. 1988).

² *Instruction Memorandum (IM) 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews*.

³ 43 U.S.C. § 1712(a).

⁴ 43 C.F.R. § 1610.

⁵ *IM 2010-117* at 4.

⁶ *IM 2010-117* at 5.

⁷ 5 U.S.C. § 553(b)-(c).

is imperative that the public has clarity on how Planning 2.0 will change land use management before BLM proceeds with the San Rafael Desert MLP.

Western Energy Alliance opposes the proposed Planning 2.0 rule BLM, and submitted comments requesting BLM rescind the proposed rule. Should BLM continue forward with the rule, however, it should not simultaneously issue complex planning documents such as the San Rafael Desert MLP. As MLPs provide a further level of planning within the constraints of an RMP, they will necessarily be affected by the changes made through the Planning 2.0 rule. The exact effects are unknown and unknowable while the rulemaking process is ongoing. Therefore, BLM should not proceed with development of this MLP, and certainly not while the proposed Planning 2.0 rule is ongoing.

In the meantime, BLM must proceed with leasing consistent with the RMPs already in place for the Price and Richfield Field Offices. The Price and Richfield RMPs were finalized relatively recently in 2008, and they provide for reasonable oil and natural gas development in the relevant areas with some restrictions. Under the Mineral Leasing Act (MLA), BLM must continue to make leasing decisions during a planning process. The MLA requires that all public lands not specifically closed to leasing be open to lease for the exploration and development of oil and gas resources. Development of this MLP, which will likely take years, is not a valid excuse to defer leases or otherwise prevent oil and natural gas land management decisions from moving forward.

Finally, if BLM does proceed with the MLP, we note that the stated “purpose” of the 2010 IM is to “ensur[e] orderly, effective, timely, and environmentally responsible leasing of oil and natural gas resources” and to “create more certainty and predictability, protect multiple use values ... and provide for consideration of natural and cultural resources” Any MLP should reflect this purpose and not be solely limited to consideration of additional constraints on oil and natural gas development. BLM should craft a purpose and need statement that promotes development of oil and natural gas resources, which in turn should drive the remainder of BLM’s analysis and the alternatives that BLM considers.

Western Energy Alliance appreciates the opportunity to provide these comments, although we urge BLM not to proceed with development of an MLP at this time. Please do not hesitate to contact me with any questions.

Sincerely,



Kathleen M. Sgamma
Vice President of Government and Public Affairs