

## PUBLIC LANDS ADVOCACY

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August 10, 2011

Regulatory Review  
Office of the Executive Secretariat  
and Regulatory Affairs  
Department of the Interior  
Room 7311  
1849 C Street, NW  
Washington, DC 20240

VIA Email: <http://www.regulations.gov/>

RE: **Docket DOI-2011-0001**  
**Reducing Regulatory Burden; Retrospective Review under E.O. 13563**

Dear Deputy Secretary Hayes:

The following comments are provided in response to the Department of Interior's second request for public comments on reducing regulatory burdens published in the July 11, 2011 *Federal Register*. For the record, Public Lands Advocacy (PLA), Colorado Petroleum Association (CPA), International Association of Geophysical Contractors (IAGC), Montana Petroleum Association (MPA), Petroleum Association of Wyoming (PAW) and Western Energy Alliance (formerly IPAMS), submitted detailed comments on March 28, 2011, which supported the declared intent of EO 13563—improving the regulatory system by using the best, most innovative, and least burdensome tools to achieve regulatory goals. We also urged the Department to conduct a comprehensive, straightforward review of current regulations and policies which create redundant requirements that are causing substantial but preventable delays in processing federal onshore oil and natural gas leases and permits.

These comments explicitly identified several regulatory practices that cause needless permitting delays or have resulted in costly and time consuming duplicative analytical requirements under the National Environmental Policy Act (NEPA). While these comments were very briefly acknowledged in the *Preliminary Plan for Retrospective Regulatory Review*, they were summarily dismissed by the Department when it settled on priorities for regulatory review. Instead DOI opted to focus most of its immediate efforts on facilitating offshore wind and other alternative energy developments along with, we surmise, ways to modify offshore oil and gas development similar to what has been done onshore.

The Two Year Initial Plan also fails to acknowledge the need to revisit the redundant onshore leasing reform procedures. We note recent DOI/BLM claims these reforms have resulted in fewer protests of lease sales. While there may be fewer protests, it is not because these duplicative analyses have proven effective in reducing protests. The truth of the matter is that fewer leases

are being offered for sale. It is evident that if leasing in certain areas has received any opposition from special interest groups, BLM is prohibited from putting the tracts up for sale, regardless of their proximity to already developed oil or gas fields or protective lease stipulations. Recently, BLM has been forced to hold lease sales with as few as one parcel as compared to over one hundred parcels under previous administrations.

As noted in our March comments, this administration has issued **72 percent** fewer acres for lease than the first two years of the Clinton administration and 67 percent fewer acres than the first two years of the Bush administration. In addition, revenue from onshore royalties on production and rents and bonuses paid for leases declined by 33 percent between 2008 and 2010, from \$4.2 billion to \$2.8 billion<sup>1</sup> – at a time when commodity prices were on the rise.

Despite the fact that leasing for and production of oil and natural gas on federal lands has declined by 50 percent over the past two decades and the federal Energy Information Administration (EIA) prediction that global energy demand will increase by 44 percent between 2006 and 2035, we are startled by the administration's continued focus on renewable energy sources at the expense of traditional, proven energy development on public lands. While our support of development of the full range of available energy sources to meet the nation's future needs has been made clear, it is vital for the Department and Administration to recognize the practical and economic realities in meeting the Nation's future energy requirements.

It is folly to ignore EIA projections that renewable and alternative fuels *might* provide 12-17 percent of U.S. energy demand over the next 20 years. EIA has also made it clear that the remaining demand will have to be met by traditional energy sources, such as coal and fossil fuels. As such, it is rash to commit to the whole-sale substitution of current energy sources with technologies that have yet to be proven capable of providing the energy needed to fuel our already severely compromised security and economy. Of equal importance are EIA estimates that capital costs of an onshore wind plant are 2.5 times higher than for a natural gas combined cycle plant. Moreover, a wind plant's fixed operation and maintenance costs are double those of the natural gas plant. For an offshore wind plant, capital costs are over 6 times higher and over 3.5 times higher for the fixed operation and maintenance costs compared to a natural gas facility. These higher wind costs will be passed on to consumers who will find it even more difficult in these depressed economic times to manage unbridled increases in their energy bills.

An Institute for Energy Research article published January 26, 2011, entitled *Wind Finishes 2010 with Poor Showing in Capacity Increases*, indicates the only way for the wind industry to succeed is for the government to adopt a renewable electricity standard and to require set percentages of renewable energy generation in the future. Of greatest concern, is that wind generation costs considerably more than natural gas generation, is not reliable, cannot be transported, and is already hugely subsidized by the very public that must shoulder the ensuing higher energy costs.

In conclusion, we reiterate our earlier comments which strongly opposed the Department's adoption of anti-traditional energy policies that further weaken our economy and national security. It is crucial for the Department to fully reconsider recent policies that thwart domestic onshore oil and gas leasing, development and transportation activities. Placing high energy potential domestic lands off limits to natural gas and oil exploration and development ignores the fact that

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<sup>1</sup> Western Oil and Natural Gas Dashboard, 12/9/2010, Western Energy Alliance

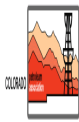
expanding world energy demand can only negatively impact America’s future economic stability, particularly if the federal government does not take proactive measures. Therefore, we urge the Department to reconsider these onerous land management policies and devise new policies consistent with the BLM’s multiple use mission and provide for a “true” balance of land uses.

Sincerely,

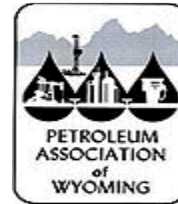
A handwritten signature in cursive script that reads "Claire Moseley". The signature is written in black ink and is centered on the page.

Claire M. Moseley

Attachment – March 28, 2011 Comments



CPA promotes and protects the interests of oil and gas companies, related businesses, and oil and gas users through public and professional education, lobbying, regulatory activities and media relations.



March 28, 2011

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VIA EMAIL: [RegsReview@ios.doi.gov](mailto:RegsReview@ios.doi.gov)

**RE: Comments on Improving DOI's Regulations—Docket Number DOI-2011-0001**

Dear Sir/Madam:

On behalf of Public Lands Advocacy (PLA), Colorado Petroleum Association (CPA), International Association of Geophysical Contractors (IAGC), Montana Petroleum Association (MPA), Petroleum Association of Wyoming (PAW) and Western Energy Alliance (formerly IPAMS), following are comments in response to the Department of Interior's Request for Information in the *Federal Register* dated February 25, 2011, *Reducing Regulatory Burden; Retrospective Review Under E.O. 13563*. The signatories to these comments are all non-profit trade groups who represent the many facets of the petroleum industry. Our goal is to foster environmentally sound exploration and production on public lands. We support the President's Executive Order (EO) 13563, Improving Regulation and Regulatory Review, issued on January 11, 2011. We fully agree with his stated intent that our *"regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation"* and it must *"use the best, most innovative, and least burdensome tools to achieve regulatory ends."* As such, we urge the Department to conduct a comprehensive, genuine and realistic review of its current regulations and policies in order to identify areas where regulations result in redundant requirements which cause significant but preventable delays in processing federal onshore oil and natural gas leases and permits.

Given the barrage of new, burdensome policies and procedures imposed by the Department on domestic oil and gas exploration and production on public lands, we ask that our comments be given conscientious consideration. We offer our comments in a good faith effort to elucidate our views and concerns. In addition to a permitting issue, these comments focus on purported process improvements associated with onshore federal oil and gas leasing. For the record, we support comments submitted by other energy trade groups that address additional elements of oil and gas activities on public lands.

## INADEQUATE COMMENT PERIOD

We are concerned this Request for Information may be simply a perfunctory exercise. Evidenced by the 30-day time frame, we question the Department's commitment to receiving comprehensive recommendations from those who are directly affected by federal regulations and processes. Federal regulations are wide-ranging and multifaceted and the expectation that comprehensive comments can be prepared in such a short time is unreasonable. The breadth of this request is no less complex than reviewing a proposed rule or draft environmental impact statement for which the comment period is typically 60 to 90, and in some cases, 120 days. Therefore, we recommend the Department keep the comment period for this Information Request open for a minimum of an additional 60 days.

## GENERAL

The domestic onshore energy program is in disarray. The U.S. Geological Survey reports that federal lands hold 69 percent of the nation's undiscovered oil and 51 percent of its natural gas – public lands are crucial to America's energy future. However, 60 percent of these lands are inaccessible to leasing and development according to the 2008 EPCA Phase III report. That figure is growing due to withdrawals and deferrals of parcels from lease sales and inaction on issuance of leases already sold throughout the Rocky Mountain West. To date, millions of acres of leases have been withdrawn or deferred.

It is of great concern that leasing for and production of oil and natural gas on federal lands has declined by 50 percent over the past two decades, which has escalated to an even greater degree under the current administration. According to a recent report by Western Energy Alliance, this administration has issued 72 percent fewer acres for lease than the first two years of the Clinton administration and 67 percent fewer acres than the first two years of the Bush administration. In addition, revenue to the federal treasury from onshore royalties on production and rents and bonuses paid for leases declined by 33 percent between 2008 and 2010, from \$4.2 billion to \$2.8 billion<sup>2</sup> – at a time when commodity prices were on the rise. It is notable that approximately 50 percent of this revenue is shared with states in which these leasing and production activities occur. Given our energy and economic needs, these noteworthy declines are contributing to increased energy dependence on foreign supplies and greater U.S. economic instability.

The Energy Information Administration predicts global energy demand will increase by 44 percent between 2006 and 2035, meaning greater competition among countries for foreign supplies and significantly higher energy prices. While the U.S. will be unable to fully offset its dependence on foreign energy sources, we have abundant natural gas, coal, oil, shale gas, and oil shale resources onshore and offshore to help counterbalance future supply needs. However, only a portion of these resources are in development today even though extensive potential exists for additional production through greater efficiency and technological advances. The Western states produce 27 percent of domestic natural gas and 14 percent of domestic oil, 42 percent of which have been produced from federal lands. Onshore federal lands hold 69 percent of the nation's undiscovered oil and 51 percent of its natural gas; however, as pointed out above 60 percent of these lands are unavailable.

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<sup>2</sup> Western Oil and Natural Gas Dashboard, 12/9/2010, Western Energy Alliance

While we agree it is necessary to seek development of the full range of available energy sources to meet the nation's future needs, it is essential for the Department and Administration to recognize the practical and economic realities in meeting our future energy challenges. EIA has projected that renewable and alternative fuels *might* provide 12-17 percent of U.S. energy demand over the next 20 years while the remaining demand will continue to be met by traditional energy sources, such as coal and fossil fuels.

In summary, it is crucial that the Department take a thorough look at current regulatory processes that impede or preclude responsible domestic energy production. Regulations and policies that protect the future of the United States are needed to ensure our economy and national security remains strong. The federal government cannot ignore the rapidly growing world energy demand that will dramatically impact America's future viability. Clearly, we need to protect sensitive resource values; but, at the same time, we need to protect our nation's future through sensible land use decisions and policies that provide for growth and development of domestic energy resources. Recognition that new technologies can convert previously uneconomic resources into significant, viable reserves is essential.

***(2) How can DOI reduce burdens and maintain flexibility and choice for the public in a way that will promote its mission?***

Existing regulations are inadequate in terms of appealing specific provisions of decisions associated with federally delegated Clean Air Act and Clean Water Act permits, and state or BLM approved applications for permit to drill (APD and Plans of Development (POD)).

**Recommendation:** The current federal permitting process is "all or nothing." When a permit (i.e., air emissions or water discharge) is approved and issued, the permittee can only appeal it in its entirety or accept the terms and conditions of the permit in its entirety. If a permit is appealed, it is not issued until the appeal is resolved. Since the permit approval process is often unduly lengthy and permits are fundamental to project progress, permittees are essentially forced to accept unwarranted or unjustified provisions in their permits because they do not have the luxury of waiting for resolution of an appeal of the entire permit.

The only available option to "fix" a permit is to request "*modification*" of the permit after the permittee begins operations in accordance with its requirements. Unfortunately, it takes as long to modify the permit, provided the agency agrees, as it takes to obtain the original permit. This process encourages excessive and unnecessary "regulatory creep" in new permits. For example, a new misguided or unfounded requirement is unilaterally added to a permit for Company A, but Company A does not appeal. This same unnecessary requirement is then inserted into permits for Company B, Company C, et. al., until an operator finally objects, even though the permit will be inordinately delayed due to the appeal process.

The current permitting process is designed to allow for the suggested removal/addition of revisions when the permit is placed in the Public Notice/Public Comment process. Unfortunately, the agencies typically do not consult with the permittee prior to issuing a draft permit to Public Notice. We strongly recommend resolution of significant technical/regulatory disagreements between the agency and the permittee be accomplished in face-to-face meetings prior to the notice being published. These disagreements would then not be on the public record and the

agency would not need to publically justify their actions and any mistakes could be easily corrected. Due to the complex nature of oil and gas operations, regulators do not always fully understand the nature of a permittee's project. Once the permit goes to public notice, any permittee criticism of the draft permit for technical/regulatory mistakes and/or overreaching of the permit requirements during Public Notice are now on the public record. Any subsequent revisions in the permit based on permittee input will be characterized by NGOs as collusion with the permittee, therefore the agency is mostly likely to defend their incorrect permit provisions rather than correct them.

We recommend this process be changed in accordance with our suggestions.

**Question 3: *Does DOI have rules or guidance that are duplicative or that have conflicting requirements among its bureaus or with other agencies?***

#### Onshore Oil and Gas Leasing Reform

On May 17, 2010, BLM issued Instruction Memorandum (IM) 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews. The basis for this reform stemmed from claims that 77 federal oil and gas leases were issued inappropriately in Utah. The leases were subsequently cancelled by the Secretary of Interior, who charged the parcels did not receive environmental reviews appropriate for sensitive landscapes and were a last-minute rush by the prior administration to issue leases. However, the Interior Department's Inspector General subsequently concluded in a December 2009 investigative report that: the completed resource management plans and subsequent lease sales were not rushed by the Bush administration, no inappropriate actions occurred in relation to the sale and that the parcels were fully and appropriately reviewed before they were included on the sale.

Nevertheless, under the guise of inadequate environmental review, millions of acres of leases in the Western states have already been delayed or deferred by the Department pending completion of new analyses related to implementation of this new lease reform policy. In addition to reducing the number of lease sales in Wyoming from 6 per year to 4, the leasing reform program has created new duplicative layers of review Bureau-wide before new lease parcels can be offered for bid.

In accordance with the Federal Land Policy and Management Act, BLM Field Offices determine which lands will be made available for lease and under what constraints through BLM's land management planning process. This process, managed by an interdisciplinary team of resource experts, is conducted by preparing a comprehensive analysis in accordance with the National Environmental Policy Act, including full public involvement. Land use planning is the principal method BLM uses to establish the balance between land use and resource protection. Resource Management Plans (RMP) are used by managers to: allocate resources and determine appropriate multiple uses for the public lands; develop a strategy to manage and protect those resources; and establish systems to monitor and evaluate status of resources and effectiveness of management practices over time.

Prior to the leasing reform program, a lease tract could be nominated by a prospective lessee and field offices were required to:

- Adjudicate nominated lease parcels; typically it would take 6 months for the tract to appear on a sale, while BLM:
  - Conducted an internal data review to determine whether new resource information was available, a land use plan review (Determination of NEPA Adequacy) and consulted with other state and federal agencies to confirm whether leasing a proposed tract for oil and gas would be in conformance with the adopted land use plan and to ensure appropriate stipulations were attached to a lease parcel in accordance with the land use plan. This review process would typically require 3 weeks to complete.
- A lease sale notice was then published and publically posted for 45 days, which identified lease parcels and their stipulations.
- 30-days of the posting period served as the protest period
- Up until February 2009, BLM State Offices handled protests and issued decisions within a few months, depending upon the number of protests received. It must be noted that very nearly every lease sale in the Rocky Mountain West has been protested by the same groups using the same arguments over the past decade or more. As such, BLM was able to establish reasonable responses to these protests, which enabled them to resolve them in relatively short order. Beginning in February 2009, BLM was instructed to send all protests to the Washington office for disposition. Consequently, it now takes up to two years to resolve protests.

Under the new Leasing Reform Program, when a lease tract is nominated by a prospective lessee, field offices are now required to:

- Adjudicate nominated lease parcels; however, BLM now requires an additional 6 to 8 months for review in order to complete the following processes:
  - Use Interdisciplinary Teams to conduct a new, comprehensive environmental review of individual parcels.
  - Conduct an on-the-ground reconnaissance of parcels.
  - Identify interested groups and individuals seek their involvement.
- Prepare a new environmental assessment (EA) for every lease sale which evaluates existing lease stipulations to determine whether they should be revised or whether new stipulations should be added. This process now requires in excess of 18 weeks to complete.
- The EA is subject to a 30-day comment period
- Notice of lease sale is posted for 90 days
- Within those 90 days, parties have 30 days to protest the unsigned EA after which BLM has another 60 days to attempt to resolve protests received prior to holding the sale. If BLM fails to resolve the conflict, the lease tract may or may not be removed from the sale and lessees must await a decision from Washington.

Coupled with the Department's refusal to allocate additional funding and staffing to accomplish this unwarranted, time-consuming and work-intensive leasing process in a timely manner, BLM State Offices have been forced to rotate lease sales among field offices. Rather than holding 4 lease sales a year that include lease parcels from all field offices, BLM can now hold only two lease sales per district per year. Consequently, a company seeking to establish the viable leasehold needed prior to drilling is forced to wait at least twice as long to assemble the lease block necessary to protect its investment.

**Recommendation:** The justification provided by DOI for this time consuming, duplicative process is that it is intended to limit lease sale protests. So far, this has not been the result. Despite the increased delays and analyses, protests have still been filed on every lease sale, even when there is only one parcel up for sale. Clearly, this new process has not resulted in any process improvements and should be immediately rescinded because it is ineffective and needlessly duplicative.

### Master Leasing Plans

In addition to requiring site-specific leasing EAs, the IM established four criteria designed to determine whether a Master Leasing Plan (MLP) and environmental impact statement (EIS) should be prepared. In such areas, MLPs would be prepared as an RMP amendment before leases are issued, would reconsider existing leasing decisions contained in RMPs and would be subject to public involvement through the NEPA process. As part of the MLP/plan amendment process, BLM will re-examine development scenarios and protection measures. Initially, MLPs were to be considered only if an area met all four of the criteria below:

- A substantial portion of the area to be analyzed in the MLP is not currently leased
- There is a majority of federal mineral interest
- The oil and gas industry has expressed a specific interest in leasing, and there is a moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area
- Additional analysis or information is needed to address likely resource or cumulative impacts if oil and gas development were to occur whether there are:
  - Multiple-use or natural/cultural resource conflicts
  - Impacts to air quality
  - Impacts on the resources or values of any unit of the National Park System, national wildlife refuge, or National Forest wilderness area, as determined after consultation or coordination with the NPS, the FWS or the FS; or Impacts on other specially designated areas

Based upon the four original criteria, many BLM State Offices determined few areas met the criteria and only a limited number of MLPs would be considered. However, since numerous proposed MLPs were recommended by special interest groups, the Department has added a fifth criterion which leaves the option to prepare a MLP open to the discretion of the federal land manager, regardless of whether an area under consideration meets the four criteria described above. In many cases, these recommended MLP areas transcend BLM Field Office jurisdictional boundaries, are limited to the Rocky Mountain States, and encompass currently leased areas with on-going development.

**Recommendation:** In areas where there is already significant leasing or interest in new leasing and RMP revisions have been completed within the last 5 years or where RMP revisions are currently under way, we recommend against preparing MLPs because to do so would constitute a waste of taxpayer dollars and agency funding to prepare duplicative environmental analysis. NEPA/planning analyses go far beyond the primary leasing focus to be addressed in an MLP. RMPs utilize a broad perspective when evaluating whether planning areas should be closed to

leasing, open to leasing, or open to leasing with major or moderate constraints. RMPs also establish resource condition objectives and the best management practices that will be used to meet these objectives in areas kept open to leasing. In areas where there have been no changing circumstances, updated policies, or new information that is already being addressed in an ongoing RMP amendment or revision, there is no need for an MLP. These existing NEPA planning documents have already ensured or will ensure sufficient protection of resource values that would be considered during development of an MLP.

### Wild Lands

On December 23, 2010, the Interior Secretary released Secretarial Order 3310, which establishes a new class of lands to be managed for the preservation of wilderness characteristics – wild lands.

**Recommendation:** Wild lands will be outside areas designated as Wilderness Study Areas or units of the National Wilderness Preservation System; further, such Wild Lands will be declared without benefit of Congressional oversight. We object that this new program is being instituted without opportunity for public comment from those who will be directly impacted, specifically the Western states, where the majority of BLM lands occur. The breadth of the Order poses tremendous uncertainty for oil and gas lessees and other permittees, and threatens financial impacts for states and rural communities that rely upon public lands to support their economies, tax bases and schools. Moreover, the Order constrains the ability of the BLM to meet its current obligations to lessees and permittees, implement recently completed resource management plan revisions, or advance those that are underway. Finally, the Order siphons off BLM's severely limited financial and staff resources to implement a questionable program designed to limit multiple-use activities on public lands.

The Order indicates these reviews will be accomplished as part of the plan revision process or during the National Environmental Protection Act (NEPA) analysis for proposed projects. In meetings with BLM State Offices, we have learned the Order has already resulted in BLM delaying release of completed resource management plans in order to reassess land use decisions in areas that may have wilderness character. It has also resulted in similar delays of permit approvals for lessees that hold valid existing rights in areas that may contain wilderness values. The projects facing delay include “clean energy” proposals, such as transmission lines for wind power. The duration of these delays is unknown because the Washington office has not yet provided policy guidance. It is our understanding the guidance will be followed by a Bureau-wide plan that assigns protection of wilderness characteristics priority over other resources and uses in land use planning.

That the Order gives BLM the ability to unilaterally confer Wild Lands status on an area, through “project level decisions,” is also cause for great concern. The Order was adopted without addressing the important questions of whether BLM has the authority to make such decisions absent conducting necessary NEPA analysis regarding the broad impacts of the Order on public land management. This provision enables BLM to arbitrarily stall permits, project NEPA documents and leasing, without following the current land use plans. While the Department claims it will rely upon the existing FLPMA resource management planning process, the fact remains that this huge loophole enables DOI to circumvent the will of Congress and well-established law. In practice, “wilderness characteristics” and “wild lands” are subjective terms

and it has been widely observed that BLM has often treated non-pristine lands with obvious man-made improvements such as roads, active and inactive wells, agricultural structures, and even an air strip, as if they contained wilderness characteristics. This Order unlawfully confers authority to BLM to circumvent FLPMA, which DOI does not have.

The first lawsuit, of many expected, has already been filed by Uintah County and the Utah Association of Counties. Other Western states are also considering their legal options. Therefore, it is our recommendation that implementation of the wild lands Order be halted pending the outcome of this legal and other challenges.

#### Conclusion

Rather than adopting policies that protect the future of America, the Department and Administration are adopting anti-traditional energy policies that further weaken our economy and national security. Placing high energy potential domestic lands off limits to natural gas and oil exploration and development ignores the fact that expanding world energy demand can only negatively impact America's future economic stability, particularly if the federal government does not take proactive measures. Therefore, we urge the Department to withdraw these onerous land management policies and devise new policies consistent with the BLM's multiple use mission and provide for a "true" balance of land uses.

Sincerely,



Claire M. Moseley  
Executive Director  
Public Lands Advocacy



Stan Dempsey  
President  
CPA



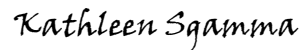
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