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August 24, 2026

SUBMITTED VIA REGULATIONS.GOV

Stevan Pearce
U.S. Department of the Interior, Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Attn: 1004-AF05

Re: Comments on the Bureau of Land Management's Proposed Rule on Oil and Gas Leasing

Dear Director Pearce,

Thank you for the opportunity to comment on the Bureau of Land Management's (BLM) proposed Oil and Gas Leasing Rule (hereinafter, the "Proposed Rule").[1] The BLM proposes to revise its oil and gas leasing regulations to codify provisions of the One Big Beautiful Bill Act (OBBBA) and implement policy direction in Executive Orders 14154 and 14219 and Secretary Order 3418.[2] Because the Proposed Rule misconstrues OBBBA and would dismantle important measures adopted in 2024 to modernize the federal onshore oil and gas leasing program, protect public lands, and ensure a market-based return to taxpayers, we strongly oppose this rulemaking and urge the BLM to maintain the existing reforms.

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[1] Oil and Gas Leasing, 91 Fed. Reg. 38,084 (proposed June 24, 2026) (to be codified at 43 C.F.R. pts. 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, and 3180).
[2] 91 Fed. Reg. at 38,086.

In 2024, the BLM promulgated the Fluid Mineral Leases and Leasing Process rule (hereinafter, the "2024 Leasing Rule") as the first comprehensive update to the regulations governing the federal onshore oil and gas leasing program since 1988.[3] For decades prior, that program gave top priority to oil and gas development above all other public land uses, fostering both an unsustainable and unpredictable revenue stream for American taxpayers and harm to public lands and resources. Thus, the Government Accountability Office (GAO) and numerous other parties repeatedly urged the Department of the Interior (DOI) to make fundamental changes. The 2024 Leasing Rule directly responded to those recommendations and addressed many of the issues long plaguing the program.

But now, the BLM is proposing to reverse course without supplying a reasoned factual or legal basis for doing so. The BLM instead relies on an incorrect and overly narrow interpretation of OBBBA, treats public participation and environmental protections as unnecessary impediments to aggressive development, and proposes to transfer significant costs and risks from industry to taxpayers. As discussed in this comment, the Proposed Rule fails to account for, let alone comply with, the BLM's continuing statutory obligations under the Mineral Leasing Act (MLA), Federal Land Policy and Management Act (FLPMA), National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA), among other laws.

The BLM should withdraw the Proposed Rule and maintain the existing regulatory protections for taxpayers, communities, and public lands. At a minimum, any final rule must recognize the BLM's continuing statutory responsibilities and leasing discretion, preserve meaningful public involvement, maintain adequate financial and environmental safeguards, and require the oil and gas industry—not the public—to bear the reasonable costs associated with the federal onshore oil and gas leasing program.

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[3] Fluid Mineral Leases and Leasing Process, 89 Fed. Reg. 30,916 (Apr. 23, 2024).

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I. Background on the Federal Onshore Oil and Gas Program and Significance of the 2024 Oil and Gas Leasing Rule

The BLM is the nation's largest land management agency, managing 10% of the United States' landmass and 30% of the nation's subsurface minerals.[4] Despite the fact that the BLM is required under FLPMA to manage public lands for multiple uses and sustained yield,[5] and that federal court rulings have repeatedly upheld that oil and gas development is not the primary use of public lands and that other valid uses such as recreation, fish and wildlife conservation, and renewable energy development must also be considered,[6] the agency has long favored oil and gas development above all other uses of public lands.[7]

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[4] *See, e.g.*, DOI, *BLM Budget: The President's Fiscal Year 2024 Budget Request for the Bureau of Land Management* (Mar. 29, 2023), *available at* https://www.doi.gov/ocl/blm-budget.
[5] 43 U.S.C. §§ 1701–85.
[6] *See*, *e.g.*, *N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 710 (10th Cir. 2009) ("It is past doubt that the principle of multiple use does not require BLM to prioritize [oil and gas] development over other uses;"); *Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 872 (9th Cir. 2017) ("Nor does [multiple use] preclude the agency from taking a cautious approach to assure preservation of natural and cultural resources.").
[7] *See*, *e.g.*, Statement of Michael Nedd, Deputy Director, Operations, BLM, to the U.S. House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources (Mar. 12, 2019) (leasing "required by the Mineral Leasing Act.") [Ex. 01, Appendix A at 2], *available at*

As a result, the BLM has opened the vast majority of the lands it manages to oil and gas leasing, even when data show that lands would be better utilized for other purposes. As of January 2025, more than 81% of all BLM-administered lands in the Western United States are open to oil and gas leasing under their respective Resource Management Plans (RMPs).[8] In most cases, these land use plans are vastly outdated – many are more than 40 years old and have not received public input in decades, meaning they neither reflect the most current and accurate data nor account for changed environmental or economic conditions.

Despite being prioritized for oil and gas development, much of the land that is leased to the industry never produces any oil and gas; this is often because a large proportion of the lands open to leasing actually have little to no development potential.[9] In fact, according to the BLM, 43% of the more than 21 million acres of federal land that are under lease to the oil and gas industry are non-producing, as of fiscal year 2025.[10] These are lands that are far better suited for other uses—such as outdoor recreation or conservation of wildlife habitat—but the act of leasing hamstrings land managers from managing the lands for those other valuable uses.[11] And once land is leased and the industry elects to apply for a permit to drill (APD), the data show that the BLM is nearly indiscriminate with respect to its decisions to approve those APDs. In fiscal year 2025, for example, the BLM approved over 90% of the applications to drill that it processed.[12] These drilling applications are often approved with little to no environmental review or opportunity for public engagement.[13]

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https://www.blm.gov/sites/default/files/congressional_testimony_documents/congressional_20190312_Policies%20and%20Priorities%20of%20BLM.pdf; Memorandum from DOI Inspector General, to Robert Abbey, Director, BLM at 6 (Dec. 29, 2009) ("Kent Hoffman [Utah's Deputy State Director for Lands and Minerals] and the BLM USO Natural Resource Specialist both commented that the BLM is required by law to hold a quarterly lease sale.").

[8] The Wilderness Society, *Open for Drilling: The Outsized Influence of Oil and Gas on Public Lands* at 2 (2025) [Ex. 02, Appendix A at 10], *available at* https://www.wilderness.org/sites/default/files/media/file/Open%20for%20Drilling_TWS%20Report.pdf.

[9] *See*, *e.g.*, National Wildlife Federation et al., *Little Potential for Development, High Potential for Harm: How Speculative Leasing for Oil and Gas Threatens Public Lands, Waters, Fish, and Wildlife* (June 13, 2022) [Ex. 03, Appendix A at 24], *available at* https://storymaps.arcgis.com/stories/1a259c9c5b634b708762b27ddc5a8d52.

[10] BLM, Oil and Gas Statistics, *available at* https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics (select "Fiscal year 2025 statistics" drop down menu, then select "Tables 1-10 National Totals by State, Fiscal Year 2001 – 2025," then see Tables 2 and 6) [Ex. 04, Appendix A at 63].

[11] *See*, *e.g.*, Center for Western Priorities et al., *"No harm, no foul" doesn't exist in oil and gas leasing* (Feb. 14, 2022) [Ex. 05, Appendix A at 66], *available at* https://storymaps.arcgis.com/stories/baa3a7b6346047d3a1d46ef9ea1ca4fd.

[12] BLM, Oil and Gas Statistics, *supra* note 10 (select "Fiscal year 2025 statistics" drop down menu, then select "Table 16 APD Status Report") [Ex. 06, Appendix A at 91].

[13] Examples of this practice abound. As just one example, in the Bakersfield Field Office, the BLM approved an APD package of 50 wells in July 2021, and did not post its Determination of NEPA Adequacy (DNA)—which

As noted above, the BLM's entrenched, institutional preference for oil and gas development above all other uses of public lands historically led to the onshore oil and gas program fostering both an unsustainable and unpredictable revenue stream for American taxpayers and harm to public lands and resources. As a result, the GAO, the Department of the Interior's Office of Inspector General (OIG), and numerous other parties had, for years, repeatedly urged the Department of the Interior (DOI) to make fundamental changes to the onshore program.[14] In 2021, DOI finally conducted a review of the federal oil and gas leasing program, which included consideration of studies from the GAO and the OIG, as well as formal Tribal consultations, a forum with expert panelists, public feedback, and meetings with States, members of Congress, and representatives from multiple stakeholder groups, including the oil and gas industry, labor organizations, conservation organizations, Indigenous organizations, environmental justice organizations, and academics. In a report issued upon conclusion of the review, DOI stated that the federal oil and gas program had been found to "fail[] to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs that must be borne by taxpayers; inadequately account[] for environmental harms to lands, waters, and other resources; foster[] speculation by oil and gas companies to the detriment of competition and American consumers; extend[] leasing into low-potential lands that may have competing higher value uses; and leave[] communities out of important conversations about how they want their public lands and waters managed."[15]

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was dated November 2021—until August 2025, over four years later. *See* BLM, BLM National NEPA Register, DOI-BLM-CA-C060-2021-0074-DNA, *available at* https://eplanning.blm.gov/Documents/?id=56ddbacb-a7f2-f011-8406-001dd802fdea&spid=94e0fa78-a8f2-f011-8407-001dd80db62a (last visited Aug. 18, 2026).

[14] *See*, *e.g.*, DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2019* (Nov. 2019) [Ex. 07, Appendix A at 93], *available at* https://www.oversight.gov/sites/default/files/documents/reports/2020-01/FinalReport_TopManagementChallengesFY19_111519.pdf; DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2018* (Nov. 2018) [Ex. 08, Appendix A at 124], *available at* https://www.oversight.gov/sites/default/files/documents/reports/2018-11/FY2018_MajorMgmtandPerformanceChallengesFacingDOI_110718.pdf; DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior* (Nov. 2017) [Ex. 09, Appendix A at 161], *available at* https://www.doioig.gov/sites/default/files/2021-migration/FY2017_MajorMgmtandPerformanceChallengesFacingDOI_110217.pdf; DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior* (Nov. 2016) [Ex. 10, Appendix B at 2], *available at* https://www.doioig.gov/sites/default/files/2021-migration/2016ER049Public_0.pdf.

[15] DOI, *Report on the Federal Oil and Gas Leasing Program* at 3 (Nov. 2021) [Ex. 11, Appendix B at 55], *available at* https://www.doi.gov/sites/default/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf.

The 2024 Leasing Rule, therefore, rightfully took action to address these well-documented issues that had long plagued the onshore oil and gas program. These issues included, but were not limited to, the BLM's outdated bonding and reclamation framework, the limitations frequently placed on public participation and engagement in the leasing process, and the frequent leasing of federal public lands with little to no development potential. In addressing these issues, reforms to the onshore oil and gas program enacted in the 2024 Leasing Rule included the following:

- <u>Updates critical for preventing oil and gas operators from delaying the 'complete' and 'timely' reclamation and restoration of lease tracts, and for protecting the Federal Government from facing significant financial risks in the event of oil and gas bankruptcies.</u> *These updates notably included increases to the minimum bond amounts required for both individual lease bonds and statewide bonds to reflect inflation and the minimum coverage required for operations on federal public lands, and the elimination of the use of nationwide bonds and unit operator bonds.*

- <u>Provisions necessary for fulfilling the Interior Department's public engagement mandate, enabling consistent public participation in the leasing process, and fostering a more effective and more efficient leasing process.</u> *These provisions included the requirement of set minimum timeframes for lease sale comments periods: at least 30 days for a scoping period; at least 30 days for public comment on draft NEPA documents; and providing the list of lands to be offered for competitive lease sale in a notice at least 60 days before a competitive auction, with at least 30 days for protest.*

- <u>Incorporation of preference criteria to assist with the consideration and selection of lease sale parcels, so that, in holding oil and gas lease sales, the BLM may conserve certain public lands, ensure the American taxpayer receives a fair return, and meet the agency's other statutory obligations.</u> *These criteria, which are not absolute, include the presence of fish and wildlife habitats and habitat connectivity areas, the presence of cultural or historical resources, the presence of recreation resources, oil and gas development potential, and proximity to existing development.*

Since it first went into effect, the 2024 Leasing Rule has brought about more effective and efficient management of the federal oil and gas program. The rule represented the first comprehensive update to federal onshore oil and gas leasing regulations in nearly four decades. As a result, the onshore oil and gas program's regulations now direct the BLM to minimize resource conflicts between fossil fuel development and other resources on BLM-managed public lands and subsurface mineral estate, while also ensuring a fair return for American taxpayers.

For example, minimum bonding levels now more closely align with the expected costs associated with plugging and reclaiming modern wells on federal public lands, which protects taxpayers from becoming responsible for those costs when oil and gas operators walk away from their wells without cleaning them up. In addition, the public has a total of at least 90 days to meaningfully engage in the leasing process allows for elected officials, Tribal governments, state agencies, local businesses, sportsmen and women, private citizens, and many other groups to provide valuable input as to how proposed sales should be amended due to conflicts that leasing and development in specific areas present for other important or sensitive resources. Finally, application of the leasing preference criteria has led to the BLM avoiding leasing on nominated lands with low development potential and instead directing leasing to areas where the industry is actually interested in purchasing lands for development, which provides transparency and clarity for the industry and ensures leasing takes place where oil and gas development is in the public's best interest.

Prior to finalizing the 2024 Leasing Rule, the BLM received and considered more than 260,000 public comments on the proposed rule. More than 99% of comments submitted on the proposed rule were in support of the rule's reforms,[16] reflecting the critical need for changes to the onshore oil and gas program that Western voters from both parties have long called for.[17]

The BLM's proposal to now reverse the aforementioned components of the 2024 Leasing Rule, as well as to make significant changes to other important provisions of the agency's oil and gas regulations, goes directly against what Western voters want. Polling shows that Western voters overwhelmingly place clean air and water, conservation of natural areas, wildlife, history, and recreation as the most important uses of public land, ranking oil and gas development as the least important.[18] Western voters in every state support placing fees on the oil and gas industry and oppose efforts to reduce those fees.[19] This is particularly true of bonding requirements: in most states, over 90% of polled voters believe that oil and gas companies, rather than taxpayers,

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[16] *See* Center for Western Priorities, *Analysis: Public comments overwhelmingly support BLM Oil and Gas Rule* (Sept. 26, 2023) [Ex. 12, Appendix B at 74], *available at* https://westernpriorities.org/2023/09/analysis-public-comments-overwhelmingly-support-blm-oil-and-gas-rule/.
[17] *See* Colorado College, *Conservation in the West, The 2026 Survey of the Attitudes of Voters in Eight Western States* (Jan. 2026) (poll surveying at least 400 registered voters in AZ, CO, ID, MT, NV, NM, UT, & WY) [Ex. 13, Appendix B at 78], *available at* https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2026.html.
[18] New Bridge Strategy, *Intermountain West & Dakotas Statewide Surveys Key Findings* at 5 (Apr. 2025) [Ex. 14, Appendix B at 156], *available at* https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2025/NWF-Poll-Western-Voters-Oil-and-Gas-Proposals.pdf.
[19] New Bridge Strategy, *supra* note 18, at 8–9.

should shoulder the responsibility of paying for all the clean-up and land restoration costs after drilling is finished.[20] This is a salient issue given that the Environmental Protection Agency (EPA) estimates that there are around 3.9 million abandoned oil and gas wells in the United States,[21] at least 15,000 of which are on public lands.[22]

The public has also historically been heavily involved in the oil and gas leasing process. There is a long track record of a wide range of stakeholders—including state agencies, counties, hunter and angler groups, and recreation organizations—engaging in oil and gas lease sale comment periods and recommending that changes be made to leasing proposals.[23] For split estate lands, prior regulation required the agency to notify private surface owners when the federal minerals beneath their land were being offered for lease, providing them with the much-needed opportunity to weigh in on leasing under and around their land.[24] And polling shows that Western voters appreciate these opportunities to engage; they overwhelmingly oppose efforts that would reduce the review process, opportunities for public input, and the ability of federal agencies to respond to local concerns on land management.[25]

II. The BLM's Statutory Obligations

a. MLA

[20] New Bridge Strategy, *supra* note 18, at 21.
[21] EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022* 3 at 3-117 (2024) [Ex. 15, Appendix B at 188], *available at* https://www.epa.gov/system/files/documents/2024-04/us-ghg-inventory-2024-main-text_04-18-2024.pdf.
[22] BLM, *Tackling the Legacy of Orphaned Wells: The Federal Orphaned Well Program in Action* (Dec. 6, 2024) [Ex. 16, Appendix B at 191], *available at* https://www.blm.gov/blog/2024-12-06/tackling-legacy-orphaned-wells-federal-orphaned-well-program-action.
[23] *See e.g.*, Colo. Parks & Wildlife, Dep't of Nat. Res., *Bureau of Land Management June 2026 Fluid Mineral Lease Sale - Colorado Parks and Wildlife Protest Submission DOI-BLM-CO-0000-2026-0001-EA* (May 14, 2026) (urging parcel deferral due to conservation easements) [Ex. 17, Appendix B at 196], *available at* https://eplanning.blm.gov/Documents/?id=f88c6bf4-a7f2-f011-8407-001dd80bcf93&spid=c25ed097-a8f2-f011-8406-001dd802fdea; BLM Wyoming, *Response to Public Comments 2026 First Quarter Competitive Oil And Gas Lease Sale Environmental Assessment DOI-BLM-WY-0000-2025-0003-EA* (Dec. 10, 2025) (showing comments submitted by Theodore Roosevelt Conservation Partnership—a hunting and fishing organization—requesting deferrals in sage-grouse and big game habitat) [Ex. 18, Appendix B at 201], *available at* https://eplanning.blm.gov/Documents/?id=124f2bf5-a7f2-f011-8407-001dd803d7d3&spid=b3653e91-a8f2-f011-8407-001dd806295a; Wilderness Workshop et al., *Comments on Draft EA and FONSI for the Colorado Bureau of Land Management 2026 Quarter 2 Competitive Oil & Gas Lease Sale (DOI-BLM-CO 0000-2026-0001-EA)* (Mar. 13, 2026) (in a comment encouraging deferrals due to a variety of conservation concerns, a total of 18 organization signed on, including national conservation non-profits like The Wilderness Society and The Center for Biological Diversity; local-based nonprofits including San Luis Valley Ecosystem Council, High Country Conservation Advocates, and Western Slope Conservation Center; and recreation-focused organizations like Dolores River Boating Advocates) [Ex. 19, Appendix C at 2].
[24] 43 C.F.R. § 3120.31(b)(6).
[25] New Bridge Strategy, *supra* note 18, at 10–11.

The MLA establishes the statutory framework for onshore oil and gas leasing on public lands. Under that framework, the BLM traditionally exercised broad discretion over whether to lease lands for oil and gas development and, if so, upon which conditions.[26] As amended by OBBBA, however, the MLA directs the BLM to make lands "known or believed to contain oil or gas deposits . . . available for leasing" within 18 months of receiving an expression of interest (EOI) and if the lands are open to oil and gas leasing under an approved RMP.[27] OBBBA also amended the MLA to require quarterly lease sales in the enumerated states where eligible lands are available,[28] restore noncompetitive leasing,[29] and prohibit the BLM from imposing lease terms and conditions that are not found in the applicable RMP.[30] The MLA nonetheless still requires that "[e]ach lease *shall* contain provisions" requiring the operator to exercise "reasonable diligence, skill, and care" and such other provisions the BLM deems necessary "for the protection of the interests of the United States" and "the safeguarding of the public welfare."[31]

To that end, the MLA establishes certain financial and operational protections for leased lands. The BLM, for example, must require "the payment of a royalty at a rate of *not less than* 12.5 percent in amount or value of the production removed or sold from the lease."[32] Thus, the BLM retains discretion to set a royalty rate above the statutory minimum to provide a fair, market-based return to taxpayers.[33] The BLM must also "determine reclamation and other actions as required in the interest of conservation of surface resources,"[34] and "*prior* to the commencement of surface-disturbing activities on any lease" the BLM "shall, *by rule or regulation*, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established . . . to ensure the complete and timely reclamation of the lease tract."[35] Thus, the MLA mandates that the financial burden associated with reclaiming public lands

[26] *See Udall v. Tallman*, 380 U.S. 1, 4 (1965) ("The Mineral Leasing Act of 1920 . . . left the Secretary discretion to refuse to issue any lease at all on a given tract."); *U.S. ex rel. McLennan v. Wilbur*, 283 U.S. 414, 419 (1931) (ruling that the Secretary possesses "general powers over the public lands as guardian of the people," including the authority to deny oil and gas lease applications).
[27] 30 U.S.C. § 226(a)(1); *see infra* Section II.e.1.
[28] 30 U.S.C. § 226(b)(1)(A).
[29] 30 U.S.C. § 226(c).
[30] 30 U.S.C. § 226(a)(2)(A).
[31] 30 U.S.C. § 187 (emphasis added); *see Nat. Res. Def. Council v. Berklund,* 458 F. Supp. 925, 936 n.17 (D.D.C. 1978), *aff'd*, 609 F.2d 553 (D.C. Cir. 1979) (interpreting "safeguarding of the public welfare" to provide "broad authority to set lease terms to prevent environmental harm").
[32] 30 U.S.C. § 226(b)(1)(A), as amended by Pub. L. No. 119-21 § 50101(a)(1).
[33] *See infra* Sections II.e.1 and III.h.
[34] 30 U.S.C. § 226(g).
[35] 30 U.S.C. § 226(g) (emphasis added).

must fall on operators who profit from developing public resources on those lands, *not* on taxpayers.[36]

The BLM also retains discretion under the MLA to take certain steps to ensure the diligent development of leased lands, such as imposing an EOI fee[37] or setting a deadline for lease suspension requests.[38] And, to comply with its continuing statutory obligations under FLPMA and other laws, in some circumstances the BLM *must* refrain from leasing certain parcels.[39] While OBBBA limited the BLM's discretion in certain ways, the BLM must still comply with its other existing statutory obligations and exercise its existing discretion in this rulemaking to protect public lands, wildlife, communities, and taxpayers.

b. APA

The APA instructs reviewing courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[40] An agency rule is "arbitrary and capricious," for example,

> if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[41]

This standard applies equally to the rescission of existing rules or the promulgation of new ones.[42]

Although agencies may change their existing regulatory policies, they must acknowledge they are doing so and "provide a reasoned explanation for the change."[43] And if the "new policy rests on factual findings that contradict those which underlay its prior policy," or the "prior policy has engendered substantial

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[36] *See infra* Section III.c.
[37] *See infra* Sections II.e.3 and III.g.
[38] *See infra* Section III.f.
[39] *See infra* Section II.e.2.
[40] 5 U.S.C. § 706(2)(A).
[41] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[42] *State Farm*, 463 U.S. at 41–42.
[43] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *accord F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

reliance interests," the agency must provide "a more detailed justification" for its change in position.[44] Any departure from an agency's earlier position that disregards facts or circumstances and is not accompanied by a reasoned explanation is arbitrary and capricious.[45]

Here, the BLM must confront the evidence and its prior findings in the record supporting the 2024 Leasing Rule, and either provide new evidence or a reasoned explanation for why it now rejects its prior findings and policy judgments. A change in administration and policy preferences alone cannot substitute for reasoned analysis in this rulemaking.

c. FLPMA

FLPMA governs the BLM's management of public lands—including its management of the onshore oil and gas program—and generally requires the agency to apply principles of multiple and sustained yield, prevent unnecessary and undue degradation, and protect environmental and natural resource values on public lands. FLPMA also requires the BLM to provide opportunities for public participation in the management of public lands. The Proposed Rule does not comply with these mandates.

1. FLPMA Requires the BLM to Protect Public Lands and Natural Resource Values when Managing the Oil and Gas Program

In enacting FLPMA, Congress declared a "policy of the United States" that the BLM manage public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values; that will preserve and protect certain public lands in their natural condition; [and] that will provide food and habitat for fish and wildlife and domestic animals."[46] Congress also declared a policy that public lands be managed "on the basis of multiple use and sustained yield,"[47] and instructed the BLM to manage public lands under those principles.[48] FLPMA further directs the agency to "take any action necessary to prevent unnecessary and undue degradation of the lands."[49]

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[44] *Fox Television Stations*, 556 U.S. at 515.
[45] *Encino Motorcars*, 579 U.S. at 221–22; *Fox Television Stations*, 556 U.S. at 515–16.
[46] 43 U.S.C. § 1701(a)(8).
[47] 43 U.S.C. § 1701(a)(7).
[48] 43 U.S.C. §§ 1712(c)(1), 1732(a).
[49] 43 U.S.C. § 1732(b); *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 76 (D.C. Cir. 2011).

The principle of "multiple use" obligates the BLM to make the "most judicious use" of public lands and their resources, account for "the long-term needs of future generations for renewable and nonrenewable resources, including . . . wildlife and fish, and natural scenic, scientific and historical values," and ensure the "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment."[50] In turn, managing public lands for "sustained yield" means "the achievement and maintenance in perpetuity of a high-level . . . output of the various renewable resources of the public lands consistent with multiple use."[51]

As discussed later, the first court to consider the impact of OBBBA on the BLM's FLPMA obligations held that "FLPMA's mandates for the protection of public lands and resources" and "requirements to maintain sustainable wildlife populations and avoid unnecessary or undue degradation of public lands . . . remain in force under OBBBA."[52] And because FLPMA continues to define the BLM's central land management mandate for protection of public lands and resources, the BLM may not pursue oil and gas leasing on public lands in a manner that FLPMA prohibits. If, for example, "unnecessary or undue degradation cannot be prevented by mitigating measures, the BLM is required to deny approval of the plan."[53] And if proposed oil and gas leasing and development conflicts with the principles of multiple use and sustained yield, including the duty to maintain sustainable populations of native species, the BLM is statutorily precluded by FLPMA from leasing that habitat.[54] Indeed, it is "'past doubt' that FLPMA 'does not require BLM to prioritize [oil and gas] development over other [land] uses,' which include 'conservation to protect environmental values.'"[55]

[50] 43 U.S.C. § 1702(c).
[51] 43 U.S.C. § 1702(h).
[52] *Mont. Wildlife Fed'n v. Burgum*, No. CV-18-69-GF-BMM, 2026 WL 1707576, at *5 (D. Mont. June 12, 2026); *see infra* Section II.e.1.
[53] *Kendall's Concerned Area Residents*, 129 IBLA 130, 138 (Apr. 15, 1994); *see Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 42 (D.D.C. 2003) ("FLPMA, by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible . . . operation because the operation, though necessary . . . would unduly harm or degrade the public land.").
[54] *See, e.g.*, *Mont. Wildlife Fed'n*, 2026 WL 1707576, at *5, 16 (vacating post-OBBBA lease sales in sage-grouse habitat that violated "FLPMA's requirements to maintain sustainable wildlife populations and avoid unnecessary or undue degradation of public lands").
[55] *Powder River Basin Res. Council v. U.S. Dep't of Interior*, No. 22-CV-2696 (TSC), 2026 WL 555013, at *5 (D.D.C. Feb. 27, 2026) (quoting *N.M. ex rel. Richardson*, 565 F.3d at 710) (alterations in original).

2. FLPMA Requires the BLM to Maintain Opportunities for Public Participation During the Leasing Process

FLPMA expressly requires the BLM to provide opportunities for public involvement in all aspects of public lands management.[56] Relevant here, FLPMA directs the BLM to establish procedures, "*by regulation*, . . . to give . . . the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and *execution* of plans and programs for, *and the management of*, the public lands."[57] FLPMA also defines "public involvement" to include the opportunity for public participation in "*decisionmaking* . . . with respect to the public lands."[58]

The Ninth Circuit recently confirmed the application of FLPMA's public participation requirements in the context of oil and gas leasing on public lands. In *Montana Wildlife Federation v. Haaland*, the court said that even though "FLPMA does not specifically require that participation opportunities be offered for oil and gas lease sales, . . . it does mandate that the government 'establish procedures' to provide the public with opportunities 'to participate in, the preparation and *execution* of plans and programs for, *and the management of*, the public lands.'"[59] In the court's view, "[t]he inclusion of the terms 'execution,' 'management,' and 'decisionmaking' indicates a Congressional requirement that the [BLM] provide opportunities for public participation on the adoption of land use plans *and* for down-the-line decisions as to the implementation of such plans."[60] The court, therefore, rejected the argument "that participation in the Plan Amendment process was sufficient to meet the statutory requirements under FLPMA."[61] Moreover, FLPMA's public participation "requirement[s] appl[y] even when dispensing with or constricting such participation would be more efficient."[62]

To comply with FLPMA in this rulemaking, the BLM must maintain adequate opportunities for public notice and comment during the oil and gas leasing process, and the agency may not point to public participation opportunities

[56] *See, e.g.*, 43 U.S.C. §§ 1701(a)(5), 1702(d), 1712(a), 1712(f), 1739(e).
[57] 43 U.S.C. § 1739(e) (emphasis added).
[58] 43 U.S.C. § 1702(d) (emphasis added).
[59] 127 F.4th 1, 40 (9th Cir. 2025) (emphasis in original).
[60] 127 F.4th at 40 (emphasis in original).
[61] 127 F.4th at 40 n.17.
[62] 127 F.4th at 41.

provided during prior land use planning efforts as an adequate substitute.[63]

d. NEPA

"NEPA declares a broad national commitment to protecting and promoting environmental quality,"[64] and "its mandates are a 'basic national charter for protection of the environment.'"[65] NEPA thus directs agencies, "to the fullest extent possible," to interpret and administer "the laws, regulations, and policies of the United States . . . in accordance with the policies" established by the statute.[66]

NEPA fosters the "twin aims" of informed decision making by federal agencies and meaningful public participation in those decisions.[67] To accomplish those purposes, the statute "establishes some important 'action-forcing' procedures,"[68] including, among others, a requirement that "all agencies … make available to [the public] advice and information useful in restoring, maintaining, and enhancing the quality of the environment."[69]

Agencies must also prepare an environmental impact statement (EIS) for proposed agency actions with a "reasonably foreseeable significant effect on the quality of the human environment."[70] Or, if the proposed action will not have a reasonably foreseeable significant effect, or its significance is unknown, the agency "shall prepare an environmental assessment" (EA) to determine whether the effect of the action is significant and requires an EIS.[71] And if the agency determines an EIS is not necessary, it must issue a finding of no significant impact (FONSI).[72]

These "action-forcing" procedures

> ensure[] that the agency, in reaching its decision, will have available,

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[63] *See infra* Section III.a.2.
[64] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989) (citing 42 U.S.C. § 4331).
[65] *Friends of the Inyo v. U.S. Forest Serv.*, 103 F.4th 543, 556 (9th Cir. 2024) (quoting *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003)).
[66] 42 U.S.C. § 4332(1).
[67] *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc*., 462 U.S. 87, 97 (1983) (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc*., 435 U.S. 519, 553 (1978)).
[68] *Robertson*, 490 U.S. at 348.
[69] 42 U.S.C. § 4332(2)(J).
[70] 42 U.S.C. § 4336(b)(1); *accord id.* § 4332(2)(C); *see infra* Section III.m.
[71] 42 U.S.C. § 4336(b)(2).
[72] 42 U.S.C. § 4336(b)(2).

> and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.[73]

Importantly, OBBBA requires the BLM to comply with NEPA's procedures when conducting lease sales,[74] which includes analyzing the environmental effects of those actions and providing meaningful opportunities for public input.

1. NEPA Requires the BLM to Take a "Hard Look" at Environmental Effects at the Lease Sale Stage

Because leasing constitutes an "irreversible, irretrievable commitment of resources,"[75] the BLM must take a "hard look" at the environmental effects before making any leasing decisions.[76] The Proposed Rule's preamble suggests that the agency may not conduct NEPA reviews,[77] which, if so, would violate NEPA. Federal courts have repeatedly rejected agency attempts to treat the reasonably foreseeable impacts of leasing as too speculative to merit consideration.[78] Thus, this rulemaking must ensure the BLM conducts adequate NEPA reviews at the lease sale stage.

2. NEPA Requires the BLM to Maintain Opportunities for Public Participation During the Leasing Process

"NEPA's public comment procedures are at the heart of the NEPA review process."[79] With an EIS, for example, NEPA requires consideration of "responsible opposing viewpoints," which

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[73] *Robertson*, 490 U.S. at 349; *see Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 177 (2025) (NEPA "ensures that the agency and the public are aware of the environmental consequences of proposed projects" and "helps agencies to make better decisions.").
[74] Pub. L. No. 119-21 § 50101(b)(2)(A) (directing BLM to conduct lease sales only after "completion of all applicable scoping, public comment, and environmental analysis requirements under . . . [NEPA]."); *see infra* Section II.e.1.
[75] *Sierra Club v. Peterson*, 717 F.2d 1409, 1412 (D.C. Cir. 1983).
[76] *Robertson*, 490 U.S. at 349–50.
[77] *See* 91 Fed. Reg. at 38,087 (concluding "that the costs for complying with NEPA are completed by the time a competitive lease sale takes place"); *infra* Section III.a.1.
[78] *See, e.g.*, *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078–79 (9th Cir. 2011); *Conner v. Burford*, 848 F.2d 1441, 1450 (9th Cir. 1988); *W. Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 992 (D. Idaho 2021); *Wildearth Guardians v. BLM*, 457 F. Supp. 3d 880, 888 (D. Mont. 2020); *Wilderness Soc'y v. U.S. Dep't of Interior*, No. 22-cv-1871 (CRC), 2024 WL 1241906, at *17 (D.D.C. Mar. 22, 2024).
[79] *California v. Block*, 690 F.2d 753, 770 (9th Cir. 1982).

> reflects the paramount Congressional desire to internalize opposing viewpoints into the decision-making process to ensure that an agency is cognizant of all the environmental trade-offs that are implicit in a decision. To effectuate this aim, NEPA requires not merely public notice, but public participation in the evaluation of the environmental consequences of a major federal action.[80]

Similarly, when preparing an EA, agencies "must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process."[81] A "complete failure to involve or even inform the public about an agency's preparation of an EA and a FONSI . . . undermines the very purpose of NEPA, which is to 'ensure[ ] that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public.'"[82]

As shown, NEPA—like FLPMA—requires the BLM to provide opportunities for public participation during the oil and gas leasing process. To comply with NEPA, the Proposed Rule must maintain adequate opportunities for public input on lease sales, and the suggestion in the Proposed Rule that the BLM may not make its environmental analysis available to the public until after the protest period and lease sale directly contravenes NEPA.[83]

e. OBBBA

One of the BLM's primary stated purposes for the Proposed Rule is to incorporate the requirements of OBBBA,[84] but the agency's recognition of OBBBA is incomplete and inaccurate. Although the Proposed Rule addresses noncompetitive leasing and replacement sales provided under OBBBA, it ignores several other key aspects of that statute. In particular, the Proposed Rule does not address the extent to which the BLM retains some of its long-standing

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[80] *Block*, 690 F.2d at 770–71 (cleaned up).
[81] *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 524 F.3d 938, 953 (9th Cir. 2008).
[82] *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961, 970–71 (9th Cir. 2003) (quoting *Okanogan Highlands All. v. Williams,* 236 F.3d 468, 473 (9th Cir. 2000)).
[83] *See* 91 Fed. Reg. at 38,120 (requiring that BLM "make available the final [NEPA] documents prior to issuing a lease from the lease sale"); *infra* Section III.a.1.
[84] *See* 91 Fed. Reg. at 38,085, 38,086.

discretion over which lands to offer for leasing.

Instead, the Proposed Rule proceeds from the mistaken premise that the BLM has less discretion after OBBBA's passage than it, in fact, does. It also fails to address how the BLM will comply with its long-standing statutory duties under FLPMA and other laws during the leasing process. Even after OBBBA, those statutes continue to require meaningful public involvement in leasing decisions; the protection of public lands, wildlife, and communities; and a fair, market-based return for taxpayers on the development of public resources.

1. The BLM Retains Discretion to Defer Parcels from Quarterly and Replacement Lease Sales

In the preamble to the Proposed Rule, the BLM asserts that OBBBA "requires the BLM to offer a parcel within 18 months of receipt of the lands within an EOI."[85] But that is not what OBBBA says: it directs that lands shall be "made available" within 18 months—not that they be offered for lease during that time period.[86]

More specifically, OBBBA amended the MLA to require that lands:

> known or believed to contain oil or gas deposits shall be *made available* for leasing . . . by the Secretary of the Interior, not later than 18 months after the date of receipt by the Secretary of an expression of interest in leasing the applicable parcel of land available for disposition under this section, if the Secretary determines that the parcel of land is open to oil or gas leasing under the approved resource management plan applicable to the planning area in which the parcel of land is located that is in effect on the date on which the expression of interest was submitted to the Secretary.[87]

While OBBBA narrowed the BLM's long-standing discretion in some ways,

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[85] 91 Fed. Reg. at 38,103. Similarly, the BLM in court filings has claimed that OBBBA "require[s] BLM to offer nominated parcels for lease within 18 months if those parcels are open to leasing and are known or believed to contain oil and gas deposits." *See, e.g.*, Defendants' Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment (Phase Three) at 14–15, ECF No. 514 (Jan. 16, 2026), *Mont. Wildlife Fed'n v. Burgum*, 4:18-cv-00069-BMM (D. Mont.).
[86] 30 U.S.C. § 226(a)(1).
[87] 30 U.S.C. § 226(a)(1) (emphasis added), as amended by Pub. L. No. 119-21 § 50101(d)(1).

the BLM retains some discretion to defer offering parcels in lease sales.[88] Other provisions of OBBBA demonstrate that "made available" simply establishes a window of time to complete pre-leasing procedural requirements, such as NEPA review, needed for the agency to determine whether to include parcels in lease sales.

First, OBBBA's legislative history confirms that "made available" within 18 months does not mean "offer." The version of the bill introduced in the House of Representatives on May 20, 2025, directed that the BLM "shall . . . offer" lands within 18 months.[89] That language, however, was dropped in the Senate,[90] and the final law requires only that the lands "shall be made available for leasing" within 18 months.[91] The amended text must be given effect.[92]

The first court to interpret OBBBA reached the same conclusion. In *Montana Wildlife Federation v. Burgum*,[93] the court rejected the extreme interpretation of OBBBA mentioned in the Proposed Rule. The court noted the legislative history described above and observed that "OBBBA's legislative history shows that Congress contemplated, and ultimately rejected, [BLM's] interpretation."[94] The court, therefore, held that "OBBBA does not effectively eliminate BLM's discretion so broadly as to mandate the sale and issuance of leases without oversight. . . . [T]he Court interprets the "made available" language in OBBBA to provide BLM some discretion to limit leasing . . . ."[95] As

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[88] *See supra* Sections II.a and II.e.

[89] H.R. 1, 119th Cong. § 80101(c)(1) (as introduced May 20, 2025), *available at* https://www.congress.gov/119/bills/hr1/BILLS-119hr1rh.pdf.

[90] H.R. 1, 119th Cong. § 50101 (as passed by Senate July 1, 2025), *available at* https://www.congress.gov/119/bills/hr1/BILLS-119hr1eas.pdf.

[91] *See* 30 U.S.C. § 226(a)(1), as amended by Pub. L. No. 119-21, § 50101(b)(1), 139 Stat. 72.

[92] *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987) (explaining that "[f]ew principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language").

[93] No. CV-18-69-GF-BMM, 2026 WL 1707576 (D. Mont.).

[94] *Mont. Wildlife Fed'n*, 2026 WL 1707576, *5 (June 12, 2026).

[95] *Mont. Wildlife Fed'n*, 2026 WL 1707576, *5. The BLM has read OBBBA the same way in some cases, reaffirming its continuing authority to withhold parcels from lease sales even after OBBBA's passage. *See, e.g.*, BLM Farmington Field Office, *Competitive Oil And Gas Lease Sale Environmental Assessment, New Mexico Quarter 2 2026*, DOI-BLM-NM-F010-2026-0001-EA at D-29 (Mar. 20, 2026) (quoting OBBBA to support position that "BLM has discretion to offer or defer any parcel during any sale"); BLM Utah State Office, *Decision on Protest of the Inclusion of 57 Parcels in the March 2026 Competitive Oil and Gas Lease Sale* at 10 (Apr. 2026) ("Nothing in the Reconciliation Act precludes the BLM from considering alternatives that would offer fewer than 50 percent of the nominated parcels in any single lease sale"). In practice, moreover, the BLM has repeatedly deferred parcels from lease sales after OBBBA. *See, e.g.*, BLM Wyoming, *Finding of No Significant Impact for 2026 Second Quarter Competitive Oil And Gas Lease Sale*, DOI-BLM-WY-0000-2026-0001-EA at 1–2 (Mar. 18, 2026) (preferred alternative deferring dozens of parcels); BLM Wyoming, *2025*

shown, "available for leasing" does not mean "offer" leases, and the BLM cannot ignore the language Congress ultimately adopted.

Second, in states "where eligible lands are available,"[96] OBBBA requires quarterly lease sales in which the BLM "*shall offer not less than 50 percent of available parcels* nominated for oil and gas development under the applicable resource management plan."[97] Thus, while the BLM has 18 months to make lands "available," it only needs to offer half of the pool of "available" lands at each lease sale. This language leaves the agency with discretion to not offer leases on certain public lands when meeting the "50 percent" requirement.

Third, OBBBA expressly requires the BLM to comply with NEPA when preparing lease sales.[98] NEPA does not require agencies to analyze issues where they have "no discretion" to act on that analysis.[99] If OBBBA entirely eliminates the BLM's discretion and requires the agency to simply offer every nominated parcel within 18 months, Congress would not have required NEPA compliance. Instead, OBBBA gives the BLM 18 months to complete its NEPA analysis (and comply with other substantive and procedural requirements), so it can determine which 50 percent of the available parcels to offer at the next quarterly lease sale. Congress's inclusion of the NEPA requirement, thus, further underscores the BLM's continuing discretion under OBBBA.

The BLM clearly retains some discretion when deciding which lands receiving EOIs to offer for lease. Similarly, when the BLM holds replacement lease sales (i.e., where 25% or more of the acreage offered at the regular quarterly sale does not receive a bid), the BLM can select which acreage and parcels go into that replacement sale.[100]

Fourth Quarter Competitive Oil and Gas Lease Sale Decision Record, DOI-BLM-WY-0000- 2025-0002-EA at 2 (Dec. 3, 2025); BLM Colorado, *Decision Record for September 2025 Competitive Oil and Gas Lease Sale*, DOI-BLM-CO-0000-2025-0001-EA (Sept. 8, 2025); BLM Wyoming, *2025 Third Quarter Competitive Oil and Gas Lease Sale Decision Record*, DOI-BLM-WY-0000-2025-0001-EA at 3 (Sept. 16, 2025).

[96] 30 U.S.C. § 226(b)(1)(A).

[97] Pub. L. No. 119-21 § 50101(c)(2)(A) (emphasis added); 91 Fed. Reg. at 38,086 (noting this language).

[98] Pub. L. No. 119-21 § 50101(b)(2)(A) (directing that sales be held "immediately on completion of all applicable . . . requirements under . . . [NEPA]").

[99] *See Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004).

[100] Further, even when the BLM offers parcels at a lease sale, it is not required to actually issue leases for them. BLM has long had the authority under the MLA to defer lease sale parcels even after bidding has concluded. *See McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (holding that the "fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected"); *see also W. Energy All. v. Salazar*, No. 10-CV-0226, 2011 WL 3737520, at *4–7 (D. Wyo. June 29, 2011) (holding that the BLM is not required to issue leases after

In short, the plain language and legislative history of OBBBA—and case law interpreting it—demonstrate that the BLM retains some ability to limit leasing of public lands. The BLM's statement to the contrary is therefore erroneous.

2. The BLM's Obligations Under FLPMA and Other Existing Laws Survived the Adoption of OBBBA's Leasing Mandates

The BLM not only retains some discretion to limit leasing after OBBBA's passage—it has a legal obligation to do so in certain circumstances. Under the OBBBA framework, lands "eligible" for leasing are defined as "all lands that are subject to leasing under this Act and *are not excluded from leasing by a statutory prohibition*."[101] By OBBBA's plain terms, the BLM must still comply with its statutory obligations under FLPMA and other applicable laws.[102]

The first court to interpret OBBBA, *Montana Wildlife Federation*, again reached the same conclusion. There, the court interpreted the definition of "eligible" to mean that "FLPMA's requirements to maintain sustainable wildlife populations and avoid unnecessary or undue degradation of public lands . . . remain in force under OBBBA."[103] Thus, that "definition . . . restrict[s] BLM from selling and issuing leases that violate FLPMA's mandates for the protection of public lands and resources."[104]

3. The BLM Retains Discretion to Impose an EOI Fee

The BLM retains discretion post-OBBBA to impose an EOI fee, which would deter speculation on public lands, increase leasing efficiency, and conserve the BLM's limited resources.[105] Although OBBBA repealed the provision in the 2022 Inflation Reduction Act (IRA) that *required* the BLM to impose an EOI fee,[106] Congress did not *prohibit* such a fee or repeal the BLM's separate statutory authority to establish reasonable filing and service fees for

offering them at auction; it only needs to make a decision within 60 days on whether to issue the leases). Nothing in the text of OBBBA overrules this law.

101 Pub. L. No. 119-21 § 50101(b)(3) (emphasis added) (codified at 30 U.S.C. § 226(b)(1)(A)).

102 *See supra* Section II.e.2.

103 *Mont. Wildlife Fed'n*, 2026 WL 1707576, at *5.

104 *Mont. Wildlife Fed'n*, 2026 WL 1707576, at *5.

105 *See infra* Section III.g.

106 Pub. L. No. 119-21 § 50101(d)(3).

"applications and other documents relating to the public lands."[107] Nor did OBBBA repeal general agency authority to charge a service fee based on governmental costs, value to the applicant, public policy, and other relevant facts.[108]

Following OBBBA's enactment, however, the BLM asserted that Congress removed its authority to impose an EOI fee and it, therefore, issued a final rule eliminating the $5 per-acre nomination fee.[109] Although the BLM premised that change on a legal error, it is not proposing to correct that error by reinstating an EOI fee in this rulemaking.

4. The BLM Retains Discretion to Raise the Minimum Royalty Rate

The BLM retains discretion post-OBBBA to reconsider the minimum royalty rate in this rulemaking, and to raise the royalty rate above the statutory floor to ensure taxpayers receive a fair return for the development of public resources on public lands. OBBBA simply restored language in the MLA requiring a royalty rate "of *not less than* 12.5 percent" for new federal onshore competitive leases.[110] Thus, the plain terms of the MLA, as amended by OBBBA, empower the BLM with the flexibility and discretion to impose a higher royalty rate.[111]

Nonetheless, the BLM mistakenly believed OBBBA required it to lower the minimum royalty rate to the statutory floor, and earlier this year it issued a

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[107] 43 U.S.C. § 1734(a).
[108] 31 U.S.C. § 9701(a)–(b).
[109] Revision to Regulations Regarding Competitive Leases; Expressions of Interest Process, 90 Fed. Reg. 36,118 (Aug. 1, 2025).
[110] Pub. L. No. 119-21 § 50101(a)(1) (repealing section 50262(a) of the Inflation Reduction Act, which had the effect of reinstating "not less than 12.5 percent" in the MLA); *see* 30 U.S.C. § 226(b)(1)(A).
[111] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (A "statute's meaning may well be that the agency is authorized to exercise a degree of discretion," such as those empowering an agency "to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility.'" (quoting *Michigan v. Envtl. Protection Agency*, 576 U.S. 743, 752 (2015))); CBO, Options for Increasing Federal Income From Crude Oil and Natural Gas on Federal Lands at 23 (Apr. 2016) ("BLM has the statutory authority to increase the royalty rate") [Ex. 20, Appendix C at 99] [hereinafter, the "2016 CBO Study"], *available at* https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options-OneCol-3.pdf. Also, section 50101(a)(2) of OBBBA restored language in the MLA imposing a *fixed* rate of 12.5 percent on noncompetitive leases, *see* 30 U.S.C. § 226(c)(1), showing Congress knows the difference between a mandatory and flexible rate. To ignore the "not less than" language" in the MLA is "at odds with one of the most basic interpretive canons, that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn,* 542 U.S. 88, 101 (2004)) (alteration in original).

direct final rule lowering the minimum rate to 12.5 percent.[112] The BLM perpetuates its legal error in this rulemaking by not considering a royalty rate above the statutory minimum.

5. OBBBA's Leasing Mandates Do Not Apply to Forest Service Lands

OBBBA's leasing mandates only apply to lands designated as open for leasing under an RMP adopted pursuant to FLPMA.[113] This reliance on the BLM RMPs excludes Forest Service land and resource management plans, which are developed under a different statute, the National Forest Management Act (NFMA). Accordingly, the final rule should confirm that OBBBA's leasing requirements do not apply to National Forests, including the provision directing the BLM to hold lease sales for "eligible" and "available" lands. Federal lands not subject to "a land use plan developed under section 1712 of title 43," including, but not limited to, national forests, grasslands, and other lands managed by the U.S. Forest Service, are not and cannot be "designated as open for leasing" pursuant to such a plan. Therefore, OBBBA prohibits the BLM from including any federal lands not subject to a BLM RMP in a lease sale authorized by section 226 of the MLA. At a minimum, the requirement to make nominated lands available for leasing within 18 months does not apply to Forest Service Lands because those lands are not open to oil or gas leasing under an approved RMP applicable to the planning area, as required by 30 U.S.C. § 226(a)(1).

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III. Discussion of Key Issues Present with the Proposed Rule

a. The Proposed Rule Impermissibly Cuts the Public Out of the BLM's Oil and Gas Leasing Decision-Making Process

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[112] BLM, Revisions to Regulations Regarding Oil and Gas Leasing; Fees, Rentals, and Royalties, 91 Fed. Reg. 23,017 (Apr. 29, 2026).

[113] *See* Pub. L. No. 119-21 § 50101(b)(3) (amending MLA at 30 U.S.C. § 226(b)(1)(A) to say lands are "available" for leasing if they "have been designated as open for leasing under a land use plan developed under section 202 of [FLPMA]"); 30 U.S.C. § 226(a)(1) (lands shall be made available for leasing "if the [Interior] Secretary determines that the parcel of land is open to oil or gas leasing under the approved resource management plan applicable to the planning area").

1. The Proposed Rule Does Not Provide for Meaningful Public Participation in Oil and Gas Leasing Decisions, As Required by FLPMA and NEPA

Contrary to NEPA and FLPMA, the Proposed Rule eliminates meaningful public participation in oil and gas leasing decisions.[114] The public would have only ten days to review and provide input – and, even then, it would be forced to file a formal protest, an intimidating and procedurally opaque step. Of additional concern, the Proposed Rule implies that the BLM would not develop site-specific NEPA analyses prior to holding lease sales,[115] and even if such analyses were prepared, the BLM would no longer be required to "make them available" until after the conclusion of the protest period.[116] Thus, the public would have little information about potential on-the-ground consequences to inform its participation during wholly inadequate ten-day protest periods.

Further, it is not at all apparent that protests would receive any weight, given the Proposed Rule would allow the BLM to hold leases sales just thirty-five days after the conclusion of protest periods. Public participation is only meaningful if the public has access to the relevant information before the comment deadline and the BLM actually makes a good faith effort to review and consider information provided by the public.[117]

This is not the first time the BLM has attempted to unlawfully fast-track leasing at the expense of the public's right to inform leasing decisions. Prior to 2010, the BLM sometimes attempted to make site-specific leasing decisions without involving the public (or otherwise complying with NEPA). Several courts rejected this practice, ruling that the BLM must prepare a site-specific analysis of proposed leasing decisions, at a minimum when offering

[114] *See supra* Sections II.c.2 and II.d.2.
[115] *See* 91 Fed. Reg. at 38,087 (concluding "that the costs for complying with NEPA are completed by the time a competitive lease sale takes place").
[116] *See* 91 Fed. Reg. at 38,120 (requiring that BLM "make available the final [NEPA] documents prior to issuing a lease from the lease sale").
[117] *See Seven County Infrastructure Coalition*, 605 U.S. at 177 ("The law ensures that the agency *and the public* are aware of the environmental consequences of proposed projects. Properly applied, NEPA helps agencies to make better decisions and to ensure good project management." (emphasis added)); *Mont. Wildlife Fed'n*, 127 F.4d at 39 (recognizing "that shortening the participation opportunity might lead to insufficient consideration of the environmental impacts of its actions. Individuals and groups are unlikely to learn of the decision, research the environmental impacts of each sale—here, numbering in the dozens to hundreds—and compose a formal comment or protest marshalling facts and arguments in little over two weeks.").

parcels without no-surface occupancy stipulations.[118] In 2010, the BLM issued Instruction Memorandum (IM) 2010-117, which recognized that NEPA obligated the BLM to "complete site-specific . . . documentation for all BLM surface and split estate lease sale parcels" and provide "an opportunity for public review. . . ."[119] Accordingly, IM 2010-117 directed the BLM to offer an optional scoping period, a 30-day comment period on draft NEPA documents, and a 30-day protest period.[120]

In 2018, the BLM once again tried to cast aside its obligations to involve the public in leasing decisions. The BLM rescinded IM 2010-117 and issued a new policy, IM 2018-034, that made public participation during the NEPA process for leasing decisions optional, only requiring a ten-day protest period.[121] Conservation organizations challenged IM 2018-034 in *Western Watersheds Project v. Zinke*, and the district court's holding that the policy violated both NEPA and FLPMA is worth noting at length because it has a direct bearing on the current rulemaking process:

> [F]ederal agencies "must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process." *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs* , 524 F.3d 938, 953 (9th Cir. 2008); *see also Kraayenbrink* , 538 F. Supp. 2d at 1315 ('The clear meaning of the statutory language . . . is that public input is required on long-range issues ('preparation . . . of plans and programs') as well as on day-to day issues ('the management of' and 'execution of' those long-range plans)."). Despite this requirement, in implementing IM 2018-034, the BLM jettisoned prior processes, practices, and norms in favor of changes that emphasized economic maximization – to the detriment, if not outright exclusion of pre-decisional

[118] *See, e.g.*, *N.M. ex rel. Richardson* 565 F.3d at 704–08 ("A public comment period is beneficial only to the extent the public has meaningful information on which to comment. . . ."); *Conner*, 848 F.2d at 1451 (ruling that by not conducting a site-specific NEPA analysis, BLM "subverts NEPA's goal of insuring that federal agencies infuse in project planning a thorough consideration of environmental values").

[119] IM 2010-117, *Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews* at III.E. (May 17, 2010), *available at* https://www.blm.gov/policy/im-2010-117.

[120] IM 2010-117, *supra* note 119, at III.E., H.

[121] *See* IM 2018-034, *Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews* at III.B.5. (Jan. 31, 2018) ("State and field offices may provide for public participation during the NEPA process as part of the review of parcels identified for potential leasing."), *available at* https://www.blm.gov/policy/im-2018-034.

> opportunities for the public to contribute to the decision-making process affecting the management of public lands.
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> . . . .
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> In this context, IM 2018-034 was a mechanism for unharnessing prior constraints upon oil and gas leasing by specifically reducing or eliminating public involvement in the oil and gas leasing process *because* such public involvement hindered the oil and gas production industry [emphasis in original]. Doing so certainly served to meet the stated "purpose" of IM 2018-034 – that is, reducing or precluding public participation will "streamline the leasing process to alleviate unnecessary impediments and burdens, to expedite the offering of lands for lease. . . ." IM 2018-034, "Purpose" p. 1 (BLMW828). But the route chosen by BLM could not reach that destination because the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales. It is axiomatic that the benefits of public involvement and the protocol by which public involvement is obtained are not "unnecessary impediments and burdens."[122]

The Ninth Circuit largely affirmed the district court decision in *Montana Wildlife Federation v. Haaland*, ruling that when the BLM replaced IM 2010-117 with IM 2018-034, it:

> failed entirely to acknowledge the potential costs of reducing public participation in leasing decisions, including that shortening the participation opportunity might lead to insufficient consideration of the environmental impacts of its actions. Individuals and groups are unlikely to learn of the decision, research the environmental impacts of each sale—here, numbering in the dozens to hundreds—and compose a formal comment or protest marshalling facts and arguments in little over two weeks. By curtailing the opportunities available for public

[122] 441 F. Supp. 3d 1042, 1073–74 (D. Idaho 2020). This decision is not an outlier. A New Mexico federal court issued an identical ruling, finding that IM 2018-034 "runs counter to the requirement of public participation in the process under NEPA, FLPMA, and their companion regulations. Any desire to take the public out of the process must go through Congress as it pertains to NEPA and FLPMA . . . ." *WildEarth Guardians v. Bernhardt*, 501 F. Supp. 3d 1192, 1225 (D.N.M. 2020).

> input in land management decisions for the sole purpose of more expeditious offerings of oil and gas leaseholds, the agency "entirely failed to consider an important aspect of the problem," one embedded in NEPA, the statute IM 2018-034 was implementing.[123]

The Proposed Rule limits public involvement even more than IM 2018-034, which made public participation during NEPA review optional and required environmental assessments to be available *before* lease sales.[124] And, while both characterize legally required public participation as an impediment to oil and gas development, the Proposed Rule even goes as far as to flout the central holding of *Western Watersheds Project v. Zinke* by arguing that "[e]liminating the two 30-day public participation periods *could significantly expedite the oil and gas leasing process*."[125] Additionally, both reduce public protest periods to insufficient ten-day protest periods. And both are entirely inconsistent with the BLM's duties to provide meaningful participation in oil and gas leasing decisions under NEPA and FLPMA.

The BLM's proposed gutting of public participation fails to consider NEPA's goal of facilitating public information and participation,[126] as well as FLPMA's requirement to provide for participation in agency decisions.[127] And the agency's long-standing practice of providing public participation opportunities under NEPA for oil and gas lease sales underscores how inconsistent with the law the new procedures are. The BLM's choice is not only contrary to NEPA and FLPMA, but it also has failed to provide a reasoned explanation why it has made this dramatic shift. The Ninth Circuit's decision in *Montana Wildlife Federation v. Haaland* illustrates precisely why the procedures set forth in the Proposed Rule are arbitrary and capricious and inconsistent with NEPA and FLPMA. The BLM must retain in full the existing public participation requirements, including the 30-day scoping period, 30-day review period for draft NEPA documents, and 30-day protest period.

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[123] 127 F.4d at 39; *see also id*. at 40 ("Determining whether to engage in specific lease sale offers surely qualifies as a decision regarding the management of public lands. So the agency has a duty under FLPMA to involve the public in those decision. . . .").
[124] And, in fact, the BLM did offer short public comment periods under IM 2018-034.
[125] 91 Fed. Reg. at 38,103 (emphasis added). Of course, the Interior Department is bound by the U.S. Constitution to follow rulings and interpretations of federal courts.
[126] *See supra* Section II.d.2.
[127] *See supra* Section II.c.2.

The Proposed Rule also carries forward the same flawed approach taken by the Interior Department's recent eviscerating of its Department-wide NEPA regulations.[128] Courts for decades have recognized that seeking out and considering public input on proposed agency actions represents the very core of the NEPA statute. Public participation is central to achieving Congress's intent with NEPA, an understanding reflected by decades of agency practice and acceptance by Congress. Nor does soliciting and considering public input as part of the NEPA process pose unnecessary or unwarranted administrative burdens—the BLM has been conducting quarterly oil and gas lease sales for decades while also providing for public participation. The Proposed Rule is arbitrary and capricious and contrary to the NEPA statute for the same reasons as the Interior Department rule. We attach and incorporate by reference the prior objections and comments regarding the 2025 Interior Department Interim Final Rule.[129]

2. Public Participation During the Land Use Planning Process is Not an Adequate Substitute

The BLM attempts to justify its proposal to exclude the public from the oil and gas leasing process by suggesting the public engagement opportunities provided during the land use planning process are sufficient.[130] Public participation during the land use planning process is not an adequate substitute for meaningfully involving the public in site-specific leasing decisions. First, federal courts have rejected attempts to rely entirely or largely on public participation during land use planning. In *New Mexico ex rel. Richardson*, the Tenth Circuit rebuffed an oil and gas company's argument that the BLM may defer site-specific analysis to the permitting stage so long as it develops an EIS at the planning stage.[131] The critical inquiry, according to the Tenth Circuit, is whether, at the leasing stage, the BLM is making "an irretrievable commitment of resources." Before crossing that threshold (which, of course, happens at virtually every lease sale), the BLM must

[128] *See* Department of the Interior Interim Final Rule on National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025); Final Rule on National Environmental Policy Act Implementing Regulations, 91 Fed. Reg. 8,738 (Feb. 24, 2026).
[129] *See* Earthjustice Comments on NEPA Implementing Regulations, U.S. Department of Interior, Docket ID: DOI-2025-0004 at 12–18 (Aug. 1, 2025) [Ex. 21, Appendix C at 152].
[130] 91 Fed. Reg. at 38,103; BLM, Oil and Gas Leasing Rule – Economic Analysis at 10 (June 2026) [hereinafter, the "2026 RIA"], *available at* https://www.federalregister.gov/documents/2026/06/24/2026-12734/oil-and-gas-leasing.
[131] *See N.M. ex rel. Richardson*, 565 F.3d at 716–19.

prepare and obtain public input on a site-specific NEPA document.[132]

Second, in OBBBA, Congress affirmed the need to fully comply with "all applicable scoping, public comment, and environmental analysis requirements under the [MLA] and [NEPA]" prior to holding lease sales.[133] Applicable requirements include the posting timeframes and public participation periods set forth in 43 C.F.R. § 3120.42, which was in force at the time of OBBBA's passage and, as noted elsewhere in these comments, was adopted to ensure that the BLM fulfilled the requirements of NEPA for lease sales.

Third, the decisions made during the land use planning and leasing stages are fundamentally different and require the BLM to provide the public with separate and distinct opportunities to inform the decision-making process. At the land use planning stage, the BLM determines whether oil and gas leasing is feasible and generally consistent with multiple use and sustained yield across hundreds of thousands or millions of acres of public lands. Site-specific considerations, including whether specific parcels of public lands should be leased for oil and gas development, are typically deferred to the leasing stage. For example, during the Eastern Colorado RMP process, the BLM explained:

> A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level.[134]

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[132] *See W. Watersheds Project v. Zinke*, 441 F. Supp. 3d at 1075 n.17 (endorsing the argument that "RMP EISs cannot be used in place of pre-leasing NEPA analysis . . . . The fact that prior EISs contained general discussions of oil and gas development does not eliminate BLM's duty to provide site-specific NEPA analysis – and public comment – before approving specific lease sales.").

[133] Pub. L. No. 119-21, § 50101(b)(2)(A).

[134] BLM, *Protest Resolution Report – Proposed Eastern Colorado RMP and EIS* at 14 (Nov. 2023), *available at* https://www.blm.gov/sites/default/files/docs/2023-11/EasternColoradoRMP_Protest%20Report_FINAL.pdf; *see also* BLM, *Protest Resolution Report – Rock Springs Proposed RMP and EIS* at 88 (Dec. 2024) ("A land use planning–level decision is broad in scope. For

Accordingly, the BLM did not fully "analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because the approval of an RMP does not directly result in any on-the-ground impacts," and instead committed to "look[ing] at all appropriate mitigation measures during the decision-making process for future site-specific actions in the planning area."[135]

The leasing stage, then, is the point at which the BLM must perform the site-specific analysis that so often evades scrutiny at the planning stage. This is when specific parcels of public lands are "irretrievably committed" to development and when the public must have the opportunity to review and respond to site-specific information about potential impacts. If the BLM could skip this step (as it would be permitted to under the Proposed Rule), then the public would never have the opportunity to inform the BLM's site-specific leasing decisions. This would sanction a shell game where site-specific analyses of leasing specific parcels continually escape public scrutiny.

Finally, the idea that public engagement on planning documents is a sufficient basis on which to base site-specific leasing decisions ignores the reality of how old and outdated RMPs currently are. There are dozens of existing RMPs covering tens of millions acres of public lands that are over thirty or forty years old.[136] These RMPs and their associated NEPA analyses are not reflective of on-the-ground conditions today, including about how oil and gas leasing may affect fish and wildlife, recreation, and other values. Since approving these RMPs in the 1980s and 1990s, entire trail systems have been built, rangelands have burned, and species have become endangered or threatened. Providing meaningful public participation opportunities ensures that the BLM has up-to-date information about these and other considerations and can make informed decisions in furtherance of its multiple use and sustained yield responsibilities, as required by FLPMA

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this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. . . . Impacts on energy and minerals were analyzed qualitatively given the speculative nature of the demand and availability of alternative sources. . . . Proposed projects on any area open for mineral development would require site-specific plans and additional NEPA analysis.").

[135] BLM, *Protest Resolution Report – Proposed Eastern Colorado RMP and EIS*, *supra* note 134, at 8.

[136] These include the BLM's *Park City Management Framework Plan* (MFP) (UT – 1975), *Bennett Hills Timmerman Hills MFP* (ID – 1980), *Randolph MFP* (UT –1980), *Big Desert MFP* (ID – 1981*), Pinyon MFP* (UT – 1983), *Wells RMP* (NV – 1985), *Shoshone-Eureka RMP* (NV – 1986), and *White Sands RMP* (NM – 1986). *See* BLM, BLM Natl Approved Land Use Plans, *available at* https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-natl-approved-land-use-plans/explore?location=42.202925%2C-122.983752%2C4.

and NEPA.

3. The Value of Public Participation Has Been Repeatedly Confirmed Over the Past Two Decades

Under NEPA and FLPMA, public participation facilitates "informed decision-making" and ensures that public lands are managed for multiple uses. "It is past doubt that the principle of multiple use does not require the BLM to prioritize development over other uses. . . . Development is a *possible* use, which the BLM must weigh against other possible uses—including conservation to protect environmental values, which are best assessed through the NEPA process."[137] Contrary to these statutory goals, the Proposed Rule characterizes public participation as unnecessary—a procedural box to be checked that "extend[s] the overall timeline unnecessarily, without providing significant added value or meaningful changes to the analysis."[138] This statement is deeply concerning and reveals a shocking lack of familiarity with how the public has successfully shaped leasing decisions in the past.

Over the years, a wide array of stakeholders, ranging from state governors to county commissioners to small business owners to hunters and anglers to private landowners to Tribal leaders to retired park rangers, availed themselves of opportunities provided by the BLM to participate in the lease sale decision-making process. These stakeholders alerted the BLM to unknown or underappreciated considerations that directly informed the BLM's decisions on whether and under what conditions to lease specific parcels of public lands for oil and gas development. The following examples, which are far from exhaustive,[139] illustrate the immense benefit of public participation:

BLM OIL & GAS LEASE SALE	PARTICIPATING STAKEHOLDER(S)	OUTCOME

[137] *See N.M. ex rel. Richardson*, 565 F.3d at 710.
[138] 91 Fed Reg. at 38,103.
[139] *See* Center for Western Priorities, *Don't Drill Here*, *How bipartisan pushback has helped prevent oil and gas leasing on some of the West's most prized public lands*, ArcGIS StoryMap (Feb. 11, 2025) (additional examples) [Ex. 22, Appendix C at 234], *available at* https://storymaps.arcgis.com/stories/dcdf44edeadd469dbaecbe6c093fd4b8; Susan Lubetkin, *BLM Proposed Rule About Oil and Gas Leasing: Exploration of the Effects of the Scoping and Public Comment Process and a Critique of the Economic Rationale* at 14–75 (Aug. 21, 2026) [hereinafter, the "Lubetkin Report"] (additional examples from a survey of lease sale NEPA documents) [Ex. 23, Appendix C at 255].

Wyoming Feb. 2011	Wyoming Game & Fish Department (WGFD)	The BLM deferred a proposed parcel "at the request of the Wyoming Game and Fish Department . . . to allow the Wyoming Game and Fish Department to complete their Table Mountain Wildlife Management Area land exchange."[140]
Colorado May 2012	Colorado Parks & Wildlife (CPW)	The BLM deferred several proposed parcels because, approximately one month prior to the sale, CPW documented the existence of a new wildlife species (Columbian sharp-tailed grouse) on or in close proximity to the parcels.[141]
Montana Mar. 2018	Governor Steve Bullock, Senator Daines, Senator Tester, local officials, local business owners, private landowners	Secretary of the Interior Zinke deferred several proposed parcels along the Yellowstone River and near the town of Livingston, a gateway community for Yellowstone National Park because of concerns for impacts on tourism, agriculture, and local ways-of-life, acknowledging that "[m]ultiple use is about balance. I've always said there are places where it is appropriate to develop and where it's not."[142]
Wyoming Dec. 2018	Governor Matt Mead, Sweetwater County Commission, local hunters and anglers	The BLM rejected over 173,000 acres of proposed leases in Greater Little Mountain, a fish and wildlife-rich area in southern Wyoming popular with local hunters and anglers and important to local economies.[143]
Nevada Nov. 2019	City of Henderson, City of Mesquite, Virgin Valley Water District, Clark County Commissioner,	After local, federal, and Tribal officials raised concerns, the BLM declined to offer leases above the sole water source for several communities, with DOI's Katherine

[140] BLM, *Information Notice, Parcel Deferred* (Jan. 11, 2011) [Ex. 24, Appendix C at 345], *available at* https://web.archive.org/web/20151227192754/http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing/2011/02notice2.html.
[141] BLM, *Environmental Assessment for the May 2012 Oil and Gas Lease Sale* (May 2012), *available at* https://www.blm.gov/sites/blm.gov/files/uploads/Energy-Oil_Gas-Lease_Sales-Colorado-5.12-WRFO_Signed_EA.pdf,
[142] Josh Siegel, *Ryan Zinke Postpones Oil and Gas Lease Sale near Yellowstone After Local Opposition*, Wash. Examiner (Mar. 5, 2018) [Ex. 25, Appendix C at 347], *available at* https://www.washingtonexaminer.com/ryan-zinke-postpones-oil-and-gas-lease-sale-near-yellowstone-after-local-opposition; Martin Kidston, *Zinke Defers Oil and Gas Leases near Livingston, Yellowstone River*, Missoula Current (Mar. 5, 2018) [Ex. 26, Appendix C at 351], *available at* https://missoulacurrent.com/livingston/.
[143] Wally J. Johnson, *Commissioner: Rushed BLM Leasing Threatens Our Way of Life*, WyoFile (Apr. 20, 2018) [Ex. 27, Appendix C at 355], *available at* https://wyofile.com/commissioner-rushed-blm-leasing-threatens-our-way-of-life/; Press Release, *A Huge Win for Greater Little Mountain: 173,000 Acres of Oil and Gas Leases Deferred*, SweetwaterNOW (Aug. 31, 2018) [Ex. 28, Appendix at 359], *available at* https://www.sweetwaternow.com/huge-win-greater-little-mountain-173000-acres-oil-gas-leases-deferred/.

	Moapa Band of Paiutes, Sen. Cortez Masto	MacGregor stating "that the department would take local concerns into account. 'In the leasing process we do quite a bit of environmental analysis . . . ."[144]
Utah June & Sept. 2020	Governor Gary Herbert, Grand County Commission, City of Moab, Director of Utah' s Public Land Policy Coordinating Office Kathleen Clarke, local businesses	The BLM removed proposed parcels near Moab's national parks and overlapping a world-famous mountain biking trail following hearing concerns from state and local elected officials, as well as local businesses.[145]

Thus, public participation is a means of making informed decisions and balancing development with other uses and values of the public lands. Nothing in OBBBA prevents the BLM from acting on information offered by the public during the decision-making process. Therefore, the BLM must immediately course correct and uphold the critically important role of the public in making oil and gas leasing decisions on public lands.

4. The BLM Fails to Consider the Economic Impacts of Reducing Public Participation During the Leasing Process

As explained in the attached comment prepared by economist Dr. Kelly O'Donnell, Ph.D. (hereinafter, the "O'Donnell Comment"),[146] who evaluated the Proposed Rule and supporting economic analysis,[147] the BLM uses flawed and inconsistent reasoning to avoid evaluating the impacts of reduced public input during the lease sale process. We fully incorporate the O'Donnell Comment here by reference and submit it as an attachment to this comment.

The BLM's economic analysis states that eliminating the 30-day scoping and comment periods and shortening the protest period "may result in

[144] Robin Bravender, *Cortez Masto Urges BLM to Rethink Nevada Drilling Leases*, Nevada Current (Nov. 5, 2019) [Ex. 29, Appendix C at 366], *available at* https://nevadacurrent.com/briefs/cortez-masto-urges-blm-to-rethink-nevada-drilling-leases/; Letter from City of Mesquite to BLM Ely District Office, Protest to BLM Decision for November 2019 Competitive Oil & Gas Lease Sale (Oct. 13, 2019) [Ex. 30, Appendix C at 370], https://www.blm.gov/sites/blm.gov/files/NV_OG_20191013_City_of_Mesquite_Protest_508.PDF.
[145] Molly Marcello, *BLM Reverses Decision to Auction Off Land in Southern Utah*, Utah Pub. Radio (Feb. 25, 2020) [Ex. 31, Appendix C at 380], *available at* https://www.upr.org/utah-news/2020-02-25/blm-reverses-decision-to-auction-off-land-in-southern-utah; Brian Maffly, *Feds Yank Oil and Gas Leases near Arches, Canyonlands Parks from Upcoming Sale*, Salt Lake Trib. (Aug. 12, 2020) [Ex. 32, Appendix C at 386], *available at* https://www.sltrib.com/news/environment/2020/08/12/feds-yank-oil-gas-leases/.
[146] Kelly O'Donnell, *Comment on the Economic Analysis Supporting the Proposed Onshore Oil and Gas Leasing Rule* (Aug. 14, 2026) [hereinafter, the "O'Donnell Comment"] [Ex. 33, Appendix C at 391].
[147] 2026 RIA, *supra* note 130, at 18, 19, 27.

both economic costs and benefits that cannot be monetized."[148] The BLM claims that monetizing impacts is too difficult and complex,[149] so it treats as costless the exclusion of the public during the leasing process.[150] But in doing so, it gives asymmetric treatment to the benefit and cost sides of the ledger.

The economic analysis glowingly describes the benefits of removing public participation opportunities as "allowing for quicker access to oil and gas resources, which may lead to faster development of the resources"; "sav[ing] approximately 80 days in the leasing process"; "lower[ing] administrative costs for operators and the BLM, making federal lands more attractive for exploration"; and "boosting investment, job creation, and revenue for federal and state budgets through lease sales and royalties."[151] These terms are concrete and monetizable "and treated as reasons supporting the change."[152]

And while the BLM acknowledges "that limited community input on proposed leasing activities may lead to future conflicts"; "result in costly litigation and delays in the BLM's issuance of leases and subsequent authorizations"; and "elevate the likelihood of missing resource conflicts that are easily resolvable, which could lead to expensive remediation or legal challenges,"[153] these "costs are left as unquantified cautions. A balanced treatment would carry both [benefits and costs] into the net assessment on equal terms."[154]

The economic analysis also purports to "balance" the potential benefits and costs of reducing public participation by "implement[ing] a 10-day protest period, which allows the BLM to proactively address community concerns before leases are issued."[155] This is absurd. The BLM is not implementing a protest period, it is *reducing* the *existing* protest period from 30 days to only 10 days, while also *eliminating* the existing 30-day scoping and public comment periods. The potentially significant costs described above—

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148 2026 RIA, *supra* note 130, at 9
149 2026 RIA, *supra* note 130, at 10.
150 *See* O'Donnell Comment, *supra* note 146, at 5.
151 2026 RIA, *supra* note 130, at 9.
152 O'Donnell Comment, *supra* note 146, at 5.
153 2026 RIA, *supra* note 130, at 9–10.
154 O'Donnell Comment, *supra* note 146, at 5; *see also* Lubetkin Report, *supra* note 139, at 76–77 (showing BLM's suggestion that the Proposed Rule will save nearly $2 million per year in staff time spent responding to protests is not supported by the facts or BLM's own economic analysis).
155 2026 RIA, *supra* note 130, at 10.

including the increased likelihood that community concerns will not be heard and resource conflicts will be missed—are a direct result of the BLM's proposal to drastically limit public input. The BLM cannot then turn around and say its proposal to shorten the *existing* 30-day protest period is a "proactive" way to offset costs.

5. The BLM Fails to Explain Why a Lease Sale Protest Filing Fee is Reasonable and Consistent with FLPMA and NEPA

The proposed fee on lease sale protests is unwarranted and in excess of the BLM's authority. Under FLPMA, the BLM may establish "reasonable filing and service fees . . . with respect to applications and other documents. . . ."[156] FLPMA requires the BLM to evaluate whether a fee is reasonable based on "reasonableness factors" identified in 43 U.S.C. § 1734(b). However, the Proposed Rule contains no evidence that the BLM actually applied these factors when it evaluated the protest fee.

Moreover, the Proposed Rule contains contradictory statements that undermine the reasonableness of the protest fee. The BLM claims the fee is needed "to ensure that the BLM has sufficient capacity (i.e., staff and resources) to review and respond to protests while meeting the statutory deadline for holding lease sales and issuing leases."[157] Yet, the BLM later says that the fee "is not being proposed to reimburse the BLM for its processing its costs. . . ."[158] The BLM cannot have it both ways and must apply the criteria set forth in 43 U.S.C. § 1734(b).

Further, the protest fee must be viewed in context with the Proposed Rule's broader restrictions on public participation. The BLM is already proposing to eliminate all but one of the three public participation opportunities, and the remaining opportunity would be reduced from a thirty to a ten-day window. The protest fee would further constrain the public's ability to meaningfully participate in oil and gas leasing decisions for public lands. The Proposed Rule's pay-to-play scheme is contrary to FLPMA and NEPA and stands in marked contrast to the proposed relaxation of filing fees for the oil and gas industry, including the competitive lease application fee.

[156] 43 U.S.C. § 1734(a).
[157] 91 Fed. Reg. at 38,087.
[158] 91 Fed. Reg. at 38,088.

6. Section-Specific Comments

i. Proposed Section 3120.42: Posting Timeframes

The BLM proposes to amend section 3120.42 by removing existing paragraphs (a) and (b) providing for a 30-day scoping period and 30-day public comment period on the draft EA, respectively.[159] The BLM also proposes to shorten the current 60-day notice requirement at paragraph (c) to 45 days, and to shorten the current 30-day protest period at paragraph (d) to only 10 days.[160] Because these changes violate NEPA and FLPMA and impermissibly ignore the value of public participation during the leasing process, we urge the BLM to maintain the existing public participation opportunities and time periods.

ii. Proposed Section 3120.43: Protests

The BLM proposes to move the existing protest section from 3120.13 to section 3120.43 and to add a new paragraph (d) requiring a protest fee of $1 per page, including exhibits and attachments, for each page in excess of fifty.[161] This fee is unsupported and an unreasonable restriction on public participation, so we urge the BLM not to impose a protest fee on the public.

iii. Proposed Section 3000.120: Fee Schedule for Fixed Fees

The BLM is proposing to revise its fixed fee schedule at section 3000.120 by adding a new fixed filing fee for protests in the amount of $1 per page, including exhibits and attachments, for each page in excess of fifty.[162] For the same reasons discussed above, the BLM should not include a protest fee in the fee schedule.

b. The BLM Must Retain the Leasing Preference Criteria

The Proposed Rule would eliminate the leasing preference criteria currently found at 43 C.F.R. § 3120.32 (hereinafter, the "Preference Criteria"). In support, the preamble asserts that "elimination of the leasing preference criteria would

[159] 91 Fed. Reg. at 38,103, 38,120.
[160] 91 Fed. Reg. at 38,103, 38,120.
[161] 91 Fed. Reg. at 38,087, 38,102, 38,104, 38,112, 38,120.
[162] 91 Fed. Reg. at 38,087, 38,112.

allow the BLM to comply with the OBBB[A], which requires the BLM to offer a parcel within 18 months of receipt of the lands within an EOI."[163] This rationale misreads OBBBA, which does not foreclose application of the Preference Criteria. The BLM also asserts that the Preference Criteria are "duplicative" of existing land use planning requirements and NEPA, but in doing so it misunderstands the criteria's distinct role and purpose in the leasing process.

1. The BLM Previously Grounded the Preference Criteria in Existing Statutory Obligations

As discussed earlier, the BLM's statutory obligations under FLPMA and other laws remain in force under OBBBA,[164] and the BLM retains some discretion in choosing which lands to lease.[165] The BLM expressly grounded the Preference Criteria in its existing statutory obligations under FLPMA and the MLA. Thus, the Preference Criteria are not in tension with OBBBA, and nothing in OBBBA requires this change.

When the BLM promulgated the Preference Criteria as part of the 2024 Leasing Rule, it described the criteria as "consistent with" the MLA and FLPMA because they worked

> to direct the BLM's administrative resources to leasing tracts most likely to be developed, to reduce conflicts between oil and gas development and other public land uses that were not resolved in the resource management plans, and to "take[ ] into account the long-term needs of future generations for renewable and nonrenewable resources."[166]

In fact, the criteria themselves expressly reference the BLM's FLPMA obligations: "the BLM will evaluate the Secretary's obligations to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources."[167] Thus, the existing Preference Criteria are grounded in and serve to implement the BLM's statutory obligations by steering leasing away from areas of greatest conflict with conservation and other values and

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[163] 91 Fed. Reg. at 38,103.
[164] *See supra* Section II.e.2.
[165] *See supra* Section II.e.1.
[166] 89 Fed. Reg. at 30,919 (quoting 43 U.S.C. § 1702).
[167] 43 C.F.R. § 3120.32.

towards areas with highest energy development potential.

2. The Preference Criteria Are Not Duplicative of Other Statutory Requirements

In proposing to eliminate the Preference Criteria, the BLM also asserts that "[t]he criteria are duplicative of existing established processes for land use planning, resulting in unnecessary delays in oil and gas leasing without providing tangible benefits."[168] Similarly, its economic analysis in support of the Proposed Rule states that "[t]he removal of this criteria is a policy decision that will have no practical effect, since it is duplicative of the review conducted under NEPA."[169] These assertions are mistaken, and without the Preference Criteria, the BLM would largely lack any national regulatory guidance on how to exercise its discretion in this area.

First, the Preference Criteria are not duplicative of FLPMA's planning requirements. RMPs typically involve planning at a very large geographic scale and do not assess the site-specific conflicts addressed by the Preference Criteria. In fact, RMPs generally do not even assess the presence or absence of those conflicts. Instead, they commonly defer those issues to the leasing or even the permitting stages. RMPs also remain in effect for decades, such that the Preference Criteria provide a valuable updated review with current information. Indeed, when the BLM promulgated the Preference Criteria it explained that

> the RMPs do not always resolve all conflicts, especially those that may be unforeseen or arise due to a change in circumstances. In many cases, this calls for a more specific site review, and the MLA provides the necessary discretion, apart from FLPMA, to engage in this type of site-specific review.[170]

Second, the Preference Criteria are not duplicative of NEPA review. NEPA and the Preference Criteria serve different functions: while NEPA is a procedural statute requiring the BLM to disclose and analyze the environmental effects of proposed actions, the Preference Criteria are a substantive screen to direct leasing toward lands with higher development potential and away from low-potential, high-conflict lands. As the BLM

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[168] 91 Fed. Reg. 38,103.
[169] 2026 RIA, *supra* note 130, at 9.
[170] 89 Fed. Reg. at 30,919.

explained when issuing the 2024 Leasing Rule, by incorporating the Preference Criteria into its "regulations, the BLM makes those provisions legally binding and provides greater certainty and transparency to the public on the decision-making processes the BLM will use when it processes EOIs."[171] While the procedural analyses of parcels under NEPA can inform the BLM's leasing decisions, NEPA's procedural analysis cannot substitute for the Preference Criteria's nationwide substantive function in deciding which parcels to offer for lease. They are not duplicative.[172]

The BLM also explained when it promulgated the Preference Criteria that their application "enables the BLM to conduct preference criteria review while the public and industry provides scoping comments, which the BLM will incorporate into its determination in the NEPA compliance documentation," and this process allows the BLM to "better manage its workload by directing its resources towards tracts that are most likely to be developed" while also "allow[ing] the public to provide input that the BLM should consider when applying the criteria to the preliminary list of lands for a lease sale."[173] Although the agency now asserts the Preference Criteria are "resulting in unnecessary delays,"[174] it provides no evidence to support this statement.

3. The Preference Criteria Function as a Critical Backstop While the BLM Updates Outdated Resource Management Plans

Retaining the Preference Criteria is especially necessary because OBBBA overturned the assumptions under which the BLM's current, but often outdated, resource management plans (RMPs) were developed. Prior to OBBBA, designating lands as open to leasing under an RMP *allowed* the BLM to lease them, but *did not require* it to lease any particular public lands nominated by industry. Based on that understanding, the current RMPs designate the vast majority of public lands as open to leasing.

Across the western United States, fully 81% of BLM lands are "open" for leasing under existing RMPs.[175] In Montana and Wyoming, 95% and 92% of

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[171] 89 Fed. Reg. at 30,919.
[172] *See* O'Donnell Comment, *supra* note 146, at 4–5.
[173] 89 Fed. Reg. at 30,947.
[174] 91 Fed. Reg. 38,103.
[175] The Wilderness Society, *Open for Drilling*, *supra* note 8, at 2.

BLM lands, respectively, are open for leasing.[176] The BLM's reading of OBBBA thus effectively gives the oil and gas industry priority in deciding how to use most BLM-managed public lands. The radical changes brought by OBBBA mean the BLM cannot rely on existing RMPs to ensure that oil and gas leasing and development maintains sustainable wildlife populations and avoids unnecessary and undue degradation, as required by FLPMA. Instead, the BLM must reassess those issues before proceeding with leasing. Indeed, NEPA *requires* the BLM to do such a reassessment before relying on the analysis supporting its pre-OBBBA RMPs.[177]

Reassessing existing RMPs is also necessary because OBBBA restricts the BLM's ability to require additional lease stipulations or mitigation requirements at the lease sale stage. As amended by OBBBA, the MLA now provides that leases "shall be subject to the terms and conditions of the approved resource management plan; and . . . *may not require any stipulations or mitigation requirements not included in the approved resource management plan*."[178] OBBBA further amended the MLA to provide that "the initiation of an amendment to an approved [RMP] shall not prevent or delay the Secretary from making the applicable parcel of land available for leasing in accordance with that approved [RMP]."[179] In developing RMPs prior to OBBBA, the BLM often relied on the promise of additional analysis and decision-making at the lease sale stage to mitigate impacts and as the basis for concluding that the requirements of FLPMA will be satisfied, and it routinely added new stipulations at the lease sale stage when RMPs were outdated or needed amendments to incorporate new information.[180]

In amending Colorado RMPs to address big game habitat, for example, the BLM emphasized the importance of monitoring, mitigation, and collaboration with the State of Colorado Parks and Wildlife (CPW) during plan implementation. The BLM explained:

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[176] The Wilderness Society, *Open for Drilling*, *supra* note 8, at 10, 13.
[177] *See* 42 U.S.C. § 4336(b); *see also* Pub. L. No. 119-21 § 50101(b)(2)(A) (requiring full compliance with NEPA's environmental analysis requirements prior to conducting lease sales).
[178] 30 U.S.C. § 226(a)(2)(A) (emphasis added), as amended by Pub. L. No. 119-21 § 50101(d)(1).
[179] 30 U.S.C. § 226(a)(2)(B), as amended by Pub. L. No. 119-21 § 50101(d)(1).
[180] *See, e.g.*, IM 2010-117, *supra* note 119, at III.C.2; *Rocky Mtn. Wild v. Bernhardt*, 506 F. Supp. 3d 1169, 1190 (D. Colo. 2020) (BLM imposed new air quality stipulation in issuing leases); *N.M. Wilderness All.*, 186 IBLA 183, 191 (2013) (affirming the BLM decision that "developed new, specifically-tailored mitigation measures as stipulations . . . for the protection of streams, rivers, floodplains" and other resources as part of lease sale without amending RMP). Alternatively, the BLM could make site-specific or targeted RMP amendments where necessary to attach new stipulations at the leasing stage.

> Cooperation during planning and in leasing federal minerals is essential to applying appropriate stipulations that avoid, minimize, and mitigate impacts to big game resources while allowing for efficient oil and gas development. Combined review of proposed lease parcels ensures CPW has the opportunity to provide input on wildlife stipulations, conservation measures, and other issues related to leasing and development.[181]

Similarly, when amending its 2015 Greater sage-grouse RMPs to remove restrictions on oil and gas leasing, the BLM asserted that it would exercise its discretion to protect sage-grouse habitat when choosing which lands to offer for lease:

> BLM would consider the desired condition to manage public lands to provide suitable habitat . . . when making leasing decisions. As described in GRSG PRMPA/FEIS Section 2.4, 'Fluid mineral leasing would be considered in GRSG habitat management areas consistent with the Secretary's discretion under the Mineral Leasing Act (as amended), as well as applicable BLM regulations and policies, and in conformance with RMP goals, objectives, stipulations, and required design features to avoid, minimize, and compensate impacts to GRSG.[182]

Moreover, prior to OBBBA, the BLM commonly deferred offering leases until necessary RMP amendments were made. This occurred, for example, for the following lease sales:

- Wyoming BLM February 2011 Oil & Gas Lease Sale – "If parcels WY-1102-040 and WY-1102-041 were allowed to go forward to the lease sale as nominated, this could preclude management analysis of the 13 areas identified as potentially containing wilderness characteristics in the Wind River/Big Horn Basin RMP revision process."[183]

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[181] BLM, *Record of Decision and Approved Resource Management Plan Amendment for Big Game Habitat Conservation for Oil and Gas Management in Colorado* at II-33 (Oct. 2024).
[182] BLM, *Director's Protest Resolution Report for Greater Sage-Grouse Rangewide Planning Proposed Resource Management Plan Amendment and Final Environmental Impact Statement* at 118 (Jan. 10, 2025) *available at* https://www.blm.gov/national-office/directors-protest-resolutions/protest-resolution-report/greater-sage-grouse; *see also* BLM, *Greater Sage-Grouse Rangewide Planning: Proposed Resource Management Plan Amendment and Final Environmental Impact Statement* at 2-24 to -25 (Nov. 2024) (same), *available at* https://eplanning.blm.gov/Documents/?id=d8b882cc-a7f2-f011-8406-001dd8008d46&spid=a26c137d-a8f2-f011-8407-001dd80c29f3.
[183] BLM, *Environmental Assessment DOI-BLM-WY-020-EA10-79 – February 2011 Lease Parcels* at 19 (Aug. 2010) [Ex. 34, Appendix C at 407].

- Colorado February 2012 Oil & Gas Lease Sale - "Sixty five (65) of the parcels were recommended to be entirely deferred based on their potential effects in greater sage-grouse core area until the RMP implementation plan is completed for [the Little Snake Field Office.]."[184]
- Montana BLM May 2012 Oil & Gas Lease Sale - "All 13 lease parcels, in whole or part, have been found to contain sensitive cultural sites being analyzed in the ongoing MCFO RMP effort. Additional cultural protection measures are being considered in the on-going planning efforts; therefore, all 13 lease parcels, in whole or part, would be deferred at this time pending further review and analysis. This would provide for consideration of alternatives in the future MCFO RMP planning effort utilizing recent research and updated BLM policies."[185]
- Wyoming August 2012 Oil & Gas Lease Sale - "Leasing these parcels will limit the effectiveness of the preferred alternative of the Lander Field Office RMP Draft EIS, because doing so allows the lease holder to develop the lease without restrictions to protect high value recreational resources. Under such a lease and if development were to occur limited mitigation measures may be imposed, and therefore developments would stand to conflict with recreational use of the area."[186]

OBBBA sharply limits the BLM's authority to take all these steps. The Proposed Rule acknowledges these changes,[187] but never addresses how they will affect future leasing and compliance with FLPMA.[188] The Preference Criteria provide a necessary mechanism for ensuring that leasing complies with FLPMA and other laws. The BLM cannot eliminate the Preference Criteria without first analyzing and considering how the agency will comply

[184] BLM, *Decision Record, February 2012 – Colorado Competitive Oil & Gas Lease Sale*, DOI-BLM-CO-N010-2011-0104-EA at 3 (Feb. 9, 2012) [Ex. 35, Appendix D at 2].
[185] BLM, *Environmental Assessment DOI-BLM-MT-C020-2012-0006-EA, Oil and Gas Lease Parcels*, May 8, 2012 Sale at 5 (Feb. 8, 2012) [Ex. 36, Appendix D at 15].
[186] BLM, *Environmental Assessment, August 2012 Lease Parcels, Wind River/Bighorn Basin District*, DOI-BLM-WY-050-EA12-17 at 4-6 (Aug. 2012) [Ex. 37, Appendix D at 26].
[187] *See* 91 Fed. Reg. at 38,097 (interpreting OBBBA restriction as applying to lease stipulations and lease-level mitigation requirements, but not "applying to conditions of approval (COA) for APDs").
[188] BLM's ability to include "reasonable" COAs at the APD stage is no substitute for lease-stage mitigation measures. *See* 91 Fed. Reg. at 38,097 (COA "measures would be consistent with the lessee's rights," and are deemed presumptively reasonable if they only require moving operations up to 200 meters or limiting activities for up to 60 days per year). Moreover, the Proposed Rule appears to limit the ability of the BLM to impose COAs addressing new circumstances or other matters not expressly addressed in the RMP. *Id.* at 38,097 (stating that COAs must be "consistent with the RMP's objectives and that further support the BLM's interpretation").

with FLPMA's resource protection mandates in their absence, yet the BLM has not done this.[189]

4. The BLM's Economic Analysis Does Not Provide a Reasoned Explanation for Eliminating the Preference Criteria

The BLM attempts to justify eliminating the Preference Criteria in its economic analysis of the Proposed Rule, concluding that removing those criteria "will not result in incremental economic costs or benefits."[190] As discussed earlier, the BLM reasons that "removal of this criteria is a policy decision that will have no practical effect, since it is duplicative of the review conducted under NEPA," and points to the BLM's prior finding when promulgating the 2024 Leasing Rule that adding the criteria was costless.[191] The BLM also repeats its position that OBBBA necessitates eliminating the Preference Criteria. The BLM's analysis and conclusions are flawed and do not support eliminating the Preference Criteria.

As explained above and by Dr. Kelly O'Donnell, Ph.D., who reviewed the BLM's economic analysis and prepared the attached comment that we fully incorporate here by reference, the Preference Criteria serve a different function than NEPA and are not duplicative.[192] Further, the BLM does not consider that eliminating the Preference Criteria will change which parcels are offered and leased, and is likely to increase leasing on low-potential parcels that generates little production.[193] This will needlessly encumber public lands and foreclose or complicate competing uses, while requiring the BLM to administer, monitor, and potentially reclaim those lands.[194] The BLM's finding that removal of the Preference Criteria will have "no economic

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[189] Relatedly, because the BLM determined that the Proposed Rule will not affect federally recognized Indian Tribes because the changes to leasing "will not impact the leasing of Indian minerals," it did not reach out to Tribes to conduct government-to-government consultations. 91 Fed. Reg. at 38,108. This is wrong. Elimination of the Preference Criteria would remove criterion (c), which screens for "[t]he presence of historic properties, sacred sites, and other high value cultural resources, giving preference to lands that would not impair the cultural significance of such resources." 43 C.F.R. § 3120.32(c). When coupled with the proposed elimination and shortening of public participation opportunities, *see supra* Section III.a, the Proposed Rule will make it more likely that the BLM will not receive relevant information from Tribes or be able to engage in meaningful consultation before leasing occurs. Thus, the Proposed Rule has "tribal implications" within the meaning of Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments*, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

[190] 2026 RIA, *supra* note 130, at 9.

[191] 2026 RIA, *supra* note 130, at 9.

[192] O'Donnell Comment, *supra* note 146, at 4.

[193] O'Donnell Comment, *supra* note 146, at 4.

[194] O'Donnell Comment, *supra* note 146, at 4.

effect therefore requires showing that the composition of leased lands will not change; the Economic Analysis makes no such showing."[195]

The BLM's reliance on its prior finding that promulgating the Preference Criteria was costless "does not establish that their removal is costless, because the economically relevant margin is the change in leasing outcomes the screen produced, which neither analysis estimates."[196]

Finally, the BLM's position that OBBBA somehow requires it to eliminate the Preference Criteria is unrelated to the Proposed Rule and "is not a showing that the change is without economic effect."[197]

5. The BLM's Other Reasons Do Not Justify Eliminating the Preference Criteria

The BLM is also wrong to suggest that the Preference Criteria are irrelevant because newer technology lessens surface impacts from oil and gas development.[198] For one, leasing low-potential lands, which the Preference Criteria help to avoid, generates little production while encumbering the land and foreclosing or complicating the BLM's multiple-use mandate under FLPMA. Further, oil and gas development has significant impacts even using current drilling technology, including, among others, greenhouse gas emissions felt miles away from well pads and impacts to wildlife and habitat from roads, as well as water and air pollution. As the BLM acknowledges, "modern drilling technology" may "reduce" impacts, but it does not eliminate them. The BLM has repeatedly acknowledged in NEPA analyses for lease sales and RMPs that, even with stipulations, oil and gas development can have significant adverse impacts to other resources. The BLM's suggestion to the contrary here is arbitrary and capricious. Indeed, the BLM recognized the existence of resource and use conflicts and the importance of addressing them through avoidance – and not just mitigation and stipulations – when adopting the Preference Criteria. The BLM does not identify anything specific that has changed since it promulgated the 2024 Leasing Rule.

None of the other grounds asserted for removing the Preference Criteria hold water either. With respect to the Preference Criteria, specifically, the BLM

[195] O'Donnell Comment, *supra* note 146, at 4.
[196] O'Donnell Comment, *supra* note 146, at 4.
[197] O'Donnell Comment, *supra* note 146, at 4.
[198] *See* 91 Fed. Reg. at 38,103.

relies on two executive orders to baldly assert that the criteria are "not required by law and unnecessarily burden[s] the oil and gas leasing process contrary to the policy guidance in E.O. 14154 and E.O. 14219."[199] It also asserts that the Preference Criteria may "inadvertently hinder" energy development by "delaying" or "unnecessarily limiting" opportunities.[200] As described above, the BLM fails to support this bald assertion. In any event, an Executive Order cannot trump an agency's statutory obligations, and as described above, OBBBA does not require this change.

Thus, the BLM's rationale for the proposed rule effectively admits that the BLM is putting one use and one priority—immediate energy development—over all other uses and values on lands it stewards for multiple use and sustained yield. These rationales ignore that, as described above, FLPMA requires management of public lands based on "multiple use and sustained yield," utilizing the resources in a way that takes "into account the long-term needs of future generations for renewable and nonrenewable resources, *including,*" among others "watershed, wildlife and fish, and natural scenic, scientific and historical values."[201] This reasoning, and the BLM's approach, cannot be squared with the BLM's legal obligation to balance multiple uses for the benefit of all Americans, including future generations.

It also bears noting that the Proposed Rule is arbitrary and unreasonable even as to the agency's asserted goal. If the ultimate intent is earlier and expanded oil and gas production, would prioritizing parcels with high development potential not better serve that end than treating all areas alike?[202] Similarly, would "giving preference to lands upon which a prudent operator would seek to expand existing operations" not be more likely to influence near-term oil and gas expansion by focusing on areas in proximity to existing development, which may require less infrastructure and associated development, than targeting, for example, other areas with high-value wildlife habitat or conflicts with recreation?[203] The Proposed Rule's

[199] 91 Fed. Reg. at 38,103.
[200] 91 Fed. Reg. at 38,103.
[201] 43 U.S.C. §§ 1701(a)(7), 1702(c) (emphasis added); *see supra* section II.c.1.
[202] *See* 43 C.F.R. § 3120.32(e).
[203] *See* 43 C.F.R. § 3120.32(a). We do have concerns that, while the regulations preference leasing parcels with "[p]roximity to existing oil and gas development," 43 C.F.R. § 3120.32(a), some of these areas risk further concentrating and expanding development, exacerbating ongoing and historical degradation to the affected area and the public health of nearby communities. We are urging BLM to retain its existing Preference Criteria, but also urge the agency, in applying these criteria: (1) not to assign an overall preference to lease parcels that are in proximity to existing oil and gas development or that are on lands with high development potential if the proposed parcels are on lands where other sensitive resources are present; and (2) to

suggestion that the Preference Criteria are not "required by law," though cryptic, similarly appears to assert a belief that absent a mandatory command to apply these particular criteria, the BLM may eliminate them as unnecessary hindrances to prioritizing energy development. This is not a valid basis for changing position and eliminating the Preference Criteria.

6. Section-Specific Comments

i. Proposed Section 3120.32: Expression of Interest Leasing Preference

The BLM proposes to remove section 3120.32 in its entirety and thereby eliminate the existing leasing Preference Criteria.[204] Because, as discussed above, the leasing preference criteria are grounded in existing law and the BLM failed to provide a reasoned explanation for this change, we urge the BLM to retain section 3120.32 and continue applying the Preference Criteria as they now exist.

c. The BLM Must Retain the Current Oil and Gas Bonding Requirements

Bonds are the cornerstone of the federal oil and gas leasing program, ensuring that operators, not taxpayers, bear the costs of plugging wells, reclaiming disturbed lands, restoring wildlife habitat, and remediating environmental damage after development ends. When bond amounts are inadequate, as they have been for decades, these costs are shifted to the public, leaving behind a cemetery of orphaned wells, degraded ecosystems, fragmented wildlife habitat, contaminated water resources, and billions of dollars of reclamation liabilities. Decades of outdated federal bonding requirements have contributed to a legacy of nearly 15,000 orphaned wells on public lands and a nationwide orphaned well crisis that prompted Congress to appropriate $4.677 billion in federal funds to identify, plug, and reclaim orphaned wells.[205] Recognizing these longstanding

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document and prioritize community health. For example, under the former IM 2023-007, *Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales* (Nov. 21, 2022) (inactive), *available at* https://www.blm.gov/policy/im-2023-007, the BLM designated lands as low preference if *any* criteria were triggered, such that an area adjacent to existing development, but in high value habitat, would still be low preference.

[204] 91 Fed. Reg. at 38,103, 38,120.

[205] Statement of Steve Feldgus, Deputy Assistant Sec'y for Land & Minerals Mgmt., U.S. Dept of the Interior, Statement Before the H. Comm. on Nat. Res., Subcomm. on Energy & Mineral Res., Benefits of the Legacy Pollution Clean-Up Programs in the Bipartisan Infrastructure Law (Mar. 31, 2022) [Ex. 38, Appendix D at 35], *available at* https://www.blm.gov/sites/default/files/docs/2022-04/DOI%20Testimony_Benefits%20of%20the%20Legacy%20Pollution%20Clean-

failures and the extent of the problem, the BLM adopted the 2024 Leasing Rule to modernize bonding requirements for the first time in decades. For the reasons discussed below, the BLM should retain the bonding requirements adopted in the 2024 Leasing Rule and reject the proposed reductions to minimum bond amounts.

1. The MLA Requires Financial Assurance Sufficient to Fulfill Congress's Mandate of Complete and Timely Reclamation

To ensure complete and timely reclamation, the MLA requires the BLM to establish standards ensuring that an adequate bond or other financial assurance is in place before operators begin surface-disturbing activities. Notably, the MLA provides:

> The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease.[206]

Congress's use of the word "shall" imposes a mandatory duty on the Secretary of the Interior to establish financial assurance standards before surface-disturbing activities commence. Congress, in the same provision, also expressly identified the purpose of those standards: to ensure the "complete" and "timely" reclamation of federal oil and gas lease sites and the restoration of affected lands and waters.[207] Thus, the statutory objective of the financial assurance program is clear: operators, not taxpayers, must bear the financial responsibility for reclaiming federal lands disturbed by oil and gas development.[208]

The BLM's 2024 Leasing Rule implemented this statutory directive by

Up%20Programs%20in%20the%20Bipartisan%20Infrastructure%20Law.pdf; *see also* BLM, *Tackling Legacy Orphaned Wells*, *supra* note 22.

[206] 30 U.S.C. § 226(g).

[207] 30 U.S.C. § 226(g).

[208] *See also* 30 U.S.C. § 187 (requiring BLM to include lease provisions that are "deem[ed] necessary . . . for the protection of the interests of the United States . . . and for the safeguarding of the public welfare").

modernizing decades-old bonding requirements that no longer reflected the actual costs of reclamation.[209] In promulgating that rule, the BLM relied on evidence demonstrating that existing bond amounts frequently failed to cover reclamation liabilities, leaving taxpayers exposed to significant cleanup costs.[210] The GAO, likewise, concluded that the BLM's historic bond minimums often covered only a fraction of reclamation costs and recommended that the agency address the risks posed by insufficient financial assurance.[211] These findings supported the BLM's determination that updated bonding requirements were necessary to fulfill the objectives Congress established in the MLA.

The Proposed Rule undermines that statutory framework by reducing minimum bond amounts back to back to levels established in the 1950s and 1960s without demonstrating that the resulting financial assurances will be sufficient to secure complete performance of lease obligations. If the BLM now proposes to substantially weaken those financial assurance requirements, it must provide a reasoned explanation demonstrating how the revised rule remains consistent with the MLA's statutory mandate. While the BLM asserts that lowering the bonding rate would lower financial barriers for operators, result in increased production of oil and gas, and foster greater engagement from a diverse range of operators, the BLM provides no evidence to support this assertion.[212] Absent any such evidence or adequate explanation, the proposed rule is arbitrary and capricious and contrary to the MLA's express purpose.

2. Decades of Experience and the Administrative Record for the 2024 Leasing Rule Show Historic Federal Bonding Requirements Were Inadequate

In promulgating the 2024 Leasing Rule, the BLM recognized what decades of administrative experience, GAO oversight reports, and congressional findings had consistently demonstrated: the federal bonding framework that existed before the 2024 Leasing Rule no longer provided financial assurances sufficient to protect taxpayers or ensure the complete and timely reclamation of federal oil and gas operations. The BLM explained that the minimum bond

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[209] *See* 89 Fed. Reg. at 31,544.
[210] 89 Fed. Reg. at 47,581.
[211] GAO, GAO-19-615, *Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells* (Sept. 2019) [Ex. 39, Appendix D at 42], *available at* https://www.gao.gov/assets/gao-19-615.pdf.
[212] 91 Fed. Reg. at 38,099.

amounts had not been increased since 1951 for statewide and nationwide bonds and 1960 for individual/lease bonds, despite inflation and dramatic increases in plugging and reclamation costs over the intervening decades.[213] The BLM further concluded that "[t]he BLM's current minimum bond amounts are outdated, expose the Federal Government to significant financial risks in the event of bankruptcies, and delay 'complete and timely' reclamation and restoration of lease tracts, which can cause or exacerbate a range of environmental issues, including methane leaks, surface and groundwater contamination, interference with agricultural activities, and degraded wildlife habitat."[214]

The BLM also explained that its revised minimum bond amounts were based on objective economic and operational data rather than arbitrary figures. Specifically, at the proposed rule stage, the BLM determined that the cost to plug and reclaim a federal well ranged from approximately $35,000 to $200,000, with an average cost of approximately $71,000 per well.[215] After reviewing its bonding portfolio, the BLM found that the median lease bond covered one well and, therefore, established the new lease bond amount at $150,000, sufficient to cover the estimated reclamation costs of two average wells.[216] Similarly, the BLM found that the median statewide bond covered seven wells, leading the agency to establish the new statewide bond amount of $500,000, which approximates the estimated reclamation costs for seven average wells.[217]

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[213] 89 Fed. Reg. at 47,565.
[214] 89 Fed. Reg. at 47,563.
[215] BLM, *Fluid Mineral Leases and Leasing Process – Final Rule, Regulatory Impact Analysis and Regulatory Flexibility Analysis* at 20 (Apr. 2024) [hereinafter, the "2024 RIA"], https://www.regulations.gov/document/BLM-2023-0005-130198. These figures are themselves conservative. A 2021 study found that the median per-well cost of plugging and surface reclamation was roughly $76,000, and that each additional 1,000 feet of well depth increases costs by 20%. Daniel Raimi et al., *Decommissioning Orphaned and Abandoned Oil and Gas Wells: New Estimates and Cost Drivers*, 55 Envtl. Sci. & Tech. 10224, 10226, 10228 (2021) [Ex. 40, Appendix D at 81], https://pubs.acs.org/esthag/article/55/15/10224/420419/Decommissioning-Orphaned-and-Abandoned-Oil-and-Gas; Kelly O'Donnell, *An Economic Evaluation of the Bonding Analysis Supporting the Proposed Oil and Gas Leasing Rule* at 3 & n.6 (Aug. 14, 2026) [hereinafter, the "O'Donnell Bonding Report"] [Ex. 41, Appendix D at 89]. And in BLM's own cleanup experience during fiscal year 2025, it received direct funding in the amount of $35 million for 93 wells, or $376,000 per well. O'Donnell Bonding Report at 9 & n.34. Federal leasing has also concentrated in the Permian Basin where deep, horizontal wells are the norm. O'Donnell Bonding Report at 2–3, 9. These wells decline faster than conventional wells, so not only are they likely to cost significantly more than $71,000 to plug and reclaim, as BLM assumes, but the cleanup bill is also likely to come due sooner. O'Donnell Bonding Report at 3, 9.
[216] 89 Fed. Reg. at 47,581.
[217] 89 Fed. Reg. at 47,581.

The GAO independently reached the same conclusion after reviewing the BLM's administration of the federal bonding program over more than a decade. In its 2019 report, the GAO summarized years of oversight findings documenting that historic federal bond amounts routinely failed to cover reclamation costs and left the federal government exposed to significant financial risk when operators became insolvent or abandoned their obligations.[218] The GAO explained that minimum bond amounts had remained unchanged for decades despite increasing reclamation costs and that the BLM's historic bonding requirements frequently failed to provide financial assurances sufficient to cover the costs of plugging wells and reclaiming disturbed lands. The GAO further noted that earlier investigations found approximately 84 percent of bonds associated with federal wells were likely insufficient to cover reclamation costs, leaving taxpayers exposed to significant unfunded liabilities.[219]

DOI subsequently reviewed the 2019 GAO report and other studies, going back decades, showing the minimum bonding rates were outdated.[220] This review led Interior to recommend that the BLM promulgate regulations to "increase minimum bond amounts and set the appropriate levels taking into consideration changes in technology, the complexity and depth of modern wells, inflation, and the risk of abandonment."[221]

The BLM did not adopt the 2024 Leasing Rule in response to speculative concerns about future reclamation liabilities. Rather, it relied on decades of experience administering the federal oil and gas program and an extensive administrative record demonstrating that the historic bonding framework frequently failed to ensure that operators, rather than taxpayers, bore the costs of plugging wells and reclaiming disturbed public lands.[222]

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[218] GAO-19-615, *supra* note 211.
[219] GAO-19-615, *supra* note 211.
[220] DOI, *Report on the Federal Oil and Gas Leasing Program*, *supra* note 15, at 3, 6, 910.
[221] DOI, *Report on the Federal Oil and Gas Leasing Program*, *supra* note 15, at 10.
[222] *See also* Oil and Gas Resources, 91 Fed. Reg. 3,643, 3,648 (Jan. 28, 2026) (U.S. Forest Service stating its final rule retains authority under the MLA to ensure adequate bonding because, in its "experience in managing Federal oil and gas resources, . . . in many cases . . . BLM lease bonds are insufficient to support surface reclamation needs if a lessee or operator defaults." The Forest Service pointed approvingly to the changes made to the bonding requirements in the 2024 Leasing Rule "to address shortcomings" identified by GAO, but kept regulations allowing the Forest Service to exercise its own bonding authority.), *available at* https://www.govinfo.gov/content/pkg/FR-2026-01-28/pdf/2026-01655.pdf; Onshore Oil and Gas Leasing and Operations, 63 Fed. Reg. 66,840, 66,868–69 (Dec. 3, 1998) (BLM proposing nearly three decades ago to increase bonding rates, stating: "Increased bonds or fees are necessary due to the significant unfunded liability that has fallen and continues to fall on the public in general and BLM and other land management agencies in particular. This liability is in the form of orphan oil and gas wells. Unplugged or inadequately

Because the 2024 Leasing Rule was expressly adopted to remedy the onshore oil and gas program's documented failures, the BLM cannot now reverse course without providing a reasoned explanation for why the factual findings underlying that rule no longer justify modernized financial assurance requirements. These are not merely observations of outside commentators or oversight bodies; they are the BLM's own factual findings supporting the 2024 Leasing Rule, corroborated by GAO investigations and Interior's recent review of the federal onshore oil and gas leasing program.

The APA requires the agency to acknowledge those findings and provide a reasoned explanation, supported by the administrative record, for reaching a contrary conclusion. The BLM fails to do so, however, and even admits that it "has no new data or basis to revise" the values relied on by the BLM in 2024, so it simply carries those values forward without rebuttal.[223] If the data are unchanged, then the BLM's prior finding that bond minimums were inadequate should also not change absent a reasoned explanation.[224] While the BLM acknowledges in the preamble to the Proposed Rule that bonds exist to ensure complete and timely plugging and reclamation, it immediately pivots to small operator access to justify bond reductions.[225] Operator burden is not the right statutory question; the MLA requires the BLM to issue regulations establishing adequate bond amounts that guarantee the

plugged wells and unreclaimed sites on Federal lands with no responsible person or company found are left to the government to clean up. Even if a bond is available for the well, it is frequently insufficient to cover the costs of plugging and reclamation. Furthermore, one bond may represent many wells. The Bureau Performance Review of the Oil and Gas Program included a review of bonding and unfunded liability. The March 1995 report concluded that the public was assuming too much of the risk from orphan wells. The existing regulations provided the authority to increase bonds, but did not provide guidelines on how much to increase the bond requirements. Furthermore, the operator may appeal the amount of the bond increase, adding to the costs for both BLM and the operator. The proposed rule reduces the number of situations where the operator may appeal bond increases. The bond increases in the proposed rule are based on the recommendations from that review."), *available at* https://www.govinfo.gov/content/pkg/FR-1998-12-03/pdf/98-31671.pdf; Exploration Activity; Oil and Gas Leasing; National Petroleum Reserve, Alaska; and Geothermal Resources Leasing; General; Amendment Consolidating Oil and Gas and Geothermal Geophysical Exploration and Lease Bonds, and Increasing Minimum Bond Amount Requirement, 50 Fed. Reg. 18,614, 18,614–15 (May 1, 1985) (BLM proposing over forty years ago to increase bonding rates to ensure "the amount of bond coverage provided in this proposed rulemaking would make the bonds commensurate with current restoration costs. In recent years, the [BLM] has encountered an average of 10 instances annually where individual operators have left well locations without properly plugging and abandoning the holes, or properly reclaiming the disturbed surface at the well site."), *available at* https://tile.loc.gov/storage-services/service/ll/fedreg/fr050/fr050084/fr050084.pdf.

[223] 2024 RIA, *supra* note 215, at 18.

[224] O'Donnell Bonding Report, *supra* note 215, at 12.

[225] 91 Fed. Reg. at 38,099.

reclamation and restoration of lease parcels upon decommissioning.[226] The BLM also points to IM 2024-014, *Oil and Gas Bonds Adequacy Reviews*, as mitigating the risk of insufficient bonding,[227] but, as explained below, that IM does not justify bond reductions.

3. Several Oil- and Gas-Producing States Have Independently Concluded that Modernized Bonding Requirements are Necessary

The BLM's 2024 Leasing Rule modernizing its bonding requirements is also consistent with broader efforts by oil and gas producing states to better align financial assurance with modern plugging and reclamation costs. These changes reflect both the importance of oil and gas programs across the West maintaining adequate bonding systems and the overwhelming public support that exists for requiring oil and gas operators to provide financial assurances sufficient to ensure that taxpayers do not bear the costs of plugging abandoned wells and reclaiming western lands.[228]

Colorado, for example, overhauled its bonding rules in 2022 after its legislature directed regulators to replace a framework that allowed operators to cover fewer than 100 wells with a single $60,000 statewide blanket bond and 100 or more wells with just $100,000 with financial assurance sufficient to provide adequate coverage for operators' obligations.[229] The 2022 rules replaced that framework with operator-specific financial assurance plans and multiple financial assurance options designed to better account for an operator's well portfolio and reclamation obligations, while imposing increased financial assurance requirements for transferred and inactive wells and requiring financial assurance accounts for new wells. Colorado also established an industry-funded orphan-well program, reflecting the State's determination that existing bonding and financial assurance mechanisms did not always provide sufficient funding to plug, reclaim, and remediate orphaned wells.[230]

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[226] 30 U.S.C. § 226(g); *see supra* Section III.c.1.
[227] 91 Fed. Reg. at 38,099.
[228] *See* Colorado College, *supra* note 17; New Bridge Strategy, *supra* note 18.
[229] S.B. 19-181, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019) (enacted) (directing the Colorado Oil and Gas Conservation Commission to revise its financial assurance rules); 2 Colo. Code Regs. § 404-1-700 to -706 (2022) (Financial Assurance Rules, effective Apr. 30, 2022); Chase Woodruff, *Colorado Oil and Gas Regulators Approve 'Strongest in the Nation' Financial Assurance Rules*, Canary Media (Mar. 3, 2022) [Ex. 42, Appendix D at 116], *available at* https://www.canarymedia.com/articles/enn/colorado-oil-and-gas-regulators-approve-strongest-in-the-nation-financial-rules.
[230] 2 Colo. Code Regs. § 404-1-700 to -706 (2022) (Financial Assurance Rules, effective Apr. 30, 2022, adopted pursuant to S.B. 19-181, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019)); S.B. 22-198, 73d Gen. Assemb., 2d Reg.

Like Colorado, Utah recently undertook a comprehensive modernization of its oil and gas bonding requirements for many of the same reasons that supported the BLM's 2024 reforms. Effective July 2026, Utah replaced its decades-old bonding framework after a state legislative audit concluded that existing bond amounts and structures were inadequate and posed financial risks to the State, and as the number and cost of orphaned wells continued to increase.[231] The new rule replaces flat-rate individual well bonds with depth-based requirements designed to better reflect anticipated plugging and reclamation costs, and establishes a tiered blanket-bond system based on an operator's production, total well inventory, and proportion of inactive or otherwise at-risk wells, with bond amounts increasing as an operator's well count and risk profile grow.[232] Utah also requires its bonding schedules to be reviewed and adjusted at least every five years using inflation data so that bond amounts remain aligned with actual reclamation costs.[233] Utah expressly explained that these reforms are intended to better reflect the costs of plugging and reclamation, reduce the potential for orphaned wells, protect natural resources, and reduce the risk that cleanup costs ultimately fall to taxpayers.

The New Mexico Oil Conservation Division also just voted to dramatically strengthen state-level bonding requirements, including by:

- Updating bonding requirements to $150,000 per well for oil and gas wells at highest risk of abandonment – including low-producing and inactive wells – more closely aligning with the Oil Conservation Division's actual plugging costs.
- Requiring operators with high-risk portfolios – more than 20% inactive wells – to post single-well bonding of $150,000 for **all** their wells, reducing the risk that large portfolios of aging wells are left

Sess. (Colo. 2022) (establishing the Orphan Wells Mitigation Fee Enterprise); Press Release, *Colo. Oil & Gas Conservation Comm'n, Colorado Oil & Gas Conservation Commission Votes Unanimously to Adopt Orphan Well Mitigation Fee Enterprise Rules* (June 30, 2022) [Ex. 43, Appendix D at 121], *available at* https://ecmc.colorado.gov/press-release/colorado-oil-gas-conservation-commission-votes-unanimously-to-adopt-orphan-well.

[231] Office of the Legislative Auditor General, *Report to the Utah Legislature No. 2019-11, A Performance Audit of Utah's Oil and Gas Program* at 47–51 (Nov. 2019) [Ex. 44, Appendix D at 124], *available at* https://le.utah.gov/audit/19_11rpt.pdf.

[232] Utah Admin. Code R. 649-13-2 to -3 (2026); Div. of Oil, Gas & Mining, Utah Dep't of Nat. Res., *Division of Oil, Gas and Mining Implements Updated Oil and Gas Bonding Rules* (July 16, 2026) [Ex. 45, Appendix D at 197], *available at* https://ogm.utah.gov/2026/07/16/ogm-implements-updated-oil-and-gas-bonding-rules/.

[233] Utah Admin. Code R649-13-1(3)(a) (2026).

without adequate cleanup funds.
- Strengthening well transfer rules to prevent poorly funded or noncompliant operators from acquiring aging wells – a common pathway to well abandonment.
- Requiring the most marginal wells (producing fewer than 90 barrels of oil equivalent in 12 months) to demonstrate they still serve a useful purpose or properly plug them.
- Tightening rules for inactive wells by requiring operators to show wells will return to production in the future, preventing non-producing wells from lingering indefinitely without cleanup.[234]

Against this backdrop, the BLM's proposal to return federal bond minimums to amounts established in the 1950s and 1960s is particularly difficult to justify: while major oil- and gas-producing states such as Colorado, Utah, and New Mexico are modernizing their bonding programs to better reflect actual plugging and reclamation liabilities, the BLM is proposing to move in precisely the opposite direction.

4. The BLM Has Not Demonstrated That Discretionary Bond Adequacy Reviews Justify Reducing the Regulatory Minimum Bond Amounts

In the proposed rule, the BLM asserts that reducing the regulatory minimum bond amounts is appropriate because the agency retains sufficient statutory and regulatory authority to require additional financial assurance where warranted. Specifically, the BLM explains that it may increase bond amounts through bond adequacy reviews conducted pursuant to non-binding IM 2024-014.[235] According to the BLM, these authorities provide the agency with sufficient flexibility to require higher bond amounts for at-risk operators and other circumstances presenting elevated reclamation risks. The BLM has not shown this to be the case.

The existence of these discretionary authorities does not address the factual findings that supported the 2024 Leasing Rule. When the BLM promulgated that rule, it was fully aware that it already possessed authority to conduct bond adequacy reviews, require additional financial assurance where appropriate, impose more stringent reclamation requirements, and take

[234] Western Environmental Law Center, *New Mexico modernizes oil, gas industry bonding, cleanup rules, now among nation's strongest* (July 1, 2026) [Ex. 46, Appendix E at 2], *available at* https://westernlaw.org/new-mexico-modernizes-oil-gas-industry-bonding-cleanup-rules-now-among-nations-strongest/.
[235] 91 Fed. Reg. at 38,099.

enforcement actions against noncompliant operators. Nevertheless, after reviewing decades of experience administering the federal oil and gas program, the BLM concluded that those authorities had not prevented outdated minimum bond amounts from exposing taxpayers to significant financial risk or ensuring complete and timely reclamation. The Proposed Rule does not explain what has changed since 2024 that would cause these same discretionary authorities to achieve a different result today.

Nor does the Proposed Rule identify evidence demonstrating that discretionary bond adequacy reviews have historically been implemented in a manner to substitute for modernized regulatory minimums. In fact, the BLM's own data show the vast majority of bonds have never been increased and sit at the old minimums.[236] And even on the relatively rare occasion that the BLM recommends a bond increase following an adequacy review, it historically has had little success securing those increases. When issuing the previous bond adequacy review IM in late 2018, for example, the BLM reported that in the preceding two years it failed to secure about 84% of recommended bond increases following adequacy reviews.[237] This likely continues to be the norm, because, as wells age, their production value declines and ownership—along with late-life plugging and reclamation responsibilities—tends to concentrate in the hands of smaller operators with tighter balance sheets and less credit access.[238] As the GAO found, "it is difficult to secure increases from bond reviews when firms are already in difficult financial situations."[239]

Given the difficulties associated with securing late-life bond increases, the

[236] 2024 RIA, *supra* note 215, at 25 ("Approximately 75% of Individual bonds and 70% of Statewide bonds are currently set at their regulatory minimums of $10,000 and $25,000 respectively."); GAO-19-615, *supra* note 211, at 15–16 ("most bonds—about 82 percent—remain at their regulatory minimum values"); O'Donnell Bonding Report *supra* note 215, at 9.
[237] BLM, IM 2019-014, *Oil and Gas Bond Adequacy Reviews* (Nov. 15, 2018) (inactive) ("According to the BLM's records, the BLM offices secured about 16 percent of the proposed bond increases during the past two years.") [Ex. 47, Appendix E at 9], *available at* https://www.blm.gov/policy/im-2019-014; GAO-19-615, *supra* note 211, at 18–19 ("BLM has a policy for reviewing the adequacy of bonds but has not been able to consistently secure bond increases when needed, and this policy has not resulted in bonds that would be adequate to reclaim most wells.").
[238] O'Donnell Bonding Report, *supra* note 215, at 4–5; Sarah C. Armitage et al., *Cutting Costs or Cutting Corners: Asset Reallocation in Oil and Gas Production*, NBER Working Paper No. 34961 (Mar. 2026) (Study examined "a novel dataset with hundreds of thousands of well transfers over 1992 to 2023, showing that oil and gas wells are transferred frequently, particularly as they age and their revenues decline," then concluded that "low-value wells are especially likely to be transferred to low-value firms. Transferred wells produce similar amounts in later years, but are less likely to be plugged – thus posing greater environmental risk.") [Ex. 48, Appendix E at 21], *available at* https://www.nber.org/papers/w34961.
[239] GAO-19-615, *supra* note 211, at 19.

GAO questioned whether updating the bond adequacy review process would even address that underlying problem.[240] The GAO, therefore, advised that increasing bond minimums to "more closely reflect expected reclamation costs up front could help decrease the need for bond increases later when companies are potentially in financial distress."[241] This was prescient.

The BLM currently conducts bond adequacy reviews under IM 2024-014, which replaced IM 2019-014 and directs BLM State Offices to "focus on securing the bond increases for those operators that show higher risk factors" and to "secure any necessary bond increases as quickly as possible," ideally "within six (6) months," but it says nothing about how they should secure those increases from operators who, as shown above, are more likely to be thinly capitalized. The IM also points BLM State Offices to Attachment 3 for "dealing with nonresponsive operators," but, again, nothing in that document explains how the BLM will actually collect bond increases, and the IM even acknowledges that "if the operator is under bankruptcy, this may not be applicable."

Further, the BLM indicates in the preamble to the Proposed Rule that any bond increases under the 2024 Leasing Rule may be returned to the minimum bond amounts in its Proposed Rule. The BLM also seems to invite operators to request a bond adequacy review for the purpose of *decreasing* bonds.[242] This runs counter to the BLM's justification for reducing the minimum bond amounts—that bond adequacy reviews under IM 2024-014 provide a sufficient backstop—and suggests the BLM has no intention of ever securing meaningful bond increases under its Proposed Rule.

The agency's own rationale for the 2024 Leasing Rule reinforces this point. The BLM did not simply determine that additional bond adequacy reviews were needed; it concluded that the regulatory minimum bond amounts themselves had become outdated after remaining unchanged for more than sixty years. The revised minimums were intentionally designed to establish a stronger baseline level of financial assurance across the federal program, while preserving the BLM's authority to require additional financial assurance where site-specific circumstances warranted. These authorities serve complementary functions. Regulatory minimums provide a consistent floor applicable to all operators, while discretionary bond adequacy reviews

[240] GAO-19-615, *supra* note 211, at 19.
[241] GAO-19-615, *supra* note 211, at 21.
[242] 91 Fed. Reg. at 38,099.

allow the BLM to address circumstances where even higher levels of financial assurance may be appropriate.

The proposal does not explain why these complementary safeguards should now be viewed as substitutes for one another. Nor does it identify any new evidence suggesting that the concerns underlying the 2024 Leasing Rule, including outdated bond amounts, increasing reclamation costs, taxpayer exposure, and orphaned wells, have changed. If the BLM continues to rely on its discretionary authority under IM 2024-014 to justify reducing the minimum bond amounts, it must disclose and analyze its bond adequacy review data, including the annual reports required by the IM, and provide a reasoned explanation for the reductions.

5. The BLM's Economic Analysis Does Not Provide a Reasoned Basis for Reducing Bond Minimums

The BLM's economic analysis in support of the Proposed Rule fails to support the proposed bonding rollbacks. As explained in the attached report prepared by economist Dr. Kelly O'Donnell, Ph.D. (hereinafter, the "O'Donnell Bonding Report"), who evaluated the bonding components of the Proposed Rule and the BLM's economic analysis,[243] the BLM's approach inflates the net economic benefits of reducing bonds and understates or omits the corresponding costs assumed by the public. The O'Donnell Comment contains the same findings.[244] We fully incorporate both the O'Donnell Bonding Report and O'Donnell Comment here by reference and submit them as attachments to this comment.

The BLM concludes that returning minimum bonds to $10,000 for individual lease bonds, $25,000 for statewide bonds, and potentially $150,000 for nationwide bonds will generate a "net cost savings" of between $6.13 million to $12.2 million per year in 2025 dollars,[245] but it presents an incomplete accounting. The BLM treats the expenditures that operators avoid under the Proposed Rule as affirmative economic savings that far exceed the added reclamation costs transferred to taxpayers.[246] Reclamation bonds protect against the possibility that operators default on their cleanup obligations,

[243] O'Donnell Bonding Report, *supra* note 215.
[244] O'Donnell Bonding Report, *supra* note 215, at 9–11.
[245] BLM, *Oil and Gas Leasing Rule – Economic Analysis* at 18, 19, 27 (June 2026) [hereinafter, the "2026 RIA"], https://www.federalregister.gov/documents/2026/06/24/2026-12734/oil-and-gas-leasing.
[246] 2026 RIA, *supra* note 130, at 18, 19.

however, and reflect the surety market's assessment of risk; and lowering those bonds will not reduce the underlying liability or the likelihood of operator default.[247] The BLM, nevertheless, treats bond reductions as primarily a social gain and largely ignores the corresponding transfer of risk from the surety market to the public.[248] This accounting is particularly consequential given that reclamation liabilities tend to migrate toward operators who are least able to pay them.[249]

The economic analysis also skews the BLM's internal figures in a manner that increases the purported economic benefits of the proposed bonding rollbacks. The BLM claims it carried forward the same values used for the 2024 Rule "without modification,"[250] then records reduced bonding payments by operators in the amounts of $7.44 million to $15.2 million per year and offsets those figures by only $1.3 million to $3 million of added public costs per year from abandoned wells.[251] Although the figures in the operator line carry over exactly from 2024, the high end of the public cost line is reduced by $800,000 per year as compared to 2024, when the BLM estimated that higher bonds would reduce public liabilities by up to $3.8 million annually.[252] The economic analysis, therefore, does not carry that figure forward without modification—which serves to undervalue the reclamation costs being shifted to the public and inflate net benefits—nor does it explain this change.

And even as the BLM varies the operator expenditures associated with each bonding alternative, sometimes by hundreds of millions of dollars, it holds constant across the alternatives its estimate of added public liability regardless of the bond required.[253] Thus, the benefit side of the BLM's ledger responds favorably as the amount of required financial assurance decreases, while the public cost side of the ledger remains static even as the amount of foregone assurance continues to increase. The result is that every reduction in bonding increases net benefits and, taken to its logical extreme, zero bonding yields the highest net benefit. The O'Donnell Bonding Report

[247] O'Donnell Bonding Report, *supra* note 215, at 1, 4–5, 13–15.
[248] O'Donnell Bonding Report, *supra* note 215, at 1, 13–15.
[249] O'Donnell Bonding Report, *supra* note 215, at 3–5.
[250] 2026 RIA, *supra* note 130, at 18.
[251] 2026 RIA, *supra* note 130, at 18, 20 (Table 3).
[252] O'Donnell Bonding Report, *supra* note 215, at 7.
[253] 2026 RIA, *supra* note 130, at 18, 20 (Table 3); O'Donnell Bonding Report, *supra* note 215, at 8 (Table 2).

illustrates this absurd result,[254] and explains that "[a] method that awards its best score to abolishing the instrument whose adequacy it evaluates is not measuring what a bond exists to do."[255] This is a fundamental flaw in the BLM's methodology.

The BLM also acknowledges that returning to pre-2024 bonding rates will cause 1,440 to 2,400 additional days of annual environmental impacts from unplugged wells, or an average of 1,920 days of delayed reclamation annually. The BLM declined to monetize those costs, however, even though it was feasible to do so and the agency previously did substantially more valuation work on the very same effects in support of the 2024 Leasing Rule.[256] Environmental costs, therefore, never enter the net benefit calculation.[257]

The BLM further inflates the alleged economic benefits of the proposed bonding rollbacks by evaluating a bonding regime that differs from the one being proposed. Again, except when it clips the public cost figure, discussed above, the economic analysis incorporates the BLM's 2024 figures and reverses them. But because the 2024 Leasing Rule eliminated unit operator and nationwide bonds, the figures the BLM uses here are necessarily conditioned on a return to $10,000 individual lease bonds, $25,000 statewide or unit operator bonds, and $150,000 nationwide bonds. The operator savings line, therefore, assumes that nationwide and unit bonds are reinstated, even though the Proposed Rule published by the BLM reinstates neither. Those savings are, thus, overstated.[258]

Additionally, the BLM's analysis relies on an analysis horizon that excludes significant public costs. The BLM analyzes economic effects during a 20-year window, which inherently excludes reclamation liabilities on leases issued near the end of that window and reduces the public-cost side of the ledger more than the operator-savings side, where economic benefits are front-loaded.[259]

Finally, the economic analysis uses data selectively and inconsistently,

[254] O'Donnell Bonding Report, *supra* note 215, at 8 (Table 2).
[255] O'Donnell Bonding Report, *supra* note 215, at 9.
[256] O'Donnell Bonding Report, *supra* note 215, at 6.
[257] O'Donnell Bonding Report, *supra* note 215, at 6.
[258] O'Donnell Bonding Report, *supra* note 215, at 16–17.
[259] O'Donnell Bonding Report, *supra* note 215, at 17–18.

further undermining its reliability. While the analysis generally assumes that future oil and gas development will be consistent with the U.S. Energy Information Administration (EIA) Annual Energy Outlook (AEO) 2025 projections, when looking at bonding impacts, it continues to rely on the EIA's AEO 2022 projections that are carried over from the BLM's 2024 analysis.[260] The BLM claims that the differences between the EIA's 2022 and 2025 projections are not material, but its economic analysis does not show the comparison or otherwise explain why this supports using outdated data that the rest of the analysis has superseded.[261] The resulting bonding figures therefore do not rest on the best available and most recent data.

In sum, the BLM's economic analysis counts operators' avoided bonding expenditures in full, understates or excludes the resulting public and environmental costs, assumes bonding options that the Proposed Rule does not implement, and relies on inconsistent information and an analysis horizon that emphasizes economic benefits over public costs. The BLM, therefore, failed to rebut its own prior determination that the historic minimums were inadequate. Because the BLM admits it has "no new data or basis to revise" the values underlying the 2024 Leasing Rule,[262] the same evidence continues to support retaining the 2024 minimum bond amounts.[263]

6. Reducing Financial Assurance Requirements Will Exacerbate the Orphaned Well Crisis and Increase Taxpayer Liability

The legacy of decades of inadequate federal bonding requirements remains both substantial and costly. DOI has identified nearly 15,000 orphaned wells on federal lands managed by the BLM, U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service.[264] Congress recognized the magnitude of the orphaned well crisis when it enacted the Infrastructure Investment and Jobs Act of 2021 ("IIJA"), appropriating $4.677 billion to establish DOI's Orphaned Wells Program.[265] Congress directed those funds to identify, plug, remediate, and reclaim orphaned wells on federal, state, Tribal,

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[260] 2026 RIA, *supra* note 130, at 8.
[261] O'Donnell Bonding Report, *supra* note 215, at 18; O'Donnell Comment, *supra* note 146, at 8.
[262] 2026 RIA, *supra* note 130, at 18.
[263] O'Donnell Bonding Report, *supra* note 215, at 13.
[264] Statement of Steve Feldgus, *supra* note 205; *see also* BLM, *Tackling Legacy Orphaned Wells*, *supra* note 22.
[265] DOI, *Orphaned Wells Program Annual Report to Congress* at 4 (Nov. 2025) [Ex. 49, Appendix E at 124], *available at* https://www.doi.gov/sites/default/files/documents/2025-11/fy-2025-orphaned-wells-congressional-report.pdf.

and private lands, including $250 million for federal wells, $4.275 billion for state and private lands, and $150 million for Tribal lands. The size of this multi-year appropriation reflects Congress's recognition that decades of inadequate financial assurance had created a nationwide backlog of orphaned wells requiring billions of dollars in taxpayer-funded remediation.

Since enactment of the IIJA, DOI has distributed approximately $1.85 billion of those appropriated funds to federal, state, and Tribal recipients through the end of Fiscal Year 2025 to identify, plug, remediate, and reclaim orphaned wells.[266] Using these funds, DOI reported that federal projects alone would support the plugging of 1,115 orphaned wells, of which 231 wells had already been plugged across ten states and the Gulf of Mexico by September 30, 2025.[267] States receiving IIJA funding have reported even greater progress, plugging more than 10,257 orphaned wells nationwide.[268]

Despite these significant federal investments, the scope of the problem remains substantial. Interior's Fiscal Year 2025 Report further notes that the Interstate Oil and Gas Compact Commission estimates there are more than 141,000 documented orphaned wells on state and private land, with an additional 250,000 to 740,000 undocumented orphaned wells that may still require identification and remediation.[269]

Against this backdrop, the overwhelming public support for stronger bonding requirements is unsurprising. Commenters recognized the same principle embodied in the MLA: the companies that profit from developing public mineral resources—not the American public—should bear the costs of plugging wells and reclaiming public lands. Returning to lower minimum bond amounts risks perpetuating the very conditions that required Congress to appropriate $4.677 billion in taxpayer funds to address the legacy of orphaned wells. The BLM should retain financial assurance requirements that better ensure reclamation costs remain the responsibility of operators rather than taxpayers.

7. Lowering Bonding Rates Will Result in Long-Term Harm to Wildlife, Habitat, and the Environment

[266] DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 5.
[267] DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 7.
[268] DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 8.
[269] DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 12.

Bonding requirements are not merely fiscal safeguards; they are essential conservation tools. Adequate bonding ensures that operators promptly plug wells, remove roads and production infrastructure, reclaim disturbed lands, and restore wildlife habitat upon completion of oil and gas development. Conversely, when bond amounts fail to reflect actual reclamation costs, operators have fewer incentives to complete reclamation, increasing the likelihood that wells will become orphaned or remain idle for years. The result is prolonged habitat degradation, continued ecological disturbance, and delayed recovery of native ecosystems across BLM-managed public lands.

DOI and experts have repeatedly recognized that orphaned wells pose significant environmental risks.[270] Unplugged wells may leak methane, carbon dioxide, and other pollutants, contaminate groundwater and surface waters, create physical hazards for wildlife and the public, and leave roads, well pads, pipelines, and associated infrastructure on the landscape long after production has ceased.[271] These impacts persist for decades where reclamation is delayed because adequate financial assurances are unavailable.

Oil and gas infrastructure fragments habitat at multiple spatial scales. Well pads, access roads, compressor stations, pipelines, and powerlines reduce the amount of intact habitat available to wildlife, increase edge effects, facilitate human disturbance, and alter animal movement patterns. Studies have documented that these disturbances reduce habitat quality and contribute to population declines for sensitive species throughout the Intermountain West.[272] Habitat fragmentation is particularly harmful because many western species depend upon large, contiguous landscapes to complete seasonal migrations, forage, reproduce, and avoid predators.

Because the Mineral Leasing Act requires "complete and timely" reclamation, adequate bonds are essential to ensuring that infrastructure is removed and

[270] 89 Fed. Reg. 47,562, 47,565 (July 2023); GAO-19-615, *supra* note 211, at 6; DOI, *Orphaned Wells Program Annual Report to Congress*, *supra* note 265, at 6; *see also* Dominic C. DiGiulio, *Understanding, Evaluating, and Remediating Leakage from Abandoned Oil and Gas Wells During Geological Storage of Carbon Dioxide* (Mar. 18, 2024) [Ex. 50, Appendix E at 140], *available at* https://drive.google.com/file/d/1c9Zr3ursgBdhuKl0j2XaJKXqJCdnql0Y/view.

[271] DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 5–13; *see also* DiGiulio, *supra* note 270.

[272] *See* DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 6; GAO-19-615, *supra* note 211, at 6.

habitat is restored without unnecessary delay. Insufficient bonds increase the risk that habitat fragmentation will persist, delaying the recovery of native vegetation and wildlife populations.

Many species of conservation concern are especially vulnerable to these impacts. Greater sage-grouse, for example, are highly sensitive to surface disturbance and oil and gas infrastructure. Research consistently demonstrates that sage-grouse populations decline near intensive oil and gas development due to habitat fragmentation, infrastructure density, and chronic disturbance. Greater sage-grouse avoid active and reclaimed oil and gas infrastructure, resulting in reduced nesting success, lower lek attendance, and long-term population declines associated with increasing development density.[273] Likewise, pygmy rabbits depend upon mature sagebrush communities that are highly susceptible to fragmentation and slow to recover following surface disturbance. Research conducted in southwestern Wyoming demonstrates that oil and gas development substantially reduces occupancy of otherwise suitable pygmy rabbit habitat, even where habitat remains available.[274] Similar impacts have been documented for dozens of wildlife species, including, mule deer,[275] pronghorn,[276] Wyoming pocket gopher,[277] and white-tailed prairie dog,[278] that rely upon intact sagebrush, grassland, and desert ecosystems. Recognizing these impacts across a broad range of species, the Wyoming Game and Fish Department concluded in its 2010 *Recommendations for Development of Oil and Gas Resources Within Important Wildlife Habitats* that,

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[273] *See* Holly E. Copeland et al., *Mapping Oil and Gas Development Potential in the US Intermountain West and Estimating Impacts to Species*, 21 Conservation Biology 1022 (2009) [Ex. 51, Appendix E at 228], *available at* https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0007400.

[274] *See* Stephen S. Germaine et al., *Relationships Between Gas Field Development and the Presence and Abundance of Pygmy Rabbits in Southwestern Wyoming*, 8 Ecosphere 5 (May 2017) [Ex. 52, Appendix E at 236], *available at* doi.org/10.1002/ecs2.1817; Stephen S. Germaine et al., *Distance Effects of Gas Field Infrastructure on Pygmy Rabbits in Southwestern Wyoming*, 11 Ecosphere 8 (Aug. 2020) [Ex. 53, Appendix E at 256], *available at* doi.org/10.1002/ecs2.3230.

[275] Hall Sawyer et al., *Mule Deer and Energy Development-Long Term Trends of Habituation and Abundance*, 23 Glob. Change Biol. 4521 (Apr. 2017) [Ex. 54, Appendix F at 2], *available at* https://onlinelibrary.wiley.com/doi/full/10.1111/gcb.13711.

[276] Victoria M. Donovan et al., *Declining pronghorn (Antilocapra americana) population productivity caused by woody encroachment and oil and gas development*, 50 Global Ecology and Conservation (Apr. 2024) [Ex. 55, Appendix F at 12], *available at* https://www.sciencedirect.com/science/article/pii/S2351989424000520.

[277] *See* WildEarth Guardians, *Petition to List the Wyoming Pocket Gopher Under the U.S. Endangered Species Act* at 14–28 (Apr. 6, 2015) [Ex. 56, Appendix F at 26], *available at* https://pdf.wildearthguardians.org/site/DocServer/Wyoming_Pocket_Gopher_Petition_final_web_opt_2.pdf?docID=17131&AddInterest=1482.

[278] *See* Douglas A. Keinath, *Species Assessment for White-Tailed Prairie Dog (Cynomys leucurus) in Wyoming, Prepared for the Wyoming State Office of the BLM* at 26–27 (Dec. 2004) [Ex. 57, Appendix F at 72].

"as densities of wells, roads, and facilities increase, habitats within and near well fields become progressively less effective until most animals no longer use these areas. Animals that remain within the affected zones are subjected to increased physiological stress. This avoidance and stress response impairs habitat function by reducing the capability of wildlife to use the habitat effectively."[279]

Unreclaimed oil and gas infrastructure also degrades aquatic resources. Improperly plugged wells may provide pathways for contaminants to migrate into groundwater, while deteriorating infrastructure can contribute to erosion, sedimentation, and altered drainage patterns that impair wetlands and intermittent streams supporting amphibians, fish, and riparian wildlife.[280] These impacts are particularly significant in arid western landscapes where water availability often limits wildlife populations.

The climate impacts of orphaned wells further reinforce the importance of adequate bonding. Methane leaks from unplugged wells are a particular concern.[281] Methane is a potent greenhouse gas that contributes to climate change, which is already altering wildlife distributions, increasing drought frequency, intensifying wildfire, and reducing the resilience of western ecosystems.[282] The EPA calculates that low-output and nonproducing wells release methane at an average rate of 1.8 tons annually.[283] Prompt plugging and reclamation, therefore, provide not only localized ecological benefits but also broader climate benefits that support long-term conservation of public lands.

Importantly, these harms are neither speculative nor temporary. The federal government has acknowledged that reclamation delays caused by insufficient financial assurances increase the likelihood that the federal government, and

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279 Wyoming Game and Fish Department, *Recommendations for development of oil and gas resources within important wildlife habitats* at 10 (Apr. 2010) [Ex. 58, Appendix F at 121], *available at* https://wgfd.wyo.gov/media/2358/download?inline.

280 Wyoming Game and Fish Department, *supra* note 279, at 11; *see also* EPA, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing* (2016), *available at* https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990.

281 *See* EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019* at 3-110 to -113 (Apr. 2021) [Ex. 59, Appendix F at 366], https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=wEy8wQuGrWS8Ef_hSLXHy1kYwKs4.ZaU.

282 *See* EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019*, *supra* note 281, at 3-110 to -113.

283 EPA, *Background Technical Support Document for the Proposed Reconsideration of the New Source Performance Standards 40 CFR Part 60, Subpart OOOOa* at 36 (Table 2-16a), Docket ID No. EPA-HQ-OAR-2017-0483 (Sept. 2018), *available at* https://www.regulations.gov/document/EPA-HQ-OAR-2017-0483-0040.

ultimately taxpayers, will bear the costs of restoring landscapes and addressing environmental damage.[284] The purpose of individual and statewide bonds is to prevent precisely these outcomes by ensuring that operators internalize the costs of reclamation rather than shifting those costs onto the public after operations cease.

Because wildlife habitat recovery depends upon timely reclamation, adequate bonding is an indispensable component of responsible public lands management. Reducing minimum bond amounts and reinstating nationwide blanket bonds would increase the likelihood of delayed reclamation, prolong habitat fragmentation, impede restoration of native vegetation, and expose wildlife to unnecessary and avoidable environmental harm.

8. The BLM Should Not Reinstate Nationwide Blanket Bonds

We oppose reinstatement of nationwide blanket bonds. Although the Proposed Rule does not restore nationwide or unit bonds in its regulatory text, it requests comment on three potential options: 1) reinstate nationwide bonds; 2) reinstate both nationwide and unit bonds; or 3) retain the 2024 Leasing Rule's elimination of those bonding mechanisms. The proposal further states that, if the BLM reinstates nationwide bonds, the BLM would set a $150,000 minimum nationwide bond.[285] The BLM should reject that approach and retain the 2024 Leasing Rule's elimination of nationwide bonds.

In the 2024 Leasing Rule, the BLM eliminated nationwide bonds after concluding that they were administratively inefficient and failed to provide financial assurance commensurate with the reclamation liabilities associated with geographically dispersed oil and gas operations.[286] Those findings remain valid today. Reinstating nationwide bonds would revive a bonding mechanism that the BLM itself determined complicated, delayed bond adequacy reviews, and increased the risk that taxpayers would bear reclamation costs.

The proposed $150,000 nationwide bond minimum would exacerbate, not

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[284] DOI, *Orphaned Wells Program Annual Report to Congress, supra* note 265, at 5–13.
[285] 91 Fed. Reg. 38,084, 38,098–99 (§ 3104.1 proposes only the $10,000 individual and $25,000 statewide minimums; nationwide and unit reinstatement is presented as a request for comment, with a $150,000 minimum only "if the BLM reinstates nationwide bonds").
[286] 2024 Leasing Rule; *see also* O'Donnell Bonding Report, *supra* note 215, at 10.

remedy, the deficiencies that led the BLM to eliminate nationwide bonds. The BLM's own data and analysis supporting the 2024 Leasing Rule found that existing nationwide bonds averaged about $387,000 while covering a median of roughly 35 wells each, resulting in financial assurance of only approximately $11,000 per well, which is only about sixteen cents on the dollar against the $71,000 per-well plugging cost.[287] A nationwide bond minimum of $150,000 would provide substantially less financial assurance than the historical average nationwide bond and would increase, not reduce, the likelihood that the available bond would be insufficient to cover reclamation costs.[288]

Nationwide bonds are inherently ill-suited to ensuring adequate financial assurance because they apply a single bond across operations spanning multiple states with widely varying reclamation costs. Plugging and reclamation expenses differ substantially based on geology, well depth, infrastructure, terrain, climate, and restoration requirements.[289] As the BLM recognized when proposing the 2024 Leasing Rule, statewide bonds allow the agency to more accurately align financial assurance with localized reclamation liabilities, while nationwide bonds obscure those differences and make it more difficult to evaluate whether bond amounts remain adequate.[290]

The proposed rule offers no evidence that reinstating nationwide blanket bonds would improve reclamation outcomes, reduce taxpayer exposure, or increase administrative efficiency. If the BLM nevertheless elects to retain a nationwide bonding option, it should, at a minimum, require a substantially higher minimum bond amount, and mandatory periodic bond adequacy reviews. Reinstating the historic nationwide bond would simply recreate the very deficiencies that prompted the BLM to eliminate it in 2024.

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[287] 2024 RIA, *supra* note 215, at 25 ($387,000 average nationwide bond); The Wilderness Society et al., *Comments on the Bureau of Land Management's Proposed Rule on Fluid Mineral Leases and Leasing Process* at 9 (Sept. 22, 2023) (median of 35 wells per nationwide bond; the mean bond over the median well count is an order-of-magnitude per-well figure, not a precise one) [Ex. 60, Appendix F at 372].

[288] *See* GAO-19-615, *supra* note 211, at 12. The GAO found that in 2018, the average nationwide bond covered 374 wells. If an operator holding the average nationwide bond were to go out of business, plugging those 374 wells could cost approximately $26.6 million, based on an average plugging cost of $71,000 per well. The cost could be much more depending on certain variables such as well depth and geographic location.

[289] Raimi et al., *supra* note 215, at 10224 ("Each additional 1,000 feet of well depth increases costs by 20%, older wells are more costly than newer ones, natural gas wells are 9% more expensive than wells that produce oil, and costs vary widely by state. Surface characteristics also matter: each additional 10 feet of elevation change in the 5-acre area surrounding the well raises costs by 3%.").

[290] 88 Fed. Reg. at 47,580.

9. Section-Specific Comments

i. Proposed Section 3104.1: Bond Amounts

The proposed rule would amend 43 C.F.R. § 3104.1 to restore the previous minimum lease bond amount of $10,000 and minimum statewide bond amount of $25,000.[291] Again, we strongly oppose the new proposed bond minimums, which do not ensure the complete and timely reclamation of lease tracts. The BLM has also failed to provide a reasoned explanation for reducing the minimum bond amounts; bond adequacy reviews will not address the problem; and the public overwhelmingly opposes bond reductions—which will exacerbate the orphaned well problem, increase taxpayer liability, and cause long-term harm to wildlife, habitat, and the environment. We, therefore, urge BLM to retain the existing regulatory minimums of $150,000 for lease bonds and $500,000 for statewide bonds. And, for the reasons discussed above, we also urge the BLM to not reinstate a nationwide bond in this regulation.

d. The BLM Must Maintain the Surface Owner Notification Requirement Prior to Leasing Split-Estate Lands

The Proposed Rule would remove the provision requiring the agency to notify private surface owners when the federal minerals beneath their land have been offered for lease.[292] Over the last two decades, this provision has been a key mechanism to guarantee landowners the opportunity to weigh in on leasing under or around a private surface owner's property. If the BLM moves forward with removing this requirement, surface owners would only be contacted once a company has already purchased a lease to drill on their land. Such a change would violate NEPA and FLPMA for reasons similar to the proposed changes to public participation, discussed above.[293]

Split estate surface owners and residents can be impacted in many ways from oil and gas leasing on their lands. Development impacts can include limitations on the use of their lands, changes in the quality or quantity of their drinking and irrigation water sources, damages to the health of their soil, excessive noise, light

[291] 91 Fed. Reg. at 38,117.
[292] 91 Fed. Reg. at 38,102, 38,120; *see* 43 C.F.R. § 3120.31(b)(6).
[293] *See supra* Section III.a.1.

pollution, toxic air pollution, the presence of dangerous waste on their property, truck traffic and accidents, and negative effects on their economic livelihoods, among other things.

In addition, nearby oil and gas development is scientifically known to present significant health risks, particularly to babies and children. Dozens of published, peer-reviewed scientific studies have found statistically significant adverse health outcomes for babies born to mothers living close to oil and gas operations during pregnancy. These risks include preterm births, low birth weight, small size for gestational age, decreased "infant health index" scores, birth defects (including heart defects and neural tube defects of the brain, spine, or spinal cord), and increased risk of infant mortality. Health risks increase with proximity of the operations as well as their density and production intensity. However, studies have found that the risk of these development health effects is elevated in babies that live as far as 10 miles from oil and gas activities.

Scientists have also found health problems in older children from exposure to oil and gas drilling sites and activities, including elevated risks of childhood cancers such as acute lymphocytic leukemia (up to eight miles from drilling sites), acute lymphoblastic leukemia, and childhood lymphoma. In addition to cancer, children show an increase in asthma severity, including higher rates of pediatric hospitalizations to manage asthma attacks. Adult health threats include elevated risk of heart attacks and cardiovascular and respiratory disease.[294]

The BLM's argument for removing the surface owner notification requirement is that it "imposes undue burdens on the oil and gas industry,"[295] which is false for two key reasons. First, as was highlighted in IM 2009-184, the budget impact is "minor," and, thus, does not impose any undue burden on operators, the agency, or taxpayers.[296] Second, by contacting private surface owners prior to leasing the minerals, any concerns on behalf of the surface owner can be clarified and addressed prior to a lease being signed, which provides operators with certainty once they do move forward with a specific lease impacting surface owners. If

[294] Cal. Oil & Gas Pub. Health Rulemaking Scientific Advisory Panel, *Public Health Dimensions of Upstream Oil and Gas Development in California: Scientific Analysis and Synthesis to Inform Science-Policy Decision Making* (June 21, 2024), *available at* https://www.conservation.ca.gov/calgem/Documents/Public%20Health%20Panel%20Final%20Report_20240621.pdf.
[295] 91 Fed. Reg. at 38,102.
[296] BLM, IM 2009-184, *Courtesy Notification of Surface Owners When Split Estate Lands are Included in an Oil and Gas Notice of Competitive Lease Sale* (July 24, 2009) (IM 2009-184 was incorporated into and superseded by BLM Handbook H-3120-1 in February 2013), *available at* https://www.blm.gov/policy/im-2009-184.

landowners aren't given the chance to protest a parcel, or – at a bare minimum – to ask questions about a specific proposed parcel, then landowners could seek legal recourse because they were never given the opportunity earlier in the leasing process to participate. To avoid a drawn-out legal process that erodes certainty for the oil and gas industry, the BLM should maintain the surface owner notification requirement. The BLM's own experience with a Montana pilot experiment preceding IM 2009-184 suggests that advance notification of split-estate surface owners was considered successful to support nationwide implementation.[297] The BLM should discuss the results of that pilot experiment in this rulemaking.

The BLM also proposes to cut the public participation periods for oil and gas lease sales from a total of 90 days to a mere 10-day protest period.[298] If surface owner notification is eliminated, split-estate landowners will need to diligently track the BLM's leasing page to learn about a lease sale proposed beneath their land. They would have only 10 days, if they track consistently, to respond. This is wholly insufficient and will result in undue harm to split-estate landowners throughout the country.

As a comparison, under Section 714 of the Surface Mining Control and Reclamation Act, the BLM must notify the surface owner and obtain the surface owner's consent before leasing federal coal for surface mining on split-estate land.[299] While Congress has not required surface owner consent before leasing federal oil and gas, the BLM has the discretion to notify surface owners, a practice it adopted after President George W. Bush's BLM Director, Jim Caswell, supported the practice in 2007. In the words of former Director Caswell, "I believe passionately in multiple-use management and conservation of our precious public resources with a commitment to balance, cooperation, collaboration, and sharing. In my view, achievement of this commitment requires scientific information, and listening to, learning about, and collaborating with the owners of our public lands—the American people."[300]

For these reasons, we urge the BLM to maintain the surface owner notification requirement prior to leasing, to guarantee that federal minerals are leased

[297] IM 2009-184, *supra* note 296.
[298] See *supra* Section III.a.
[299] 30 U.S.C. § 1304(c).
[300] Statement of James L. Caswell, Nominee to be Director, BLM, Department of the Interior, S. Hearing 110-157 (July 12, 2007) [Ex. 61, Appendix F at 433], *available at* https://www.govinfo.gov/content/pkg/CHRG-110shrg38108/html/CHRG-110shrg38108.htm.

democratically and in a manner that limits undue burdens for split-estate landowners.

1. **Section-Specific Comments**

   i. **Proposed Section 3120.31: Expression of Interest Process**

The Proposed Rule would amend section 3120.31(b) by removing the requirement found in subparagraph (b)(6) of this section that requires the submitter of an EOI to identify the private surface owner's name and address when expressing interest in leasing split-estate lands.[301] Because this requirement is not an undue burden on industry and removing it would deprive landowners the opportunity to voice concerns about potential impacts to their private property, we urge the BLM to maintain existing subparagraph (6) and continue to notify private surface owners of plans to offer federal oil and gas interests underlying their lands. We also recommend the BLM incorporate IM 2009-184 into this rulemaking.

e. The BLM Fails to Justify Its Proposal to Reduce the Lease Application Fee

The Proposed Rule would reduce the competitive lease application fee from $3,100 to a mere $155,[302] even lower than the fee of $195 that the BLM chose to increase in 2024.[303] The BLM fails to show that reducing the fee by 95% will recover the costs of processing lease applications, particularly in light of the increased leasing responsibilities and workload placed on the agency by OBBBA. Nor has the BLM explained why transferring costs from the applicant to the general taxpayer, through federal appropriations, is justified. The BLM should not make this unsupported change.

When proposing the current lease application fee in 2023, the BLM was responding to the GAO's criticism that the agency had not fully reviewed its application fee in nearly two decades, since the BLM established the prior fee in

[301] 91 Fed. Reg. at 38,102, 38,120.
[302] 91 Fed. Reg. at 38,087.
[303] The 2023 proposed rule indicated the then-existing application fee was $185, 88 Fed. Reg. at 47,571 (Table 1), but later that year the BLM adjusted the fee to $195 to account for inflation. Minerals Management: Adjustment of Cost Recovery Fees, 88 Fed. Reg. 66,695, 66,696 (Sept. 28, 2023).

2005.[304] The GAO recommended that the BLM "examine all costs [it] intended to recover with its application fees, and, where appropriate, adjust fees accordingly,"[305] and the BLM concurred because the costs associated with the oil and gas leasing process had changed significantly since 2005.[306]

The BLM, therefore, calculated a new fee—in the amount of $3,100—based on the FLPMA reasonableness factors,[307] including actual direct and indirect costs, the monetary value of the right or privilege granted to the applicant, and other factors.[308] In doing so, the BLM noted that the value of the right or privilege granted to lease applicants "is so much greater than the processing cost that a fee based on the average actual cost would not significantly affect the applicant's proposed action,"[309] so it "included the costs related to NEPA compliance,[310] as authorized by FLPMA,[311] and adopted the increased fee following a robust notice and comment period.[312] In response, the GAO marked its recommendation to review and adjust the BLM's application fees as "implemented," stating:

> In a final rule issued April, 2024, the BLM revised the agency's approach to and fees for applications. Specifically, the BLM reviewed its fees to account for changes in the leasing process since the fees were initially established, including by reviewing information from field offices of the processing time and associated costs of each type of application. Based on this analysis, the BLM increased some of its application fees. For example, the competitive lease application fee had been $195 and was increased to $3,100 as a result of this review. Going forward, the BLM intends to update its fees annually for inflation, and to conduct a more in-depth review for those fees where there has been a change in the application process. As a result of these changes, the BLM's application fees will more appropriately reflect the total costs involved.[313]

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[304] 88 Fed. Reg. 47,562, 47,567 (July 24, 2023); *see* GAO, GAO-22-103968, *BLM Should Update Its Guidance and Review Its Fees* at 24 (2021) [Ex. 62, Appendix F at 502], *available at* https://www.gao.gov/assets/gao-22-103968.pdf.
[305] GAO-22-103968, *supra* note 304, at 44.
[306] 88 Fed. Reg. at 47,567.
[307] 43 U.S.C. § 1734(b).
[308] 88 Fed. Reg. at 47,569–71.
[309] 88 Fed. Reg. at 47,570.
[310] 88 Fed. Reg. at 47,567.
[311] 43 U.S.C. § 1734(b).
[312] 89 Fed. Reg. at 30,922–23.
[313] GAO-22-103968, *supra* note 304 (select "Recommendations," then see Recommendation 3).

Despite this, the BLM now claims that recovering NEPA-related costs "inflate[s] the filing fee, . . . and conclude[s] that the costs for complying with NEPA are completed by the time a competitive lease sale takes place. Therefore, the BLM should not be collecting NEPA-related fees in the competitive leasing application fee."[314] Although the BLM knew the sequence of leasing and NEPA review when it promulgated the 2024 Leasing Rule,[315] it does not explain why this same sequence now compels it to not recover those costs, or why taxpayers should bear those costs rather than applicants.

Regardless of when NEPA work occurs, associated costs do not disappear merely because a lease application is submitted later. The BLM also continues to believe that the value granted to a lease applicant greatly outweighs processing costs, such that recovering the actual costs of processing leases "would not significantly affect the applicant's proposed action,"[316] yet, at the same time, it proposes to charge the public to participate in the lease sale process,[317] it declines to recover NEPA-related costs from industry or show that $155 reasonably reflects the costs that the BLM actually incurs.

Further, the BLM proposes to slash the lease application fee without considering the impacts of OBBBA on agency workload and costs. The BLM calculated the existing lease application fee before Congress enacted OBBBA, which substantially changed the federal onshore leasing process by requiring quarterly lease sales, requiring replacement sales, and restoring noncompetitive leasing, among other changes that create additional administrative work. The BLM must identify and quantify the additional costs generated by the post-OBBBA process before it determines to revise the lease application fee.

Nor does the BLM's economic analysis in support of the Proposed Rule justify a 95-percent reduction of the lease application fee. As explained in the O'Donnell Comment, which we attach and fully incorporate here by reference, the economic analysis downplays public costs.[318] While that analysis records the proposed reduction of the fee from $3,100 to $155 as an annual transfer payment, with no impact on the total resources available to society, it highlights the estimated cost savings to industry—$2.15 million per year—and downplays

[314] 91 Fed. Reg. at 38,087.
[315] 89 Fed. Reg. at 30,922 ("the competitive lease application fee is collected after the NEPA review has been completed, and after the lease sale has been held.").
[316] 91 Fed. Reg. at 38,094.
[317] 91 Fed. Reg. at 38,087; *see supra* Section IIIa.5.
[318] O'Donnell Comment, *supra* note 146, at 6–7.

that the cost of processing applications will be transferred from industry to taxpayers, through federal appropriations.[319] Reducing the application fee will not eliminate the underlying processing work and associated costs, so a fee set below the actual processing costs either shifts costs onto the public or degrades the service provided by the BLM.[320]

As shown, the BLM fails to provide a reasoned explanation for reversing course and drastically reducing the lease application fee from $3,100 to only $155. The BLM statement that it "should not be collecting NEPA-related fees" because the costs were incurred prior to a lease sale is a bald assertion with nothing to support it. Nor does it explain why the fee amount should be even lower than the fee amount in place prior to the 2024 Leasing Rule, especially considering the additional leasing responsibilities and associated costs brought by OBBBA. The BLM should, therefore, retain the existing lease application fee.

1. Section-Specific Comments

i. Proposed Section 3000.120: Fee Schedule for Fixed Fees

The BLM proposes to revise its fee schedule by reducing the lease application fee from $3,100 to a mere $155.[321] Again, the BLM has not shown that lowering the fee by 95% will recover the costs incurred by the agency, or explained why those non-recovered costs should be transferred from operators to taxpayers. The BLM should, therefore, retain the existing lease application fee in the amount of $3,100.

f. The BLM Must Maintain Current Lease Suspension Requirements

The Proposed Rule would reverse important changes to the lease suspension requirements made by the 2024 Leasing Rule that, in the BLM's view, "are not mandated by the MLA."[322] One, it would remove the prohibition on lease suspension applications submitted less than 90 days before a lease expires at the end of its ten-year term.[323] Two, it would remove the one-year limit and annual extension requirements and allow lease suspensions to continue indefinitely

[319] *See* 2026 RIA, *supra* note 130, at 12, 14–15, 17, 20 (Table 4); O'Donnell Comment, *supra* note 146, at 5–6.
[320] O'Donnell Comment, *supra* note 146, at 5–6.
[321] 91 Fed. Reg. at 38,112–13.
[322] 91 Fed. Reg. at 38,105.
[323] 91 Fed. Reg. at 38,105; *see* 43 C.F.R. § 3165.1(c).

"until the circumstances warranting the suspension no longer exist."[324] Although the 2024 Leasing Rule implemented the existing requirements "to encourage diligent development of leased lands and ensure lease suspensions are justified and tied to an end date,"[325] the BLM is now proposing to change course without providing a reasoned explanation and contrary to law.

1. The Proposed Lease Suspension Requirements Are Arbitrary and Capricious

Courts will find a rule arbitrary and capricious if the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[326]

Here, the proposed changes to suspensions are not contemplated by OBBBA, but rather are proposed by the BLM without Congressional direction. Consequently, the regulations must be reasoned, evidence-based, and cannot conflict with existing federal law or they will be arbitrary and capricious actions by the agency.[327] The proposed regulations are arbitrary and capricious because they strip suspensions of guardrails to such an extent that the decision runs counter to evidence in the record and lacks a rational connection between the facts and decision made.

The proposed regulations enumerate fiduciary obligations to the American public as a primary justification.[328] However, the record is replete with evidence that lease suspensions, without the sideboards the BLM is proposing to strip, are a recipe for speculation—a practice that costs rather than benefits the American public.[329] The record also shows how lease

[324] 91 Fed. Reg. at 38,106; *see* 43 C.F.R. § 3165.1(d).
[325] 88 Fed. Reg. at 47,595.
[326] *State Farm*, 463 U.S. at 43.
[327] *State Farm*, 463 U.S. at 43.
[328] 91 Fed. Reg. at 38,084, 38,105 ("This change would benefit the public by ensuring that valuable oil and gas leases are not prematurely cancelled . . . thereby allowing for continued development of domestic energy resources… This increased flexibility would not only help to maximize the use of Federal lands for energy production but would also contribute to enhancing domestic energy supply, ultimately benefiting consumers and promoting energy independence.").
[329] *See, e.g.,* GAO, GAO-18-411, *BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (June 2018), [Ex. 63, Appendix F at 555], *available at* https://www.gao.gov/assets/gao-18-411.pdf; *see also* The Wilderness Society, *Land Hoarders: How*

suspensions tie up public lands—making energy development the dominant use and preventing Americans from using them for recreation and conservation, and preventing other companies from developing the leases.[330] Indeed, the BLM has recognized that "leases that are not diligently developed can limit the BLM's ability to manage public lands for other uses and resources and fulfill its multiple-use and sustained-yield missions."[331]

The Proposed Rule would allow approval of late-term suspension requests despite evidence in the record showing leaseholders who fail to diligently develop their leaseholdings routinely request suspensions late in the lease term to keep leases from expiring. This is a complete reversal from the 2024 Leasing Rule and IM 2023-012, which were a direct response to a June 2018 GAO report entitled "BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures" (GAO-18-411). IM 2023-012 includes a general prohibition on approval of suspension requests based on pending APDs filed less than 90-days prior to expiration of a lease and provides evidence with a detailed discussion explaining why such requests often belie a showing of diligence.[332] Speculative leaseholders are known to abuse the privilege of suspensions by filing APDs "for the sole purpose of supporting a suspension to secure relief from drilling requirements."[333] To claim that loosening the standards guiding the BLM's suspension approval process will benefit the American public is simply inapposite to the facts in front of the BLM about how often lease suspensions are abused by speculative leaseholders and rob the public of revenue from rentals and royalties. Further, the Proposed Rule's claim that loosening the suspension requirements "would not only help to maximize the use of Federal lands for energy production but would also contribute to enhancing domestic energy supply"[334] is nonsensical, given that the entire point of a suspension is to relieve the lessee from having to bring leases into production. Rather, the

Stockpiling Leases is Costing Taxpayers (Dec. 2015), [Ex. 64, Appendix F at 598], https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf.

[330] The Wilderness Society, *Land Hoarders*, *supra* note 329.

[331] 88 Fed. Reg. at 47,566.

[332] BLM, IM 2023-012, *Suspensions of Operations and/or Production* (Nov. 18, 2022) ("it is reasonable to expect a diligent operator to file an APD more than 90 days prior to lease expiration" based on the timeframes for approval), *available at* https://www.blm.gov/policy/im-2023-012.

[333] DOI, *FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future* (Jan. 27, 2021) (explaining that industry has stockpiled millions of acres of unused leases and "is sitting on approximately 7,700 unused, approved permits to drill") [Ex. 65, Appendix F at 607], *available at* https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands.

[334] 91 Fed. Reg. at 38,105.

proposed changes will allow lessees to suspend their leases longer and more often instead of putting them into production, while also preventing the BLM from re-offering the leases to another company that might bring them into production. This makes life easier for careless lessees, but it can't be justified as a way of increasing federal oil and gas development.

The proposal to remove the one-year limit on suspensions also runs counter to the BLM's obligation to manage public lands for multiple uses and further lacks a reasoned evidentiary basis. The one-year limit was implemented just a few years ago in response to evidence showing that the BLM does not actively monitor suspended leases or even have a system to do so,[335] and that leases often remain suspended for decades and cost taxpayers tens of millions of dollars in lost rent alone.[336] Removing the one-year requirement would, thus, allow companies to hold land indefinitely without developing it, resulting in land that is tied up, preventing other, better, uses of it.[337] To remove the limit on suspensions so as to rely exclusively on the BLM to monitor them while knowing it lacks the resources and tools to do so in a manner that satisfies its obligation to manage the land for multiple uses runs counter to evidence in the record.

The BLM's proposed changes to the administration of lease suspensions represent a dramatic change in position that is unsupported by evidence in the record and unexplained by the agency. An agency must provide a reasoned explanation for its change in position.[338] Therefore, the proposed action is arbitrary and capricious under the APA.

2. The Proposed Lease Suspension Requirements Conflict with the MLA

The MLA is intended to encourage diligent development of domestic mineral resources in an orderly way and to secure a public return.[339] The BLM's

[335] *See* 88 Fed. Reg. at 47,595; *see also* GAO-18-411, *supra* note 329.
[336] The Wilderness Society, *Land Hoarders*, *supra* note 329.
[337] The Wilderness Society, *Land Hoarders*, *supra* note 329.
[338] *Encino Motorcars,* 579 U.S. at 221 ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change"); *Fox Television Stations*, 556 U.S. at 515 (2009) ("An agency may not . . . depart from a prior policy *sub silentio*").
[339] The MLA and BLM's standard lease form demand diligent development. *See, e.g.*, 30 U.S.C.S. § 187 ("Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence); *Tempest Exploration Co.*, 196 IBLA 386, 390 (2021) ("the 'diligent development requirement' rooted in MLA Section 30, noting that a 'fundamental requirement of every oil and gas leases, as stated in Section 4 on page 3 of Form 3100-1, is the requirement that the 'Lessee must exercise reasonable diligence in developing and producing").

proposed regulations, however, not only remove provisions that enforce the diligence requirements and ensure a fair return to taxpayers, but go so far as to promote violations of them.

As a preliminary matter, the BLM makes statements that are simply wrong to justify the Proposed Rule. For example, the agency provides a laundry list of reasons for weakening the existing lease suspension regulations set forth in 43 C.F.R. § 3165.[340] However, as noted above, many of these justifications contradict—without reasoned explanation—the agency's findings and conclusions in 2024 when it updated the section 3160 regulations.[341] This violates the APA, as explained above, because the BLM is required to explain its about-face and contradictory conclusions.

In addition, the commonplace use of late-term suspension requests to hold leases without complying with diligence obligations is a direct violation of the MLA.[342] The record is full of examples confirming how regularly this tactic has been employed by leaseholders.[343] Despite this evidence, the Proposed Rule would eliminate the general prohibition on granting late-term suspension requests that violate the MLA.

The Proposed Rule would also eliminate the 1-year limit on suspensions despite evidence in the record showing that oil and gas operators routinely exploit lease suspensions to stockpile leases, costing taxpayers more than $80 million in lost rentals alone.[344] The record shows that lease suspensions have been used to cheat U.S. taxpayers of rental and royalty payments, and they have allowed industry to evade Congressional intent to diligently develop their leasehold interests. The Proposed Rule would reopen the door to these abuses in violation of the MLA.

3. The Proposed Lease Suspension Requirements Conflict with FLPMA

[340] 91 Fed. Reg. at 38,105–06.
[341] *See* 89 Fed Reg. at 30,952–54.
[342] The Wilderness Society, *Land Hoarders*, *supra* note 329*;* GAO-18-411, *supra* note 329; *see Vaquero Energy, Inc.*, 185 IBLA 233, 237 (2015) ("Lessees and/or operators are responsible for timely filing required plans and necessary applications and cannot reasonably assume the Secretary will grant a suspension of operations…merely to relieve them of the consequences of their poorly timed decisions and actions."); *Harvey E. Yates Co., et. al*, 156 IBLA 100 (2001) ("a BLM delay in approving an APD does not equate to an order suspending drilling or production."); Standard Lease Form requiring diligent development.
[343] The Wilderness Society, *Land Hoarders*, *supra* note 329 (providing numerous examples of the BLM "routinely" granting late-term suspensions).
[344] The Wilderness Society, *Land Hoarders*, *supra* note 329.

FLPMA requires the BLM to manage its land for "multiple use and sustained yield,"[345] which obligates the agency to make the "most judicious use" of public lands and their resources to "best meet the present and future needs of the American people."[346] To allow for suspensions when an APD was filed less than 90 days before the expiration of the lease and to eliminate the one-year default suspension period fails to comply with FLPMA.

In 2024, when the BLM updated its oil and gas regulations, the agency included a general prohibition on approval of late-term suspension requests.[347] The change was implemented in response to reports prepared by the GAO and private researchers, as well as information gathered through Congressional inquiries showing that operators were utilizing late-term suspensions to keep leases from expiring after failing to diligently prosecute development of those leases.[348] Late-term suspensions represent one way that oil and gas companies stockpile leases without development and lock up public lands in contravention of FLPMA's multiple use and sustained yield mandates.[349] Nonetheless, the Proposed Rule would eliminate any prohibition on the BLM's approval of late-term suspensions and grease the skids for operators to hold leases that have not been diligently developed beyond their 10-year term.

While short-term lease suspensions may provide relief in extraordinary circumstances, long-term suspensions generally do not further the public interest or properly conserve natural resources. Instead, they tie up public lands and make them unavailable for other uses, including other potential leaseholders, as well as fail to provide taxpayers with a fair return for the lease of public lands.[350] Once again, this information is clear in the record and the BLM relied upon it to revise its oil and gas rules in 2023. Now, though, the agency is reversing course and proposing to eliminate the 1-year limit on suspensions. The agency claims this will help "maximize the use of Federal lands for energy production,"[351] but it fails to explicitly acknowledge that the

[345] 43 U.S.C. § 1701(a)(7).
[346] 43 U.S.C. § 1702(c); *see supra* Section II.c.
[347] 89 Fed. Reg. at 30,996; *see* 43 C.F.R. § 3165.1(c).
[348] 88 Fed. Reg. at 47,566, 47,595-96; IM 2023-012, *supra* note 332. ("it is reasonable to expect a diligent operator to file an APD more than 90 days prior to lease expiration" based on the timeframes for approval); 88 Fed. Reg. at 47,566.
[349] The Wilderness Society, *Land Hoarders*, *supra* note 329.
[350] 88 Fed. Reg. at 47,566 (BLM recognized, "leases that are not diligently developed can limit the BLM's ability to manage public lands for other uses and resources and fulfill its multiple-use and sustained-yield missions."); *see also* The Wilderness Society, *Land Hoarders*, *supra* note 329; GAO-18-411, *supra* note 329.
[351] 91 Fed. Reg. at 38,105.

change will facilitate more long-term suspensions and inhibit the agency's ability to successfully implement its multiple use and sustained yield mandates.

History has shown that the BLM does not have the capacity or systems in place to actively monitor suspended leases.[352] Therefore, eliminating the parameters on lease suspensions—including the general prohibition on approval of late-term suspension requests and the 1-year limit on the term of suspensions—will only make it harder for the BLM to manage its lands for multiple uses and meet the present and future needs of the American people, in direct conflict with FLPMA.

4. Section-Specific Comments

i. Proposed Section 3165.1: Relief from Operating and/or Producing Requirements

The BLM should retain existing paragraph (c) to curb the speculative use of suspensions. As discussed above, the record shows clear evidence that late-term suspension requests are often used to keep leases from expiring despite a lack of diligence.

The BLM should retain existing paragraph (d), including the requirement that approved suspensions will not exceed 1 year except under limited circumstances. The 1-year limitation on suspensions is another important measure intended to reduce speculation which, again, is well documented in the record.

Finally, the BLM should abandon the proposal to add new paragraph (e), which would broaden applicability of force majeure provisions under the MLA. The Savoy case that the BLM takes issue with undertook a thorough review of the statute and found that 17(i) suspensions are applicable in limited circumstances where commencement of operations or production occurred. The BLM's attempt to expand a 17(i) suspension beyond the scope permissible under the MLA is ultra vires, violates the law, and ignores IBLA authority.[353]

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[352] GAO-18-411, *supra* note 329.

[353] *See Savoy Energy, L.P.*, 178 IBLA 313, 323–25 (2010) (interpreting section 17(i) of the MLA and citing relevant IBLA authorities).

g. The BLM Should Reinstate an Expression of Interest Fee to Deter Speculative Nominations and Conserve Agency Resources

The BLM should use this rulemaking to reconsider its previous decision removing the EOI fee from its regulations and reinstate a reasonable fee under 43 U.S.C. § 1734 and 31 U.S.C. § 9701. The BLM has clear authority to assess an EOI fee, and doing so will deter speculation, dedicate the BLM's limited resources to evaluating nominated lands that are more likely to be leased and developed, and ensure the BLM complies with its obligations under FLPMA and other applicable statutes.

Although OBBBA repealed the provision in the 2022 IRA that *required* the BLM to impose an EOI fee, it did not *prohibit* such a fee or repeal the BLM's separate statutory authority to establish reasonable filing and service fees for "applications and other documents relating to the public lands."[354] Nor did it repeal general agency authority to charge a service fee based on governmental costs, value to the applicant, public policy, and other relevant facts.[355] Indeed, FLPMA directs the Secretary, in determining a reasonable fee, to consider actual costs, the value of the rights or privileges sought, processing efficiency, costs attributable to the public interest, and other relevant factors.[356] The BLM's review of nominated lands for possible inclusion in a competitive lease sale incurs actual costs and provides a particularized benefit to the nominator, and an EOI fee has been shown to deter speculation, so a reasonable EOI fee is warranted.

Following OBBBA's enactment, however, the BLM asserted that Congress removed its authority to impose an EOI fee and it, therefore, issued a final rule eliminating the $5 per-acre nomination fee.[357] That conclusion conflated Congress's repeal of a mandatory fee with a prohibition on the BLM's exercise of independent discretionary authority, so many of the undersigned commenters opposed this change on procedural, policy, and substantive grounds.[358] We reiterate and incorporate those concerns here. We also urge the BLM to correct its legal error and evaluate, on the relevant statutory factors, whether to

[354] 43 U.S.C. § 1734(a).
[355] 31 U.S.C. § 9701(a)–(b).
[356] 43 U.S.C. § 1734(b).
[357] BLM, Revision to Regulations Regarding Competitive Leases; Expressions of Interest Process, 90 Fed. Reg. 36,118 (Aug. 1, 2025).
[358] *See* Letter from The Wilderness Society et al. to BLM Director (Sept. 2, 2025) [Ex. 66, Appendix F at 612].

reinstate a reasonable EOI fee.

The record strongly supports reinstating an EOI fee. Even before the IRA, the GAO recognized the BLM's authority and determined there was a "particularly acute" need for an EOI fee because the BLM's investments in processing nominations often do not lead to leases, let alone production.[359] In the absence of any cost to nominate lands for leasing, oil and gas companies are incentivized to simply identify huge swaths of public lands for leasing regardless of development potential and their interest in bidding on those lands. The GAO, for example, highlighted a 2014 lease sale in Nevada where 28 million acres of public lands were nominated, which took the BLM over five years to review and process, yet the vast majority of those lands never resulted in a lease.[360] This is not unusual. Between 2011 and 2020, over 110 million acres of public lands were nominated for leasing[361]—a land mass larger than the State of California—and while the BLM offered nearly 50 million of those acres for leasing, during that time only 11.4 million acres (about 10% of the nominated acreage and 23% of the offered acreage) actually received bids at a competitive lease sale.[362]

Dedicating the BLM's limited staff and resources to reviewing and processing EOIs that are clearly speculative is bad policy and a misuse of taxpayer dollars. Accordingly, the BLM state officials previously told the GAO that a nomination fee would be one possible solution for reducing the number of nominations that ultimately go unleased. According to BLM state officials, such a fee would make nominators more likely to submit nominations for only those lands that they are truly interested in leasing. The BLM state officials also commented that such a fee would also help reduce processing costs that are not currently being recovered and help manage their existing resources by, for example, focusing their efforts on those nominations that are more likely to result in a lease.[363]

Indeed, in 2023 and 2024, following the imposition of a $5 per-acre EOI fee, industry nominated approximately 430,000 acres for lease,[364] the BLM offered about 408,000 acres for lease, and industry bid on nearly 238,000 of those

[359] GAO-22-103968, *supra* note 304.
[360] GAO-22-103968, *supra* note 304, at 25.
[361] BLM, Oil and Gas Statistics, *supra* note 10 (select "Fiscal year 2020 statistics" drop down menu, then "Table 13 Expressions of Interest – Acres by Calendar Year") [Ex. 67, Appendix F at 618].
[362] BLM, Oil and Gas Statistics, *supra* note 10 (select "Fiscal year 2020 statistics" drop down menu, then "Table 11 Acreage Offered at Competitive Sale Auctions Since January 1, 2009") [Ex. 67, Appendix F at 618].
[363] GAO-22-103968, *supra* note 304, at 28.
[364] BLM, Oil and Gas Statistics, *supra* note 10 (select "Fiscal year 2024 statistics" drop down menu, then "Table 13 Expressions of Interest – Acres by Calendar Year") [Ex. 68, Appendix F at 621].

acres.[365] The EOI fee, therefore, increased efficiency, resulting in a process where 95% of the nominated acreage was offered for lease and well over half of that acreage actually received bids. Lands receiving bids are also more likely to see production.

Also, to the extent the BLM has concerns about the impacts of an EOI fee on the number of nominations it receives, it should consider implementing a fee that is wholly or partially refundable in certain circumstances. If an operator obtains leases at auction for lands it nominated, for example, the GAO has suggested the BLM could deduct the amount of the EOI fee from later payments like the lease application fee or first-year rent.[366] Alternatively, the fee could be refundable if a good-faith nominator bids on those parcels at a competitive lease sale but is unsuccessful in obtaining a lease.[367]

Because an EOI fee is a proven method to ensure the BLM invests its limited resources in processing nominations that will lead to issued leases,[368] and actual production, we urge the BLM to take this rulemaking opportunity to reinstate an EOI fee.

1. **Section-Specific Comments**

   i. **Proposed Section 3000.120: Fee Schedule for Fixed Fees**

   The BLM does not propose to revise its fee schedule at section 3000.120 by reinstating an EOI fee.[369] Again, the BLM retains authority even post-OBBBA to assess a reasonable EOI fee, which will deter speculative leasing, dedicate the BLM's limited resources to evaluating nominated lands that are more likely to be leased and developed, and help the agency comply with FLPMA and other applicable statutes. We, therefore, urge the BLM to reinstate a reasonable EOI fee through this rulemaking.

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[365] BLM, Oil and Gas Statistics, *supra* note 10 (select "Fiscal year 2024 statistics" drop down menu, then "Table 11 Acreage Offered at Competitive Sale Auctions Since January 1, 2009") [Ex. 68, Appendix F at 621].
[366] GAO-22-103968, *supra* note 304, at 29.
[367] GAO-22-103968, *supra* note 304, at 29.
[368] Nominations fees are not unique to oil and gas leasing. The BLM, for example, currently imposes a nomination fee of $5 per acre for wind and solar leasing, 43 C.F.R. § 2809.11(b)(1), which factors into the variable offset process. 43 C.F.R. § 2809.16(c)(6). The BLM also requires a nomination fee for geothermal leasing. BLM, Minerals Management: Annual Adjustment of Cost Recovery Fees, 91 Fed. Reg. at 1,194, 1,195 (Jan. 12, 2026) (nomination fee of $150 plus $0.14 per acre).
[369] 91 Fed. Reg. at 38,112–13.

ii. Proposed Section 3120.31: Expression of Interest Process

Similarly, the BLM does not propose to amend section 3120.31 to reinstate a reasonable EOI fee requirement.[370] Because the BLM previously amended section 3120.31 to remove that requirement, it should use this rulemaking opportunity to reinstate an EOI fee in this regulation.

h. The BLM Should Raise the Minimum Royalty Rate to Ensure a Fair Return to Taxpayers

The MLA requires a royalty rate for onshore competitive leasing of "not less than 12.5 percent,"[371] which establishes a floor as opposed to a fixed rate. OBBBA's restoration of that language did not require the BLM to reduce the minimum regulatory rate.[372] Thus, to ensure federal and state taxpayers receive a fair return on the development of public resources on public lands, as required by law,[373] the BLM should determine an optimal royalty rate above the statutory *minimum* of 12.5% and implement that rate through this rulemaking.

In April 2026, the BLM issued a direct final rule (DFR)[374] that wrongly asserted OBBBA required the agency to revise its regulations to reflect the minimum rate. As some of the undersigned commenters explained in their significant adverse comments opposing the DFR, which we attach and fully incorporate here by reference, that rule rested on the mistaken view that the BLM lacked discretion to keep the higher rate, a flawed economic analysis, and an unlawful invocation of the APA's good cause exception.[375]

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[370] 91 Fed. Reg. at 38,120.

[371] 30 U.S.C. § 226(b)(1)(A).

[372] *See supra* Section II.e.4.

[373] *See* 43 U.S.C. § 1701(a)(9) (declaring policy that "the United States receive fair market value of the use of the public lands and their resources"); *California Co. v. Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961) ("The purpose of the [MLA] was not to obtain sales for the gas from these reserves on Government land at any price. The Act was intended to promote wise development of these natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public. The Secretary of the Interior is the statutory guardian of this public interest. . . . To protect the public's royalty interest he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market. He may also establish 'reasonable values' for royalty purposes." (citation omitted)).

[374] BLM, Revisions to Regulations Regarding Oil and Gas Leasing; Fees, Rentals, and Royalties, 91 Fed. Reg. 23,017, 23,020 (Apr. 29, 2026).

[375] *See* Letter from The Wilderness Society et al. to BLM Director (May 28, 2026) [Ex. 69, Appendix G at 2].

And, despite promising to respond to and address any significant adverse comments it received on the DFR,[376] the BLM did not respond to either the attached comment or any other comments. The DFR, therefore, took effect with no indication that the BLM meaningfully considered the public's concerns with lowering the minimum royalty rate.

Further, the economic analysis for the DFR was deeply flawed because it did not attempt to isolate and examine royalty-specific budgetary impacts.[377] Instead, it adopted the economic forecast of the Congressional Budget Office for the entire suite of provisions in OBBBA section 50101 and treated that figure as the "upper bound" budget forecast for reducing the royalty rate.[378] Because the BLM has never evaluated royalty-specific fiscal impacts, either when it promulgated the DFR or together with the Proposed Rule, it should consider the combined economic effects of the Proposed Rule and other recent regulatory changes, particularly the reduction of the minimum royalty rate that has had, and will continue having, significant fiscal impacts.[379]

Because the DFR rulemaking process was unlawful and the BLM retains discretion to raise the minimum royalty rate, we urge the BLM to correct its legal error through this rulemaking and set a higher royalty rate that brings a fair return to taxpayers.

1. **Section-Specific Comments**

   i. **Proposed Section 3103.31: Royalty on Production**

   The BLM does not propose to reconsider or raise the minimum royalty rate for competitive leases at section 3103.31(a)(1). Again, the BLM recently lowered the minimum royalty in its regulations under the mistaken belief that OBBBA removed its discretion to set a higher rate. That action deprives taxpayers a fair return on the development of public resources on public lands. We, therefore, urge the BLM to exercise its

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[376] 91 Fed. Reg. at 23,108.
[377] *See* Letter from The Wilderness Society et al., *supra* note 375, at 8–9.
[378] BLM, *Economic Analysis of the Royalty Rate Provisions in the One Big Beautiful Bill Act of 2025* at 1, 3, 5, 6 (2026) [Ex. 70, Appendix G at 23], *available at* https://www.regulations.gov/document/BLM-2025-0138-0002.
[379] *See* O'Donnell Comment, *supra* note 146, at 1, 2–4; *see also* Taxpayers for Common Sense, *By the Numbers: Federal Onshore Oil and Gas Leasing Revenue Loss* (as of Aug. 10, 2026, taxpayers have lost about $1.46 billion in royalty revenues since BLM began charging the minimum statutory rate last year) [Ex. 71, Appendix G at 31], https://www.taxpayer.net/by-the-numbers-federal-onshore-oil-and-gas-leasing-revenue-loss/.

existing discretion to set a higher minimum rate through this rulemaking.

i. The BLM Must Ensure Noncompetitive Leasing Serves the Public Interest

Noncompetitive leasing is an antiquated practice that, prior to the establishment of the modern competitive leasing process in 1987, drove fraud and corruption to run rampant in the federal onshore oil and gas program. Prior to the IRA's elimination of noncompetitive leasing on federal public lands in 2022, the GAO had found that only 1 percent of noncompetitive leases issued between 2003 and 2009 entered production during their primary term.[380] These leases are frequently bought by speculators or companies looking to inflate their lease holdings, meaning taxpayers receive virtually no return from them. And even when undeveloped, noncompetitive leases also can and have burdened other public land uses by limiting land use planning options and discouraging conservation designations.[381]

OBBBA's reauthorization of noncompetitive leasing on federal public lands was a shortsighted decision for which there was no revenue-based justification. With the BLM now having to reincorporate noncompetitive leasing into its regulations, the agency must ensure the public interest is served by this historically abusive practice. There are a number of measures that the BLM must take to achieve this.

First, as is stated in IM 2026-018,[382] the BLM must make clear that only lands first offered at competitive auction since OBBBA was signed into law may be leased noncompetitively. We have noted the absence of this specification in the Proposed Rule, which makes it far too likely that a BLM Office may issue a noncompetitive oil and gas lease for lands that were first offered at competitive auction prior to the reinstatement of noncompetitive leasing, in error. In addition, the BLM should specify that noncompetitive lease applications that were submitted but not approved prior to the elimination of noncompetitive leasing on August 16, 2022, are to be considered void and may not be

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[380] GAO, GAO-21-138, *Onshore Competitive and Noncompetitive Lease Revenues* (Nov. 2020) [Ex. 72, Appendix G at 37]., *available at* https://www.gao.gov/assets/gao-21-138.pdf.
[381] The Wilderness Society, *No Exit: Fixing the BLM's Indiscriminate Energy Leasing* (June 2016) [Ex. 73, Appendix G at 71], *available at* https://www.wilderness.org/sites/default/files/media/file/Report-No%20Exit-Fixing%20BLM%20Leasing.pdf.
[382] IM 2026-018, *Impacts of the One Big Beautiful Bill Act of 2025 (Pub. L. No. 119-21) to the Oil and Natural Gas Leasing Program* (May 12, 2026), *available at* https://www.blm.gov/policy/im-2026-018.

retroactively issued now.[383]

Second, the BLM must take action to address the issue of irresponsible actors historically taking advantage of the noncompetitive leasing process to speculate on public lands. Given that leased lands are frequently not then available for other uses, there are substantial opportunity costs associated with lands under lease that are not diligently developed. We, therefore, recommend that the BLM require a "public interest" determination prior to issuing noncompetitive leases, which should evaluate such factors as the applicant's ability to undertake development and compliance history, including whether the applicant has a history of failing to make rental or other payments. If, based on such evaluation, the BLM subsequently issues a noncompetitive lease to a qualified applicant, the BLM must also ensure careful development of the lease.

We, therefore, recommend that the BLM add a section to its regulations pertaining to noncompetitive leases that outlines the actions that must be taken for a noncompetitive lessee to fulfill their diligent development obligations. It is our recommendation that, by the end of the fifth year of the lease term, the BLM require that a noncompetitive lessee have done at least one of the following: (1) established actual production in paying quantities on the lease; (2) established allocated production in paying quantities on the lease; (3) filed a complete APD; (4) extended the lease term by committing it to an oil and gas agreement; or (5) filed a Notice of Intent to undertake geophysical exploration. If, by the end of the fifth year of the lease term, a noncompetitive lessee has not met any of these specific development milestones, the BLM should require the lessee to pay increased rental fees.

Third, we are concerned that, in proposing to omit approximately half of the provisions that governed noncompetitive leasing prior to the 2024 Leasing Rule, the BLM's regulations would no longer address limitations concerning the size of noncompetitive lease offers. Previously, the BLM required that noncompetitive offers for public domain minerals be at least 640 acres, and that offers for public domain or acquired lands not exceed 10,240 acres and not cover an area of more

[383] On April 16, 2026, the BLM issued six noncompetitive leases totaling 6,786.72 acres to Kirkwood Oil & Gas LLC. Kirkwood Oil & Gas LLC had submitted applications for those leases on September 27, 2019, and the applications were never approved prior to the IRA's elimination of noncompetitive leasing, due to being suspended pursuant to ongoing litigation. As only lands that were first offered at competitive auction on or after July 4, 2025, should be accessible for noncompetitive leasing now, applications for noncompetitive leases submitted prior to that date should not be eligible for approval. It is necessary for the BLM to clearly state this in its regulations, to ensure noncompetitive lease offers that pre-date OBBBA do not continue to be issued.

than 6 square miles.[384] These acreage requirements, which had been in place since 1988, were intended to "promote efficient resource development by requiring leases to be formed in reasonably large, compact blocks."[385] With the Proposed Rule now no longer containing any limitations on noncompetitive lease offer size, there is greater likelihood that speculators may purchase large swaths of public land that they cannot reasonably develop. We, therefore, recommend that the BLM reconsider its decision to omit acreage requirements from its regulations, and incorporate such requirements into its final rule. Consistent with changes to the acreage limitation for noncompetitive leases previously proposed by the BLM,[386] we recommend the BLM limit the acreage in noncompetitive lease offers to 2,560 acres, in alignment with the limitation for competitive parcels.

Fourth, to promote more transparency in the noncompetitive leasing process, the BLM should create and maintain a publicly accessible portal for noncompetitive lease offers, and provide the public with at least 30 days to review and comment on noncompetitive lease offers.

Finally, the BLM must fully evaluate the public costs associated with noncompetitive leasing as part of its economic analysis. Instead, as explained in the O'Donnell Comment, which we fully incorporate here by reference, the BLM largely avoids doing so by using its own data selectively.[387] On the one hand, the economic analysis relies on the available data to project that the restoration of noncompetitive leasing will increase leasing by approximately 25,000 acres annually, and transfer approximately $955,000 per year from the federal government to operators through reduced bonus payments.[388] But rather than use its own drilling records and reported production figures to estimate the foregone value associated with leasing 25,000 acres of low-production, low-value lands noncompetitively, the BLM claims that such a valuation is too

[384] 43 C.F.R. § 3110.3-3(a) (Mar. 2024) ("Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease."); *id.* § 3110.3-3(b) ("An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions.").
[385] 53 Fed. Reg. 22,825 (June 17, 1988).
[386] Onshore Oil and Gas Leasing and Operations, 63 Fed. Reg. 31,671 (proposed Dec. 3, 1998) (to be codified at 43 C.F.R. pts. 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180), *available at* https://www.govinfo.gov/content/pkg/FR-1998-12-03/pdf/98-31671.pdf.
[387] O'Donnell Comment, *supra* note 146, at 7–8.
[388] 2026 RIA, *supra* note 130, at 17–18, 20 (Table 4).

"speculative" and "complex."[389] In other words, the BLM relies on a quantified increase in leased acres to calculate a transfer payment while simultaneously invoking uncertainty to avoid estimating the foregone value associated with leasing lands.[390] The BLM cannot have it both ways.

1. Section-Specific Comments

i. Proposed Section 3110.1: Lands Accessible for Noncompetitive Leasing

As noncompetitive leasing has been reinstated only as of July 4, 2025, an additional sentence must be added to this new section, to specify that, "[o]nly lands first offered at a competitive auction held on or after July 4, 2025, are accessible for noncompetitive leasing."

ii. Proposed Section 3110.2: Application Requirements

To limit the ability of speculators to acquire large swaths of public land noncompetitively that they cannot reasonably develop, it is prudent for the BLM to reinstate an acreage limitation for noncompetitive oil and gas lease offers. To provide consistency between competitive and noncompetitive leases and simplify the leasing system, the BLM should specify in this section that noncompetitive lease offers are not to exceed 2,560 acres.

iii. Proposed Section 3110.4: Action on Application

In this section, the BLM addresses, in part, the reasons for which a noncompetitive lease application would be rejected. To clarify the action that must be taken regarding noncompetitive lease applications submitted prior to OBBBA's reinstatement of noncompetitive leasing, section 3110.4(f) should be added to state, "[a] noncompetitive lease application submitted for lands that were first offered at a competitive auction held prior to July 4, 2025, will be rejected. This shall include any noncompetitive lease application submitted prior to August 16, 2022, that was not previously issued."

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[389] 2026 RIA, *supra* note 130, at 12–13; *see* O'Donnell Comment, *supra* note 146, at 7–8.
[390] O'Donnell Comment, *supra* note 146, at 7–8.

In addition, as we outlined above, it is necessary for the BLM to undertake a "public interest" determination of any entity applying for a noncompetitive lease, prior to acting on the lease application. We, therefore, urge the BLM to state in this section what action will be taken if the authorized officer determines that the applicant is not considered to be either "responsible" or "qualified" to hold a noncompetitive oil and gas lease. An additional section 3110.4(g) should be added to state the following: "A noncompetitive lease application submitted by an entity determined by the authorized officer to be neither 'responsible' nor 'qualified' to hold a noncompetitive lease under § 3100.5 of this chapter, for reasons including, but not limited to, those relating to the applicant's ability to undertake development and compliance history, will be rejected."

iv. Proposed Section 3110.5: Noncompetitive Lease Terms

With irresponsible actors historically having acquired noncompetitive leases without ever utilizing the oil and gas resources associated with them, it is necessary for the BLM to require additional lease terms for noncompetitive leases, to both encourage the industry's diligent use of publicly-owned resources and prevent speculation on public lands. We, therefore, urge the BLM to add diligent development provisions to this section. We recommend section 3110.5(d) be added to state the following: "By the end of the fifth year of the lease term, a lessee holding a noncompetitive lease must have completed at least one of the following: (1) established actual production in paying quantities on the lease; (2) established allocated production in paying quantities on the lease; (3) filed a complete APD; (4) extended the lease term by committing it to an oil and gas agreement; or (5) filed a Notice of Intent to undertake geophysical exploration. Any noncompetitive lease for which none of these requirements have been met by the end of the fifth year of the lease term will be required to carry a higher rental rate, to be determined by the authorized officer."

j. The BLM Must Cite FLPMA as a Requisite Authority for the Proposed Rule

If the BLM does finalize the Proposed Rule, it should include a five-year sunset date for the regulations, as directed by Executive Order 14270.[391] In declining to include a sunset date, the BLM asserts that its oil and gas leasing "regulations are primarily promulgated under the MLA," not FLPMA. This excuse is arbitrary and capricious and contrary to the record. The agency proposes to remove all references to FLPMA in its statements of authority to promulgate parts 3100, 3120, 3130, 3140, 3150, and 3160 of its leasing regulations.[392] But, in addition to the MLA, the BLM manages the entire federal onshore oil and gas leasing program pursuant to the requirements of FLPMA.[393] Indeed, the BLM's existing and proposed oil and gas leasing regulations both make explicit references to FLPMA and land use planning,[394] and are best characterized as mixed-authority provisions promulgated pursuant to both statutes. While the BLM explicitly recognizes that the fixed filing fee at 43 C.F.R. § 3000.120 is promulgated pursuant to FLPMA, it simply requests comments on the costs and benefits of the fixed filing fee but does not propose to add a sunset date to that regulation.[395]

Eliding reference to FLPMA and asserting this rulemaking is not an exercise of FLPMA authority is arbitrary and capricious. The preamble to the Proposed Rule, for example, cites to FLPMA dozens of times and the purpose of this rulemaking is to amend the 2024 Leasing Rule that the BLM expressly relied on FLPMA when promulgating. If the BLM is adopting these regulations only in reliance on the MLA and ignores or disregards its authority under FLPMA, then the BLM is ignoring an important aspect of the problem and is acting arbitrarily and capriciously for this reason as well.[396] The BLM must, therefore, retain citations to FLPMA as a requisite authority for the Proposed Rule.

k. The BLM Should Take Further Action to Address the Issue of Idled Wells on Public Lands

The 2024 Leasing Rule rightfully established new reporting and operational requirements for operators of idled wells, which present significant health, environmental, and safety threats to public lands as well as nearby communities,

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[391] *See* 90 Fed. Reg. at 38,104.
[392] 91 Fed. Reg. at 38,096, 38,102, 38,104–05.
[393] *See* 91 Fed. Reg. at 38,085; 89 Fed. Reg. at 30,916.
[394] *See, e.g.*, 43 C.F.R. § 3100.5 (definition of "available"); 91 Fed. Reg. at 38,115 (proposed 43 C.F.R. § 3101.12 referencing approved RMPs).
[395] 91 Fed. Reg. at 38,111–13; *see* 2026 RIA, *supra* note 130, at 5 ("BLM established fixed filing fees pursuant to the authority in [FLPMA]"); *see also* 43 C.F.R. §§ 3000.100(a) ("For processing fees, the BLM takes into account the factors in section 304(b) of . . . FLPMA . . . before deciding a fee."), 3000.110(b) ("For case-by-case fees, the BLM measures the ongoing processing cost for each individual document and considers the factors in section 304(b) of FLPMA on a case-by-case basis according to the following procedures . . . .").
[396] *See supra* Section II.b.

and present substantial financial risks to taxpayers. Long-term abandonment of oil and gas wells on federal public lands has been a persistent issue for years, and the GAO has identified long-inactive wells as those most at risk of becoming orphaned, potentially costing $46 to $333 million to clean up.[397] As of July 31, 2026, there are 8,004 idled wells on federal public lands,[398] many of which are at risk of becoming orphaned due to the extended length of time that they have been left either abandoned or shut in.

As many of our organizations raised in comments on the 2024 Leasing Rule, we remain concerned that the maximum length of time that a federal well may be left idle is four years, as we consider four years far too long for a well to be allowed to remain in either temporarily abandoned or shut-in status. Most state oil and gas programs determine "idled wells" to be those that have been left inactive for much shorter lengths of time.[399] Therefore, we urge the BLM to finalize regulations that prohibit operators from delaying permanent abandonment of temporarily abandoned and shut-in wells for more than two years. In addition, to encourage operators to move forward with plugging and reclaiming idled wells, or alternatively to bring the wells back into production, we recommend that the BLM require the use of idled well bonds in its regulations. Idled well bonds are already required by some states, including Wyoming,[400] in order to create a financial incentive for operators to avoid delaying remediation, reclamation, and permanent closure of their wells.

1. **Section-Specific Comments**

   i. **Proposed Section 3162.3-4: Well Abandonment**

Even though the BLM's current regulations include important measures for resolving the issue of temporarily abandoned and shut-in wells, these provisions need to be strengthened. We encourage the BLM to use this rulemaking opportunity to do so. Consistent with provisions in previous legislation such as S. 2177, *Oil and Gas Bonding Reform and Orphaned Well Remediation Act*, as introduced by Senator Michael Bennet in June

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[397] GAO-19-615, *supra* note 211, at 18.
[398] BLM, Automated Fluid Minerals Support System, Idled Federal Wells Report (accessed July 31, 2026), *available at* https://reports.blm.gov/report/AFMSS/135/Idled-Federal-Wells/.
[399] *See*, *e.g.*, Interstate Oil & Gas Compact Commission (IOGCC), *Idle & Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies* (2021) [Ex. 74, Appendix G at 85], *available at* https://oklahoma.gov/content/dam/ok/en/iogcc/documents/publications/iogcc_idle_and_orphan_wells_2021_final_web.pdf.
[400] 055-3 Wyo. Code R. § 3-4 - Bonding Requirements (Forms 8, 8A, 8E and 8F).

2021,[401] Section 3162.3-4(3) should be amended to state, "[w]ithin *two* years of temporary abandonment of a well, complete one of the following actions. . . ." (emphasis added).

In addition, as discussed above, we ask the BLM to add a subsection (iv) to Section 3162.3-4(3) to require the use of idled well bonds. We recommend the following language, modeled after Wyoming's idled well bond rules: [402] "In the event an operator has a statewide or individual lease bond covering federal wells, the authorized officer may require an increased bond amount of up to fifteen dollars ($15.00) per foot for each idled well taking into account the existing level of bond in place. As wells are removed from idled status, up to fifteen dollars ($15.00) per foot of bonding requirements will be reduced accordingly. An operator may request the authorized officer to set a different bonding level based on an evaluation of the specific well conditions and circumstances. The operator shall submit a written cost estimate to provide plugging, abandonment, and site remediation prepared by a contractor with expertise in well plugging, abandonment, and site remediation. At the authorized officer's discretion, the authorized officer may accept or reject the cost estimate when determining whether to adjust the bonding level. The idled well bond amount will be reviewed annually or upon request of the operator."

l. The BLM's Threshold Determinations Under Executive Order 12866, Executive Order 13211, and the Regulatory Flexibility Act Conflict with Other Findings in the Record

As explained in the attached O'Donnell Comment and O'Donnell Bonding Report, which we fully incorporate here by reference, the BLM's threshold determinations under Executive Order 12866, Executive Order 13211, and the Regulatory Flexibility Act are at odds with other statements and findings in the record.[403] The BLM must, therefore, reconcile these inconsistencies.

First, the BLM asserts "that the Proposed Rule would yield a net annual economic benefit of $10.9 million," and is therefore not significant under Executive Order 12866, but that dollar figure does not match anything in the

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[401] Oil and Gas Bonding Reform and Orphaned Well Remediation Act, S. 2177, 117th Cong. (2021) [Ex. 75, Appendix G at 169], *available at* https://www.congress.gov/bill/117th-congress/senate-bill/2177/text.
[402] 055-3 Wyo, Code R. §§ 3-4(b)(ii).
[403] O'Donnell Comment, *supra* note 146, at 2, 8–9; O'Donnell Bonding Report, *supra* note 215, at 14–15, 17.

economic analysis, including in Table 3 that the BLM cites.[404] The BLM's significance determination also contradicts its statement in the Proposed Rule that the Office of Information and Regulatory Affairs (OIRA) "has determined that this proposed rule is significant."[405] The BLM must explain how it determined that the Proposed Rule will yield $10.9 million in net benefits and reconcile OIRA's contradictory finding.

Second, the BLM claims that the Proposed Rule is not a "significant energy action" under Executive Order 13211 because it is not significant under Executive Order 12866 and OIRA did not designate it as such.[406] This finding is at odds with the BLM's justification for the Proposed Rule, however, that lowering bonds and removing other regulatory impediments will encourage meaningful energy development on public lands.[407] The BLM must reconcile these inconsistent findings in relation to Executive Order 13211 and energy development.

Third, the BLM's analysis under the Regulatory Flexibility Act concludes that the Proposed Rule will not pose significant economic impacts on small businesses and is expected to have an economic benefit of less than 0.01 percent on those entities.[408] This finding contradicts a primary rationale for the BLM's proposed bonding rollbacks, which is that the bonding minimums set by the 2024 Leasing Rule impose a severe burden on small businesses that hinders development.[409] Again, the BLM must reconcile these inconsistent statements and findings.

m. The BLM Must Prepare an Environmental Impact Statement Rather Than a Categorical Exclusion for This Rulemaking

To comply with its obligations under NEPA, the BLM must conduct environmental analysis in the form of an Environmental Impact Statement (EIS). The Proposed Rule is likely to "significantly affect[] the quality of the human

[404] 2026 RIA, *supra* note 130, at 3, 20 (Table 3); *see* O'Donnell Bonding Report, *supra* note 215, at 17; O'Donnell Comment, *supra* note 146, at 2, 9.
[405] 91 Fed. Reg. at 38,106; *see* O'Donnell Bonding Report, *supra* note 215, at 17.
[406] 2026 RIA, *supra* note 130, at 4; 91 Fed. Reg. at 38,111.
[407] 2026 RIA, *supra* note 130, at 4; 91 Fed. Reg. at 38,086; *see* O'Donnell Comment, *supra* note 146, at 9; O'Donnell Bonding Report, *supra* note 215, at 15.
[408] 2026 RIA, supra note 130, at 3; 91 Fed. Reg. at 38,107.
[409] 91 Fed. Reg. at 38,086, 38,099; *see* O'Donnell Comment, *supra* note 146, at 9; O'Donnell Bonding Report, *supra* note 215, at 14–15.

environment"[410] for all of the reasons discussed in detail in the preceding sections, including, among others, removal of the Preference Criteria likely leading to leasing in areas unsuitable for development, lower bonding rates and the subsequent increase in orphaned wells, and the elimination of meaningful public input as an avenue for pointing out conservation conflicts with development. At minimum, however, the BLM must prepare an Environmental Assessment (EA) for this rulemaking. It may not rely on a categorical exclusion (CE) to forego such analysis, as it attempts to do here.

In its Proposed Rule, the BLM states the following:

> A detailed environmental analysis under NEPA is not required because the proposed rule will be covered by a categorical exclusion (*see* 43 CFR 46.205). This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this proposed rule is "of an administrative, financial, legal, technical, or procedural nature." We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.[411]

The BLM's reliance on this CE is unreasonable for several reasons.

As an initial matter, the BLM's conclusory statement that the "proposed rule meets the criteria" of the categorical exclusion without any further explanation or justification is entirely insufficient. The Ninth Circuit has long held that "[w]hen an agency decides to proceed with an action in the absence of an EA or EIS, the agency must adequately explain its decision."[412] Because of this, the agency's failure to explain its reliance on a CE "renders the BLM's reliance on the CE infirm."[413] Similarly, the BLM cannot submit that "the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215" without explaining why this is so. In *American Wild Horse Campaign*, the court was "not convinced" by the BLM's "conclusory statement" in which it "simply listed the

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[410] 42 U.S.C. § 4332(c).
[411] 91 Fed. Reg. at 38,111.
[412] *See Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007) (internal quotation marks omitted) (quoting *Alaska Ctr. for Env't v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999)); *see also Jones v. Gordon*, 792 F.2d 821, 828 (9th Cir. 1986).
[413] *See Am. Wild Horse Campaign v. Burgum*, 768 F. Supp. 3d 1291, 1321 (D. Colo. 2025); *see also Shearwater v. Ashe*, 2015 WL 4747881, at *16 (N.D. Cal. Aug. 11, 2015) (finding that the agency's failure to "adequately explain its reliance on . . . this CE as a basis for avoiding further NEPA review" rendered its application of the CE "unreasonable").

various criteria included in 43 C.F.R. § 46.215 and stated as follows: 'The proposed action has been reviewed with the list of extraordinary circumstances described below; none of these circumstances apply to the proposed action.'"[414] The BLM's statement here is even more cursory—and thus inadequate.

And, in fact, nearly all of the extraordinary circumstances listed at 43 C.F.R. § 46.215 apply to the Proposed Rule. Regarding paragraph (a), the Proposed Rule is likely to have "significant impacts on public health or safety."[415] For example, the Proposed Rule's inadequate bonding rates are vastly insufficient to plug and reclaim wells, and the BLM itself has recognized that orphaned and idled wells "pose health and safety risks to communities," even stating as part of this very rulemaking that lowered bonding amounts could have impacts on water quality, a factor with important implications for public health.[416]

The extraordinary circumstances of paragraph (b)—for actions with "significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas"—apply as well. In addition to the aforementioned impacts of lowered bonding rates on water quality, the removal of the 2024 Leasing Rule's Preference Criteria—which require the BLM to preference leasing lands that do not impair wildlife habitat or historic properties, sacred sites, and other high value cultural resources[417]—is certain to lead to significant impacts to historical cultural resources and to migratory bird habitat.

Turning to paragraph (c), the Proposed Rule—which appears to direct the BLM to prioritize oil and gas leasing over all other uses—involves "highly uncertain and potentially significant environmental effects."

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414 768 F. Supp. 3d at 1321 (citations omitted).
415 43 C.F.R. § 46.215(a).
416 BLM, *Protecting Taxpayers and Communities from Orphaned Oil and Gas Wells on Public Lands* (2024) [Ex. 76, Appendix G at 218], *available at* https://www.blm.gov/sites/default/files/docs/2024-06/BLM-OilandGas-Orphanwells-Factsheet-June2024.pdf; 91 Fed. Reg. at 38,107; *see also* 79 Fed. Reg. at 30,938 (in the overview section of the 2024 Leasing Rule, stating that "the BLM expects that the expedited timing for reclamation of orphaned wells from increased bonding could provide benefits related to . . . climate change (reduced greenhouse gas emissions from unplugged orphaned wells)" and "ground water," among other benefits).
417 43 C.F.R. § 3120.32.

And, by guiding the BLM's actions in its future land planning and oil and gas leasing decisions, the Proposed Rule "[e]stablish[es] a precedent for future action or represent[s] a decision in principle about future actions with potentially significant environmental effects," and has "a direct relationship to other actions that implicate potentially significant environmental effects" per paragraphs (d) and (e).

And finally, as indicated above, the Proposed Rule's removal of the requirement to preference leasing away from wildlife habitat, historic properties, and sacred sites is likely to have "significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places," "significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or . . . on designated Critical Habitat for these species," and to "[s]ignificantly limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites," per paragraphs (f), (g), and (h).

Moreover, the cited CE is improper for this rulemaking. The Proposed Rule—which eliminates leasing preference criteria, slashes opportunities for public participation, and severely cuts bonding rates that industry is required to pay, just to name a few of its revisions—is a substantive rule, rather than one "of an administrative, financial, legal, technical, or procedural nature." The BLM even appears to recognize as much. While the agency claims that "most proposed changes in the rule are administrative and do not result in direct environmental effects," it acknowledges that lowered bonding amounts "could delay reclamation of orphaned wells by an estimated 1,440 to 2,400 days annually, leading to nonmonetized environmental costs such as postponed improvements in soil stability, water quality, and habitat recovery," and "could potentially decrease the incentive for operators to adhere to responsible operational practices and properly reclaim well sites, which could result in greater risks to the public lands and local ecosystems."[418]

To contrast this Proposed Rule with ones that are typically covered by this type of CE, in discussing the Forest Service's parallel CE for rules on "administrative procedures, program processes, or instructions," the Ninth Circuit listed the following examples as being "clearly routine and procedural matters" to conform to the CE: "changes to locations at which the Forest Service may charge admission fees, clarifications of the appraisal procedures for determining fair

[418] 91 Fed. Reg. at 38,107, 38,099.

market value when appraising timber, updates for field unit names and addresses, clarification of appeal procedures, and revisions to building standards for residential outbuildings."[419] The proposed changes here are far from the sorts of administrative actions that are typically covered by CEs like these. Specifically, courts have stated that "regulations that 'increase the barriers to public involvement' in agency management 'are not purely administrative.'"[420] This Proposed Rule, which increases barriers to public involvement for all of the reasons discussed above, is likewise not "administrative." And again, for all the reasons discussed in detail in this comment letter, this regulation would have "substantive effects on land management" and thus is not appropriate for a CE that is reserved for purely administrative rules.[421]

Even the purpose of the Proposed Rule as proffered by the BLM is not an administrative one. The BLM states that it "is undertaking this proposed rulemaking for the purposes of rescinding regulations that have created needless impediments to the development and use of our Nation's abundant energy and natural resources" and to "improv[e] the United States' energy leasing, development, and production capacity to provide a reliable, diversified, growing, and affordable supply of energy for our Nation using existing authorities to the fullest extent possible."[422] This stated purpose of "improving," "diversif[ying]," and "growing" energy production is a substantive goal, rather than a purely technical or administrative one. For comparison, courts have found that a rulemaking "plainly disclaim[s] having an administrative purpose" where the stated goal was to "facilitate the responsible development of renewable energy" or to "increase the number of adoptions of untrained wild horses and burros . . . through offering financial incentives."[423]

Because this proposed rulemaking includes substantive revisions to the oil and gas leasing process and is guided by a substantive mission, the BLM's reliance on a CE for administrative, financial, legal, technical, or procedural rules is unreasonable and misplaced. The BLM must instead issue an EIS—or, at minimum, an EA—for this regulation.

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419 *See Cal. ex rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999, 1017 & n.16 (9th Cir. 2009) (first quoting Forest Service Handbook 1909.15 § 31.1b., ¶ 2; and then quoting *Cal. ex rel. Lockyer v. U.S. Dep't of Agric.*, 459 F. Supp. 2d 874, 902 n.6 (N.D. Cal. 2006)).
420 *Shearwater*, 2015 WL 4747881, at *16 (quoting *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 498 (9th Cir. 2011)).
421 *Cal. ex rel. Lockyer*, 575 F.3d at 1017.
422 91 Fed. Reg. at 38,085.
423 *Shearwater*, 2015 WL 4747881, at *17; *Am. Wild Horse Campaign*, 768 F. Supp. 3d at 1321.

n. The BLM Must Disclose Its Use of Artificial Intelligence During This Rulemaking

The BLM must disclose any use of artificial intelligence (AI) throughout this rulemaking process, including any use of AI to assist with its economic analysis of the Proposed Rule. And if the BLM has used AI, the agency must describe the AI tools employed and explain how it has used them.

While AI can be used appropriately to improve agency efficiency, the BLM must properly moderate and disclose that use, including so the public has an opportunity to identify and correct any errors. Undisclosed use of AI could render the BLM's process unlawful. Core provisions of the APA—including those governing rulemaking transparency[424] and reasoned explanation[425]—require agencies to expose the true basis and methodology of their actions.[426] As described elsewhere in this comment, the BLM has failed to supply a reasoned explanation and made certain bald assertions. It also has not disclosed whether assertions made are based on use of AI tools. If used, however, AI tools would constitute part of the analytical and evidentiary foundation for the BLM's decisions. An agency that uses AI without disclosing it would prevent the public—and, eventually, the courts—from conducting meaningful record review.[427] If the BLM uses AI in this process, it must document the use and any relevant inputs and outputs for the public.

Further, FLPMA, NEPA, and case law all emphasize rigorous public engagement in public land processes.[428] The disclosure of the use of AI is essential to

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[424] 5 U.S.C. § 553(c) (requiring that after consideration of relevant public comments, "the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose"). If an agency uses an AI system to analyze public comments, model policy outcomes, or generate the analytical underpinnings of a rule, the statement of basis and purpose must account for and explain that methodology.

[425] 5 U.S.C. § 706 (authorizing courts to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "unsupported by substantial evidence").

[426] *Cf. Chamber of Commerce v. SEC*, 443 F.3d 890, 899 (D.C. Cir. 2006) ("[a]mong the information that must be revealed for public evaluation are the 'technical studies and data' upon which the agency relies" in its rulemaking); *Conn. Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982) ("In order to allow for useful criticism, it is especially important for the agency to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules.").

[427] *See Sierra Club v. Costle*, 657 F.2d 298, 318 (D.C. Cir. 1981) ("There must be a rational connection between the factual inputs, modeling assumptions, modeling results, and conclusions drawn from these results.").

[428] *See, e.g.*, 43 U.S.C. § 1702(d) (defining "public involvement" to mean "the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance"); *Mont. Wildlife Fed'n*, 127 F.4th at 41 (emphasizing NEPA's requirement that the public have the "ability to provide 'meaningful' input into the agency's decision").

transparent and rigorous public engagement, as noted above, by allowing the public to address areas of potential error.

Finally, using AI without sufficient human oversight to respond to relevant comments also would not fulfill the BLM's legal duties. Courts have interpreted the APA's arbitrary and capricious language to require reasoned decision-making from the agency.[429] Similarly, judicial precedent reflects that agencies must respond to comments "in a reasoned manner."[430] When agencies rely on computer-generated results, like computer models, courts have long held that "ultimate responsibility for the policy decision remains with the agency rather than the computer."[431]

IV. Conclusion

As discussed throughout this comment, the Proposed Rule, if promulgated in its current form, would violate the BLM's continuing statutory obligations under the MLA, APA, FLPMA, and NEPA, among other laws, by removing the existing regulatory protections for taxpayers, communities, and public lands that the BLM implemented in 2024. We, therefore, urge the BLM to withdraw the Proposed Rule and maintain the existing regulations.

If you have questions or wish to discuss this comment, please contact Gregg DeBie, Senior Staff Attorney at The Wilderness Society, at gdebie@tws.org or (720) 647-9668.

Respectfully,

Archaeology Southwest
Coalition to Protect America's National Parks
Conservation Colorado
Conservatives for Responsible Stewardship
Dakota Resource Council
Defenders of Wildlife
National Parks Conservation Association
Natural Resources Defense Council
Nevada Conservation League
New Mexico Voices for Children
New Mexico Wild

[429] *See, e.g.*, *State Farm*, 463 U.S. at 43; *Fox v. Clinton*, 684 F.3d 67, 74 (D.C. Cir. 2012).
[430] *Conf. of State Bank Supervisors v. Off. of Thrift Supervision*, 792 F. Supp. 837, 846 (D.D.C. 1992).
[431] *Costle*, 657 F.2d at 334–35.

Nuestra Tierra Conservation Project
Powder River Basin Resource Council
Public Citizen
Rocky Mountain Wild
San Luis Valley Ecosystem Council
Sierra Club
The Wilderness Society
Western Colorado Alliance
Western Organization of Resource Councils
Western Slope Conservation Center
Wild Connections
Wild Montana
Wilderness Workshop

Exhibit Index to TWS et. al.'s Comments on the Bureau of Land Management's Proposed Rule on Oil and Gas Leasing

APPENDIX	EXHIBIT	TITLE
A	1	Statement of Michael Nedd, Deputy Director, Operations, BLM, to the U.S. House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources (Mar. 12, 2019)
A	2	The Wilderness Society, *Open for Drilling: The Outsized Influence of Oil and Gas on Public Lands* (2025)
A	3	National Wildlife Federation et al., *Little Potential for Development, High Potential for Harm: How Speculative Leasing for Oil and Gas Threatens Public Lands, Waters, Fish, and Wildlife* (June 13, 2022)
A	4	BLM, Oil and Gas Statistics, Fiscal Year 2025 Tables 2 and 6
A	5	Center for Western Priorities et al., *"No harm, no foul" doesn't exist in oil and gas leasing* (Feb. 14, 2022)
A	6	BLM, Oil and Gas Statistics, Fiscal Year 2025 Table 16
A	7	DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2019* (Nov. 2019)
A	8	DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2018* (Nov. 2018)
A	9	DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior* (Nov. 2017)
B	10	DOI OIG, *Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior* (Nov. 2016)
B	11	DOI, *Report on the Federal Oil and Gas Leasing Program* (Nov. 2021)
B	12	Center for Western Priorities, *Analysis: Public comments overwhelmingly support BLM Oil and Gas Rule* (Sept 26. 2023)
B	13	Colorado College, *Conservation in the West, The 2026 Survey of the Attitudes of Voters in Eight Western States* (Jan. 2026)

B	14	New Bridge Strategy, *Intermountain West & Dakotas Statewide Surveys Key Findings* at 5 (Apr. 2025)
B	15	EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022* (2024)
B	16	BLM, *Tackling the Legacy of Orphaned Wells: The Federal Orphaned Well Program in Action* (Dec. 6, 2024)
B	17	Colo. Parks & Wildlife, Dep't of Nat. Res., *Bureau of Land Management June 2026 Fluid Mineral Lease Sale - Colorado Parks and Wildlife Protest Submission DOI-BLM-CO-0000-2026-0001-EA* (May 14, 2026)
B	18	BLM Wyoming, *Response to Public Comments 2026 First Quarter Competitive Oil And Gas Lease Sale Environmental Assessment DOI-BLM-WY-0000-2025-0003-EA* (Dec. 10, 2025)
C	19	Wilderness Workshop et al., *Comments on Draft EA and FONSI for the Colorado Bureau of Land Management 2026 Quarter 2 Competitive Oil & Gas Lease Sale (DOI-BLM-CO 0000-2026-0001-EA)* (Mar. 13, 2026)
C	20	CBO, Options for Increasing Federal Income From Crude Oil and Natural Gas on Federal Lands (Apr. 2016)
C	21	Earthjustice Comments on NEPA Implementing Regulations, U.S. Department of Interior, Docket ID: DOI-2025-0004 (Aug. 1, 2025)
C	22	Center for Western Priorities, *Don't Drill Here, How bipartisan pushback has helped prevent oil and gas leasing on some of the West's most prized public lands* (Feb. 11, 2025)
C	23	Susan Lubetkin, *BLM Proposed Rule About Oil and Gas Leasing: Exploration of the Effects of the Scoping and Public Comment Process and a Critique of the Economic Rationale* (Aug. 21, 2026)
C	24	BLM, Information Notice, Parcel Deferred (Jan. 11, 2011)
C	25	Josh Siegel, *Ryan Zinke Postpones Oil and Gas Lease Sale near Yellowstone After Local Opposition*, Wash. Examiner (Mar. 5, 2018)
C	26	Martin Kidston, *Zinke Defers Oil and Gas Leases near Livingston, Yellowstone River*, Missoula Current (Mar. 5, 2018)
C	27	Wally J. Johnson, *Commissioner: Rushed BLM Leasing Threatens Our Way of Life*, WyoFile (Apr. 20, 2018)

C	28	Press Release, *A Huge Win for Greater Little Mountain: 173,000 Acres of Oil and Gas Leases Deferred*, SweetwaterNOW (Aug. 31, 2018)
C	29	Robin Bravender, *Cortez Masto Urges BLM to Rethink Nevada Drilling Leases*, Nevada Current (Nov. 5, 2019)
C	30	Letter from City of Mesquite to BLM Ely District Office, Protest to BLM Decision for November 2019 Competitive Oil & Gas Lease Sale (Oct. 13, 2019)
C	31	Molly Marcello, *BLM Reverses Decision to Auction Off Land in Southern Utah*, Utah Pub. Radio (Feb. 25, 2020)
C	32	Brian Maffly, *Feds Yank Oil and Gas Leases near Arches, Canyonlands Parks from Upcoming Sale*, Salt Lake Trib. (Aug. 12, 2020)
C	33	Kelly O'Donnell, Comment on the Economic Analysis Supporting the Proposed Onshore Oil and Gas Leasing Rule (Aug. 14, 2026)
C	34	BLM, *Environmental Assessment DOI-BLM-WY-020-EA10-79 – February 2011 Lease Parcels* (Aug. 2010)
D	35	BLM, *Decision Record, February 2012 – Colorado Competitive Oil & Gas Lease Sale*, DOI-BLM-CO-N010-2011-0104-EA (Feb. 9, 2012)
D	36	BLM, *Environmental Assessment DOI-BLM-MT-C020-2012-0006-EA, Oil and Gas Lease Parcel, May 8, 2012 Sale* (Feb. 8, 2012)
D	37	BLM, *Environmental Assessment, August 2012 Lease Parcels, Wind River/Bighorn Basin District*, DOI-BLM-WY-050-EA12-17 (Aug. 2012)
D	38	Statement of Steve Feldgus, Deputy Assistant Sec'y for Land & Minerals Mgmt., U.S. Dept of the Interior, Statement Before the H. Comm. on Nat. Res., Subcomm. on Energy & Mineral Res., Benefits of the Legacy Pollution Clean-Up Programs in the Bipartisan Infrastructure Law (Mar. 31, 2022)
D	39	GAO, GAO-19-615, *Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells* (Sept. 2019)
D	40	Daniel Raimi et al., *Decommissioning Orphaned and Abandoned Oil and Gas Wells: New Estimates and Cost Drivers*, 55 Envtl. Sci. & Tech. 10224 (2021)
D	41	Kelly O'Donnell, *An Economic Evaluation of the Bonding Analysis Supporting the Proposed Oil and Gas Leasing Rule* (Aug. 14, 2026)

D	42	Chase Woodruff, *Colorado Oil and Gas Regulators Approve 'Strongest in the Nation' Financial Assurance Rules*, Canary Media (Mar. 3, 2022)
D	43	Press Release, *Colo. Oil & Gas Conservation Comm'n, Colorado Oil & Gas Conservation Commission Votes Unanimously to Adopt Orphan Well Mitigation Fee Enterprise Rules* (June 30, 2022)
D	44	Office of the Legislative Auditor General, *Report to the Utah Legislature No. 2019-11, A Performance Audit of Utah's Oil and Gas Program* (Nov. 2019)
D	45	Div. of Oil, Gas & Mining, *Utah Dep't of Nat. Res., Division of Oil, Gas and Mining Implements Updated Oil and Gas Bonding Rules* (July 16, 2026)
E	46	Western Environmental Law Center, *New Mexico modernizes oil, gas industry bonding, cleanup rules, now among nation's strongest* (July 1, 2026)
E	47	BLM, IM 2019-014, *Oil and Gas Bond Adequacy Reviews* (Nov. 15, 2018)
E	48	Sarah C. Armitage et al., *Cutting Costs or Cutting Corners: Asset Reallocation in Oil and Gas Production*, NBER Working Paper No. 34961 (Mar. 2026)
E	49	DOI, *Orphaned Wells Program Annual Report to Congress* (Nov. 2025)
E	50	Dominic C. DiGiulio, *Understanding, Evaluating, and Remediating Leakage from Abandoned Oil and Gas Wells During Geological Storage of Carbon Dioxide* (Mar. 18, 2024)
E	51	Holly E. Copeland et al., *Mapping Oil and Gas Development Potential in the US Intermountain West and Estimating Impacts to Species*, 21 Conservation Biology 1022 (2009)
E	52	Stephen S. Germaine et al., *Relationships Between Gas Field Development and the Presence and Abundance of Pygmy Rabbits in Southwestern Wyoming*, 8 Ecosphere 5 (May 2017)
E	53	Stephen S. Germaine et al., *Distance Effects of Gas Field Infrastructure on Pygmy Rabbits in Southwestern Wyoming*, 11 Ecosphere 8 (Aug. 2020)
F	54	Hall Sawyer et al., *Mule Deer and Energy Development-Long Term Trends of Habituation and Abundance*, 23 Glob. Change Biol. 4521 (Apr. 2017)
F	55	Victoria M. Donovan et al., *Declining pronghorn (Antilocapra americana) population productivity caused by woody encroachment and oil and gas*

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F	56	WildEarth Guardians, *Petition to List the Wyoming Pocket Gopher Under the U.S. Endangered Species Act* (Apr. 6, 2015)
F	57	Douglas A. Keinath, *Species Assessment for White-Tailed Prairie Dog (Cynomys leucurus) in Wyoming, Prepared for the Wyoming State Office of the BLM* (Dec. 2004)
F	58	Wyoming Game and Fish Department, *Recommendations for development of oil and gas resources within important wildlife habitats* (Apr. 2010)
F	59	EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019* (Apr. 2021)
F	60	The Wilderness Society et al., *Comments on the Bureau of Land Management's Proposed Rule on Fluid Mineral Leases and Leasing Process* (Sept. 22, 2023)
F	61	Statement of James L. Caswell, Nominee to be Director, BLM, Department of the Interior, S. Hearing 110-157 (July 12, 2007)
F	62	88 Fed. Reg. 47,562, 47,567 (July 24, 2023); *see* GAO, GAO-22-103968, *BLM Should Update Its Guidance and Review Its Fees* (2021)
F	63	GAO, GAO-18-411, *BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (June 2018)
F	64	The Wilderness Society, *Land Hoarders: How Stockpiling Leases is Costing Taxpayers*
F	65	DOI, *FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future* (Jan. 27, 2021)
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G	70	BLM, *Economic Analysis of the Royalty Rate Provisions in the One Big Beautiful Bill Act of 2025* (2026)
G	71	Taxpayers for Common Sense, *By the Numbers: Federal Onshore Oil and Gas Leasing Revenue Loss*

G	72	GAO, GAO-21-138, *Onshore Competitive and Noncompetitive Lease Revenues* (Nov. 2020)
G	73	The Wilderness Society, *No Exit: Fixing the BLM's Indiscriminate Energy Leasing* (June 2016)
G	74	Interstate Oil & Gas Compact Commission, *Idle & Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies* (2021)
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G	76	BLM, *Protecting Taxpayers and Communities from Orphaned Oil and Gas Wells on Public Lands* (2024)