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WESTERN ENVIRONMENTAL LAW CENTER

August 24, 2026

Comment submitted via regulations.gov
Exhibits sent via Certified Mail

U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, D.C. 20240
Attention: 1004-AF05

Re: Comments on Proposed Oil and Gas Leasing Rule – RIN 1004-AF05.

Dear Director Steve Pierce and Bureau of Land Management Staff,

The Western Environmental Law Center, along with Badlands Conservation Alliance, Center for Biological Diversity, Citizens for a Healthy Community, Coalition to Protect America's National Parks, Endangered Species Coalition, Friends of the Earth, Grand Valley Citizens Alliance, Montana Environmental Information Center, Prairie Hills Audubon Society, Sage Steppe Wild, Sierra Club, Southern Utah Wilderness Alliance, Western Nebraska Resources Council, Western Organization of Resource Councils, Western Watersheds Project, WildEarth Guardians, Wilderness Workshop, and Wyoming Outdoor Council (collectively, "Commenters"), submit the following comments on the Bureau of Land Management's ("BLM") proposed Oil and Gas Leasing rule ("proposed rule").[1] The proposed rule's changes to bonding requirements, public engagement opportunities, royalty rates, leasing preference criteria, leasing suspensions, and noncompetitive leasing are unsupported and contrary to the Federal Land Policy Management Act ("FLPMA"), Mineral Leasing Act ("MLA"), Administrative Procedure Act ("APA"), and Endangered Species Act ("ESA"). BLM should not adopt the rule as proposed.

[1] A list of all exhibits to this comment is attached as **Appendix A**. Exhibits referenced herein and itemized in Appendix A were provided on a USB drive sent under separate cover via FedEx on August 24, 2026.

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I. INTERESTS OF GROUPS

Our organizations and members are impacted by oil and gas development's degradation of habitat, injuries to human health and frontline communities, damage to recreational values, and destruction of a livable climate. We are composed of recreationalists, scientists, educators, farmers, ranchers, and other concerned citizens who live, work, recreate, worship, and otherwise rely on the land, air, and water of public lands for their wellbeing.

Badlands Conservation Alliance is dedicated to the restoration and preservation of the badlands and rolling prairie ecosystem comprising western North Dakota's public lands, both state and federal. They provide an independent voice for conservation-minded North Dakotans and others who are appreciative of this unique Great Plains landscape. It is also their mission to ensure that the public lands management agencies adhere to the principles of the laws that guide them and provide for wise stewardship of the natural landscapes with which the citizens of the United States have entrusted them – for this and future generations.

The **Center for Biological Diversity ("Center")** is a non-profit environmental organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center uses science, policy, and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center also works to reduce greenhouse gas emissions to protect biological diversity, our environment, and public health. The Center has over one million members and online activists, including those living in the West who have visited public lands for recreational, scientific, educational, and other pursuits and intend to continue to do so in the future, and are particularly interested in protecting the many native, imperiled, and sensitive species and their habitats that may be affected by the proposed oil and gas leasing.

Citizens for a Healthy Community ("CHC") is a grass-roots organization with more than 500 members formed in 2010 for the purpose of protecting people and their environment from the impacts of oil and gas development in the Delta County region. CHC's members and supporters include organic farmers, ranchers, vineyard and winery owners, sportsmen, realtors, and other concerned citizens impacted by oil and gas development. CHC members have been actively involved in commenting on BLM's oil and gas activities.

The **Coalition to Protect America's National Parks** is a nonprofit organization comprised of over 4,900 current, former, and retired employees and volunteers of the National Park Service ("NPS"), who collectively represent more than 50,000 years of experience protecting, interpreting, and maintaining America's national parks and public lands. The Coalition's membership includes former NPS directors, deputy directors, regional directors, superintendents, law enforcement and interpretive park rangers, maintenance professionals, administrative staff, and other dedicated career professionals. The Coalition is committed to upholding the NPS mission and advocating for national park solutions grounded in law and sound science. The Coalition and its members have deep recreational, scientific, cultural, aesthetic, and professional interests in the responsible stewardship of America's public lands. Many Coalition members have visited, worked in, and continue to use lands and waters in and adjacent to the proposed lease sale areas, and intend to continue to do so in the future.

The **Endangered Species Coalition** is a national coalition of 475 member organizations and 525,000+ activists working together to protect and recover at-risk threatened and endangered species and to defend the Endangered Species Act and other wildlife laws and policies.

Friends of the Earth ("FoE") is a 501(c)(3) non-profit, membership-based organization with offices located in Berkeley, California and Washington, DC. FoE currently has over 4.7 million activists and over 290,000 members, located across all 50 states and the District of Columbia. FoE is also a member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. FoE's primary mission is to defend the environment and champion a more healthy and just world by collectively ensuring environmental and social justice, human dignity, and respect for human rights and peoples' rights. FoE is dedicated to fighting climate change and advocating for clean energy alternatives. FoE's Climate & Energy program directly engages in administrative and legal advocacy to protect the environment and society from climate change, pollution, and industrialization associated with fossil fuel development on public lands and associated greenhouse gas emissions. Key to this work is fighting to reduce greenhouse gas emissions and domestic reliance on fossil fuels, including from federally produced fossil-fuels, and advance justly-sourced, renewable energy.

Grand Valley Citizens Alliance ("GVCA") was founded in 1997 to empower and mobilize Garfield County residents impacted by oil-and-gas exploration near their homes and ranches. With assistance from Western Colorado Alliance and other like-minded nonprofits, GVCA members engage in balancing the industry's cumulative impacts on health, safety, the environment, public lands and air/water quality in Western Colorado.

Montana Environmental Information Center ("MEIC") is a nonprofit organization founded in 1973 with approximately 10,000 members and supporters. MEIC is dedicated to the preservation and enhancement of the natural resources and natural environment of Montana, particularly the protection of water quality, air quality, and the climate. MEIC is committed to assuring that state and federal officials comply with and fully uphold the laws of the United States and the State of Montana that are designed to protect the environment from pollution. MEIC and its members have intensive, long-standing recreational, aesthetic, scientific, professional, and spiritual interests in the responsible production and use of energy, and the land, air, and waters across the state. MEIC members live, work, and recreate on public lands that are adversely impacted oil and gas development. MEIC brings this action on its own behalf and on behalf of its adversely affected members.

The **Prairie Hills Audubon Society ("PHAS")** is a chapter of the National Audubon Society. PHAS works to conserve the rich natural resources and wildlife heritage of the prairies and hills of western South Dakota and the surrounding region. PHAS is a volunteer grassroot organization. Assistance, support, and donations are greatly appreciated. We are a South Dakota non-profit corporation. We began meeting in 1993, established our first by-laws in 1994 and were certified as a National Audubon Society (NAS) Chapter in 1994. Our chapter's territory, as assigned by the National Audubon Society, is much of "West River" South Dakota.

Sage Steppe Wild works to protect, conserve, and restore western wildlands and wildlife.

The **Sierra Club** was founded in 1892 and is the nation's oldest grassroots environmental organization. The Sierra Club is incorporated in California, and has approximately over 790,000 members nationwide and is dedicated to the protection and preservation of the environment. The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. The Sierra Club has members that live in, work and use lands that will be affected by the proposed rule for recreation such as hiking, snowshoeing, cross-country skiing, climbing, backpacking, camping, fishing and wildlife viewing, as well as for business, scientific, spiritual, aesthetic and environmental purposes.

Southern Utah Wilderness Alliance ("SUWA") is a non-profit environmental organization based in Salt Lake City, Utah. SUWA's mission is the preservation of the outstanding wilderness at the heart of the Colorado Plateau, and the management of these lands in their natural state for the benefit of all Americans. SUWA promotes local and national recognition of the region's unique wilderness character through research and public education; supports both administrative and legislative initiatives to permanently protect the Colorado Plateau wild places within the National Park and National Wilderness Preservation System, or by other protective designations where appropriate; builds support for such initiatives on both the local and national level; and provides leadership within the conservation movement through uncompromising advocacy for wilderness preservation.

The **Western Environmental Law Center ("WELC")** uses the power of the law to foster thriving, resilient western U.S. lands, waters, wildlife, and communities in the face of a changing climate. We envision a western U.S. abundant with protected and interconnected ecosystems, powered by renewable energy, and cared for by communities brought together in an ecology of kinship.

The **Western Nebraska Resources Council**, a non-profit organization, was formed originally in 1983 by local citizens concerned about groundwater contamination from uranium mining. Since then, we have continued to serve as an active advocate for citizens' rights to exist within a healthy climate, complementing our Western NE lifestyle. We achieve this purpose through public education, community participation, and by advocating responsible laws and governmental regulations.

The **Western Organization of Resource Councils ("WORC")** is a network of nine grassroots organizations in eight Western states with 22,750 members, many of them ranchers and farmers committed to common-sense reform in agriculture, oil and gas development, coal mine reclamation, and rural economic development.

Western Watersheds Project ("WWP") is a non-profit environmental conservation group that works to influence and improve public lands management throughout the western United States in order to protect native species and conserve and restore the habitats they depend on. WWP's primary focus is on the negative impacts of livestock grazing, including harm to ecological, biological, cultural, historic, archeological, scenic resources, wilderness values, roadless areas, Wilderness Study Areas and designated Wilderness. WWP was founded in 1993 and has 1,500 members. WWP covers 250 million acres of public land spanning all of the western states and has field offices in Idaho, Montana, Wyoming, Arizona, Nevada, and Oregon.

WildEarth Guardians ("Guardians") is dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians is a west-wide environmental advocacy organization with thousands of members. Guardians' members live in and regularly use and enjoy lands impacted by oil and gas leasing, and are interested in their conservation.

Wilderness Workshop ("WW") is a non-profit organization engaged in research, education, legal advocacy and grassroots organizing to protect the ecological integrity of local public lands. WW is based in Carbondale, Colorado and has approximately 800 members. WW not only defends pristine public lands from new threats, but also strives to restore the functional wildness of landscapes fragmented by human activity. WW works to protect and preserve existing wilderness areas, advocate for expanding wilderness, defend roadless areas from development that would destroy their wilderness character, and safeguard the ecological integrity of all federal public lands in the vicinity of the White River National Forest. WW has a long history of participation in forest planning and public land management on the White River National Forest, the Grand Mesa Uncompahgre and Gunnison National Forest, and adjacent Bureau of Land Management lands.

The mission of the **Wyoming Outdoor Council ("WOC")** is to protect Wyoming's environment now and for future generations. We believe that public lands, wildlife, clean air and clean water are worth defending in Wyoming, Conservation should not be a partisan issue, and informed and engaged citizens make a difference.

II. COMMENT ON SPECIFIC PROVISIONS AND ISSUES

A. Bonding Requirements

The proposed rule would reduce individual lease bonds to $10,000 (from $150,000) and statewide bonds to $25,000 (from $500,000).[2] This would set bond amounts back at levels originally established more than 65 years ago.[3] These proposed changes violate BLM's statutory requirements, ignore abundant evidence and BLM's own prior findings that bonds set at such low levels are inadequate and ineffective, and expose taxpayers to significant costs.[4]

[2] 91 Fed. Reg. 38,084, 38,086 and 38,099 (June 24, 2026).
[3] 88 Fed. Reg. 47,562, 47,565 (July 24, 2023).
[4] Commenters also hereby incorporate by reference comments submitted by the Center for Asset Retirement Accountability on the proposed Oil and Gas Leasing Rule (RIN 1004-AF05).

1. BLM's proposal to lower minimum bond amounts would violate the Mineral Leasing Act and the Infrastructure Investment and Jobs Act.

a) The proposed rule would violate the MLA's mandate that BLM ensure adequate bonding is in place prior to drilling.

The MLA requires that BLM "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."[5] This requires that (1) the bond must be "adequate" to "ensure the complete and timely reclamation of the lease tract" and "restoration of any lands or surface waters adversely affected by lease operations";[6] (2) the adequate bond must be in place "prior to the commencement of surface-disturbing activities."[7] The proposed rule would violate both elements.

In its 2019 report "Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells," the GAO found that "most bonds (84 percent) that are linked to wells in BLM data are likely too low to reclaim all the wells they cover."[8] The GAO explained that the bonds were inadequate because "most bonds are set at their regulatory minimum values, and these minimums have not been adjusted since the 1950s and 1960s to account for inflation," and because "these minimums do not account for variables such as number of wells they cover or other characteristics that affect reclamation costs, such as well depth."[9] BLM itself determined in its 2023-24 rulemaking that "the cost to plug a well and reclaim the surface ranges from $35,000 to $200,000, with an average cost of $71,000."[10] These figures are far higher than any of the per well bonding coverage provided under the proposed rule, but BLM does not dispute its own prior findings or offer updated calculations in the proposed rule.

State oil and gas regulators in states with significant numbers of wells on BLM land report similar plugging costs. Colorado regulators report that plugging costs "generally fall

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[5] 30 U.S.C. § 226(g) (emphasis added). This requirement is repeated in BLM's regulations, which requires that "[p]rior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator must submit a surety or a personal bond, . . . in order to ensure compliance with the Act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations." 43 C.F.R. § 3104.10.

[6] 30 U.S.C. § 226(g).

[7] *Id.*

[8] **Exhibit 1,** U.S. Gov't Accountability Office, GAO 19-615, *Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells* (Sept. 2019), Exec. Summ.

[9] *Id.*

[10] 88 Fed. Reg. at 47,581.

within a range of $20,000 to $140,000 per well."[11] New Mexico regulators report average plugging costs of $163,000.[12]

Rather than seek to justify the plainly inadequate minimum bond amounts, BLM proposes instead to rely on bond adequacy reviews.[13] The first obvious flaw with this approach is that bond adequacy reviews occur *after* wells are drilled, and therefore cannot satisfy the MLA's requirement that adequate bonding be in place *prior* to commencement of surface-disturbing activities. Even if this were not the case, ample evidence demonstrates that BLM's bond adequacy review process has not resulted in adequate bonding.

BLM also may not rely on these reviews to justify its proposed rule because bond adequacy reviews have proven woefully inadequate in practice. As of 2018, 82% of bonds remained at the plainly inadequate regulatory minimum bond value despite the availability of bond adequacy reviews.[14] The GAO, in a 2018 report, noted that "[o]fficials from one BLM state office told us that other challenges to managing its potential liabilities are staffing limitations and the time it takes to conduct bond adequacy reviews."[15] Even when bond adequacy reviews indicate a need for additional bonding, BLM has difficulty securing the increased bond. In a 2019 report, the GAO noted that "according to BLM documentation, its offices did not secure about 84 percent of the proposed bond increases in fiscal years 2016 and 2017."[16] The basis for this failure includes the fact that, as BLM officials have acknowledged, "it is difficult to secure increases from bond reviews when firms are already in difficult financial situations."[17]

b) Reducing minimum bond amounts would violate the MLA's mandate that BLM include lease provisions necessary to protect the public welfare.

In addition to requiring adequate bonds to be in place prior to drilling, the MLA also requires BLM to ensure that each lease "contain . . . such . . . provisions as . . . necessary . . . for the protection of the interests of the United States, . . . and for the safeguarding of the public welfare."[18]

First, the enormous gap between the reduced bond amounts in the proposed rule, and the documented actual costs of plugging, fails to protect "the interests of the United States." In its 2023 proposed rule, BLM determined that increasing minimum bond amounts was necessary to

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[11] **Exhibit 2,** Colorado Energy & Carbon Mgmt. Comm'n, *The Outcomes of More Stringent and Strengthened Energy Regulations: A Comparison of 2016 to 2025*, at 4 (Jan. 16, 2026), https://ecmc.colorado.gov/sites/g/files/lrnvjt1211/files/documents/SMARTAct_Report_2026.pdf.
[12] **Exhibit 3,** N.M. Legislative Fin. Comm., *Policy Spotlight: Orphaned Wells*, at 13 (June 24, 2025), https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/LFC%20Policy%20Spotlight%20-%20Orphaned%20Wells%20-%20Final.pdf.
[13] 91 Fed. Reg. at 38,099.
[14] **Exhibit 4,** U.S. Gov't Accountability Office, GAO-18-250, *Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities*, at 15-16 (May 2018).
[15] *Id.* at 26.
[16] Exhibit 1, U.S. Gov't Accountability Office, GAO-19-615, *Oil and Gas: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells*, at 19 (Sept. 2019).
[17] *Id*.
[18] 30 U.S.C. § 187.

"ensure that reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public."[19] The proposed rule reverses that, ensuring that reclamation responsibilities and costs will be borne by the United States and its taxpayers, in direct contravention of the MLA.

Second, the proposed rule's reduction of minimum bond amounts to levels originally set prior to the early 1960s, and that the GAO, OIG, and BLM itself have found to be inadequate, would not safeguard the public welfare, because setting bond levels at such a low level would lead to more idle and orphaned wells.

Before an oil or gas well is even drilled, it is known that one day it will stop producing in economic quantities and must be plugged. This is because oil and gas wells provide access to a finite resource.[20] Once that finite resource is exhausted, the well loses any private or societal value and must be properly decommissioned "to reduce risks to health and the environment and to turn the land over to alternative uses."[21] The nature of oil and gas operations is that the obligation to plug comes due when the well has stopped generating revenue. At the same time, plugging and decommissioning is expensive and represents a pure cost with no potential to produce additional revenue.[22] The economics of this reality dramatically increases the likelihood that an operator will go out of business or otherwise walk away from its obligations before completing plugging and restoration of the lease. Regulators can address this dynamic by requiring operators to post financial assurances prior to drilling or acquiring a well, but only if the financial assurances are sufficient to cover the costs of plugging, or at least sufficient to incentivize operators to plug their wells.[23]

Effective financial assurance programs facilitate timely decommissioning in three ways. First, the financial assurance "assures that some resources will be available for reclamation if the firm fails to clean up the site."[24] Second, maintaining the financial assurance imposes an ongoing cost on the operator that is only released once plugging is complete, thereby incentivizing the operator to plug a well as soon as it is no longer economic. Third, financial assurance requirements shift risk away from the state and onto a third party such as a surety bond provider, with the third party conducting its own analysis of an operator's reliability and likelihood of default.[25]

Past experience shows that bonds set at the levels in the proposed rule lead to unacceptably high numbers of long-term inactive unplugged wells. In the proposed rule, BLM

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[19] 88 Fed. Reg. at 47581

[20] **Exhibit 5,** Jeremy Weber et al., *Identifying the End: Minimum Production Thresholds for Natural Gas Wells*, USAEE Working Paper No. 21-500, at 4 (May 27, 2021), https://ssrn.com/abstract=3854279.

[21] *Id*. at 1.

[22] *Id*. at i.

[23] *Id.* at 191 ("An approach to the judgment-proof problem is to require collateral (such as a bond), thus providing the agent with a direct monetary incentive to comply with the regulations. If the agent fails to perform, the forfeited collateral is used to remedy the performance failure.").

[24] *Id.*

[25] *Id.* at 189-90 ("The use of a third party further reduces public exposure by increasing the number of parties potentially liable for the cleanup. Moreover, the third party assumes an enforcement role, which encourages contractual or regulatory compliance.").

expressly recognizes that "lower minimum bond amounts 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."[26] This is correct.

GAO's 2019 report "identified 2,294 wells that may be at increased risk of becoming orphaned because they have not produced since June 2008 and have not been reclaimed."[27] Wells that have been inactive for more than a decade are exceedingly unlikely to ever be returned to service. GAO estimated that the cost to the government to plug and reclaim these wells could be as high as $333 million.[28] A financial assurance policy that fails to incentivize operators to plug wells that have not generated any revenue for more than 10 years is inadequate.

Unplugged idle and orphaned wells threaten human health and harm the environment. In its January 2018 report, the OIG found that "[i]dle wells pose notable financial risk to the U.S. Government and the taxpayer, as idle wells can fall into disrepair creating environmental, safety, and public health hazards."[29] Unplugged oil and gas wells can leak numerous harmful pollutants into the air and water. Pollutants may escape when the well casings or wellheads of unplugged wells rust or crack, which can happen through improper maintenance, subsidence, or from other causes.[30] Oil and gas wells can emit air pollutants including methane, nitrogen oxides, sulfur dioxide, and hazardous air toxics like benzene, toluene, ethylbenzene, and xylene.[31] These pollutants "are known or suspected to cause cancer or other serious health effects, such as reproductive diseases, or birth defects."[32] Researchers have observed "increased concentrations of PM2.5, CO, NO2, O3, and VOCs at distances up to 4 km downwind of wells."[33]

Methane leaks are a particular concern from unplugged wells.[34] At very high concentrations, methane can pose an asphyxiation and explosion risk, particularly when

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[26] 91 Fed. Reg. at 38,099.

[27] Exhibit 1, U.S. Gov't Accountability Office, GAO-19-615, *Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells*, at 17 (Sept. 2019).

[28] *Id*. at 18.

[29] **Exhibit 6,** U.S. Dep't of the Interior, Office of Inspector Gen., Report No. 2016-EAU-061, *Bureau of Land Management's Idle Well Program*, at 1 (Jan. 2018).

[30] **Exhibit 7,** Edan Allison & Brendan Mandler, *Abandoned Wells: What Happens to Oil and Gas Wells When They Are No Longer Productive?*, Am. Geosciences Inst. (June 2018), https://americangeosciences.org/critical-issues/factsheet/pe/abandoned-wells; **Exhibit 8,** Bill Analysis for A.B. 2729, 2015–2016 Sess. (Cal. 2016), http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2701-2750/ab_2729_cfa_20160819_202107_asm_floor.html.

[31] **Exhibit 9,** Richard K. Lattanzio, Cong. Research Serv., R42833, *Air Quality Issues in Natural Gas Systems* (Apr. 2013), https://www.congress.gov/crs_external_products/R/PDF/R42833/R42833.9.pdf; **Exhibit 10,** Gregg P. Macey et al., *Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study*, 13 Envtl. Health 82 (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4216869/.

[32] Exhibit 9, Richard K. Lattanzio, Cong. Research Serv., R42833, *Air Quality Issues in Natural Gas Systems* (Apr. 2013).

[33] **Exhibit 11,** David J.X. Gonzalez et al., *Upstream Oil and Gas Production and Ambient Air Pollution in California*, 806 Sci. Total Env't 150298 (2022), https://www.sciencedirect.com/science/article/pii/S0048969721053754.

[34] **Exhibit 12,** Josh Woda et al., *Methane Concentrations in Streams Reveal Gas Leak Discharges in Regions of Oil, Gas, and Coal Development*, 737 Sci. Total Env't 140105 (2020), https://www.sciencedirect.com/science/article/abs/pii/S0048969720336251; **Exhibit 13,** Mary Kang et al., *Direct Measurements of Methane Emissions from Abandoned Oil and Gas Wells in Pennsylvania*, 111 Proc. Nat'l Acad.

accumulated in basements or well pits.[35] Methane is also a potent greenhouse gas driving global climate change. Methane's heat-trapping effects are up to 80 times more powerful than carbon dioxide, depending on the timeframe.[36] The U.S. Environmental Protection Agency estimates that the average low- or non-producing oil well leaks 1.8 tons of methane into the atmosphere each year.[37]

Leaking wells can also pollute groundwater and surface water, including contaminating drinking water sources.[38] Oil and gas wellbores pass through shallower strata that may contain groundwater used for drinking or other purposes.[39] Unplugged, non-producing wells can facilitate the migration of pollutants from deeper hydrocarbon-producing strata into this groundwater or up to the surface.[40]

c) The proposed minimum bond amounts would violate the Infrastructure Investment and Jobs Act requirement that BLM "reduce the inventory of idled wells on Federal land".

The inadequate bond levels in the proposed rule would also violate the statutory mandate of the Infrastructure Investment and Jobs Act (IIJA) that "[t]he Secretary, acting through the Director of the Bureau of Land Management, shall– . . . reduce the inventory of idled wells on Federal land."[41] BLM would violate this mandate by returning minimum bond amounts to levels that have already produced thousands of idled wells on federal land.

As discussed above, GAO's 2019 assessment of the effects of BLM's oil and gas bonding program—which included the same minimum bond amounts as set forth in the proposed rule identified approximately 2,300 idled wells inactive for more than a decade. Returning minimum bond amounts to those levels would produce even more idled wells, contravening IIJA requirements.[42] The GAO report placed the blame for those high numbers of idled wells

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Sci. 18173, 18173–77 (2014); **Exhibit 14,** Nicholas J. Gianoutsos et al., *Geologic Sources and Well Integrity Impact Methane Emissions from Orphaned and Abandoned Oil and Gas Wells*, 912 Sci. Total Env't 169584 (2024), https://www.sciencedirect.com/science/article/pii/S0048969723082141.

[35] **Exhibit 15,** R.E. Jackson et al., *Groundwater Protection and Unconventional Gas Extraction: The Critical Need for Field-Based Hydrogeological Research*, 51 Groundwater 488, 492 (2013).

[36] **Exhibit 16,** Khalil El Hachem & Mary Kang, *Reducing Oil and Gas Well Leakage: A Review of Leakage Drivers, Methane Detection and Repair Options*, 3 Envtl. Rsch.: Infrastructure & Sustainability 012002 (2023), https://iopscience.iop.org/article/10.1088/2634-4505/acbced/pdf.

[37] Background Technical Support Document for the Proposed Reconsideration of the New Source Performance Standards 40 CFR Part 60, Subpart OOOOa 36, Docket ID No. EPA-HQ-OAR-2017-0483 (Sept. 2018).

[38] Exhibit 15**,** R.E. Jackson et al., *Groundwater Protection and Unconventional Gas Extraction: The Critical Need for Field-Based Hydrogeological Research*, 51 Groundwater 488, 496–99 (2013).

[39] **Exhibit 17,** Richard J. Davies et al., *Oil and Gas Wells and Their Integrity: Implications for Shale and Unconventional Resource Exploitation*, 56 Marine & Petroleum Geology 239, 239–40 (2014).

[40] **Exhibit 18,** D.G. Calvert & Dwight K. Smith, *Issues and Techniques of Plugging and Abandonment of Oil and Gas Wells*, SPE-28349-MS, Soc'y of Petroleum Eng'rs Ann. Tech. Conf. & Exhibition 3 (Sept. 1994); **Exhibit 19,** George E. King & Randy L. Valencia, *Environmental Risk and Well Integrity of Plugged and Abandoned Wells*, SPE-170949-MS, Soc'y of Petroleum Eng'rs Ann. Tech. Conf. & Exhibition 2, 5–6 (Oct. 2014).

[41] 42 U.S.C. § 15907(b)(3)(B).

[42] Industry commentators have sought to downplay the impact of inadequate bond amounts by cherry-picking statistics related to the number of orphaned wells identified on BLM land. *See* **Exhibit 20,** Western Energy Alliance

squarely on the low minimum bond amounts, finding that those bond levels "may not create an incentive for operators to promptly reclaim wells after operations cease because it costs more to reclaim the wells than the operator could collect from its bond."[43] Indeed, bonds set at the levels specified in the proposed rule are so low that operators sometimes forget to request termination of the bond after transferring or plugging and abandoning their wells.[44] By failing to set bonds at a level sufficient to incentivize prompt plugging of idled wells, BLM's proposed rule would violate the IIJA's statutory directive to "reduce the inventory of idled wells on Federal land".

2. BLM should not restore Nationwide Blanket Bonds or Unit Operator Blanket Bonds

In the proposed rule, BLM requests feedback on whether it should reinstate nationwide bonds and unit operator bonds, both of which were eliminated in the 2024 rule.[45] It should not.

Blanket bonds such as the nationwide bonds and unit operator bonds do not provide adequate financial assurance. Blanket bonds result in very low coverage per well. The greater the number of wells covered, the lower the per well coverage. When an operator who has provided only a blanket financial assurance defaults and orphans its wells, almost all of those plugging costs must be covered by the government and, by extension, the taxpayers. According to GAO in its 2019 report, "nationwide bonds had the lowest average bond per well value at $890."[46] That is a negligible amount of coverage per well, considering BLM's assessment of the typical range of plugging costs between $35,000 to $200,000, with an average cost of $71,000."[47]

BLM's assessment in the 2023-24 rulemaking was correct that the high administrative costs for managing these blanket bonds warrant their elimination. In the 2023 proposed rule, BLM stated that "the proposed rule would rescind the use of nationwide bonds, which call upon the BLM to manage nationwide risks and liabilities and are therefore administratively inefficient. The elimination of nationwide bonding . . . would allow the agency to ensure improved bonding, with an appropriate focus on specific areas and fields, which should reduce the burden to the taxpayer if an operator fails to complete proper plugging and abandonment."[48]

As to unit operator bonds, BLM stated that "eliminating and replacing the unit operator's bond, which is already treated and managed like statewide bonds, would bring efficiencies to the program."[49] BLM repeated this finding in its most recent proposed rule, stating that "BLM originally created unit operator bonds, because the BLM bond forms that predated 1987 did not

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comments on the 2023 proposed rulemaking. These arguments are inaccurate and unpersuasive for several reasons. First, they ignore additional orphaned wells on other federal land also subject to BLM leasing rules. Second, they ignore that BLM continues to identify additional orphaned wells. And third, they ignore the much higher number of long-term idled wells—including the 2,300 identified by GAO—that are orphans in all but name and are extremely likely to be added to official orphaned well count in the coming years.

[43] *Id.* at 15.

[44] 88 Fed. Reg. at 47,580.

[45] 91 Fed. Reg. at 38,098.

[46] Exhibit 1, U.S. Gov't Accountability Office, GAO-19-615, *Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells*, at 12 (Sept. 2019).

[47] 88 Fed. Reg. at 47,581.

[48] 88 Fed. Reg. at 47,581.

[49] *Id*. at 47,582.

cover the principal bond holder acting in the capacity of a unit operator when the operator did not have an interest in the lease. The BLM's current bond forms now address this issue, negating the need for unit operator bonds. Unit operator bonds have never been widely used by industry."[50] BLM is correct that unit operator bonds are unnecessary and administratively burdensome and do not belong as a part of BLM's oil and gas leasing program.

Nationwide bonding should also be eliminated because it is incompatible with a reliance on bond adequacy reviews. As discussed above, bond adequacy reviews have failed to ensure adequate bonding for decades, in part because BLM staff lack the capacity to timely conduct and enforce bond adequacy determinations. Nationwide bonds would raise the stakes for ineffective bond adequacy reviews because, as described above, the per-well coverage associated with nationwide bonds is vanishingly small. Nationwide bonds would also exacerbate staff capacity shortages because it is particularly time-consuming to review bonds that encompass hundreds of wells across diverse geography.[51]

3. BLM fails to support its claim that lowering bonding requirements would lead to more production from federal land.

BLM's primary justification for lowering bond amounts is that doing so would lead to increased production from federal land, "[b]y easing these financial constraints, the BLM believes it will stimulate growth in the oil and gas sector, enhance economic opportunities, and foster greater engagement from a diverse range of operators thereby contributing to the nation's economic security."[52] But BLM provides no support in the proposed rule for this broad assertion, and the central premises are contradicted by actual BLM data on lease sales and by economic literature studying the effects of changes to bond amount requirements.

Increased bond amounts under the 2024 rule have not materially changed the number of new oil and gas leases, or the percentage of offered oil and gas leases that found buyers. Leasing levels have remained consistent both before and after the bond increases from the 2024 rule. If BLM were correct that increased bond amounts lead to decreased interest in Federal oil and gas leases then one would expect to see a drop off in the number of new federal oil and gas leases, but the available data does not show this trend or otherwise support BLM's position.

Nor is there any proof that companies with existing wells would put cost savings toward new exploration or production. An operator is just as likely to direct that savings towards paying dividends to shareholders, or increasing executive compensation. Meanwhile, under the proposed rule, taxpayers would assume the burden of covering the shortfall between bond coverage and actual plugging and reclamation costs.

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[50] 91 Fed. Reg. at 38,098-099.

[51] *See* Exhibit 4, U.S. Gov't Accountability Office, GAO-18-250, *Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities*, at 26 (May 2018) ("[S]tate office officials told us that bond reviews can take a long time to complete because some bonds are associated with several hundred wells.").

[52] 91 Fed. Reg. at 38,099.

BLM cites no authority for the proposition that decreasing bonding would "stimulate growth in the oil and gas sector." Because regulators tend to *increase* bond amounts over time, rather than decrease them, there are no studies of the effects of decreasing bond requirements on production. In two separate studies, one in Texas[53] and one in North Dakota,[54] economists studied the effect on production of increasing bond amounts. Those studies found no meaningful decrease in production following adoption of the increased bonding requirements. In Texas, "the state's total output of oil and gas was essentially unaffected by the policy. This is because the firms affected by the policy accounted for a small fraction of production, and because most of the valuable production associated with exiting firms was reallocated to other producers instead of shutting down."[55] If increasing bond amounts does not lead to a decrease in overall production, it follows that decreasing bond amounts would not lead to an increase in production. BLM offers no evidence or analysis to the contrary.

B. Public Involvement

The proposed rule would strip away nearly every meaningful opportunity the public currently has to weigh in on individual oil and gas lease sales before parcels are leased. As part of its overhaul of the leasing process, BLM proposes to eliminate the scoping period and the comment period on the draft environmental assessment that BLM currently provides during NEPA review; to shorten the posting period for the Notice of Competitive Lease Sale from 60 to 45 days; and to cut the protest period from 30 days to just 10 days. 91 Fed. Reg. 38084, 38103-04 (June 24, 2026) (proposed 43 C.F.R. § 3120.42). Taken together, these changes would replace a multi-stage, multi-month process for public engagement with a single, truncated, 10-day protest window that opens only after BLM has already completed its environmental review and finalized the parcels for sale. BLM has tried this before. As explained below, the Ninth Circuit recently held that this same combination of cuts (eliminating NEPA comment periods and reducing lease-sale protest periods to 10 days) violated NEPA and FLPMA, and BLM does not acknowledge or grapple with that decision anywhere in this proposal. Both proposed changes should be withdrawn.

1. BLM's elimination of opportunities for public comment and reduction in time for public comment during the leasing process violate FLPMA's public participation requirements.

FLPMA imposes an affirmative, non-discretionary duty on BLM to involve the public in the management of the public lands, including in decisions implementing land use plans through individual leasing actions. FLPMA directs that "[t]he Secretary shall, with public involvement . . . develop, maintain, and, when appropriate, revise land use plans," 43 U.S.C. § 1712(a), and separately requires the Secretary to "allow an opportunity for public involvement" and to "give Federal, State, and local governments and the public[] adequate notice and opportunity to

[53] **Exhibit 21,** Judson Boomhower, *Drilling Like There's No Tomorrow: Bankruptcy, Insurance, and Environmental Risk*, 109 Am. Econ. Rev. 391, 420–21 (2019).
[54] **Exhibit 22,** Ian Lange & Michael Redlinger, *Effects of Stricter Environmental Regulations on Resource Development*, 96 J. Env't Econ. & Mgmt. 60 (2019).
[55] Exhibit 21, Boomhower, *Drilling Like There's No Tomorrow: Bankruptcy, Insurance, and Environmental Risk*, 109 Am. Econ. Rev. at 422.

comment upon and participate in the formulation of plans and programs relating to the management of public lands." *Id*. § 1712(f). FLPMA's participation mandate is not limited to land use planning: section 1739(e) separately requires BLM to "establish procedures" giving 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." *Id*. § 1739(e).

The Ninth Circuit recently confirmed – in a decision arising from BLM's own prior attempt to shorten these exact participation periods – that section 1739(e)'s references to "execution," "management," and "decisionmaking" require BLM to provide public participation opportunities not only when it adopts a resource management plan, but for "down-the-line decisions as to the implementation of such plans," such as individual lease sales. *Montana Wildlife Fedn. v. Haaland*, 127 F.4th 1, 40 (9th Cir. 2025) (citing *Nat'l Wildlife Fedn. v. Burford*, 835 F.2d 305, 322 (D.C. Cir. 1987), which rejected the argument that section 1739(e) requires participation only in developing a land use plan, because that reading "reads 'the management of public lands' language out of the statute"). As the court explained, "[d]etermining 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 decisions to some extent." *Id*.

This decision is directly on point. In 2018, BLM issued Instruction Memorandum 2018-034, which made public participation during NEPA review "optional," eliminated the comment period for Determinations of NEPA Adequacy outright, halved the lease-sale notice period from 90 to 45 days, and cut the protest period from 30 to 10 days – the same package of cuts BLM now proposes to write into the Code of Federal Regulations. *Id.* at 22. Reviewing lease sales conducted under that policy, the Ninth Circuit held that BLM violated NEPA by eliminating or severely shortening public comment periods without a "reasoned explanation," and separately violated FLPMA by shortening the protest period for every one of the challenged sales without an adequate explanation for the change. *Id*. at 39-41. The court rejected BLM's own stated justification (that the changes would "simplify and streamline the leasing process" and "alleviate unnecessary impediments and burdens") as insufficient, explaining that "'streamlining' and 'efficiency' ... are not in isolation 'good reasons'" for cutting public participation, and that FLPMA's participation requirement "applies even when dispensing with or constricting such participation would be more efficient." *Id*. at 41. BLM offers the same efficiency-based justification here. 91 Fed. Reg. at 38103 (explaining that eliminating the scoping and comment periods "could significantly expedite the oil and gas leasing process").

Tellingly, BLM itself concluded after that litigation that the cuts went too far. In April 2021, BLM issued Instruction Memorandum 2021-027, which reinstated the mandatory 30-day NEPA comment period and the 30-day protest period, while retaining only the 45-day lease-sale notice. *Montana Wildlife Fedn.*, 127 F.4th at 22-23. The proposed rule would abandon that self-correction and revert to the very policy the Ninth Circuit held unlawful, without once acknowledging BLM's own IM 2021-027 course correction, or explaining why the same 10-day protest period a federal appellate court has already found insufficiently justified would now pass muster.

If anything, the proposed rule goes further than the policy already held unlawful. IM 2018-034 merely made reductions in opportunities for NEPA participation discretionary, and BLM, in practice, still provided comment or scoping periods ranging from 14 to 30 days for the sales at issue; only the shortest of those periods was found to violate NEPA, and the court held even a bare 10-day protest period could not be squared with FLPMA absent a reasoned explanation for eliminating longer-standing participation. *Id*. at 37-41. The current proposal would eliminate the scoping and draft-EA comment periods entirely by regulation, leaving field offices no discretion to provide more where warranted, and would codify by binding rule the same 10-day protest period already found wanting. That is a more severe curtailment of public participation than the one the Ninth Circuit rejected, not a lesser one. BLM should withdraw the proposed elimination of the scoping and draft-EA comment periods and the reduction of the protest period below the current 30 days.

2. BLM's elimination of opportunities for public comment and reduction in time for public comment during the leasing process are contrary to the spirit of the APA.

The proposed changes are contrary to the spirit of the APA in at least three respects: they reflect an unexplained and unreasoned departure from BLM's own longstanding public-participation practices (and from BLM's own prior corrective policy); they repeat, without any acknowledgment, an approach a federal appellate court has already found unlawful; and they gut the participatory, fact-testing function that public involvement serves throughout BLM's administrative decisionmaking.

Before an agency changes course, the APA requires it to "display awareness that it is changing position," to "show that there are good reasons for the new policy," and, where the prior policy has engendered "serious reliance interests," to provide "a more detailed justification" than would suffice for a rule adopted on a blank slate. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); see 5 U.S.C. § 706(2)(A). The Ninth Circuit applied exactly this framework to BLM's prior attempt at similar cuts in *Montana Wildlife Fedn.*. It found that BLM had displayed awareness it was changing position and believed the new policy was an improvement, but that BLM's stated justification (administrative efficiency and expedited leasing) did not amount to a "reasoned explanation" because BLM "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." *Montana Wildlife Fedn.*, 127 F.4th at 39-40. The court explained that "the agency's decision to prioritize administrative efficiency and expedition of oil and gas production over deliberative decision-making that takes into account informed public comments is in direct tension with" the statutory scheme. *Id*. at 39.

This proposal repeats that same unreasoned justification (citing anecdotal examples of lengthy or repetitive submissions and the bare assertion that scoping and comment periods are simply "not required" by statute, 91 Fed. Reg. at 38103) without acknowledging that BLM has already advanced this rationale, lost in the Ninth Circuit, and revised its own policy in response. That omission is itself a defect. An agency acts arbitrarily when it fails to grapple with directly relevant judicial precedent bearing on the wisdom and lawfulness of the very policy it proposes to readopt; that failure is a paradigmatic example of an agency "entirely fail[ing] to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

BLM should also expect that any claim of harmless error will fail for the same reasons it failed in *Montana Wildlife Fedn.*. There, the government argued that shortened comment and protest periods were harmless because the public still submitted some comments and protests. The Ninth Circuit rejected that argument, crediting "numerous examples" of how truncated periods "limited the public's ability to provide 'meaningful' input," including that shortened timeframes made it "infeasible to visit the parcels to conduct site-specific research, to consult with local stakeholders or organizational members about their knowledge and priorities, or to mobilize the public to write additional comments," and that some commenters were "unable to provide comments at all." *Id.* at 41. Under the APA, "it is the burden of the opponent of the agency action" here, BLM "to demonstrate that an error is prejudicial," and that showing "is not a particularly onerous requirement." *Id*. The statutes and regulations at issue "protect the right to public participation so as to assure informed agency decision-making, not to direct any particular outcome of the decision-making process," *id*. at 41-42, meaning BLM cannot excuse the elimination of scoping and comment periods, or the reduction of the protest period, merely because some truncated input would still be submitted.

More broadly, the proposed changes undermine the participatory values that animate the APA. The APA reflects Congress's judgment that agency decisionmaking benefits from, and the public is entitled to, a meaningful opportunity to be heard before an agency acts, particularly where that action authorizes the disposition of public resources. *See* 5 U.S.C. § 553(c) (notice-and-comment rulemaking); *id*. § 555(b) (right to appear before an agency); *id*. § 706(2)(A). Individual lease sale decisions are not themselves subject to APA notice-and-comment rulemaking, but for decades BLM has voluntarily built an analogous participatory structure (scoping, draft-EA comment, and protest) into the leasing process precisely because that structure serves the same function notice-and-comment serves for rulemaking: surfacing relevant information, testing the agency's reasoning, and building a record that supports (or exposes flaws in) the agency's ultimate decision. Empirical research confirms the value of that process: one recent study found that public comments led to substantive changes in agency decisions in 62% of cases reviewed, including modifications to alternatives, mitigation measures, and, in some instances, selection of an entirely new preferred alternative.[56] By eliminating two of BLM's three participation opportunities and cutting the third to a bare 10 days, the proposed rule leaves the public with only a single, truncated opportunity to engage with BLM's leasing decisions after BLM has already completed its environmental analysis and prepared the parcels for sale. This undermines the deliberative, error-correcting function that public participation has long served, and runs contrary to the values the APA reflects, even where its notice-and-comment provisions do not independently apply.

For these reasons, in addition to violating FLPMA, the proposed elimination of the scoping and draft-EA comment periods and the reduction of the protest period to 10 days reflect an unreasoned, unexplained departure from BLM's established practice (including BLM's own post-litigation correction of this identical policy) and erode the meaningful public participation

[56] **Exhibit 23,** Ashley Stava et al., 2025 Environ. Res. Lett.

that the spirit of the APA is designed to protect. BLM should retain, at a minimum, its existing scoping, draft-EA comment, and 30-day protest periods.

3. BLM's elimination of surface owner notification prior to leasing would harm landowners.

The BLM's proposed revision would eliminate the requirement for the agency to notify private surface owners when federal minerals beneath their land are offered for lease. While this provision was not mandated by the MLA, it has served for the past two decades as a critical mechanism to ensure landowners have the opportunity to provide input on leasing decisions affecting their property. If the BLM proceeds with removing this requirement, surface owners would be notified only after a company has already acquired a lease to drill on their land.

The BLM contends that this provision "imposes undue burdens on the oil and gas industry," a claim that is unsubstantiated for two primary reasons. First, as highlighted in IM 2009-184, the budgetary impact is minimal and does not create significant burdens for operators, the agency, or taxpayers.[57] Second, notifying private surface owners prior to leasing allows for concerns to be addressed before a lease is finalized, thereby providing operators with greater certainty when proceeding with leases that affect surface owners. The inherent tension in a split estate is the mineral owner's right to access their property and the surface owner's right to use and enjoy their land. Where one right ends and the other begins has been tested in many lawsuits, and generally, the jurisprudence states that mineral rights owners must be given due regard to surface owners.[58] This is no different if the federal government is the mineral owner. Surface owners are entitled to notice and consideration that can prevent impairment and diminishment of the surface. If landowners are not afforded the opportunity to protest or, at minimum, inquire about a proposed parcel, they may pursue legal action due to their exclusion from the leasing process. To prevent protracted legal disputes that undermine industry certainty, the BLM should retain the surface owner notification requirement. Furthermore, the BLM's experience with a Montana pilot project preceding IM 2009-184 demonstrated that advance notification of split-estate surface owners was effective and supported nationwide implementation. The BLM should include an analysis of this pilot project in the rulemaking record.

The BLM's proposed revision recommends reducing the public participation period for oil and gas lease sales from 90 days to a 10-day protest window. If surface owner notification is eliminated, split-estate landowners would be required to monitor the BLM's leasing page closely to learn about proposed lease sales affecting their property. Even with consistent monitoring, they would have only 10 days to respond. This abbreviated timeline is inadequate and would cause significant harm to split-estate landowners nationwide.

For comparison, Section 714 of the Surface Mining Control and Reclamation Act requires the BLM to notify and obtain consent from surface owners before leasing federal coal for surface mining on split-estate land.[59] Although Congress has not mandated surface owner

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[57] BLM Instruction Memorandum No. 2009-184, (July 24, 2009), https://www.blm.gov/policy/im-2009-184.

[58] *See, e.g., Getty Oil Co. v. Jones*, 470 S.W.2d 618 (Tex. 1971), *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913 (Colo. 1997).

[59] Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1304 (Section 714) (2023)

consent for federal oil and gas leasing, the BLM retains the discretion to notify surface owners, a practice adopted following the endorsement of BLM Director Jim Caswell in 2007 under President George W. Bush. As former Director Caswell stated, "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".[60] We strongly urge the BLM to maintain the surface owner notification requirement prior to leasing, to ensure that federal minerals are leased in a democratic manner and to minimize undue burdens on split-estate landowners.

4. The per-page fee violates the First Amendment.

BLM's proposed per-page fee for administrative protests also runs afoul of the public's right to petition the government. "The First Amendment guarantees 'the right of the people . . . to petition the Government for a redress of grievances.' The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression." *McDonald v. Smith*, 472 U.S. 479, 482 (1985). That right "extends to all departments of the Government," including "administrative agencies," and "the right of access to the courts." *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

The per-page fee infringes on the public's right to petition the government and freedom of expression, in several ways. First, the fee is an impermissible tax on a First Amendment right. Because the fee applies to protests exceeding 50 pages, including attachments and exhibits, the fee limits the public's ability to present technical information and peer-reviewed studies in support of administrative protests, which can easily exceed 50 pages, thus reducing the public's ability to meaningfully protest, especially where a protest is based on complex, technical issues. Second, the per-page fee is an impermissible content-based restriction on protests, given BLM's goals to discourage protesters from repeating issues raised in prior lease sales—regardless of their merit—and from raising purportedly "irrelevant" information. These goals belie BLM's motive to suppress content that it disagrees with, including content that it has previously found unpersuasive, or content that it believes is not pertinent—even where reasonable minds may disagree. Third, by burdening the public's ability to provide arguments and evidence in support of potential legal claims, exhaust issues, and develop an adequate administrative record, the per-page fee deprives the public of meaningful access to the courts.

a) The fee is an unconstitutional tax on the exercise of First Amendment rights.

"Although the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis. *Wayte v. United States*, 470 U.S. 598, 610 (1985) (citing *NAACP* v. *Claiborne Hardware Co*., 458 U.S. 886, 911-915 (1982)); *see also Thomas v. Collins*, 323 U.S. 516, 530 (1945) (observing that "the rights to freedom in speech and press" and "the rights of the people peacably to assemble and to petition

[60] U.S. Department of the Interior. Office of Congressional and Legislative Affairs. (2007, July 12). *Energy and Interior Department nominations: Confirmation statement for James L. Caswell.* https://www.doi.gov/ocl/hearings/110/CaswellConfirmationStatement_071207

for redress of grievances" "are inseparable"). The government may not "impose a charge for the enjoyment of a right granted by the federal constitution," *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943), including the right to petition the government. Accordingly, in the landmark case *Murdock*, the Supreme Court held that a city could not charge Jehovah's Witnesses for distributing religious literature and soliciting donations door-to-door under an ordinance imposing a fee for solicitation activities, because any such fee "inevitably tends to suppress" the exercise of First Amendment rights. *Id*. at 114. The Court, however, did not bar licensing fees altogether, but held that only fees "to defray the expenses of policing the activities in question." *Murdock*, 319 U.S. at 113-14. Accordingly, fees must be limited to "defray both administrative expenses (such as processing and licensing costs) and the cost of enforcing [the government's regulations]." *Mainstream Mktg. Servs. v. FTC*, 358 F.3d 1228, 1247 (10th Cir. 2004) (citing *National Awareness Found. v. Abrams*, 50 F.3d 1159, 1166 (2nd. Cir. 1995).

Here, BLM proposes to impose a one-dollar fee for every page of a protest exceeding 50 pages, but "[t]he fee is not being proposed to reimburse the BLM for its processing costs," 91 Fed. Reg. at 38088. Rather, the fee's purposes are "to discourage overly lengthy and administratively burden protest filings," *id.* at 38109, and "to encourage individuals submitting protests to be clear and concise as to the basis for the protest," *id*. at 38088. Purportedly, the fee would enable BLM "to timely review and address the key issues raised in a protest without unduly delaying a final decision on lease issuance or causing parcels proposed for a sale to be deferred due to a lack of resolution of a protest." *Id*. In other words, BLM wants to disincentivize longer protests, so that it can spend less time reviewing lengthy protests and/or exhibits and conduct lease sales without delays.

Like in *Murdock*, such a fee is impermissible because it would "inevitably tend[] to suppress" the exercise of First Amendment rights. 319 U.S. at 114. A per-page fee would limit protesters' ability to fully raise arguments and evidence in support of a protest, especially with respect to technical or complex issues that may require the submission of evidentiary support. The submission of published studies and technical data is often necessary to credibly and effectively dispute BLM's analysis and conclusions. *See, e.g.*, 16 U.S.C. § 4332(2)(D)-(E) (requiring NEPA reviews to "ensure the professional integrity, including scientific integrity, of the discussion and analysis" and "make use of reliable data and resources"). Protests may also concern dozens of parcels proposed in a single lease sale, affecting a variety of wildlife, water, air, recreational, public land, and/or cultural resources, and involving a number of legal and policy issues under the relevant resource management plan, and various statutes, including the Mineral Leasing Act, NEPA, FLPMA, Endangered Species Act, Migratory Bird Treaty Act, Clean Air Act, and National Historic Preservation Act, among other laws. *See* 91 Fed. Reg. at 38088 (recognizing that the "substantial volume of documentation" submitted with protests, including published "peer-reviewed articles," "underscores the seriousness and breadth of protest content"). Although BLM's asserted purpose is to target and reduce purportedly "irrelevant," "repetitive," or "generalized" protests, *see* pp. 6-8 below, the fee will inevitably suppress the amount of, and evidentiary support for, issues raised in protests and thus amounts to an unlawful tax on First Amendment-protected activities.

b) The fee's purpose and justification are impermissibly content-based.

In addition, the per-page fee is unconstitutional because it is an impermissible content-based restriction on the public's right to petition for redress of grievances. "Regulations which permit the Government to discriminate on the basis of the content of the message"—or here, the content of the petition or protest—"cannot be tolerated under the First Amendment," *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 135 (1992), and are subject to "strict scrutiny," *United States v. Playboy Entm't Group*, 529 U.S. 803, 813 (2000) (citation omitted). Further, a regulation "is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech." *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991).

A regulation is content-based if it "singles out" or is "directed only at works with a specified content." *Id*. at 116. In addition, a regulation is content-based if "the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (citation omitted). Even a regulation that is content-neutral on its face is content-based if it is justified in reference to the content of the regulated speech. *See id.*; *Reed v. Town of Gilbert*, 576 U.S. 155, 166 (2015) (holding "strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based"); *see also Forsyth County*, 505 U.S. at 134 (1992) ("Listener's reaction to speech is not a content-neutral basis for regulation.").

The per-page fee is a content-based restriction, because the fee singles out oil and gas leasing protests and no other types of administrative objections or appeals. *See Simon & Schuster*, 502 U.S. at 116, 123. In addition, BLM's purpose and justification for the fee is justified in reference to the content of protests that it claims are "overly lengthy and administratively burdensome," 91 Fed. Reg. at 38109. BLM's purpose in enacting the fee is to discourage "repetitive" and "duplicative" protests that raise the same issues raised in a prior sale, or in a prior stage of a given sale. *Id*. at 38088. Specifically, BLM claims—without providing any substantiation—that protests that exceed 50 pages typically "lack focus" and contain "repetitive content that echoes previous filings," "irrelevant material," "an overwhelming array of unrelated information," and "generalized information about the leasing process without clearly linking the specific claim to a given parcel under consideration." *Id*. at 38087. According to BLM, the fee would "encourage clear and concise" protests. *Id*. at 38088. But at bottom, BLM's justification rests on its disagreement with the message conveyed in those protests, as reflected in its blanket generalization that the information submitted in lengthier protests is irrelevant to its leasing decision; in its apparent view that protests repeating issues from prior sales or prior stages of the sale could not have any influence on its decision; and in its apparent view that protest issues should be tied to specific parcels.[61]

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[61] Further, BLM's proposed rule states that it is implementing Executive Order 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025), "which directs the removal of impediments imposed on the development and use of our Nation's abundant energy and natural resources." *Id*. at 38084. Specifically, E.O. 14154 directs that agencies revise their NEPA implementing regulations, which must "expedite permitting approvals" and "prioritize efficiency and certainty over any other objectives, including those of activist groups." E.O. 14154, § 5(c). The proposed fee therefore also appears geared toward suppressing the voices of "activist groups" opposing leasing of oil and gas, which would constitute not just content-based discrimination but also more pernicious viewpoint discrimination. *Reed*, 576 U.S. at 168 ("Government discrimination among viewpoints—or the regulation of speech

Because the fee is a content-based regulation, strict scrutiny applies. *Playboy*, 529 U.S. at 813. None of these grounds supplies a legitimate governmental interest, much less, compelling reason, for BLM's flawed attempt to limit the length of protests independent of BLM's apparent purpose to suppress content that it disagrees with less restrictive alternatives exist.

First, as for BLM's vague rationale that much of the information submitted in lengthy protests is "irrelevant": that BLM may disagree as to the relevance of arguments and materials submitted in support of a protest does not make the protest frivolous or justify the suppression of that material. Agencies, including BLM, sometimes make mistakes. For example, they ignore whether certain issues (e.g., climate change emissions or other foreseeable impacts) must be analyzed and considered. *See, e.g., Wildearth Guardians v. United States BLM*, 457 F. Supp. 3d 895-96 (D. Mont. 2020) (invalidating three lease sales due to BLM's failure to consider impacts of fracking on groundwater and climate change, and failure to consider reasonable alternatives). Those disagreements may also rest on discretionary policy choices. But just because BLM has, for example, prioritized expediting oil and gas development over climate change considerations does not make climate change irrelevant to BLM's leasing decision. BLM's disagreement as to the relevance of issues and information raised in lengthier protests and interest in disincentivizing supposedly "irrelevant" issues or "unrelated information" from being raised in future protests is not a valid basis, let alone a compelling government interest, for imposing the fee.

To the extent BLM's fee is aimed at deterring protestors from repeatedly submitting copies of studies that have already been provided in a prior comment period for the same sale, it is unclear how repeat submissions unduly burden BLM. In fact, commenters provide references at each stage for the agency's convenience, so reviewers do not have to search for the referenced study from a prior comment stage, and because different offices handle the NEPA reviews and lease sale protests—field office staff conduct NEPA reviews, while the State Director resolves protests. In any event, the supposed burden of repeat submissions would no longer be an issue if BLM were to adopt its proposal to eliminate scoping and NEPA comment periods for lease sales altogether. In that case, there would be no reason to charge a fee to deter the submission of repeat submissions, because the protest stage would be the only chance for the public to comment on the lease sale and submit any supporting evidence.

Second, BLM's objective to reduce repetition of issues, based on its apparent view that protests *needlessly* repeat issues raised in prior lease sale protests, or raised in prior comment stages of a lease sale, is at odds with issue exhaustion requirements. To exhaust an issue (and to administratively exhaust remedies), a protester must generally provide the agency with "sufficient notice to … afford [the agency] the opportunity to rectify the violations" during available administrative proceedings prior to raising them in a court. *Nat'l Parks & Conservation Ass'n v. BLM*, 606 F.3d 1058, 1065 (9th Cir. 2010). BLM's objective to deter protesters from raising issues and/or material that BLM has previously considered, in direct conflict with a protester's right and responsibility to first raise and exhaust issues in a protest before raising them in court, is not a legitimate basis for imposing the fee. Thus, repeat issues cannot be avoided when BLM repeatedly commits the same errors in its leasing analyses, or relies on the

based on 'the specific motivating ideology or the opinion or perspective of the speaker'—is a 'more blatant' and 'egregious form of content discrimination.'" (citation omitted)).

same flawed environmental documents or analyses in sale after sale. *See, e.g.*, *Mont. Wildlife Fed'n v. Burgum*, 2026 U.S. Dist. LEXIS 131708, *5-*8, *18-25 (D. Mont. June 12, 2026) (summarizing prior litigation invalidating eight lease sales for failure to properly apply specific sage-grouse protective measure to each sale and invalidating five additional lease sales on the same grounds).

Third, BLM's concern that protest issues should not be based on "generalized information about the leasing process" and should "clearly link[] the specific claim to a given parcel under consideration" is incorrect. Issues may cut across multiple or all parcels offered in a lease sale. *See, e.g., Montana Wildlife*, 127 F.4th at 46 (holding issuance of 159 leases offered in June 2018 Wyoming sale violated RMP requirement to prioritize leasing in areas outside sage-grouse habitat); *Rocky Mt. Wild v. Bernhardt*, 506 F. Supp. 3d 1169, 1192 (D. Utah 2020) (remanding lease sale decision due to BLM's failure to consider "reasonable alternatives to leasing all nominated parcels"). In any case, it is unclear how a per-page fee serves BLM's apparent objective of ensuring that protesters do not base their claims on "generalized information" and link specific claims to a given parcel under consideration.

Fourth, BLM's objective to encourage clear and concise protests so that leasing is not delayed is not a compelling government interest. BLM suggests that its statutory obligation to issue a lease "within 60 days following payment by the successful bidder" under 30 U.S.C. § 226(b)(1)(A) requires it to timely resolve protests before the 60 day expires. *See* 91 Fed. Reg. at 38087. But BLM is not required to collect payment from the highest bidder immediately upon identifying the winner and thus need not necessarily collect payment before the protest is resolved. BLM's regulations require that "[e]ach winning bidder must submit, by the close of official business hours on the day of the sale for the parcel, *or such other time as may be specified by the authorized officer*." 43 C.F.R. § 3120.52(b) (emphasis added). BLM could therefore accept payment *after* resolution of the protest, and then timely issue the lease "within 60 days following payment by the successful bidder."

Although BLM also suggests that it seeks to avoid deferral of lease sales "due to a lack of resolution of a protest," 91 Fed. Reg. at 38088. BLM routinely holds lease sales on the scheduled date, even though protests have not been resolved. *See* Ex. A (protest decision issued nearly six months after lease sale). The failure to resolve protests before the sale does not preclude BLM from holding the sale. *See* Ex. B at 10 (example sale notice stating: "If we uphold a protest and withdraw the parcel from leasing, we will reject your bid and refund the first year's rental, bonus bid, and administrative fee."). The delayed issuance of leases due to a pending protest is also not a compelling interest, especially given that potential bidders are warned in advance that leases will not be issued for a protested parcel "until the protest is either upheld or denied." *Id*.

Lastly, the fee is not "narrowly tailored" to achieve any of these objectives, and "a less restrictive alternative would serve the Government's purpose." *Playboy*, 529 U.S. at 813. The fee charges protesters for the presentation of issues and evidence in protests if the protest exceeds 50 pages—that 50-page threshold has no relation to whether a protest's contents and evidence are irrelevant, needlessly repetitive, too generalized, unclear, or unconcise. Moreover, BLM can use the less restrictive alternative of charging lease applicants for the costs of increasing staffing to expedite processing of leasing applications and protests, *see* p. 3 above, and therefore must use that approach to achieve its objectives instead, *Playboy*, 529 U.S. at 813.

BLM's content-based fee fails strict scrutiny and runs afoul of the First Amendment right to petition.

c) The fee frustrates access to the courts.

Third, by burdening the public's ability to provide arguments and evidence in support of potential legal claims, and to develop an adequate administrative record, the per-page fee deprives the public of meaningful access to the courts. The First Amendment right to petition for redress of grievances includes the right to access the courts. *Bill Johnson's Rests. v. NLRB*, 461 U.S. 731, 741 (1983). Access must be "adequate, effective, and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822 (1977). Meaningful access is denied where a legal claim "ha[s] been frustrated or [is] being impeded." *Lewis v. Casey*, 518 U.S. 343, 353 (1996).

The proposed fee prevents adequate, effective, and meaningful access to the courts, because plaintiffs cannot raise issues and fully develop the administrative record in support of potential legal claims, in excess of 50 pages, without paying a fee. *Cf. Cutler v. Wills*, 2024 U.S. Dist. LEXIS 243934, *10-11 (S.D. Ill. 2024) (plaintiff adequately stated claim that he had been deprived of meaningful access to courts, where he alleged that prison had improperly allowed grievance reports to be destroyed, "prevent[ing] . . . proper exhaustion of administrative remedies, which jeopardize Plaintiff's claims against Defendant, and interference with Plaintiff's motion for preliminary injunctive relief"); *King v. Stewart*, 2025 U.S. Dist. Lexis 79604, *21 (D. Md. 2025) (prisoner's first amendment claim alleging that legal challenge was frustrated by denial of access to unredacted mail required for litigation was a viable claim). Challenges to lease sales are typically reviewed on an administrative record, and parties must exhaust any issues before the agency, for the party to raise them in court. Under BLM's proposed rule, the only chance for parties to develop the record and exhaust issues will be via lease sale protest, but unless the protesting party pays a fee, the party will be limited to 50 pages in the issues it can raise and the materials it can introduce into the administrative record. BLM acknowledges that the fee could likely total hundreds or thousands of dollars for a single protest exceeding 50 pages. *See* 91 Fed. Reg. at 38088.

Moreover, the proposed regulation creates an uneven playing field where the agency may develop the record in favor of approving leases—and without considering public input during the NEPA review process—while members of the public, communities, and conservation groups will be financially burdened and thus limited in their ability to submit materials into the record in support of their claims. The potentially lopsided administrative record would further frustrate a protesting party's ability to raise legal claims, undermining the party's access to the courts.

(1) BLM Should Not Charge Fees for Hyperlinked References.

BLM's proposed rule invites the public to comment "on how the BLM should handle hyperlinks in protests submitted to the BLM," asking "Should the BLM include each page of a hyperlink as part of the number of pages to calculate the filing fee?" 91 Fed. Reg. at 38102. It should not. The above statutory and constitutional concerns equally apply to charges for hyperlinked references.

But even if BLM ends up not charging protesting parties for the submission of hyperlinked documents, and charging protesting parties only for the submission of exhibits and attachments to incentivize the submission of hyperlinks instead of exhibits, this alternative approach does not resolve the above concerns. Hyperlinks can expire, the web address for referenced content can change, and/or the substantive content can be altered over time. Thus, although BLM should still give full consideration to hyperlinked references cited in protests, there is a risk that, by incentivizing the use of hyperlinks instead of attachments or exhibits, BLM's administrative records may eventually become incomplete.[62] Allowing the public to submit attachments and exhibits free of charge ensures that the administrative record is stable and complete. In addition, not all documents will be available via hyperlink, but there is no reason why non-hyperlinked references should be treated differently than hyperlinked references.

To the extent BLM seeks to reduce the burden of voluminous hard copies, *see* 91 Fed. Reg. at 38087, BLM can easily solve that issue by accepting protests and attachments via email, its website, or a file-sharing platform (e.g., Dropbox) instead of requiring hard copies via U.S. mail or hand delivery—or, at the very least, by requiring or allowing the submission of references on flash drives or via a file-sharing system. Most agencies accept electronic submissions of public comments or administrative appeals or formal objections, including BLM's field offices and BLM's Director[63], the Interior Board of Land Appeals[64], the U.S. Forest Service[65], the U.S. Army Corps of Engineers[66], and the Surface Transportation Board.[67] BLM's requirement for hard copies for oil and gas lease sale protests is outdated, inefficient, and wasteful, and unnecessarily burdens the public and protesting parties. *See* Ex. B (requiring protests to be submitted "by hand delivery or mailed to the Eastern States State Office in hard copy form" and warning that BLM "will dismiss a protest filed by electronic mail").

d) The Proposed Fee is Not Consistent with the Paperwork Reduction Act.

The Paperwork Reduction Act (PRA) requires OMB to assess, among other things, whether information collection burdens are "necessary for the proper performance of the function of the agency," and "reduce to the extent practicable the appropriate burden on persons

[62] Hyperlinked documents referenced in comments are part of the administrative record. *See, e.g., Friends of the Mahoning River v. U.S. Army Corps of Eng'rs*, 487 F. Supp. 3d 638, 640 n.1 (N.D. Ohio 2020); *Coyote Valley Band of Pomo Indians v. U.S. DOT,* No. 15-cv-04987-JSW, 2018 U.S. Dist. LEXIS 54974, at *4 n.4 (N.D. Cal. Mar. 30, 2018); *Red Lake Band of Chippewa Indians v. U.S. Army Corps of Eng'rs*, 636 F. Supp. 3d 33, 49 n.5 (D.D.C. 2022).)

[63] BLM, https://www.blm.gov/programs/planning-and-nepa/eplanning (project comments); https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest (plan or plan amendment protests).

[64] Dept. of Interior, https://www.doi.gov/oha/bfs.

[65] U.S. Forest Service, https://cara.fs2c.usda.gov/Public/CommentInput?Project=273253.

[66] U.S. Army Corps of Engineers, https://www.spn.usace.army.mil/Missions/Regulatory/Public-Notices/Year/2026/.

[67] Surface Transportation Board, https://www.stb.gov/proceedings-actions/e-filing/.

who shall provide information to or for the agency, including with respect to small entities." *See* 44 U.S.C. § 3506(c)(3)(A), (C); *see also* 5 C.F.R. § 1320.8(d)(1)(iv) (requiring that the agency "minimize[] the burden of the collection of information who are to respond."). Moreover, the agency should ensure that the collection of information "*enhance[s]* the quality, utility, and clarity of the information to be collected" 44 U.S.C. 3506(c)(2). BLM's proposed fee accomplishes none of these.

First, a reduction in public participation is not "necessary" for BLM to properly function as an agency—in fact, the fee operates to undercut BLM's informed environmental review of leasing parcels and compliance with statutory mandates. Commenting parties often submit highly relevant localized, and scientific information to BLM regarding its proposed oil and gas leases in an effort to help inform and improve decisionmaking and ensure the protection of important and sensitive environmental resources. Protesters submit peer-reviewed studies, data, maps, and other documentation, which can often lead to alterations in BLM's substantive decisions.[68] Limiting the public's ability to submit these types of records will significantly reduce the agency's effectiveness in performing its core function to protect public lands "without permanent impairment of the productivity of the land" *see* 43 U.S.C. §§ 1702(c), 1732(a), and "unnecessary or undue degradation of the lands," *id*. § 1732(b).

Second, BLM's proposed fee does nothing to reduce "to the extent practicable" or minimize burdens on those who would provide information to it, especially with respect to small entities. *See* 44 C.F.R. § 3506(c)(3); 5 C.F.R. § 1320.8(d)(1)(iv). Rather, the fee burdens those with pertinent information, and in many instances may dissuade people from providing information to BLM altogether. It also disproportionately impacts small entities. Rather than imposing a fee on protesting parties, BLM should maintain the $3,100 filing fee for competitive oil and gas lease applications (instead of reducing the applicant's fee to $155). Shifting the cost to private parties who expect to financially benefit from a proposed lease many times over would reduce and minimize unnecessary burdens on members of the public and small entities "to the extent practicable."

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[68] *See, e.g.,* **Exhibit 24,** Koshmrl, Mike, BLM deletes contested, off-limits 'Golden Triangle' parcels from upcoming Wyoming oil and gas auction, WyoFile (Dec. 22, 2025), https://wyofile.com/blm-deletes-contested-off-limits-golden-triangle-parcels-from-upcoming-wyoming-oil-and-gas-auction/ (sensitive wildlife habitat withdrawn from leasing due to public protests); **Exhibit 25,** Keddington, Emma, Tens of thousands of leased acres used for oil and gas production in Bears Ears area canceled, KSL NewsRadio, (May 13, 2024), https://kslnewsradio.com/environment-outdoors/tens-of-thousands-of-leased-acres-used-for-oil-and-gas-production-in-bears-ears-area-cancelled/2101070/ (40,000 acres of lands sacred to Tribes canceled due to cultural resource considerations); **Exhibit 26,** Beckley: North Texas relieved as Bureau cancels plan to drill under Lake Lewisville, Cross Timbers Gazette (June 25, 2020), https://www.crosstimbersgazette.com/2020/06/25/north-texas-relieved-as-bureau-cancels-plan-to-drill-under-lake-lewisville/ (lease sales canceled in 2016 and 2020 after communities protested fracking beneath Dallas's drinking water supply); **Exhibit 27,** Kohler, Judith, Concerns about sage grouse lead to withdrawal of federal oil, gas leases from upcoming sale, Denver Post (Oct. 19, 2018), https://www.denverpost.com/2018/10/19/blm-pulls-leases-from-colorado-sale/; **Exhibit 28,** Jaffe, Mark, BLM drops controversial western Colorado parcels from oil and gas sale, Denver Post (Feb. 6, 2013), https://www.denverpost.com/2013/02/06/blm-drops-controversial-western-colorado-parcels-from-oil-and-gas-sale-2/. *See also* Exhibit 23, Ashley Stava *et al* 2025 *Environ. Res. Lett.* (showing that public comment comments resulted in substantive decision alterations in 62% of cases, with 64% showing modifications to alternatives, 42% showing modifications to mitigation plans, and 11% leading to the selection of an entirely new preferred alternative, available at https://iopscience.iop.org/article/10.1088/1748-9326/addee5).

Third, BLM's proposed fee does nothing to enhance the quality of collected information: it simply curtails it. Taken together, the proposed rule changes would eliminate most opportunities to comment on oil and gas leasing by requiring the public to raise all objections during a single 10-day protest period (drastically reduced from 30 days, and without the two 30-day periods for public scoping and draft NEPA review comments). For BLM to enhance the quality of the collected information, it would do better to provide the public sufficient time to review the agency's proposed actions, gather relevant information, and develop well-supported submissions. Imposing a fee will further reduce participation and the volume of information submitted, making it less likely (not more) that BLM receives high-quality input.

For these reasons, BLM's proposed fee is not consistent with the PRA.

5. The Proposed Rule is Inconsistent with Statutory Notice, Comment, and Consultation Requirements.

The proposed rule's elimination of the existing opportunities for pre-sale public engagement—including the current 30-day scoping comment period, 30-day review period for the draft environmental analysis, and 30-day protest period—and replacement of those procedures with an abbreviated post-decision protest process is inconsistent with BLM's broader statutory obligations to provide meaningful public participation in public-land management decisions. Besides FLPMA, the APA, and NEPA's requirements, BLM must comply with numerous other statutory and regulatory obligations.

Similar participation mandates are found throughout the federal public-lands framework, including the National Historic Preservation Act's ("NHPA") requirements for public involvement and consultation. The NHPA requires federal agencies "to the maximum extent possible" to take "such planning and actions as may be necessary to minimize harm" and "afford the Council a reasonable opportunity to comment with regard to the undertaking." 54 U.S.C. §§ 306107-08. NHPA's implementing regulations require agencies to provide the public with information and opportunities to express views at appropriate stages of this process, recognizing that public input is "essential to informed Federal decisionmaking." 36 C.F.R. § 800.2(d)(1)-(2). The regulations permit agencies to rely on NEPA or other public-participation procedures only where those procedures provide opportunities for public involvement consistent with NHPA's statutory requirements. 36 C.F.R. § 800.2(d)(3).

The proposed rule is also irreconcilable with other federal environmental review and consultation requirements that continue to require substantially longer public review periods. For example, EPA's General Conformity regulations provide that, before making a conformity determination, federal agencies must provide notice and an opportunity for public comment for at least 30 days and provide notice of the final conformity determination for an additional 30 days. 40 C.F.R. § 93.156(b), (d). Oil and gas leasing frequently occurs in areas designated as nonattainment or maintenance areas under the Clean Air Act, including portions of the Uinta Basin and Colorado's Front Range ozone nonattainment areas, where federal oil and gas leasing regularly surpasses *de minimis* thresholds. In those circumstances, BLM's proposed 10-day protest process would provide the public less than one-third of the review period required under

EPA's conformity regulations, creating a procedural mismatch that would violate the Clean Air Act.

At minimum, BLM has failed to explain how a 10-day protest period can satisfy its obligations under numerous statutory and regulatory schemes that require substantially longer comment or consultation periods. More fundamentally, by compressing public participation into an abbreviated protest process, the proposed rule creates a significant risk that BLM will routinely make leasing decisions without sufficient time to comply with independent legal requirements, such as the NHPA and Clean Air Act, thereby setting the agency on course for unlawful lease issuances.

C. Royalties

This proposed rule relies on and further extends BLM's decision to cut the federal oil and gas royalty rate from 16.67 % back to 12.5 %. BLM implemented that reduction through a direct final rule issued April 29, 2026, 91 Fed. Reg. 23017 (Docket No. BLM-2025-0138), which Commenters have already opposed.[69] This rulemaking builds directly on that reduction. It removes the reference to "the Inflation Reduction Act" from the fiscal terms provision at 43 C.F.R. 3103.1(a), 91 Fed. Reg. at 38098, and it separately proposes to cut the royalty rate for combined hydrocarbon and tar sand leases from 16.67 % to 12.5 %, 91 Fed. Reg. at 38105 (proposed 43 C.F.R. §§ 3140.14(c)(2), 3141.53(a)), expressly "to conform to the requirements of the OBBB." Because this proposed rule adopts, implements, and relies on the same 12.5 % rate, and because BLM's justification for that rate is identical here to the justification Commenters have already shown to be unlawful, Commenters renew and incorporate their prior objections and explain below why the royalty rate reduction, as implemented and extended by this proposed rule, is unlawful.

1. BLM's proposed reduction in royalty rates violates FLPMA's fair market value requirements.

FLPMA requires that "the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute." 43 U.S.C. § 1701(a)(9). BLM's own 2024 Fluid Mineral Leases and Leasing Process rule concluded, after extensive analysis and thousands of public comments, that a 12.5 % royalty rate (unchanged since the 1920 enactment of the MLA despite decades of technological change that have made production far more efficient and lucrative) failed to secure fair market value for the public. 89 Fed. Reg. 30916 (Apr. 23, 2024). That conclusion was consistent with a substantial body of government analysis: Interior's own 2021 report on the federal oil and gas leasing program found that the federal program "fail[ed] to provide a fair return to taxpayers," and multiple GAO reports have found that the United States charges among the lowest royalty rates in the world, that the onshore federal rate sat frozen for decades even as many states charged materially more without any

[69] *See* **Exhibit 29,** Comments of Western Environmental Law Center et al. on Direct Final Rule, "Revisions to Regulations Regarding Oil and Gas Leasing; Fees, Rentals, and Royalties" (May 29, 2026) (incorporated herein by reference).

corresponding loss of production, and that raising rates would increase federal revenue without significantly affecting production on federal lands.[70]

This proposed rule reverts precisely to the rate BLM's own record shows fails to provide fair market value, without addressing that record or explaining why the agency's prior fair-value analysis was wrong. Reducing the royalty rate for combined hydrocarbon and tar sand leases from 16.67 % to 12.5 %, 91 Fed. Reg. at 38104-06 (proposed 43 C.F.R. §§ 3140.14(c)(2), 3141.53(a)), and reaffirming the same 12.5 % baseline rate for oil and gas leases generally, *id*. at 38086, 38098, would return the public to receiving below-market compensation for the extraction of a nonrenewable public resource, in violation of FLPMA's fair market value mandate.

2. BLM's proposed reduction in royalty rates violates FLPMA's unnecessary or undue degradation prohibitions.

FLPMA also requires BLM to manage the public lands to provide for "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment," 43 U.S.C. § 1702(c), and to "take any action necessary to prevent unnecessary or undue degradation of the lands," *id*. § 1732(b). Lower royalty rates reduce the financial disincentive against speculative, undercapitalized drilling and make it more attractive for operators to walk away from marginal or underperforming wells rather than properly plug and reclaim them, compounding the nation's idle and orphan well crisis and the associated air and water pollution, habitat harm, and methane emissions those wells cause.

BLM's own analysis of this very rulemaking confirms the compounding risk. This proposed rule would simultaneously reduce minimum bond amounts from $150,000 to $10,000 for individual lease bonds and from $500,000 to $25,000 for statewide bonds, 91 Fed. Reg. at 38098-99 (proposed 43 C.F.R. § 3104.1), and BLM's own Regulatory Impact Analysis acknowledges that this bonding reduction "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." 91 Fed. Reg. at 38107. Cutting royalty rates at the same time BLM cuts the bonding meant to guard against exactly this orphan-well risk compounds rather than mitigates that risk: lower royalties reduce the ongoing revenue BLM collects from producing wells, while lower bonds reduce the assurance that non-producing wells will actually be reclaimed. BLM has not grappled with this compounding effect anywhere in the proposed rule, even though the rule's own Regulatory Impact Analysis supplies the evidence of it.

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[70] *See* **Exhibit 30,** U.S. Dep't of the Interior, Report on the Federal Oil and Gas Leasing Program (Nov. 2021); **Exhibit 31,** U.S. Gov't Accountability Off., GAO-07-676R, Oil and Gas Royalties: Comparison of the Share of Revenue Received from Oil and Gas Production by the Federal Government and Other Resource Owners (2007); **Exhibit 32,** GAO-14-50, Oil and Gas Resources: Actions Needed for Interior to Better Ensure a Fair Return (2013); **Exhibit 33,** GAO-17-540, Oil, Gas, and Coal Royalties: Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue (2017); **Exhibit 34,** GAO-19-718T, Federal Energy Development: Challenges to Ensuring a Fair Return for Federal Energy Resources (2019).

3. BLM's justification for the royalty rate reduction is unsupported by the clear language of the IRA.

BLM's justification for the royalty rate reduction (that the enactment of the OBBB, "independently and alone," justifies reducing royalty rates) finds no support in the statutory text it invokes. The Inflation Reduction Act amended the MLA to require a royalty "of not less than 16⅔ per centum." That language was, by its own terms, a floor, not a ceiling: nothing in the IRA ever prohibited BLM from setting royalty rates above that floor, and nothing in the IRA conditioned BLM's authority to do so on any additional trigger. The OBBB's repeal of that provision did not change that structure; it simply reverted to a lower floor. As amended, 30 U.S.C. § 226(b)(1)(A) now provides only that "[a] lease shall be conditioned upon the payment of a royalty at a rate of not less than 12½ per centum in amount or value of the production removed or sold from the lease."

Repealing a statutory floor of 16.67 % and reverting to a lower statutory floor of 12.5 % does not, by the clear language of either provision, compel BLM to set the rate at the new floor rather than anywhere above it. BLM's position that it lacks discretion to impose royalty rates higher than 12.5 % is squarely contradicted by the "not less than" language that has governed this provision, without interruption, both before and after the OBBB amendment. BLM retains, and has always retained, full discretion to set royalty rates above the statutory minimum. Neither the IRA nor the OBBB's repeal of it supplies the textual command BLM invokes, and BLM's stated rationale for declining to exercise its retained discretion is unsupported by (and contrary to) the statute on which it relies.

4. BLM's justification for the proposed royalty rate reduction is arbitrary and capricious.

BLM's justification for the royalty rate reduction is also arbitrary and capricious. An agency changing course must "display awareness that it is changing position," "show that there are good reasons for the new policy," and, where the new policy "rests upon factual findings that contradict those which underlay its prior policy," provide "a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009). BLM's 2024 Rule rested on an extensive, multi-year record developed through notice-and-comment rulemaking and thousands of public comments, concluding that a 12.5% royalty rate failed to provide a fair return to taxpayers. This proposed rule reverses that conclusion without acknowledging it, explaining why the record underlying the 2024 Rule was wrong, or addressing the GAO and Interior reports on which that record relied. That is precisely the kind of unexplained, unreasoned reversal that *Fox Television* and *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983), forbid.

BLM's treatment of the tar sand royalty change further illustrates the problem. In amending the royalty rate for combined hydrocarbon leases from 16.67 % to 12.5 %, BLM expressly states that, "[d]ue to the limited scope of this change, the BLM did not analyze or monetize the effects to Federal revenues and operators." 91 Fed. Reg. at 38105 (proposed 43 C.F.R. § 3140.14(c)(2)). An agency cannot satisfy its obligation to "examine the relevant data and articulate a satisfactory explanation for its action" by declining to analyze the very revenue effects its own rule change will produce. *See State Farm*, 463 U.S. at 43. And more broadly, while BLM's Regulatory Impact Analysis quantifies the cost savings this rule will deliver to industry– estimating $65 to $129 million in present-value savings, "primarily from reduced bonding and lease application costs for oil and gas operators," 91 Fed. Reg. at 38107, BLM nowhere quantifies the corresponding loss in royalty revenue to the public from reverting to a 12.5% rate, or reconciles that omission with its own 2024 finding that this same rate failed to provide a fair return. An agency acts arbitrarily when it credits the benefits of a policy to one set of interests while ignoring the costs to another, particularly where, as here, the agency's own prior rulemaking already quantified precisely the costs it now omits.

For all of these reasons, BLM should withdraw the royalty rate provisions of this proposed rule and, consistent with FLPMA's fair market value and non-degradation requirements, retain the royalty rates adopted in the 2024 Rule pending a reasoned, record-supported justification for any change.

D. Leasing Preference Criteria

The Proposed Rule would "eliminate[] the leasing preference criteria," 91 Fed. Reg. 38084 at 38084, which are found at 43 C.F.R. § 3120.32(a)-(e) (hereinafter, the "Preference Criteria"). As described below, the BLM has not supplied a reasoned basis for doing so, nor has it provided any indication that it could satisfy its obligations under FLPMA and the MLA without the Preference Criteria. Further, the proposal violates the APA.

1. BLM Must Retain the Preference Criteria to Satisfy Mandates of the FLPMA.

FLPMA requires the BLM manage public lands according to "multiple use" and "sustained yield" and "take any action necessary to prevent unnecessary and undue degradation of the lands."[71] This means to manage "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."[72] Multiple use 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."[73] This requires taking "into account the long-term needs of future generations" and ensuring "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment."[74] Sustained yield mandates "achiev[ing] and maint[aining] in perpetuity . . . a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use."[75] "It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses. . . .

[71] 43 U.S.C. §§ 1701(a)(7), 1732(b).
[72] 43 U.S.C. § 1701(a)(8).
[73] 43 U.S.C. § 1702(c).
[74] 43 U.S.C. § 1702(c).
[75] 43 U.S.C. § 1702(h).

Development is a *possible* use, which BLM must weigh against other possible uses—including conservation to protect environmental values. . . ."[76]

In 2024, when the BLM promulgated the Preference Criteria as part of the Leasing Rule, it expressly grounded them in the agency's FLPMA "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."[77] Further, the preamble to the existing Leasing Rule explains that the BLM proposed the Preference Criteria:

> 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."[78]

Thus, the BLM's existing regulation serves to implement FLPMA obligations by steering leasing away from areas of greatest conflict with conservation and other values and towards areas with highest energy development potential.

The record clearly shows that there was a need for the Preference Criteria to help BLM achieve its mission.[79] In 2021, prior to implementation of the Preference Criteria, GAO issued a report with these recommendations to improve BLM's leasing program:

> BLM should ensure that oil and gas is not prioritized over other land uses, consistent with BLM's mandate of multiple-use and sustained yield. The BLM should carefully consider what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses, such as outdoor recreation and wildlife habitat. The BLM should always ensure it is considering the views of local communities, Tribes, businesses, State and local governments, and other stakeholders.[80]

The Preference Criteria serve as a key guardrail to prevent harmful speculation and ensure the BLM complies with its obligations under FLPMA, and there is strong evidence that BLM failed to achieve those obligations prior to implementing the Preference Criteria.[81] Now, though, the

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[76] *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009) (emphasis in original).
[77] 43 C.F.R. § 3120.32.
[78] 89 Fed. Reg. 30,916, 30,919 (Apr. 23, 2024) (quoting 43 U.S.C. §1702 and describing the Preference Criteria as also consistent with the MLA).
[79] **Exhibit 35,** The Wilderness Society, *Open for Drilling: The Outsized Influence of Oil & Gas on Public Lands*, 4 (March 2025) https://www.wilderness.org/sites/default/files/media/file/Open%20for%20Drilling_TWS%20Report_0.pdf.
[80] Exhibit 30, U.S. Dep't of the Interior, Report on the Federal Oil and Gas Leasing Program (November 2021), at 12 available at https://www.doi.gov/sites/default/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf.
[81] *See e.g.,* **Exhibit 36,** Dept. of Interior, Onshore Oil and Gas Leasing Rule Fact Sheet – General Updates (April 2024), https://www.blm.gov/sites/default/files/docs/2024-04/BLM-Final-Onshore-Oil-and-Gas-Leasing-Rule-General-Fact-sheet.pdf ("Between 2013 and 2022, the BLM offered approximately 40.3 million acres for lease, but received bids on only approximately 9.5 million acres. The final rule will focus agency resources on areas with the

agency is proposing to eliminate this guardrail altogether, and it has provided no alternative to ensure continued compliance with FLPMA.

The BLM appears to also believe this regulation is necessary pursuant to its obligations under the OBBBA to "offer a parcel within 18 months of receipt of the lands within an EOI."[82] However, the OBBBA does not mandate the BLM "offer" a parcel, but rather that it "make available"[83] a parcel. These terms are distinguishable, and the result is that the statutory text of OBBBA does not eliminate BLM's discretion so broadly as to mandate the sale and issuance of leases without oversight, requiring the elimination of Preference Criteria. In fact, in the legislative history of OBBBA, Congress contemplated using the term "offer,"[84] but opted to proceed at ratification to require only that the lands "shall be made available for leasing"[85] within 18 months. "Few 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."[86] Lands are not "available" for leasing under the MLA until all statutory requirements are met and legal reviews are complete.[87] As a result, the BLM retained discretion to limit leasing of land that fails to satisfy the requirements of FLPMA and the MLA.

The BLM's Executive Summary cites two overarching bases for the Proposed Rule: implementing the OBBBA and "President Trump's January 20, 2025, E.O. 14154, entitled "'Unleashing American Energy,''" which the BLM describes as "direct[ing] the removal of impediments" to energy development on federal lands.[88] With respect to the Preference Criteria, specifically, the BLM relies on two executive orders, claiming that the existing regulation is "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."[89] It also further asserts that the Preference Criteria may "inadvertently hinder" energy development by "delaying" or it "unnecessarily limiting" opportunities.[90] However, an Executive Order cannot trump an agency's statutory obligations, and 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. The rationale ignores 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."[91] This

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highest potential for development and with the fewest conflicts or special resources, allowing the BLM to better manage public lands for multiple uses and sustained yield.").

[82] *Oil and Gas Leasing*, 91 Fed. Reg. 38,084, 38,103 (proposed June 24, 2026) (to be codified at 43 C.F.R. pts. 3000, 3100, 3110 et al.).

[83] One Big Beautiful Bill Act, Pub. L. No. 119-21, § 50101(d)(1), 139 Stat. 138 (2025).

[84] See H.R. 1, 119th Cong. § 80101(a)(1) (May 20, 2025).

[85] See 30 U.S.C. § 226(a)(1), as amended by Pub. L. No. 119-21, § 50101(b)(1), 139 Stat. 139 (2025).

[86] *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987).

[87] *See, e.g., W. Energy All. v. Biden*, No. 21-CV-13-SWS, 2022 WL 18587039, *9 (D. Wyo. Sept. 2, 2022).

[88] 91 Fed. Reg. at 38084.

[89] 91 Fed. Reg. at 38103.

[90] *Id.*

[91] 43 U.S.C. §§ 1701(a)(7), 1702(c),(h).

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.

2. The BLM Must Retain the Preference Criteria to Satisfy Mandates of the MLA.

As with FLPMA, the BLM has failed to supply any evidence that it could satisfy its obligations under the MLA without the Preference Criteria. The MLA commands BLM to hold periodic oil and gas lease sales for lands which are "known or believed to contain oil or gas deposits,"[92] to "regulate all surface-disturbing activities conducted pursuant to any lease . . . in the interest of conservation of surface resources," to lease lands for oil and gas development only in the public interest, and for each lease to include provisions that ensure "the safeguarding of the public welfare."[93] The MLA affords BLM broad discretion over which lands to offer for lease and the OBBBA did not eliminate that discretion.[94] The BLM must have the ability to exercise this discretion to comply with directives under the MLA.

The Preference Criteria were specifically enacted to assist the BLM in achieving statutory mandates, including those in the MLA, and "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.'"[95] The Preference Criteria are a critical tool for the BLM to achieve its mandates to only offer lands known or believed to contain oil or gas and to regulate surface-disturbing activities in the interests of conservation, public interest, and public welfare; to eliminate them would violate the MLA by impeding the Agency's discretion to offer lands for lease.

3. Elimination of the Preference Criteria violates the APA because it is 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.[96]

Here, BLM's proposal to eliminate the Preference Criteria and restore a leasing system that failed to achieve the goals of FLPMA and the MLA runs counter to evidence in the record. GAO reports and reports from private analysists show that BLM's leasing system was plagued

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[92] 30 U.S.C. § 226(a); *see Vessels Coal Gas, Inc.*, 175 IBLA 8, 25 (2008) ("It is well-settled under the MLA that competitive leasing is to be based upon reasonable assurance of an existing mineral deposit.").
[93] 30 U.S.C. §§ 187, 192, 226(g); *see also Powder River Basin Res. Council v. U.S. DOI*, No. 22-CV-2696 (TSC), 2026 WL 555013, at *5 (D.D.C. Feb. 27, 2026); *NRDC 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").
[94] *Mont. Wildlife Fed'n v. Burgum*, No. CV-18-69-GF-BMM, 2026 WL 1707576, at *13 (D. Mont. June 12, 2026); *See, e.g., Udall v. Tallman*, 380 U.S. 1, 4 (1965); *W. Energy All. v. Salazar*, 709 F.3d 1040, 1044 (10th Cir. 2013).
[95] 89 Fed. Reg. 30,916, 30,919 (Apr. 23, 2024) (quoting 43 U.S.C. §1702).
[96] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

by speculation and conflict and in need of reform.[97] It failed to protect the interests of the public, failed to ensure a fair return to American taxpayers, and undermined BLM's ability to manage public lands for multiple use and sustained yield.[98]

The Preference Criteria were designed and adopted to assist the BLM with managing public lands efficiently and in the best interest of the public. Because the vast majority of federal public lands are open to leasing,[99] parcels that are nominated for leasing are frequently in conflict with sensitive cultural, fish and wildlife, and recreational resources. They are also often in areas of no or low potential for oil and gas. Consequently, without the use of Preference Criteria that identifies, predicts, and avoids such conflicts, parcels often are offered and leased in areas that host these important values and have little or no potential for development.[100] Too often before Preference Criteria were implemented, BLM was issuing leases in areas with low oil and gas potential and little prospect of development even despite significant conflicts with other values.[101] The Preference Criteria were implemented to resolve these problems. To eliminate the Preference Criteria would be contrary to the evidence that they assist the BLM in more efficiently managing oil and gas lease parcels for the benefit of the American public in compliance with the MLA and FLPMA.[102]

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[97] *See e.g.,* Exhibit 35, The Wilderness Society, *Open for Drilling: The Outsized Influence of Oil & Gas on Public Lands*, 4 (March 2025) https://www.wilderness.org/sites/default/files/media/file/Open%20for%20Drilling_TWS%20Report_0.pdf; **Exhibit 37,** The Wilderness Society, *Open for Business (and not much else): How public lands management favors the oil and gas industry* (2016) https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf; **Exhibit 38,** The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/articles/blog/land-hoarders-oil-and-gas-companies-are-stockpiling-your-public-lands#. *See also* Exhibit 30, U.S. Dep't of the Interior, Report on the Federal Oil and Gas Leasing Program (November 2021), at 12 available at https://www.doi.gov/sites/default/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf.

[98] *See e.g.,* U.S. Dept. of Int., *Report on the Federal Oil and Gas Leasing Program* (Nov. 2021), available at https://www.doi.gov/sites/default/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf.

[99] Exhibit 35, The Wilderness Society, *Open for Drilling: The Outsized Influence of Oil & Gas on Public Lands*, 4 (March 2025) https://www.wilderness.org/sites/default/files/media/file/Open%20for%20Drilling_TWS%20Report_0.pdf; Exhibit 37, The Wilderness Society, *Open for Business (and not much else): How public lands management favors the oil and gas industry* (2016) https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf.

[100] Exhibit 37, The Wilderness Society, *Open for Business (and not much else): How public lands management favors the il and gas industry* (2016) https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf. *See also* Exhibit 30, U.S. Dept. of Int., *Report on the Federal Oil and Gas Leasing Program* (Nov. 2021), available at https://www.doi.gov/sites/default/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf; 89 Fed. Reg. at 30,919 ("The preference criteria, on the other hand, were proposed consistent with the MLA 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," 43 U.S.C. 1702. These criteria may be considered on a case-by-case basis in light of specific circumstances.").

[101] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/articles/blog/land-hoarders-oil-and-gas-companies-are-stockpiling-your-public-lands#.

[102] Importantly, oil and gas development is currently at all-time highs, as it has been stretching back into the Biden Administration, so clearly the lease preference criteria did not hinder oil and gas development and BLM's claim that

Preference Criteria are additionally even more important in light of the new directives from the OBBBA, and to eliminate them would be to fail to consider an important aspect of the problem, run counter to the evidence, lack a rational connection between the facts and the decision, and would thereby be arbitrary and capricious. The OBBBA increased the frequency of lease sales significantly, reinstated noncompetitive leasing, and prohibited the addition of new stipulations or additional mitigation at the leasing stage.[103] Under the new, aggressive land management directives of the OBBBA, energy development is prioritized at the expense of other uses and the BLM's capacity is stretched thin. The BLM must consider the destructive impact these directives will have on our public lands and not promulgate additional, unnecessary regulations that further degradation.

To make matters worse, the recently amended resource management plan for the BLM sensitive species, the Greater Sage-Grouse, declined to include specific leasing prioritization language or leasing strategy.[104] This decision was made under the presumption that the BLM, as the relevant leasing agency, would be using its own Preference Criteria to "avoid, minimize, and compensate impacts to GRSG" so as to maintain "the desired condition to manage public lands to provide suitable GRSG habitat." [105] Elimination of the Preference Criteria, then, would jeopardize the Greater Sage-Grouse by removing a critical administrative backstop to destruction of its habitat. Proceeding in light of this information would fail to consider an important aspect of the problem and lack a rational connection between the facts and decision made, resulting in an arbitrary and capricious decision.

The BLM relies on the assertion that "preference criteria unnecessarily burden the oil and gas leasing process contrary to the policy guidance in E.O. 14154 and E.O. 14219"[106] as a primary basis for their elimination. However, because the OBBBA does not explicitly direct the BLM to eliminate Preference Criteria, executive orders cannot be the basis for new regulations if they conflict with other existing laws, such as FLPMA.[107] As discussed above, elimination of the Preference Criteria will frustrate BLM's ability to comply with FLPMA and the MLA. Because executive orders cannot be the sole authority here, to eliminate Preference Criteria would be an arbitrary and capricious decision by the BLM.

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this is necessary to remove energy burdens so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

[103] 30 U.S.C. § 226(b)(1)(A), as amended by Pub. L. No. 119-21, § 50101(b)(1), 139 Stat. 138 (2025); 30 U.S.C. § 226(a)(2)(A)(ii), as amended by Pub. L. No. 119-21, § 50101(b)(1), 139 Stat. 139 (2025).

[104] Bureau of Land Management, U.S. Dep't of the Interior, *Greater Sage-Grouse Rangewide Planning: Proposed Resource Management Plan Amendment and Final Environmental Impact Statement vol. 1,* at 2-24 (Nov. 2024), https://eplanning.blm.gov/Documents/?id=d8b882cc-a7f2-f011-8406-001dd8008d46&spid=a26c137d-a8f2-f011-8407-001dd80c29f3#.

[105] Bureau of Land Management, U.S. Dep't of the Interior, *Greater Sage-Grouse Rangewide Planning: Proposed Resource Management Plan Amendment and Final Environmental Impact Statement vol. 1,* at 2-24 (Nov. 2024), https://eplanning.blm.gov/Documents/?id=d8b882cc-a7f2-f011-8406-001dd8008d46&spid=a26c137d-a8f2-f011-8407-001dd80c29f3#.

[106] *Oil and Gas Leasing*, 91 Fed. Reg. 38,084, 38,103 (proposed June 24, 2026) (to be codified at 43 C.F.R. pts. 3000, 3100, 3110 et al.).

[107] *Youngstown v. Sawyer*, 343 U.S. 579 (1952).

The BLM is also justifying the proposal by claiming that "The criteria are duplicative of existing established processes for land use planning, resulting in unnecessary delays in oil and gas leasing without providing tangible benefits"[108] and that "[m]odern drilling technology has advanced, allowing for reduced surface impacts, which the Preference Criteria do not adequately consider."[109] These claims are not supported by the record. Many RMPs are decades old, do not have updated stipulations that reflect on-the-ground conditions or contemporary best management practices, and tend to list the vast majority of land as open for leasing.[110] The Preference Criteria are therefore critical to ensuring the BLM upholds its obligations under FLPMA and the MLA when the RMPs alone cannot. Old RMPs also fail to consider the impacts of modern drilling such as fracking. While new technologies have, in some circumstances, reduced the impacts of drilling, they also often increase impacts by opening previously uneconomic formations to new development, including tight sands and shale formations which require substantially more energy, water, and fracking fluids to drill.[111] Even new technologies that allow many wells to be drilled from a single pad and facilitate directional and horizontal drilling can result in concentrated impacts that are more significant than the impacts of historic drilling. The rationale that technology has reduced impacts is also not equivalent to having no impacts, which was the result of Preference Criteria eliminating certain parcels from being available for leasing altogether to protect for multiple uses. The claim of redundancy and reliance on advancing technology are, therefore, counter to the evidence and lack rational connections to the decision made.

E. Noncompetitive Leasing

1. Noncompetitive leasing must be completely reformed to comply with the MLA.

The MLA is intended to encourage diligent development of domestic mineral resources in an orderly way and to secure a fair public return.[112] For more than 60 years after the MLA was implemented in 1920, noncompetitive leasing was allowed for parcels with no "known" oil and

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[108] *Oil and Gas Leasing*, 91 Fed. Reg. 38,084, 38,103 (proposed June 24, 2026) (to be codified at 43 C.F.R. pts. 3000, 3100, 3110 et al.).
[109] *Oil and Gas Leasing*, 91 Fed. Reg. 38,084, 38,103 (proposed June 24, 2026) (to be codified at 43 C.F.R. pts. 3000, 3100, 3110 et al.).
[110] Exhibit 35, The Wilderness Society, *Open for Drilling: The Outsized Influence of Oil & Gas on Public Lands*, 4 (March 2025) https://www.wilderness.org/sites/default/files/media/file/Open%20for%20Drilling_TWS%20Report_0.pdf; Exhibit 37, The Wilderness Society, *Open for Business (And Not Much Else): How public lands management favors the oil and gas industry*, https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf.
[111] *See e.g.* **Exhibit 39,** U.S. Geologic Survey, *Mixing Oil and Water – How USGS Oil and Gas Assessments Incorporate Water Estimates: The Eagle Ford Group Assessment* (Oct. 2020) https://www.usgs.gov/news/featured-story/mixing-oil-and-water.
[112] 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...'""). The MLA also sets the core structural framework to ensure fair financial returns to the American public, including minimum royalties, royalty rates, rents, and competitive bidding structures.

gas deposits.[113] The program was consistently criticized "for encouraging fraud, misleading the public, and generating insufficient revenues."[114] In response to criticism, Congress amended the MLA in 1987 to require competitive leasing for all parcels, and permitting noncompetitive leasing only for parcels that were not bid on at a competitive lease sale. Despite these changes, the process continued to short-change the public.

A 2020 study undertaken by the GAO found noncompetitive leases produced substantially less revenue and less oil and gas than competitive leases.[115] Research showed that noncompetitive leases were frequently bought by speculators or companies looking to inflate their lease holdings, meaning taxpayers receive virtually no return from them. And even when developed, noncompetitive leases often burdened other public land uses by limiting land use planning options and discouraging conservation.[116] In 2021, DOI released a report detailing why noncompetitive leasing does not provide a fair return to the American public and emphasizing the agency's efforts to implement "a fair and equitable return on resources through a competitive leasing process."[117] The same report found that reforming the program was overdue and urgent as the DOI takes into account "new stressors and new opportunities for our public lands . . ., including addressing biodiversity loss, tackling climate change, and deploying new

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[113] **Exhibit 40,** Lyle K. Rising, "The Federal Onshore Oil and Gas Leasing and Reform Act of 1987" (University of Colorado Boulder, 1988), available at https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1112&context=books_reports_studies; *see also* **Exhibit 41,** Center for American Progress, Report entitled "Backroom Deals: The Hidden World of Noncompetitive Oil and Gas Leasing," May 23, 2019, available at https://www.americanprogress.org/article/backroom-deals/.

[114] **Exhibit 42,** U.S. General Accounting Office, "Issues Surrounding Continuation Of The Noncompetitive Oil and Gas Lottery System" (1985), available at https://www.gao.gov/assets/150/142700.pdf.

[115] The total acreage leased between 2003 and 2019 was 89,118,084 and of that 34,090,627 (38%) was leased non-competitively. Competitive leases yielded $14.3 billion in revenue over the studied period, and account for approximately 55,027,456 million acres in total acreage leased. Noncompetitive leases yielded $1.8 billion in revenue and account for approximately 34 million acres leased. **Exhibit 43,** GAO, GAO-21-138, Onshore Competitive and Noncompetitive Lease Revenues (Nov. 2020), *available at* https://www.gao.gov/assets/gao-21-138.pdf.

[116] **Exhibit 44,** The Wilderness Society, *No Exit: Fixing the BLM's Indiscriminate Energy Leasing* (June 2016), *available at* https://www.wilderness.org/sites/default/files/media/file/Report-No%20Exit-Fixing%20BLM%20Leasing.pdf. *See also* Press Release, Dept. of the Interior, *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) (The lands have wildlife and conservation uses, over 300,000 acres of non-competitively leased land is big game habitat or part of migration corridors), available at https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands. For a report documenting the effect of noncompetitive leasing using case studies refer to: **Exhibit 45,** National Wildlife Federation, *How Noncompetitive Leasing Threatens Our Public Lands,* at 1, 2 (2022), available at https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2022/03-30-22-Noncompetitive-Leasing-Report.ashx; for a report on the effect of undeveloped leases refer to: **Exhibit 46,** Tyler McIntosh et al., *The Oil Industry's Public Lands Stockpile,* Center for Western Priorities (2021), available at https://storymaps.arcgis.com/stories/63745d4475104a33968081ff008e36b9. In a press release from Senator Jon Tester's office about the *Leasing Market Efficiency Act* which would have ended noncompetitively leased land, multiple stakeholders commented on the benefits, including conserving government resources and allowing public use of the land. Press Release, Jon Tester Newsroom, *Tester announces bill to end wasteful non-competitive oil and gas leasing, increase government efficiency*, (Jul. 16, 2020); Bureau of Land Mgmt., Environmental Consequences*,* WRFO Oil and Gas Development Proposed RMPA/Final EIS 2015*,* at 4-498 (2015).

[117] Dept. of the Interior, *Report on the Federal Oil and Gas Leasing Program* (Nov. 2021); Inflation Reduction Act, § 50262(d).

technology."[118] In August of 2022, Congress passed the Inflation Reduction Act (IRA) incorporating recommendations from the DOI report and eliminated noncompetitive leasing.

In July of 2025 with passage of OBBBA, Congress changed direction and explicitly reintroduced noncompetitive leasing.[119] In so doing, Congress repealed relevant provisions of the IRA, but left in place provisions of the MLA, including those demanding diligent development and a fair return to the public.[120] The MLA demands that leaseholders exercise reasonable diligence, skill, and care and directs the BLM to lease lands for oil and gas development only in the public interest.[121] History shows, however, that all forms of noncompetitive leasing previously allowed by BLM have undermined the MLA's diligence requirement and the public interest. Congress may have changed its mind about noncompetitive leasing, but BLM must find a way to implement it while also addressing problems with the program that led to its prohibition in the IRA.

Noncompetitive leasing has been referred to as the "bargain bin of the federal onshore oil and gas program."[122] Noncompetitive leasing, and the proposed regulations to administer it, lack "transparency or accountability, wast[e] government resources, and encourage[e] blatant violation[s] of the [MLA's] due diligence requirements."[123] As discussed above, BLM, the GAO, members of Congress and independent researchers have all found noncompetitive leasing in all the forms that BLM previously allowed did not result in diligent development or a fair return to the public. Simply reinstating the process without meaningful reform, as BLM is proposing to do here, cannot be done without violating the MLA and the APA.

2. Noncompetitive leasing must be completely reformed to comply with FLPMA.

As with the MLA, despite Congress re-authorizing noncompetitive leasing in OBBBA, the BLM still has an obligation to comply with FLPMA.[124] Pursuant to FLPMA, the BLM must manage its lands for "multiple use and sustained yield,"[125] which obligates the agency to make the "most judicious use" of public lands and their resources to "best meet the present and future

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118 *Id.*
119 **"**Subsection (e) of section 50262 of Public Law 117-169 (136 Stat. 2057) is repealed, and any provision of law amended or repealed by that subsection is restored or revived as if that subsection had not been enacted into law." 119 P.L. 21, 2025 Enacted H.R. 1, 119 Enacted H.R. 1, 139 Stat. 72, 119 P.L. 21, 2025 Enacted H.R. 1, 119 Enacted H.R. 1, 139 Stat. 72
120 Passage of OBBBA did not repeal the MLA. *See Branch v. Smith*, 538 U.S. 254, 273 (2003) ("absent 'a clearly expressed congressional intention,' . . . [a]n implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.").
121 30 U.S.C. § 187.
122 **Exhibit 47,** Colorado Wildlands Project & Wilderness Workshop, *The Harms and Fouls of Speculative Leasing*, 2 (July 2022).
123 *Id.*
124 *Branch v. Smith*, 538 U.S. 254, 273 (2003) ("absent 'a clearly expressed congressional intention,' . . . [a]n implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.").
125 43 U.S.C. § 1701(a)(7).

needs of the American people."[126] However, as discussed above, noncompetitive leases often remain undeveloped, yet still burden other uses of land, resulting in a waste of government resources and generating little to no revenue to benefit the taxpayers.[127] This is because noncompetitive leaseholds are often issued for low potential parcels, yet hold a valid existing right that limits the agency's ability to plan and manage for other uses of the land such as recreation, renewable energy, or other conservation designations.[128] Noncompetitive leasing violates FLPMA's multiple use and sustained yield requirement by making oil and gas the dominant use of public lands, even in places where it represents low value compared to other values. Absent dramatic reform to the noncompetitive leasing system, BLM cannot reauthorize noncompetitive leasing and comply with the agency's obligations under FLPMA.

3. BLM's proposed reinstatement of noncompetitive leasing regulations violates the APA because it is arbitrary and capricious.

Under the APA, a rule is 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.[129]

Here, BLM's decision to reinstate noncompetitive leasing ignores the substantial evidence in the record indicating that noncompetitive leasing results in speculation and fraud, fails to guarantee a fair return to the American public, and undermines the agency's ability to effectively achieve its multiple use and sustained yield mandate. As discussed above, studies undertaken by the GAO, members of Congress, independent researchers, and BLM itself all confirm that noncompetitive leasing serves to undermine the goals BLM is charged to achieve. The agency's decision to ignore the weight of this evidence and reinstate a broken program is arbitrary and capricious and violates the APA.

While Congress clearly ordered BLM to reinstate noncompetitive leasing, the agency must consider information in the record and reform the process to ensure that it proceeds in a way that reduces opportunity for fraud, guarantees a fair return to the public, and effectuates FLPMA's multiple use and sustained yield mandate.

4. Should BLM reauthorize noncompetitive leasing through this rule, the process must be reformed.

Should the BLM proceed with reinstatement of noncompetitive leasing, it still would be contrary to the evidence and arbitrary and capricious without substantial supplementation of the

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[126] 43 U.S.C. § 1702(c).
[127] Exhibit 45, National Wildlife Federation, *How Noncompetitive Leasing Threatens Our Public Lands* (2022), https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2022/03-30-22-Noncompetitive-Leasing-Report.
[128] Exhibit 43, U.S. Gov't Accountability Off., *Oil and Gas: Onshore Competitive and Noncompetitive Lease Revenues* (Report No. GAO-21-128, 2020), https://www.gao.gov/assets/gao-21-138.pdf; Exhibit 45, National Wildlife Federation, *How Noncompetitive Leasing Threatens Our Public Lands* (2022), https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2022/03-30-22-Noncompetitive-Leasing-Report.
[129] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

record and without changes to the program that ensure compliance with the BLM's obligations under the MLA and FLPMA.

At a minimum, as is stated in IM 2026-018,[130] the BLM must make clear that only lands first offered at competitive auction since OBBBA was signed into law on July 4, 2026, 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 July 4, 2026, 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 retroactively issued now.[131]

BLM should require a shorter primary term for noncompetitive leases and strict diligence requirements to protect against speculative, wasteful holds on federal public lands.

The BLM must also 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 recommend that the BLM consider a shorter primary term for noncompetitive leases, strict diligence requirements, and a higher fee (*e.g.*, $20 per acre) to acquire the lease through noncompetitive means.

One proposal the agency should consider would require a "public interest" determination prior to issuing noncompetitive leases. In making the determination, BLM should evaluate factors such 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 this "public interest" determination, the BLM decides to issue a noncompetitive lease to a qualified applicant, the agency must also ensure careful development of the lease. We 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. By the end of the fifth year of the lease term, the BLM should 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

[130] 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*, *available at* https://www.blm.gov/policy/im-2026-018.

[131] 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, 2026, 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.

has not met any of these specific development milestones, the BLM should require the lessee to pay increased rental fees.

Additionally, because noncompetitive lease parcels tend to be in areas with low potential for energy development but have high value for other conservation and recreation purposes,[132] BLM should consider default lease stipulations of NSO and CSU for noncompetitive leaseholds.

Finally, 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.

F. Leasing Suspensions

1. The BLM's proposed leasing suspension regulations violate the APA because they 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.[133]

Here, the proposed changes to suspensions are not contemplated by the 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.[134] 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.[135] However, the record is replete with evidence that lease suspensions, without the sideboards BLM is proposing to strip, are a recipe for speculation—a practice that costs rather than benefits the American public.[136] The record also shows how lease suspensions

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[132] Exhibit 45, National Wildlife Federation, *How Noncompetitive Leasing Threatens Our Public Lands* (2022), https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2022/03-30-22-Noncompetitive-Leasing-Report.
[133] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[134] *Id.*
[135] Bureau of Land Management, *Proposed Rule: Oil and Gas Leasing*, 91 Fed. Reg. 38,084, 38,105 (June 24, 2026) (to be codified at 43 C.F.R. pts. 3000, 3100, 3110 et al.) ("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.").
[136] *See e.g.,* **Exhibit 48,** U.S. Gov't Accountability Off., *Oil and Gas Lease Management—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (Report No. GAO-18-411, 2018), https://www.gao.gov/assets/gao-18-411.pdf; *see also* Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and*

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.[137] Indeed BLM has 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."[138]

The proposed rule would allow approval of late-term suspension requests despite evidence in the record showing leaseholders who fail to diligently develop their leasehold routinely request suspensions late in the lease term to keep leases from expiring. This is a complete reversal from BLM's position in IM 2023-012, which was 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.[139] 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."[140] To claim that loosening the standards guiding 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.

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 BLM does not actively monitor suspended leases or even have a system to do so,[141] and that leases often remain suspended for decades and cost taxpayers tens of millions of dollars in lost rent alone.[142] 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

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gas companies are stockpiling your public lands (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf.

[137] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf.

[138] Bureau of Land Management, *Proposed Rule: Fluid Mineral Leasing Process*, 88 Fed. Reg. 47562, at 47566 (July 24, 2023).

[139] Bureau of Land Management, Instruction Memorandum No. 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).

[140] 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), https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands (explaining that industry has stockpiled millions of acres of unused leases and "is sitting on approximately 7,700 unused, approved permits to drill").

[141] *See* Bureau of Land Management, Proposed Rule: Fluid Mineral Leasing Process, 88 Fed. Reg. 47562, at 47595 (July 24, 2023). *See also* Exhibit 48, U.S. Gov't Accountability Off., *Oil and Gas Lease Management—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (Report No. GAO-18-411, 2018), https://www.gao.gov/assets/gao-18-411.pdf.

[142] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf.

of it.[143] 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.

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.[144] Therefore, the proposed action is arbitrary and capricious under the APA.

2. The BLM's proposed regulations 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.[145] BLM's 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, to justify the new rule BLM makes statements that are simply wrong. For example, the agency provides a laundry list of excuses for weakening the existing lease suspension regulations set forth in 43 C.F.R. § 3165.[146] However, as noted above, many of these excuses contradict—without reasoned explanation—the agency's findings and conclusions in 2024 when it updated the section 3160 regulations.[147] This violates the APA, as explained above, because BLM is required to explain its about-face and contradictory conclusions.

In addition, BLM claims the proposed changes are necessary to comply with the MLA.[148] However, this assertion is wrong and not subject to deference, as the United States Supreme Court has made clear.[149] As such, BLM's novel interpretation of what the MLA "mandates" (or not) is not binding and "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."[150]

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[143] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf.
[144] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("An agency may not . . . depart from a prior policy *sub silentio*").
[145] 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...'''").
[146] *See* 91 Fed. Reg. at 38105-06.
[147] *See* 89 Fed. Reg. at 30952-54.
[148] *See, e.g.*, 91 Fed. Reg. at 38105 ("The BLM proposes to revise this section by removing requirements that are not mandated by the MLA.").
[149] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) *overruling Chevron, U.S.A. v. NRDC, Inc.*, 467 U.S. 837 (1984).
[150] *Id.* At 412.

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.[151] The record is full of examples confirming how regularly this tactic has been abused by leaseholders.[152] Despite this evidence BLM's proposed rule would eliminate the general prohibition on granting late-term suspension requests that violate the MLA.

BLM's 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.[153] 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. BLM's proposed rule would reopen the door to these abuses in violation of the MLA.

3. The BLM's proposed regulations conflict with FLPMA.

FLPMA requires the BLM to manage its land for "multiple use and sustained yield,"[154] 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."[155] 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 2023, when BLM updated existing oil and gas regulations, the agency included a general prohibition on approval of late-term suspension requests. 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.[156] 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

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[151] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/articles/blog/land-hoarders-oil-and-gas-companies-are-stockpiling-your-public-lands; Exhibit 48, U.S. Gov't Accountability Off., *Oil and Gas Lease Management—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (Report No. GAO-18-411, 2018), https://www.gao.gov/assets/gao-18-411.pdf; *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.

[152] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf (providing numerous examples of BLM "routinely" granting late-term suspensions).

[153] *Id.*

[154] 43 U.S.C. § 1701(a)(7).

[155] *Id.* § 1702(c).

[156] Bureau of Land Management, Instruction Memorandum No. 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). Bureau of Land Management, *Proposed Rule: Fluid Mineral Leasing Process*, 88 Fed. Reg. 47562, at 47566 (July 24, 2023).

and sustained yield mandates.[157] Nonetheless, BLM's new proposed rule would eliminate any prohibition on 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.[158] Once again, this information is clear in the record and 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,"[159] but it fails to explicitly acknowledge that the 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 BLM does not have the capacity or systems in place to actively monitor suspended leases.[160] 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.[161]

G. Endangered Species Act

1. BLM failed to consult under the ESA.

BLM's leasing decisions routinely rest on decades-old, RMP-level programmatic biological opinions (BiOps) that, even where they address oil and gas at all, do not analyze or

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[157] Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf.
[158] 88 Fed. Reg. at 47566 (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* Exhibit 38, The Wilderness Society, *Land Hoarders: Oil and gas companies are stockpiling your public lands* (Dec. 2015), https://www.wilderness.org/sites/default/files/media/file/TWS%20Hoarders%20Report-web.pdf; Exhibit 48, U.S. Gov't Accountability Off., *Oil and Gas Lease Management—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (Report No. GAO-18-411, 2018), https://www.gao.gov/assets/gao-18-411.pdf.
[159] 91 Fed. Reg. at 38106.
[160] Exhibit 48, U.S. Gov't Accountability Off., *Oil and Gas Lease Management—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (Report No. GAO-18-411, 2018), https://www.gao.gov/assets/gao-18-411.pdf.
[161] Commenters have repeatedly raised the issues discussed herein. *See, e.g.*, **Exhibit 49,** Southern Utah Wilderness All. et al., *Executive Order 14008 – Comprehensive Review of the Federal Oil and Gas Program* (April 15, 2021); **Exhibit 50,** S. Utah Wilderness All. et al., *Comments on BLM's Proposed Rule on Fluid Mineral Leases and Leasing Process, 88 Fed. Reg. 47562 (July 24, 2023)* (Sept. 22, 2023); **Exhibit 51,** S. Utah Wilderness All. et al., *The Interior Department needs to prepare additional guidance for oil and gas lease suspensions and unit agreements* (June 14, 2024). As the proposed rule does not address issues raised in prior comments and, in many (if not all) instances, will exacerbate the problems previously highlighted, we reincorporate our prior comments in their entirety.

disclose the impacts of selling specific parcels. These BiOps expressly defer analysis of future oil and gas leasing and development, including cumulative impacts, to separate consultation. Leasing and development are precisely separate, unrelated actions — land-use planning, leasing, and drilling approval are three distinct stages under the MLA. *See N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 689 n.1 (10th Cir. 2009). A rule that structures leasing around RMP-level stipulations and defers everything else to the APD stage does not close that gap; it relies on exactly the programmatic analysis the BiOps themselves say cannot substitute for site-specific, parcel-level consultation.

There is no blanket exception to ESA compliance at leasing, and federal courts regularly set aside BLM leasing decisions on this basis. *See Bd. of Cnty. Comm'rs of the Cnty. of San Miguel v. BLM*, 706 F. Supp. 3d 1180, 1209–10 (D. Colo. 2022). To the extent BLM continues to treat leasing as an "incremental step" that need not itself be supported by a comprehensive BiOp, that position is unsupported. The ESA text (16 U.S.C. § 1536) contains no concept of incremental-step consultation, and under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), BLM's longstanding interpretation to the contrary is owed no deference – courts must independently decide whether the statute authorizes the challenged approach, and here it does not. Even under the implementing regulation, incremental review is available only "when the action is authorized by a statute that allows the agency to take incremental steps toward completion of the action." 50 C.F.R. § 402.14(k). Onshore leasing under 30 U.S.C. § 226(a) is a single action, not a statutorily-authorized sequence of steps, so § 402.14(k) does not apply. As the Ninth Circuit held in rejecting this same approach for onshore leasing, the agency "was required to prepare, at the leasing stage, a comprehensive biological opinion" based on the best available data, and cannot defer that duty past the point of irreversible commitment of resources. *Conner v. Burford*, 848 F.2d 1441, 1453–54 (9th Cir. 1988).

The Proposed Rule makes it harder, not easier, to surface these problems before that commitment is made. It eliminates the existing 30-day scoping and comment periods during NEPA review of a lease sale, Proposed Rule § 3120.42(a)–(b) (removed), and shortens the post-sale-notice protest period from 30 to 10 days while adding a new $1-per-page fee for protests over 50 pages, *id.* §§ 3120.42(b), 3120.43(d), 3000.120; changes that specifically burden the kind of detailed, species- and site-specific showings ESA protests require. And BLM's assurance that conditions of approval (COAs) at the APD stage will "ensure . . . compliance with all other applicable laws, such as . . . the ESA," Proposed Rule, Section-by-Section Discussion, § 3101.12, does not fill the gap: by the APD stage, the lease has already conferred a contractual right to develop, so COAs operate as an afterthought to a commitment BLM has already made, not a substitute for the comprehensive, pre-leasing consultation *Conner* requires. Commenters urge BLM to withdraw these provisions or, at a minimum, commit in the final rule to site-specific, parcel-level consultation before issuing any lease.

III. CONCLUSION

BLM's proposed rule would arbitrarily reinstate inadequate bonding and royalty provisions, eliminate meaningful opportunities for public engagement, remove leasing preference criteria, and reintroduce leasing suspensions and noncompetitive leasing without adequate guardrails, in violation of FLPMA, APA, MLA, and ESA. We urge BLM to withdraw the proposed rule.

Sincerely,

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Attention: 1004-AF05

Comment submitted via regulations.gov
Exhibits sent via Certified Mail

Re: Comments on Proposed Oil and Gas Leasing Rule – RIN 1004-AF05.

Appendix A

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