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The Bureau of Land Management's Final Hydraulic Fracturing Rule
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Chairman Barrasso, Ranking Member Wyden, and members of the committee, thank you for the opportunity to appear before you today to discuss the Bureau of Land Management's (BLM) recently finalized hydraulic fracturing rule.

Western Energy Alliance represents 450 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees. Our members are proud to provide nearly a quarter of America's oil and natural gas production while disturbing only 0.07% of public lands.

The fundamental question related to BLM's final rule is whether we as a nation want to encourage responsible energy development on the vast, multiple-use public lands of the United States, or do we want to shut it down.

If the goal is to continue to discourage oil and natural gas development on federal lands, then this rule will indeed further that goal. The rule is a broad new regulatory regime with no real justification as it adds cost and delay to energy development with no identified environmental benefit; duplicates yet usurps state regulation; and cannot be implemented in an efficient manner.

If indeed the answer is that we want to encourage the continued environmentally responsible development of oil and natural gas on appropriate multiple-use public lands (i.e., non-park, non-wilderness lands), then this rule is counterproductive to that goal and should be rescinded.

Until Congress changes BLM's mandate under the Federal Land Policy and Management Act (FLPMA), BLM has a multiple-use mandate, with oil and natural gas production being a "best and proper" use of public lands. The rule before the Subcommittee today cannot realistically be addressed as furthering BLM's mandate, as another layer of redundant regulation will further discourage production of energy that all Americans own, and will continue the exit of producers from federal and tribal lands.

In addition, the Department of the Interior (DOI) owes a statutory and general trust obligation to individual Indians and tribes that are in the "best interest" of the Indian mineral owner, as embodied in the Indian Mineral Leasing Act of 1938. The Secretary of the Interior has an obligation to further the return Indian mineral owners receive from the development and production of their oil and natural gas resources. BLM's hydraulic fracturing rule runs counter to

that trust obligation, as it discourages production on Indian lands. In addition, the rule is based on FLPMA, an inapplicable standard for Indian lands, and is aimed at managing Indian land resources in a manner that will protect their quality for the public at large, rather than for the benefit of Indian landowners and communities.

The actions of DOI over the last several years lead us to the conclusion that the real goal is to discourage responsible energy development on federal lands, pushing it to adjacent private and state lands or to areas of the country that are not predominated by public lands. DOI has communicated that the goal of the rule is "to support safe and responsible hydraulic fracturing on public and American Indian lands" but since development is already happening safely on federal lands, what are we to make of this and similar statements? We look at actual actions and results.

Over the last several years, DOI has enacted several policies that discourage production on federal lands. These policies include:

- "Reforms" that add years onto the leasing process, such as longer processing requirements, Master Leasing Plans, and the discontinuation of state-wide lease sales

- Land use planning restrictions more excessive than what is required to protect cultural, wildlife, land values and other resources, to the point where it becomes nearly impossible to find a time in the year where development can actually occur

- Stalled project environmental analyses under the National Environmental Policy Act (NEPA), with only three major oil and natural gas projects approved in seven years and many projects languishing in the eighth year of NEPA analysis

- Retroactive audits based on a completely new interpretation that disallows natural gas cost deductions, despite their support in statute and regulation

- Management of another 12 million acres in the Arctic National Wildlife Refuge as wilderness, despite the fact that oil and natural gas development would disturb an infinitesimal proportion of ANWR

- Initiation of a rulemaking to raise royalty, lease, civil penalty, and bonding rates.

Besides declared policies, there is deliberate bureaucratic delay. In addition to general foot dragging, BLM field offices arbitrarily add ad hoc requirements onto the permitting process at the whim of individual BLM staff and with no basis in regulation. Overall, there has been a diversion of resources from oil and natural gas to other activities, such as renewable energy development.

The results of DOI's policies are obvious. Even as production of oil and natural gas has increased dramatically across the country, it has fallen on federal lands. As the Congressional Research Service has recently reported, natural gas production has grown 37% on non-federal lands as it

has decreased 31% on federal lands, and oil production has grown 89% on non-federal lands even as it has dropped 10% on federal lands and waters.

Lacks Justification

With that background, I turn to the three main points about the rule itself, starting with the fact that BLM has finalized a costly rule with no justification in the form of real environmental benefit. BLM can show no incident that necessitates the rule, nor any risk that the rule actually reduces. The best BLM can do to justify the rule is to cite vague notions of public concern. But are these concerns valid or just the result of misinformation and agitation?

A regulator has an obligation to the regulated community and the public to show that there is a tangible benefit to justify the additional cost. Regulatory costs affect not just the regulated industry, but society at large in the form of higher energy prices, fewer jobs, less government revenue, and slower economic growth. BLM has failed in its obligation and simply ignores laws that require proper justification and economic analysis, including (i) Executive Order 13563; (ii) Executive Order 12866 (Regulatory Planning and Review); (iii) the Regulatory Flexibility Act of 1980; (iv) the Small Business Regulatory Enforcement Fairness Act; and (v) the Unfunded Mandates Reform Act. For this reason, the Independent Petroleum Association of America (IPAA) and Western Energy Alliance are legally challenging the rule in the U.S. District Court of Wyoming. Wyoming, with its high proportion of federal lands and the greatest number of Applications for Permit to Drill (APD) approved every year, is the state with arguably the highest impact from this rule.

Redundant with State Regulation

That lack of justification brings me to my next point; since BLM can articulate no real reason for the rule, why is it infringing on state and tribal authority? The rule duplicates what states and tribes are already doing to protect environmental health and safety, yet BLM can show no deficiency in state regulation that would motivate it to act. BLM has no evidence that its costly proposed rule will be any more effective than existing state regulations. When the federal government feels compelled to take action that upsets the balance between states and the federal government, there should be a compelling reason to do so. Lack of a single incident or inability to articulate a single risk reduced by the rule hardly seems compelling.

In fact, BLM observes that from fiscal year 2010 to 2013 more than 99.3 percent of all well completions on federal and Indian lands occurred in nine states, all with regulations governing oil and gas development. For those states that represent that remaining .7 percent of completions on federal lands, almost all have also recently updated their oil and natural gas regulations. Looking at APDs last year, which are a good indicator of future activity affected by this rule, 99.97 percent are in states that have updated their wellbore integrity and hydraulic fracturing disclosure rules in the last few years. That number would be 100 percent except for one APD in Kansas, a state which is currently undergoing rulemaking. That percentage will likely be 100 once those wells are actually completed. I mention *recently* updated state rules, but all states with active oil and natural gas development have had wellbore integrity rules, the focus of BLM's rule, for many years if not decades.

BLM has tried to deflect criticism regarding the duplication of state regulations by suggesting that states can obtain a variance if their rules meet or exceed the requirements of the rule. Sensing vulnerability on the state issue, BLM introduced the concept of state variances between the initial rule proposed in 2012 and the second version in 2013. In the press release for the final rule, BLM states that there is a process whereby states and tribes may request variances from provisions for which they have an equal or more protective regulation in place. However, there is no genuine mechanism for state or tribal variance in the final rule. BLM has promised to work with states on Memoranda of Understanding (MOU), but those cannot substitute for a real regulatory mechanism that defers to states. BLM's rulemaking does not consider the federalism implications of BLM evaluating the adequacy of states' rules.

State regulations already meet the goals of BLM's rule, yet they are not doing so in the exact prescriptive manner that BLM now demands. State rules are tailored to the types of formations, hydrocarbon mix and composition, hydrology, topography, and other factors present in their respective state. Their rules wisely retain operation flexibility to meet the regulatory goals, instead of setting the same specific operational processes as the BLM rule dictates. These differences will not be recognized by BLM, which will instead require the exact set of requirements.

States also show leadership by allowing flexibility for operators to innovate and reduce environmental impact. Practices encouraged by states are often not possible on federal lands because of regulatory rigidity. For example, centralized fracking and gathering facilities reduce truck traffic and surface impact, yet often cannot be done on federal lands. The final BLM rule will further stifle innovation, with the tank requirements providing an example. Rigid requirements on tank size and prohibition of pits will hamper innovative centralized fluids gathering and processing that minimizes surface disturbance. Water reuse and recycling processes will be more difficult on public lands, even as adoption on non-federal lands is leading to higher levels of produced water reuse and reduced fresh water use.

Inability to Implement

Finally, a major problem of this rule is that BLM simply does not have the resources or wherewithal to implement this vast new regulatory regime. Despite a superficial economic analysis that minimized the effort to implement this rule, this rule will be difficult and costly for both industry and BLM to implement. Career BLM staff knows that petroleum engineering personnel are already spread too thin. This rule will result in ever longer delays in the permitting process. Leadership in DOI and BLM have tacitly admitted this fact, as they are hurrying to meet with states to convince them to sign onto MOUs. In effect, since BLM will not in actuality defer to state regulations, they are trying to convince the states to implement the rule for them.

Yet why should a state take up that burden? They are already meeting the overall goals of this rule, though not of course using the one-size-fits-all approach that BLM dictates. Why should the states take responsibility for implementing BLM's rule, which the federal government brought on itself without justification, when their rules more effectively achieve the same goals but in a more effective, cost-efficient manner?

Were the rule designed to provide a genuine mechanism for granting a state a variance and truly deferring to state rules, then an MOU so stating would make sense. But in the absence of such a mechanism, states are wise to refrain from entering into an MOU to implement this poorly conceived rule. In fact, Wyoming, North Dakota and Colorado are challenging the legality of the rule in the U.S. District Court in Wyoming.

So here before us we have a rule that is not properly justified, delivers no discernable environmental benefit, infringes on state authority, and cannot be reasonably implemented. Yet BLM is rushing to implement this rule by June 24th. Having taken over four years to write the final rule, BLM now rushes to implement it in only three months. That is not a realistic timeframe, and IPAA and Western Energy Alliance are seeking a preliminary injunction to stay its implementation. We urge this Subcommittee and Congress to advance legislation to roll back the rule and instead grant state and tribal regulation primacy on oil and natural gas development, including hydraulic fracturing.

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