

Testimony of
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before the United States Senate, Committee on Energy and Natural Resources
hearing to Examine Opportunities for Congress to Reform the Process for Permitting Electric
Transmission Lines, Pipelines, and Energy Production on Federal Lands

July 26, 2023

Chairman Manchin, Ranking Member Barrasso and members of the Energy and Natural Resources Committee. Thank you for allowing me to speak with you today regarding the leasing and permitting challenges natural gas and oil operators face every day in their attempt to bring sustainable, reliable, and affordable energy to Americans and indeed the entire world. This committee's efforts to focus attention on how difficult it has become to successfully navigate a system that is byzantine at best, and utterly broken at worst, is so very important. On behalf of the 19,000 men and women who work in the natural gas and oil industry in Wyoming, I implore you to pass meaningful permitting reform.

For many, energy debates in this country begin and end with high profile arguments based around specific events – the Keystone Pipeline, a power outage, or unusually high prices at the gas station. These incidents garner a lot of attention, but are often situational, and when the crisis passes the issue fades to the background. But for us in Wyoming, two truths illustrate why the issues never fade. Energy is the driver of our state's economy, and the federal government is firmly in the driver's seat on whether Wyoming's energy sector flourishes or falters.

Natural Gas and Oil are Wyoming's Primary Economic Drivers.

Wyoming is the 8th largest crude oil producer in the country, and the 9th largest producer of natural gas. This level of production provides high paying careers for more than 19,000 men and women in our state; supports a way of life for every single Wyoming citizen no matter their job as the economic activity from the oil and gas industry buoys the entire state; and enough tax revenue to subsidize every man, woman and child in Wyoming by more \$2,500 each.

In 2022, the oil and natural gas industry provided over \$2.34 billion in tax revenue to Wyoming. Wyoming is a small state with a small budget. \$2.34 billion is 67% of our state's two-year general fund appropriations of approximately \$3.5 billion. Last year the oil and gas industry provided over \$1.1 billion in funding to K-12 education, nearly \$200 million to Wyoming's local communities, \$177 million to public infrastructure projects, and added \$170 million to our state's permanent investment funds that ensure Wyoming citizens pay no state income tax and among the lowest property tax in the nation.

Every credible projection of global demand forecasts an ever-increasing appetite for energy. Despite rapid deployment of other sources, oil and natural gas will remain the major source of energy for many decades to come. While there are some who would like to force a faster transition by fiat and attempt to minimize the human impact of doing so by calling for a "just

transition,” there simply is no industry or government program that can substitute for the contribution to Wyoming from our natural gas and oil industry.

Federal Leasing Process is Unpredictable and Expensive

Nearly three quarters of Wyoming’s oil and gas projects include federally managed minerals. This presents challenges and delays to production that do not exist in private mineral states. The Inflation Reduction Act (IRA) made leasing federal minerals more expensive across the board, further diminishing Wyoming’s competitiveness. Unfortunately, that increased cost has been accompanied by a decrease in predictability in the leasing process as the Administration has continued to erect barriers to exploration and production.

Nomination of federal parcels for oil and gas leasing, called Expressions of Interest (EOI), are now \$5 an acre to submit. These EOIs are vetted by field offices to determine their availability under the applicable Resource Management Plan (RMP). When acres are determined to be available, the BLM offers them for bid haphazardly, allowing into lease sales seemingly random sections and partial sections that have no logical tie to a project. There are no discernable criteria used to determine which acres, or partial acres, are made available and when. After holding no lease sales at all in 2021, since then the Bureau of Land Management (BLM) has deferred 462 parcels covering over 586,000 acres with limited or no explanation regarding the criteria for deferral, and in contravention of the availability criteria in the RMP. Once placed in deferral limbo – neither available or unavailable for bids – there is no process for releasing them for bids.

Figure 1 shows an actual example of how leasing decisions at the Department of the Interior should stretch credulity.

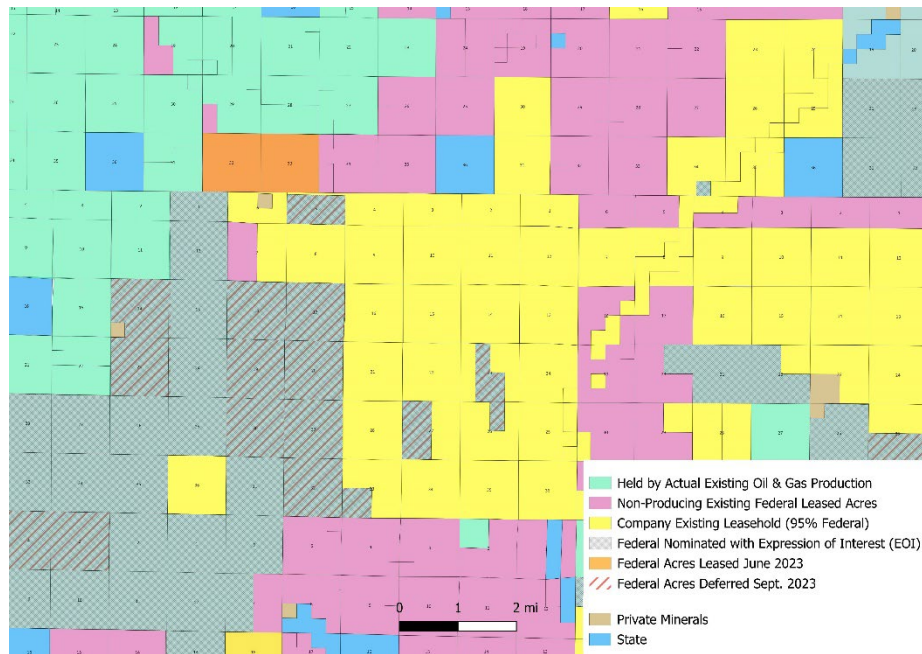


Figure 1: Current lease ownership map in a Wyoming basin. Crosshatch donut holes prevent development in the leased field.

Apart from the crosshatch areas that have been nominated for leasing but deferred by the Bureau of Land Management (BLM), every acre depicted in Figure 1 has already been leased for oil and gas development, including as recently as the June 2023 lease sale. Oil and gas operations exist in other neighboring parcels. Yet, the BLM deferred in the upcoming September lease sale the crosshatch acres. For the company that has leased the acres depicted in yellow, this decision is particularly egregious. What compelling reason exists to defer the donut holes in an already leased section that doesn't exist elsewhere in the section, or that could not be mitigated with horizontal drilling techniques? The BLM has denied a request to offer those acres for lease with a stipulation that there be no surface occupancy. Neither has it outlined a process for what mitigation steps could be taken to release those acres for bidding. Examples like this exist all over Wyoming, and often explain why exploration companies must lease and hold substantial acres in order to create a project area that can support an economical drilling program.

Even at the end of a properly executed lease sale, the BLM sometimes fails to issue the leases. Nominated, offered, and legally purchased leases made available in Q4 of 2020 totaling 165,753 acres and earning a bonus payment of over \$6 million to the federal government have never been issued by the agency and likely never will absent a court order to do so. This type of uncertainty created by the federal government drives away investment and increases the costs to consumers of necessary energy resources.

Federal Permits Must be Issued in a Timely Manner, and Should be Limited to Significant Federal Nexus

Once leases are secured operators must then undergo lengthy and expensive work to meet all the requirements under the lease to earn a permit to drill. Permits are an essential component of drilling programs of any size and serve as the primary official conduit of information flow between the operator and the BLM. They are not a one and done document. Requests from the operator and approvals from the BLM are ongoing throughout the project. Efficient and timely approval of initial permits and changes to permit terms are crucial for the day-to-day operations of a natural gas and oil project. Disruptions in permitting can cripple projects and set investment back years.

The BLM's performance on permit issuance has suffered in recent years as processing times increased 124% since 2018, rising from 121 days to 271 days. After this long wait, routine changes to permits that do nothing to alter the underlying environmental analysis but are essential to successful drilling programs are now routinely denied. Worse, the BLM is, on its own volition, withholding permits on acreage subject to litigation, even if the court has not enjoined the issuance of permits or other actions. From 2015 to 2022, 18 lease sales have been litigated in Wyoming, encompassing over 2.1 million acres. On most of these acres, the BLM is self-enjoining from issuing permit approvals.

Meanwhile, the specter of adding more acreage to federal control looms as the agency and others look to expand the reach of federal permitting requirements to private and state lands. The so-called fee/fee/fed scenario (see Figure 2) is common in Wyoming. Clear Congressional direction is necessary to ensure that the challenges of permitting are not foisted on private landowners even when their surface acreage is miles away from federal land or minerals.

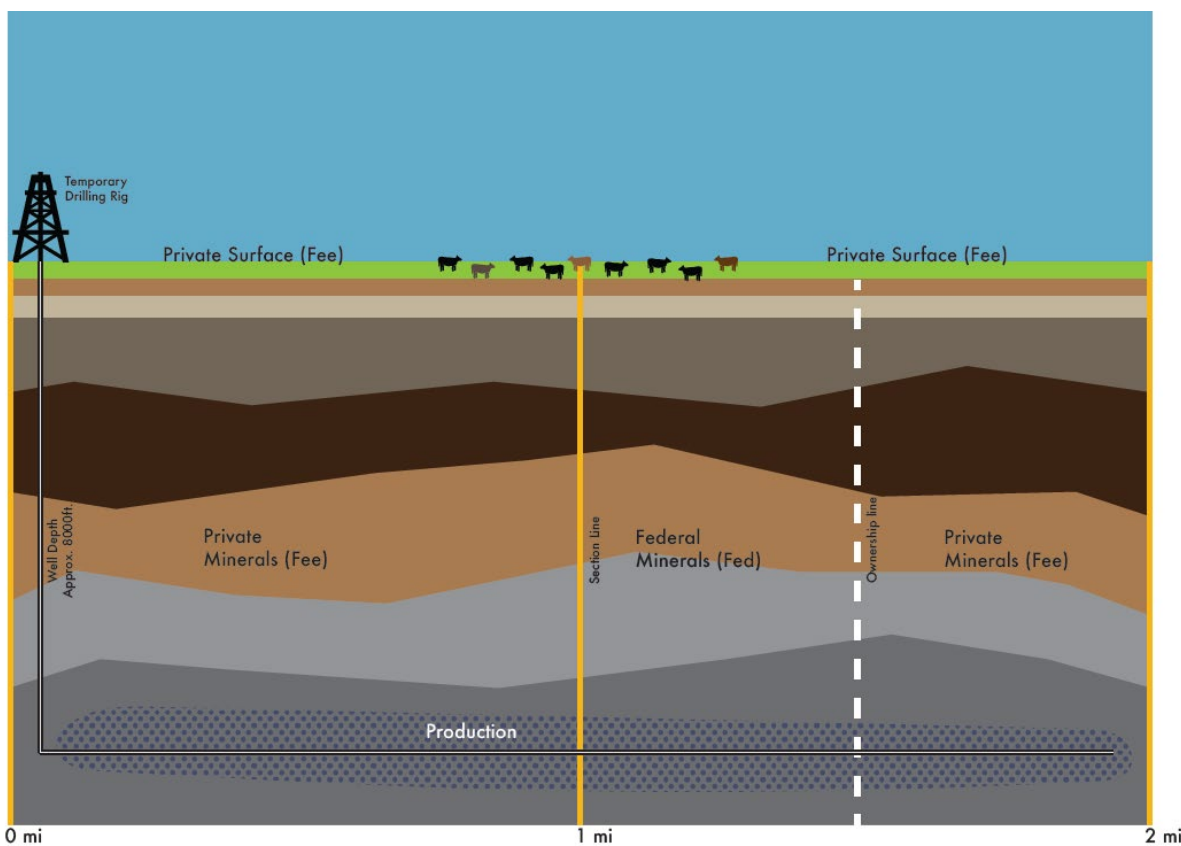


Figure 2: Fee/Fee/Fed scenario. A temporary drilling rig is located on privately owned surface, drills into privately owned minerals, then laterally into federally owned minerals and another privately owned parcel. The federal government owns none of the surface, either at the drilling rig, or above the wellbore.

Litigation Reform is Critical to Successful Leasing and Permitting

The BLM's unilateral decision to withhold permits on millions of acres absent a court order is unprecedented and severely limits economic growth in my state, but it is understandable in one sense: the agency has an extreme bunker mentality resulting from the onslaught of litigation on their every decision approving human activity. RMP updates or amendments, National Environmental Policy Act (NEPA) decisions, permit conditions of approval, wildlife timing stipulations, federal land territorial jurisdiction, emissions analysis, and so much more are all subject to protests and litigation.

The recently completed RMP amendment in Converse County, Wyoming is a prime example. Cleverly crafted with meticulous effort and stakeholder collaboration, this planning document took nearly 7 years to prepare. It provides for careful protection of wildlife while also ensuring economic development can occur. It is the type of professional creativity that should earn plaudits and serve as an example to federal employees looking to make a real difference in meeting a multiple use objective. Instead, after inexplicably waiting for two years to file their lawsuit, notorious activist litigators are now seeking to overturn the amended plan. The message this sends to BLM employees is to do nothing because hard work and creativity will be challenged anyway.

Access to the judicial system is crucial for our system of governance. Sadly, in the realm of natural resource law we have lost the plot because accessing the courts is no longer about correcting injustice, it is about bypassing Congress to create and enact policy outside of the crucible of elected representative debate. As the Article I branch of government it is Congress' primary responsibility to set our national policy and direct the Executive's actions to implement it. Recent Congressional attention on the paralytic state of permitting energy and infrastructure projects is encouraging, but the job is not complete. Only Congress can free the BLM from the court-ordered, or self-imposed, shackles that bind it.

Recommendations

To build on the helpful work enacted in the Fiscal Responsibility Act of 2023, we ask that you prioritize additional statutory changes that improve predictability and reliability for federal land energy development.

Specifically, this committee should advance, and Congress should pass:

- Clear and concise language regarding the timing of lease sales on acres determined to be available under an RMP, and that offered leases correlate to industry nominated parcels in states and field offices at every sale.
- Restrictions on BLM's authority to defer nominated acres when doing so is contrary to the relevant RMP, and direction for the agency to establish a clear process and timeline for deferred acres to be made available for bid at a future time.
- Language that settles the question of decision-making and management control in favor of private and state landowners when the federal nexus is limited to the subsurface mineral estate.
- Requirements that the issuance of permits and sundries following legally completed lease sales cannot be halted because of litigation if the court has not by order enjoined the issuance of permits.
- Reasonable timing requirements both on initial challenges to BLM final decisions, and on the BLM to complete court ordered analysis in a timely fashion.
- Reform legislation that removes taxpayer funded financial incentives to litigate like under the Equal Access to Justice Act.
- Rescission of Inflation Reduction Act language that eliminated the ability for explorers to find new reserves (so-called noncompetitive leases).

The good news is most of these issues are already covered by language in the SPUR Act introduced by Ranking Member Barrasso. We ask that this committee take up that legislation as soon as possible. It, combined with the work already done on NEPA timelines and other permitting reforms would restore faith in the process of public lands energy development. We sincerely hope you do not let this opportunity of bipartisan agreement on permitting pass you by.