Testimony Before the House Committee on Natural Resources
Unleashing America's Energy and Mineral Potential

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Chairman Westerman and Ranking Member Grijalva, thank you for the opportunity to testify today. Western Energy Alliance represents about 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fourteen employees.

In the West, oil and natural gas resources are inextricably bound to federal public lands, and therefore, to the men and women of the industry who work there. As much as we would like to avoid public lands because of their extensive red tape and time-consuming process, it is nearly impossible to develop in the West without touching some federal lands and/or minerals. Even when we try to site oil and natural gas operations on private, state, or tribal lands, the interlocking land and mineral ownership means that just about every project in the West will involve a federal lease, right-of-way, and/or permit.

With that attachment to the land, we take public lands stewardship very seriously. We're proud that oil and natural gas on federal and tribal lands is produced sustainably and furthers the goals of environmental justice. We've met every legitimate environmental challenge and continue to innovate to do even better. We've reduced the footprint on federal lands by up to 70% through advances in horizontal drilling and hydraulic fracturing.[1] We continue to produce more energy from less public lands. The amount of acreage under lease was at an all-time historic low when we hit historic high production on federal lands in 2019.

I will be discussing three main themes today: overregulation, NEPA delays, and corrections to the Inflation Reduction Act.

Policy Obstacles and Overregulation

Because of the obligation to protect the land, the federal onshore oil and natural gas program is a highly complex one. Of course federal lands should carry more regulation and process. They're owned by all Americans and the federal government, working with producers, has a duty to protect them. But the energy underneath the surface is also owned by all Americans. When federal regulation and process becomes unbalanced with the goal of producing the energy the Interior Department manages on behalf of all Americans, then we have a situation where the federal government is purposefully preventing federal production, resulting in higher prices for consumers, more foreign imports, less energy security, and less exports for our allies in Europe and Asia.

We know we need more energy. The administration admitted that nearly a year ago when, after the invasion of Ukraine, the White House tried to blame our producers for not developing on,

[1] "Oil and Gas Impacts on Wyoming's Sagegrouse: Summarizing the Past and Predicting the Foreseeable Future," *Human-Wildlife Interactions, Vol. 8 : Iss. 2 , Article 15.*, Dave H. Applegate, Nick L. Owens, 2014.

interchangeably, 9,000 leases and/or permits.[2] The president says he wants more American production, but where he has the most control, on tribal and federal public lands, his Interior Department is making it more difficult to do so at every turn and with every policy decision. From detailed, in-the-weeds policies on how to manage leases and permits to major rules on waste prevention and decisions on when and where to lease, every opportunity is taken to throw out more red tape obstacles and process.

On the big picture, Interior is proceeding with over three quarters of a million acres of land withdrawals around Chaco Culture National Historic Park in New Mexico, the Thompson Divide in Colorado, and the Superior National Forest in Minnesota. The Chaco withdrawal would prevent Navajo mineral owners from developing their energy and providing for their families, while the Superior withdrawal prevents the development of critical minerals for wind and solar energy and battery storage. Congress should exercise its oversight obligations with respect to these large land withdrawals.

Regarding the proposed waste prevention rule, we appreciate that it is better than the 2016 rule that Western Energy Alliance and the Independent Petroleum Association along with Wyoming and North Dakota overturned. However, it still suffers from some of the same basic problems, most notably, as with the 2016 rule, it exceeds BLM's jurisdiction and intrudes on the authority of EPA and state air quality agencies by attempting to regulate air quality in the name of preventing waste. Like the 2016 rule, the costs of the rule exceed its waste prevention benefits and can only be viewed as having overall net benefits if the air quality and climate co-benefits are included in the calculation. But the Wyoming court aleady held that air quality is outside BLM's jurisdiction and that such co-benefits cannot be the primary justification for the rule. We encourage Congress to keep an eye on this rule as it is becomes finalized later this year.

Regarding more specific policy changes, although with far-reaching implications, a series of policies released in November requires producers to justify any permit extension request and lease suspension with detailed justification, even on a quarterly basis. A permit extension to four years, which used to be routine, is now dribbled out every quarter, requiring paper pushing by both the company and the government. A lease suspension, which usually is related to the fact that the government or litigation hold up the operator from moving forward with development, must now be justified every year rather than until the obstacle is breached. These individually may not seem significant, but every bureaucratic cut can bring a project closer to death. It is the inherent government inefficiencies themselves that cause operators to build large inventories of permits and leases, so why does the government want to introduce more inefficiencies in the process?

Another example is the nearly unlimited discretion BLM reserves for itself on every lease, permit, and any other oil and natural gas decision on federal lands. There is already a long, drawn-out land use planning process that takes years to complete. I have never seen a Resource Management Plan (RMP) completed by any administration that does not lock away more land from oil and natural gas leasing and that does not put more restrictions on development. Yet BLM just released policy that gives itself discretion to add yet more restrictions on every lease and permit over and above what is specified in the RMPs. This self-assignment of unlimited discretion is contrary to the Federal Land Policy and Management Act (FLPMA) and therefore, arbitrary and capricious.

[2] Please see our position paper on the 9,000 leases/permits, which discusses the complexity behind permit and lease utilization and is attached to this testimony.

I appreciate the committee's oversight of the Interior Department today and how the committee is drawing attention to the administration's additional red tape meant to constrain oil and natural gas and deliver on the President's on-again, off-again statements about ending federal oil.[3] I just don't think my members should get blamed for not developing on those 9,000 leases and/or permits that the White House likes to bring up. We want to move forward with delivering more energy and bringing down prices, but more Interior Department obstacles are not the way to achieve those goals. I encourage the committee to consider legislation that would reassert the obligations already found in the Mineral Leasing Act (such as the obligation to hold quarterly lease sales in all producing states) and the Energy Policy Act of 2005 (such as to ensure APDs are processed expeditiously, especially for standard permits.) These obligations are routinely ignored or the department interprets them so broadly that they no longer serve Congress' original intent.

Judges are often struggling to rule on the plain language of the laws passed by Congress and there is often not enough in the record to help them determine the intent. Judges can often be swayed by plaintiffs' overly broad interpretation of the discretion Interior does have because of ambiguities in the record and the text of the law itself. In addition to activist judges focused on predetermined outcomes divorced from the simple text of the law, we have also been in front of very conscientious judges honestly struggling to interpret the law, with some ambiguous rulings as a result.

One example was in the District Court for Wyoming. The judge struggled with the lack of clarity of what the Mineral Leasing Act means by lands available for leasing. He arrived at a conclusion that lands are not available for leasing if BLM has not completed NEPA for them. The effect would be to give BLM a get-out-of-jail-free card on having to do any leasing if it simply cannot get through the bureaucratic NEPA process. Anything this committee can do to clarify when and under what conditions leasing shall occur would be much appreciated. First and foremost, to prevent another Biden leasing ban, would be to clarify that the Mineral Leasing Act's requirement that the Interior Secretary must hold quarterly lease sales where lands are available, meaning lands designated as available for leasing in a current RMP. . Congress should clarify that quarterly means quarterly, and that BLM has the obligation to get through the NEPA process and meet those quarterly deadlines. It would also be worthwhile for Congress to clarify FLPMA's requirement for BLM to make land use management decisions based on the current RMP. BLM routinely holds up leasing in an area because its RMP is being updated, but RMP updates and supplements take years to complete

National Environmental Policy Act (NEPA)

All Americans understand the effects of NEPA, even if they can't spell it. They understand that our infrastructure is sub-par in many places because projects to build or repair roads and bridges take too long and are held up in government red tape. Long, drawn-out NEPA analyses have long been the bane of oil and natural gas projects on federal lands, but Americans are now seeing how wind and solar energy and their mineral feedstock projects are facing the same NEPA and associated litigation challenges. Congress must do more to ensure that NEPA can be done in a reasonable and timely

[3] For example during his presidential campaign, he promised "no federal oil." Just before last November's election, he again promised "no more drilling." Contrast that with various statements blaming producers for not developing on 9,000 leases/permits.

manner. Yet this Administration overturned the sensible and limited 2020 NEPA rule that simply clarified the scope of NEPA analysis is to focus on actual, not hypothetical, impacts of a project and limited the length and timeframes for completing NEPA. Congress should consider codifying those sensible sideboards to NEPA.

When it comes to oil and natural gas projects, Congress should clarify when NEPA is necessary. Too often BLM requires redundant NEPA, such as for additional wells on existing pads or wells drilled from adjacent nonfederal lands that touch a minority of federal minerals. When reinstating lapsed leases, which usually result from simple administrative error, BLM requires new lengthy NEPA. Further Congress should clarify the intent of NEPA is to analyze the actual impacts of a development project, including with respect to greenhouse gas (GHG) emissions, and not far-flung impacts from the distribution to and consumption of the energy by the end-use consumer. Likewise, the Council of Environmental Quality (CEQ) is moving forward with new guidance on conducting GHG and climate change analysis under NEPA, which Congress should closely scrutinize. CEQ is likely to find authority to regulate both, but Congress has granted the Executive Branch such authority.

Courts are struggling with the extent of GHG analysis necessary for oil and natural gas projects. We're in court defending about 6,000 leases that have been sent back to BLM for yet more GHG NEPA analysis. Development and production cannot take place on most of these leases in the meantime. Just last week, the Tenth Circuit ruled that BLM failed to do a carbon budget analysis in its NEPA for 199 permits in New Mexico. Yet in another court, the D.C. District Court, Western Energy Alliance convinced the judge that BLM does not have to do a carbon budget analysis or use the Social Cost of Carbon in cases involving thousands of leases. Congress has passed no law requiring a carbon budget or the SCC, yet it is being shoehorned in through NEPA. Congress needs to clarify to the courts the boundaries of NEPA.

Inflation Reduction Act Effects

My final main theme is the application of the Inflation Reduction Act. Ironically, Senator Manchin gave us a pretty big gift in one sense, leaving aside for now the many ways that bill increased costs on American energy and ensured energy inflation continues into the future. By tying wind and solar permitting to oil and natural gas leasing, he imposed a pretty ingenious application of all-of-the-above energy on an administration that clearly would not lease otherwise. BLM is now moving forward with leasing, however tentatively, on the basis of IRA alone, in contravention of the Mineral Leasing Act.

The problem is, since IRA was negotiated behind closed doors, it was not informed by groups like Western Energy Alliance, our members, BLM, and other public lands experts. As such, the language is full of holes and the administration is interpreting how to meet the bare minimum leased acreage requirement in IRA while circumventing the spirit and even the letter of the law. For example, BLM plans to meet the requirement to offer 50% of the acreage nominated (as identified by EOI - Expressions of Interest) by counting lands that are considered in the process, even if much of that acreage is not actually offered for sale. For example, If BLM receives EOIs for 200,000 acres and considers 100,000 acres during the leasing NEPA process but then decides to defer 50,000 acres under its broad interpretation of discretion (see above), BLM will consider the 50% IRA threshold as having been met. Any plain language reading of IRA would conclude that 100,000 must be offered at sale before wind and solar permits can be issued.

Another example of the problems with IRA is the new fee of $5 per acre on lease nominations, known as EOIs. Leaving aside the fact that it is one of many new taxes and fees imposed by IRA to solidify energy inflation, there are practical implications. Because it often takes the Interior Department several years to offer nominated acreage for sale, requiring the EOI fee to be paid at time of nomination results in the government holding millions of dollars of capital in a nonproductive capacity. Further, the government regularly neglects to offer nominated acreage for sale at all. It is inherently inequitable for the government to take money for a stated purpose and then never deliver on it, with no mechanism in IRA for a refund. Equally problematic is the fact that often companies other than the nominating company ultimately prevail as the highest bidder at auction. It is likewise an aberration for one company to pay the nomination expenses of another.

To rectify the situation, I urge Congress to clarify the EOI fee by specifying that it be paid by the winning bidder at the time the acreage is offered at auction. To meet the original intent of the EOI fee, which is to guard against too much acreage being nominated without sufficient interest and to cover the costs of leasing, the EOI fee should be paid by the nominating party in the event the offered parcel receives no bids. Either way, the government collects the fee at the time of sale.

I also urge Congress to drop the methane fee in IRA. The Environmental Protection Agency (EPA) and the states are moving forward with methane regulation. IRA imposed an unprecedented tax on a “pollutant” that is otherwise controlled through EPA Clean Air Act (CAA) regulation. All other CAA application for all other industries involve controlling emissions, not taxing them. Because of the difficulties of measuring the small leaks of methane emissions from wellsite equipment, the imposition of the methane tax becomes a tax on natural gas production. Since EPA is updating its methane regulations, Congress should repeal this tax and let normal CAA regulation proceed.

There are many other ideas we have at Western Energy Alliance to return the federal onshore oil and natural gas system into balance. I look forward to questioning to explore some of those details.