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**Testimony of Bruce Baizel before the House Subcommittee on Energy and Mineral Resources on the “Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2019”  
June 20, 2019**

**Introduction**

Mr. Chairman, Ranking Member Gosar, Members of the Subcommittee, thank you for the opportunity to testify before you on the Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2019. My name is Bruce Baizel, I’m the Energy Program Director with Earthworks. We are a nonprofit organization dedicated to protecting communities and the environment from impacts of oil and gas development while seeking a just and rapid transition to renewable energy.

Our Oil and Gas Accountability Project (OGAP) has worked in the West since 1998. In the early years, we specialized in protecting surface owners, mineral rights owners, and communities primarily facing nearby oil, gas, and coal bed methane operations. Since then, the proliferation of directional drilling and hydraulic fracturing operations has encroached upon additional communities impacting our health, climate, wildlife, air, water, and property.

**Commons Sense Reforms Provide Fairness in BLM’s Leasing Procedures**

This bill’s reforms to BLM’s leasing procedures provide the public fairness while fulfilling market demand. For each state, this legislation lowers the annual lease sale frequency to three or fewer, and rotates sales so that each BLM field office sells leases at most once per year.

In some cases, a more responsible lease sale frequency may help prevent considerable delays. Fewer lease sales will provide BLM some relief from oil and gas industry pressure to rush additional acreage for lease. Rushed decisions can lead to poor decisions causing greater delay. In the San Juan Basin, and specifically the Chaco Canyon area, BLM’s inadequate evaluation of lands under lease consideration and failure to conduct appropriate consultations with the Native American tribes and communities has resulted in conflict and delays.

Fewer lease sales may help alleviate the glut of acreage already leased to industry but not developed. According to The Wilderness Society, of the 36 million acres of public lands currently under oil and gas lease, only 12.6 million (35%) are in production.<sup>1</sup> Also, a more reasoned leasing pace would seem more reflective of market conditions in the United States for gas. Only recently, the glut of gas in West Texas resulted in a net

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negative price for gas<sup>2</sup> - that is, the operators had to pay to have the gas taken off of their hands.

Finally, some parcels do not generate a large demand from the oil and gas industry. This bill ends non-competitive bidding which may generate a fairer return to the public.

### **Transparency and Landowner Protections**

The Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2019 also helps deliver a more transparent and responsive oil and gas leasing process.

In particular, this bill helps deliver fairness to land surface owners. This begins by notifying them at least 45 days in advance of lease sales underneath their property. After sale, BLM shares with the surface owner the lessee's identity and stays in touch as to additional lessee requests or as BLM decisions arise.

Before exploration or drilling begins under this bill, the lessee and the surface owner must reach a surface use agreement that addresses timing, location, bonding, reclamation, compensation, and type of exploration and drilling occurring on the surface owner's land. This is a necessary change and is consistent with current practice in Colorado<sup>3</sup> and New Mexico<sup>4</sup> - both significant oil and gas producing states.

We helped draft and negotiate provisions very similar to the requirements of this bill in each of these states in 2007 because industry's voluntary "Good Neighbor" policies completely failed to prevent conflict. More than a decade of experience since has shown that these basic surface owner notice and fairness protections work. Moreover, industry players, such as BP in Colorado, and the cattle growers in New Mexico were integrally involved in the negotiation of these state requirements. So bringing what is standard practice in the states to the BLM context is not a big change, and is more than timely.

If the surface owner and lessee can not agree and if arbitration fails to resolve disputes, this bill still requires the BLM to provide landowners opportunities to comment on plans of operations and participate in bonding determinations and onsite inspections.

BLM notifies land owners, the general public and holders of special recreation permits at least 45 days before a land is put up for leasing and at least 30 days before approving drilling permits, granting waivers, exceptions, or modifications. The notices are posted to the local BLM office and on the website. Lease information will also be available on a public website. This information includes the identity of the people who have been a lessee or an operator, notices of any lease transfer, and notices of suspension of operations or production.

### **Environmental Review in Oil and Gas Leasing Procedures**



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Just as our Government’s leasing decisions of public minerals should require fairness for private surface owners, so too do these decisions need adequate planning to protect our air, water, health, wildlife, and climate. Sections 5 and 6 of this bill embrace thoughtful planning and meaningful environmental reviews of our Government’s oil and gas leasing decisions.

We participated in an MLP process for basin wide planning in southwest Colorado over a period of time, as did many recreation, farming, wildlife and local government interests. This process allowed for consideration of other factors, beyond industry interests, in the specific areas where all stakeholders work and live. Unfortunately, BLM chose to terminate the process despite a wide consensus of the value of moving ahead with an MLP for the area. This process would have been the logical place to address broader cumulative climate issues. Such landscape and community specific review, consistent with the National Environmental Policy Act (NEPA), will require BLM to weigh direct, indirect, and cumulative impacts, including climate, and consider alternatives.

### **BLM must fully consider climate in NEPA reviews for oil and gas leases.**

This reform bill codifies an important instruction to BLM to provide the public input and environmental review NEPA requires. This legislation acknowledges the reality that the oil and gas industry is a major contributor to greenhouse gas (GHG) emissions. Therefore, NEPA reviews must include lifecycle analysis of cumulative greenhouse gas emissions considering reasonably foreseeable emissions scenarios. Some courts are already recognizing this trend. If BLM fails to recognize this trend, they increase the risk of more lease sale delays.

In, *WildEarth Guardians v. Zinke*<sup>5</sup>, the Court ruled that BLM violated NEPA by not thoroughly considering climate change in their analysis when authorizing oil and gas leases of federal land. The court remanded nine Environmental Assessments (EAs) and Findings of No Significant Impacts (FONSIs) connected with the lease sales challenged to BLM so they can fulfill NEPA’s requirements.

The court wrote NEPA, “require[s] that BLM quantify the emissions from each leasing decision—past, present, or reasonably foreseeable—and compare those emissions to regional and national emissions, setting forth with reasonable specificity the cumulative effect of the leasing decision at issue. To the extent other BLM actions in the region—such as other lease sales—are reasonably foreseeable when an EA is issued, BLM must discuss them as well.”<sup>6</sup>

### **Conclusion**

I appreciate Mr. Levin’s leadership in sponsoring this common sense reform legislation. For truly good neighbors, many of the basic reforms contained herein reflect a common courtesy. These are many of the same reforms oil and gas lessees have operated under in New Mexico and Colorado for more than a decade. However, my



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experience is the oil and gas industry will not generally abide by these courtesies unless forced by statute or regulation.

Instead, the Administration appears eager to sell off some of our nation's most treasured places to oil, gas, and mining interests. Through rollbacks of National Monuments, reconsideration of mineral withdrawals, and pursuit of a so-called "energy dominance" strategy, our Government seems bent on taking public minerals out of public hands and placing them in private industry pockets.

The Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2019 will slow the indiscriminate sell off of our mineral resources, provide transparency, fairness, and protections for our air, water, health, climate, and wildlife resources.

<sup>1</sup> The Wilderness Society, [Open for Business \(and not much else\)](https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf): How public lands management favors the oil and gas industry <https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf>

<sup>2</sup> See Reuters, May 22, 2019, U.S. Natural Gas Prices Turn Negative in Texas Permian Shale Again <https://www.reuters.com/article/us-usa-natgas-waha-negative/u-s-natural-gas-prices-turn-negative-in-texas-permian-shale-again-idUSKCN1SS1GC>

<sup>3</sup> C.R.S. 24-60-127

<sup>4</sup> Section 70-12-5 NMSA 1978, <<https://laws.nmonesource.com/w/nmos/Chapter-70-NMSA-1978#!b/70-12-5>>

<sup>5</sup> 2019 U.S. Dist. LEXIS 44995

<sup>6</sup> Ibid.

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