

Written Testimony of

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Oil and Gas Development: Impacts of Business-as-Usual on
The Climate and Public Health

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Good afternoon Chairman Lowenthal, Ranking Member Gosar, and Members of the Subcommittee.

My name is David J. Hayes. I am the Executive Director of the State Energy & Environmental Impact Center at the NYU School of Law. Pertinent to my testimony today, I served as the Deputy Secretary and Chief Operating Officer of the U.S. Department of the Interior for President Obama from 2009 through 2013. I also served as the Interior Deputy Secretary for President Clinton from 1999 to 2001 and, before that, as Counselor to Interior Secretary Bruce Babbitt from 1997 to 1999. I am appearing here today in my personal capacity.

I appreciate the opportunity to testify today on climate change, our public lands, and oil and gas development.

Several key observations guide my testimony today.

First, the federal government has a solemn responsibility to act as a good steward for our nation's magnificent public lands and its land, water, cultural and wildlife resources.

The federal government has a trust obligation to manage its public lands and resources for the benefit of all Americans, including future generations. As Professor and former Interior Solicitor John Leshy summarized, the Secretary of the Interior has the responsibility to “. . . manage public lands to serve ‘the long-term needs of future generations’ and to ‘prevent unnecessary or undue degradation,’ to ‘ensure’ that the ‘environmental health’ of national wildlife refuges is maintained, and to leave national parks ‘unimpaired for the enjoyment of future generations.’”¹

Second, the climate crisis presents the most significant challenge that our government has ever faced as trustee for our natural resources. Damage from climate change to our natural resources already is widespread and serious, and it is only going to get worse.

The evidence of climate change-induced damage to our public lands (and state and private lands) is right in front of our eyes. Prolonged droughts are stressing water supplies throughout the west; precipitation falling as rain rather than snow has increased flooding and reduced snow pack; tree-killing beetles are flourishing through warm winters, wiping out millions of acres of forest lands; longer fire seasons combined with drier and hotter conditions are fueling historically destructive wildfires; the Alaskan coast is eroding at record rates due to the loss of winter sea ice protection; in the lower 48, extreme weather, wind and flooding events and related storm surges are destroying vital coastal and inland infrastructure; warmer rivers are hitting salmon runs and trout fisheries hard; and wildlife of all types are coping with climate-related disruptions to their habitats, migration patterns and feeding behaviors.²

Third, it is both unlawful and irresponsible for the administration's climate deniers and climate dismissers to adopt a "business as usual" approach to managing our public lands in the face of climate change. Climate change must be at the top of the Secretary of the Interior and his cabinet colleagues' priority list.

Although some in the administration have claimed that they have no special responsibility to address climate change impacts on public lands, the law tells us otherwise. As noted above, our land management laws explicitly call for active management against public lands threats, particularly those like climate change that implicate the interests of future generations.

To further illustrate this point, bipartisan Congressional action has created and funded a variety of specific programs and strategies to assist Interior Department officials and other federal land managers in addressing the climate crisis. For example, through the SECURE Water Act of 2009, Congress acknowledged that "climate change poses a significant challenge to the protection and use of the water resources of the United States" and that "federal agencies that conduct water management and related activities have a responsibility . . . to develop strategies . . . to help ensure that the long-term water resources management of the United States is sustainable and will ensure sustainable quantities of water."

The Bureau's report back to Congress under the Act reconfirmed these Congressional findings, noting that climate change is "a growing risk to Western water management" and concluding that "warmer temperatures, changes to precipitation, snowpack and the timing and quality of streamflow runoff across major river basins [are] threats to water sustainability."³

Given these realities, it is apparent that the Secretary of the Interior, as the water master of the Colorado River, must acknowledge and address the impacts that climate change is having on the Colorado River Basin. 40 million Americans are relying on him to do so.

As discussed throughout this testimony, Congress has enacted other laws that obligate the Interior Department to address negative impacts that climate change is having on federal lands and infrastructure. Now is the time to expand and strengthen those instructions, particularly given the current administration's refusal to acknowledge, much less act on, the climate crisis.

Fourth, the federal government's game plan to address climate change must address both climate adaptation and climate mitigation strategies. In particular, Congress should insist that the Interior Department and other relevant cabinet agencies prioritize the development of science-guided adaptation strategies and deploy carbon management strategies for public lands.

I. Science-guided adaptation strategies.

The anti-climate shackles must come off government scientists. Federal land, water and wildlife managers need the benefit of the best science to assess resource vulnerabilities and to shape sound adaptive management responses – both for the federal government, and for state, local, tribal, and private land, water and wildlife managers. It is shameful that top scientists at the Interior Department (e.g. United States Geological Survey), the Department of Agriculture (e.g. the U.S. Forest Service), the Department of Commerce (e.g. NOAA), NASA, and other agencies are not being mobilized to do this important work, and to broadly share their results.

The skeletal structure to effectively translate scientific information into effective adaptation strategies for federal and non-federal land managers was put in place by the previous administration, with Congressional assistance. It has not been fully deconstructed by the current administration. Congress should revive and strengthen that structure.

Congress began putting a climate adaptation architecture in place for the Interior Department in 2008 when it established the "National Climate Change and Wildlife Science Center." That legislation gave Interior's United States Geological Survey (USGS) the responsibility "to deliver science to help fish, wildlife, water, land, and people adapt to a changing climate."⁴

In my role as Deputy Secretary, I was personally involved in working with the Congress to implement this new program. With Congress' help, we competitively set up and funded eight regional Climate Science Centers around the country.⁵ The Climate Science Centers formed a

unique public/private partnership between government and leading university scientists who shared the goal of providing public lands managers with practical scientific information that would inform how best to manage public resources in a changing climate.

The Climate Science Centers, in turn, work with a network of Landscape Conservation Cooperatives that Congress has funded to enable the Interior Department to “develop and provide integrated science-based information about the implications of climate change and other stressors” and, based on such information, help inform responsive conservation strategies that take into account “the implications of current and future environmental stressors.”⁶

Congress also has supported other public lands-related resilience and adaptation initiatives on a bipartisan basis following extreme weather disasters that have harmed public landholdings.

Following Hurricane Sandy’s damage of federal facilities operated by the National Park Service and U.S. Fish & Wildlife Service (including to the Statue of Liberty and coastal National Wildlife Refuges), for example, Congress authorized and appropriated \$100 million to the Department of the Interior to fund “projects that promote resilient natural systems while enhancing green spaces and wildlife habitat in needed areas along the Sandy-impacted landscape, enabling coastal communities and key habitats to withstand the impacts of future storms.”⁷

II. Deploying carbon management strategies.

a. Enhancing natural biological carbon sequestration.

Natural landscapes play a key role in the carbon cycle by removing carbon from the air through photosynthesis. As a result, our National Parks, National Forests, National Wildlife Refuges, National Monuments and other public lands – which together comprise a full third of our nation’s landmass – already are playing a key role in offsetting carbon emissions from fossil fuel combustion.

Congress has recognized the important role that natural biological systems play in the carbon cycle. Section 712 of the Energy Independence and Security Act of 2007, for example, directed the Secretary of the Interior to complete a national assessment of the quantity of carbon stored in and released from terrestrial ecosystems, and to evaluate the annual flux of “greenhouses gases in and out of terrestrial ecosystems.”

The subsequent work completed by the USGS confirmed the enormous potential for forests, rangelands, wetlands, and other natural resources to biologically sequester and mitigate harmful anthropogenic greenhouse gas emissions.⁸ These results are consistent with the growing drumbeat of messages from scientists and economists that investing in carbon-attentive management and restoration activities can cost-effectively increase the carbon uptake of our natural landscapes.⁹

We should develop and implement a national plan to enhance biological carbon sequestration as applied to both our public lands and, in cooperation with the agricultural community, to our working lands as well.

A biological carbon sequestration strategy can and should be coupled with a broader-based conservation strategy that sets aside additional public lands for conservation. Thoughtful advocates are making a strong case for conserving a third of our total lands globally, and nationally.¹⁰ A bold conservation goal like this takes a refreshing, holistic approach to conservation that would reap multiple co-benefits associated with land conservation including climate-related benefits (such as biological carbon sequestration and enhanced wildlife and ecosystem adaptation opportunities) as well as clean water benefits that flow from watershed protections, increased recreational opportunities, and the like.

b. Siting clean energy projects on public lands.

Congress also has recognized that the public lands should play a key role in transitioning to a clean energy economy. When developing what would become the Energy Policy Act of 2005, for example, Congress recognized that virtually no renewable energy had been developed on public lands, despite world-class solar resources on southwestern public lands and wind resources on public lands in the inter-mountain west and plains states, and off the Atlantic Coast.

Accordingly, in Section 211 of the Act, Congress challenged the Interior Department to prioritize the development of clean, renewable energy by calling for the deployment of 10,000 megawatts of renewable power from the public lands within 10 years.

Interior Secretary Ken Salazar and our team took up the challenge in the previous administration. We stood up the first robust public lands renewable energy program in history and blew through Congress' 10,000 MW goal three years early, demonstrating the viability of building utility-scale solar and wind projects on public lands and in offshore waters, and doing

so by using modern permitting techniques that produced final decisions in record time, while delivering environmentally sound results.¹¹

The current administration has abandoned siting clean energy on our public lands as a priority and has turned back toward fossil fuels as the foundation of its so-called “energy dominance” agenda. Major clean energy project approvals have slowed to a trickle.

In the FAST Act, Congress codified a number of the siting and permitting reforms that the previous administration developed and put in place to facilitate the siting and permitting of renewable energy projects on the public lands.¹² More can be done, however, to legislatively endorse the tools that enabled the Interior Department to achieve its remarkable success in siting clean energy projects on public lands, including the landscape level planning activities that underpin the identification of “go” renewable development areas (“solar energy zones” and “wind energy areas”) – land use designations that reduce environmental conflicts, facilitate mitigation investments that compensate for unavoidable project damage and, more generally, provide a clear pathway for clean energy developers to successfully site new projects.

c. Reducing fossil fuel extraction activities on public lands, adopting a net zero carbon goal for public lands, and addressing community impacts.

The administration’s fossil fuel “energy dominance” agenda has been unbalanced and destructive. It has turned an economically and environmentally sound oil and gas leasing program into an industry-led free for all.

The first rule of any federal oil and gas leasing program on our public lands must be: do not drill for oil and gas in America’s special places. A second, corollary rule is: be certain that the American people are receiving full value for any and all resources extracted from public lands.

The administration is routinely violating both rules. It is rushing headlong to drill for oil in the Arctic National Wildlife Refuge – one of the most remote and pristine natural settings in the world. Honeycombing the Arctic Refuge with dozens of drill pads and hundreds of miles of pipelines would change the Refuge forever, disrupting the migration route of the porcupine caribou herd – the longest of any terrestrial mammal on Earth – and the Alaska Natives who rely on it for their subsistence. Economists also expect any lease sale in the Arctic Refuge to be uneconomic for the industry, and most certainly for the American taxpayer.¹³

The administration also has proposed to open up a vast swath of the offshore Atlantic and Pacific Oceans to oil and gas exploration, despite strong state opposition, the complete absence

of infrastructure to support offshore drilling activity, and potential devastating impacts on strong tourism, recreational and commercial fishing industries.¹⁴

More quietly, but just as perniciously, the administration is unraveling an historic bipartisan agreement spearheaded by western governors and federal and state wildlife managers and scientists to protect millions of acres of key habitat for the greater sage grouse.¹⁵ Sensitive areas that were consensus choices for protection are now being offered for oil and gas leasing.¹⁶

The scale of the administration's reckless sacrifice of sensitive lands for oil and gas drilling is becoming even more apparent as it completes its first spate of revisions to the Resource Management Plans (RMPs) that guide the management of our public lands. Astonishingly, the administration is proposing to remove the protective classification of "Areas of Critical Environmental Concern" on 94% of previously-protected lands in the six RMPs that it is currently processing, opening up millions of sensitive public lands for oil and gas drilling.¹⁷

We have seen this play before. In connection with my confirmation as Deputy Secretary in 2009, I agreed to comprehensively review how the Bush administration had identified 77 controversial parcels for oil and gas drilling in Utah as it headed out the door. Our comprehensive report confirmed that no meaningful planning or review had occurred regarding the appropriateness of oil and gas drilling for many of the offered parcels. The administration had "short-circuited processes that are in place to protect our most precious landscapes," with oil and gas drilling leases offered on the doorstep of National Parks, in areas with no oil and gas infrastructure, with little or no confirmed oil and gas potential, and without regard to strong countervailing recreation and conservation values.¹⁸ The practice was wrong then; it remains wrong today.

The administration's eagerness to lease sensitive lands for oil and gas drilling has been matched only by its willingness to simultaneously violate the second cardinal rule of leasing: do not give away our natural resources.

The administration is gifting valuable taxpayer-owned oil and gas resources to its industry friends. It is leasing millions of acres of public land for oil and gas drilling at \$2 per acre or less. Much of this land will never be utilized by oil and gas companies, effectively removing it from "other valuable uses, including renewable energy, outdoor recreation, or conservation."¹⁹ Also, if and when drilling occurs, the federal government will charge royalty rates below those imposed by state and private landowners.

Compounding the give-away, the Interior Department has tried to spike a royalty reform rule that would stop coal and oil and gas companies from using insider transactions to hide market prices and defraud taxpayers out of royalties owed for removing fossil fuels from public lands. In its latest iteration, Interior attempted to simply repeal the reform rule and allow underpayments of royalties to continue indefinitely. State attorneys general sued the administration, and won. On March 29, a federal court vacated the final rule, finding that it had no legal support.²⁰

Given the multiple dysfunctionalities in today's federal oil and gas leasing program, it is a propitious time for Congress to acknowledge and address the federal government's responsibility to reduce greenhouse gas emissions directly under its control, and account for the carbon pollution that is the inevitable result of its leasing of oil and gas resources on public lands – two fundamental responsibilities that the administration is flaunting.

As for emissions under direct federal control, the Minerals Leasing Act does not permit oil and gas companies to waste valuable methane – a powerful greenhouse gas -- through venting or flaring activities on public lands. Yet the administration has rescinded a rule that would have disallowed that practice. State attorneys general are challenging the rule repeal in court.²¹

The Clean Air Act also disallows oil and gas methane emissions. Again, however, the administration is seeking to roll back emissions restrictions that apply to new oil and gas operations, and it has refused to move forward with any restrictions on current oil and gas operations. State attorneys general have sued.²²

This is an unacceptable state of affairs. Congress should bring the hammer down, making it clear that the federal government must implement its legal responsibilities and reduce greenhouse gas emissions from operations conducted on public lands.

With regard accounting for the carbon pollution that is the result of oil and gas leasing activities, a bipartisan Congress recognized more than a decade ago that the Interior Department should get a handle on the carbon content in domestic coal and oil and gas supplies. Specifically, Section 713 of the Energy Independence and Security Act of 2007 requires the Bureau of Land Management to “maintain records and an inventory regarding the quantity of carbon dioxide stored within federal mineral leaseholds.”

Much more than this, however, needs to be done. As a first step, the federal government should be required to calculate and disclose the anticipated carbon dioxide emissions associated with oil and gas resources from our public lands on both an individual and combined

basis. The environmental and economic implications of this carbon pollution should be fully evaluated, including costs associated with climate change-related impacts on infrastructure. (In that regard, royalties charged for oil and gas extracted from public lands should take into account the cost of carbon damage embedded in the resource. James Stock and I penned an op-ed that made this point with regard to coal; it applies as well to oil and gas.²³)

Future leasing decisions should be dependent upon the results of this comprehensive evaluation, guided by a net zero carbon goal that incentivizes public land activities that increase carbon sequestration and disincentivizes oil and gas leasing activity. Necessary and appropriate oil and gas activity can and should continue on public lands, but it should be counterbalanced with the aggressive deployment of our public lands to tackle the climate crisis. Congress should provide financial resources needed to assist communities in making the shift away from fossil fuel dependence and toward more sustainable economic drivers, including clean energy production and carbon sequestration projects.

Thank you for the opportunity to testify on this important topic. I look forward to responding to your questions.

¹ <https://www.eli.org/vibrant-environment-blog/secretary-bernhardt-says-he-doesnt-have-duty-fight-climate-change-hes-wrong>

² See generally, Fourth National Climate Assessment <https://nca2018.globalchange.gov/>

³ <https://www.usbr.gov/climate/secure/>

⁴ <https://www.usgs.gov/land-resources/climate-adaptation-science-centers/about>

⁵ The current administration has renamed the program, calling it the “Climate Adaptation Science Center.”

⁶ <https://lccnetwork.org/about/about-lccs>

⁷ <https://www.nfwf.org/whoware/mediacenter/pr/Pages/Department-of-the-Interior-and-NFWF-to-Administer-Hurricane-Sandy-Program.aspx>

⁸ https://www.usgs.gov/faqs/has-usgs-made-any-biologic-carbon-sequestration-assessments?qt-news_science_products=0#qt-news_science_products

⁹ <https://www.pnas.org/content/pnas/114/44/11645.full.pdf>. I endorse the view of those who recognize that this will not be an easy process, but it is an essential one. <https://legal-planet.org/2019/05/15/in-defense-of-live-carbon/>

¹⁰ <https://advances.sciencemag.org/content/5/4/eaaw2869>

¹¹ <https://cdn.americanprogress.org/wp-content/uploads/2015/08/25132805/RenewableEnergy-report1.pdf>

¹² <https://law.stanford.edu/2015/12/10/congress-just-enacted-new-permitting-requirements-for-energy-projects-did-you-miss-it/>

¹³ See [https://agportal-](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/FINAL%20State%20)

[s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/FINAL%20State%20](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/FINAL%20State%20)

AG%20Coastal%20Plain%20DEIS%20Comments.pdf , including attached March 2019 Report from Energyzt on “Economic Assessment of Proposed Oil and Gas Lease Sales In the Arctic National Wildlife Refuge Coastal Plain.

¹⁴ <https://www.law.nyu.edu/centers/state-impact/issues/oceans-and-water-policy/five-year-oil-and-gas-leasing-plan>

¹⁵ See generally <https://www.americanprogress.org/issues/green/news/2019/04/08/468372/5-trump-administration-efforts-undermine-greater-sage-grouse-conservation-strategy/>

¹⁶ <https://www.reuters.com/article/us-usa-drilling-sale/u-s-holds-major-oil-and-gas-lease-sale-in-sage-grouse-habitat-idUSKCN1QH2PB>

¹⁷ See attached chart

¹⁸ See generally

https://www.oregonlive.com/environment/2009/06/bush_adminstration_targeted_la.html;

full Hayes report here:

http://action.suwa.org/site/DocServer/HayesReport_Dec08LeaseSale.pdf?docID=8361

¹⁹ <https://www.americanprogress.org/issues/green/reports/2019/05/23/470140/backroom-deals/>

²⁰ https://www.eenews.net/assets/2019/04/15/document_ew_01.pdf

²¹ See generally <https://www.law.nyu.edu/centers/state-impact/issues/public-lands/methane-waste-prevention-rule>

²² See generally <https://www.law.nyu.edu/centers/state-impact/issues/climate-action/oil-and-gas-industry-methane-emissions>

²³ <https://www.nytimes.com/2015/03/24/opinion/the-real-cost-of-coal.html>