



**WRITTEN TESTIMONY OF
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“Emissions Impacts From Oil & Gas Leasing on Public Lands”**

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I. INTRODUCTION

I am grateful for the opportunity to submit this written testimony. My name is Erik Schlenker-Goodrich. I am the executive director of the Western Environmental Law Center (WELC).

WELC is a public interest environmental law firm that uses the power of the law to safeguard the public lands, wildlife, and communities of the western U.S. in the face of a changing climate. We envision a thriving, resilient western U.S., abundant with protected public lands and wildlife, powered by renewable energy from the wind and sun, and defended by communities rooted in an ethic of conservation. Each year we represent and partner with roughly 200 national, regional, and local nonprofit and community organizations from our offices in Colorado, Montana, New Mexico, Oregon, and Washington state.

I have called Taos, New Mexico, home since January 2003. Nestled between the Sangre de Cristo Mountains and the Rio Grande, Taos is set amidst a landscape blessed with public lands, from the forest and meadows of the Carson National Forest’s Valle Vidal to the cliffs and river confluence of the Rio Grande del Norte National Monument’s Wild Rivers Recreation Area. As Willa Cather evocatively described New Mexico in 1927, “Elsewhere the sky is the roof of the world; but here the earth was the floor of the sky.” It is an enchanted landscape, one beloved by virtually all who live here, whether your roots reach back deep into time immemorial or you gravitated here from elsewhere, such as my birthplace, the Hudson River Valley.

In my nearly 18 years of living in New Mexico, I have never met a person who does not share a love for the land, even as we may have differed over how that land should be managed. There is a lesson and a truth embedded in that reality for all of us to contemplate: land held in trust by and for everyone can foster community among all of us. Whether we harness that truth in service of a thriving, resilient future is the challenge and opportunity presented by this moment – a moment where droughts intensify, wildfires rage, and our climate tilts us into an uncertain future.

My home state of New Mexico is a crucible for a specific facet of this moment: Interior's federal public lands oil and gas program. New Mexico's aging oil and gas fields in the Greater Chaco landscape and booming fields in the Permian Basin present, yes, near-term revenue and economic benefits. But they also present a cautionary tale of the risks of dependence on a volatile boom-and-bust industry whose impacts are destabilizing the climate with grave consequences to public lands and communities. Business as usual is, put simply, unsustainable.

We cannot frack and drill our way into a climate resilient future. And we cannot burden states and communities with public lands policies that hitch the resilience of local economies to volatile boom-and-bust industries that will tilt into a long-term structural decline as the world decarbonizes. It is thus WELC's position that the federal public lands oil and gas program must be carefully wound down through a just, equitable, and managed transition. Such a transition would open new doors to climate action grounded in a shared love of the land and opportunity-rich innovation that stabilizes and diversifies the revenue and economic base of the states, such as New Mexico, that have supplied this country with oil and gas for decades but also disproportionately shouldered the harmful legacy of land, air, water, health, and other impacts such development entails.

In the foreword of his iconic Sand Country Almanac, Aldo Leopold wrote: "We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect." Leopold's land ethic is not simply a philosophically compelling musing, but a moral, ethical, and scientific imperative codified into our public lands laws, including the Federal Land Policy and Management Act of 1976 ("FLPMA"), which governs our public lands. Leopold was not only a writer, but a pragmatic, storied manager of public lands with the U.S. Forest Service, including as supervisor of the Carson National Forest, and his influence on public lands management is considerable. As FLPMA, channeling Leopold, provides, Interior is directed to foster:

[H]armonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.¹

In this context, I'd like to set the stage for our conversation with the following key thoughts, which I expand upon in my testimony below:

- First, the federal public lands oil and gas program is antiquated and a threat to the climate and public lands.
- Second, Interior holds expansive legal authorities and duties to prevent or mitigate the federal public lands oil and gas program's contributions to the climate crisis.
- Third, Interior should actively align the federal public lands oil and gas program with the urgency demanded by the climate crisis.

¹ 43 U.S.C. § 1702(c) (emphasis added).

- Fourth, the federal government should articulate and lead a just, equitable, and managed transition away from the federal public lands oil and gas program and toward a new era of public lands management centered on ecological and community resilience.

II. THE FEDERAL PUBLIC LANDS OIL AND GAS PROGRAM IS ANTIQUATED AND A THREAT TO THE CLIMATE AND PUBLIC LANDS.

The federal public lands oil and gas program is broken. As Interior explained in August 2021:

Together, federal onshore and offshore oil and gas leasing programs are responsible for significant greenhouse gas emissions and growing climate and community impacts. Yet the current programs fail to adequately incorporate consideration of climate impacts into leasing decisions or reflect the social costs of greenhouse gas emissions including, for example, in royalty rates. Furthermore, past operation of the programs did not adequately reflect the breadth of the Interior Secretary's stewardship responsibilities, including conserving wildlife habitat, protecting historic and cultural resources, ensuring that public lands are available for multiple uses, protecting marine, coastal, and human environments, meeting trust responsibilities to American Indian and Alaska Native Tribes, and providing a fair return to taxpayers. Moreover, the federal oil and gas programs inadequately account for environmental harms to lands, waters, and other resources, foster speculation by oil and gas companies, and frequently leave impacted communities out of important conversations about how they want the public lands and waters managed.²

The problems with the federal public lands oil and gas program are systemic, extending across the entirety of Interior's four-phased public lands oil and gas framework: (1) resource management planning; (2) leasing; (3) drilling and infrastructure permitting; and (4) retirement and reclamation. Plans do not create an effective field office-wide framework to avoid or mitigate greenhouse gas emissions, leases are sold without stipulations directing operators to reduce emissions, applications for permits to drill are approved in routine and piecemeal fashion, and bonding levels are set at levels far too low to ensure oil and gas lessees clean up their mess if they go bankrupt.

While much of the public's attention has been focused on the risks caused by Interior's sale of new oil and gas leases, Interior's dismal climate record is acutely apparent in the context of federal oil and gas permitting.³ As the Washington Post recently reported:

Between Jan. 20 and Oct. 31 [of 2021], the Bureau of Land Management approved 3,091 new onshore drilling permits — permits it could have deferred or on which it could have imposed more rigorous restrictions. That's an average of 332 per month,

² U.S. Department of the Interior, *Statement on Oil and Gas Leasing Program* (Aug. 16, 2021). Available at: <https://www.doi.gov/pressreleases/interior-department-issues-statement-oil-and-gas-leasing-program>.

³ Oil and gas leases confer a right, bounded by the terms of the lease, to develop public lands oil and gas resources. Once a lease is acquired, the lessee or operator must obtain a drilling permit to develop the lease.

according to the agency's data, surpassing the number of approvals in the last three years of the Trump administration.⁴

Industry stockpiling of permits, which Interior continues to condone, is troubling. As Interior found, industry "holds more than 9,600 approved permits that are available to drill. In fiscal year (FY) 2021, BLM approved more than 5,000 drilling permits, and more than 4,400 are still being processed."⁵

Interior's oil and gas decisions in the Greater Chaco region provide real-world insight into the Biden administration's confused approach to the public lands oil and gas program. On November 15, 2021, Secretary of the Interior Haaland announced that Interior "will initiate consideration of a 20-year withdrawal of federal lands within a 10-mile radius around Chaco Culture National Historical Park, which would bar new federal oil and gas leasing on those lands."⁶ In addition, Secretary Haaland announced that Interior would also "undertake a broader assessment of the Greater Chaco cultural landscape to ensure that public land management better reflects the sacred sites, stories, and cultural resources in the region."⁷ That assessment would complement Congress' appropriation of funds to support pending ethnographic studies of Greater Chaco.⁸

Interior's actions in Greater Chaco are an important step forward. But they are not the destination. Roughly 90% of Greater Chaco's federal oil and gas resources have already been leased and the region already shoulders the burden of 40,000 existing federal, state, tribal, and private oil and gas wells and an attendant spiderweb of pipelines, compressor stations, and other infrastructure.⁹ The magnitude of oil and gas development has very real implications for people and communities. For example, in San Juan County, which falls within Greater Chaco, 6,500 children under the age of 5 live within half a mile — about 2,600 feet — of an oil and gas well.¹⁰

Oil and gas development in Greater Chaco, notwithstanding Interior's recent step forward, is only

⁴ Federman, A., *Biden is Breaking a Promise to Block Drilling on Public Lands* (Nov. 19, 2021). Available at: https://www.washingtonpost.com/outlook/biden-is-breaking-a-promise-to-block-drilling-on-public-lands/2021/11/19/8f3c260a-4887-11ec-95dc-5f2a96e00fa3_story.html.

⁵ U.S. Dept. of the Interior, *Report on the Federal Oil and Gas Leasing Program* at 12 (Nov. 26, 2021) (hereinafter "Oil and Gas Report" or "Report"). Available at: <https://www.doi.gov/pressreleases/interior-department-report-finds-significant-shortcomings-oil-and-gas-leasing-programs>.

⁶ U.S. Dept. of the Interior, *Secretary Haaland Announces Steps to Establish Protections for Culturally Significant Chaco Canyon Landscape* (Nov. 15, 2021). Available at: <https://www.doi.gov/pressreleases/secretary-haaland-announces-steps-establish-protections-culturally-significant-chaco>.

⁷ *Id.*

⁸ See Indian Country Today, *All Pueblo Council of Governors Applauds Appropriation Legislation Maintaining Protections for Chaco Canyon and Providing Additional Funding for Tribally-Led Cultural Resource Study* (Dec. 29, 2020). Available at: <https://indiancountrytoday.com/the-press-pool/all-pueblo-council-of-governors-applauds-appropriation-legislation-maintaining-protections-for-chaco-canyon-and-providing-additional-funding-for-tribally-led-cultural-resource-study>.

⁹ See *Diné Citizens Against Ruining Our Environment, et. al. v. U.S. Bureau of Land Management, et. al.*, Case No. 1:20-cv-00673-KG-JHR, Plaintiffs' Opening Merits Brief, Document #46 (filed November 21, 2021).

¹⁰ Environmental Defense Fund, *New Mexico Oil and Gas Data Map*, available at: <https://www.edf.org/nm-oil-gas/map/>.

poised to intensify. New Mexico is contemplating the use of federal infrastructure funding and a legislative package of state-level subsidies to build out a fossil gas hydrogen hub. If that fossil gas hydrogen hub is built, it would perpetuate and intensify the demand for natural gas from Greater Chaco's subsurface and further impair the region's climate, land, and communities.¹¹

Further, Interior, in December 2018, November 2019, and February 2020, sold nearly 45,000 acres of new federal oil and gas leases in Greater Chaco. WELC, representing several groups including our lead plaintiff, Diné Citizens Against Ruining Our Environment, has challenged these leases in federal court.¹² Even with this litigation pending, Interior in 2021 approved at least 120 drilling permits on eight of the challenged leases.¹³ Interior's drilling approvals – made by Interior in 2021, during the Biden administration – authorize development of three times more wells than the agency projected in its lease-stage environmental reviews, risking significantly more greenhouse gas emissions and land impacts and further concentrating health impacts on area residents.¹⁴ These oil and gas decisions – all of which the Biden administration is defending in federal court – also threaten the Sinaateel Mesa Complex, a 20-mile area sacred to Diné peoples.¹⁵ The story of these lands, as publicly available, is about the Diné story of the creation of the horse, part of the Diné National Epic of “two-sons-that-went-to-their-father,” and central to Diné cosmology and identity.

Thus, even in Greater Chaco, where Interior has announced long-sought action to rein in otherwise indiscriminate oil and gas development to great fanfare, oil and gas conflicts continue to rage. While this may suggest Interior is taking action to achieve “balanced” oil and gas development, the notion of “balanced” oil and gas development cannot be squared with the fact that the region's public lands are already 90% leased or Interior's failure to align the federal public lands oil and gas program with the climate crisis. Interior cannot continue to whittle around the margins of the oil and gas program's systemic problems. It must remedy them directly.

It therefore gives us no pleasure to conclude, as the promise of the first year of the Biden administration comes to a close, that the public lands oil and gas program remains broken and geared not to benefit the shared public interest in climate action, but to maximize the profits and investment returns of oil and gas companies and their investors.

III. INTERIOR HOLDS EXPANSIVE LEGAL AUTHORITY AND DUTIES TO ADDRESS THE FEDERAL PUBLIC LANDS OIL AND GAS PROGRAM'S CONTRIBUTIONS TO THE CLIMATE CRISIS.

Interior, fortunately, holds expansive legal authority and duties to address the climate crisis. The starting point of that authority and duties is the U.S. Constitution. The Constitution's property

¹¹ See Redfern, J., *New Mexico's Draft Plan for Hydrogen a Nonstarter for Environmentalists*, Capital & Main (November 22, 2021), available at: <https://capitalandmain.com/new-mexicos-draft-plan-for-hydrogen-a-nonstarter-for-environmentalists>.

¹² See *Diné Citizens Against Ruining Our Environment, et. al. v. U.S. Bureau of Land Management, et. al.*, Case No. 1:20-cv-00673-KG-JHR, Plaintiffs' Opening Merits Brief, Document #46 (filed November 21, 2021).

¹³ *Id.* at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1-2.

clause confers upon Congress the “[p]ower to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”¹⁶ This power was exercised through passage of two key laws governing the federal public lands oil and gas program: (1) the Federal Land Policy and Management Act of 1976 (“FLPMA”); and the (2) the Mineral Leasing Act of 1920, as amended by the Federal Onshore Oil and Gas Leasing Reform Act Amendments of 1987 (collectively, “MLA”).

Because they are derived from the U.S. Constitution’s property clause, FLPMA and the MLA exemplify the federal government’s constitutional power at its apex. As the Supreme Court of the United States teaches, “while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that ‘[t]he power over the public land thus entrusted to Congress is without limitations.’”¹⁷ FLPMA and the MLA are thus distinct from other natural resource and environmental laws, such as the Clean Water Act. Such power also suggests opportunity to center public lands as a cornerstone of climate action, given how constitutionally well-equipped Interior is to direct how public lands are managed.

Regardless, and in this constitutional context, FLPMA directs Interior to manage federal public lands pursuant to a “multiple use” approach. While production of oil and gas is indisputably a multiple use of the public lands, it is far from the only use. FLPMA expressly mandates that:

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.¹⁸

To reconcile tensions that may arise between multiple uses, and to further Interior’s dual role as both the trustee of federal public lands for the benefit of the American people and regulator of federal public lands uses, FLPMA directs Interior to engage in resource management planning.¹⁹ Through planning, Interior meets the multiple use directive “to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions.”²⁰ In other words, FLPMA directs Interior to account for the world as it is, empowering it to directly and proactively account for the emergent and intensifying climate crisis. In planning, Interior must, *inter alia*:

- “[U]se and observe the principles of multiple use and sustained yield”;
- “[U]se a systematic interdisciplinary approach to achieve integrated consideration of physical,

¹⁶ U.S. Constitution, Art. IV., Sec. 3, Cl. 2.

¹⁷ *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976).

¹⁸ 43 U.S.C. § 1701(a)(8).

¹⁹ 43 U.S.C. § 1712.

²⁰ 43 U.S.C. § 1702(c).

biological, economic, and other sciences”;

- “[C]onsider present and potential uses of the public lands”;
- “[C]onsider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values”; and
- “[W]eigh long-term benefits to the public against short-term benefits.”²¹

While FLPMA provides Interior with considerable discretion to satisfy these directives, it also charges Interior with several specific, nondiscretionary duties. Namely, to:

- Prevent “permanent impairment of the productivity of the land and quality of the environment”²²; and
- “[B]y regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”²³

Remarkably, Interior has never promulgated rules that implement these FLPMA duties, whether in the context of the climate crisis or the public lands oil and gas program.²⁴ Thus, there are no specific FLPMA-based rules governing how Interior shall, as it must, “protect air and atmospheric” values, prevent “permanent impairment,” or otherwise “prevent unnecessary or undue degradation.”²⁵ Interior has, however, promulgated extensive and specific oil and gas rules that implement the MLA’s oil and gas leasing and permitting directives.²⁶

The absence of FLPMA-based rules coupled with the existence of MLA-based rules creates an asymmetry in Interior’s planning and management framework that favors oil and gas at the expense of FLPMA’s other enumerated resources and values. Interior effectively assumes that it has complied with FLPMA by virtue of compliance with MLA-based oil and gas rules – i.e., by approving oil and gas leases and permits. But the law does not condone decision-making on the basis of assumptions. The law requires that federal agencies show their work by rationally and transparently connecting the facts they find with the choices they make to demonstrate, not assume, compliance

²¹ 43 U.S.C. §§ 1712(c)(1), (2), (5), (6), and (7).

²² 43 U.S.C. § 1702(c).

²³ 43 U.S.C. § 1732(b).

²⁴ Of note, Interior has promulgated rules to implement its duty to prevent unnecessary or undue degradation in the distinct context of hardrock mining. See 43 C.F.R. Subpart 3809.

²⁵ 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b).

²⁶ See 43 C.F.R. Subt. B, Ch. II, Subch. C, Part 3100 (general oil and gas leasing rules), Part 3110 (noncompetitive oil and gas leasing rules), Part 3120 (competitive oil and gas leasing rules), Part 3150 (oil and gas geophysical exploration rules), Part 3160 (oil and gas operations rules), and Part 3170 (oil and gas production measurement and waste rules).

with the law.²⁷ In my 20-plus years of experience working on public lands issues, I find it disconcerting that I cannot point to anything that plainly explains how Interior’s oil and gas decisions adhere to FLPMA’s climate and conservation duties.

Oil and gas companies have exploited this dynamic to acquire oil and gas development rights to 26.6 million acres of federal public lands and drill over 96,000 wells—leases and infrastructure that are an underlying cause of the climate crisis, threaten public lands, harm communities, and do not even provide a fair return to taxpayers. In other words, it is the oil and gas industry’s interest—as acquiesced to by Interior—that governs the federal public lands oil and gas program, not the public interest. For example, as Interior concluded in its Oil and Gas Report, “[c]ommon practice in BLM land use planning has been to leave the majority of Federal [public] lands open for leasing and allow industry to drive decisions on what areas will be nominated for oil and gas leasing.”²⁸ Many leases never even produce a barrel of oil or cubic foot of natural gas. It is thus no wonder Interior found:

[A] Federal oil and gas program that fails to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs that must be borne by taxpayers; inadequately accounts for environmental harms to lands, waters, and other resources; fosters speculation by oil and gas companies to the detriment of competition and American consumers; extends leasing into low potential lands that may have competing higher value uses; and leaves communities out of important conversations about how they want their public lands and waters managed.²⁹

IV. INTERIOR MUST ALIGN THE FEDERAL PUBLIC LANDS OIL AND GAS PROGRAM WITH THE URGENCY DEMANDED BY THE CLIMATE CRISIS.

While Interior’s actions, to date, have proven inadequate, opportunity abounds if only Interior would seize it. We have recommended that Interior take a comprehensive approach to align the federal public lands oil and gas program with the urgency demanded by the climate crisis. This approach involves three specific actions, each of which we have recommended to the Biden administration, whether to the White House directly or to Interior:

- Interior should immediately initiate rulemaking to provide field offices with clear direction on how to implement and comply with FLPMA’s climate and conservation authorities and duties.
- Interior should craft a comprehensive, public lands-wide climate action framework that: (1) prohibits or sharply reduces leasing and drilling; and (2) provides for a multi-year managed production decline path to transition away from public lands oil and gas production.³⁰

²⁷ See *Motor Veh. Mfrs. Assn. v. State Farm*, 463 U.S. 29, 43 (1983) (explaining agency duty, pursuant to Administrative Procedure Act, to justify its decisions).

²⁸ Oil and Gas Report at 12.

²⁹ *Id.* at 3.

³⁰ In addition to the other authorities and duties identified in this testimony, section 3 of the standard federal public lands oil and gas lease provides that Interior retains the authority to “specify rates of development and production in the public interest...” U.S. Bureau of Land Management, Form 3100-11 (Oct. 2008).

- Interior should immediately impose interim climate and conservation guardrails on the issuance of new oil and gas leases and drilling permits to satisfy its FLPMA authorities and duties, pending new rules and a comprehensive climate action framework. Absent such guardrails, permit approvals should be deferred.³¹

These recommendations would help correct Interior’s mission drift and complement progress Interior has otherwise made to quantify the greenhouse gas emissions caused by federal fossil fuels and integrate those emissions into environmental reviews prepared in accord with the National Environmental Policy Act.³² While that progress is appreciated, it is not a substitute for tangible, on-the-ground action that in fact reduces greenhouse gas emissions.

We are thus underwhelmed and disappointed by the myopic scope of actions recommended by Interior’s November 26, 2021 Oil and Gas Report. In section 208 of executive order 14008 (Jan. 27, 2021), which was the impetus for the report, President Biden directed Interior to complete:

[A] comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters.

Yet Interior’s report is neither comprehensive nor a reflection of Interior’s expansive authorities and responsibilities. It references “climate” a mere four times: once when it references the title to executive order 14008, once in a footnote referring to Interior’s separate coal program, and twice in substance-free introductory language. The report’s dodging of the climate crisis is even more egregious in the context of the executive order’s precatory language, which explains that:

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

Ten months into the Biden administration’s “narrow moment to pursue action,” the report fixates on fiscal reforms and does not even reference the agency’s expansive, if latent, FLPMA authorities and duties. These fiscal reforms—adjustments to royalty rates, bonus bids, rental rates, and

³¹ In addition to oil and gas lease stipulations, Interior retains the authority to subject leases to “restrictions deriving from specific, nondiscretionary statutes” as well as “reasonable measures,” known as conditions of approval, “to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed” if those measures are “consistent with lease rights granted.” 43 C.F.R. § 3101.1-2.

³² See <https://www.blm.gov/press-release/bureau-land-management-announces-next-steps-new-analyses-upcoming-oil-and-gas-lease>.

bonding levels—also remain prospective and speculative, with no clear or definitive path to implementation. Nor does the report even take a position on what, for example, the royalty rate should be set at to ensure a fair return to taxpayers, let alone internalize climate costs.

Further, it is critical to keep in mind that only new leases sold by Interior would be subject to many of these fiscal reforms, such as a royalty rate increase. Our understanding is that adjusted royalty rates would not be applied to the more than 26 million onshore acres already under lease today, including the nearly 13.9 million leased acres that have yet to be developed. These existing leases would remain subject to the anemic 12.5% federal royalty rate. Of course, these fiscal reforms also presume new leasing and an expansion of oil and gas development on federal public lands.

While we are sympathetic to the political gauntlet the administration must run, the report's focus on fiscal reforms does not deliver on the Biden administration's climate and environmental justice commitments. In fact, it contravenes those commitments by condoning an additional expansion of oil and gas development on federal public lands. Further, while Interior's recommended fiscal reforms are premised on the notion they can internalize climate costs—e.g., make lessees pay for the climate costs of emissions through higher royalties—economics modeling concludes that “raising royalty rates at the levels commonly proposed [a range from 6.25% to 12.5%] would have little effect on federal oil and gas production and hence relatively small effects on emissions.”³³ Even an outright prohibition on new leasing would have little climate impact. This is starkly illustrated in New Mexico's Delaware Basin, a “sweet spot” for oil and gas production, where Enverus, a global energy consultant, concluded that 93% to 95% of the basin's federal public lands would be entirely unaffected by a permanent end to the leasing program, with production continuing unabated – a function of industry's leasing and drilling permit stockpiles.³⁴

As the International Energy Agency found in its 2021 report, *Net Zero: A Roadmap for the Global Energy System*, new fossil fuel production projects are incompatible with U.S. and global commitments to reach net zero emissions by 2050.³⁵ Previous reports echo this conclusion.³⁶ And more recently, the U.N. Environment Programme *et al.*'s Production Gap report found that:

[T]he world's governments still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with limiting global warming to 1.5°C, and 45% more than consistent with limiting warming to 2°C. Collectively, although

³³ Prest, B., Resources for the Future, *Supply-Side Reforms to Oil and Gas Production on Federal Lands: Modeling the Implications for Climate Emissions, Revenues, and Production Shifts* at 8 (Sept. 2020). Available at: <https://www.rff.org/publications/testimony-and-public-comments/remarks-for-the-us-department-of-the-interior-on-the-federal-oil-and-gas-program/>.

³⁴ Enverus, Presentation to the New Mexico Legislative Finance Committee at slides 15 and 16 (June 2021). Available at: https://www.nmlegis.gov/handouts/ALFC_062221_Item_9_Enverus_June2021.pdf.

³⁵ International Energy Agency, *Net Zero by 2050: A roadmap for the global energy system* at 21 (2021). Available at: <https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf>.

³⁶ Oil Change International. 2016. Sky's the Limit: Why the Paris climate goals require a managed decline of fossil fuel production. Available at: http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf

many governments have pledged to lower their emissions and even set net-zero targets, they have not yet made plans to wind down production of the fossil fuels that, once burned, generate most of those emissions.³⁷

Put simply, there is no room left in the global carbon budget for new federal fossil fuel leasing and, in fact, the Biden administration should work with Congress to not simply end further leasing, but ramp down production from existing leases. Every new oil and gas lease or drilling permit risks further locking in fossil fuel production levels incompatible with measures to limit warming to 1.5 Celsius, including the Biden administration’s Nationally Determined Contribution “to achieve a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030”³⁸ and separate equity-based emissions reductions of 70 percent by 2030 and to near zero by 2040.³⁹

The imperative to complement targeted fiscal reforms with more direct and expansive climate action is therefore clear. WELC’s recommendations to Interior – in short, promulgate FLPMA-centered climate and conservation rules; prohibit or sharply reduce oil and gas leasing and production; and impose interim climate and conservation-focused guardrails on any and all new leases and permits pending long-term rules – provide a pathway for Interior to take such action by leveraging existing authorities and duties to align the federal public lands oil and gas program with the urgency demanded by the climate crisis.

V. THE FEDERAL GOVERNMENT SHOULD ACTIVELY SUPPORT A JUST, EQUITABLE, AND MANAGED TRANSITION AWAY FROM THE FEDERAL OIL AND GAS PROGRAM AND TOWARDS A NEW ERA OF PUBLIC LANDS MANAGEMENT CENTERED ON ECOLOGICAL AND COMMUNITY RESILIENCE.

Even setting aside the urgency to take action commensurate to the scale of the climate crisis, there is a serious risk that the U.S. oil and gas industry is tilting away from already volatile boom-and-bust cycles and into a permanent structural decline. This is a product of waning capital investment, high infrastructure costs, oil and gas demand and supply misalignment, shifts in energy demand, and increasing market competition from renewable energy. This decline exists even without industry internalizing the many health and environmental harms caused by oil and gas production, and even as industry still benefits from tremendous levels of federal and state subsidies.

While oil prices have rebounded since 2020 and may remain high in the near term, oil and gas faces stiff, long-term headwinds. As the Institute for Energy Economics and Financial Analysis recently explained relative to current oil markets, which have benefitted oil and gas companies even as consumers pay higher prices at the gas pump:

³⁷ U.N. Environment Programme, et al., *The Production Gap: Governments’ Planned Fossil Fuel Production Remains Dangerously Out of Sync With Paris Agreement Limits*, Executive Summary at 3 (2021). Available at: <https://productiongap.org/>.

³⁸ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

³⁹ <https://usfairshare.org/backgrounder/>.

North America’s oil and gas sector is patting itself on the back for dramatic improvements in its financial performance last quarter. With prices at a seven-year high, fossil fuel companies are finally generating cash—and stock market investors are rewarding them with rising equity prices and glowing reviews.

But today’s market has also exposed a long-term vulnerability for the oil industry: The same high prices that are juicing profits for oil and gas producers are also turbocharging the transition away from oil and gas. Prices have quickly shifted from being too low for oil and gas companies to prosper, to being high enough to endanger long-term demand for fossil fuels.⁴⁰

In other words, the more states and communities remain chained to oil and gas production revenue and economics, the less resilient revenue and jobs will prove to be in the face of economic realities and a warming climate. WELC therefore strongly recommends action to foster a just and equitable transition for communities now dependent on oil and gas for revenue and jobs or who have borne the brunt of oil and gas impacts, such as pollution. In many respects, such a transition would offer communities what they have never before been offered: the freedom to choose an economic pathway that is not anchored to an industry that harms the climate, public lands, and people.

Promising legislation on this front has been introduced in both the U.S. Senate and in the U.S. House of Representatives. In the Senate, Senator Heinrich introduced S. 1740, The Schools and State Budgets Certainty Act⁴¹; in the House, Representative Leger Fernández and Representative Bonamici introduced H.R. 5193, the Just Transition for Energy Communities Act.⁴² While each bill requires work, each also embodies precisely the thinking we need to support communities. Some states are also embracing, if slowly, that transition. For example, with New Mexico’s passage of Senate Bill 112, just signed into law this year, the state is developing a strategic plan that could help transition New Mexico’s economy away from its current overreliance on oil and gas production.⁴³

Interior can assist in this transition by harnessing its ongoing planning and decision-making processes in service of community-led transition planning and action in areas that have shouldered the weight and impacts of fossil fuel exploitation. Interior can also help communities secure transition funding, direct resources to support conservation, economic diversification, and research projects in or near communities, and encourage appropriate renewable energy development.

⁴⁰ Williams-Derry, C., *The Goldilocks Predicament: For Oil and Gas, There Are No “Just Right” Prices* (Nov. 19, 2021). Available at: <https://ieefa.org/the-goldilocks-predicament-for-oil-and-gas-there-are-no-just-right-prices/>.

⁴¹ <https://www.congress.gov/bill/117th-congress/senate-bill/1740>.

⁴² <https://www.congress.gov/bill/117th-congress/house-bill/5193>.

⁴³ <https://legiscan.com/NM/bill/SB112/2021>.