Testimony

Of

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On

A Bill to Require BLM Director to Withdraw the BLM Mineral Leasing Rule
(Discussion Draft)

Before

House Natural Resources Committee's Subcommittee on Energy and Mineral Resources

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Good afternoon, Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the House Subcommittee on Energy and Mineral Resources.

On behalf of the National Stripper Well Association (NSWA), thank you for the opportunity to testify in support of the discussion draft bill that would require the BLM director to withdraw the proposed *Fluid Mineral Leasing and Leasing Process Rule* which would adversely impact small oil and gas operators who do business on BLM land.

In a nutshell, the rule reflects the clearest and most direct effort by the Biden Administration to discourage—indeed, eliminate if they can -- energy development on federal lands. The proposed rule, if finalized, will very likely have the practical effect of, over time, forcing oil and gas production off federal land.

We are most grateful for the Subcommittee's leadership in highlighting the rule's role in undermining sound domestic energy production in the US.

Who is NSWA and Our Positive Impact

Founded in 1934, the NSWA is the only national association responsible for representing the interests of the nation's smallest, and yet most efficient and effective, oil and natural gas wells before Congress and the federal agencies.

Our mission is to ensure the critical needs and concerns of producers, owners, and operators of marginally-producing oil and gas wells are addressed regarding federal legislation and regulation.

With members in 30 states, NSWA is a viable and powerful voice for the American stripper well producer. This proposed rule has the potential for devastating impacts on small producers in areas with BLM leases, particularly in the areas of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah and Wyoming.

Our members are the small independent business men and women who own stripper wells producing 15 barrels of oil (equal to 90 Mcf of natural gas) or less per day. No large integrated oil and gas company is a member of NSWA.

We are the "family farmers" of the U.S. energy sector – with an average of 11 employees – who recognize the importance of regulations on small businesses, often in rural areas of the country.

Of the roughly one million active oil and natural gas wells in the United States, about 750,000 are low production wells.

Every day, our members – as others across the industry – demonstrate our commitment to successfully running small businesses and creating jobs to supporting a robust national economy. Our members and their families live in the communities in which they work, and we recognize the need for continued vigilance, responsibility, and accountability in our production activities.

Indeed, the nation has seen considerable progress over the past two decades due to the widespread adoption of safe, reliable, and environmentally conscious exploration and production practices which has resulted in a significant boost in U.S. production. This all while also reducing America's dependency on foreign sources of energy, and displaced higher emission fuel sources, in America's electrical and industrial sectors.

The benefits to society are clear. Not just the fuels that heat and cool our homes and workplaces and power our vehicles (electric and otherwise), but also products and materials we take for granted: truck tires and parts that allow vital products – such as fruits and vegetables, vaccines and building materials – to travel to market as well as critical electric vehicle parts and materials; umbrellas and raincoats that keep us dry; carpet that covers our offices and homes; packaging that ensures foodstuffs arrive at grocery stores unspoiled and safe to eat; and lifesaving medical equipment, including MRIs and pacemakers.

The list goes on. By at least one credible estimate, as many as 6,000 everyday items contain a key element of petroleum.

GENERAL COMMENTS

In furthering support for the legislation that is the subject of today's hearing, below we first outline general concerns -- followed by specific ones -- regarding the inappropriate authorities that the proposed rule would provide to BLM and other federal agencies regarding the curtailing or eliminating energy production on public lands. Our major general concerns include but are not limited to:

- We do not believe the existing regulations fail to promote leasing practices that are consistent with appropriate development requirements and multiple-use and sustained-yield principles. It's clear that regional planning, National Environmental Policy Act ("NEPA") reviews, and other processes already conduct the requisite balancing in identifying suitable areas for leasing.

- BLM cannot adopt new leasing procedures that sidestep or dilute its statutory obligation to conduct quarterly lease sales in each state.
- BLM cannot adopt regulatory changes that unduly constrain opportunities for development and operations on already-issued leases or that breach or otherwise unduly impair rights conferred under those leases.
- BLM cannot confer undue authority on other Department of the Interior ("DOI") bureaus, and other surface managing agencies, to constrain leasing and development of oil and natural gas leases on federally-managed lands.
- BLM should not impose undue additional bonding and other financial burdens on the oil and natural gas industry beyond new statutory requirements under the IRA.
- BLM should not "streamline" disqualification of entities from existing or new leases, akin to suspension and debarment but without corresponding due process.

The cumulative likely impacts of the proposed rule will exacerbate challenges created by other anti-oil and gas proposals and efforts by BLM and other federal agencies, thereby decreasing domestic energy supplies and energy security.

In addition, while claiming to principally implement statutory changes enacted in the Inflation Reduction Act, the proposed rule represents BLM's and the administration's latest attempt to dramatically and inappropriately curtail oil and natural gas leasing and corresponding production.

Several proposed provisions in the rule introduce new uncertainty into BLM's leasing process. In doing so, contrary to its preamble's assertions, this contradicts directives to BLM for "improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends." 88 Fed. Reg. at 47,608 (citing Executive Order 13563).

Perhaps of greatest concern is the proposed rule's creation and implementation of new "preference criteria" that are opaque and subjective. Emblematic of the Proposed Rule's flawed approach is its assertion that "this approach would provide stakeholders with greater certainty, as it would be understood at the outset of the leasing process that the preference criteria would guide the BLM's decision-making" *Id.* at 47,566-67. But the only such added certainty appears to be substantially less oil and natural gas leasing, as BLM's non-"preference" of certain areas would likely amount to their indefinite exclusion from leasing.

That is, the proposed rule would repeatedly defer the leasing of promising oil and natural gas prospects, instead "directing leasing toward areas that do not have" what BLM perceives to be "any sensitive cultural, wildlife." It is disconcerting that BLM would attempt to shift toward subjective judgments rather than rely on already-existing intensive planning efforts, NEPA reviews, and other environmental safeguards – making such onshore areas suitable for oil and natural gas leasing.

If implemented as written, the proposed rule could essentially eliminate the opportunity for exploration or the expansion of newly discovered producing areas, constrain future natural oil and gas development to areas where it already exists, and shrink such areas even further, thereby discouraging further innovation, new discoveries, and ultimately domestic production.

Even after accepting nominations and holding lease sales, BLM would reserve the ability to impose new conditions and ultimately deny leases. Additionally, despite not truly offering acreage for leasing or itself nominating tracts in which industry clearly has no interest, BLM could unduly count such acreage against its IRA minimums for onshore oil and natural gas leasing to enable onshore wind leasing.

Areas of Specific Concern

Bonding Levels

First, the option for nationwide and unit operator bonds needs to be maintained. BLM explains in the preamble of the rule that nationwide bonds are "administratively inefficient" because they call upon BLM to manage risks nationwide. It further states that the proposed increases in the minimum lease and statewide bond "would allow the agency to ensure improved bonding." These vague justifications that BLM proffers do not outweigh producers' need for a continued nationwide bond to achieve efficiencies and continue providing affordable energy to the U.S. public.

That said, we recognize that bonding minimums need to be increased. However, the proposed rule increases the minimum so aggressively (15x and 20x) that it would impose considerable new financial burdens on smaller operators – especially those with operations across multiple states, leaving many leases and wells unmarketable and uneconomic to new and current operators. This will only increase the number of idle and eventual orphan wells to the burden of the taxpayers. This rule alone will make nearly all (100%) Federal leases with stripper wells uneconomic. This will lead to bankruptcies, job losses, and potential environmental hazards and loss of royalty to the Federal Government and other Owners.

Leases in current, good standing should be grandfathered and not have their bonds increased. If the operator has shown they are capable of taking care of the assets and leases, they should not see a bond increase. It is easier for Companies with a new lease to build these new costs into their budget and move forward with their project. It is a completely different and unlikely scenario for an established Operator that owns producing leases to be able to produce funds to cover this extra bonding increase. In many cases the increased bonding is more than the value of the stripper well itself. This will lead to the same results already mentioned.

To the extent bond levels need to be altered, rather than increasing the minimum lease bond amount from $10,000 to $150,000, we would suggest a minimum amount of $25,000 for new bonds. We would further suggest an increase in the statewide bond from $25,000 to $100,000 rather than the proposed amount of $500,000 for new statewide bonds.

Bond Obligations

BLM is proposing to remove certificates of deposit (CDs) and letters of credit (LOCs) as forms of security for personal bonds. We oppose this action. The proposed rule's stated rationale for removing these options is that CDs are difficult to manage, and it is difficult for banks to include BLM's requirements in a LOC. However, BLM provides no information on how often this occurs, what type of operators (small or large) use CDs and LOC, and other similar details on the issue. At a minimum, BLM should provide an analysis of this issue for review and comment before removing such options.

As a general matter, BLM should afford greater – rather than less – flexibility to operators regarding forms of security, particularly given the proposed rule's drastically higher minimum and additional bond amounts.

New Terms For Well Abandonment

NSWA strongly opposes the proposed rule's imposition of a maximum four-year period "except in extraordinary circumstances" to permanently abandon wells. Circumstances the proposed rule defines as temporarily abandoned.

In some fields, an operator may not know within four years whether it will need that well, including for secondary recovery operations, water injections, or other purposes. NSWA is concerned that BLM may not consider such circumstances as "extraordinary" to extend the proposed four-year maximum period. It would be wasteful and more environmentally impactful to inflexibly require an operator to permanently abandon a well and then later have to drill a replacement well. Rather, the maximum period to permanently abandon temporarily abandoned wells should be the same as for shut-in wells in subsection (d), allowing for additional one-year delays where warranted.

BLM also should delete proposed language regarding shut-in wells that require separate notices to the BLM within 90 days of shutting in a well.

Wells are required to be reported to BLM beginning with the last month of drilling and continuing until the well is abandoned. Thus, shut-in wells already are reported. This reporting requirement should suffice, and BLM can track these wells through monthly reports. If it is BLM's intention to track wells that are shut in for extended periods, i.e., up to the 3 years noted in the rule, then the rule should make it clear that it does not apply to wells that are shut in only for short periods of time. In particular, this would include wells that are shut in periodically but have actual production each month.

Insufficient Time To Comment

A major concern is the brief period allowed for comments on the proposed rule. The deadline did not give enough time for all owners to be informed of the proposed rule change and to fully understand the effect it could have on their interest.

One example: a major operator member of NSWA reports that requests made to the BLM for updated lease files and lease ownership data for Federal Leases necessary to respond to the changes proposed by the rule have not been answered. Therefore, this and other similar operators are unable to inform any new working interest owners and royalty owners so they can submit comments regarding these proposed rules.

It is important that all types of stripper well owners have an opportunity to provide feedback to the BLM in this matter. Anything short of this is denying these owners of their right to have a voice. If these proposed rules are adopted and the wells are plugged and abandoned, the federal government is effectively revoking the ownership right to the livelihood from these wells.

The result: many wells will be plugged and abandoned due to the proposed bond amount increases and these wells and leases will be lost for the operator, working interest and royalty owners.

This will have an extremely detrimental effect on rural areas and beyond across the U.S. and, given the current fragile state of the economy, additional economic pressure and hardship would be deeply felt. Especially given that the operators of federal wells provide good paying jobs, which return tax dollars and economic activity to many of those communities.

Mr. Chairman, our members believe strongly in a commitment to clean air and clean water by reducing emissions here and abroad. However, NSWA believes the implementation of this rule, as proposed, will result in significant adverse impacts, and reductions in domestic energy production on public lands – a statutory mission of BLM – and elsewhere, thus increasing foreign dependence on energy at a time of worldwide uncertainty, as well as substantial economic hardships on small and rural communities – the lifeblood of this country.

Thank you again for the opportunity to provide this testimony.

Sincerely,

Nick Powell
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NSWA Chairman