Testimony of Melissa Hornbein, Senior Attorney at the Western Environmental Law Center before the House Natural Resources Committee, Subcommittee on Energy and Minerals Wednesday, October 25, 2023

The Honorable Pete Stauber
Chair, Subcommittee on Energy and Mineral Resources
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Chairman Stauber, Ranking Member Ocasio-Cortez, thank you for the opportunity to testify.

My name is Melissa Hornbein. I am an attorney with the Western Environmental Law Center's Climate and Energy program. The Western Environmental Law Center (WELC) is a non-profit 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. Our policy and legal engagement on the federal oil and gas leasing program is driven by the need to achieve climate stability, environmental justice for frontline communities, and a fair return for American taxpayers who share in the ownership of federal public lands and shoulder the costs of a federal oil and gas program that historically has not required lessees to pay their fair share.

The bill you are considering would halt a long-awaited effort to modernize the federal oil and gas leasing program. H.R. 6009 seeks to perpetuate a system that is a half-century out of date and shortchanges American taxpayers on royalties and rental payments of publicly owned minerals, while continuing to leave taxpayers liable for cleanup of the mess oil and gas companies leave behind. The Bureau of Land Management's (BLM's) proposed rule attempts to redress this longstanding imbalance, and my hope is that this Subcommittee will support that effort. Current law dictates that the costs associated with federal oil and gas development should be squarely borne by federal oil and gas lessees—but to date, the federal leasing program has failed to require lessees to internalize these costs. Fundamentally, this is an issue of fairness to all Americans.

Of equal importance with these fiscal reforms, this rulemaking presents an opportunity for BLM to craft rules that acknowledge and act on the climate crisis and the iniquitous impacts the oil and gas program has long perpetuated on already overburdened communities. In my view, BLM's rule, as proposed, falls short of these additional goals. It is my sincere hope that the agency will listen to public comment to this effect and seize the opportunity to address these issues in its final rule. To do so, however, this rulemaking must be allowed to proceed. Regardless of the contents of the final rule, the proposed rule represents a substantive and necessary improvement over the system H.R. 6009 seeks to leave in place. The oil and gas

industry earned a record $219 billion in profits in 2022,[1] and yet federal lands are littered with idled and unplugged wells that continue to emit greenhouse gases and toxic air pollutants, and which have the potential to cost taxpayers upwards of $330 million to reclaim.[2] The interests of the American taxpayer and the health of communities living in proximity to these sources, as well as the health of the public lands they exist on must for once be prioritized above those of industry profits.

- There is an urgent need for reform of the federal oil and gas program.
    - Taxpayer return through bonding reform:

Bonding plays an important role in ensuring that wells are promptly and fully plugged and remediated, and that taxpayers and local communities are not burdened with the clean-up costs or the negative effects of living, working, or recreating in proximity to unplugged wells. Moreover, data shows that inadequate bonding serves as a deterrent to proper reclamation, while sufficient bonding amounts lead to increased rates of clean up and full reclamation of fossil fuel infrastructure.[3] In the event the operator does not remediate a site and obtain bond release, the bond serves to protect the government and taxpayers from bearing these costs by providing BLM with adequate funding to complete sufficient plugging and reclamation. To achieve these purposes, bond amounts must be set at levels equivalent to the actual costs of plugging and remediation.[4] The bond amounts in BLM's current rules spectacularly fail to achieve this objective, and this bill inexplicably seeks to frustrate the agency's efforts to remedy the problem.

In 2019, Congress asked the Government Accountability Office (GAO) to review the status of oil and gas bonding for federal lands. The resulting report: (1) described the value of bonds for oil and gas wells in 2018 compared to 2008, and (2) examined the extent to which BLM's bonds ensure complete and timely plugging and remediation.[5] The GAO found that bonds held by BLM have *not* provided sufficient financial assurance to ensure timely plugging and remediation.[6] For example, the vast majority of bonds generally do not reflect actual

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[1] https://www.reuters.com/business/energy/big-oil-doubles-profits-blockbuster-2022-2023-02-08/.
[2] 88 Fed. Reg. 47,562, 47,565 (July 24, 2023).
[3] See Dustin Bleizeffer, *Mine clean-up financing may be poised for an upgrade*, WyoFile (Jan. 12, 2022) https://wyofile.com/mine-clean-up-financing-may-be-poised-for-an-upgrade/ (recounting the experience of the coal industry in Wyoming where coal mine operators replaced inadequate self-bonding as a result of improved state regulations as a result of regulator and public pressure. After replacing inadequate bonds, the industry carried out a record amount of reclamation, obtaining the greatest amount of bond release in the history of the federal coal program due to the increased financial interest on the part of operators and providing a financial incentive to finish reclamation and obtain release of bonds).
[4] *See* 30 U.S.C. § 226(g) (Mineral Leasing Act requirement that an "adequate" bond be established before operators begin preparing land for drilling "to ensure the *complete and timely* reclamation" and "restoration" of the leased tract of land) (emphasis added).
[5] Government Accountability Office, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells (Sept. 2019)("GAO Report"), https://www.gao.gov/assets/gao-19-615.pdf.
[6] *Id*. at 14.

reclamation costs[7] because most bonds are set at their regulatory minimum values, and these minimums have not been adjusted since the 1950s and 1960s to account for inflation.[8] Additionally, these minimums do not account for variables such as the number of wells they cover or other characteristics that affect reclamation costs, such as well depth or location.[9] As a result of its findings, the GAO recommended that BLM take steps to adjust bond levels to more closely reflect expected reclamation costs.[10] BLM concurred with this recommendation,[11] and the proposed rule addresses this issue directly. Nonetheless, BLM needs to go further, and improve the rule and its protections for American taxpayers, by implementing additional fiscal protections, including full cost bonding. In comments WELC submitted on the proposed rule on behalf of a number of partner organizations, we urged BLM to do just this, and it is our hope that if this rulemaking is allowed to proceed, BLM will heed this recommendation.

A properly implemented bonding system with bond amounts set at levels equivalent to the full cost of plugging and remediating all covered wells ensures that abandoned well sites will be cleaned up in a timely manner, as required by the MLA, 30 U.S.C. § 226(g). Bonding systems that set bonds at appropriate levels achieve this in two ways. First, as already noted, they create economic incentives for operators to promptly complete plugging and remediation themselves. Second, they ensure that regulators have access to adequate resources to complete plugging and remediation in the event the operator either cannot or will not do the work. It is crucial that BLM update its regulations to adopt policies, such as full cost bonding, that encourage prompt plugging and remediation of oil and gas wells, because uncapped wells are ongoing sources of harmful pollution and a risk to the public. H.R. 6009 would ensure precisely the opposite result. That is a risk the government has no business imposing on hardworking Americans, especially those who are already suffering disproportionate impacts of living in proximity to such infrastructure.

While bonding is an important feature of regulatory oversight for any industry where a lessee or permittee assumes clean-up obligations, it is critically important in settings such as the oil and gas industry, which are inherently subject to boom-and-bust cycles. Subject to fluctuations in international commodity prices, the oil and gas industry is prone to a pattern of drilling many new wells when prices are high, and then experiencing bankruptcies, idlings, and abandonments when prices drop.[12] Effective bonding protects against these fluctuations by encouraging operators to plug wells promptly in order to free up capital dedicated to servicing the bonds, and by ensuring that regulators are able to complete clean-up in the event of abandonment by operators. Adequate bonding also frees regulators to take appropriate

[7] GAO defines "reclamation" to mean "all of the actions and costs to reclaim a well, including well plugging and surface reclamation, and to restoring any lands or surface waters adversely affected by oil and gas operations." GAO Report at 1.
[8] *Id.*
[9] *Id*. at 16-17.
[10] *Id.* at 24.
[11] *Id*. at 31 (App'x II, Comments from the Department of the Interior).
[12] GAO Report at 1.

enforcement actions against operators without fear that such actions will lead to additional well abandonments with unfunded clean-up obligations.

Two provisions of BLM's proposed rule—provisions that would be eliminated by passage of this resolution—are particularly critical. First, BLM's proposal to raise minimum bond amounts for individual leases to $150,000. This increase represents an absolute minimum necessary to bring bonding amounts in line with actual reclamation costs, which average $77,000 per well.[13] Indeed, there is a very real concern that this per-lease bonding requirement remains too low to capture actual clean-up costs on leases with multiple wells, and in comments on the proposed rule, we urged BLM to address this risk in its final rule. Nonetheless, the rule as written it is a significant and necessary first step, and a fiscal backstop to protect the government and taxpayers from runaway costs associated with reclamation. Second, BLM's proposal to eliminate nationwide bonding and unit operators' bonds is long overdue. BLM's currently held nationwide bonds cover multiple wells at lower rates and are adequate to cover only about half of the existing wells and their associated liability ostensibly covered by the bonds. They also consume more agency resources in their administration, further ensuring that these bond amounts lag behind even those for individual leases. It is past time these resource-intensive and insufficient bonds were eliminated.

- Programmatic Reform in Response to the Inflation Reduction Act.

In addition, the rulemaking represents a necessary opportunity to bring the BLM's regulations in-line with the amendments to the Mineral Leasing Act (MLA) effected by the Inflation Reduction Act (IRA). BLM's existing rules are outdated in the face of changes implemented by the IRA, including the elimination of noncompetitive leasing, changes to royalty rates, minimum bids, evaluation of nominated parcels for future sales and provisions relating to renewable energy rights of way on public lands, among others. BLM is currently using instruction memoranda to implement many of these provisions, but this is a stopgap measure, and the agency's regulations should be revised for the sake of consistency, enforceability, and clarity for lessees and the public. BLM has also, in the wake of the IRA, articulated policies surrounding reinstatements, land use planning, lease parcel reviews, extensions of APDs, and suspensions that are most appropriately and durably expressed through the regulatory process.

- BLM's Rule Must be Allowed to Address the Climate and Biodiversity Crises.

Of equal importance, BLM's rulemaking represents an important opportunity—as yet unrealized—for the agency to meaningfully incorporate the scientific and physical realities of the climate crisis into its decision-making surrounding the federal oil and gas program, and to incorporate long-neglected measures to address the public health and environmental justice

[13] https://ohioauditor.gov/auditsearch/Reports/2022/Ohio_Department_of_Natural_Resources_22_Performance-Franklin_FINAL.pdf. BLM'S estimates in the proposed rule support these numbers: the BLM determined the cost to plug a well and reclaim the surface ranges from $35,000 to $200,000, with an average cost of $71,000. 88 Fed. Reg. at 47,581.

impacts of the program on infrastructure-adjacent, underserved, and overburdened communities.

The climate crisis is real, and it is here now. Just last month, the World Meteorological Organization made official what an unprecedented cluster of extreme weather events this summer had already presaged: the Earth just experienced its hottest three months in recorded history.[14] Alarmingly, August 2023 (which is second only to July 2023 in the competition for hottest month ever), averaged 1.5°C warmer than the preindustrial average, bringing the planet a perilous step closer to permanently exceeding the Paris Accord's 1.5°C temperature threshold, years earlier than anticipated.[15]

Additional future oil and gas development is fundamentally incompatible with a safe climate. This reality exists in tandem with the fact that BLM operates under varied and conflicting statutory directives and political impediments, as well as a directive, per the recently enacted IRA, that federal oil and gas leasing continue for the present. As a result, BLM's rulemaking represents a critical opportunity to address the interwoven climate, ecological, and biodiversity crises and ensure BLM can fulfill its nondiscretionary statutory obligations to protect public lands and resources for future generations. WELC and partners have encouraged BLM, through its comments, to adopt a regulatory approach that maintains consistency with the framework of BLM's proposed rule, yet more fully accounts for BLM's statutory responsibilities, scientific reality, and concurrent rulemaking efforts when implementing its final rule. We have termed this approach, which takes into account considerations ranging from planning to leasing to permitting, a "lifecycle" approach to the oil and gas program. H.R.6009's proposal to withdraw the proposed rule would prevent BLM from harmonizing its concomitant statutory obligations with the United States' international commitments and would help ensure BLM's failure to administer federal public lands for multiple use and sustained yield and to prevent their unnecessary or undue degradation.[16]

BLM still has an opportunity, through the proposed rule, to address this crisis by providing a comprehensive framework to align the federal oil and gas program within science-based guardrails. In comments on the proposed rule, WELC and partners encouraged BLM to focus this enquiry not only on the impacts of GHG emissions from the program but also on intensifying stresses on the ecological resilience of the public lands system caused by the combined stressors of climate change and the existing network of oil and gas infrastructure. H.R. 6009 would remove this important opportunity for BLM to align its oil and gas program with underlying scientific and legal directives, and would perpetuate the legal vulnerabilities

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[14] *Earth had hottest three-month period on record, with unprecedented sea surface temperatures and much extreme weather.* World Meteorological Organization News Release September 6, 2023, https://public.wmo.int/en/media/press-release/earth-had-hottest-three-month-period-record-unprecedented-sea-surface.

[15] *Global temperatures set to reach new records in next five years*, World Meteorological Organization, May 17, 2023, https://public.wmo.int/en/media/press-release/global-temperatures-set-reach-new-records-next-five-years#:~:text=There%20is%20a%2066%25%20likelihood,be%20the%20warmest%20on%20record.

[16] 43 U.S.C. §§ 1702(c), 1732(b).

that have so plagued BLM's administration of the leasing program, to the detriment of the agency, lessees, and the public as well as public lands themselves.

BLM has an intrinsic responsibility to manage fluid minerals to "safeguard[] … the public welfare," as well as related but separate obligations to take a hard look at impacts through NEPA, and to consider alternatives and mitigation to protect "air and atmospheric" values and, *inter alia*, to manage public lands "without permanent impairment" and to "prevent unnecessary or undue degradation."[17] These mandates require the agency to fulfill these interconnecting responsibilities in any rule it adopts to modernize oversight of the federal oil and gas program. In tandem with BLM's forthcoming Public Lands Rule, the oil and gas rule presents BLM with a distinctive opportunity to place climate, conservation, and environmental justice values on a truly "equal footing" with oil and gas extraction to shape and inform action in the public interest. As noted, H.R. 6009 would not only eliminate these nascent opportunities for BLM to bring its program into long-overdue statutory compliance, but would actually increase the legal vulnerability of every lease sale the agency offers in the future.

BLM's own data underscores the need such reform: fossil fuel development on BLM-administered lands accounts for 15.3% of total U.S. GHG emissions, 1.8% of global emissions, and nearly 21% of all emissions in the U.S. from fossil fuel production.[18] With respect to carbon dioxide, emissions from fossil fuels (coal, oil, fossil gas) produced on federal lands represent a quarter of *all* CO_2 emissions in the U.S.[19] Clearly, public lands continue to be a significant contributor to the climate crisis, and will be until BLM undertakes a lifecycle-based planning effort for federal oil and gas development. Oil and gas companies have exploited and continue to exploit BLM's highly permissive approach to oil and gas development of federal public lands and minerals. These companies have acquired oil and gas development rights to 23.7 million acres of federal public lands and operate over 89,000 wells now in production. Oil and gas companies have also stockpiled over 10,000 additional oil and gas drilling permits[20] and thousands of undeveloped leases totaling at least 13.9 million acres.[21] While the proposed rule attempts to address a subset of these issues through fiscal reforms, it can, and should, go further. Indeed, the fiscal provisions of the rule are only part of the total costs the government

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[17] 30 U.S.C. § 187; 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b).

[18] 2021 BLM Greenhouse Gas Specialist Report at Section 9.1 (Representative Concentration Pathways), ("Climate change is fundamentally a cumulative phenomenon, global in scope, and all GHGs contribute incrementally to climate change regardless of scale or origin."); Section 7.1. (BLM Share of 2020 Annual Global and U.S. GHG Emissions), Table 7-1. https://www.blm.gov/content/ghg/2021/#:~:text=The%20%222021%20BLM%20Specialist%20Report,of%20Land%20Management%20(BLM).

[19] Merrill, M.D., Sleeter, B.M., Freeman, P.A., Liu, J., Warwick, P.D., and Reed, B.C., Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005–14: U.S. Geological Survey Scientific Investigations Report 2018–5131, 31 (2018).

[20] BLM Fiscal Year 2022 Oil and Gas Statistics, https://public.wmo.int/en/media/press-release/earth-had-hottest-three-month-period-record-unprecedented-sea-surface.

[21] Report on the Federal Oil and Gas Leasing Program at 4, noting that of the more than 26 million onshore acres currently under lease, nearly 13.9 million or 53% is non-producing. This number likely does not capture the full extent of industry's stockpiling of federal leases, hence the use of "at least."

and American taxpayers will incur if oil and gas leasing continues under a "business as usual" scenario, as H.R. 6009 contemplates. The climate and public health costs that result from each and every BLM lease sale are underreported, and are just as often born by the taxpayer as are the costs associated with abandoned and unreclaimed wells.

It is wholly undisputed by reputable scientists that fossil fuels are a primary driver of the climate crisis, harm the resilience and intactness of public lands and communities, and saddle state and local governments with an overdependence on a highly volatile source of revenue with soaring and unsecured clean-up costs, along with the political and economic challenges that flow from reliance on fossil-fuel based economies.[22] While BLM has, with the proposed rule, suggested long-overdue fiscal reforms that begin to address some of these problems and offer American taxpayers some assurance that the federal oil and gas program is not being administered solely for the benefit of industry, the proposed rule fails to *mention* climate change, let alone attempt to meaningfully address the significant contribution of fossil fuel production on public lands to the climate crisis or the urgency of winding down fossil fuel production in order to avert its worst impacts. It is a scientifically accepted reality that fossil fuel production must end within the foreseeable future to avert the most catastrophic effects of climate change on ecosystems, and by extension on the resilience and intactness of federal public lands, species, other public lands values, and communities, in particular underserved and overburdened communities already suffering disproportionately from a variety of stressors.

BLM has yet to frankly acknowledge the incompatibility of this continued leasing requirement with greenhouse gas reduction goals, and to do what it can within the bounds of its "plenary" and "capacious" authorities and responsibilities, in particular those afforded by the Federal Land Policy and Management Act (FLPMA), to address climate change in this and every regulatory action it takes.[23] As we communicated to BLM in comments submitted on the proposed rule, BLM must not continue to silo the federal oil and gas program from the realities of the climate crisis. This will merely exacerbate confusion regarding the administration's approach to climate action, incite further litigation targeting legally vulnerable fossil fuel decisions, fail to set the stage for future action, and propagate further harm, particularly to public lands already suffering disproportionately from warming that has already occurred and is expected to worsen.[24] BLM instead must lean into action that will fulfill the agency's core responsibility to serve as the trustee of the public lands system and its "mandate to manage federal lands for multiple use and to provide for the protection of resources on those lands."[25] If this bill passes, BLM will be unable to heed this advice, and its legal liability will be further increased.

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[22] *See, e.g.*, Albuquerque Journal, *New Mexico faces a budget abyss if oil and gas goes bust* (Jan. 30, 2023), https://news.yahoo.com/mexico-faces-budget-abyss-oil-045900527.html?guccounter=1.

[23] Solicitor's Opinion M-37039 at 9, https://www.doi.gov/sites/doi.gov/files/m-37039-the-blms-authority-to-address-impacts-of-its-land-use-authorizations-through-mitigation.pdf.

[24] An example of these type of warming exists on the Western Slope, including the North Fork Valley of Colorado, a 2°C "hotspot." https://www.washingtonpost.com/graphics/2020/national/climate-environment/climate-change-colorado-utah-hot-spot/. *See also*, Basin: https://www.colofarmfood.org/groundzero

[25] 88 Fed. Reg. 47,562, 47,574 (July 24, 2023).

In the interests of protecting public resources, reducing risk to public lands, and minimizing costs to taxpayers, WELC and its partners will continue to urge BLM to adopt a more holistic "lifecycle" approach to the planning for leasing, development, production, and reclamation of federal mineral resources. Such an approach is true to the law and science, would better conform the proposed rule and its implementation with U.S. and international climate commitments, and would connect the rule more seamlessly with parallel rulemakings, including the agency's proposed Public Lands Rule and the Council on Environmental Quality's proposed Phase II NEPA regulations. The more the proposed rule can be tailored to complement these concurrent rulemaking efforts the better it will serve to protect non-mineral resources on land overlying BLM mineral estate, and the more legally defensible it will be. H.R. 6009 seeks to ensure that the oil and gas program will continue to run afoul of these concurrent rulemaking efforts, existing law, and international commitments for the foreseeable future.

- BLM's Oil and Gas Rule Must be Allowed to Address Health and Environmental Justice Concerns.

BLM's proposed rule contains important acknowledgments of the potential for disproportionately high, adverse, and cumulative impacts of leasing and drilling on "underserved communities" and environmental justice.[26] It also recognizes BLM's authority to require reasonable measures to avoid, minimize, or mitigate those impacts.[27] The measures contemplated by BLM include increased minimum setback distances and clarification of existing language surrounding setbacks and other mitigation measures. These are important first steps that BLM has for too long ignored. The bill under consideration today would put BLM back at square one with respect to consideration of these critical issues. Even as written, the proposed rule goes nowhere near far enough to ensure such protections. If the current rulemaking process is allowed to proceed, BLM has another opportunity to address these important issues before it adopts its final rule. If not, the human and financial costs of its failure to do so will continue to mount.

As with climate, BLM's proposed rule does not go far enough to address public health and environmental justice considerations by the mere fact that it presumes and enables the indefinite continuation of oil and gas leasing and drilling. As already referenced, any additional oil and gas extraction perpetuates adverse climate and health risks and impacts and is fundamentally incompatible with advancing environmental and climate justice—both goals this Administration has professed adherence to. As with climate, however, we recognize that interim harm-reduction measures, such as setback distances, conditions of approval, or leasing stipulations are essential to a just transition, and are necessary to protect community and ecosystem health and advance environmental justice, now and for future generations. Those who are breathing polluted air, drinking contaminated water, or living with multigenerational legacies of extraction and pollution, need strong setback requirements and other "reasonable

[26] 88 Fed. Reg. at 47,573.
[27] *Id.*

measures"[28] to mitigate, minimize, or, wherever possible, avoid adverse risks and impacts, particularly for those in frontline or "underserved communities."[29] But ultimately, any "reasonable measures" to mitigate or avoid harm must be *part of*—not a *substitute for*— a just transition away from oil and gas extraction. We have urged BLM to consider these important factors in its adoption of a final rule. The bill under consideration today seeks to ensure that BLM continues to ignore these important factors to the detriment of public health and its associated publicly born costs, environmental justice, and the legal defensibility of its program.

An extensive and ever-growing body of peer-reviewed research has shown what people living near oil and gas operations already know firsthand—that proximity to drilling and fracking operations and other oil and gas facilities is linked to adverse health risks and impacts. These risks and impacts include (but are not limited to):

- Reproductive harms – including birth defects, low birth weight, preterm births, and miscarriages;
- Respiratory health effects – including asthma, lung disease, breathing difficulty, and, most recently, increased vulnerability to COVID-19;
- Eye, skin, and throat irritation and rashes;
- Cardiovascular effects – including higher blood pressure and other indicators of, or precursors to, heart disease;
- Possible disruption of the endocrine system (a system of glands producing hormones that regulate a variety of functions in the body, including metabolism, growth and development, reproduction, sleep, and mood);
- Cancer (lung cancer and other types of cancer);
- Motor vehicle injuries and fatalities, and other health and safety risks associated with increased vehicle traffic (and the air pollutants it emits) from oil and gas development;
- Injuries and fatalities from explosions, fires, spills, and leaks; and

[28] *See* 88 Fed. Reg. 47573.

[29] BLM cites Executive Order 14035, "Diversity, Equity, Inclusion and Accessibility in the Federal Workforce" (EO 14035) for its definition of "underserved community:" ''[t]he term 'underserved communities' refers to populations sharing a particular characteristic, as well as geographic communities, who have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.'' BLM also cites EO 14008 interim CEQ Guidance for its definition of "community" as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.'' *See* Proposed Rule at 88 Fed. Reg. 47573.

- Trauma and psychological stress.

BLM has an opportunity with its proposed rule to meaningfully address these too-often-overlooked impacts both through the mitigation measures ultimately included in the final rule and in the process BLM employs to finalize and implement the rule. To this end, we urged BLM to take into account and proactively solicit the knowledge, experience, and voices of those in frontline and "underserved" communities, and to ensure that these communities' perspectives are meaningfully incorporated into and actively shape planning and decision-making. H.R. 6009, again, seeks to ensure that these perspectives remain unheard. This is yet another reason this Subcommittee should reject the Resolution.

- BLM's Legal Authority and Responsibility to Adopt New Oil and Gas Regulations.

Development of oil and gas remains an element of FLPMA's multiple use mandate. This remains true in the wake of the IRA. Nonetheless, BLM holds competing obligations to, *inter alia*, protect "air and atmospheric" values, and has an overarching statutory responsibility to manage public lands without "permanent impairment of the productivity of the land and quality of the environment," and to "take any action necessary, whether by regulation or otherwise, to prevent unnecessary or undue degradation of the lands."[30] These mandates do not lock into place oil and gas leasing and production at the expense of other multiple uses or overshadow the role of public lands as part of a mosaic of ecological and biological systems critical to ecosystem resilience. Instead, FLPMA directs BLM to manage public lands and resources to "meet the present and future needs of the American people" while "conform[ing] to changing needs and conditions … tak[ing] into account the long-term needs of future generations."[31]

The National Environmental Policy Act (NEPA) animates BLM's imperative, through this rulemaking, to address interwoven climate, ecological, and biological crises and to better serve otherwise underserved and overburdened people and communities. Section 102 of NEPA directs that, "to the fullest extent possible," BLM's statutory mandates, whether provided by FLPMA or the MLA (amongst other "policies, regulations, and public laws of the United States"), "shall be interpreted and administered in accordance with [section 101 of NEPA]."[32] Section 101(a), in turn, provides that:

> [I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and

[30] 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b).
[31] 43 U.S.C. § 1702(c).
[32] 42 U.S.C. § 4332(1).

> promote the general welfare, to create and maintain conditions under which man [sic] and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.[33]

Section 101(b) further directs BLM to use "all practicable means" to:

> (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
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> (2) assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;
>
> (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
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> (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
>
> (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
>
> (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.[34]

In other words, NEPA requires that BLM interpret and administer FLPMA and the MLA consistent with Section 101's directive that the agency, distilled to its essence, serve as a "trustee" of the federal public lands system for the benefit of future generations. This is wholly consistent with the distinctive authority conferred to Congress and, by extension through statute, to the agency, by the U.S. Constitution's Property Clause.[35] The Property 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."[36] 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

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[33] 42 U.S.C. § 4331(a).

[34] 42 U.S.C. § 4331(b).

[35] For a summary of the expansive legal authorities delegated to Interior under FLPMA, as well as BLM's authority to require mitigation of impacts resulting from its land use authorizations, see recently reinstated Solicitor's Opinion M-37039, The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations through Mitigation (Dec. 21, 2016), https://www.doi.gov/sites/doi.gov/files/m-37039-the-blms-authority-to-address-impacts-of-its-land-use-authorizations-through-mitigation.pdf.

[36] U.S. CONSTITUTION, Art. IV., Sec. 3, Cl. 2.

public land thus entrusted to Congress is *without limitations*.'"[37] BLM is required to consider this broad authority in its implementation of the federal oil and gas program, and its proposed rule represents a critical opportunity for it to do so. This opportunity should not be curtailed.

Conclusion

In sum, I urge the committee to reject H.R. 6009 and to allow BLM's rulemaking to proceed unhindered. That process has not yet concluded, and BLM is currently reviewing more than 260,000 comments submitted on the proposed rule. The bill under consideration today not only seeks to cut short BLM's rulemaking process but also would negate the efforts of the American public who weighed in in such numbers and circumvent BLM's opportunity to benefit from those comments. Though BLM's proposed rule does not address the fundamental tension of continued oil and gas leasing with the climate crisis, it seeks to implement important measures to protect American taxpayers from the type of abuse BLM's oil and gas system has historically experienced. Just as WELC and its partners urged the agency, in the strongest possible terms, to live up to its statutory responsibilities in the final rule, I today urge this committee to reject H.R. 6009, and its effort to proscribe BLM's rulemaking authority and shortchange American taxpayers for decades to come.

[37] *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) (emphasis added).