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Testimony Before the House Committee on Natural Resources,
Subcommittee on Energy and Mineral Resources
Hearing on H.R. 6481 Regarding Expressions of Interest

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Chairman Stauber, Ranking Member Ocasio-Cortez, and Committee Members, thank you for the opportunity to testify today on H.R. 6481. The subject of the bill involves nominations for oil and natural gas leases, which are initiated by an Expression of Interest (EOI). EOIs are a specific detail of the leasing process governed by the Mineral Leasing Act (MLA), as amended by the inaptly named Inflation Reduction Act (IRA). Inaptly, as the EOI fee, along with other fees and tax increases as well as hundreds of billions in government spending, will ensure that fundamental energy inflation continues far into the future.

Western Energy Alliance thanks Representative Hageman for introducing the bill. The bill does not rescind the fee, but rather fixes a structural flaw in the EOI provisions of IRA. There are many structural flaws in IRA regarding energy, since the language that Senator Manchin hastily developed as he rushed IRA into law over just a few weeks in the summer of 2022 was not vetted with industry experts nor with the Bureau of Land Management (BLM). Officials at BLM have commiserated with me over the lack of technical consultation on the language, which has resulted in impracticalities and confusion on how to implement several provisions such as those regarding EOIs, other fee increases, and the intertwining of renewable energy permits with oil and natural gas leasing. The proposed leasing rule, about which I testified before this Subcommittee in September, demonstrates the difficulties BLM faces in finalizing a legally defensible final rule. Likewise, the Environmental Protection Agency (EPA) is struggling in multiple rulemakings to figure out technically how to implement the methane emissions fee mandated by IRA.

We applaud Senator Manchin for recognizing—in a bill that included hundreds of billions of dollars in spending and subsidies for so-called green energy projects—that oil, natural gas, and coal provide 80% of the energy that Americans rely on and are not going away anytime soon. While research and development for alternative energy sources is a worthy government investment, excessive IRA spending that distorts energy markets confuses American energy policy and threatens grid reliability. But since IRA proceeds apace, at least Senator Manchin had the foresight to attempt to keep the Department of the Interior from completely crowding out reliable energy sources by focusing solely on wind and solar energy. He included provisions that require a minimum level of oil and natural gas lease offerings before wind and solar permits can be issued, an all-of-the-above energy approach we can get behind. However, again, since the language was not developed cooperatively, the wording is confusing and BLM is playing games with how it counts EOIs and acreage offered to meet neither the letter nor the spirit of these IRA provisions.

Regulatory Fix

Getting back more directly to the subject at hand, Rep. Hageman's bill would correct one of the various flaws of the EOI provisions in IRA. First to identify the flaws. The EOI language in IRA, if unchanged, requires companies to pay a $5 per-acre fee for the acreage they nominate, regardless of whether the

acreage is ever offered for sale. Based on the large proportion of nominated acreage that BLM historically sits on for years and never brings to sale, the government is in the inappropriate position of charging for nothing. The government takes the money whether or not the service is rendered, something that certainly would not work in the private sector.

I have a simple fix: BLM should simply collect the EOI fee at the time the acreage is offered for sale. The IRA language does not specify when the fee must be paid, so BLM has the flexibility with its leasing rule to make this simple fix a reality. Western Energy Alliance offered that suggestion in comments on the rule, and we hope BLM will accept this common-sense fix.

Further, collecting the fee at time of sale also corrects another problem: the situation of one company paying for something another company receives. Nominating a parcel does not guarantee you will win that lease at auction; it merely starts the leasing process. By making the EOI fee payable at time of sale, the winning bidder pays for the lease right received, not the losing bidder who goes home empty-handed. It is inherently inequitable to compel one party to pay for property that another party receives.

My solution also addresses parcels offered at auction that receive no bids: the nominating company pays the EOI fee. Whether sold or not, the EOI fee is paid and BLM pockets the fee to cover its lease processing costs. BLM could implement my suggestions as part of its leasing rule, but legislation such as H.R. 6481 is necessary in the likelihood BLM chooses not to implement my practical solution.

Some History

The push for the EOI fee came in response to the problem of too much acreage being nominated in Nevada. As far as I could tell, given publicly available data and conversations with people in Nevada, one or two individuals inexperienced in the business of oil and natural gas were nominating millions of acres without having conducted any analysis of the geology, resource potential, or industry interest. The nominations would be submitted indiscriminately on bulk spreadsheets listing hundreds of parcels of hundreds of thousands of acres at a time. In digging into the issue, I could not determine a true motive other than possibly naivete and a desire to convince gullible clients that one is a “player” in the business. But a nomination is nothing but a piece of paper if you never acquire the lease and determine its potential.

This person(s) did this several times, and of course, none of the acreage sold at auction. I argued publicly and to BLM that it should simply ignore these bulk nominations. BLM indeed came to that same conclusion after a few null sales and did not move forward wholesale with these nominations. Problem solved.

Meanwhile, in the Mountain West states where the vast majority of federal leasing and production occur, this simply does not happen. Companies spend too much time and money when assessing potential leases to nominate willy nilly. The majority of parcels offered generally receives bids. The percentage is not 100% because of inefficiencies in the leasing process and the long time periods

between nomination and sale, which can discourage companies and cause them to give up. But bulk nominations of hundreds of thousands of acres simply do not occur.

Legislative Solutions

Once BLM stopped processing the bulk nominations from Nevada, the problem went away. But of course, reality and evidence don't always drive the policy process, and the "solution" of an EOI fee lasted far beyond the problem. Therefore, I call on Congress to simply eliminate the EOI fee. Even before the new IRA EOI fee and all the others were put in place, the oil and natural gas industry returned $54.94 for every dollar BLM spent administering the federal oil and gas program.[1] In fact, the $8.6 billion in onshore royalties, rents, and bonuses that oil and natural gas companies paid in 2022 cover BLM's entire budget appropriation of $1.6 billion. BLM does not lack resources to process EOIs.

Given the likelihood of my first legislative suggestion passing, H.R. 6481 is a very reasonable solution. By removing the word "nonrefundable" from the EOI fee definition in the Mineral Leasing Act, the bill fixes the important problem of BLM taking fees for acreage that it never offers for sale. After five years, if BLM has not offered the parcel, the EOI fee is refunded. That is reasonable.

A third suggestion would be for H.R. 6481 to be amended along the lines of my easy regulatory fix above. The bill could specify that the EOI fee is to be paid at the time of sale by the winning bidder, or if the parcel does not sell, the nominating company is on the hook. My suggestion solves the potential problem of excess nominations, as profligate nominators are liable for unwanted lease fees. At $5 an acre, our naive friends in Nevada would be immediately priced out of the nominations process, were they still up to their tricks today.

Thank you for the opportunity to testify.

[1] Office of Natural Resources Revenue (ONRR) 2022 revenue data for oil and natural gas divided by BLM's $156,537,000 total FY2022 actual appropriation, from *Budget Justifications and Performance Information, Fiscal Year 2024, Bureau of Land* Management, DOI.